

**DOCKET NO. 2023-0531-IHW**

<b>IN RE THE APPLICATION OF</b>	<b>§</b>	<b>BEFORE THE</b>
	<b>§</b>	
<b>U.S. ECOLOGY TEXAS INC. FOR</b>	<b>§</b>	
	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>INDUSTRIAL HAZARDOUS WASTE</b>	<b>§</b>	
	<b>§</b>	
<b>PERMIT NO. 50421</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**APPLICANT’S RESPONSE TO REQUEST FOR HEARING**

**TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:**

COMES NOW, U.S. Ecology Texas Inc. (“U.S. Ecology”), applicant for Industrial and Hazardous Waste (“IHW”) Permit No. 50421, to authorize the construction and operation of a new commercial industrial and hazardous waste management facility in Nueces County, Texas, by and through its attorney, and submits this, its response to the request for a contested case hearing, pursuant to 30 TEX. ADMIN CODE § 55.209(d) of the rules of the Texas Commission on Environmental Quality (the “TCEQ” or the “Commission”), and respectfully shows the following:

**I.**

**FACILITY DESCRIPTION AND PROCEDURAL BACKGROUND**

The proposed U.S. Ecology Texas Rail Site (“Proposed Facility”) will be a commercial industrial and hazardous waste management facility for the storage of hazardous and nonhazardous wastes at 4364 County Road 30, Robstown, in Nueces County, Texas. U.S. Ecology filed its application on December 30, 2021, and the Executive Director declared it

administratively complete on February 9, 2022. The Notice of Receipt of Application and Intent to Obtain Permit was published on February 9, 2022, in the *Corpus Christi Caller Times*. The Executive Director completed the technical review of the Application and issued the Final Draft Permit on July 15, 2022. The Notice of Application and Preliminary Decision was published on August 2, 2022, in the *Corpus Christi Caller Times*.

The Chief Clerk held a public meeting on the Application on December 6, 2022, in Robstown, Texas. Notice of the public meeting was published on November 15, 22, and 29, 2022, in the *Corpus Christi Caller Times*. The comment period ended at the close of the public meeting. The Executive Director Filed her Response to Comments (“RTC”) with the Chief Clerk on February 17, 2023, and hearing requests were due by March 24, 2023.

Because the Application was received after September 1, 2015, this application is subject to the requirements adopted pursuant to House Bill 801, 76th Legislature (1999), and Senate Bill 709, 84th Legislature (2015).

## II.

### LEGAL BASIS

Chapter 55, Subchapter F of the TCEQ’s rules provides that a request for a contested case hearing shall be granted if certain standards are met.

#### **Affected Person**

First, the request must be filed by an “affected person.” 30 TEX. ADMIN. CODE § 55.201(b). 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.” *Id.*

at § 55.203(a). In determining whether an individual is an affected person, the rules require consideration of various factors, including:

- (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) 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.

*Id.* at § 55.203(c).

In determining whether a person is an affected person, the Commission may also consider:

- (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.

*Id.* at § 55.203(d).

Where a group files a request for a hearing for an application filed after September 1, 2015, the group must:

- (1) identify in its hearing request, a single person, by name, responsible for receiving all official communications and documents for the group, including the person's name, address and telephone number;
- (2) have filed timely comments on the application;
- (3) identify in its hearing request, one or more members that would otherwise have standing to request a hearing in their own right, including the person's name and address;
- (4) have an interest germane to the application that the group seeks to protect; and
- (5) not require that the claim asserted or the relief requested requires the participation of the individual members in the case.

*Id.* at § 55.201(d)(1) and § 55.205.

### **Other Hearing Request Requirements**

Even if filed by an affected person, TCEQ rules require that, for an application filed on or after September 1, 2015, a request for a contested case hearing shall be granted only if it:

- (1) raises disputed issues of fact or mixed question of fact or law that were raised during the comment period by the affected person whose request is granted, that were not withdrawn, and that are relevant and material to the commission's decision on the application;
- (2) is timely filed with the chief clerk;
- (3) is pursuant to a right to hearing authorized by law; and
- (4) complies with the requirements of § 55.201.

30 TEX. ADMIN. CODE § 55.211(c)(2)(A)(ii) and (B)-(D).

Section 55.201, in turn, requires that, for applications filed on or after September 1, 2015, the hearing request substantially comply with the following:

- (1) give the name, address, [and] daytime telephone number of the person who files the request;
- (2) identify the person's personal justiciable interest;
- (3) request a contested case hearing;

- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request; and
- (5) provide any other information specified in the public notice of the application.

*Id.* at § 55.201(d).

Section 55.209 requires that responses to hearing requests 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;
- (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.

*Id.* at § 55.209(e).

### **III.**

#### **DETERMINATION OF AFFECTED PERSONS (§ 55.209(e)(1))**

Chris Phelan (the “Requestor”) was the only person to request a contested case hearing. As Mr. Phelan does not meet the requirements of “affected persons,” his request should be denied.

Mr. Phelan identified his residence as 3806 Kingston Drive in Corpus Christi, Texas. As this residence is approximately 18.8 miles away from the Proposed facility according to the Geographic Information Systems map included in the Executive Director’s Response to Hearing

Request and attached hereto as Exhibit 1 and he has not indicated that he resides or even owns property near the facility, Mr. Phelan has failed to show that he is affected in any way not common to members of the general public, and therefore is not an affected person. Additionally, though Mr. Phelan appears to indicate that his request is on behalf of a group, he does not state which group he represents, nor does he provide the group's purpose or any group members other than himself that could qualify as an affected member in his or her own capacity. Furthermore, as the rules require that all hearing requests be based on comments timely filed by an affected party, even if Mr. Phelan were to present a member of the group in a response to any response to his hearing request, the Commission would not be in a position to consider the additional requestor. As such, neither Mr. Phelan nor any group he represents are affected persons.

#### **IV.**

#### **ISSUES PRESENTED**

Because U.S. Ecology does not find that Mr. Phelan is an affected person, we do not address the issues raised or the maximum duration of the hearing. However, U.S. Ecology notes that Mr. Phelan does not dispute any legal or factual aspects of the draft permit, but merely raises three short and vague issues without evidence, reasoning, or merit. Further, the issues he raises have been adequately addressed by the Executive Director in her RTC, and the Executive Director's Notice of Application and Preliminary Decision indicates that the draft permit meets all state and federal legal and technical requirements, including those regulations applicable to Mr. Phelan's concerns. *See* 30 TEX. ADMIN. CODE § 80.17.

V.

**CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, U.S. Ecology respectfully requests that the Commission deny the hearing request of Mr. Phelan and authorize the issuance of IHW Permit No. 50421 by the Executive Director.

Respectfully submitted,

**LLOYD GOSSELINK  
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**ATTORNEYS FOR U.S. ECOLOGY**

**DOCKET NO. 2023-0531-IHW**  
**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of May, 2023, a true and correct copy of the foregoing Applicant's Response to Request for Hearing was served on the following entities and individuals by electronic mail and/or e-filing.

  
DUNCAN NORTON

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# US Ecology Texas, Inc. Application for New IHW Permit No. 50421

Hearing Request Agenda May 31, 2023

TCEQ Docket No. 2023-0531-IHW

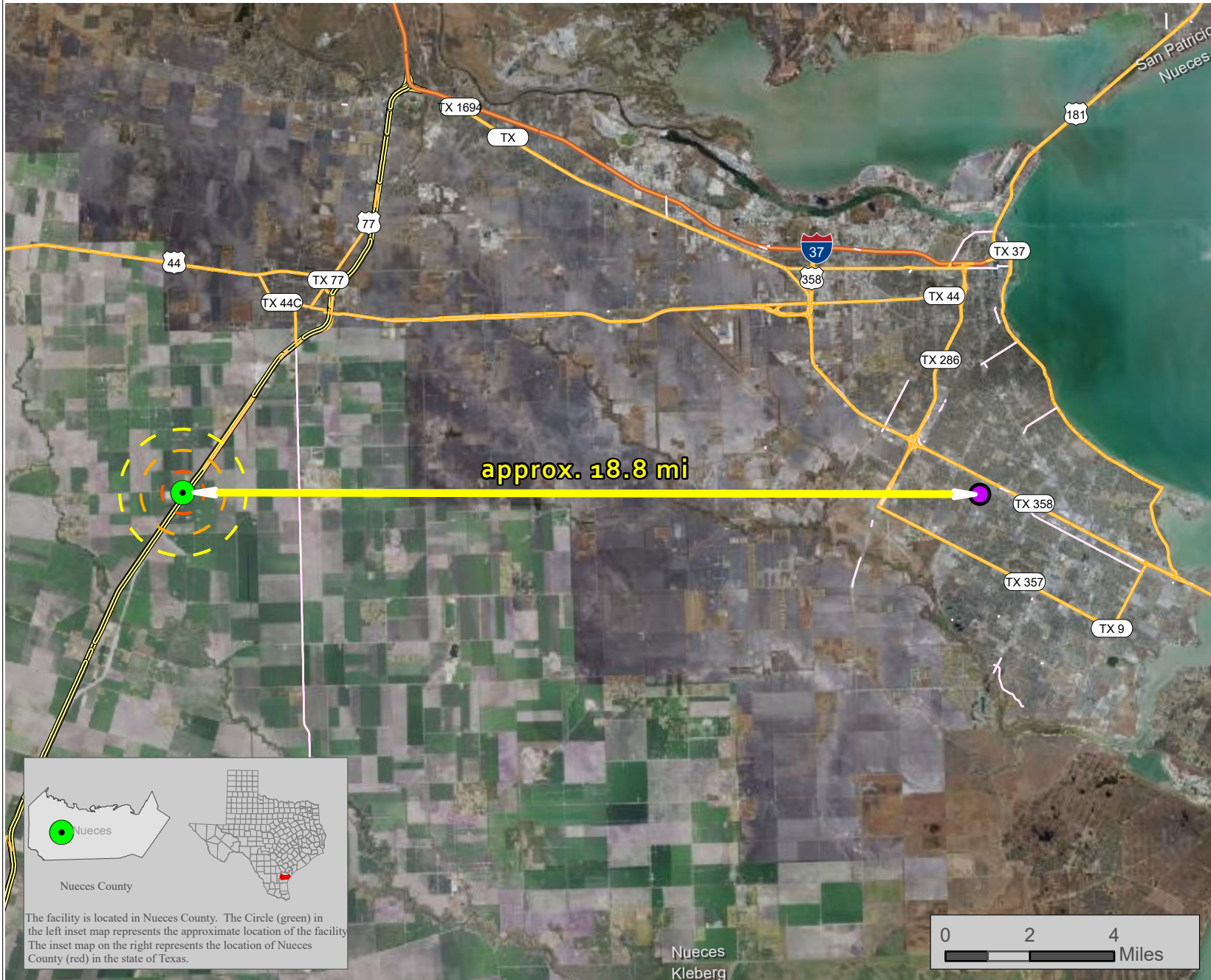
Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda

## Exhibit 1



*Protecting Texas by  
Reducing and  
Preventing Pollution*

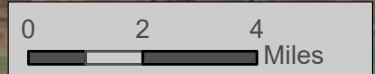
Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 4/28/2023  
CRF 0086663  
Cartographer: jbartlin



- Requestor's residence
- Proposed Facility
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius

approx. 18.8 mi

The facility is located in Nueces 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 Nueces 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.