

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 30, 2022

Ms. Laurie Gharis, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

RE: Application by the City of Waco, MSW Permit No. 2400; TCEQ Docket No. 2022-0977-MSW

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the Executive Director's Response to Hearing Requests and Requests for Reconsideration.

Please do not hesitate to contact me at Anthony.tatu@tceq.texas.gov or (512) 239-5778 if you have any questions. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anthony Tatu".

Anthony Tatu
Staff Attorney
Environmental Law Division

Division Enclosure

Cc: Mailing List

**MAILING LIST CITY OF WACO
DOCKET NO. 2022-0977-MSW;
PERMIT NO. 2400**

FOR THE APPLICANT:

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REQUESTER(S):

See attached list

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Temple TX 76502-7995

Amy, Stephanie Marie
PO Box 452
Axtell TX 76624-0452

Boyett, Alton M
7664 E Highway 84
Waco TX 76705-4954

Boyett, Cynthia Ann
7664 E Highway 84
Waco TX 76705-4954

Brannen, Dr. Julie Michelle
Hidden Branch Stables
595 Hurst Rd
Axtell TX 76624-1307

Dunlap, Cynthia Banik
211 State Highway 31
Mount Calm TX 76673-3163

Dunlap, Joe Wilburn
211 State Highway 31
Mount Calm TX 76673-3163

Engledow, Miss Kaylee
Pierce & Pierce Builders Inc
9151 County Line Rd S
Mount Calm TX 76673-3245

Graham, Denise
718 N Seeley Ave W
Mount Calm TX 76673-3085

Green, Angela
462 Beaver Ln
Waco TX 76705-4901

Guillen, Jasmin
2715 Torino Reale Ave
Temple TX 76502-7995

Harris, Mrs Mary
882 LCR 116
Mount Calm TX 76673-3546

Harris, Phillip Kirk
363 Homer Young Ln
Axtell TX 76624-1306

Haynes, Vickie
6969 Highway 84 W
Coolidge TX 76635-3115

Howard, Stacy
PO Box 186
Axtell TX 76624-0186

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Perales Allmon & Ice Pc
On Behalf Of Safe
1206 San Antonio St
Austin TX 78701-1834

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Mount Calm TX 76673-3094

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176 HCR 3259
Mount Calm TX 76673-3174

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Leroy TX 76654-0221

Lynch, Mrs Katy
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Mount Calm TX 76673-3002

Manning, Christi
1652 Hurst Rd
Axtell TX 76624-1311

McMillan, Janet Burke
23 Jones View Dr
Huntsville TX 77320-1543

McMillan, Janet Burke
6725 Highway 84 W
Coolidge TX 76635-3071

Nickel, Candace
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Axtell TX 76624-0435

Nivin, Cathryne
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Mount Calm TX 76673-3592

Nivin, Mr Ernest Taylor
964 Lcr 120
Mount Calm TX 76673-3592

Perales, Marisa Attorney
Perales Allmon & Ice Pc
On Behalf Of Safe
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Pierce & Pierce Builders Inc
9151 County Line Rd S
Mount Calm TX 76673-3245

Pierce, Mrs. Vicki Michelle
9151 County Line Rd S
Mount Calm TX 76673-3245

Porter, Darren
1500 LCR 102
Mount Calm TX 76673-3625

Porter, Melissa
1500 LCR 102
Mount Calm TX 76673-3625

Price, Randi
102 N Morgan St W
Mount Calm TX 76673-3020

Reed, David L
3444 T K Pkwy
Axtell TX 76624-1328

Reed Jr, David L
PO Box 1922
Canyon Lake TX 78133-0022

Rigby, Mrs. Elisabeth
4418 T K Pkwy
Axtell TX 76624-1353

Rigby, Mr Steven
4418 T K Pkwy
Axtell TX 76624-1353

Roof, Stacy L
370 W Old Axtell Rd
Waco TX 76705-4926

Serros Iii, Dr. Alcario
933 Frazier Ln
Axtell TX 76624-1658

Souders, Leslie Gail
518 N Seeley Ave W
Mount Calm TX 76673-3073

Stefka, David
PO Box 43
Axtell TX 76624-0043

Stokes, Mr Benjamin Luke
1553 Frazier Ln
Axtell TX 76624-1662

Stone, Robert R
2013 Highway 31
Axtell TX 76624-1520

Swaner, Susan
4351 T K Pkwy
Axtell TX 76624-1461

Tennison, Keven
4081 E Old
Axtell Rd Axtell TX 76624-
1218

Tierce, Virginia
376 Wood St
Axtell TX 76624-1232

Trayler, James
20 Walkers Xing
Waco TX 76705-4006

Weatherby, Mr Brent
602 HCR 3373
Hubbard TX 76648-2838

TCEQ DOCKET NO. 2022-0977-MSW

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
THE CITY OF WACO	§	ON
FOR MSW PERMIT NO 2400	§	ENVIRONMENTAL QUALITY

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

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests and Requests for Reconsideration (Response) on the application of the City of Waco (Applicant) for a new Municipal Solid Waste (MSW) Permit No. 2400. The Office of the Chief Clerk (OCC) received timely hearing requests from Tehuacana Creek Water Control and Improvement District (TCWCID); Elisabeth Rigby and Steven Rigby; Susan Swaner; Cynthia Dunlap and Joe Dunlap; Darren Porter and Melissa Porter; Kaylee Engledow, Ricky Pierce, and Vicki Pierce; Phillip Harris; Cathryne Nivin and Ernest Nivin; Christi Manning; Mary Harris; Julie Brannen; Katy Lynch; Candace Nickel; David Stefka; Virginia Tierce; Charles Klanika; Keven Tennison; Leslie Souders; Denise Graham; Randi Price; Suzanne Johnson; Kimberly Lucien; Alcario Serros; Benjamin Stokes; Robert Stone; Stacy Howard; Angela Green; Stephanie Amy; Alton Boyett; Cynthia Boyett; Stacy Roof; Brent Weatherby; Save Axtell Families and the Environment (SAFE); James Trayler; Vickie Haynes; Janet Mcmillan; Jose Alvarez; Jasmin Guillen; and David Reed.

The Executive Director recommends that the Commission find the following requestors are affected persons and grant their hearing requests: Darren Porter and Melissa Porter; James Trayler; Steven Rigby and Elisabeth Rigby; Susan Swaner; Cynthia Dunlap; Joe Dunlap; David Reed; SAFE; and TCWCID.

Attached for the Commission's consideration is a Geographic Information Systems (GIS) map of requestors in the area of the proposed facility (Attachment A), along with the Applicant's list and map of landowners adjacent to the proposed facility (Attachment B). The Draft Permit, Technical Summary, Executive Director's Preliminary Decision, and Executive Director's Response to Public Comment can be found in the Agenda backup materials filed for the Commission's consideration.

II. Description of the Facility

The City of Waco has applied for a new Type I MSW landfill facility proposed to be located approximately 0.4 miles south of the intersection of TK Parkway and State

Highway 31 in McLennan and Limestone Counties. The application, if granted, would include 502.5 acres within the proposed permit boundary, and approximately 173.8 acres would be used for waste disposal.

The draft permit would authorize the owner or operator of the facility to dispose of household waste, yard waste, commercial waste, construction and demolition waste, special waste, Class 2 non-hazardous industrial wastes, and Class 3 non-hazardous industrial wastes, which include rock, brick, glass, dirt, certain plastics and rubber, and other waste as approved by the Executive Director. The permittee would be prohibited from accepting or knowingly disposing of any other waste not identified above. Authorized wastes would be accepted at an average rate of approximately 1,070 yards per day; however the rate would vary over the life of the site, with an estimated maximum of 1,590 yards per day.

III. Procedural Background

The City of Waco initially filed a bifurcated application. Parts I and II of the application were received on August 8, 2018 and declared administratively complete on September 14, 2018. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published on September 26, 2018 in the *Waco Tribune-Herald* and in *Mexia News*. Parts III and IV of the application were received on May 29, 2020. After the Applicant filed Parts III and IV of the application, the NORI was published again on July 11, 2020 in the *Waco Tribune-Herald* and in *Mexia News* and on July 16, 2020 in *Groesbeck Journal*. The Executive Director incorporated Parts III and IV with Parts I and II of the application and declared the application administratively complete on June 20, 2020. The first public meeting on the application was held on August 15, 2019. The Executive Director completed the technical review of the application on October 18, 2021 and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published on October 27, 2021 in the *Waco Tribune-Herald* and in *Mexia News* and on October 28, 2021 in *Groesbeck Journal*. The second public meeting on the application was held on September 23, 2021. The public comment period ended November 29, 2021. This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature (1999) and Senate Bill 709, 84th Legislature (2015), both implemented by the Commission in its rules under 30 TAC Chapters 39, 50, and 55.

IV. Evaluation of Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment, and the Commission's consideration of hearing requests. The

Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the Commission’s consideration of hearing requests. This application was declared administratively complete on September 14, 2018; therefore, it is subject to the procedural requirements adopted pursuant to HB 801 and SB 709.

A. Legal Authority to Respond to Hearing Requests

“The [E]xecutive [D]irector, the public interest counsel, and the applicant may submit written responses to [hearing] requests . . .”¹

“Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director’s Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.”²

B. Hearing Request Requirements

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, . . . filed with the chief clerk within the time provided . . ., [based only on the requestor’s timely comments, 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.”³

“A hearing request must substantially comply with the following:

¹ 30 TAC § 55.209(d).

² 30 TAC § 55.209(e).

³ 30 TAC § 55.201(c).

- (1) 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;
- (2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) . . . list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the [C]ommission'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 [E]xecutive [D]irector's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.”⁴

C. Requirement that Requestor be an Affected Person

In order to grant a contested case hearing, the Commission must determine that a requestor is 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:

⁴ 30 TAC § 55.201(d).

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
 - (6) . . . whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁵
- (d) [In making this determination,] the [C]ommission may also consider the following:
- (1) the merits of the underlying application and supporting documentation in the [C]ommission’s administrative record, including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the [E]xecutive [D]irector; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the [E]xecutive [D]irector, the applicant, or hearing requestor.”⁶

D. Referral to the State Office of Administrative Hearings

“When the [C]ommission grants a request for a contested case hearing, the [C]ommission shall issue an order specifying the number and scope of the issues to be referred to [SOAH] for a hearing.”⁷ “The [C]ommission may not refer an issue to SOAH for a contested case hearing unless the [C]ommission determines that the issue: (1) involves a disputed question of fact or a mixed question of law and fact; (2) was raised during the public comment period . . . by an affected person . . .; and (3) is relevant and material to the decision on the application.”⁸

⁵ 30 TAC § 55.203.

⁶ 30 TAC § 55.203.

⁷ 30 TAC § 50.115(b).

⁸ 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 the appropriate duration of the hearing.

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

i. Individuals the Executive Director Recommends the Commission Find are Affected Persons

The Executive Director reviewed the factors in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a requestor is an affected person and recommends the Commission find that the following requestors are affected persons. All hearing requests were in writing, provided the required contact information, and raised the issues that are the basis of the individual hearing requests in the requestors' timely comments.

1. Save Axtell Families and the Environment (SAFE)

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.205 for determining if a group meets the requirements for a contested case hearing and recommends the Commission find that SAFE meets those requirements.

SAFE submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of its hearing request in its timely comments. The interests that SAFE seeks to protect are germane to the purpose of the organization. SAFE identified Mr. James Trayler, who owns property adjacent to the proposed site as a member of the organization and who would have standing to request a hearing in this own right.

In its hearing requests, SAFE raised several concerns, including recreation, the floodplain, wildlife, odors, noise, light pollution, surface water, groundwater, traffic safety, fire and emergency response, the City of Waco's transparency and competency, land use, geology, need for the proposed landfill, windblown debris, and vectors.

In its requests, SAFE raised Issues 1, 2, 3, 4, 5, 6, 11, 12, 14, 15, 16, and 18 of the issues the Executive Director recommends referring.

2. James Trayler

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that James Trayler is an affected person. Mr. Trayler owns 375 acres

of land adjacent to the proposed landfill and is identified as an adjacent landowner by the Applicant.

James Trayler submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of his hearing request in his timely comments.

In his hearing requests, James Trayler raised several concerns, including recreation, the floodplain and floodways, wildlife, odor and methane gas control, noise, light pollution, surface water, groundwater, traffic safety, fire and emergency response, property values, the City of Waco's transparency, the local ordinance, and the location of the proposed landfill. Based on the location and distance of Mr. Trayler's property and the issues he raised, the Executive Director has determined that Mr. Trayler demonstrated that he has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In his requests, James Trayler raised Issues 1, 3, 4, 5, 11, 12, 16, and 19 of the issues the Executive Director recommends referring.

3. Tehuacana Creek Water Control and Improvement District (TCWCID)

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a governmental entity is an affected person and recommends the Commission find that TCWCID is an affected person. TCWCID owns an easement which is on the proposed landfill site.

TCWCID submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of their hearing request in their timely comments. TCWCID, as a special utility district, has statutory authority and interest over issues relating to water quality and flood control.

In its hearing requests, TCWCID raised several concerns, including easement and property rights, the floodplain, and water quality.

In its requests, TCWCID raised Issues 3, 5, and 10 of the issues the Executive Director recommends referring.

4. Cynthia Dunlap

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Cynthia Dunlap is an affected person. Ms. Dunlap is identified as an adjacent landowner by the Applicant.

Cynthia Dunlap submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of her hearing request in her timely comments.

In her hearing request, Cynthia Dunlap raised several concerns, including surface water, water quality, the City of Waco's compliance history, odor, windblown debris, traffic safety, vectors, noise, and hours of operation. Based on the location and distance of Ms. Dunlap's property and the issues she raised, the Executive Director has determined that Ms. Dunlap demonstrated that she has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In her request, Cynthia Dunlap raised Issues 3, 4, 12, 14, 15, 16, 17, and 18 of the issues the Executive Director recommends referring.

5. Joe Dunlap

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Joe Dunlap is an affected person. Mr. Dunlap is identified as an adjacent landowner by the Applicant.

Joe Dunlap submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of his hearing request in his timely comments.

In his hearing request, Joe Dunlap raised several concerns, including odor, windblown debris, property values, and traffic safety. Based on the location and distance of Mr. Dunlap's property and the issues he raised, the Executive Director has determined that Mr. Dunlap demonstrated that he has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In his request, Joe Dunlap raised Issues 12, 14, and 16 of the issues the Executive Director recommends referring.

6. Melissa Porter and Darren Porter

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Darren Porter and Melissa Porter are affected persons. The address provided by the Porters is approximately 1.38 miles from the proposed facility.

Melissa Porter and Darren Porter submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of their hearing request in their timely comments.

In their hearing requests, Darren Porter and Melissa Porter raised several concerns, including health, property values, groundwater, surface water, the floodplain and wetlands, land use, odor, geology, location, traffic safety, wildlife, local ordinances,

and the compliance history of the City of Waco. Based on the location and distance of the Porters' property and the issues they raised, the Executive Director has determined that the Porters have demonstrated that they have a personal justiciable interest in the application that is not common to members of the general public, and therefore, are affected persons.

In their requests, Melissa Porter and Darren Porter raised Issues 1, 2, 3, 4, 5, 6, 12, 16, 18, 19, and 20 of the issues the Executive Director recommends referring.

7. Steven Rigby and Elisabeth Rigby

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Steven Rigby and Elisabeth Rigby are affected persons. The Rigbys are identified as adjacent landowners by the Applicant.

Steven Rigby and Elisabeth Rigby submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of their hearing request in their timely comments.

In their hearing requests, Steven Rigby and Elisabeth Rigby raised several concerns, including wildlife, groundwater, traffic safety, noise, location, and land use. Based on the location and distance of the Rigbys' property and the issues they raised, the Executive Director has determined that the Rigbys have demonstrated that they have a personal justiciable interest in the application that is not common to members of the general public, and therefore, are affected persons.

In their requests, Steven Rigby and Elisabeth Rigby raised Issues 1, 2, 3, and 12 of the issues the Executive Director recommends referring.

8. Susan Swaner

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Susan Swaner is an affected person. Ms. Swaner provided an address that is 0.62 miles from the proposed landfill.

Susan Swaner submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of her hearing request in her timely comments.

In her hearing request, Susan Swaner raised several concerns, including traffic safety, land use, the City of Waco's transparency, odor, and vectors. Based on the location and distance of the address provided by Ms. Swaner's and the issues she raised, the Executive Director has determined that Ms. Swaner demonstrated that she has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In her request, Susan Swaner raised Issues 2, 12, 15, and 16 of the issues the Executive Director recommends referring.

9. David Reed

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that David Reed is an affected person. Mr. Reed states that he owns property within a one-mile radius of the proposed site and is identified as an adjacent landowner by the Applicant.

David Reed submitted a timely hearing request in writing, provided the required contact information, and raised issues that are the basis of his hearing request in his timely comments.

In his hearing request, Mr. Reed raised concerns regarding surface water, location, and the floodplain. Based on the location and distance of Mr. Reed's property and the issues he raised, the Executive Director has determined that Mr. Reed has demonstrated that he has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In his hearing request, David Reed raised Issues 4 and 5 of the issues the Executive Director recommends referring.

ii. Individuals the Executive Director Does Not Recommend the Commission Find are Affected Persons

The Executive Director reviewed the factors in 30 TAC § 55.201(c) and (d), and § 55.203 for determining if a person is an affected person, and recommends the Commission find the following individuals are not affected persons because they did not file any comments as required by rule prior to filing a hearing request or they did not raise issues in their hearing request: Jose Alvarez, Jasmin Guillen, Cathryne Nivin, Stacy Howard, Ernest Nivin, Stacy Roof, Kevin Tennison, Brent Weatherby, Denise Graham, Virginia Tierce, Candace Nickel, and Katy Lynch.

In addition, the Executive Director recommends the Commission find the following individuals are NOT affected persons because based on their location relative to the facility, they did not demonstrate a personal justiciable interest that is not common to members of the general public: Janet McMillan, Suzanne Johnson, Charles Klanika, Robert Stone, Mary Harris, Ricky Pierce, Vicki Pierce, Kaylee Engledow, Randi Price, Kimberly Lucien, Alton Boyett, Stephanie Amy, Christy Manning, Cynthia Boyett, Alcario Serros, Vickie Haynes, Angela Green, Julie Brannen, David Stefka, Benjamin Stokes, Leslie Souders, and Phillip Harris.

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

The Executive Director has identified issues of disputed questions of fact or mixed questions of law and fact, raised during the comment period, in the requests for a contested case hearing, and relevant to the decision on the application that could be referred to SOAH if the Commission determines that a requestor is an affected person. The issues discussed were raised during the public comment period and addressed in the Executive Director's Response to Public Comment (RTC). None of the issues were withdrawn. All issues identified in this response are considered disputed, unless otherwise noted.

i. Disputed Issues of Fact that are Relevant and Material to the Commission's Consideration of the Application

The Executive Director recommends that the Commission refer the following issues to SOAH for a Contested Case Hearing:

1. Whether the permit application is adequately protective of endangered and threatened species. (RTC no. 2) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
2. Whether the proposed facility is compatible with existing land uses. (RTC nos. 3 and 9) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
3. Whether the Applicant has demonstrated that the proposed landfill would be adequately protective of groundwater. (RTC no. 5) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
4. Whether the Applicant has demonstrated that the proposed landfill would be adequately protective of surface water. (RTC no. 6) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
5. Whether the Applicant has provided an adequate delineation of the relevant floodplains, floodways, and wetlands and adequately addressed potential impacts of the proposed facility upon floodplains, floodways, and wetlands. (RTC no. 7) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.

6. Whether the Applicant has adequately addressed geologic and slope stability at the proposed facility. (RTC no. 8) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
7. Whether the Applicant has demonstrated sufficient availability of soils for the construction of a liner. (RTC no. 8) The issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
8. Whether the proposed design and operation of the landfill cover meets all applicable requirements. (RTC no. 13) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
9. Whether the proposed application includes adequate buffer zones. (RTC no. 14) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
10. Whether the application adequately delineates and addresses easements and whether the Applicant has requisite property interests at the proposed site. (RTC no. 15) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
11. Whether the Applicant has provided an adequate Site Operating Plan, including provisions for fire and emergency response. (RTC no. 17) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
12. Whether the Applicant has adequately addressed traffic impacts and traffic safety. (RTC no. 18) The issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
13. Whether the application adequately meets the applicable requirements for addressing visual impacts. (RTC no. 19) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
14. Whether the Applicant has adequately addressed the control of windblown waste and debris. (RTC no. 20) The issue involves a disputed question of mixed

fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.

15. Whether the Applicant has adequately addressed the control of vectors at the proposed facility. (RTC no. 21) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
16. Whether the application includes a sufficient odor control plan. (RTC no. 22) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
17. Whether the Applicant has adequately addressed the hours of operation. (RTC no. 23) The issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
18. Whether the Applicant has an acceptable compliance history and has demonstrated evidence of competency. (RTC no. 30) The issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
19. Whether the application is in violation of local ordinances prohibiting the processing and disposal of municipal solid waste. (RTC no. 32) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
20. Whether the application is adequately protective of human health. (RTC no. 1) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.

ii. Issues that are not Relevant or Material to the Commission's Consideration of the Application or that are Matters of Law or Policy

The Executive Director does not recommend that the Commission refer the following issues to SOAH for a Contested Case Hearing:

21. Whether the location of the proposed landfill is appropriate. (RTC no. 10) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the

issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.

22. Whether there is a need for the proposed landfill. (RTC no. 11) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.
23. Whether the application adequately addresses noise and light pollution. (RTC no. 23) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.
24. Whether the application is protective of recreation activities outside of the permit boundary of the proposed landfill. (RTC no. 24) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.
25. Whether the proposed landfill will adversely affect property values, taxes, and the economy. (RTC no. 25) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.
26. Whether the proposed landfill will adversely impact local businesses. (RTC no. 26) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.
27. Whether the proposed landfill will result in increased costs to local residents. (RTC no. 27) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.
28. Whether the proposed landfill will adversely impact low-income communities in the surrounding area. (RTC no. 28) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.

29. Whether the Applicant demonstrated transparency in submitting the application and purchasing the land for the proposed facility. (RTC no. 31) The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit as it is not an issue the TCEQ may consider as part of the application review process.

VI. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be six months from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VII. Requests for Reconsideration

The TCEQ received Requests for Reconsideration from Fred Swaner and Cynthia Dunlap. Mr. Swaner raised concerns relating to traffic, windblown debris, noise, and dust. Ms. Dunlap raised issues concerning the City of Waco's transparency, water contamination, odors, noise, traffic, feral hogs, and operating hours. The Executive Director has reviewed the Requests for Reconsideration and maintains that the Draft Permit, if issued, will comply with all applicable statutory and regulatory requirements. The Executive Director recommends that the Requests for Reconsideration be denied.

VIII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission deny the Requests for Reconsideration.
2. The Executive Director recommends the Commission find that the following are affected persons and grant their hearing requests: Darren Porter and Melissa Porter; James Trayler; Steven Rigby and Elisabeth Rigby; Susan Swaner; Cynthia Dunlap; Joe Dunlap; David Reed; SAFE; and TCWCID.
3. The Executive Director recommends that the Commission find that all other requestors are not affected persons and deny their hearing requests.
4. If referred to SOAH, that the duration of the hearing be six months from the preliminary hearing to the presentation of the proposal for decision to the Commission.
5. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
6. If referred to SOAH, refer Issues 1 through 20 listed above in Part V of this response.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker
Executive Director

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

**Attachment A – Geographic Information Systems (GIS) Map
of Requestors in the Proposed Area**

The City of Waco, MSW Permit No. 2400

Hearing Request Agenda

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



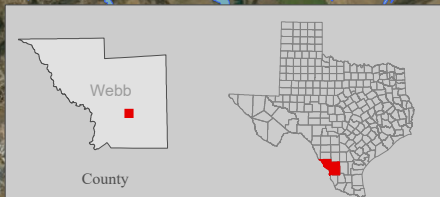
*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 8/18/2022
CRF 0073433
Cartographer: alortiz



- Requestor
- 0.5 Mile from Facility Boundary
- 1 Mile from Facility Boundary
- 1.5 Miles from Facility Boundary
- Lake/Pond
- Facility Permit Boundary
- County Boundary

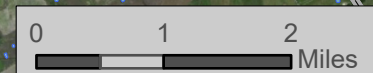
Requestor serial number and distance from Facility provided in Appendix A



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

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

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



Appendix A For Hearing Request Agenda: The City of Waco, MSW Permit No. 2400

Requestor Id	Name	Address	City	State	Zip	Zip_4	Latitude	Longitude	Distance
1	<u>Alvarez,Jose E</u>	2715 Torino Reale Ave	Temple	Tx	76502	7995	31.0464	-97.3925	52.85
2	<u>Amy,Stephanie Marie</u>	Po Box 452	Axtell	Tx	76624	452	31.6319	-97.0138	6.97
3	<u>Boyett,Alton M & Boyett,Cynthia Ann</u>	7664 E Highway 84	Waco	Tx	76705	4954	31.6275	-97.0243	7.62
4	<u>Brannen,Julie Michelle</u>	595 Hurst Rd	Axtell	Tx	76624	1307	31.656	-96.954	3.57
5	<u>Darren Porter & Melissa Porter</u>	1500 Lcr 102	Mount Calm	Tx	76673		31.7098	-96.9083	1.38
6	<u>Dunlap,Cynthia Banik & Dunlap,Joe Wilburn</u>	211 State Highway 31	Mount Calm	Tx	76673	3163	31.7196	-96.9319	1.09
7	<u>Graham,Denise</u>	718 N Seeley Ave W	Mount Calm	Tx	76673	3085	31.7606	-96.8853	4.73
8	<u>Green,Angela</u>	462 Beaver Ln	Waco	Tx	76705	4901	31.6268	-96.9946	6.51
9	<u>Guillen,Jasmin</u>	2715 Torino Reale Ave	Temple	Tx	76502	7995	31.0464	-97.3925	52.85
10	<u>Harris,Mary</u>	882 Lcr 116	Mount Calm	Tx	76673	3546	31.7032	-96.8794	3.01
11	<u>Harris,Phillip Kirk</u>	363 Homer Young Ln	Axtell	Tx	76624	1306	31.6676	-96.9488	2.71
12	<u>Haynes,Vickie</u>	6969 Highway 84 W	Coolidge	Tx	76635	3115	31.6591	-96.686	14.73
13	<u>Howard,Stacy</u>	Po Box 186	Axtell	Tx	76624	186	31.6355	-97.0065	6.49
14	<u>Johnson,Suzanne C</u>	202 N 2nd St E	Mount Calm	Tx	76673	3094	31.758	-96.8791	4.81
15	<u>Klanika,Charles</u>	176 Hcr 3259	Mount Calm	Tx	76673	3174	31.7643	-96.9295	4.17
16	<u>Lucien,Kimberly</u>	Po Box 221	Leroy	Tx	76654	221	31.7312	-97.0172	5.44
17	<u>Lynch,Katy</u>	1789 Lcr 120	Mount Calm	Tx	76673	3002	31.6847	-96.8737	3.60
18	<u>Manning,Christi</u>	1652 Hurst Rd	Axtell	Tx	76624	1311	31.6628	-96.938	2.86

Requestor Id	Name	Address	City	State	Zip	Zip_4	Latitude	Longitude	Distance
19	<u>Mcmillan,Janet Burke</u>	6725 Highway 84 W	Coolidge	Tx	76635	3071	31.6603	-96.6779	15.18
20	<u>Nickel,Candace</u>	Po Box 435	Axtell	Tx	76624	435	31.657	-96.9696	3.96
21	<u>Nivin,Cathryne & Nivin,Ernest Taylor</u>	964 Lcr 120	Mount Calm	Tx	76673	3592	31.7218	-96.8873	2.83
22	<u>Engledow,Kaylee & Pierce,Ricky & Pierce,Vicki Michelle</u>	9151 County Line Rd S	Mount Calm	Tx	76673	3245	31.7242	-96.9482	1.75
23	<u>Price,Randi</u>	102 N Morgan St W	Mount Calm	Tx	76673	3020	31.7596	-96.8838	4.73
24	<u>Reed,David L</u>	Po Box 1922	Canyon Lake	Tx	78133	22	29.8622	-98.2922	150.42
25	<u>Rigby,Elisabeth & Rigby,Steven</u>	4418 T K Parkway	Axtell	Tx	76624	1353	31.6967	-96.9272	0.53
26	<u>Roof,Stacy L</u>	370 W Old Axtell Rd	Waco	Tx	76705	4926	31.6187	-97.022	7.96
27	<u>Serros,Alcario</u>	933 Frazier Ln	Axtell	Tx	76624	1658	31.6279	-96.9635	5.57
28	<u>Souders,Leslie Gail</u>	518 N Seeley Ave W	Mount Calm	Tx	76673	3073	31.7589	-96.8842	4.67
29	<u>Stefka,David</u>	Po Box 43	Axtell	Tx	76624	43	31.6564	-96.9702	4.01
30	<u>Stokes,Benjamin Luke</u>	1553 Frazier Ln	Axtell	Tx	76624	1662	31.623	-96.9526	5.71
31	<u>Stone,Robert R</u>	2013 Highway 31	Axtell	Tx	76624	1520	31.6495	-97.0064	5.82
32	<u>Swaner,Susan</u>	4351 T K Parkway	Axtell	Tx	76624	1461	31.695	-96.9284	0.62
33	<u>Tennison,Keven</u>	4081 E Old Axtell Rd	Axtell	Tx	76624	1218	31.6532	-96.977	4.43
34	<u>Tierce,Virginia</u>	376 Wood St	Axtell	Tx	76624	1232	31.6545	-96.9672	4.02
35	<u>Trayler,James</u>	20 Walkers Xing	Waco	Tx	76705	4006	31.6199	-97.1284	13.00
36	<u>Weatherby,Brent</u>	602 Hcr 3373	Hubbard	Tx	76648	2838	31.7873	-96.7873	10.21

**Attachment B – Applicant’s List and Map
of Landowners Adjacent to the Proposed Facility**

5 LANDOWNERS' MAP AND LIST

In accordance with 30 TAC §330.59(c)(3)(B) and §305.45(a)(6)(D), the landowners' list presents the names and mailing addresses of the landowners of property within one-quarter (1/4) mile of the Site, as provided in Table 5-1. The numbering in the landowners list corresponds to the numbers on Drawing I/II-3, which depicts the locations of the landowners. The landowners' list and map are based on the McLennan, Limestone, and Hill County Appraisal Districts' property records, as of April 2018. Additionally, mineral interest owners shown in Table 5-2 were identified in the real property records for McLennan and Limestone Counties as provided by the Title company. Neither McLennan nor Limestone Counties identify mineral interests in their real property appraisal records.

Table 5-1 Landowners

1.	City of Waco 300 Austin Avenue Waco, TX 76702	7.	Te Kay Ranch*	13.	Confidential Owner – Prop ID 352815 4396 TK Pkwy Axtell, TX 76624
2.	City of Waco 300 Austin Avenue Waco, TX 76702	8.	Lee Mike Rex et al 3096 Happy Swaner Ln Axtell, TX 76624	14.	Rigby Steven William & Elisabeth Anne 4070 TK Pkwy Axtell, TX 76624
3.	Dunlap Billie J 536 St Hwy 31 Mt. Calm, TX 76673	9.	Swaner Fred Lee Jr 4351 TK Pkwy Axtell, TX 76624	15.	Reed David L 3444 TK Pkwy Axtell, TX 76624
4.	Dunlap Joe W & Cynthia 211 State Hwy 31 Mt. Calm, TX 76673	10.	JWL Interests LLC - Series Ranch 1 3132 Lovers Lane Dallas, TX 75225	16.	Jameson Mary Jo Grubbs Trustee et al 1910 Channing Park Dr Arlington TX 76013
5.	Trayler James F 796 LCR 114 Waco, TX 76705	11.	City of Waco 300 Austin Avenue Waco, TX 76702	17.	Coggin Mary Ruth 532 LCR 112 Axtell, TX 76624
6.	Unknown Right-of-Way Ownership*	12.	Powser Victoria & Cody 4418 TK Pkwy Axtell, TX 76624		

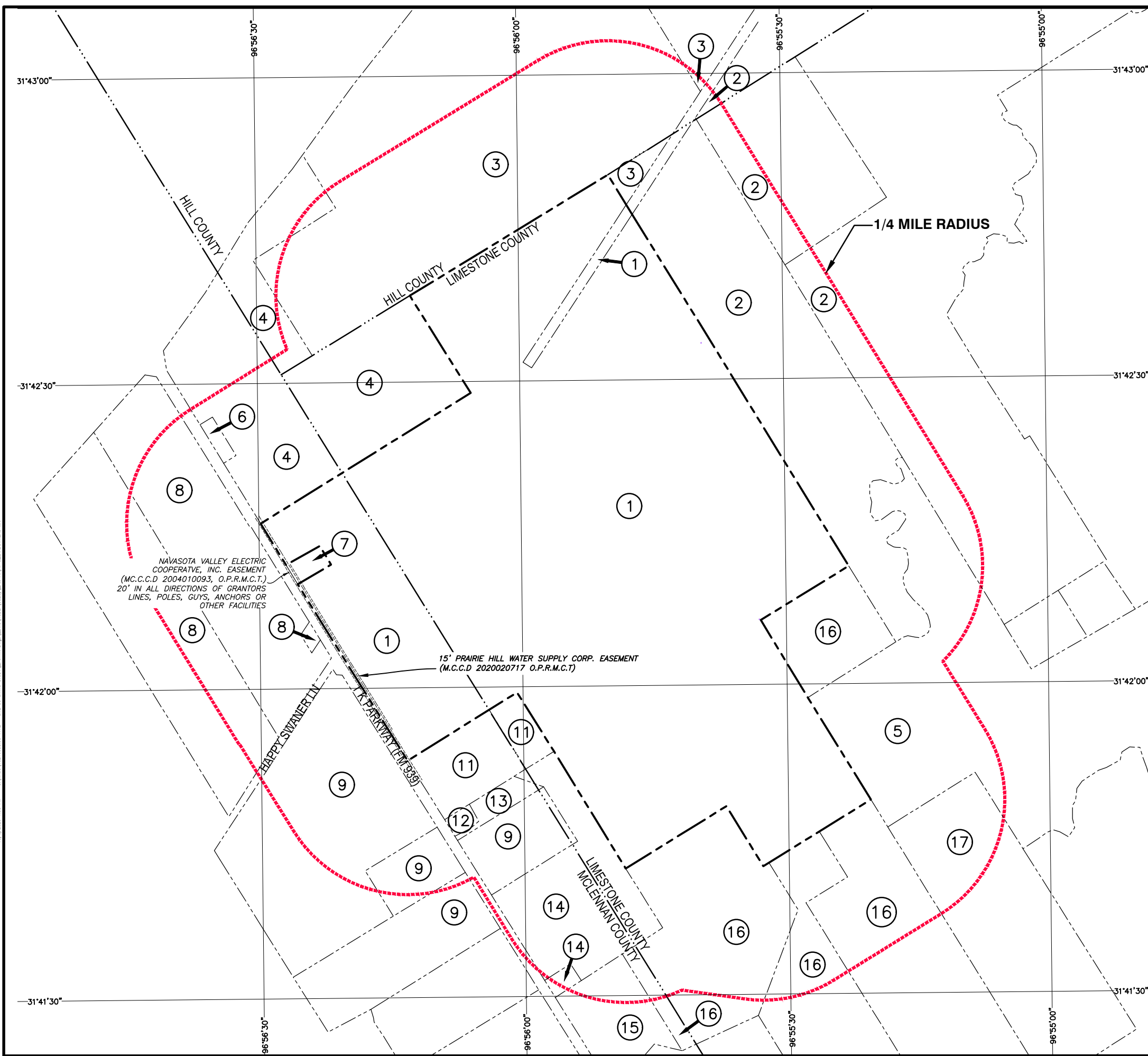
*No information available per Kevin Fikes at the McLennan County Appraisal District

Table 5-2 Mineral Interest Owners

Joe Thompson*	St. Louis Southwestern Railway Company*	Jim B. Horn Rt. 1, Box 60 Axtell, TX 76624
Tant Horn 609 Norma Waco, TX 76705	Union Pacific Railroad Company*	Ridley and Locklin*
Sun Oil Company*	Paul Barenkamp 8233 Purdue Tyler, TX 75701	St. Louis Southwestern Railway Company*

*No address available in lease summaries.

10/6/2020 1:58 PM C:\WACO\16216086\00\1172 - SITE 50 STRING STUDY\Permit_Dwg\16216086_00\1172-3_LANDOWNERS_MAP

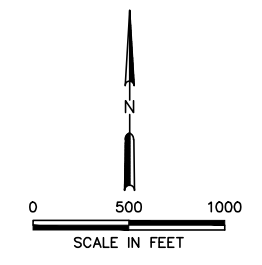


NAVASOTA VALLEY ELECTRIC COOPERATIVE, INC. EASEMENT (M.C.C.D. 2004010093, O.P.R.M.C.T.) 20' IN ALL DIRECTIONS OF GRANTORS LINES, POLES, GUYS, ANCHORS OR OTHER FACILITIES

15' PRAIRIE HILL WATER SUPPLY CORP. EASEMENT (M.C.C.D. 2020020717 O.P.R.M.C.T.)

HAPPY SWANER III
117 PARKWAY FM 1939

JIMESTONE COUNTY
MCLENNAN COUNTY



LEGEND

- PERMIT BOUNDARY
- - - ADJACENT PROPERTY BOUNDARY
- · - · - COUNTY LINE
- 1/4 MILE RADIUS
- 96°55'30"--- LATITUDE/LONGITUDE LINES

NOTES:

1. (X) CORRESPONDS TO LANDOWNERS LISTED ON LANDOWNERS LIST.
2. PROPERTY OWNERS WITHIN 1/4 MILE OF THE PERMIT BOUNDARY ARE SHOWN.
3. LANDOWNER PROPERTY BOUNDARIES INDICATED ARE APPROXIMATE.
4. A FLOWAGE EASEMENT EXISTS ON THE PROPERTY THAT IS UNDER THE JURISDICTION OF THE TECHUACANA CREEK WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER (1) OF LEROY, TEXAS SUBJECT TO THE EASEMENT RECORDED IN VOLUME 498, PAGE 118, VOLUME 506, PAGE 181, VOLUME 507, PAGE 378, AND VOLUME 509, PAGE 417 OF THE DEED RECORDS OF LIMESTONE COUNTY, TEXAS.



REV	DATE	DESCRIPTION	BY
1	10/2020	UPDATED LANDOWNER LABELS AND RRR	RRK
2		PROPERTY BOUNDARIES, REMOVED FIBER OPTIC EASEMENT AND NOTE, UPDATED WATER LINE EASEMENT CALLOUT.	
3		CHANGES TO LAYOUT, AND RENUMBERED NOTES	

DRAWING TITLE	LANDOWNER'S MAP
PROJECT TITLE	CITY OF WACO LANDFILL TYPE I MSW - PERMIT APPLICATION
CLIENT	CITY OF WACO 501 SHROEDER WACO, TEXAS 76710
PROJ. NO.	16216086_00
DWN. BY	JLL
CHK. BY	KDY
APP. BY	RRK
CADD FILE:	11-3_LANDOWNERS_MAP
DATE:	08/2018
SCALE:	AS SHOWN
DRAWING NO.	I/II-3

FOR PERMITTING PURPOSES ONLY

CERTIFICATE OF SERVICE

I certify that, on August 30, 2022, the “Executive Director’s Response to Hearing Requests and Requests for Reconsideration” on the application by the City of Waco, MSW Permit No. 2400 was filed with the TCEQ’s Office of the Chief Clerk and that 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.



Anthony Tatu, Staff Attorney
Environmental Law Division
State Bar No. 00792869
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
Phone (512) 239-5778
Fax: (512) 239-0606