

**TCEQ AIR QUALITY PERMIT NUMBER 165848  
TCEQ DOCKET NUMBER 2022-1552-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>EXFLUOR RESEARCH</b>	<b>§</b>	
<b>CORPORATION</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>FLORENCE, WILLIAMSON</b>	<b>§</b>	
<b>COUNTY</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS AND REQUESTS FOR RECONSIDERATION**

**I. INTRODUCTION**

The Executive Director of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for reconsideration and contested case hearing submitted by persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), TEX. HEALTH & SAFETY CODE (THSC) § 382.056(n), requires the Commission to consider hearing requests in accordance with the procedures provided in TEX. WATER CODE (TWC) § 5.556.<sup>1</sup> This statute is implemented through the rules in 30 TEX. ADMIN. CODE (TAC) Chapter 55, Subchapter F.

Maps showing the location of the proposed plant are included with this Response and have been provided to all hearing requesters listed on the service list for this application. In addition, a current compliance history report, technical review summary, and a copy of the draft permit prepared by the Executive Director’s staff have been filed as backup material for the commissioners’ agenda. The Executive Director’s Response to Public Comment (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the Commission’s consideration.

**II. PLANT DESCRIPTION**

Exfluor Research Corporation (Applicant) has applied to the TCEQ for a New Source Review Authorization under TCAA § 382.0518. This will authorize the construction of a new facility that may emit air contaminants.

This permit will authorize the Applicant to construct the Exfluor Research Facility. The plant is proposed to be located at 1100 County Road 236, Florence, Williamson County. Contaminants proposed to be authorized under this permit include hydrogen fluorides, carbon monoxide, particulate matter, hazardous air pollutants, nitrogen oxides. and organic compounds.

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<sup>1</sup> Statutes cited in this response may be viewed online at [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us). Relevant statutes are found primarily in the THSC and the TWC. The rules in the TAC may be viewed online at [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml), or follow the “Rules” link on the TCEQ website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

### III. PROCEDURAL BACKGROUND

Before work is begun on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain a permit from the Commission. This permit application is for an initial issuance of Air Quality Permit No. 165848.

The permit application was received on July 9, 2021 and declared administratively complete on July 14, 2021. The Notice of Receipt and Intent to Obtain an Air Quality Permit (first public notice) for this permit application was published in English on July 28, 2021, in the *Williamson County Sun* and in Spanish on July 29, 2021, in *El Mundo*. The Notice of Application and Preliminary Decision for an Air Quality Permit (second public notice) was published on March 6, 2022, in English in the *Williamson County Sun* and in Spanish on March 10, 2022, in *El Mundo*. A public meeting was held on June 16, 2022, in Florence, Texas. The public comment period ended on June 20, 2022. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

### IV. APPLICABLE LAW FOR REQUESTS FOR RECONSIDERATION

Any person may file a request for reconsideration of the Executive Director's decision. However, for the Commission to consider the request, it must substantially comply with the following requirements set forth in 30 TAC § 55.201(e): give the name, address, daytime telephone number and, when possible, fax number of the person who files the request; expressly state that the person is requesting reconsideration of the Executive Director's decision; and give reasons why the decision should be reconsidered.

### V. RESPONSE TO REQUESTS FOR RECONSIDERATION

Although the Executive Director determined that the permit application meets the applicable rules and requirements, a final decision to approve the draft permit has not been made. The application must be considered by the commissioners of the TCEQ at a regularly scheduled public meeting before any final action can be taken on the application.

The TCEQ received timely requests for reconsideration from Nicole Elizabeth Bauer, Alycen Malone, Shannon White-Shubert and the North San Gabriel Alliance.<sup>2</sup> In general, the requests for reconsideration reiterated concerns that the Executive Director responded to in the RTC. North San Gabriel Alliance attached a letter from Dr. Neil Carman to its request, which it states supports reconsideration of the draft permit. Dr. Carman expressed his opinions concerning the TCEQ's air permitting process in general, the monitoring and recordkeeping requirements of the permit, best available control technology (BACT), and other issues unrelated to this application; the Executive Director responded to similar concerns in the RTC. North San Gabriel Alliance also referenced several RTC responses with which it disagreed and requested these issues

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<sup>2</sup> The commission also received requests for reconsideration from Jillian Gabriel, Richard Grabish, Timothy McDaniel, and Karen Milone. However, because these requests were submitted during the comment period, the Executive Director treated them as comments and responded to them in the RTC.

be referred to SOAH. Neither Nicole Elizabeth Bauer, Alycen Malone, nor Shannon White-Shubert indicated which RTC responses they wanted the Executive Director to reconsider. The Executive Director will respond to the requests for reconsideration under the RTC Response that best matches the issue or concern. The Executive Director provides the following response to the requests for reconsideration.

**REQUEST FOR RECONSIDERATION OF RESPONSE 5: Air Quality / Health Effects**

North San Gabriel Alliance requested reconsideration of Response 5 stating that it does not believe the proper analysis was conducted and therefore, disagrees that the draft permit will be protective of human health and welfare and the environment, particularly sensitive subgroups such as children, the elderly, or people with existing respiratory conditions. North San Gabriel Alliance gave two reasons for its disagreement with Response 5. First, North San Gabriel Alliance expressed concern that hydrogen fluoride and fluorine emissions exceeded the ESLs. Second, North San Gabriel Alliance stated that the Executive Director did not respond to concerns about PFAS chemicals, which they state was not an insignificant oversight and warrants reconsideration. North San Gabriel Alliance also referenced Dr. Carman's letter, which it states supports reconsideration of the draft permit. Dr. Carman expressed several opinions concerning PFAS chemicals and potential adverse effects and his opinion that the only truly safe level of emissions is zero and that PFAS chemicals should be banned.

In her request for reconsideration, Shannon White-Shubert stated that she is concerned for her health and believes there are critical health and environmental concerns associated with the proposed plant.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director responded to comments and concerns about whether the draft permit would be protective of human health, welfare, and the environment, including sensitive subgroups throughout the RTC and in particular in Responses 5 and 6. Response 5 explained the Executive Director's duty to review permit applications to ensure the emissions proposed to be authorized will be protective of human health and the environment, explained the technical review of the application, and the Executive Director's conclusion that the emissions authorized by this permit will be protective of both human health and welfare and the environment.

As outlined in Response 5, the U.S. Environmental Protection Agency (EPA) sets the NAAQS, such that primary standards protect public health, including sensitive members of the population such as children, the elderly, and those individuals with preexisting health conditions. Secondary NAAQS protect public welfare from any known or anticipated adverse effects from air contaminants. The criteria pollutants proposed to be authorized are at levels so low that none of them exceeded the de minimis level.

North San Gabriel Alliance indicated that the Executive Director did not respond to comments concerning PFAS chemicals; however, Response 5 included several paragraphs explaining how non-criteria pollutants, which include PFAS chemicals, were considered and evaluated by the Executive Director's staff. In addition, Response 5 included a table outlining the specific noncriteria pollutants that were evaluated and their maximum predicted ground level concentration in comparison to the ESLs. North San Gabriel Alliance argues that a proper review of PFAS chemicals was not conducted but other than expressing concern that hydrogen fluoride and fluorine emissions

exceeded the ESLs, it did not offer any specifics as to what it alleges was deficient about the technical review. Response 5 explained that the emissions of hydrogen fluoride and fluorine exceeded the ESLs. However, as explained in Response 5, ESLs are not regulatory standards that cannot be exceeded but rather, are guidelines used in the review on non-criteria pollutants. Thus, if a pollutant is above its the ESL, it is not indicative of an adverse effect but rather that further evaluation is warranted. Response 5 explained that the TCEQ's Toxicology Division conducted an analysis of hydrogen fluoride and fluorine in order to evaluate potential exposures and assess human health risks to the public. The Toxicology Division determined that the potential impacts are acceptable given the conservative nature of both the ESLs and the emissions estimates.

North San Gabriel Alliance referenced Dr. Carman's letter, which it states supports reconsideration of the draft permit. The Executive Director reviewed the letter from Dr. Carman and does not agree it supports reconsideration. In the letter, Dr. Carman expressed concern about air pollution in general and impacts to Texans living near industrial facilities. These concerns, as they related to this application, were addressed throughout the RTC and in particular, Response 5, which explained the health effects evaluation of the emissions proposed to be authorized.

Dr. Carman also expressed concern that industrial plants can be "leaky" and refers to a movie about chemical releases from plant in West Virginia that is not the subject of this permit application. However, as described in more detail below, the Executive Director responded to comments and concerns about the monitoring requirements of the permit in Response 16 and about potential emission events in Response 22.

Dr. Carman expressed general concern about emissions of benzene, 1,3-butadiene, vinyl chloride, ethylene oxide, dioxins, and dibenzofurans; however, as was shown in Response 5, Table 2, these pollutants are not proposed to be authorized by the draft permit. Dr. Carman also expressed concern about the potential for adverse health effects from PFAS chemicals and stated that EPA has recently raised serious public health and environmental concerns and indicated it will list PFAS, PFOA, and PFOS as hazardous substances under the Superfund law and may potentially ban production of some organofluorines. As described in the RTC and in this Response, this application seeks to authorize emissions under the Texas Clean Air Act, not Superfund. Thus, neither the current Superfund law nor potential future amendments to Superfund are implicated in the review of this application. Depending on the nature of its operations, the Applicant may be required to comply with other existing or future regulatory actions. However, the potential for future regulatory actions is outside the scope of the review of this application and does not support reconsideration.

Dr. Carman expressed his opinion that EPA, TCEQ, and the FDA should ban PFAS, PFOA, and PFOS and referred to the nonprofit group, Toxin Free USA's, lawsuit against Procter & Gamble and general efforts to raise awareness about the chemicals. Unrelated litigation, advocacy by a nonprofit group, or private opinions are not controlling for the application at issue and do not support reconsideration.

#### **REQUEST FOR RECONSIDERATION OF RESPONSE 6: Environmental Concerns / Flora and Fauna/ Endangered Species**

North San Gabriel Alliance requested reconsideration of Response 6 stating that it disagrees with the Executive Director's response and maintains that it has not been demonstrated that the draft permit will be protective of animal life, including

livestock, wildlife, and endangered species, or of vegetation and surrounding property. North San Gabriel Alliance reiterated its contention that a proper analysis was not conducted for PFAS chemicals as a basis for reconsideration of this Response. In addition, North San Gabriel Alliance referred to the Executive Director's reference to the prohibition on causing a nuisance at 30 TAC § 101.4 and stated that this response acknowledges that the Executive Director has jurisdiction and the obligation to ensure that it does not permit the discharge of contaminants in violation of section 101.4. Nuisance conditions are not expected if the plant is operated in compliance with the terms of the permit.

North San Gabriel Alliance through Dr. Carman expressed concern that the Applicant may emit "unburned PFAS compounds" and stated that hydrogen fluoride emissions are unsafe and may impact local vegetation, animals, and leave trace residues. In addition, Dr. Carman questioned whether the Applicant would agree to fund PFAS soil testing in the area around the proposed plant and expressed his opinions regarding soil testing by other companies.

Shannon White-Shubert requested reconsideration and expressed concern about potential impacts to the bees she keeps on her property and her trees.

**EXECUTIVE DIRECTOR'S RESPONSE:** As described above, in Response 5 the Executive Director explained the technical review of the application and how the emissions proposed to be authorized complied with the NAAQS. That response also explained the health effects review conducted for the non-criteria pollutants proposed to be authorized. In Response 6, the Executive Director reiterated that the secondary NAAQS are set to protect public welfare and the environment, including animals, crops, vegetation, visibility, and structures, from any known or anticipated adverse effects associated with the presence of a contaminant in the ambient air. Response 6 explained that the air contaminants proposed to be authorized were evaluated in accordance with applicable federal and state rules and regulations and that it was determined that adverse effects to animal life, crops, or vegetation are not expected. The Executive Director notes that 30 TAC § 101.4 is not a permitting standard, but rather is a general prohibition on causing a nuisance.

Comments concerning the emission controls required by the draft permit were addressed in Response 12. Comments concerning the potential for soil testing were not raised during the comment period. Nonetheless, the applicable state and federal statutes and rules that govern this air quality permit application do not include provisions requiring soil testing.

#### **REQUEST FOR RECONSIDERATION OF RESPONSE 7: Air Dispersion Modeling / Evaluation of the Surrounding Area**

North San Gabriel Alliance stated it disagrees with the Executive Director's response that the air dispersion modeling was appropriate and representative of site-specific conditions and that the procedures, methodology, predictions, and results are acceptable.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director responded to comments concerning the air quality analysis, including the air dispersion modeling, in Response 7. This Response explained that the modeling procedures, methodology, predictions, and results were audited by the TCEQ's Air Dispersion Modeling Team (ADMT) in accordance with the procedures in TCEQ's Air Quality Modeling Guidelines. The

evaluation incorporated all emissions proposed to be authorized, as represented in the permit application, and the ADMT determined the modeling was acceptable. North San Gabriel Alliance did not provide any information on what specifically it alleges was deficient or what applicable guidance, rules, or regulations were not appropriately followed. Accordingly, the Executive Director does not have additional information to provide beyond what was included in the RTC.

**REQUEST FOR RECONSIDERATION OF RESPONSE 10: Water Concerns**

Nicole Elizabeth Bauer urged reconsideration on the basis of potential water system contamination.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director responded to concerns about water contamination in Response 10 and explained that issues regarding water use, water quality, or potential discharges are not within the scope of the review of this application.

**REQUEST FOR RECONSIDERATION OF RESPONSE 12: Best Available Control Technology (BACT)**

North San Gabriel Alliance stated it disagrees that a proper BACT analysis for the sources and types of contaminants emitted was conducted, particularly given the “dangerous chemicals” that will be emitted from the proposed plant. North San Gabriel Alliance reiterated its contention that the Executive Director did not respond to concerns about PFAS chemicals and, through Dr. Carman, expressed concern that PFAS chemicals could escape destruction by the thermal oxidizer and that because industrial equipment will breakdown at some point, higher than authorized emissions will be emitted. Dr. Carman also expressed his opinion that the plant should not be built due to the risk of the thermal oxidizers failing to control emissions.

**EXECUTIVE DIRECTOR'S RESPONSE:** In Response 12, the Executive Director explained the evaluation of BACT, described the specific controls proposed to be used, and explained that the permit reviewer evaluated the proposed BACT and confirmed it to be acceptable. North San Gabriel Alliance did not specify any facility or contaminant it alleges does not meet BACT or state what specifically it alleges was deficient about the BACT review but attached Dr. Carman's letter which expressed concern that the controls might not work as intended. In accordance with 30 TAC § 116.116, an applicant is bound by its representations in the application and those representations become an enforceable part of the permit. In addition, 30 TAC § 116.115(b)(2)(G) states that “the permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations...” Further, as described in Response 16, the draft permit requires the Applicant to perform stack sampling and other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere from the thermal oxidizers to demonstrate compliance with the permit. The Executive Director is not persuaded that a concern that the required controls might not work justifies reconsideration and without any details about what specifically North San Gabriel Alliance alleges was deficient, the Executive Director does not have additional information to provide.

**REQUEST FOR RECONSIDERATION OF RESPONSE 13: Emissions Calculations**

North San Gabriel Alliance stated it disagrees that the Applicant demonstrated appropriate methodologies and control efficiencies were used in calculating emissions rates.

**EXECUTIVE DIRECTOR'S RESPONSE:** Response 13 explained that in accordance with 30 TAC § 116.116(a), the Applicant is bound by its representations, including the represented performance characteristics of the control equipment. In addition, the Executive Director explained how emissions from the proposed plant were calculated. These calculations were reviewed by the permit reviewer who determined they were conducted correctly using appropriate methodologies and control efficiencies. North San Gabriel Alliance did not provide information on what specifically it alleges was deficient about the emissions calculations. Similarly North San Gabriel Alliance did not indicate which calculations it alleges were not completed using appropriate methodologies or what methodologies it alleges should have been used. Therefore, the Executive Director does not have additional information to provide beyond what was included in the RTC.

**REQUEST FOR RECONSIDERATION OF RESPONSE 14: Chemical Flexibility**

North San Gabriel Alliance stated it disagrees with the Executive Director that allowance of chemical flexibility is appropriate at this site and for this Applicant.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director responded to North San Gabriel Alliance's comment that chemical flexibility should not be allowed in Response 14. However, the North San Gabriel Alliance did not give any specific reason or point to any applicable state or federal rule or regulation or guidance it believes prohibits chemical flexibility. Accordingly, the Executive Director does not have additional information to provide other than the explanation of chemical flexibility, how additional chemicals may be authorized, and how impacts are evaluated that was provided in Response 14.

**REQUEST FOR RECONSIDERATION OF RESPONSE 15: Hours of Operation**

In Shannon White-Shubert's request for reconsideration, she expressed concern that manufacturing activities would occur 24/7. North San Gabriel Alliance stated it disagrees with the Executive Director's Response 15 stating that no conditions exist that would allow TCEQ to limit the hours of operation at the proposed plant.

**EXECUTIVE DIRECTOR'S RESPONSE:** In Response 15, the Executive Director explained that TCEQ has not been delegated the authority to regulate the hours of operations of a facility or site if the permit review demonstrates all applicable federal and state regulations are met. The response also referred to Response 5 which explained the health effects review of the application. North San Gabriel Alliance stated it disagrees with the response that no conditions exist to limit the operating hours of the proposed plant but does not point to any conditions it alleges would provide the authority for the Executive Director to do so. Accordingly, the Executive Director does not have additional information to provide beyond what was included in the RTC.

**REQUEST FOR RECONSIDERATION OF RESPONSE 16: Monitoring & Recordkeeping**

North San Gabriel Alliance stated it disagrees that the draft permit will ensure compliance based on what it described as the Applicant's extensive poor compliance and disaster response history. However, North San Gabriel Alliance did not state which

facilities it believes will not be sufficiently monitored or which of the Special Conditions it alleges does not assure compliance, other than including Dr. Carman's letter which references using a CEMS. Specifically, Dr. Carman stated he could not determine whether PFAS chemicals would be continuously monitored and stated that without a PFAS CEMS, the exact amount of emissions would be unknown. Dr. Carman also expressed concern that industrial plants can be leaky and referenced equipment handling and processing and chemicals listed as HAPs by EPA.

In the letter attached to North San Gabriel Alliance's request, Dr. Carman generally complained about the TCEQ's air permitting process and what he called "legal loopholes" that allow permits to be issued without proper monitoring for VOC emissions. In addition, Dr. Carman generally criticized TCEQ and EPA enforcement actions as they relate to VOC emissions and expressed concern that the vast majority of industrial plants file self-reports of estimated VOC emissions rather than installing a CEMS. Dr. Carman cited these self-reports as a flaw in TCEQ's annual Emissions Inventory or PSD database and EPA's annual TRI data.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director responded to concerns about the monitoring and recordkeeping requirements included in the draft permit in the RTC. General concerns about enforcement or specific issues concerning other industrial facilities are outside the scope of the review of this application. In addition, although issues with both TCEQ's Emissions Inventory and the EPA's TRI are outside the scope of the review of this application, the Executive Director notes that as a minor source of emissions, the proposed plant is not subject to the Emission Inventory reporting requirements in the TCEQ rules. In addition, the Executive Director also notes that the use of calculations to estimate emissions and reliance on EPA's AP-42 Compilation of Air Emission Factors (AP-42) guidance is a common practice throughout the industry.

In Response 16, the Executive Director explained how emissions will be required to be monitored and what records the Applicant will be required to keep in order to demonstrate compliance. Response 16 also explained that the draft permit requires the Applicant to perform stack sampling and other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere from the thermal oxidizers to demonstrate compliance with the permit.

In Response 12, the Executive Director also explained that the Applicant proposed the use of the 28AVO program for monitoring components in hydrogen fluoride (HF) service. The 28AVO inspection program is a leak detection and repair (LDAR) program used to inspect fugitive components and identify and repair leaks and requires a physical walk-through inspection every four hours with repair or containment of leaks within one hour of detection and identification. Further, as the Executive Director explains in response to the request for reconsideration of Response 21 below, the Applicant's compliance history did not warrant changes to the draft permit. Similarly, the Executive Director responded to concerns about potential disasters and emergency response in Response 22 of the RTC and will respond to requests for reconsideration of that response below.

**REQUEST FOR RECONSIDERATION OF RESPONSE 17: Future Permitting Actions**

Alycen Malone stated that she believes the Applicant intends to expand its business and expressed concern about future increases in pollution. North San Gabriel Alliance, through Dr. Carman, also expressed concern about potential changes to permits.



Dr. Carman expressed his opinion that once in operation, it is not uncommon for industrial facilities to request additional permitting for expanded production. He opined that this practice results in what started as a small facility, becoming a major, mostly unregulated, regional polluter.

**EXECUTIVE DIRECTOR'S RESPONSE:** Permit amendments are governed by TCAA § 382.0518, which provides that a permit must be obtained prior to construction of a new facility or a modification of an existing facility that may emit air contaminants. See TEX. HEALTH & SAFETY CODE § 382.0518; *see also generally* 30 TAC § 116.111 (providing requirements that must be met in order for a permit or amendment to be granted).

Neither Ms. Malone nor the North San Gabriel Alliance expressed concern about future permitting actions during the comment period. However, the Executive Director responded to concerns about potential future permitting actions raised by other commenters. Response 17 explained that a permit holder may not vary from any representation or permit condition without obtaining a permit amendment if the modification will cause a change in the method of control of emissions, a change in the character of the emissions, or an increase in the emissions rate of any air contaminant. The RTC also explained that the TCEQ does not have jurisdiction to prohibit anyone from seeking authorization to emit air contaminants; nor can the TCEQ prohibit owners and operators from receiving authorization to emit air contaminants if they comply with all applicable statutory and regulatory requirements. However, as explained in the RTC any potential future application would need to demonstrate that the proposed facility would utilize the best available control technology (BACT) and that the proposed emissions would not cause or contribute to a violation of the NAAQS or adverse health effects.

**REQUEST FOR RECONSIDERATION OF RESPONSE 18: Location / Trucks / Traffic / Roads / Quality of Life / Aesthetics / Property Value**

Alycen Malone stated the country roads near the proposed location of the plant cannot handle truck traffic the business would bring and questioned whether potential impacts to property values were considered. Ms. Malone also reiterated a concern about location and stated the proposed plant backs up to a nature reserve and homes. She stated the Applicant could easily go to another place. In his letter attached to North San Gabriel Alliance's request, Dr. Carman stated it encouraged the Applicant to expand its existing plant or look for another site in an industrial park.

Shannon White-Shubert stated that a specialty chemical manufacturing plant does not belong in a rural community.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director explained in Response 18 that concerns regarding the location an applicant chooses for a proposed facility, trucks and truck traffic, roads, and the consideration of potential impacts to property values are outside the TCEQ's jurisdiction. Therefore the TCEQ does not have the authority to consider these concerns in the review of an air quality permit application. However, the Executive Director explained the health effects review conducted to ensure that there will be no adverse impacts to human health and welfare throughout the RTC and, in particular, Responses 5 and 6.

### **REQUEST FOR RECONSIDERATION OF RESPONSE 19: Public Infrastructure and Utilities**

In her request for reconsideration, Alycen Malone expressed concern about the utilities in the area being unstable. In her request for reconsideration, Shannon White-Shubert also reiterated her concern that the City of Florence is not equipped to serve industrial or chemical manufacturing needs due to the lack of reliable utilities, including water, sewer, and power and infrastructure such as a fire department or emergency response teams.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director responded to concerns about public infrastructure and the reliability of utilities in Response 19. As the Executive Director explained in that Response, issues related to public infrastructure or the availability of utilities are outside the scope of review of an air quality permit.

### **REQUEST FOR RECONSIDERATION OF RESPONSE 21: Compliance History / Enforcement / Penalties**

North San Gabriel Alliance stated that changes to the draft permit are justified based on the Applicant's history of noncompliance at its existing plant. In addition, the North San Gabriel Alliance expressed concern that the Executive Director did not acknowledge this issue was raised in their comments submitted during the comment period and did not specifically indicate whether changes to the draft permit were made as a result of the Applicant's compliance history.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director acknowledges North San Gabriel Alliance commented concerning the Applicant's compliance history in its timely comments. North San Gabriel Alliance stated changes are warranted but did not state what specific changes it believes should be made to the draft permit. As explained throughout the RTC, the draft permit lists the only emissions proposed to be authorized. In addition, the Executive Director responded to comments concerning the Applicant's compliance history in Response 21. The Response explained how the Applicant's compliance history was reviewed by the Executive Director's staff during the technical review of the application. In addition, the Response provided the site's and Applicant's compliance history ratings, which are "unclassified" and "satisfactory," respectively. TCEQ rules provide that unsatisfactory performers may be subject to additional oversight to improve environmental compliance. *See* 30 TAC § 60.3 (Use of Compliance History). Accordingly, the Executive Director did not propose changes to the permit to address compliance because a satisfactory compliance history rating did not warrant changes to the draft permit.

### **REQUEST FOR RECONSIDERATION OF RESPONSE 22: Emissions Events / Spills / Safety / Emergency Response**

In her request for reconsideration, Alycen Malone stated that the Applicant's facilities have been known to leak. Ms. Malone also expressed concern about the potential for the plant to be destroyed by a tornado and questioned whether toxic chemicals would swirl directly into homes during such a natural disaster. She also expressed concern that emergency services surrounding the site are not hazmat equipped. In Shannon White-Shubert's request for reconsideration, she also expressed concern about the potential for emission events or chemicals spills.

North San Gabriel Alliance stated it disagrees with the response that the requirement to submit a Risk Management Plan in the future and after issuance of the draft permit is adequate given a previous emergency situation at the Applicant's other plant. North San Gabriel Alliance stated that any new permit must not allow for special conditions to be added after-the-fact to ensure compliance with applicable requirements.

**EXECUTIVE DIRECTOR'S RESPONSE:** The Executive Director responded to concerns regarding emissions events, the potential for spills, safety issues, and emergency response in Response 22. Specifically, the Executive Director explained that the draft permit lists the only emissions authorized to be emitted from the proposed plant and also explained the process and rules, incumbent on the Applicant, to report an emissions event. The response further explained that the Local Emergency Planning Committee and the regulated entity have the primary responsibility in an emergency.

The Executive Director responded to comments concerning whether the application should have included a Risk Management Plan in Response 22, which explained the Risk Management Program administered by EPA and what would trigger a TCEQ disaster review. However, the Executive Director believes North San Gabriel Alliance may be confusing the requirement to submit a Risk Management Plan prior to exceeding a threshold quantity of hydrogen fluoride with applicable requirements that become conditions of air quality permits. The requirement to comply with EPA's regulations under the Risk Management Program is triggered on the date a threshold quantity of regulated substance is first met. Thus, it is not uncommon for an applicant to not have a Risk Management Plan prepared prior to startup, which is why the Executive Director included the requirement that the Applicant submit its Risk Management Plan prior to exceeding a threshold quantity of hydrogen fluoride.

Because this application proposed to authorize hydrogen fluoride (HF) in an amount above the threshold quantity, codified by EPA at 40 C.F.R. § 68.130, the Applicant will be required to implement a risk management program and submit its Risk Management Plan for all covered processes to both TCEQ and EPA. As part of its disaster review, the agency requests that applicants subject to EPA's Risk Management Program submit a copy of the applicable Risk Management Plan to the TCEQ. However, as Response 22 explained, the TCEQ has not been delegated the authority to administer EPA's Risk Management Program. Accordingly, the Applicant's Risk Management Plan will be kept of file after it is submitted but will not authorize or result in changes or amendments to the draft permit.

## **VI. THE EVALUATION PROCESS FOR HEARING REQUESTS**

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

### **A. Response to Hearing Requests**

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

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 of 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.

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:

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

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, 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 personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- 3) request a contested case hearing;
- 4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the

number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and

- 5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

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

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 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) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- 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 use of the impacted natural resource by the person;
  - 6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application which were not withdrawn; and
  - 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203

In regard specifically to air quality permits, the activity the Commission regulates is the emissions of air contaminants into the atmosphere. Any person who plans to construct or modify a facility that may emit air contaminants must receive authorization from the Commission. In addition, Commission rules also include a

general prohibition against causing a nuisance. Further, for air quality permits, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility.

For applications filed on or after September 1, 2015, 30 TAC § 55.201(d) allows the Commission to consider, to the extent consistent with case law:

1. the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2. the analysis and opinions of the Executive Director; and
3. any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

#### **D. Referral to the State Office of Administrative Hearings**

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

- 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 whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

### **VII. ANALYSIS OF THE HEARING REQUESTS**

The commission received timely hearing requests from the following persons: Nicole Elizabeth Bauer, Ann Beville, Thomas Beville, Sheryl Marie Farley, Elizabeth Ann Friou, Kelley Heath, Suzanne Johnson, Catherine Johnston, Charles Ely McCormick, Joyce McCormick, Nickolas McCormick, Charles McCormick, Erin McCormick, Henry N. Mulvihill, Patricia McCormick Mulvihill, Joe J. Pacheco, Chris Peyton, Renee Peyton, Sandra Lee Thurman, Brittany D. Varner, Harold Charles Wardlaw, Peggy Ann McCormick Wardlaw, Shannon White-Shubert, Haziell McCormick Williams, and the North San Gabriel Alliance. The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

#### **A. Persons the Executive Director Recommends the Commission Find are Affected Persons**

##### **1. Elizabeth Ann Friou**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Elizabeth Ann Friou is an affected person.

Ms. Friou submitted three requests for a contested case hearing during the comment period and one hearing request during the 30-day period after the RTC was mailed out by the Commission. Her hearing requests were in writing, provided the required contact information, and included issues that are the basis of the hearing request. Some of the issues raised in this hearing request were based on timely filed comments. Ms. Friou is asthmatic and suffers from chronic obstructive pulmonary disease (COPD). In her hearing requests, she expressed concern about adverse health effects on her personally and on her ranching employees as well as impacts to her land, livestock, and wildlife. In addition, Ms. Friou is concerned that the proposed plant will impact the use and enjoyment of her property.

Elizabeth Ann Friou owns two parcels of land and stated she will be the proposed plant's immediate neighbor directly across the street from the proposed location. Based on the address provided and county property records, the Executive Director determined the closest point on Ms. Friou's property is located approximately 0.1 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes.

Ms. Friou does not reside on the property and provided the Commission with a mailing address in Austin, Texas. She did not indicate how often she is on the property but provided some information about how the property is used. Specifically, she stated that she and her employees work outdoors, grazing horses and managing pasture. She stated she will suffer significant losses if the draft permit fails to protect her health and interests and that based on the Applicant's compliance history, there is no guarantee it will comply with the permit. Based on the location of her property, issues raised, and interests affected by the application, Elizabeth Ann Friou has identified personal justiciable interests not common to members of the general public. Therefore, the Executive Director recommends that the Commission find that Elizabeth Ann Friou is an affected person based on the criteria set out in 30 TAC § 55.203.

In her hearing request, Ms. Friou raised the following issues that were also raised in her timely comments:

**Issue 1:** *Whether the proposed plant will negatively affect air quality.*

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 5:** *Whether the proposed plant will cause a nuisance or interfere with the use and enjoyment of property.*

**Issue 9:** *Whether the air dispersion modeling was representative of the proposed location and adequately evaluated potential impacts to nearby receptors, including residences and ranches.*

**Issue 11:** *Whether the draft permit contains adequate monitoring and recordkeeping requirements to assure compliance with all applicable rules and requirements.*

**Issue 12:** *Whether the proposed operating hours of the plant ensure that there will be no adverse impacts to human health, welfare, and the environment.*

**Issue 14:** *Whether the Applicant's compliance history warrants changes to the draft permit.*

**Issue 15:** *Whether the condition in the draft permit requiring the submission of a risk management plan prior to exceeding a threshold quantity of hydrogen fluoride is adequate.*

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

**Issue 23:** *Whether potential emissions events, accidents, or spills will cause adverse health and welfare effects.*

**Issue 29:** *Whether the proposed plant will have negative economic impacts for nearby landowners.*

## **2. Suzanne Johnson**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Suzanne Johnson is an affected person.

Ms. Johnson submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing, provided the required contact information, and included issues that are the basis of the hearing request. Some of the issues raised in this hearing request were based on timely filed comments. In her hearing request, Ms. Johnson expressed concern that the chemicals proposed to be handled at the plant are hazardous and questioned whether anything could be done to prevent approval of the permit. She expressed particular concern about what she described as a chemical evaporation pond and stated that harmful PFAS chemicals will evaporate into the air from that pond. She is concerned that evaporated chemicals will contaminate her rainwater collection systems and adversely affect her health and that of her neighbors, livestock, and bees. Ms. Johnson stated that because bees cannot differentiate between fresh and contaminated water, honey will be contaminated with PFAS chemicals.

Ms. Johnson stated that she lives 1,000 feet from the proposed plant's evaporation pond with her husband and their dog. Based on the address provided, the Executive Director determined the Johnsons reside approximately 0.1 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Based on the location of her property, issues raised, and interests affected by the application, Suzanne Johnson has identified personal justiciable interests not common to members of the general public. Therefore, the Executive Director recommends that the Commission find that Suzanne Johnson is an affected person based on the criteria set out in 30 TAC § 55.203.

In her hearing request, Ms. Johnson raised the following issues that were also raised in her timely comments:



**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 28:** *Whether the proposed plant will violate any deed restrictions.*

In her hearing request, Ms. Johnson raised the following issues that were not raised in her timely comments:

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

**Issue 29:** *Whether the proposed plant will have negative economic impacts for nearby landowners.*

**Issue 30:** *Whether the Applicant's evaporation pond will contaminate groundwater or evaporate chemicals that will be harmful to human health or negatively affect welfare, including plants, animals, and the environment.*

**Issue 31:** *Whether the Applicant's evaporation pond will cause mosquito infestations and whether any subsequent mosquito remediation actions will harm honeybees.*

### **3. Patricia McCormick Mulvihill**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Patricia McCormick Mulvihill is an affected person.

Mrs. Mulvihill submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. Some of the issues raised in this hearing request were based on timely filed comments. The hearing request was in writing, provided the required contact information, and included issues that are the basis of the hearing request. The hearing request was in writing, provided the required contact information, and included issues that are the basis of their hearing requests.

In her hearing request, Mrs. Mulvihill detailed some of her preexisting health conditions, stated that she is battling cancer, and is hypersensitive to chemicals in her environment. Mrs. Mulvihill expressed concern about the proposed plant will negatively affect air quality and cause adversely impact her health and safety and that of visitors to her property. Additionally, Mrs. Mulvihill expressed concern that the plant would adversely impact the health and lives of all children and families that move to the area.

Patricia McCormick Mulvihill is a co-trustee for a 31-acre parcel of land that she stated is located 0.65 miles from the location of the proposed plant. She expressed concern that the current and future use of the property will be impacted by a decline in air quality. Mrs. Mulvihill stated that that she, her family, and guests frequently use the property for nature walks, wildlife observation, bird watching, outdoor recreation and exercise, rest and relaxation, and mental health retreats.

Mrs. Mulvihill does not reside on the property but indicated that she plans to build a residence there in the future. She stated that the property has been owned by her family since 1852, is the subject of a 100-year trust for the benefit of her children and grandchildren, and that it is frequently used for outdoor recreation and exercise.

The Executive Director has identified and labeled this property on the attached map as the "McCormick Ranch." Using the address provided and county property records, the Executive Director determined that while the majority of the property is located more than one mile from the location of the proposed plant, small portions of the McCormick Ranch are located within one mile with the closest point being approximately 0.97 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Based on the location of the McCormick Ranch, issues raised, and interests affected by the application, Patricia McCormick Mulvihill has identified personal justiciable interests not common to members of the general public. Therefore, the Executive Director recommends that the Commission find that Patricia McCormick Mulvihill is an affected person based on the criteria set out in 30 TAC § 55.203.

In her hearing request, Ms. Mulvihill raised the following issues that were also raised in her timely comments:

**Issue 1:** *Whether the proposed plant will negatively affect air quality.*

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

In her hearing request, Ms. Mulvihill raised the following issues that were not raised in her timely comments:

**Issue 5:** *Whether the proposed plant will cause a nuisance or interfere with the use and enjoyment of property.*

#### **4. Shannon White-Shubert**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a person is an affected person and recommends the Commission find that Shannon White-Shubert is an affected person.

Shannon White-Shubert submitted a hearing request on behalf of herself and her husband Mike, during the 30-day period after the RTC was mailed out by the Commission. Some of the issues raised in this hearing request were based on timely filed comments. The hearing request was in writing, provided the required contact information, and included issues that are the basis of her hearing requests. In her hearing request, Ms. White-Shubert expressed concern about adverse health effects on herself, her husband, and pets and adverse impacts to trees on their property. She stated she believes there are critical health and environmental concerns associated

with the proposed plant. Mrs. White-Shubert expressed particular concern about the potential for adverse effects on the bees kept on their property and bees being raised by others in the community. She stated that honey will most certainly be contaminated.

Shannon White-Shubert stated that she owns twelve acres of land located 1,086 feet from the proposed plant. Based on the address provided and county property records, the Executive Director determined the closest point of Ms. White-Shubert's property is located approximately 0.33 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes.

Mrs. White-Shubert did not state that she and her husband reside on this property and provided the Commission with a mailing address in Round Rock, Texas. In addition, she did not state how much time she spends on the property. However, Mrs. White-Shubert did indicate that her property is used to raise bees.

Based on the location of her property, issues raised, and interests affected by the application, Shannon White-Shubert has identified personal justiciable interests not common to members of the general public. Therefore, the Executive Director recommends that the Commission find that Shannon White-Shubert is an affected person based on the criteria set out in 30 TAC § 55.203.

In her hearing request, Ms. White-Shubert raised the following issues that were also raised in her timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 5:** *Whether the proposed plant will cause a nuisance or interfere with the use and enjoyment of property.*

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

**Issue 18:** *Whether the plant will be subject to less stringent regulations because of its proposed rural location.*

**Issue 21:** *Whether there are adequate power utilities available to serve the proposed plant.*

**Issue 22:** *Whether there is adequate infrastructure to support the proposed plant in an emergency situation, including police, fire department, emergency response teams, and nearby trauma centers.*

**Issue 23:** *Whether potential emissions events, accidents, or spills will cause adverse health and welfare effects.*

**Issue 30:** *Whether the Applicant's evaporation pond will contaminate groundwater or evaporate chemicals that will be harmful to human health or negatively affect welfare, including plants, animals, and the environment.*

In her hearing request, Ms. White-Shubert raised the following issue that was not raised in her timely comments:

**Issue 12:** *Whether the proposed operating hours of the plant ensure that there will be no adverse impacts to human health, welfare, and the environment.*

## **B. Persons the Executive Director Recommends the Commission Refer to SOAH for an Affectedness Determination**

### **1. Brittany D. Varner**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a person is an affected person and recommends the Commission refer Brittany D. Varner to SOAH for an affectedness determination.

Mrs. Varner submitted a request for a contested case hearing during the comment period. The hearing request was in writing, provided the required contact information, and included issues that are the basis of the hearing request. In her hearing request, Mrs. Varner expressed concern about adverse health effects to herself and her family, including her child and elderly parents, farm animals, and future generations. She also expressed particular concern about PFAS chemicals.

Mrs. Varner stated that she owns property 0.4 miles or 2,112 feet from the proposed plant. Based on the address provided and county property records, the Executive Director determined the closest point of Mrs. Varner's property is located approximately 0.37 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes.

Mrs. Varner also stated that she and her husband sold their home and bought an RV in order to build a future on the property. While she expressed concern that they will have no choice but to live next to the proposed plant, in her hearing request she did not specifically state they currently reside on the property or state how they currently use their property. Therefore, the Executive Director recommends that the Commission refer Mrs. Varner to SOAH for a determination of whether she is an affected person.

In her hearing request, Mrs. Varner raised the following issues that were also raised in her timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

**Issue 33:** *Whether the proposed plant will increase future industrial development in the area.*

In her hearing request, Mrs. Varner raised the following issues that were not raised in her timely comments:

**Issue 20:** *Whether the proposed plant will negatively impact water supply or water availability.*

**Issue 21:** *Whether there are adequate power utilities available to serve the proposed plant.*

**Issue 22:** *Whether there is adequate infrastructure to support the proposed plant in an emergency situation, including police, fire department, emergency response teams, and nearby trauma centers.*

**Issue 23:** *Whether potential emissions events, accidents, or spills will cause adverse health and welfare effects.*

**Issue 28:** *Whether the proposed plant will violate any deed restrictions.*

## **2. Harold Charles Wardlaw and Peggy Anne McCormick Wardlaw**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission refer Harold Charles Wardlaw and Peggy Ann McCormick Wardlaw to SOAH for an affectedness determination.

Harold Wardlaw and Peggy Ann McCormick Wardlaw both submitted hearing requests during the 30-day period after the RTC was mailed out by the Commission. Some of the issues raised in their hearing requests were based on timely filed comments. Mr. Wardlaw expressed concern about air and water pollution; he raised these issues in timely comments. Mrs. Wardlaw expressed concern about the predicted exceedance of the ESLs, which was not raised during the comment period. The Wardlaws both expressed concern about adverse health impacts; Mr. Wardlaw raised this concern in timely comments but Mrs. Wardlaw did not. In addition, the Wardlaws both expressed concern that deer and wild turkey hunted on their property will be contaminated; these concerns were not raised during the comment period.

The Wardlaws both indicated they own an interest in the McCormick Ranch and provided the address for the property. The Wardlaws also both stated they own property “across CR 306” but did not provide any information about that property. Mrs. Wardlaw’s hearing request stated they enjoy spending time outdoors at the ranch and that their grandchildren play outside on the grass. However, the Wardlaws reside in San Antonio and neither hearing request indicated how much time they spend on the property. Given their interest in the McCormick Ranch and the issues raised, the Executive Director recommends that the Commission refer the Wardlaws to SOAH for a determination of whether they are affected persons.

In his hearing request, Mr. Wardlaw raised the following issues that were also raised in his timely comments:

**Issue 1:** *Whether the proposed plant will negatively affect air quality.*

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

In his hearing request, Mr. Wardlaw raised the following issues that were not raised in his timely comments:

**Issue 8:** *Whether the air dispersion modeling properly evaluated emissions from the proposed plant, included all applicable emission sources.*

**Issue 23:** *Whether potential emissions events, accidents, or spills will cause adverse health and welfare effects.*

In her hearing request, Mrs. Wardlaw raised the following issues that were also raised in her timely comments:

**Issue 23:** *Whether potential emissions events, accidents, or spills will cause adverse health and welfare effects.*

**Issue 25:** *Whether the storage and potential transportation of chemicals stored in sealed drums was adequately considered.*

In her hearing request, Mrs. Wardlaw raised the following issues that were not raised in her timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

### **C. Persons the Executive Director Recommends the Commission Find are NOT Affected Persons**

#### **a. Individuals that did not meet the requirements of 30 TAC § 55.201: Nicole Elizabeth Bauer, Charles Ely McCormick, Erin McCormick, Joyce McCormick, Nickolas McCormick**

These individuals submitted a timely request for a contested case hearing during the 30-day period after the RTC was mailed out by the Commission. However, these individuals did not submit any timely comments during the public comment period. For applications submitted after September 1, 2015, a hearing request must be based only on the requestor's timely filed comments. Because the requesters did not submit any timely filed comments, the Executive Director recommends that they are not affected persons because they did not meet the criteria set out in 30 TAC § 55.201.

## **b. Individuals that did not meet the requirements of 30 TAC § 55.203**

### **1. Ann and Thomas Beville**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Ann and Thomas Beville are not affected persons.

Mr. and Mrs. Beville submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing and provided the required contact information. Ann Beville submitted a timely comment during the comment period but Thomas Beville did not submit timely comments. The issues raised in their hearing request were not raised in a timely comment. Their hearing request expressed concern about adverse health effects on themselves, their family, pets and beehives. In addition, the Bevilles are concerned that water runoff from the proposed plant could impact water quality.

The Bevilles did not indicate where they live in relation to the proposed plant. Using the address provided, the Executive Director determined that they live approximately 10.36 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Based on their location relative to the proposed plant, the Executive Director does not expect the regulated activity to have an impact on their health in a way that is not common to members of the general public. Accordingly, the Executive Director recommends that the Commission find that Ann and Thomas Beville are not affected persons based on the criteria set out in 30 TAC § 55.203.

In their hearing request, Mr. and Mrs. Beville raised the following issue that was also raised in Ann Beville's timely comments:

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

In their hearing request, Mr. and Mrs. Beville raised the following issues that were not raised in Ann Beville's timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

### **2. Sheryl Marie Farley**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Sheryl Marie Farley is not an affected person.

Ms. Farley submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing and provided the required contact information. Some of the issues raised in this hearing request were based on timely filed comments. In her hearing request, Ms. Farley expressed concern that air emissions from the proposed plant will reach her property and be harmful to the health of herself and her family and very young children and the elderly.

Ms. Farley did not indicate where she lives relative to the proposed plant. Using the address provided, the Executive Director determined that she lives approximately 2.41 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Based on her location relative to the proposed plant, the Executive Director does not expect the regulated activity to have an impact on Ms. Farley's health in a way that is not common to members of the general public. Accordingly, the Executive Director recommends that the Commission find that Sheryl Marie Farley is not an affected person based on the criteria set out in 30 TAC § 55.203.

In her hearing request, Ms. Farley raised the following issue that was also raised in her timely comments:

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

In her hearing request, Ms. Farley raised the following issues that were not raised in her timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

**Issue 21:** *Whether there are adequate power utilities available to serve the proposed plant.*

**Issue 22:** *Whether there is adequate infrastructure to support the proposed plant in an emergency situation, including police, fire department, emergency response teams, and nearby trauma centers.*

**Issue 32:** *Whether the proposed plant will negatively impact public safety on surrounding roads.*

### **3. Kelley Heath**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Kelley Heath is not an affected person.



Ms. Heath submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing and provided the required contact information. Some of the issues raised in this hearing request were based on timely filed comments. In her hearing request, Ms. Heath expressed concern about adverse health effects on herself and her family.

Ms. Heath did not state where she resides in relation to the proposed plant but stated they are “too close.” Using the address provided, the Executive Director determined that they she lives approximately 11.97 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person’s interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Based on her location relative to the proposed plant, the Executive Director does not expect the regulated activity to have an impact on Ms. Heath’s health in a way that is not common to members of the general public. Accordingly, the Executive Director recommends that the Commission find that Kelley Heath is not an affected person based on the criteria set out in 30 TAC § 55.203.

In her hearing request, Ms. Heath raised the following issues that were also raised in her timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

In her hearing request, Ms. Heath raised the following issues that were not raised in her timely comments:

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

#### **4. Catherine Johnston**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Catherine Johnston is not an affected person.

Ms. Johnston submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing and she provided the required contact information. In her hearing request Ms. Johnston stated, “I would like to request a contested case hearing” and attached the letter from Dr. Neil Carman that was referenced in the response to the requests for reconsideration above. However, Ms. Johnston did not state how or why she specifically will be affected in a manner not common to members of the general public.

Ms. Johnston did not state where she resides in relation to the proposed plant. Using the address provided, the Executive Director determined that they she lives approximately 3.81 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person’s interests because of the dispersion and

effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Because she failed to state a personal justiciable interest in her hearing request and because she resides over three miles from the location of the proposed plant, the Executive Director recommends that the Commission find that Catherine Johnston is not an affected person based on the criteria set out in 30 TAC § 55.203.

#### **5. Charles McCormick**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Charles McCormick is not an affected person.

Mr. McCormick submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing and provided the required contact information. Some of the issues raised in his hearing request were based on timely filed comments. In his hearing request, Mr. McCormick expressed concern about the monitoring requirements of the draft permit. He stated that the Applicant should be required to install an exhaust monitoring system that measures and records emissions in real time and includes threshold alarms that trigger sirens and alert emergency services to notify residents of a potential need to evacuate. Mr. McCormick expressed concern that without such a system, the Applicant could be tempted to alter its records that would otherwise show noncompliance with the permit. However, Mr. McCormick did not state how or why he specifically will be affected in a manner not common to members of the general public.

In his hearing request, Mr. McCormick stated he owns 30 acres 0.6 miles away “on CR236” but did not provide an address or any additional information about his property. As a result, the Executive Director is unable identify where this property is located. He did not indicate how much time he spends on the property on which his hearing request is based or state how the property is used. In addition, Mr. McCormick provided a mailing address in Round Rock, Texas. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person’s interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Because he failed to state a personal justiciable interest in his hearing request and because he did not provide information about his property, the Executive Director recommends that the Commission find that Charles McCormick is not an affected person based on the criteria set out in 30 TAC § 55.203.

In his hearing request, Mr. McCormick raised the following issue that was also raised in his timely comments:

**Issue 11:** *Whether the draft permit contains adequate monitoring and recordkeeping requirements to assure compliance with all applicable rules and requirements.*

#### **6. Henry N. Mulvihill**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Henry N. Mulvihill is not an affected person.

Mr. Mulvihill submitted a request for a contest case hearing during the public comment period. The hearing request was in writing, provided the required contact information, and included issues that are the basis of the hearing request. In his hearing request, Henry Mulvihill expressed concern with the location of the proposed plant and, in reference to a statement made by the Applicant concerning its choice of location, stated that he was not a buffer.

Henry Mulvihill did not provide a residential address or indicate where he lives relative to the proposed plant. 30 TAC § 55.201(d)(2) provides that requests for contested case hearing must include “the requestor’s location and distance relative to the proposed facility or activity that is the subject of the application...” Therefore, Mr. Mulvihill did not comply with the requirements of 30 TAC § 55.201(d)(2).

In addition, in his hearing request Mr. Mulvihill expressed concern about the location of the proposed plant and indicated that he owned land near the proposed location. However, the hearing request did not describe any likely impact of the regulated activity on Mr. Mulvihill’s health and safety or on the use of his property. Because he failed to state a personal justiciable interest in his hearing request, the Executive Director recommends that the Commission find that Henry N. Mulvihill is not an affected person based on the criteria set out in 30 TAC § 55.203.

In his hearing request, Mr. Mulvihill raised the following issue that was also raised in his timely comments:

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

#### **7. Joe J. Pacheco**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Joe J. Pacheco is not an affected person.

Mr. Pacheco submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing and provided the required contact information. Some of the issues raised in his hearing request were based on timely filed comments. In his hearing request, Mr. Pacheco expressed concern about adverse health effects on himself and his family and expressed concern that emissions will contaminate the land and local waterways and negatively impact groundwater.

Mr. Pacheco did not state where he resides in relation to the proposed plant. Using the address provided, the Executive Director determined that he lives approximately 11.97 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person’s interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Based on his location relative to the proposed plant, the Executive Director does not expect the regulated activity to have an impact on Mr. Pacheco’s health in a way that is not common to members of the general public. Accordingly, the Executive Director recommends that the Commission find that Joe J. Pacheco is not an affected person based on the criteria set out in 30 TAC § 55.203.

In his hearing request, Mr. Pacheco raised the following issues that were also raised in his timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

#### **8. Chris and Renee Peyton**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Chris and Renee Peyton are not affected persons.

Mr. and Mrs. Peyton each submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing requests were in writing and provided the required contact information. Some of the issues raised in their hearing requests were based on timely filed comments. In their hearing requests, the Peytons expressed concern that the Applicant was planning on dumping wastewater into the San Gabriel River. In addition, the Peytons both expressed concern about adverse health effects on themselves and their family and expressed concern that emissions will contaminate the land and local waterways and negatively impact groundwater. They both stated they have young children who enjoy playing outside and elderly family members who enjoy sitting outside and watching birds and other wildlife.

Mr. and Mrs. Peyton both stated their property is approximately 14 miles from the proposed plant. Using the address provided, the Executive Director determined that they live approximately 9.39 miles from the proposed plant. For air authorizations, distance from the proposed plant is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility. The natural resource that is the subject of this permit is the ambient air an individual breathes. Based on their location relative to the proposed plant, the Executive Director does not expect the regulated activity to have an impact on their health in a way that is not common to members of the general public. Accordingly, the Executive Director recommends that the Commission find that Chris and Renee Peyton are not affected persons based on the criteria set out in 30 TAC § 55.203.

In their hearing request, Mr. and Mrs. Peyton raised the following issues that were also raised in their timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

## **9. Sandra Lee Thurman**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Sandra Lee Thurman is not an affected person.

Ms. Thurman submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing and provided the required contact information. In her hearing request, Ms. Thurman questioned whether the Commission could guarantee that neither she nor anyone else in the community would experience adverse health effects. In timely comments, Ms. Thurman expressed concern about emissions events or leaks of chemical products and about potential water contamination. Thus, the concern about adverse health effects was not raised in a timely comment.

Ms. Thurman stated she and her husband live 0.28 miles from the proposed plant. Using the address provided, the Executive Director determined that they she lives approximately 0.63 miles from the proposed plant. For applications submitted after September 1, 2015, a hearing request must be based only on the requestor's timely filed comments. Because she did not raise health concerns in a timely filed comment, the Executive Director recommends that the Commission find that Sandra Lee Thurman is not an affected person based on the criteria set out in 30 TAC § 55.203.

In her hearing request, Ms. Thurman raised the following issues that were not raised in her timely comments:

**Issue 1:** *Whether the proposed plant will negatively affect air quality.*

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

## **10. Haziell McCormick Williams**

The Executive Director reviewed the factors found in 30 TAC § 55.201(c) and (d), and § 55.203 for determining whether a requestor is an affected person, and recommends the Commission find that Haziell McCormick Williams is not an affected person.

Mrs. Williams submitted a hearing request during the 30-day period after the RTC was mailed out by the Commission. The hearing request was in writing and provided the required contact information. In her hearing request, Ms. Williams stated that she is an affected person because of her proximity to the proposed plant and her hypersensitivity to chemicals in her environment. She stated she suffers from idiopathic anaphylaxis which can be triggered by insignificant levels of chemicals. In timely comments, Ms. Williams expressed concern about the proposed location of the plant and referred to an incident that occurred at the Applicant's other plant. The concern about adverse health effects was not raised in a timely comment and thus, the issues in her hearing request were not based on timely filed comments.

Mrs. Williams stated she owns two tracts of land within one mile of the proposed plant and provided a map of the two properties. Using the information provided, the Executive Director determined that the closest point on Ms. Williams' property is located approximately 0.71 miles from the proposed plant. Mrs. Williams stated she is a Licensed Professional Therapist and that she plans to have a Children's Equine

Therapy counseling practice on her land to work with children who have respiratory and hyperallergic health conditions triggered by chemical emissions. However, Mrs. Williams resides in San Antonio and did not indicate how much time she spends on the property on which her hearing request is based or state how the property is currently used. For applications submitted after September 1, 2015, a hearing request must be based only on the requestor's timely filed comments. Because she did not raise health concerns in a timely filed comment, the Executive Director recommends that the Commission find that Haziel McCormick Williams is not an affected person based on the criteria set out in 30 TAC § 55.203.

In her hearing request, Mrs. Williams raised the following issues that were also raised in her timely comments:

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

In her hearing request, Mrs. Williams raised the following issues that were not raised in her timely comments:

**Issue 1:** *Whether the proposed plant will negatively affect air quality.*

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 5:** *Whether the proposed plant will cause a nuisance or interfere with the use and enjoyment of property.*

**Issue 14:** *Whether the Applicant's compliance history warrants changes to the draft permit.*

**Issue 18:** *Whether the plant will be subject to less stringent regulations because of its proposed rural location.*

**Issue 23:** *Whether potential emissions events, accidents, or spills will cause adverse health and welfare effects.*

#### **D. Groups and Associations**

In addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, requests for a contested case hearing by a group or association on an application filed on or after September 1, 2015, must meet the requirements in 30 TAC § 55.205(b). Specifically: (1) the group or association must have submitted timely comments on the application; (2) the request must identify, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right; (3) the interests the group or association seeks to protect must be germane to the organization's purpose; and (4) the claim asserted or the relief requested may not require the participation of the individual members in the case.

## 1. North San Gabriel Alliance

*(1) Whether the group or association submitted timely comments on the application.*

The North San Gabriel Alliance submitted multiple timely comments and requests for a contested case hearing on the application. The Executive Director has determined that North San Gabriel Alliance meets this requirement for associational standing.

*(2) Whether one or more members of the group or association would otherwise have standing to request a hearing in their own right.*

The North San Gabriel Alliance identified several members it argued would have standing to request a hearing in their own right, including Elizabeth Ann Friou, Patricia McCormick Mulvihill, Bryce Philip McCormick, Charles Ray Williams, Jr., Haziel McCormick Williams, and Margaret 'Peggy' Ann McCormick Wardlaw. As discussed above, the Executive Director recommends that Elizabeth Ann Friou and Patricia McCormick Mulvihill have standing to request a hearing in their own right. Accordingly, the Executive Director has determined North San Gabriel Alliance meets this requirement for associational standing without the need to evaluate whether the remaining members identified by North San Gabriel Alliance would have standing in their own right.

*(3) Whether the interests the group or association seeks to protect are germane to the organization's purpose.*

According to their hearing requests, North San Gabriel Alliance is a non-profit organization that works to protect the natural environment, homes, crops, animals, and property of people who live, work, farm, ranch, and recreate in the area of the North Fork of the San Gabriel River. North San Gabriel Alliance stated that it is protesting the issuance of the permit to protect against an increase in air emissions and risks of accidents and spills that could lead to surface and groundwater contamination, which it argues is germane to its purpose as a local conservation and stewardship organization. Thus, the Executive Director has determined that North San Gabriel Alliance has met this requirement for associational standing.

*(4) Whether the claim asserted or the relief requested requires the participation of the individual members in the case.*

The relief requested by North San Gabriel Alliance does not require the participation of any individual member of North San Gabriel Alliance. Thus, the Executive Director has determined that North San Gabriel Alliance has met this requirement for associational standing.

Because the North San Gabriel Alliance met all four requirements for associational standing, the Executive Director recommends the Commission find the North San Gabriel Alliance is an affected person.

In its hearing requests, North San Gabriel Alliance raised the following issues that were also raised in its timely comments:

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 4:** *Whether cumulative and aggregate impacts were adequately considered.*

**Issue 7:** *Whether the emissions from the proposed facilities were appropriately calculated.*

**Issue 8:** *Whether the air dispersion modeling properly evaluated emissions from the proposed plant, included all applicable emission sources.*

**Issue 9:** *Whether the air dispersion modeling was representative of the proposed location and adequately evaluated potential impacts to nearby receptors, including residences and ranches.*

**Issue 10:** *Whether the draft permit requires the use of the best available control technology (BACT).*

**Issue 11:** *Whether the draft permit contains adequate monitoring and recordkeeping requirements to assure compliance with all applicable rules and requirements.*

**Issue 12:** *Whether the proposed operating hours of the plant ensure that there will be no adverse impacts to human health, welfare, and the environment.*

**Issue 13:** *Whether the draft permit should prohibit chemical flexibility.*

**Issue 14:** *Whether the Applicant's compliance history warrants changes to the draft permit.*

**Issue 15:** *Whether the condition in the draft permit requiring the submission of a risk management plan prior to exceeding a threshold quantity of hydrogen fluoride is adequate.*

**Issue 16:** *Whether the proposed plant will adversely impact endangered species.*

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

**Issue 23:** *Whether potential emissions events, accidents, or spills will cause adverse health and welfare effects.*

**Issue 24:** *Whether an emergency fire water pump should have been included in the application.*

**Issue 26:** *Whether the application should have included a site review that included information about limestone features on nearby properties that could serve as conduits to the Edwards Aquifer or habitat for endangered species, and plants and animals being raised near the proposed location of the plant.*

**Issue 27:** *Whether the application should have included an Edwards Aquifer Contributing Zone Plan.*



## **VIII. Whether 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. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred.<sup>3</sup> The issues raised for this application and the Executive Director's analysis and recommendations follow.

### **Issue 1:** *Whether the proposed plant will negatively affect air quality.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou, Patricia McCormick Mulvihill, and the North San Gabriel Alliance who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

### **Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou, Suzanne Johnson, Patricia McCormick Mulvihill, Shannon White-Shubert, and the North San Gabriel Alliance who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

### **Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou, Suzanne Johnson, Patricia McCormick Mulvihill, Shannon White-Shubert, and the North San Gabriel Alliance who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

### **Issue 4:** *Whether cumulative and aggregate impacts were adequately considered.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by the North San Gabriel Alliance who the Executive Director recommends the Commission find is an affected person.

**The Executive Director recommends referring this issue to SOAH.**

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<sup>3</sup> TEX. GOVT. CODE § 2003.047(e-1); 30 TAC § 55.211 (c)(2)(A)(ii).

**Issue 5:** *Whether the proposed plant will cause a nuisance or interfere with the use and enjoyment of property.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou, and Shannon White-Shubert who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 6:** *Whether the application contains factually incorrect or omitted information.*

This issue involves a disputed question of fact, and was not withdrawn, however, the requesters only provided a general statement that errors or omissions existed in the permit application. Because of the generalized nature of the issue, the Executive Director recommends not referring this issue to SOAH.

**Issue 7:** *Whether the emissions from the proposed facilities were appropriately calculated.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by the North San Gabriel Alliance who the Executive Director recommends the Commission find is an affected person.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 8:** *Whether the air dispersion modeling properly evaluated emissions from the proposed plant, included all applicable emission sources.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by the North San Gabriel Alliance who the Executive Director recommends the Commission find is an affected person.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 9:** *Whether the air dispersion modeling was representative of the proposed location and adequately evaluated potential impacts to nearby receptors, including residences and ranches.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou and the North San Gabriel Alliance who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 10:** *Whether the draft permit requires the use of the best available control technology (BACT).*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by the North San Gabriel Alliance who the Executive Director recommends the Commission find is an affected person.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 11:** *Whether the draft permit contains adequate monitoring and recordkeeping requirements to assure compliance with all applicable rules and requirements.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou and the North San Gabriel Alliance who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 12:** *Whether the proposed operating hours of the plant ensure that there will be no adverse impacts to human health, welfare, and the environment.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou, and the North San Gabriel Alliance who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 13:** *Whether the draft permit should prohibit chemical flexibility.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by the North San Gabriel Alliance who the Executive Director recommends the Commission find is an affected person.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 14:** *Whether the Applicant's compliance history warrants changes to the draft permit.*

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou and the North San Gabriel Alliance who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 15:** *Whether the condition in the draft permit requiring the submission of a risk management plan prior to exceeding a threshold quantity of hydrogen fluoride is adequate.*

This issue involves a mixed question of fact and law, and was not withdrawn, and is relevant and material to the issuance of the draft permit. The issue was raised by Elizabeth Ann Friou and the North San Gabriel Alliance who the Executive Director recommends the Commission find are affected persons.

**The Executive Director recommends referring this issue to SOAH.**

**Issue 16:** *Whether the proposed plant will adversely impact endangered species.*

This issue involves a disputed question of fact and was not withdrawn. However, because the TCEQ does not have jurisdiction over endangered species, it is not relevant and material to the issuance of the draft permit. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 17:** *Whether the proposed location of the plant is suitable for the chemical plant.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. Except under limited circumstances, which do not exist under this particular permit application, the issuance of a permit cannot be denied on the basis of plant location. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 18:** *Whether the plant will be subject to less stringent regulations because of its proposed rural location.*

This issue involves a question of law which is not relevant and material to the Commission's decision on the application. TCAA § 382.0518 provides that for plants located in areas in attainment of the NAAQS, such as Williamson County, they must utilize controls that meet Best Available Control Technology (BACT) and there must be no indication that emissions from the plant will contravene the intent of the TCAA, including protection of the public's health and physical property. Accordingly, outside of the context of a nonattainment area, the applicable regulations are not determined by the location of the proposed facility. TCEQ's rules provide that only disputed issues of fact or mixed questions of fact and law may be referred to SOAH. 30 TAC § 50.115(c). The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 19:** *Whether the proposed plant will negatively affect water quality.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. While the TCEQ is responsible for the environmental protection of all media, including water, the TCAA specifically addresses air-related issues. This permit, if issued, would regulate the control and abatement of air emissions only, and therefore, issues regarding water quality are not within the scope of this permit review. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 20:** *Whether the proposed plant will negatively impact water supply or water availability.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. While the TCEQ is responsible for the environmental protection of all media, including water, the TCAA specifically addresses air-related issues. This permit, if issued, would regulate the control and abatement of air emissions only, and therefore, issues regarding water use or water availability are not within the scope of this permit review. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 21:** *Whether there are adequate power utilities available to serve the proposed plant.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The TCEQ's jurisdiction is limited to the issues set forth in statute. Accordingly, the TCEQ does not have the authority to consider whether there are adequate utilities available to serve the proposed plant. It is an applicant's responsibility to ensure it has adequate utilities to serve its needs. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 22:** *Whether there is adequate infrastructure to support the proposed plant in an emergency situation, including police, fire department, emergency response teams, and nearby trauma centers.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The TCEQ's jurisdiction is limited to the issues set forth in statute. Accordingly, the TCEQ does not have the authority to consider whether there is adequate infrastructure to support the proposed plant. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 23:** *Whether potential emissions events, accidents, or spills will cause adverse health and welfare effects.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The draft permit's Maximum Allowable Emission Rate Table (MAERT) lists the only emissions authorized to be emitted from the proposed plant. Emissions events, accidents, or spills are not authorized. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 24:** *Whether an emergency fire water pump should have been included in the application.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The TCEQ does not have jurisdiction over emergency response plans. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 25:** *Whether the storage and potential transportation of chemicals stored in sealed drums was adequately considered.*

This issue involves a mixed question of fact and law, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. Under the TCAA, the TCEQ regulates facilities that emit air contaminants. Thus, the storage of chemicals in sealed drums which do not have the potential to emit pollutants into the air are outside the scope of review of an air quality application. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 26:** *Whether the application should have included a site review that included information about limestone features on nearby properties that could serve as conduits to the Edwards Aquifer or habitat for endangered species, and plants and animals being raised near the proposed location of the plant.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The TCAA establishes the TCEQ's jurisdiction to regulate air emissions in the state of Texas. TCEQ's review of requests for air quality authorizations to emit air contaminants is limited to a review of the best available control technology (BACT) and a health effects review. The Executive Director recommends the Commission not refer this issue to SOAH.

**Issue 27:** *Whether the application should have included an Edwards Aquifer Contributing Zone Plan.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. While the TCEQ is responsible for the environmental protection of all media, including water, the TCAA specifically addresses air-related issues. This permit, if issued, would regulate the control and abatement of air emissions only, and therefore, issues regarding water use, water quality, water availability, or compliance with any applicable Edwards Aquifer rules are not within the scope of this permit review. The Executive Director recommends not referring this issue to SOAH.

**Issue 28:** *Whether the proposed plant will violate any deed restrictions.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The TCEQ does not have jurisdiction to consider or enforce deed restrictions. The Executive Director recommends not referring this issue to SOAH.

**Issue 29:** *Whether the proposed plant will have negative economic impacts for nearby landowners.*

This issue involves a disputed question of fact, and was not withdrawn, however it is not relevant and material to the issuance of the draft permit. The TCEQ's jurisdiction is limited to the issues set forth in statute. Accordingly, the TCEQ does not have the authority to consider local economic impacts when determining whether to approve or deny a permit. The Executive Director recommends not referring this issue to SOAH.

**Issue 30:** *Whether the Applicant's evaporation pond will contaminate groundwater or evaporate chemicals that will be harmful to human health or negatively affect welfare, including plants, animals, and the environment.*

This issue involves a disputed question of fact, and was not withdrawn, however it is not relevant and material to the issuance of the draft permit. While the TCEQ is responsible for the environmental protection of all media, including water, the TCAA specifically addresses air-related issues. This permit, if issued, would regulate the control and abatement of air emissions only, and therefore, issues regarding wastewater evaporation are not within the scope of this permit review. The Applicant's evaporation pond is authorized by Wastewater Permit No. WQG100041. This general permit does not authorize land application of wastewater adjacent to water in the state or the discharge of wastewater into water in the state. The Executive Director recommends not referring this issue to SOAH.

**Issue 31:** *Whether the Applicant's evaporation pond will cause mosquito infestations and whether any subsequent mosquito remediation actions will harm honeybees.*

This issue involves a disputed question of fact, and was not withdrawn, however it is not relevant and material to the issuance of the draft permit. While the TCEQ is responsible for the environmental protection of all media, including water, the TCAA specifically addresses air-related issues. This permit, if issued, would regulate the control and abatement of air emissions only, and therefore, issues regarding wastewater evaporation are not within the scope of this permit review. The Applicant's evaporation pond is authorized by wastewater permit No. WQG100041. This general permit does not authorize land application of wastewater adjacent to water in the state or the discharge of wastewater into water in the state. The Executive Director recommends not referring this issue to SOAH.

**Issue 32:** *Whether the proposed plant will negatively impact public safety on surrounding roads.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The TCEQ's jurisdiction is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider traffic or road safety when determining whether to approve or deny a permit application. Trucks, and their associated emissions, are considered mobile sources, which are not regulated by the TCEQ. Moreover, the TCEQ is prohibited from regulating roads per TCAA § 382.003(6), which excludes roads from the definition of "facility." The Executive Director recommends not referring this issue to SOAH.

**Issue 33:** *Whether the proposed plant will increase future industrial development in the area.*

This issue involves a disputed question of fact, and was not withdrawn, however, it is not relevant and material to the issuance of the draft permit. The TCEQ's jurisdiction is limited to the issues set forth in statute. The TCEQ does not have the authority to consider the potential for future development because of a plant's location. The Executive Director recommends not referring this issue to SOAH.

## IX. Executive Director's Recommendation

The Executive Director respectfully recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that Elizabeth Ann Friou, Suzanne Johnson, Patricia McCormick Mulvihill, Shannon White-Shubert, and the North San Gabriel Alliance are affected persons and grant their hearing requests.
2. The Executive Director recommends the Commission refer Brittany D. Varner, Harold Charles Wardlaw, and Peggy Ann McCormick Wardlaw to SOAH for a determination of whether they are affected persons.
3. The Executive Director recommends the Commission find that the remaining hearing requestors are not affected persons and deny their hearing requests.
4. The Executive Director recommends that the Commission deny the requests for reconsideration.
5. If referred to SOAH, refer the following issues as raised by an affected person as identified by the Executive Director:

**Issue 1:** *Whether the proposed plant will negatively affect air quality.*

**Issue 2:** *Whether the proposed plant will negatively affect human health, including sensitive subgroups and physical property.*

**Issue 3:** *Whether the proposed plant will negatively affect welfare, including plants, animals, and the environment.*

**Issue 4:** *Whether cumulative and aggregate impacts were adequately considered.*

**Issue 5:** *Whether the proposed plant will cause a nuisance or interfere with the use and enjoyment of property.*

**Issue 7:** *Whether the emissions from the proposed facilities were appropriately calculated.*

**Issue 8:** *Whether the air dispersion modeling properly evaluated emissions from the proposed plant, included all applicable emission sources.*

**Issue 9:** *Whether the air dispersion modeling was representative of the proposed location and adequately evaluated potential impacts to nearby receptors, including residences and ranches.*

**Issue 10:** *Whether the draft permit requires the use of the best available control technology (BACT).*

**Issue 11:** *Whether the draft permit contains adequate monitoring and recordkeeping requirements to assure compliance with all applicable rules and requirements.*

**Issue 12:** *Whether the proposed operating hours of the plant ensure that there will be no adverse impacts to human health, welfare, and the environment.*

**Issue 13:** *Whether the draft permit should prohibit chemical flexibility.*



**Issue 14:** *Whether the Applicant's compliance history warrants changes to the draft permit.*

**Issue 15:** *Whether the condition in the draft permit requiring the submission of a risk management plan prior to exceeding a threshold quantity of hydrogen fluoride is adequate.*

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker, Executive Director

Erin E. Chancellor, Director  
Office of Legal Services

Charmaine Backens, Deputy Director  
Environmental Law Division



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Betsy Petcolas, Staff Attorney  
Environmental Law Division  
State Bar Number 24070040  
(512) 239-6033

Abigail Adkins, Staff Attorney  
Environmental Law Division  
State Bar Number 24132018  
(512) 239-2496  
PO Box 13087, MC 173  
Austin, Texas 78711-3087

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

EXFLUOR RESEARCH CORPORATION  
AIR QUALITY PERMIT NO. 165848  
MAP A

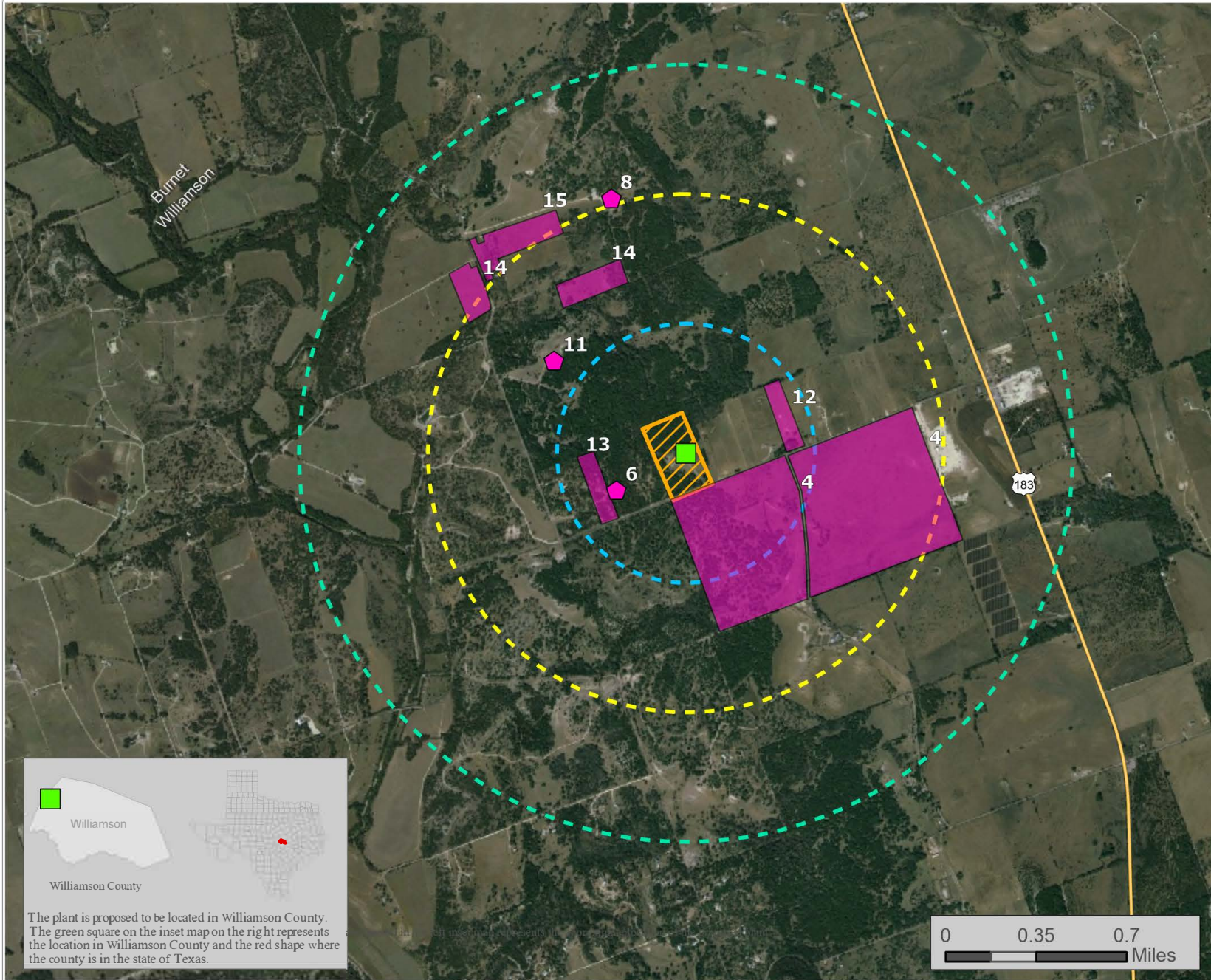
# EXFLUOR RESEARCH CORPORATION Air Quality Permit No. 165848



*Protecting Texas by  
Reducing and  
Preventing Pollution*

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: 11/1/2022  
CRF 0079610  
Cartographer: ABanda



- Plant
- ◆ Requestors (residences)
- ▭ Requestors (property)
- Property Line
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- County Boundary

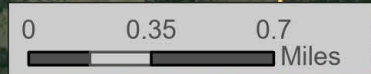


The plant is proposed to be located in Williamson County.  
The green square on the inset map on the right represents the location in Williamson County and the red shape where the county is in the state of Texas.

Please see Appendix A for a list of requestors and distances from the plant.

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.



EXFLUOR RESEARCH CORPORATION  
AIR QUALITY PERMIT NO. 165848  
MAP B



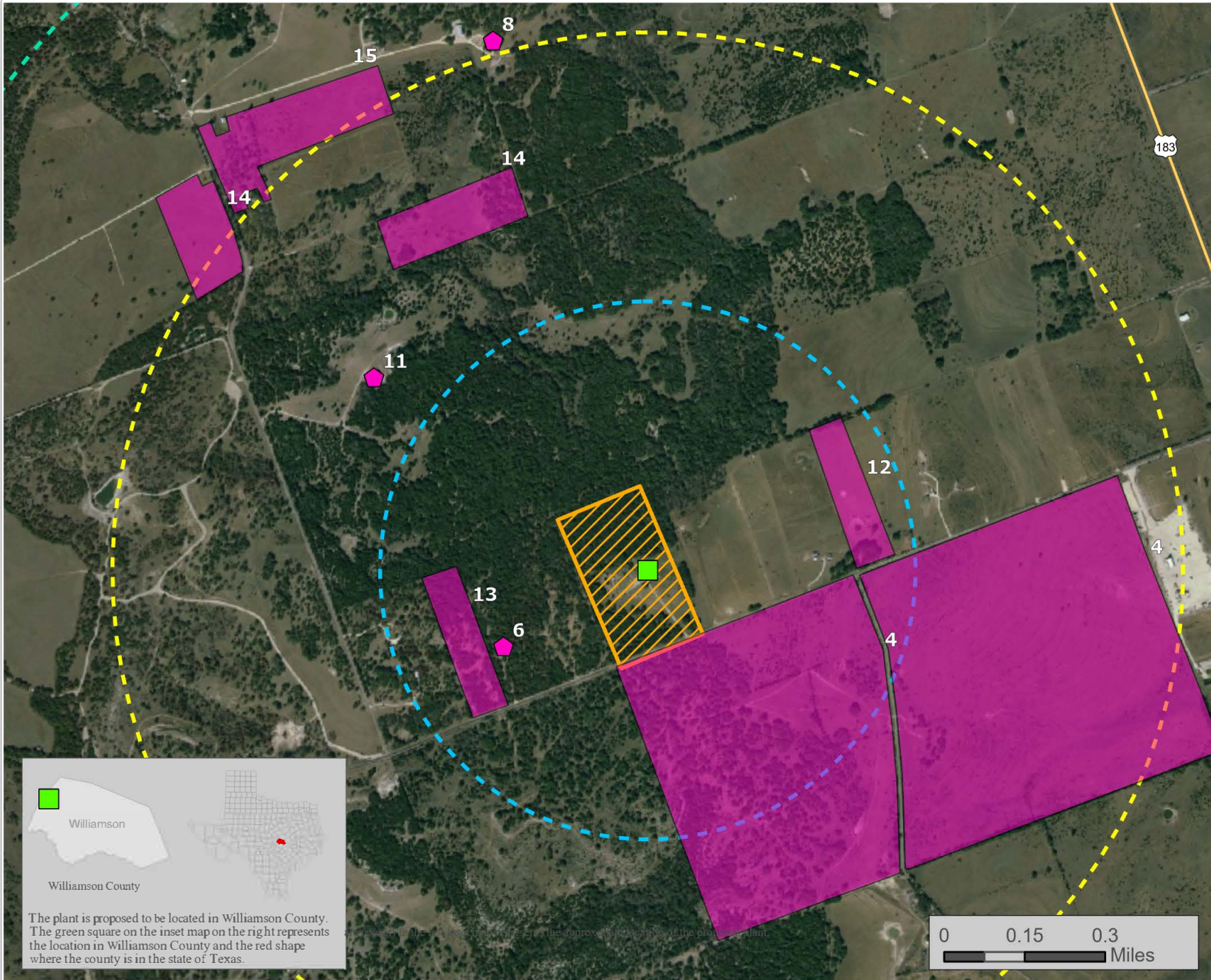
# EXFLUOR RESEARCH CORPORATION Air Quality Permit No. 165848



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- Plant
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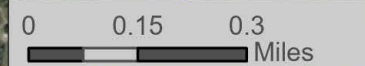
Please see Appendix A for a list of requestors and distances from the plant.

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The plant is proposed to be located in Williamson County. The green square on the inset map on the right represents the location in Williamson County and the red shape where the county is in the state of Texas.



EXFLUOR RESEARCH CORPORATION  
AIR QUALITY PERMIT NO. 165848  
MAP C



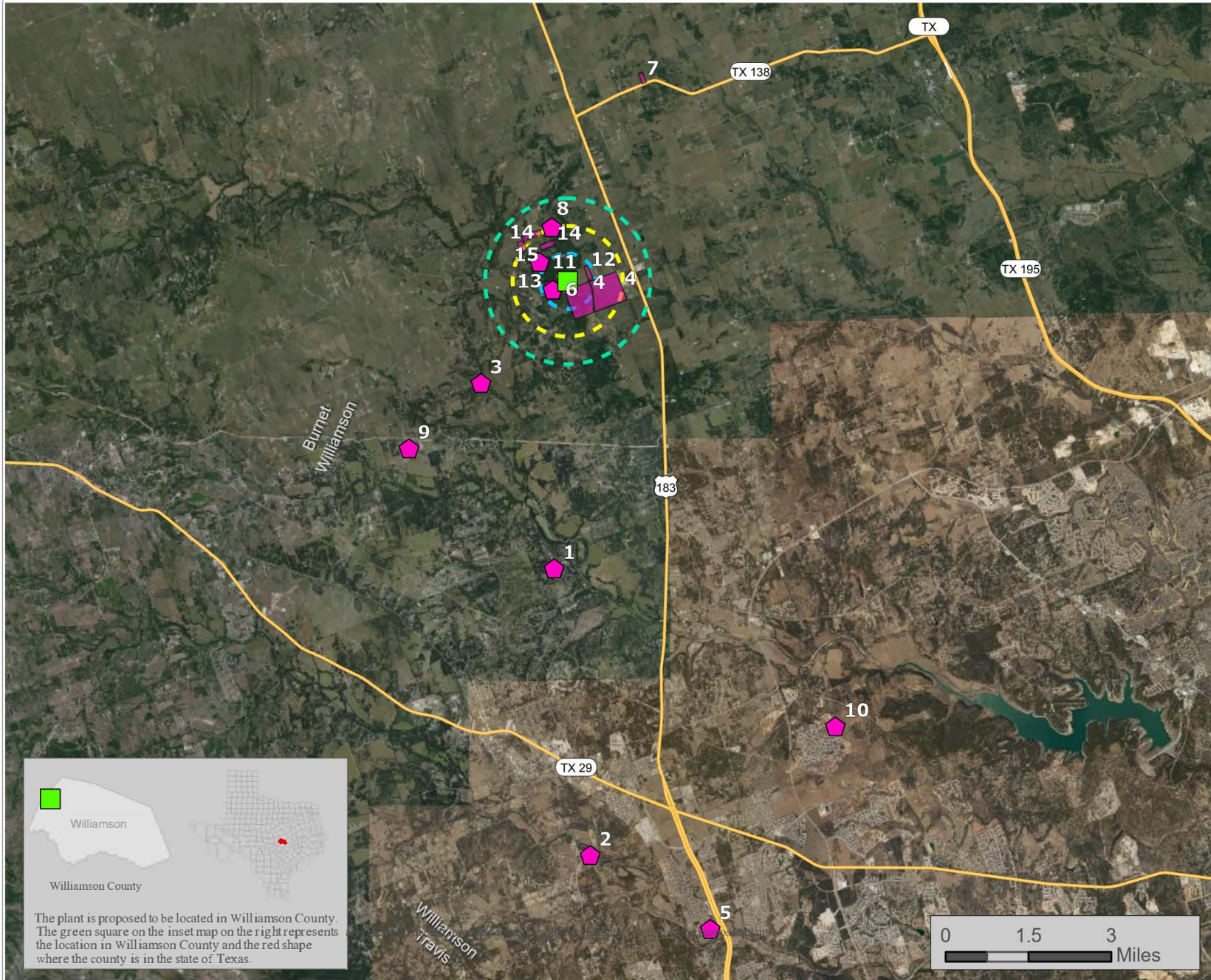
# EXFLUOR RESEARCH CORPORATION Air Quality Permit No. 165848



*Protecting Texas by  
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Map Requested by TCEQ Office of Legal Services  
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Texas Commission on Environmental Quality  
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P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 11/1/2022  
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Cartographer: ABanda



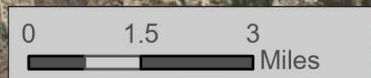
- Plant
- ⬠ Requestors (residences)
- ⬠ Requestors (property)
- Property Line
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- County Boundary

Please see Appendix A for a list of requestors and distances from the plant.

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.

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The plant is proposed to be located in Williamson County. The green square on the inset map on the right represents the location in Williamson County and the red shape where the county is in the state of Texas.



EXFLUOR RESEARCH CORPORATION  
AIR QUALITY PERMIT NO. 165848  
REQUESTOR'S LIST



## Appendix A

Label	Name	Miles from Plant
1	Nicole Elizabeth Bauer	5.18
2	Anne and Thomas Beville	10.36
3	Sheryl Marie Farley	2.41
4	Elizabeth Ann Friou	0.1
5	Kelley Heath	11.97
6	Suzanne Johnson	0.3
7	Catherine Johnston	3.81
8	Bryce Philip McCormick	1.03
9	Joe J. Pacheco	4.17
10	Chris and Renee Peyton	9.39
11	Sandra Lee Thurman	0.63
12	Brittany D. Varner	0.37
13	Shannon White-Shubert	0.33
	Charles Ray Williams, Jr. and Haziell	
14	McCormick Williams	0.71
15	McCormick Ranch	0.97

**CERTIFICATE OF SERVICE**

I certify that on this 21st day of November 2022, a true and correct copy of the Executive Director's Response to Hearing Requests and Requests for Reconsideration" for Air Quality Permit No. 165848 was served on all persons on the service list by the undersigned via electronic filing, electronic mail, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



---

Betsy Peticolas, Staff Attorney  
Environmental Law Division

**SERVICE LIST  
EXFLUOR RESEARCH CORPORATION  
TCEQ DOCKET NO. 2022-1552-AIR  
PERMIT NO. 165848**

FOR THE CHIEF CLERK:

*via electronic filing*  
Laurie Gharis, Chief Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk  
P.O. Box 13087, MC-105  
Austin, TX 78711-3087

FOR THE APPLICANT:

Derek Seal  
MCGINNIS LOCHRIDGE  
600 Congress Ave Ste 2100  
Austin, Texas 78701  
Tel: (512) 495-6188  
Fax: (512) 505-6388  
[dseal@mcginnislaw.com](mailto:dseal@mcginnislaw.com)

Thomas Bierschenk  
Exflur Research Corporation  
2350 Double Creek Drive  
Round Rock, Texas 78664  
Tel: (512) 310-9044  
Fax: (512) 310-9045  
[bierschenk\\_t@exflur.com](mailto:bierschenk_t@exflur.com)

FOR THE TCEO EXTERNAL RELATIONS  
DIVISION

Ryan Vise, Deputy Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program, MC-108  
P.O. Box 13087  
Austin, Texas 78711  
Tel: (512) 239-4000  
Fax: (512) 239-5678  
[pep@tceq.texas.gov](mailto:pep@tceq.texas.gov)

FOR THE PUBLIC INTEREST COUNSEL:

Pranjal Mehta  
Texas Commission on Environmental  
Quality  
Office of Public Interest Counsel  
P.O. Box 13087, MC-103  
Austin, TX 78711-3087  
[Pranjal.Mehta@Tceq.Texas.Gov](mailto:Pranjal.Mehta@Tceq.Texas.Gov)

FOR ALTERNATIVE DISPUTE  
RESOLUTION

via electronic mail:  
Kyle Lucas  
Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711  
Tel: (512) 239-0687  
Fax: (512) 239-4015  
[kyle.lucas@tceq.texas.gov](mailto:kyle.lucas@tceq.texas.gov)

FOR THE REQUESTERS:

Nicole Elizabeth Bauer  
800 Hidden Bear Rd.  
Liberty Hill, TX 78642-4634  
[nicole.e.imperial@gmail.com](mailto:nicole.e.imperial@gmail.com)

Anne and Thomas Beville  
443 County Road 278  
Liberty Hill, TX 78642-4378  
[akbeville@gmail.com](mailto:akbeville@gmail.com)

Terry G. Cook, Commissioner,  
Williamson County Precinct 1  
1801 E Old Settlers Blvd. Ste. 110  
Round Rock, TX 78664-1905  
[terry.cook@wilco.org](mailto:terry.cook@wilco.org)

Sheryl Marie Farley  
6600 County Road 200  
Liberty Hill, TX 78642-3725  
[sheryl.farley@gmail.com](mailto:sheryl.farley@gmail.com)

Jillian Gabriel  
105 Lark St.  
Leander, TX 78641-1890  
[jillian.gabriel@gmail.com](mailto:jillian.gabriel@gmail.com)

Richard Grabish  
201 Shady Oaks Trl.  
Liberty Hill, TX 78642-3944  
[rfgabish@msn.com](mailto:rfgabish@msn.com)

Kelley Heath  
205 Talon Grasp Trl.  
Leander, TX 78641-2595  
[KELLEYHEATH1@GMAIL.COM](mailto:KELLEYHEATH1@GMAIL.COM)

Suzanne Johnson  
1400 County Road 236  
Florence, TX 76527-4918  
[suzjohnson@prodigy.net](mailto:suzjohnson@prodigy.net)  
Catherine Johnston  
4960 Highway 138  
Florence, TX 76527-4901  
[ctr2000@hotmail.com](mailto:ctr2000@hotmail.com)

Alycen Malone  
158 Barn Owl Loop  
Leander, TX 78641-1881  
[alycenmalone@gmail.com](mailto:alycenmalone@gmail.com)

Charles Ely McCormick  
440 W Pleasantview Dr.  
Hurst, TX 76054-3504  
[chasomcc@gmail.com](mailto:chasomcc@gmail.com)

Charles McCormick  
2035 Woodglen Dr.  
Round Rock, TX 78681-2605  
[chasomcc@gmail.com](mailto:chasomcc@gmail.com)

Erin McCormick  
19926 Park Holw  
San Antonio, TX 78259-1924/  
1250 County Road 208  
Florence, TX 76527-4628  
[erin.mccormick90@gmail.com](mailto:erin.mccormick90@gmail.com)

Joyce McCormick  
2301 Ohlen Rd.  
Austin, TX 78757-7758  
[chasomcc@gmail.com](mailto:chasomcc@gmail.com)

Nickolas McCormick  
1050 County Road 208  
Florence, TX 76527-4277  
[jimmy.nicholasmccormick@gmail.com](mailto:jimmy.nicholasmccormick@gmail.com)

Timothy McDaniel  
1800 County Road 208  
Florence, TX 76527-4235  
[twmcdaniel@hotmail.com](mailto:twmcdaniel@hotmail.com)

Karen Milone  
208 N. Haven Dr.  
Liberty Hill, TX 78642-2387  
[Karen.milone@cnxcorp.com](mailto:Karen.milone@cnxcorp.com)

Henry N. Mulvihill Jr.  
PO Box 831945  
Richardson, TX 75083-1945  
[theplan@swbell.net](mailto:theplan@swbell.net)

Patricia McCormick Mulvihill  
8 Lundys Ln.  
Richardson, TX 75080-2343  
[patmulv@swbell.net](mailto:patmulv@swbell.net)

Joe J. Pacheco  
201 Cowboy Trl.  
Liberty Hill, TX 78642-3954  
[joejpacheco@gmail.com](mailto:joejpacheco@gmail.com)

Chris and Renee Peyton  
121 Night Bloom Path  
Liberty Hill, TX 78642-2365  
[Topher.peyton@gmail.com](mailto:Topher.peyton@gmail.com)  
[renerisingsun@gmail.com](mailto:renerisingsun@gmail.com)

Jennifer Spies  
8907 Rustic Cv.  
Austin, TX 78717-4853  
[jccspies@gmail.com](mailto:jccspies@gmail.com)

Sandra Lee Thurman  
190 County Road 208  
Florence, TX 76527-4472  
[slthurman1951@gmail.com](mailto:slthurman1951@gmail.com)

Brittany D. Varner  
PO Box 1532  
Liberty Hill, TX 78642-1532  
[brittdvarner@gmail.com](mailto:brittdvarner@gmail.com)

Harold Charles Wardlaw and  
Peggy Anne Wardlaw  
19910 Park Rnch.  
San Antonio, TX 78259-1934  
[HaroldWardlaw@gmail.com](mailto:HaroldWardlaw@gmail.com)  
[peggywardlaw@hotmail.com](mailto:peggywardlaw@hotmail.com)

Shannon White-Shubert  
3404 Cortina Ln.  
Round Rock, TX 78681-2417  
[swshubert@gmail.com](mailto:swshubert@gmail.com)

Haziel McCormick Williams  
19926 Park Holw.  
San Antonio, TX 78259-1924  
[haziel.williams@gmail.com](mailto:haziel.williams@gmail.com)

For Elizabeth Ann Friou  
Natasha J. Martin  
Graves Dougherty Hearon & Moody PC  
401 Congress Ave. Ste. 2700  
Austin, TX 78701-4071  
[nmartin@gdhm.com](mailto:nmartin@gdhm.com)

For the North San Gabriel Alliance  
Lauren Ice  
Perales Allmon & Ice PC  
1206 San Antonio St.  
Austin, TX 78701-1834  
[christa@txenvirolaw.com](mailto:christa@txenvirolaw.com)  
[lauren@txenvirolaw.com](mailto:lauren@txenvirolaw.com)