

DOCKET NO. 2023-0323-SLG

APPLICATION BY
GCC SUN CITY MATERIALS, LLC
FOR RENEWAL OF TPDES PERMIT
NO. WQ0004636000

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by GCC Sun City Materials, LLC (Applicant) seeking a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ00046360001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received contested case hearing requests from Johnny Sheets.

Attached for Commission consideration is a satellite map of the area.

II. Description of Facility

GCC Sun City Materials, LLC, 1 McKelligon Canyon Road, El Paso, Texas 79930, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TCEQ Permit No. WQ0004636000 to dispose of wastewater treatment plant sludge and water treatment plant residuals on 142 acres. This permit will not authorize a discharge of pollutants into water in the state. The disposal unit is designed to handle 882 cubic yards per day of wastewater treatment plant (WWTP) sewage sludge and water treatment plant (WTP) residuals, with the estimated life of Monofill Area C being 4 years.

The sewage sludge land application site is located 3.3 miles east of the intersection of Gary Lee and Hueco Ranch Roads, at the eastern end of Gary Lee Road, in Hudspeth County, Texas 79938. The sewage sludge land application site is located within the drainage basin of Rio Grande Below Riverside Diversion Dam in Segment No. 2307 of the Rio Grande Basin.

III. Procedural Background

The TCEQ received GCC Sun City Materials, LLC's application for renewal of the permit on April 9, 2021 and declared it administratively complete on June 25, 2021. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on July 16, 2021, in the *Hudspeth County Herald*. The ED completed the technical review of the application on March 28, 2022, and prepared an initial draft permit. The Notice of Application and Preliminary Decision (NAPD) was published on June 10, 2022, in the *Hudspeth County Herald*. The public comment period ended on October 17, 2022. A public meeting was held on October 17, 2022 in Desert Haven. This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

IV. 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 Requests

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

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;
- 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;
- whether the issues are relevant and material to the decision on the application; and
- a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

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:

- 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;

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;

request a contested case hearing; and

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 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. 30 TAC § 55.203 sets out who may be considered an affected person. For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. 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.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

whether the interest claimed is one protected by the law under which the application will be considered;

distance restrictions or other limitations imposed by law on the affected interest;

whether a reasonable relationship exists between the interest claimed and the activity regulated;

likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

likely impact of the regulated activity on use of the impacted natural resource by the person;

whether the requestor timely submitted comments on the application which were not withdrawn; and

for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

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;

the analysis and opinions of the Executive Director; and

any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

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:

involves a disputed question of fact or a mixed question of law and fact;

was raised during the public comment period by an affected person whose hearing request is granted; and

is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of Hearing Requests

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

A. Whether the Hearing Requests Complied with Section 55.201(c) and (d).

Johny Sheets submitted a timely hearing request and provided the correct contact information. He identified himself as a person with what he believed to be personal justiciable interests affected by the application. Additionally, Johny Sheets raised the issues that are the basis of his hearing request in a timely comment as required by 30 TAC §55.201(c). The address provided with Mr. Sheets' hearing request is a location approximately 10 miles from the proposed facility. However, Mr. Sheets did not explain, based on his location, how he would be adversely affected by the facility in a manner not common to members of the general public as required by 30 TAC 30 TAC § 55.201(d). Mr. Sheets identified himself as a County Commissioner of Hudspeth County. However, his hearing request does not indicate that it was

submitted on behalf of the County. As a result, the Executive Director analyzed his request as a request from Mr. Sheets in his individual capacity.

The Executive Director recommends the Commission find that Johny Sheets is not an affected person.

B. Whether Issues Raised Are Referable to SOAH for a Contested Case.

The ED does not recommend referring any issues to SOAH.

VI. Analysis of Request for Reconsideration

The Chief Clerk received a timely Request for Reconsideration (RFR) from Johny Sheets. As required by 30 Texas Administrative Code § 55.201(e), Mr. Sheets gave his request in writing, and provided his name, address, and daytime telephone number. Mr. Sheets specifically requested reconsideration of the ED's decision on the GCC Sun City Materials, LLC's application

The issues brought up by Johny Sheets: water quality (RTC Response No.1), human health (RTC Response No. 2), notice issues (RTC Response No. 11), odor (RTC Response No. 4), infrequent inspections (RTC Response No. 19), property values (RTC Response No. 23), nuisance sound (RTC Response No. 23), destruction of roadways (RTC Response No. 24), accidental spills (RTC Response No. 25), and flooding at the facility site (RTC Response No. 27). These issues, to the extent they are within the Commission's jurisdiction to consider on a TPDES application, were considered during the ED's review of the application and have been addressed in the RTC. The RFR did not provide any new information that would lead the ED to change his recommendation on the application; therefore, the ED recommends denial of the RFR.

VII. 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 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Johny Sheets is not an affected person and deny his hearing request.

Deny Johny Sheet's request for reconsideration.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor
Interim Executive Director

Charmaine Backens, Acting Director
Office of Legal Services



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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

IX. CERTIFICATE OF SERVICE

I certify that on March 20, 2023, the “Executive Director’s Response to Hearing Request” for new TPDES Permit No. WQ0004636000 by GCC Sun City Materials, LLC was filed with the TCEQ’s Office of the Chief Clerk, and a 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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Attachment A

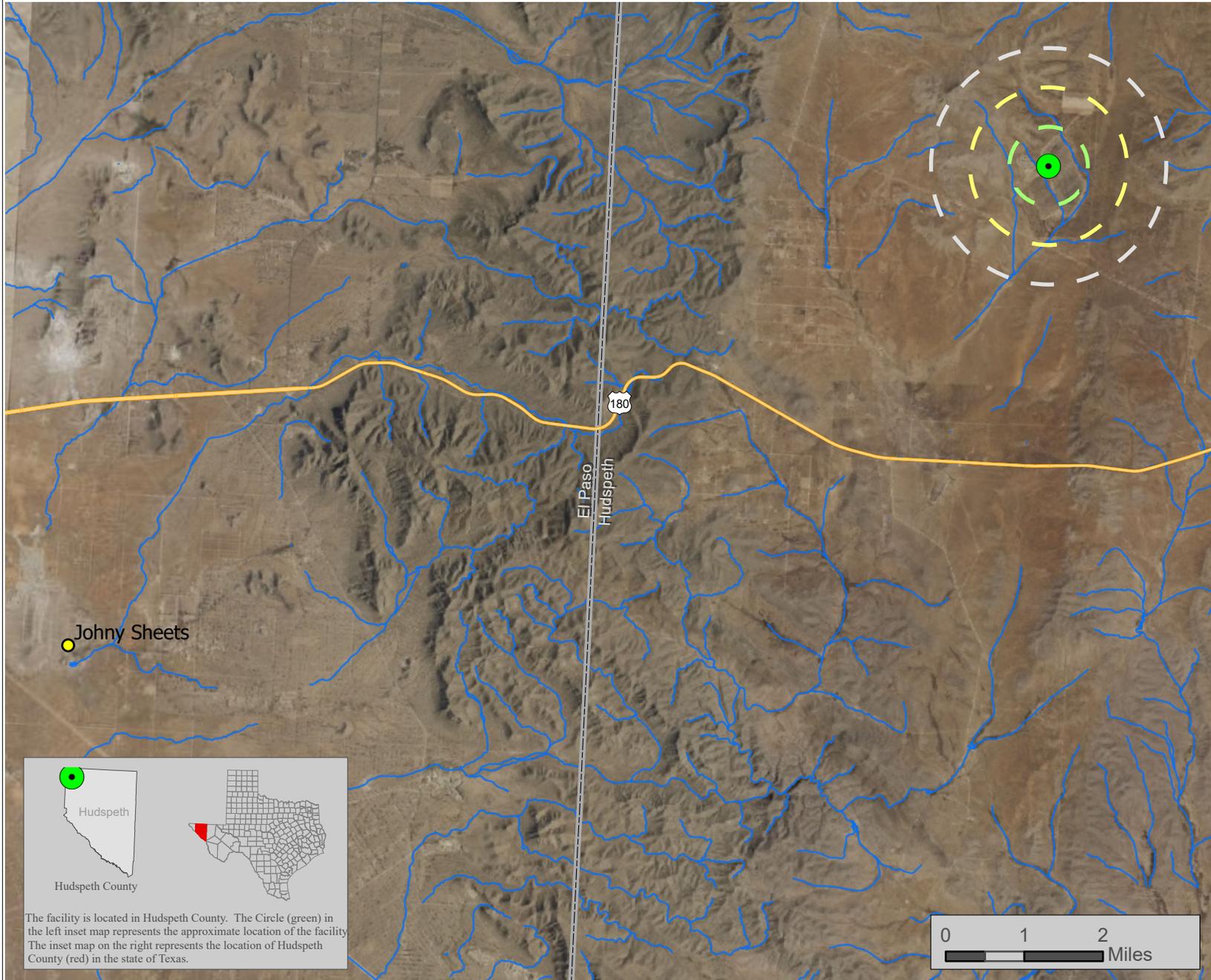
GCC Sun City Materials, LLC (WQ0004636000)

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



*Protecting Texas by
Reducing and
Preventing Pollution*

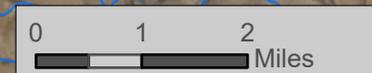
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 1/20/2023
CRF 0083316
Cartographer: cschrade



- Requestor
- Facility
- 0.5 mi Radius
- 1.0 mi Radius
- 1.5 mi Radius



The facility is located in Hudspeth 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 Hudspeth County (red) in the state of Texas.



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

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

MAILING LIST
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TCEQ Docket No. 2023-0323-SLG; TPDES Permit No. WQ0004636000

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INTERESTED PERSON(S)

See attached list

REQUESTER(S)

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PUBLIC OFFICIALS - INTERESTED PERSON(S)

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LISTA DE CORREO
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TCEQ Expediente N.º 2023-0323-SLG; TPDES Permiso N.º WQ0004636000

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PERSONA(S) INTERESADA(S)

Ver lista adjunta.

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