

Jon Niermann, *Chairman*
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Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 8, 2023

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 US Ecology Texas, INC., IHW Permit No. 50421; TCEQ
Docket No. 2023-0531-IHW**

Dear Laurie Gharis:

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

Please do not hesitate to contact me at Diane.goss@tceq.texas.gov or (512) 239-5731 if you have any questions. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Diane Goss".

Diane Goss
Staff Attorney
Environmental Law Division

Division Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2023-0531-IHW

APPLICATION BY US ECOLOGY TEXAS, INC. FOR NEW PERMIT NO. 50421	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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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 US Ecology Texas, Inc. (USET or Applicant) for a new Hazardous Waste Permit No. 50421. The Office of the Chief Clerk received one hearing request from Christopher L. Phelan that stated that he represents “For the Greater Good.”

The Executive Director recommends that the Commission find that Christopher L. Phelan is not an affected person and that For the Greater Good is not an affected person and deny the hearing request as required by Tex. Water Code §5.556(c)

Attached for the Commission’s consideration is a Geographic Information Systems map created by the Executive Director that depicts the locations of the proposed facility and the requestor’s residence (Attachment A). The Draft Permit, Technical Summary and Executive Director’s Preliminary Decision, and Executive Director’s Response to Public Comment are available in TCEQ Office of the Chief Clerk and will be filed for the Commission’s consideration as Agenda backup materials on behalf of the Executive Director.

II. DESCRIPTION OF APPLICATION AND PROPOSED FACILITY

US Ecology Texas, Inc. applied for a new commercial hazardous waste permit to authorize the long-term storage of hazardous and nonhazardous waste at an existing facility, with a rail spur, that USET presently operates as a ten-day transfer facility, which is located at 4364 County Road 30, approximately five (5) miles south of Robstown, in Nueces County. The Application, if granted, would authorize the construction and operation of 2 container storage areas and 1 container storage building for the storage of hazardous waste and Class 1, Class 2, Class 3 nonhazardous industrial solid waste generated on-site or received from off-site sources on a commercial basis. The wastes to be managed at the facility would include a wide variety of hazardous wastes, Class 1, Class 2, and Class 3 industrial solid wastes, solvents, other organic liquids, and waste oils.

The Executive Director has prepared a draft permit that would authorize construction and operation of the proposed facility. The proposed permit is required by 30 Tex. Admin. Code Sections 335.2 and 335.43, and Section 3005(c) of the Hazardous and Solid Waste Amendments of 1984 (HSWA). A draft permit was prepared

in accordance with applicable requirements of 30 Tex. Admin. Code Chapters 335 and 305, which have been adopted under the authority of Texas Health and Safety Code Chapter 361 and Texas Water Code Section 5.103. The Applicant operates a commercial hazardous waste landfill facility authorized by Hazardous Waste Permit No. 50052 that is located approximately 1 mile east of the proposed facility.

III. PROCEDURAL BACKGROUND

TCEQ received the application on December 30, 2021, and declared it administratively complete on February 1, 2022. The Notice of Receipt of Application and Intent to Obtain a Nonhazardous Waste Underground Injection Control Permit Renewal was published on February 9, 2022, in the *Corpus Christi Caller Times*.

The Executive Director completed the technical review of the application and issued a 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 Commission held an in-person public meeting on the Application on December 6, 2022. The public comment period closed at the end of the public meeting on December 6, 2022.

The Executive Director filed a Response to Public Comment on February 17, 2023. The period in which to file a hearing request or a request for reconsideration closed on March 24, 2023.

IV. EVALUATION OF HEARING REQUESTS

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment, and the Commission's consideration of hearing requests. The Commission implemented HB 801 by adopting procedural rules in 30 Tex. Admin. Code 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 February 1, 2022; therefore, it is subject to the procedural requirements adopted pursuant to HB 801 and SB 709.

A. Legal Authority to Respond to Hearing Requests

"The executive director, the public interest counsel, and the applicant may submit written Responses to [hearing] requests"¹

"Responses to hearing requests must specifically address:

- (1) Whether the requestor is an affected person;
- (2) Which issues raised in the hearing request are disputed;
- (3) Whether the dispute involves questions of fact or of law;

¹ 30 TAC §55.209(d).

- (4) Whether the issues were raised during the public comment period;
- (5) Whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) Whether the issues are relevant and material to the decision on the application; and
- (7) A maximum expected duration for the contested case hearing.”²

B. Hearing Request Requirements

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

“A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided, [based only on the requestor's timely comments, and] may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment”³

“A hearing request must substantially comply with the following:

- (1) 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;”⁴
- (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 Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the

² 30 Tex. Admin. Code §55.209(e).

³ 30 Tex. Admin. Code §55.201(c).

⁴ *Id.*

extent possible, specify any of the executive director'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) 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; 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 commission may also consider the following:

⁵ 30 Tex. Admin. Code §55.201(d).

⁶ 30 Tex. Admin. Code §55.203.

- (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.”⁷

D. Requirements of a Request by a Group or an Association

- (a) A hearing request by a group or association must meet the following requirements:
 - (1) One or more members of the group or association would otherwise have standing to request a hearing in their own right;
 - (2) The interests the group or association seeks to protect are germane to the organization's purpose; and
 - (3) Neither the claim asserted nor the relief requested requires the participation of the individual members in the case.
- (b) For applications filed on or after September 1, 2015, a request by a group or association for a contested case may not be granted unless all of the following requirements are met:
 - (1) Comments on the application [must be] timely submitted by the group or association;
 - (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) Neither the claim asserted nor the relief requested [may require] the participation of the individual members in the case.”⁸

E. 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 state office of administrative hearings (SOAH) for a hearing.”⁹ “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

⁷ 30 Tex. Admin. Code §55.203.

⁸ 30 Tex. Admin. Code §55.205.

⁹ 30 Tex. Admin. Code §50.115(b).

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.”¹⁰

V. ANALYSIS OF THE REQUEST

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, whether Christopher L. Phelan qualifies as an affected person, which issues may be referred to SOAH, and the appropriate duration of a hearing. Christopher L. Phelan’s request for hearing was submitted in writing to the Chief Clerk, on the back of a TCEQ public meeting sign-in form, at the public meeting, during the public comment period, before the Executive Director filed the Response to Public Comment. On the face of the public meeting registration form Christopher L. Phelan checked the box “yes,” to the question “Are you here today representing a municipality, legislator, agency, or group” and identified “For the Greater Good” as the group that he represented. Christopher L. Phelan also submitted formal verbal public comments at the public meeting during the public comment period.

A. Whether the Hearing Request Complied with 30 Tex. Admin. Code §§55.201(c) and (d), and 55.205.

1. Christopher L. Phelan

The Executive Director reviewed the factors in 30 Tex. Admin. Code §§55.201(c) and (d) and 55.203 for determining whether a requestor is an affected person and recommends the Commission find that Christopher L. Phelan is not an affected person. Christopher L. Phelan’s request was in writing, provided the required contact information, was timely received on December 6, 2022, during the public comment period, requested a contested case hearing, and raised disputed issues of fact that are relevant and material to the Commission’s consideration of the Application. Christopher L. Phelan also submitted public comments during the public comment period. However, the hearing request did not identify the location of requestor’s residence relative to the proposed facility or why the requestor believes that he would be adversely affected by the proposed facility in a manner not shared in common with members of the general public and did not describe how the operation of the proposed facility would impact Christopher L. Phelan’s health and safety, his use of property, or his use of impacted natural resources. Thus, Christopher L. Phelan did not demonstrate that he has a personal justiciable interest in the application. The Executive Director recommends that the commission find that Christopher L. Phelan is not an affected person.

¹⁰ 30 Tex. Admin. Code §50.115(c).

2. For the Greater Good

The Executive Director reviewed the factors in 30 Tex. Admin. Code §§55.201(c) and (d), 55.203 and 55.205 for determining if a requestor is an affected person and recommends the Commission find that “For the Greater Good” is not an affected person. Christopher L. Phelan’s request was in writing, provided his contact information, was timely received on December 6, 2022, during the comment period, requested a contested case hearing, and raised issues that are relevant and material to the Commission’s consideration of the Application. However, the request did not identify members of the group, did not identify the group’s purpose, and did not identify a member of the group who has a personal justiciable interest in the application that is not shared in common with members of the general public. The Executive Director recommends that the commission find that For the Greater Good is not an affected person.

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

The Executive Director has determined that Christopher L. Phelan raised issues during the comment period in his public comments and in his hearing request that are disputed questions of fact that are relevant and material to the commission’s decision on the Application that could be referred to SOAH if the Commission determines that Christopher L. Phelan or For the Greater Good are affected persons. These issues were raised during the public comment period, addressed in the Executive Director’s Response to Public Comment, and were not withdrawn.

If the Commission finds that Christopher L. Phelan or For the Greater Good are affected persons and grants the hearing request, the Executive Director recommends that the Commission refer the following issues to SOAH for a Contested Case Hearing:

1. Whether the Application satisfies the rule requirements for emergency response/first responder capability. (RTC Response no. 5) This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the Commission’s consideration of the Application.
2. Whether the Application satisfies the rule requirements for wastewater treatment or storm water retention. (RTC Response no. 6) This 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 Commission’s consideration of the Application.
3. Whether the Application satisfies the rule requirements to prevent air dispersion of waste during bulk handling, loading and unloading. (RTC Response no. 2) This issue is a disputed question of mixed fact, was raised

during the comment period, was not withdrawn, and is relevant and material to the Commission's consideration of the Application.

VI. CONTESTED CASE HEARING DURATION

If the Commission finds that Christopher L. Phelan or For the Greater Good are affected persons and grants the hearing request on this Application, the Executive Director recommends a hearing duration of six months from the date of the preliminary hearing to the presentation of a proposal for decision to the Commission.

VII. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission deny the Hearing Request.
2. The Executive Director recommends the Commission find that Christopher L. Phelan and For the Greater Good are not affected persons and deny the hearing request.
3. If the Commission finds that Christopher Phelan or For the Greater Good are affected persons and grants the hearing request on this Application establish a hearing duration of six months from the date of the preliminary hearing to the presentation of the proposal for decision to the Commission.
4. If the Commission refers the Application to SOAH, refer Issues 1 through 3.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin Chancellor
Interim Executive Director

Charmaine Backens, Acting Director
Office of Legal Services

Guy Henry, Acting 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 May 8, 2023, the “Executive Director’s Response to Hearing Request” on the application by US Ecology Texas, Inc. for Hazardous Waste Permit No. 50421 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 the methods indicated.



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MAILING LIST
US Ecology Texas, Inc.
TCEQ Docket No. 2023-0531-IHW; Permit No. 50421

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via US Mail and electronic mail

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FOR ALTERNATIVE DISPUTE
RESOLUTION

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FOR THE CHIEF CLERK

via eFilings:

<https://www14.tceq.texas.gov/epic/eFiling/>

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**ATTACHMENT A – GEOGRAPHIC INFORMATION SYSTEMS (GIS) MAP DEPICTING
LOCATIONS OF THE PROPOSED FACILITY AND THE REQUESTOR’S RESIDENCE**

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

Hearing Request Agenda May 31, 2023

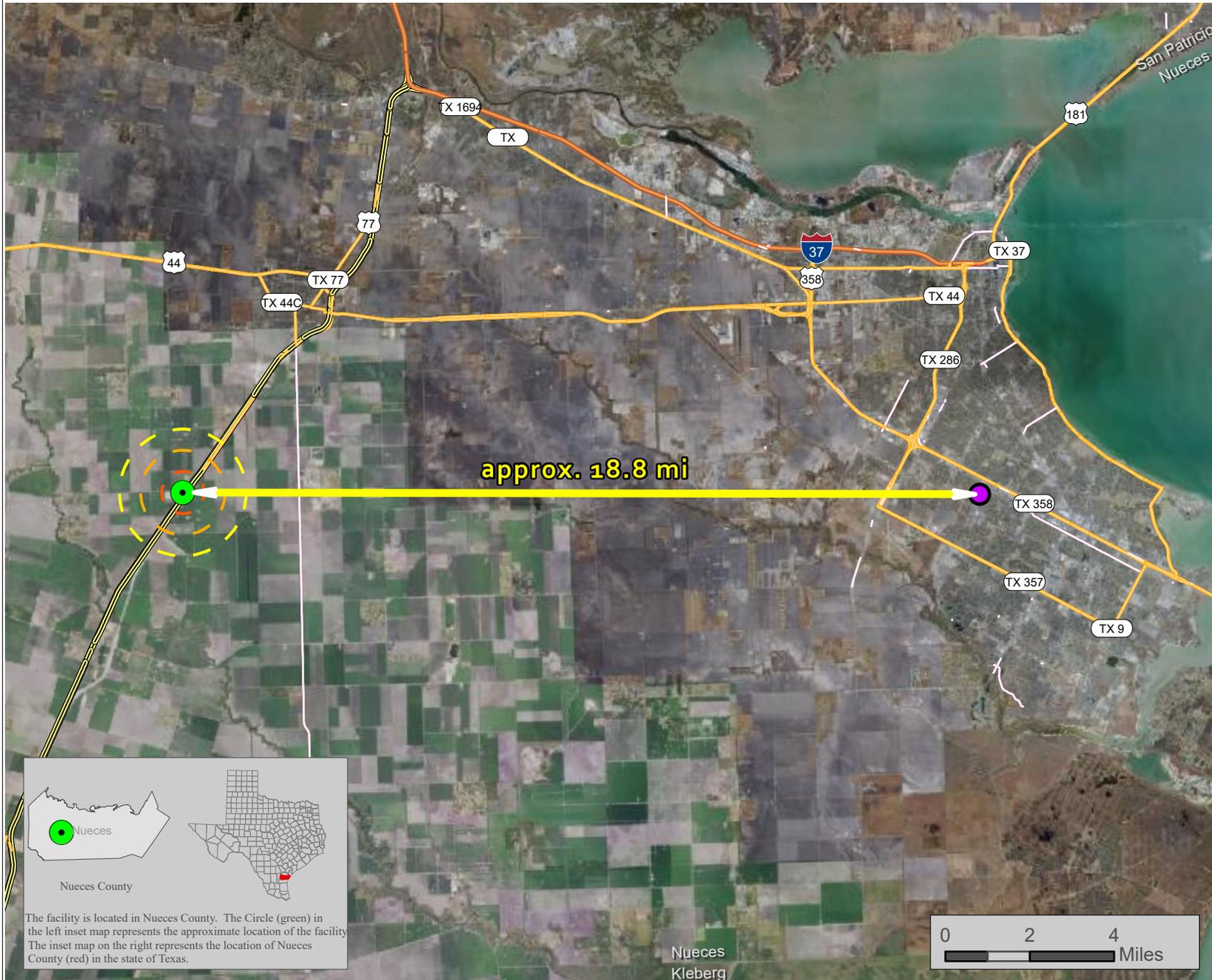
TCEQ Docket No. 2023-0531-IHW

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



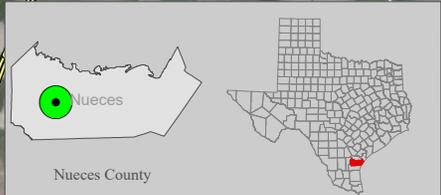
*Protecting Texas by
Reducing and
Preventing Pollution*

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

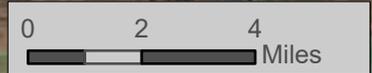


- Requestor's residence
- Proposed Facility
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius

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.