

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 21, 2022

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

**RE: Application by Uranium Energy Corp., Permit WDW423 and WDW424; TCEQ
Docket No. 2022-1553-WDW**

Dear Ms. Gharis:

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

Please do not hesitate to contact me at Clark.Reeder@tceq.texas.gov or (512) 239-5771 if you have any questions. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Reeder".

Clark Reeder
Staff Attorney
Environmental Law Division

Division Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2022-1553-WDW

APPLICATION BY § BEFORE THE TEXAS COMMISSION
URANIUM ENERGY CORP. §
FOR PERMITS WDW423 & WDW424 § ON
§ ENVIRONMENTAL QUALITY

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

Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request and Request for Reconsideration (Response) on the application by Uranium Energy Corp. (Applicant) for a renewal and amendment of injection well Permits WDW423 and WDW424. The Office of the Chief Clerk (OCC) received one hearing request from the Goliad County Groundwater Conservation District (District). The District also submitted a separate Request for Reconsideration.

The Executive Director recommends that the Commission find that the District is an affected person and grant the District's hearing request as required by Tex. Water Code §27.018(a).

Attached for the Commission's consideration is a Geographic Information Systems (GIS) map of the proposed facility within the jurisdictional boundary of the District in Goliad County (Attachment A). The Draft Permit, Technical Summary, Executive Director's Preliminary Decision, and Executive Director's Response to Public Comment can be found in the Agenda backup materials filed for the Commission's consideration.

Description of the Facility

Uranium Energy Corp. has applied for renewal and amendment of Class I injection well permits, WDW423 and WDW424, for a facility proposed to be located at 14869 North United States Highway 183, Yorktown, Texas 78164 in Goliad County. Permits WDW423 and WDW424 were previously issued for these Class I injection wells on May 25, 2010 for a term of ten years. The permitted injection zone for proposed wells WDW423 and WDW424 is within the Frio and Vicksburg Formations from approximately 2,800 to 3,590 feet below ground level (BGL). No injection operations have been conducted under the permits, and the injection wells have not been drilled, constructed, or completed.

The application, if granted, would authorize the construction and operation of Class I injection wells WDW423 and WDW424 for disposal of industrial nonhazardous wastes associated with *in situ* uranium mining. A permit amendment has been requested to reduce the maximum allowable surface injection pressure from 976 to 761 psig when the injected waste stream specific gravity is 0.997 to 1.005 and reduce the maximum allowable surface injection pressure from 914 to 698 psig when the injected waste stream specific gravity is 1.005 to 1.05.

The Executive Director has prepared draft permits that would authorize injection of nonhazardous wastes and by-product material derived from in-situ uranium mining. The proposed permits are required by the Injection Well Act, Texas Water Code §27.011. The draft

permits have been prepared in accordance with applicable requirements of 30 Texas Administrative Code (TAC) Chapters 281, 305 and 331, which have been adopted under the authority of the Texas Water Code, Chapters 5 and 27. Additional TCEQ permits, including the Class III injection well area permit and a radioactive material license, are required for operating an *in situ* uranium recovery facility, but the Class III injection well permit and license are not part of this application.

Procedural Background

The TCEQ received this application on January 23, 2020, and declared it administratively complete on April 27, 2020. The Notice of Receipt of Application and Intent to Obtain a Nonhazardous Waste Underground Injection Control Permit Renewal was published in English on May 28, 2020, in the *Goliad Advance - Guard* in Goliad County, Texas.

The Executive Director completed the technical review of the application on April 4, 2022, and prepared two draft permits. The Notice of Application and Preliminary Decision for Nonhazardous Waste Underground Injection Control Permit Renewal and Amendment was published in English on April 28, 2022, in the *Victoria Advocate* and in the *Goliad Advance-Guard, Karnes Countywide, Bee-Picayune, and Refugio County Press* on May 5, 2022. The public comment period ended on June 6, 2022.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature (1999) and Senate Bill 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

Evaluation of Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment, and the Commission's consideration of hearing requests. The Commission implemented HB 801 by adopting procedural rules in 30 TAC Chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. This application was declared administratively complete on April 27, 2020; therefore, it is subject to the procedural requirements adopted pursuant to HB 801 and SB 709.

Texas Water Code (TWC) §27.018(a) also provides: "The commission shall hold a hearing on a permit application for an injection well to dispose of industrial and municipal waste if a hearing is requested by a local government located in the county of the proposed disposal well site or by an affected person." "Local government" has the meaning as provided in TWC Chapter 26 that includes "an incorporated city, a county, a river authority or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution." Goliad County Groundwater Conservation District is a groundwater conservation district established under Section 59, Article XVI of the Texas Constitution with a boundary that is coextensive with the boundaries of Goliad County.¹

¹ HB 3651, 77th Leg., 2001.

A. Legal Authority to Respond to Hearing Requests

“The [E]xecutive [D]irector, the public interest counsel, and the applicant may submit written Responses to [hearing] requests . . .”²

“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.”³

B. Hearing Request Requirements

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

“A request for a contested case hearing by an affected person must be in writing, . . . filed with the chief clerk within the time provided . . . , [based only on the requestor’s timely comments, and] may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director’s Response to Comment”⁴

“A hearing request must substantially comply with the following:

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

² 30 TAC §55.209(d).

³ 30 TAC §55.209(e).

⁴ 30 TAC §55.201(c).

- (4) . . . list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the [C]ommission’s determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the [E]xecutive [D]irector’s Responses to the requestor’s comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.”⁵

C. Requirement that Requestor be an Affected Person

In order to grant a contested case hearing, the Commission must determine that a requestor is an affected person.

- (a) “For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) . . . [G]overnmental 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; and
 - (6) . . . whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁶
- (d) [In making this determination,] the [C]ommission may also consider the following:

⁵ 30 TAC §55.201(d).

⁶ 30 TAC §55.203.

- (1) the merits of the underlying application and supporting documentation in the [C]ommission's administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the [E]xecutive [D]irector; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the [E]xecutive [D]irector, the applicant, or hearing requestor.”⁷

D. Referral to the State Office of Administrative Hearings

“When the [C]ommission grants a request for a contested case hearing, the [C]ommission shall issue an order specifying the number and scope of the issues to be referred to [SOAH] for a hearing.”⁸ “The [C]ommission may not refer an issue to SOAH for a contested case hearing unless the [C]ommission determines that the issue: (1) involves a disputed question of fact or a mixed question of law and fact; (2) was raised during the public comment period . . . by an affected person . . . ; and (3) is relevant and material to the decision on the application.”⁹

Analysis of the Hearing Request

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, whether the District qualifies as an affected person, what issues may be referred for a contested case hearing, and the appropriate duration of the hearing. The District's request for hearing was submitted in Response to the Notice of Receipt of Application and Intent to Obtain a Permit, prior to the Executive Director's preliminary decision on the application and prior to receiving the Response to Public Comment. The District also submitted additional public comments later in the comment period and a request for reconsideration after receiving the Response to Public Comment. Because a local government is entitled to a contested case hearing on an injection well permit application under TWC §27.018(a), the Executive Director recommends that *all* of the correspondence submitted by the District be considered to support its request for contested case hearing.

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

The Executive Director reviewed the factors in 30 TAC §§55.201(c) and (d) and 55.203 for determining if a requestor is an affected person and recommends the Commission find that the District is an affected person. The District's request was in writing, provided the required contact information, and raised an issue that is the basis of the individual hearing requests in the requestors' timely comments. The correspondence submitted by the District indicates that the District is a governmental body created by the Legislature to protect and preserve the groundwater of Goliad County. Under 30 TAC §55.203(b), governmental entities, including local governments, with authority under state law over issues raised by the application may be considered affected persons. The District's interest in protecting groundwater quality is protected under the applicable rules for injection well permit applications as considered in 30 TAC §55.203(c)(1). A reasonable relationship exists between the District's interest in protecting the groundwater of Goliad County and the application for a permit to dispose of

⁷ 30 TAC §55.203.

⁸ 30 TAC §50.115(b).

⁹ 30 TAC §50.115(c).

waste by injection well in Goliad County under 30 TAC §55.203(c)(3). The District timely submitted comments on the application that were not withdrawn under 30 TAC §55.203(c)(6). In HB 3651, 77th Leg., 2001, the Legislature created the District as a groundwater conservation district established under Section 59, Article XVI of the Texas Constitution with a boundary that is coextensive with the boundaries of Goliad County. As a governmental entity, the District is an affected person with statutory authority over issues relevant to the application under 30 TAC §55.203(c)(7). The Executive Director recommends that the commission find that the District is an affected person.

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

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

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

1. Whether the permit application adequately identified the local health facility in the vicinity of the proposed injection wells. (RTC no. 1) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
2. Whether the permit application adequately characterized the geology and identified and assessed faults in the vicinity of the proposed injection wells. (RTC nos. 2, 3, 4, 5, 6, 7, 8 and 9) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.
3. Whether the permit application provides for adequate monitoring of migration of injected fluids in the vicinity of the proposed injection wells. (RTC no. 4) The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.

Contested Case Hearing Duration

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

Request for Reconsideration

The TCEQ received a Request for Reconsideration from the Goliad County Groundwater Conservation District. The Executive Director has reviewed the Request for Reconsideration and maintains that the Draft Permit, if issued, will comply with all applicable statutory and

regulatory requirements. The Executive Director recommends that the Request for Reconsideration be denied.

Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission deny the Request for Reconsideration.
2. The Executive Director recommends the Commission find that the Goliad County Groundwater Conservation District is an affected person and grant its hearing request.
3. If referred to SOAH, that the duration of the hearing be six months from the preliminary hearing to the presentation of the proposal for decision to the Commission.
4. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
5. If referred to SOAH, refer Issues 1 through 3 listed on page 7.

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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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that, on November 21, 2022, the “Executive Director’s Response to Hearing Request and Request for Reconsideration” on the application by the Uranium Energy Corp. for permits WDW423 and WDW424 was filed with the TCEQ’s Office of the Chief Clerk and that a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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MAILING LIST
URANIUM ENERGY CORP.
DOCKET NO. 2022-1553-WDW; PERMIT NOS. WDW423 AND WDW424

FOR THE APPLICANT:
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REQUESTER(S)/INTERESTED PERSON(S): via
first class mail

REQUESTER(S):

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The Honorable Lois W Kolkhorst
State Senator, The Senate of Texas District 18
P.O. Box 12068
Texas Capitol Room 3E.2
Austin, TX 78711-2068

INTERESTED PERSON(S)

Annalysa Camacho
Goliad County Groundwater Conservation
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P.O. Box 562
Goliad, TX 77963-0562

**Attachment A – Geographic Information Systems (GIS) Map
of Proposed Facility in Goliad County**

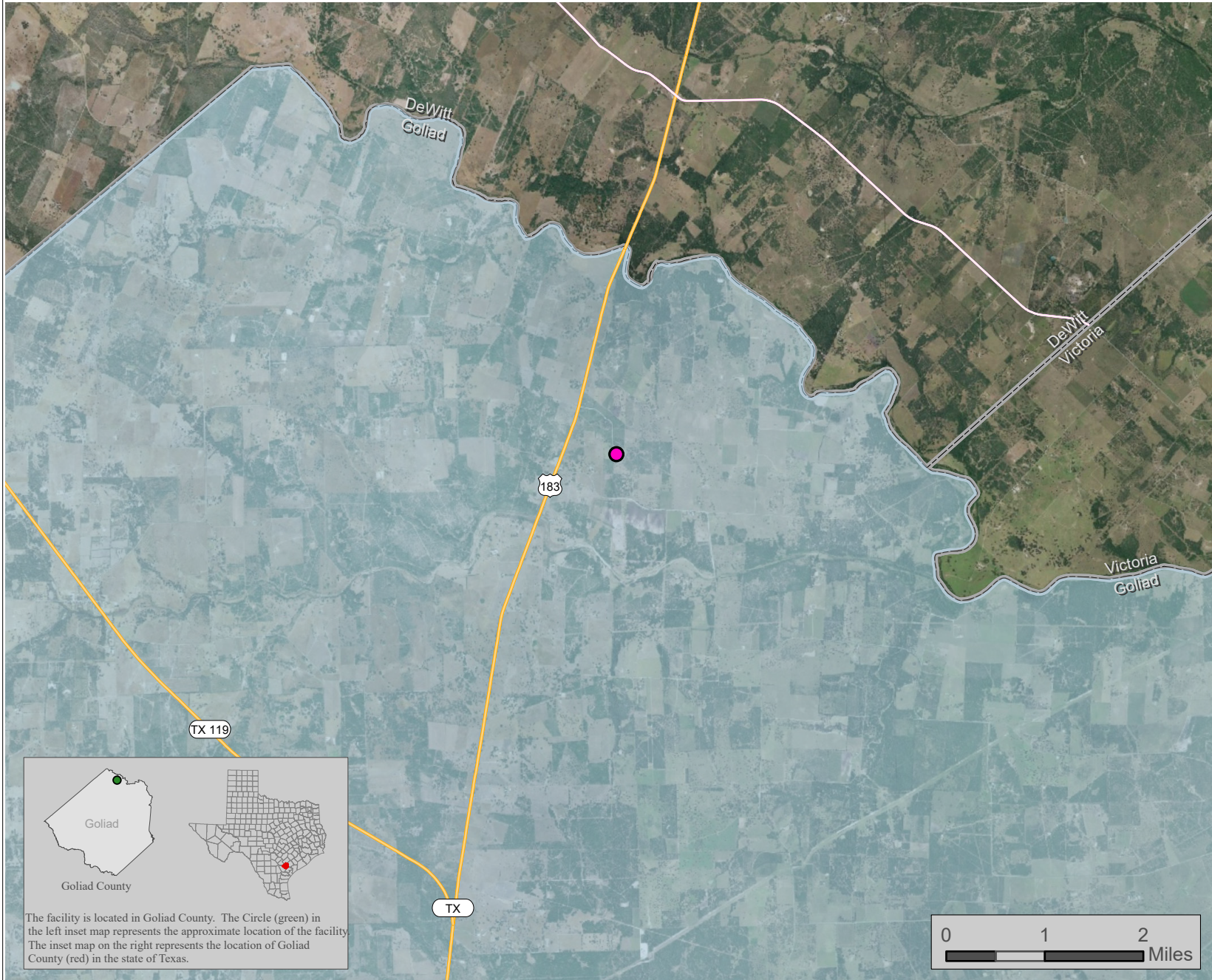
Location of Requestor -- Uranium Energy Corp. WDW 423 and 424



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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: 11/10/2022
CRF 0080121
Cartographer: jbartlin



- Facility
- Goliad County GCD

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.

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

