

DOCKET NO. 2023-0579-MWD

APPLICATION BY
CLEAN HARBORS SAN LEON, INC.
FOR TPDES PERMIT
NO. WQ0004086000

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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 Clean Harbors San Leon, Inc. (Applicant) seeking a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004086000 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Hajrulla Halili, trustee on behalf of the Razz Halili Trust.

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

II. Description of Facility

The Clean Harbors San Leon facility is located at 2700 Avenue South, in the City of San Leon, Galveston County, Texas. Clean Harbors San Leon's facility is a recycling and storage facility that manages catalyst and oily wastes from the petroleum refining and petrochemical industries. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-94.966666%2C29.469722&level=12>

Discharge is currently via Outfall 001 to a drainage ditch, thence to an unnamed tidal tributary of Dickinson Bayou, thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The relocated Outfall 001 will be discharged directly to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto - Brazos Coastal Basin.

The unclassified receiving water uses are minimal aquatic life use for the drainage ditch and high aquatic life use for unnamed tidal tributary. The designated uses for Segment No. 1103 are primary contact recreation and high aquatic life use.

In accordance with 30 TAC § 307.5 and TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Unnamed Tidal Tributary and Dickinson Bayou Tidal, which has been identified as having high aquatic life use. Existing uses will be maintained and

protected. The preliminary determination can be reexamined and may be modified if new information is received.

The discharge from this permit is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS's) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic-dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS's biological opinion.

III. Procedural Background

The TCEQ received the application on July 8, 2021, and declared it administratively complete on October 8, 2021. The applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Bay Area Citizen* on October 20, 2021, and in Spanish in *La Voz* on October 20, 2021. The ED completed the technical review of the application on November 16, 2022, and prepared the proposed permit, which if approved, would establish the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English in the *Houston Chronical* on November 23, 2022, and in Spanish in *La Voz* on November 30, 2022. The comment period for this application closed on January 2, 2023.

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).

Mr. Hajrulla Halili submitted a timely hearing request and provided the correct contact information. However, Mr. Halili did not raise any issues in his comment or hearing request. A hearing request must be based on the requestor's timely comments pursuant to 30 TAC § 55.201(c). Further, Mr. Halili did not identify any personal justiciable interests affected by the application or 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 § 55.201(d). Therefore, the ED recommends denying his hearing request.

The Executive Director recommends the Commission find that Mr. Halili is not an affected person.

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

No issues were raised in Mr. Halili's comment or hearing request; therefore, the ED does not recommend referring any issues to SOAH.

VI. 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.

VII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Hajrulla Halili is not an affected person and deny his hearing request.

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

VIII. CERTIFICATE OF SERVICE

I certify that on May 22, 2023, the “Executive Director’s Response to Hearing Request” for new TPDES Permit No. WQ0004086000 by Clean Harbors San Leon, Inc. 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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TCEQ Docket No. 2023-0579-WQ; Permit No. WQ0004086000

FOR THE APPLICANT:

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FOR THE EXECUTIVE DIRECTOR

via electronic mail:

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via eFilings:

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

REQUESTER(S):

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P.O. Box 8448
Bacliff, Texas 77512

INTERESTED PERSON(S):

Andrew Miller
San Leon Municipal Utility District
443 24th Street
San Leon, Texas 77539

Attachment A

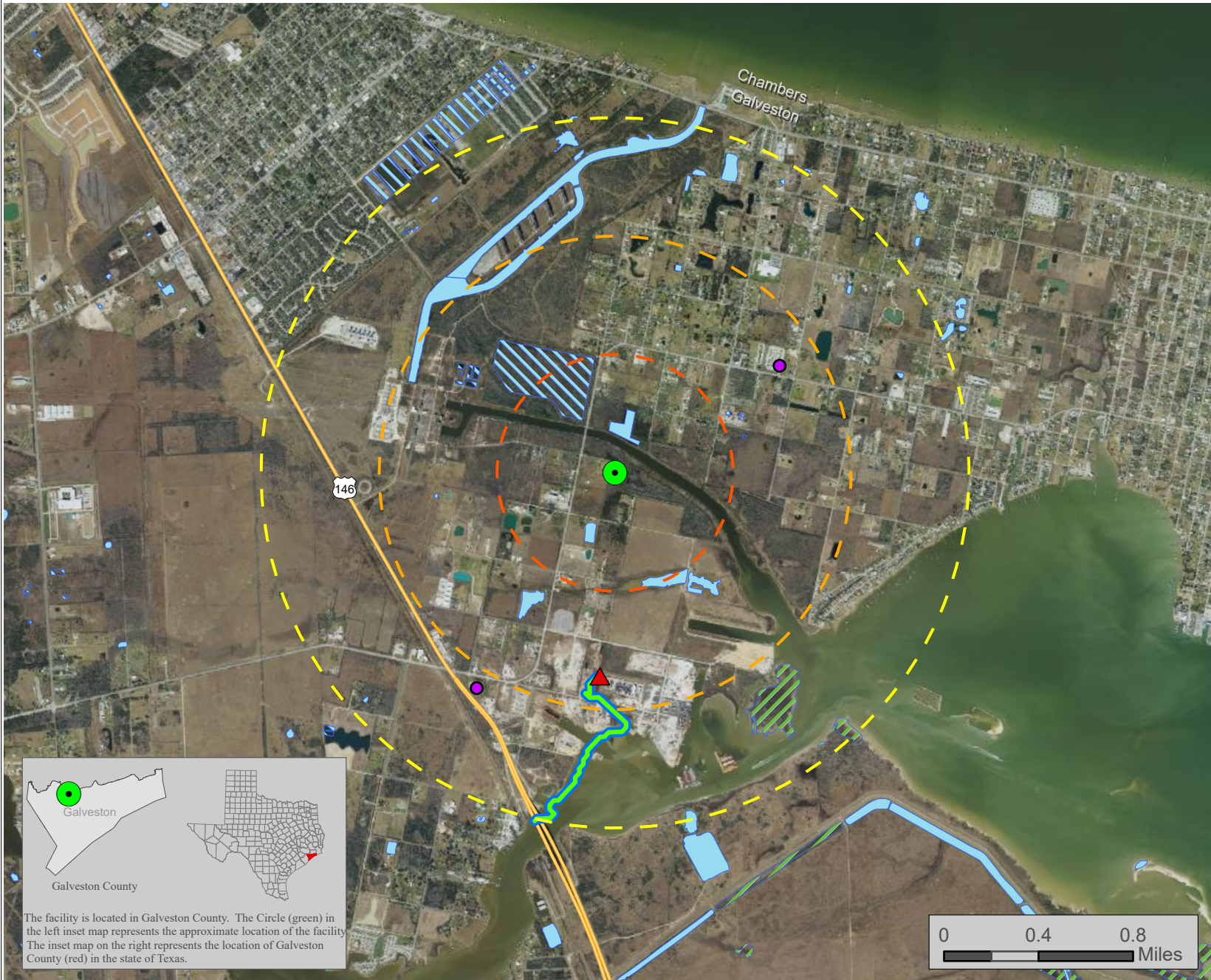
Clean Harbors San Leon, Inc. (WQ0004086000)

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

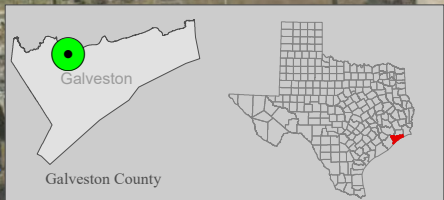


Protecting Texas by
Reducing and
Preventing Pollution

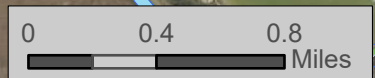
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 3/29/2023
CRF 0086448
Cartographer: jbartlin



- Requestors
- Outfall
- Facility
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- 1.0 Mile Discharge



The facility is located in Galveston 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 Galveston 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.