

TCEQ DOCKET NO. 2016-1211-MSW

APPLICATION BY § **BEFORE THE TEXAS COMMISSION**
IESI TX LANDFILL LP FOR §
MUNICIPAL SOLID WASTE PERMIT § **ON**
NO. 1983C § **ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS AND
REQUEST FOR RECONSIDERATION**

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (the TCEQ or Commission) files this Response to Hearing Requests on the application of IESI Tx. (IESI) for a major amendment to Municipal Solid Waste (MSW) Permit No. 1983C. The Office of the Chief Clerk received timely hearing requests from Babette Brichett, Joan Cauley, Sheila Fiorella, Liliane Garza, Randall Kahan, Terry Leese, Jessica Monreal, Chandra Moore, Lora Simpson, Susan Thomas, and Cliff Uranga. Also attached is a GIS map of the area.

II. Description of the Facility

IESI owns and operates the IESI Fort Worth C&D Landfill located at 4144 Dick Price RD, Ft. Worth, Tarrant County, Texas 76140. The landfill is a Type IV landfill, which only accepts brush, construction and demolition waste, and rubbish.¹ IESI applied for a major amendment to increase the maximum permitted height of the landfill and to increase the total waste disposal capacity of the landfill. The application also includes updates and revisions to the landfill's site development plan, waste acceptance plan, site operating plan, and other supporting permit documents.

Currently, the permitted landfill facility encompasses 151.73 total acres. Only 77.7 acres of that total are used for waste disposal. The maximum permitted height of waste fill is currently 719 feet above mean sea level (msl) and the maximum permitted height of final cover is 721.5 msl. If this permit amendment is approved,

¹ 30 TAC § 330.5(a)(2). Type IV MSW facilities may not accept putrescible waste, conditionally exempt small-quantity generator waste, or household wastes.

the height of the final waste fill and final cover would be increased by 99 feet. Therefore, the amended maximum permitted height of waste fill would be 818 msl and the amended maximum permitted height of the final cover would be 820.5 msl. According to the application, authorized wastes are currently accepted at an initial rate of approximately 364,344 tons per year, forecasted to grow to a rate of approximately 413,560 tons per year by 2035.

The currently permitted landfill capacity is 12 million cubic yards which IESI estimates will be depleted in 2023. If this permit amendment is approved, the landfill capacity will be increased by 6.3 million cubic yards for a total of 18.4 million cubic yards and its estimated site life would be extended by approximately 12.5 years to the year 2035.

The amended permit would authorize the expansion of the existing Type IV municipal solid waste landfill with a total net disposal volume (waste and weekly cover) of approximately 18.4 million cubic yards, in addition to support structures and facilities as described in the permit amendment application and subject to the limitations contained in the draft permit and commission rules. The existing permitted landfill facility consists of a site entrance with security fencing, a gatehouse, scales, a paved entrance road to the site, all-weather access roads, soil stockpiles, a landfill gas monitoring system, a groundwater monitoring system, and the solid waste disposal area. Within the permitted landfill facility, there will continue to be a composting area, a large items/white goods unloading and storage area, a construction and demolition (C&D) recyclable sorting area, and a wood recycling area (they are all authorized under the current permit). The permitted landfill facility also includes structures for surface drainage and stormwater run-on/runoff control and a perimeter drainage system to convey stormwater runoff around the site. The amended permit would modify the drainage system and add mechanically-stabilized earth and other berms, ditches, detention ponds and associated drainage structures.

III. Procedural Background

This permit application is for a major permit amendment. The Waste Permits Division received the application on March 4, 2015, and declared it administratively complete on May 5, 2015. The Notice of Receipt and Intent to Obtain (NORI) was published in English on May 26, 2015, in the *Fort Worth Star Telegram* and in Spanish on May 30, 2015, in *La Estrella*. The application was declared technically complete on March 1, 2016. The Notice of Application and Preliminary Decision (NAPD) was published in English on March 19, 2016, in the *Fort Worth Star Telegram* and in Spanish in the *La Estrella*. The public comment period ended on April 18, 2016. The Executive Director's Response to Comments was mailed on June 20, 2016, the Hearing Request period ended on July 20, 2016. Since this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

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, it 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 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. The Application was declared administratively complete on May 5, 2015; therefore, it is subject to the procedural requirement of HB 801.

A. Response to Request

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

Responses to hearing requests must specifically address:

- a) whether the requestor is an affected person;

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

30 TAC § 55.209(e).

B. Hearing Request Requirements

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

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided...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.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

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

- b) 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;
- c) request a contested case hearing;
- d) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's response to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- e) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. "Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person." Section 55.203 sets out who may be considered an affected person.

- a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- b) Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.

- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
- 1) whether the interest claimed is one protected by the law under which the application will be considered;
 - 2) distance restrictions or other limitations imposed by law on the affected interest;
 - 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - 5) likely impact of the regulated activity on the use of the impacted natural resource by the person; and
 - 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 50.203.

D. Referral to the State Office of Administrative Hearings (SOAH)

When the Commission grants a request for a contested case hearing, they are required to issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing. 30 TAC § 50.115(b). Subsection 50.115(c) sets out the test for determining whether an issue may be referred to SOAH. "The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application." 30 TAC § 50.115(c).

V. Analysis of the Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, who qualifies as an affected person,

what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

1. Whether the Requestors Complied with 30 TAC §§ 55.201(c) and (d)

Babette Brichett, Joan Cauley, Sheila Fiorella, Randall Kahan, Terry Leese, Jessica Monreal, Lora Simpson, Susan Thomas, and Cliff Uranga submitted timely, written, hearing requests that raised issues presented during the public comment period that have not been withdrawn. They provided their addresses and phone numbers, or those of their representative, and requested a hearing. They identified themselves as persons with what they believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided lists of disputed issues of fact that were raised during the public comment period. The Executive Director concludes that these hearing requests substantially comply with the sections 55.201(c) and (d) requirements.

Chandra Moore and Liliane Garza submitted timely hearing requests, but they did not raise any issues. They each provided their addresses and phone numbers, however they did not provide any disputed issues of fact that were raised during the public comment period. The Executive Director concludes that the hearing requests of Chandra Moore and Liliane Garza do not substantially comply with the sections 55.201(c) and (d) requirements.

Kathy Carroll and Gloria Villaire submitted timely, written, hearing requests that raised issues presented during the public comment period, however, they both withdrew their hearing requests.

*The Executive Director recommends that the Commission find that the hearing requests, submitted by Babette Brichett, Joan Cauley, Randall Kahan, Terry Leese, Jessica Monreal, Sheila Fiorella, Lora Simpson, Susan Thomas, and Cliff Uranga, **substantially comply** with the requirements of 30 TAC §§ 55.201(c) and (d).*

*The Executive Director recommends that the Commission find that the hearing requests, submitted by Chandra Moore and Liliane Garza **do not substantially comply** with the requirements of 30 TAC §§ 55.201(c) and (d).*

2. Whether the Requestors are Affected Persons

a. Babette Birchett

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Birchett is not an affected person because she does not have a personal justiciable interest related to a legal right, duty, privilege power or

economic interest affected by the application, that is not common to members of the general public. Ms. Birchett raised issues regarding odors and human health; however, according to the address Ms. Birchett provided in her hearing request, her property does not appear to be near the IESI landfill. Due to the type of landfill and the distance from the landfill to Ms. Birchett's property, it is unlikely she will be impacted by the landfill in a way that is not in common to members of the general public.

The Executive Director recommends that the Commission find that Babette Birchett is not an affected person under 30 TAC § 55.203.

c. Joan Cauley

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Cauley is not an affected person because she does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Ms. Cauley raised issues regarding odors, property values, quality of life, and negative impacts to wildlife; however, according to the address Ms. Cauley provided in her hearing request, her property does not appear to be near the IESI landfill. Due to the type of landfill and the distance from the landfill to Ms. Cauley's property, it is unlikely she will be impacted by the landfill in a way that is not in common to members of the general public.

The Executive Director recommends that the Commission find that Joan Cauley is not an affected person under 30 TAC § 55.203.

d. Sheila Fiorella

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Fiorella is not an affected person because she does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Ms. Fiorella raised an issue regarding odors; however, according to the address she provided in her hearing request, her property does not appear to be near the IESI landfill. Due to the type of landfill and the distance from the landfill to Ms. Fiorella's property, it is unlikely she will be impacted by the landfill in a way that is not in common to members of the general public.

The Executive Director recommends that the Commission find that Sheila Fiorella is not an affected person under 30 TAC § 55.203.

e. *Liliane Garza*

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Garza is not an affected person because she did not identify a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Ms. Garza submitted a hearing request; however she did not raise any issues.

The Executive Director recommends that the Commission find that Liliane Garza is not an affected person under 30 TAC § 55.203.

f. *Randall Kahan*

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Mr. Kahan is not an affected person because he does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Mr. Kahan raised issues regarding the proposed increase in the height of the landfill. According to his hearing request, Mr. Kahan lives in Pantego, Texas; therefore, his property does not appear to be near the IESI landfill. Due to the type of landfill and the distance from the landfill to Mr. Kahan's property, it is unlikely he will be impacted by the landfill in a way that is not in common to members of the general public.

The Executive Director recommends that the Commission find that Randall Kahan is not an affected person under 30 TAC § 55.203.

g. *Terry Leese*

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Terry Leese is not an affected person because he does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Terry Leese raised issues regarding odors, quality of life, and property values; however, according to the address he provided in his hearing request, his property does not appear to be near the IESI landfill. Due to the type of landfill and the distance from the landfill to Terry Leese's property, it is unlikely he will be impacted by the landfill in a way that is not in common to members of the general public.

The Executive Director recommends that the Commission find that Terry Leese is not an affected person under 30 TAC § 55.203.

h. Jessica Monreal

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Monreal is an affected person because she has a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Ms. Monreal raised issues regarding odors, human health, and property values. According to her hearing request, Ms. Monreal lives relatively close to the IESI facility; therefore, there is a reasonable relationship between the draft permit and her concerns regarding odor and human health.

The Executive Director recommends that the Commission find that Jessica Monreal is an affected person under 30 TAC § 55.203.

i. Chandra Moore

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Moore is not an affected person because she did not identify a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Ms. Moore submitted a hearing request; however, she did not raise any issues.

The Executive Director recommends that the Commission find that Chandra Moore is not an affected person under 30 TAC § 55.203.

j. Lora Simpson

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Simpson is not an affected person because she does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Ms. Simpson raised issues regarding odors and the facility's compliance history; however, according to the address Ms. Simpson provided in her hearing request, her property does not appear to be near the IESI landfill. Due to the type of landfill and the distance from the landfill to Ms. Simpson's property, it is unlikely she will be impacted by the landfill in a way that is not in common to members of the general public.

The Executive Director recommends that the Commission find that Lora Simpson is not an affected person under 30 TAC § 55.203.

k. *Susan Thomas*

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Ms. Thomas is not an affected person because she does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Ms. Thomas raised an issue regarding odor; however, according to the address she provided in her hearing request, her property does not appear to be near the IESI landfill. Due to the type of landfill and the distance from the landfill to Ms. Thomas' property, it is unlikely she will be impacted by the landfill in a way that is not in common to members of the general public.

The Executive Director recommends that the Commission find that Susan Thomas is not an affected person under 30 TAC § 55.203.

l. *Cliff Uranga*

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends that the Commission find that Mr. Uranga is not an affected person because he does not have a personal justiciable interest related to a legal right, duty, privilege power or economic interest affected by the application, that is not common to members of the general public. Mr. Uranga raised issues regarding odors and property values; however, according to the address he provided in his hearing request, his property does not appear to be near the IESI landfill. Due to the type of landfill and the distance from the landfill to Mr. Uranga's property, it is unlikely he will be impacted by the landfill in a way that is not in common to members of the general public.

The Executive Director recommends that the Commission find that Cliff Uranga is not an affected person under 30 TAC § 55.203.

3. Whether the Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. All identified issues in this response are considered disputed, unless otherwise noted.

4. Whether the Increase in the Maximum Permitted Height of the Landfill or the Increase in the Total Waste Disposal Capacity of the Landfill will Cause Nuisance Odors.

This issue was raised and addressed in the Executive Director's Response to Public Comment, Comment 1. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

5. Whether the Increase in the Maximum Permitted Height of the Landfill or the Increase in the Total Waste Disposal Capacity of the Landfill will Negatively Impact Property Values.

This issue was raised and addressed in the Executive Director's Response to Public Comment, Comment 2. It involves a question of fact, however the impact to property values is not relevant and material to the Commission's decision on this application.

*The Executive Director concludes that this issue **is NOT appropriate** for referral to SOAH.*

6. Whether the Increase in the Maximum Permitted Height of the Landfill or the Increase in the Total Waste Disposal Capacity of the Landfill will Negatively Impact Human Health.

This issue was raised and addressed in the Executive Director's Response to Public Comment, Comment 3. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

7. Whether the Increase in the Maximum Permitted Height of the Landfill or the Increase in the Total Waste Disposal Capacity of the Landfill will Negatively Impact the Requestors Quality of Life.

This issue was raised and addressed in the Executive Director's Response to Public Comment, Comment 8. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

8. Whether the Application for a Major Amendment should be Denied Based on the Applicant's Compliance History.

This issue was raised and addressed in the Executive Director's Response to Public Comment, Comment 11. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

9. Whether the Application to Increase the Height of the Landfill should be Granted.

This issue was raised and addressed in the Executive Director's Response to Public Comment, Comment 7. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

10. Whether the Increase in the Maximum Permitted Height of the Landfill or the Increase in the Total Waste Disposal Capacity of the Landfill will Negatively Impact Wildlife.

This issue was raised and addressed in the Executive Director's Response to Public Comment, Comment 10. It involves a question of fact and it is relevant and material to the decision on this application.

*The Executive Director concludes that this issue **is appropriate** for referral to SOAH.*

VI. Duration of the Contested Case Hearing

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

VII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

a) Find that the following individual *is affected* and grant her hearing request:

1. Jessica Monreal

b) Should the Commission find that any of the requestors are affected, the following issues should be referred to SOAH for a Contested Case Hearing for a duration of six months:

1. Whether the increase in the maximum permitted height of the landfill or the increase in the total waste disposal capacity of the landfill will cause nuisance odors.
2. Whether the increase in the maximum permitted height of the landfill or the increase in the total waste disposal capacity of the landfill will negatively impact human health.
3. Whether the increase in the maximum permitted height of the landfill or the increase in the total waste disposal capacity of the landfill will negatively impact the requestors' quality of life.
4. Whether the application for a major Amendment should be denied based on the Applicant's compliance history.
5. Whether the application to increase the height of the landfill should be granted.
6. Whether the increase in the maximum permitted height of the landfill or the increase in the total waste disposal capacity of the landfill will negatively impact wildlife.

Respectfully submitted,

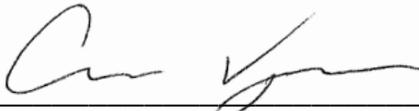
Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on September 12, 2016, an original and seven copies of the "Executive Director's Response to Hearing Requests" for IESI Tx Landfill, LP, MSW Permit No. 1983C was 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 U.S. Mail.



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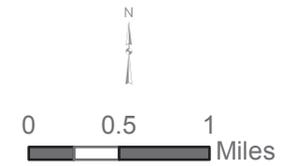
IESI Ft. Worth C and D Landfill MSW 1983C

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



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

Date: 9/7/2016

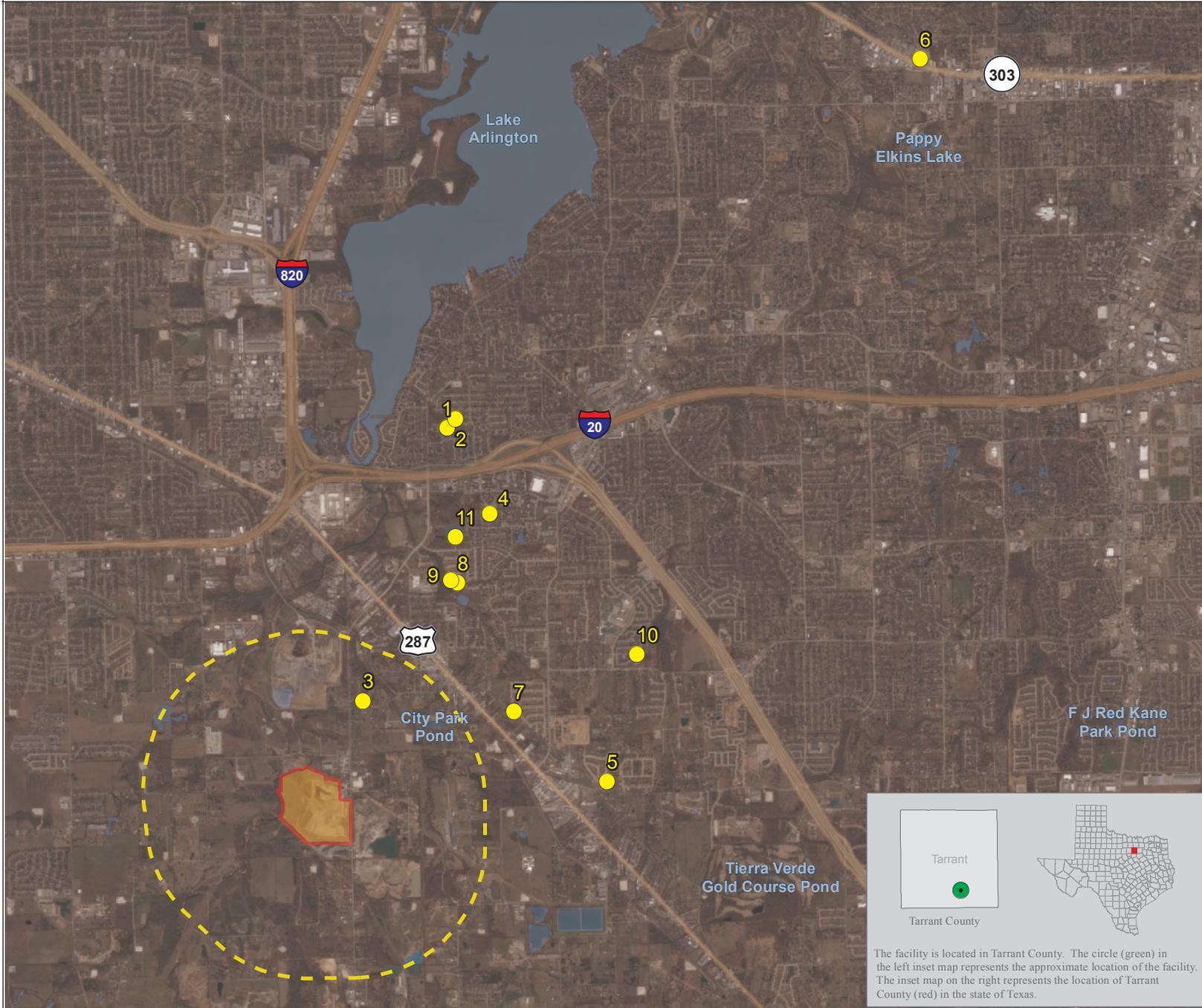


- Requesters
- MSW 1983C
- 1 mi. Radial Distance
- Water Bodies
- Interstates
- Major Highways

ID	NAME
1	FIORELLA,SHEILA
2	BIRCHETT,BABETTE
3	MONREAL,JESSICA
4	LEESE,TERRY
5	MOORE,CHANDRA
6	KAHAN,RANDALL
7	GARZA,LILIANE
8	URANGA,CLIFF
9	SIMPSON,LORA
10	THOMAS,SUSAN
11	CAULEY,JOAN

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



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