

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 28, 2023

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

**RE: 130 ENVIRONMENTAL PARK, LLC
PERMIT NO. 2383
TCEQ DOCKET NO. 2023-1559-MSW**

Dear Ms. Gharis:

Enclosed for filing is the Executive Director's Revised Response to Hearing Requests and Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Tatu".

Anthony Tatu, Staff Attorney
Environmental Law Division

TCEQ DOCKET NO. 2023-1559-MSW

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
130 ENVIRONMENTAL PARK, LLC	§	
FOR	§	ON
LIMITED-SCOPE MSW PERMIT	§	
AMENDMENT NO. 2383	§	ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR’S REVISED RESPONSE TO HEARING REQUESTS
AND REQUESTS FOR RECONSIDERATION**

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Revised Response to Hearing Requests and Requests for Reconsideration (Response) on the limited-scope amendment application (LSA Application) by 130 Environmental Park, LLC (130 Environmental Park or Applicant), for 130 Environmental Park, a Municipal Solid Waste (MSW) facility, Permit Number 2383. The LSA Application would expand waste acceptance hours to 5:00 a.m. to 7:00 p.m., Monday through Friday, and 6:00 a.m. to 5:00 p.m. on Saturday. It would expand operating hours to 5:00 a.m. to 9:00 p.m., Monday through Friday, and 6:00 a.m. to 6:00 p.m. on Saturday. The Office of the Chief Clerk (OCC) received timely hearing requests from Jennifer Aviles; Claudia Shroyer Brown and Robert Brown; Environmental Protection in the Interest of Caldwell County (“EPICC”); Sara I Figueroa; Jodie and Byron Friedrich; Eugenio Garcia; Irene Garcia; Leslie Holder; Patton King on behalf of the King Family Trust; Susan Elizabeth Lane; Frank L. Sughrue; and Dora Gudino Trejo.

The Executive Director recommends that the Commission find the following requestors are affected persons and grant their hearing requests: Claudia Shroyer Brown and Robert Brown; EPICC; Patton King on behalf of the King Family Trust; Susan Elizabeth Lane; Frank L. Sughrue; and Dora Gudino Trejo.

Attached for the Commission’s consideration are Geographic Information Systems (GIS) maps of requestors in the area of the facility showing a zoomed-in (Attachment A) and zoomed-out (Attachment B) version, along with a list of landowners adjacent to the facility (Attachment C). 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.

II. Description of the Facility

130 Environmental Park, LLC owns and operates 130 Environmental Park, a Type I MSW landfill in Caldwell County, Texas. The original application was received on September 4, 2013, and the permit issued December 11, 2017 (referred to as original application or original permit). The facility is located north of Farm-to-Market Road (FM) 1185 between U.S. Highway 183 and Homannville Trail, about two miles north of Lockhart. The facility boundary covers 520 acres, of which approximately 202 acres are approved for waste disposal. The Applicant is authorized to dispose of municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational, and industrial activities, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, construction and demolition waste, and yard waste. The Applicant is also authorized to dispose of Class 2 industrial solid waste, Class 3 industrial solid waste, and certain special waste. The Applicant is prohibited from accepting Class 1 nonhazardous industrial solid waste except waste that is Class 1 only because of asbestos content. The Applicant is further prohibited from accepting medical waste, sewage, dead animals, slaughterhouse waste, sludge, grease trap waste, grit trap waste, liquid waste from municipal sources, municipal hazardous waste from conditionally exempt small quantity generators, and out-of-state waste. The total disposal capacity of the landfill, including waste and daily cover, is 33.1 million cubic yards.

III. Procedural Background

The LSA Application was received on December 22, 2021. An administrative Notice of Deficiency letter (NOD) was mailed on January 18, 2021. A response to the NOD was received January 31, 2022, and the LSA Application was declared administratively complete on March 7, 2022. The LSA Application originally requested operating hours of 24 hours per day, seven days per week. The Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment (NORI) was mailed on March 14, 2022. The NORI was published on April 4, 2022, in the *Austin*

American-Statesman; on April 7, 2022, in the *Lockhart Post-Register*; and on April 7, 2022, in Spanish in *El Mundo*, in Caldwell County, Texas.

The Executive Director completed the technical review of the LSA Application on May 25, 2022, and prepared a draft limited-scope amendment document. The Notice of Application and Preliminary Decision (NAPD) was mailed May 27, 2022. The NAPD was published on June 15, 2022, in the *Austin American-Statesman*; on June 16, 2022, in the *Lockhart Post-Register*; and on June 16, 2022, in Spanish in *El Mundo*, in Caldwell County, Texas. An error was noted in the NAPD published in the *Austin American-Statesman*. The first publication was missing a weblink to provide public comments electronically and a link to the Commissioner's Integrated Database (CID). The NAPD was republished in the *Austin American-Statesman* on July 21, 2022. A second error was noted in the July 21, 2022 NAPD publication. The second publication in the *Austin American-Statesman* provided the public comment weblink but did not include the CID weblink.

Before the second publishing error was resolved, the Applicant made changes to the technically complete LSA Application. These changes were received September 14, 2022. These changes reduced the requested waste acceptance hours to 5:00 a.m. to 7:00 p.m. Monday through Friday, and 6:00 a.m. to 5:00 p.m. on Saturday; and operating hours to 5:00 a.m. to 9:00 p.m. Monday through Friday, and 6:00 a.m. to 6:00 p.m. on Saturday; and allows Caldwell County residents to dispose of waste under certain situations at no charge. A revised NAPD and revised Spanish NAPD were prepared and mailed on October 11, 2022. The revised NAPD was published on October 12, 2022, in the *Austin American-Statesman* and on October 13, 2022, in the *Lockhart Post-Register*. The revised Spanish NAPD was published on October 13, 2022, in *El Mundo*, in Caldwell County, Texas.

The comment period for the LSA Application ended on November 14, 2022. On August 24, 2023, the Executive Director preliminarily determined that the LSA application met the requirements of applicable law and would be considered before the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration were withdrawn before that meeting. On August 24, 2023, the Executive Director also filed a Response to Public Comment as required by Title 30 of the Texas

Administrative Code (30 TAC) Section 55.156. The 30-day period to request a contested case hearing or reconsideration of the executive director's decision ended on September 25, 2023.

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 under 30 TAC Chapters 39, 50, and 55.

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 TAC Chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests.

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 . . ."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 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;

¹ 30 TAC § 55.209(d).

- (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 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(e).

³ 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."⁴

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 30 TAC § 55.201(d).

- (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.
- (d) [In making this determination,] the [C]ommission may also consider the following:
- (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.”⁵

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.”⁶ “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.”⁷

⁵ 30 TAC § 55.203.

⁶ 30 TAC § 50.115(b).

⁷ 30 TAC § 50.115(c).

V. Analysis of the Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, who qualifies as an affected person, what issues may be referred for a contested case hearing, and the appropriate duration of the hearing.

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

i. Individuals the Executive Director Recommends the Commission Find are Affected Persons

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 following requestors are affected persons. All hearing requests were in writing, provided the required contact information, and raised the issues that are the basis of the individual hearing requests in the requestors' timely comments.

1. Claudia Shroyer Brown and Robert Brown

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Claudia Shroyer Brown and Robert Brown are affected persons. The address provided by Claudia Shroyer Brown and Robert Brown is approximately 1.12 miles from the facility.

Claudia Shroyer Brown and Robert Brown submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of their hearing request in their timely comments.

Claudia Shroyer Brown and Robert Brown were previously recognized as an affected person by SOAH Administrative Law Judges (ALJs) Casey A. Bell and Sharon Cloninger on March 26, 2015, when they sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit.

In their hearing requests, Claudia Shroyer Brown and Robert Brown raised several concerns, including noise, traffic, odors, potential impacts of expanded

operations on the surrounding community, and light pollution. Based on the location and distance of Claudia Shroyer Brown's and Robert Brown's property and the issues they raised, the Executive Director has determined that Claudia Shroyer Brown and Robert Brown have demonstrated that they have a personal justiciable interest in the application that is not common to members of the general public, and therefore, are affected persons.

In their request, Claudia Shroyer Brown and Robert Brown raised Issue 1 which the Executive Director recommends referring.

2. Environmental Protection in the Interest of Caldwell County ("EPICC")

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.205 for determining if a group meets the requirements for a contested case hearing and recommends the Commission find that EPICC meets those requirements.

EPICC was previously recognized as an affected person by SOAH ALJs Casey A. Bell and Sharon Cloninger on March 26, 2015, when it sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit.

EPICC submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of its hearing request in its timely comments. The interests that EPICC seeks to protect are germane to the purpose of the organization. EPICC identified the King Family Trust and Jodie and Byron Friedrich, who own property adjacent to the site as members of the organization and who would have standing to request a hearing in their own right.

In its hearing requests, EPICC raised several concerns, including noise, light pollution, traffic, odor, lack of justification for expanding the operating hours, and its impact on the surrounding community.

In its requests, EPICC raised Issue 1 which the Executive Director recommends referring.

3. Patton King on behalf of the King Family Trust

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that the King Family Trust meets those requirements. Patton King is

a representative of the King Family Trust, which has a personal justiciable interest in the Lazy K Ranch. The two addresses provided by Patton King are approximately 0.82 mile and 1.96 miles from the facility.

The King Family Trust was previously recognized as an affected person by SOAH ALJs Casey A. Bell and Sharon Cloninger on March 26, 2015, when it sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit.

Patton King submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of his hearing request in his timely comments.

In his hearing requests, Patton King raised several concerns, including noise, odor, pollution, and light pollution. Based on the location and distance of the King Family Trust's property and the issues Patton King raised as its representative, the Executive Director has determined that the King Family Trust has demonstrated that it has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In his requests, Patton King raised Issue 1 which the Executive Director recommends referring.

4. Susan Elizabeth Lane

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Susan Lane is an affected person. The address provided by Susan Lane is approximately 1.16 miles from the facility.

Susan Lane submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of her hearing request in her timely comments.

In her hearing requests, Susan Lane raised several concerns, including noise, light pollution, trash toxicity, and odor. Based on the location and distance of Susan Lane's property and the issues she raised, the Executive Director has determined that Susan Lane demonstrated that she has a personal justiciable interest in the application

that is not common to members of the general public, and therefore, is an affected person.

In her requests, Susan Lane raised Issue 1 which the Executive Director recommends referring.

5. Frank L. Sughrue

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Frank Sughrue is an affected person. The address provided by Frank Sughrue is approximately 1.12 miles from the facility.

Frank Sughrue submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of his hearing request in his timely comments.

Frank Sughrue was previously recognized as an affected person by SOAH ALJs Casey A. Bell and Sharon Cloninger on March 26, 2015, when he sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit.

In his hearing request, Frank Sughrue raised several concerns, including noise, traffic, odors, potential impacts of expanded operations on the surrounding community, and light pollution. Based on the location and distance of Frank Sughrue's property and the issues he raised, the Executive Director has determined that Frank Sughrue demonstrated that he has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In his request, Frank Sughrue raised Issue 1 which the Executive Director recommends referring.

6. Dora Gudino Trejo

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Dora Gudino Trejo is an affected person. The address provided by Dora Gudino Trejo is approximately 0.88 mile from the facility.

Dora Gudino Trejo submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of her hearing request in her timely comments.

In her hearing requests, Dora Gudino Trejo raised several concerns, including noise, trash toxicity, odor, and impacts on air and water quality. Based on the location and distance of Dora Gudino Trejo's property and the issues she raised, the Executive Director has determined that Dora Gudino Trejo demonstrated that she has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In her request, Dora Gudino Trejo raised Issue 1 which the Executive Director recommends referring.

ii. Individuals the Executive Director Does Not Recommend the Commission Find are Affected Persons

The Executive Director reviewed the factors in 30 TAC § 55.201(c) and (d), and § 55.203 for determining if a person is an affected person, and recommends the Commission find the following individuals are NOT affected persons because the requestor's failed to include their location and distance relative to the facility that is the subject of the application: Sara I Figueroa, Eugenio Garcia, and Irene Garcia. Without further information regarding the location of the requestors, the Executive Director is unable to recommend approval of these hearing requests.

The Executive Director recommends the Commission find that Jodie and Byron Friedrich are NOT affected persons because they failed to raise issues or explain how the application would affect them differently than the general public in their hearing request. It should be noted that the hearing request by EPICC identified the Friedrichs as members of its organization who own property adjacent to the facility and would have standing to request a hearing in their own right. Byron Friedrich was previously recognized as an affected person by SOAH ALJs Casey A. Bell and Sharon Cloninger on March 26, 2015, when he sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit. However, the Executive Director cannot recommend granting the Friedrich's hearing request for this application because they did not comply with the requirements in 30 TAC § 55.201(d)(2).

The Executive Director recommends the Commission find that Jennifer Aviles is NOT an affected person because she did not file any comments as required by rule prior to filing a hearing request.

The Executive Director also recommends the Commission find that Leslie Holder is NOT an affected person because based on her location relative to the facility, she did not demonstrate a personal justiciable interest that is not common to members of the general public.

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 during the comment period, in the requests for a contested case hearing, and relevant to the decision on the application that could be referred to SOAH if the Commission determines that a requestor 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.

i. Disputed Issues of Fact that are Relevant and Material to the Commission's Consideration of the Application

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

1. Whether 130 Environmental Park has presented a valid justification for expanding its site operations and its operating hours in accordance with 30 TAC § 330.135. (RTC no. 5). 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.

ii. Issues that are not Relevant or Material to the Commission's Consideration of the Application or that are Matters of Law or Policy

The Executive Director does not recommend that the Commission refer the following issues to SOAH for a Contested Case Hearing:

1. Whether 130 Environmental Park has presented an adequate analysis of the likely impacts on the neighboring community if their request to expand site operations and operating hours is granted. (RTC no. 4). The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn. However, this issue is outside the scope of the amendment application.
2. Whether 130 Environmental Park's proposed "site operations" (which includes, among other unspecified activities: construction, material delivery, earthmoving, and transportation of construction materials) allows operation activities beyond those contemplated by 130 Environmental Park's existing permit, and whether those expanded site operations are justified, compatible with surrounding land uses, and adequately protective of the health and environment of the surrounding community. (RTC no. 9). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.
3. Whether 130 Environmental Park's current operations have negatively impacted the nearby landowners, such that expansion of operations would likely exacerbate those conditions. (RTC no. 4). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.
4. Whether expanding 130 Environmental Park's site operations and operating hours are compatible with surrounding land uses. (RTC no. 4). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.
5. Whether the requested expanded site operations and operating hours will create additional traffic, noise, odor, and nuisance conditions. (RTC no. 6 & 8). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.

6. Whether 130 Environmental Park's request for expanded site operations and operation hours should be denied, because of the adverse impacts it would have on the surrounding community. (RTC no. 2, 4, 5, 6, 8, & 9). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.

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 six months from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VII. Requests for Reconsideration

The Executive Director reviewed the factors in 30 TAC § 55.201(3) for requests for reconsideration of the Executive Director's decision. The TCEQ received Requests for Reconsideration from Claudia Shroyer Brown and Robert Brown; EPICC; Leslie Holder; Patton King; and Frank L. Sughrue. All of the Requests for Reconsideration raised the same issues as were raised in the individuals' Hearing Requests. After reviewing the issues raised in the Requests for Reconsideration, the Executive Director determined that the issues raised were fully addressed in the Executive Director's Response to Comments and did not find any cause for changing the draft permit. The Executive Director has reviewed the Requests for Reconsideration and maintains that the LSA, if issued, will comply with all applicable statutory and regulatory requirements. The Executive Director recommends that all the Requests for Reconsideration be denied.

VIII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission deny the Requests for Reconsideration.
2. The Executive Director recommends the Commission find that the following are affected persons and grant their hearing requests: Claudia Shroyer Brown

and Robert Brown; EPICC; Patton King on behalf of the King Family Trust; Susan Elizabeth Lane; Frank L. Sughrue; and Dora Gudino Trejo.

3. The Executive Director recommends that the Commission find that all other requestors are not affected persons and deny their hearing requests.
4. 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.
5. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
6. If referred to SOAH, refer Issue 1 listed above in Part V of this response:

Whether 130 Environmental Park has presented a valid justification for expanding its site operations and its operating hours in accordance with 30 TAC § 330.135. (RTC no. 5). 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.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Interim Executive Director

Erin Chancellor, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division



Michael Martinez, Staff Attorney
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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. Regular Mail or Certified Mail Return Receipt Requested on all parties listed in the attached Service List on this 28th day of November, 2023

A handwritten signature in black ink, appearing to read "Anthony Tatu", written over a horizontal line.

Anthony Tatu, Staff Attorney
Environmental Law Division

MAILING LIST
130 ENVIRONMENTAL PARK, LLC
TCEQ DOCKET NO. 2023-1559-MSW
PERMIT NO.2383

FOR THE APPLICANT:

via electronic mail

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**FOR ALTERNATIVE DISPUTE
RESOLUTION**

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FOR THE CHIEF CLERK:

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**REQUESTER(S)/INTERESTED
PERSON(S):**

See attached list.

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Leslie Holder
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Dale, TX 78616-3347

Patton S King
22834 Mountain Creek CT
Katy, TX 77450-3680
pattonkinglazykranch@gmail.com

Ms Susan Elizabeth Lane
Gardenscapes
1334 Homannville Tri
Lockhart, TX 78644-2078
GARDENSCAPES.SLANE@GMAIL.COM;
SLANE3@EARTHLINK.NET

Marisa Perales
Attorney, Perales Allmon & Ice Pc
1206 San Antonio St.
Austin, TX 78701-1834
marisa@txenvirolaw.com

Frank L Sughrue
5118 Barth Rd.
Lockhart, TX 78644-2258
frank@flsauction.com

Dora Gudino Trejo
1475 Homannville Tri
Lockhart, TX 78644-3196

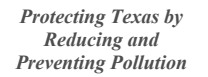
ATTACHMENT A
ZOOMED-IN MAP













Caldwell

Caldwell County

0.6 Miles

The facility is located in Caldwell County, Texas. The Jail (green) in the center of the map represents the approximate location of the facility. The red outline on the right represents the location of Caldwell County Jail in the state of Texas.



-  Jodie and Byron Friedrich
-  Patton King - King Family Trust-1
-  Susan Elizabeth Lane
-  Patton King - King Family Trust-2
-  Claudia Shroyer Brown and Robert Brown
-  Dora Gudino Trejo
-  Frank L. Sughrue
-  Leslie Holder
-  Facility Centroid
-  0.5 Mile from Facility Point
-  1 Mile from Facility Point
-  1.5 Miles from Facility Point

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.

ATTACHMENT B
ZOOMED-OUT MAP

130 Environmental Park

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



*Protecting Texas by
Reducing and
Preventing Pollution*

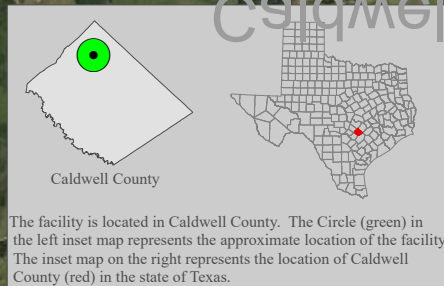
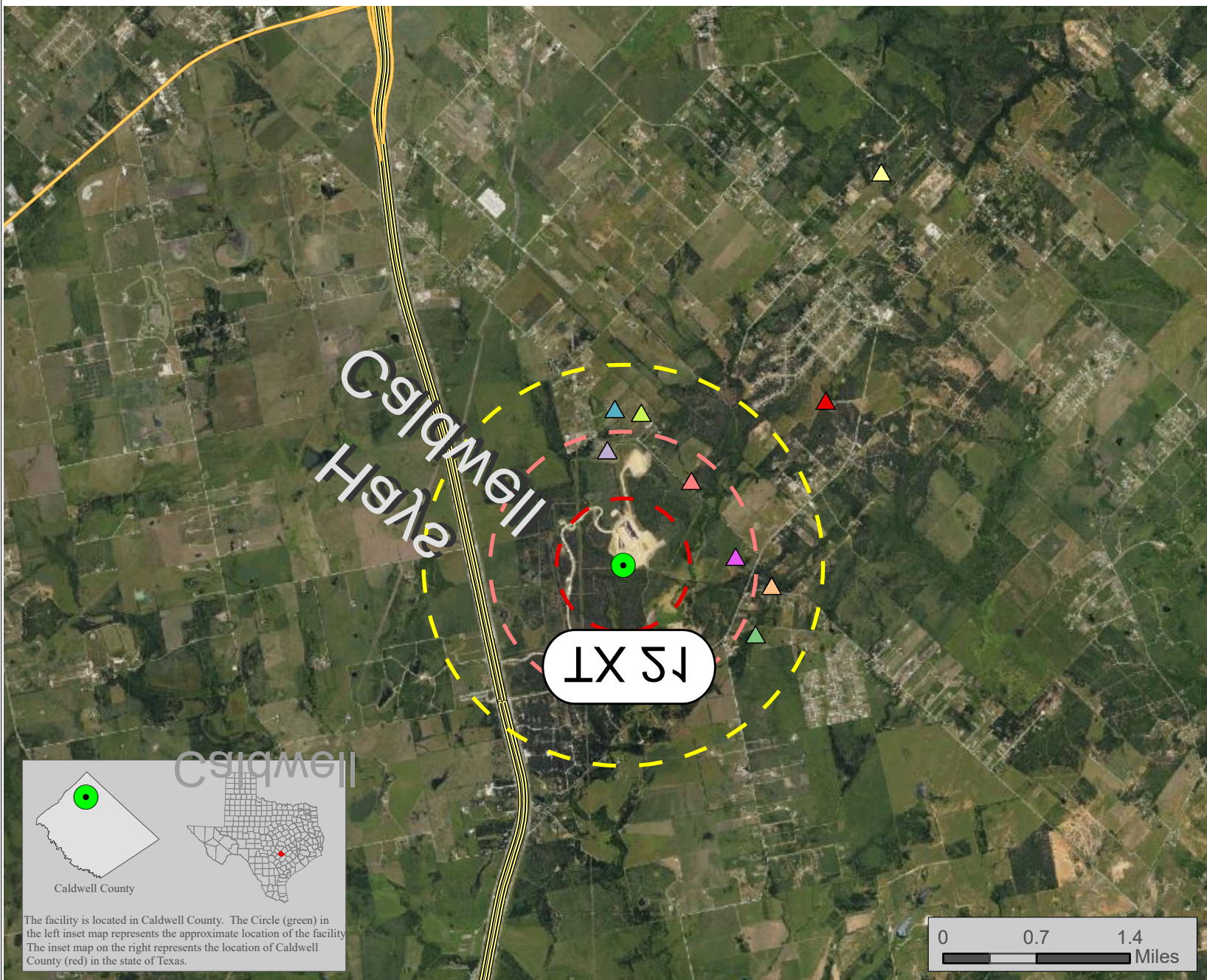
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 10/11/2023
CRF 0095534
Cartographer: MAttoh



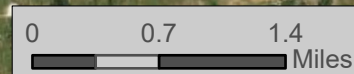
- Jennifer Aviles
- Jodie and Byron Friedrich
- Patton King - King Family Trust-1
- Susan Elizabeth Lane
- Patton King - King Family Trust-2
- Claudia Shroyer Brown and Robert Brown
- Dora Gudino Trejo
- Frank L. Sughrue
- Leslie Holder
- Facility Centroid
- 0.5 Mile from Facility Point
- 1 Mile from Facility Point
- 1.5 Miles from Facility Point

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 Caldwell 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 Caldwell County (red) in the state of Texas.



ATTACHMENT C
APPENDIX A/LIST OF LANDOWNERS

Appendix A for 130 Environmental Park GIS Map

Name	Lat	Long	State	Distance To Facility Point
Jennifer Aviles	29.982886	-97.659362	TX	1.18 Miles
Jodie and Byron Friedrich	29.966566	-97.644624	TX	0.85 Mile
Patton King - King Family Trust - 1	29.974905	-97.649962	TX	0.82 Mile
Susan Elizabeth Lane	29.982402	-97.656052	TX	1.16 Miles
Patton King - King Family Trust - 2	29.983296	-97.632931	TX	1.96 Miles
Claudia Shroyer Brown and Robert Brown	29.958096	-97.642333	TX	1.12 Miles
Frank L. Sughrue	29.96332	-97.640198	TX	1.12 Miles
Dora Gudino Trejo	29.978429	-97.660402	TX	0.88 Mile
Leslie Holder	30.007949	-97.625372	TX	3.53 Miles

TCEQ DOCKET NO. 2023-1559-MSW

APPLICATION BY	§	BEFORE THE TEXAS COMMISSION
130 ENVIRONMENTAL PARK, LLC	§	
FOR	§	ON
LIMITED-SCOPE MSW PERMIT	§	
AMENDMENT NO. 2383	§	ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS
AND REQUESTS FOR RECONSIDERATION**

I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests and Requests for Reconsideration (Response) on the limited-scope amendment application (LSA Application) by 130 Environmental Park, LLC (130 Environmental Park or Applicant), for 130 Environmental Park, a Municipal Solid Waste (MSW) facility, Permit Number 2383. The LSA Application would expand waste acceptance hours to 5:00 a.m. to 7:00 p.m., Monday through Friday, and 6:00 a.m. to 5:00 p.m. on Saturday. It would expand operating hours to 5:00 a.m. to 9:00 p.m., Monday through Friday, and 6:00 a.m. to 6:00 p.m. on Saturday. The Office of the Chief Clerk (OCC) received timely hearing requests from Jennifer Aviles; Claudia Shroyer Brown and Robert Brown; Environmental Protection in the Interest of Caldwell County (“EPICC”); Sara I Figueroa; Jodie and Byron Friedrich; Eugenio Garcia; Irene Garcia; Leslie Holder; Patton King on behalf of the King Family Trust; Susan Elizabeth Lane; Frank L. Sughrue; and Dora Gudino Trejo.

The Executive Director recommends that the Commission find the following requestors are affected persons and grant their hearing requests: Claudia Shroyer Brown and Robert Brown; EPICC; Patton King on behalf of the King Family Trust; Susan Elizabeth Lane; Frank L. Sughrue; and Dora Gudino Trejo.

Attached for the Commission’s consideration are Geographic Information Systems (GIS) maps of requestors in the area of the facility showing a zoomed-in (Attachment A) and zoomed-out (Attachment B) version, along with a list of landowners adjacent to the facility (Attachment C). 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.

II. Description of the Facility

130 Environmental Park, LLC owns and operates 130 Environmental Park, a Type I MSW landfill in Caldwell County, Texas. The original application was received on September 4, 2013, and the permit issued December 11, 2017 (referred to as original application or original permit). The facility is located north of Farm-to-Market Road (FM) 1185 between U.S. Highway 183 and Homannville Trail, about two miles north of Lockhart. The facility boundary covers 520 acres, of which approximately 202 acres are approved for waste disposal. The Applicant is authorized to dispose of municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational, and industrial activities, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, construction and demolition waste, and yard waste. The Applicant is also authorized to dispose of Class 2 industrial solid waste, Class 3 industrial solid waste, and certain special waste. The Applicant is prohibited from accepting Class 1 nonhazardous industrial solid waste except waste that is Class 1 only because of asbestos content. The Applicant is further prohibited from accepting medical waste, sewage, dead animals, slaughterhouse waste, sludge, grease trap waste, grit trap waste, liquid waste from municipal sources, municipal hazardous waste from conditionally exempt small quantity generators, and out-of-state waste. The total disposal capacity of the landfill, including waste and daily cover, is 33.1 million cubic yards.

III. Procedural Background

The LSA Application was received on December 22, 2021. An administrative Notice of Deficiency letter (NOD) was mailed on January 18, 2021. A response to the NOD was received January 31, 2022, and the LSA Application was declared administratively complete on March 7, 2022. The LSA Application originally requested operating hours of 24 hours per day, seven days per week. The Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment (NORI) was mailed on March 14, 2022. The NORI was published on April 4, 2022, in the *Austin*

American-Statesman; on April 7, 2022, in the *Lockhart Post-Register*; and on April 7, 2022, in Spanish in *El Mundo*, in Caldwell County, Texas.

The Executive Director completed the technical review of the LSA Application on May 25, 2022, and prepared a draft limited-scope amendment document. The Notice of Application and Preliminary Decision (NAPD) was mailed May 27, 2022. The NAPD was published on June 15, 2022, in the *Austin American-Statesman*; on June 16, 2022, in the *Lockhart Post-Register*; and on June 16, 2022, in Spanish in *El Mundo*, in Caldwell County, Texas. An error was noted in the NAPD published in the *Austin American-Statesman*. The first publication was missing a weblink to provide public comments electronically and a link to the Commissioner's Integrated Database (CID). The NAPD was republished in the *Austin American-Statesman* on July 21, 2022. A second error was noted in the July 21, 2022 NAPD publication. The second publication in the *Austin American-Statesman* provided the public comment weblink but did not include the CID weblink.

Before the second publishing error was resolved, the Applicant made changes to the technically complete LSA Application. These changes were received September 14, 2022. These changes reduced the requested waste acceptance hours to 5:00 a.m. to 7:00 p.m. Monday through Friday, and 6:00 a.m. to 5:00 p.m. on Saturday; and operating hours to 5:00 a.m. to 9:00 p.m. Monday through Friday, and 6:00 a.m. to 6:00 p.m. on Saturday; and allows Caldwell County residents to dispose of waste under certain situations at no charge. A revised NAPD and revised Spanish NAPD were prepared and mailed on October 11, 2022. The revised NAPD was published on October 12, 2022, in the *Austin American-Statesman* and on October 13, 2022, in the *Lockhart Post-Register*. The revised Spanish NAPD was published on October 13, 2022, in *El Mundo*, in Caldwell County, Texas.

The comment period for the LSA Application ended on November 14, 2022. On August 24, 2023, the Executive Director preliminarily determined that the LSA application met the requirements of applicable law and would be considered before the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration were withdrawn before that meeting. On August 24, 2023, the Executive Director also filed a Response to Public Comment as required by Title 30 of the Texas

Administrative Code (30 TAC) Section 55.156. The 30-day period to request a contested case hearing or reconsideration of the executive director's decision ended on September 25, 2023.

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 under 30 TAC Chapters 39, 50, and 55.

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 TAC Chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests.

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 . . ."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 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;

¹ 30 TAC § 55.209(d).

- (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 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(e).

³ 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."⁴

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 30 TAC § 55.201(d).

- (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.
- (d) [In making this determination,] the [C]ommission may also consider the following:
- (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.”⁵

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.”⁶ “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.”⁷

⁵ 30 TAC § 55.203.

⁶ 30 TAC § 50.115(b).

⁷ 30 TAC § 50.115(c).

V. Analysis of the Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, who qualifies as an affected person, what issues may be referred for a contested case hearing, and the appropriate duration of the hearing.

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

i. Individuals the Executive Director Recommends the Commission Find are Affected Persons

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 following requestors are affected persons. All hearing requests were in writing, provided the required contact information, and raised the issues that are the basis of the individual hearing requests in the requestors' timely comments.

1. Claudia Shroyer Brown and Robert Brown

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Claudia Shroyer Brown and Robert Brown are affected persons. The address provided by Claudia Shroyer Brown and Robert Brown is approximately 1.12 miles from the facility.

Claudia Shroyer Brown and Robert Brown submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of their hearing request in their timely comments.

Claudia Shroyer Brown and Robert Brown were previously recognized as an affected person by SOAH Administrative Law Judges (ALJs) Casey A. Bell and Sharon Cloninger on March 26, 2015, when they sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit.

In their hearing requests, Claudia Shroyer Brown and Robert Brown raised several concerns, including noise, traffic, odors, potential impacts of expanded

operations on the surrounding community, and light pollution. Based on the location and distance of Claudia Shroyer Brown's and Robert Brown's property and the issues they raised, the Executive Director has determined that Claudia Shroyer Brown and Robert Brown have demonstrated that they have a personal justiciable interest in the application that is not common to members of the general public, and therefore, are affected persons.

In their request, Claudia Shroyer Brown and Robert Brown raised Issues 1 and 2 of the issues the Executive Director recommends referring.

2. Environmental Protection in the Interest of Caldwell County ("EPICC")

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.205 for determining if a group meets the requirements for a contested case hearing and recommends the Commission find that EPICC meets those requirements.

EPICC was previously recognized as an affected person by SOAH ALJs Casey A. Bell and Sharon Cloninger on March 26, 2015, when it sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit.

EPICC submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of its hearing request in its timely comments. The interests that EPICC seeks to protect are germane to the purpose of the organization. EPICC identified the King Family Trust and Jodie and Byron Friedrich, who own property adjacent to the site as members of the organization and who would have standing to request a hearing in their own right.

In its hearing requests, EPICC raised several concerns, including noise, light pollution, traffic, odor, lack of justification for expanding the operating hours, and its impact on the surrounding community.

In its requests, EPICC raised Issues 1 and 2 of the issues the Executive Director recommends referring.

3. Patton King on behalf of the King Family Trust

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that the King Family Trust meets those requirements. Patton King is

a representative of the King Family Trust, which has a personal justiciable interest in the Lazy K Ranch. The two addresses provided by Patton King are approximately 0.82 mile and 1.96 miles from the facility.

The King Family Trust was previously recognized as an affected person by SOAH ALJs Casey A. Bell and Sharon Cloninger on March 26, 2015, when it sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit.

Patton King submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of his hearing request in his timely comments.

In his hearing requests, Patton King raised several concerns, including noise, odor, pollution, and light pollution. Based on the location and distance of the King Family Trust's property and the issues Patton King raised as its representative, the Executive Director has determined that the King Family Trust has demonstrated that it has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In his requests, Patton King raised Issues 1 and 2 of the issues the Executive Director recommends referring.

4. Susan Elizabeth Lane

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Susan Lane is an affected person. The address provided by Susan Lane is approximately 1.16 miles from the facility.

Susan Lane submitted timely hearing requests in writing, provided the required contact information, and raised the issues that are the basis of her hearing request in her timely comments.

In her hearing requests, Susan Lane raised several concerns, including noise, light pollution, trash toxicity, and odor. Based on the location and distance of Susan Lane's property and the issues she raised, the Executive Director has determined that Susan Lane demonstrated that she has a personal justiciable interest in the application

that is not common to members of the general public, and therefore, is an affected person.

In her requests, Susan Lane raised Issue 1 of the issues the Executive Director recommends referring.

5. Frank L. Sughrue

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Frank Sughrue is an affected person. The address provided by Frank Sughrue is approximately 1.12 miles from the facility.

Frank Sughrue submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of his hearing request in his timely comments.

Frank Sughrue was previously recognized as an affected person by SOAH ALJs Casey A. Bell and Sharon Cloninger on March 26, 2015, when he sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit.

In his hearing request, Frank Sughrue raised several concerns, including noise, traffic, odors, potential impacts of expanded operations on the surrounding community, and light pollution. Based on the location and distance of Frank Sughrue's property and the issues he raised, the Executive Director has determined that Frank Sughrue demonstrated that he has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In his request, Frank Sughrue raised Issue 1 and 2 of the issues the Executive Director recommends referring.

6. Dora Gudino Trejo

The Executive Director reviewed the factors found in 30 TAC §§ 55.201(c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Dora Gudino Trejo is an affected person. The address provided by Dora Gudino Trejo is approximately 0.88 mile from the facility.

Dora Gudino Trejo submitted a timely hearing request in writing, provided the required contact information, and raised the issues that are the basis of her hearing request in her timely comments.

In her hearing requests, Dora Gudino Trejo raised several concerns, including noise, trash toxicity, odor, and impacts on air and water quality. Based on the location and distance of Dora Gudino Trejo's property and the issues she raised, the Executive Director has determined that Dora Gudino Trejo demonstrated that she has a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

In her request, Dora Gudino Trejo raised Issue 1 of the issues the Executive Director recommends referring.

ii. Individuals the Executive Director Does Not Recommend the Commission Find are Affected Persons

The Executive Director reviewed the factors in 30 TAC § 55.201(c) and (d), and § 55.203 for determining if a person is an affected person, and recommends the Commission find the following individuals are NOT affected persons because the requestor's failed to include their location and distance relative to the facility that is the subject of the application: Sara I Figueroa, Eugenio Garcia, and Irene Garcia. Without further information regarding the location of the requestors, the Executive Director is unable to recommend approval of these hearing requests.

The Executive Director recommends the Commission find that Jodie and Byron Friedrich are NOT affected persons because they failed to raise issues or explain how the application would affect them differently than the general public in their hearing request. It should be noted that the hearing request by EPICC identified the Friedrichs as members of its organization who own property adjacent to the facility and would have standing to request a hearing in their own right. Byron Friedrich was previously recognized as an affected person by SOAH ALJs Casey A. Bell and Sharon Cloninger on March 26, 2015, when he sought party status in opposition to 130 Environmental Park's application for a Type I MSW landfill permit. However, the Executive Director cannot recommend granting the Friedrich's hearing request for this application because they did not comply with the requirements in 30 TAC § 55.201(d)(2).

The Executive Director recommends the Commission find that Jennifer Aviles is NOT an affected person because she did not file any comments as required by rule prior to filing a hearing request.

The Executive Director also recommends the Commission find that Leslie Holder is NOT an affected person because based on her location relative to the facility, she did not demonstrate a personal justiciable interest that is not common to members of the general public.

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 during the comment period, in the requests for a contested case hearing, and relevant to the decision on the application that could be referred to SOAH if the Commission determines that a requestor 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.

i. Disputed Issues of Fact that are Relevant and Material to the Commission's Consideration of the Application

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

1. Whether 130 Environmental Park has presented an adequate analysis of the likely impacts on the neighboring community if their request to expand site operations and operating hours is granted. (RTC no. 4). The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn. However, this issue is outside the scope of the amendment application.

ii. Issues that are not Relevant or Material to the Commission's Consideration of the Application or that are Matters of Law or Policy

The Executive Director does not recommend that the Commission refer the following issues to SOAH for a Contested Case Hearing:

1. Whether 130 Environmental Park has presented a valid justification for expanding its site operations and its operating hours in accordance with 30 TAC § 330.135. (RTC no. 5). 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 130 Environmental Park's proposed "site operations" (which includes, among other unspecified activities: construction, material delivery, earthmoving, and transportation of construction materials) allows operation activities beyond those contemplated by 130 Environmental Park's existing permit, and whether those expanded site operations are justified, compatible with surrounding land uses, and adequately protective of the health and environment of the surrounding community. (RTC no. 9). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.
3. Whether 130 Environmental Park's current operations have negatively impacted the nearby landowners, such that expansion of operations would likely exacerbate those conditions. (RTC no. 4). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.
4. Whether expanding 130 Environmental Park's site operations and operating hours are compatible with surrounding land uses. (RTC no. 4). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.
5. Whether the requested expanded site operations and operating hours will create additional traffic, noise, odor, and nuisance conditions. (RTC no. 6 & 8). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.
6. Whether 130 Environmental Park's request for expanded site operations and operation hours should be denied, because of the adverse impacts it would

have on the surrounding community. (RTC no. 2, 4, 5, 6, 8, & 9). The issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, this issue is outside the scope of the amendment application.

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 six months from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VII. Requests for Reconsideration

The Executive Director reviewed the factors in 30 TAC § 55.201(3) for requests for reconsideration of the Executive Director's decision. The TCEQ received Requests for Reconsideration from Claudia Shroyer Brown and Robert Brown; EPICC; Leslie Holder; Patton King; and Frank L. Sughrue. All of the Requests for Reconsideration raised the same issues as were raised in the individuals' Hearing Requests. After reviewing the issues raised in the Requests for Reconsideration, the Executive Director determined that the issues raised were fully addressed in the Executive Director's Response to Comments and did not find any cause for changing the draft permit. The Executive Director has reviewed the Requests for Reconsideration and maintains that the LSA, if issued, will comply with all applicable statutory and regulatory requirements. The Executive Director recommends that all the Requests for Reconsideration be denied.

VIII. Executive Director's Recommendation

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission deny the Requests for Reconsideration.
2. The Executive Director recommends the Commission find that the following are affected persons and grant their hearing requests: Claudia Shroyer Brown

and Robert Brown; EPICC; Patton King on behalf of the King Family Trust; Susan Elizabeth Lane; Frank L. Sughrue; and Dora Gudino Trejo.

3. The Executive Director recommends that the Commission find that all other requestors are not affected persons and deny their hearing requests.
4. 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.
5. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
6. If referred to SOAH, refer Issue 1 listed above in Part V of this response.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Interim Executive Director

Erin 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 hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. Regular Mail or Certified Mail Return Receipt Requested on all parties listed in the attached Service List on this 20th day of November, 2023

A handwritten signature in black ink, appearing to read "Anthony Tatu", written over a horizontal line.

Anthony Tatu, Staff Attorney
Environmental Law Division

MAILING LIST
130 ENVIRONMENTAL PARK, LLC
TCEQ DOCKET NO. 2023-1559-MSW
PERMIT NO.2383

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**FOR ALTERNATIVE DISPUTE
RESOLUTION**

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Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
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www.tceq.texas.gov/goto/efilings

**REQUESTER(S)/INTERESTED
PERSON(S):**

See attached list.

REQUESTER(S):

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Eugenio Garcia Jr.
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Bryon Christopher Friedrich
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Bryon Christopher Friedrich
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Dora Gudino Trejo
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Lockhart, TX 78644-3196

ATTACHMENT A
ZOOMED-IN MAP

130 Environmental Park














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



*Protecting Texas by
Reducing and
Preventing Pollution*

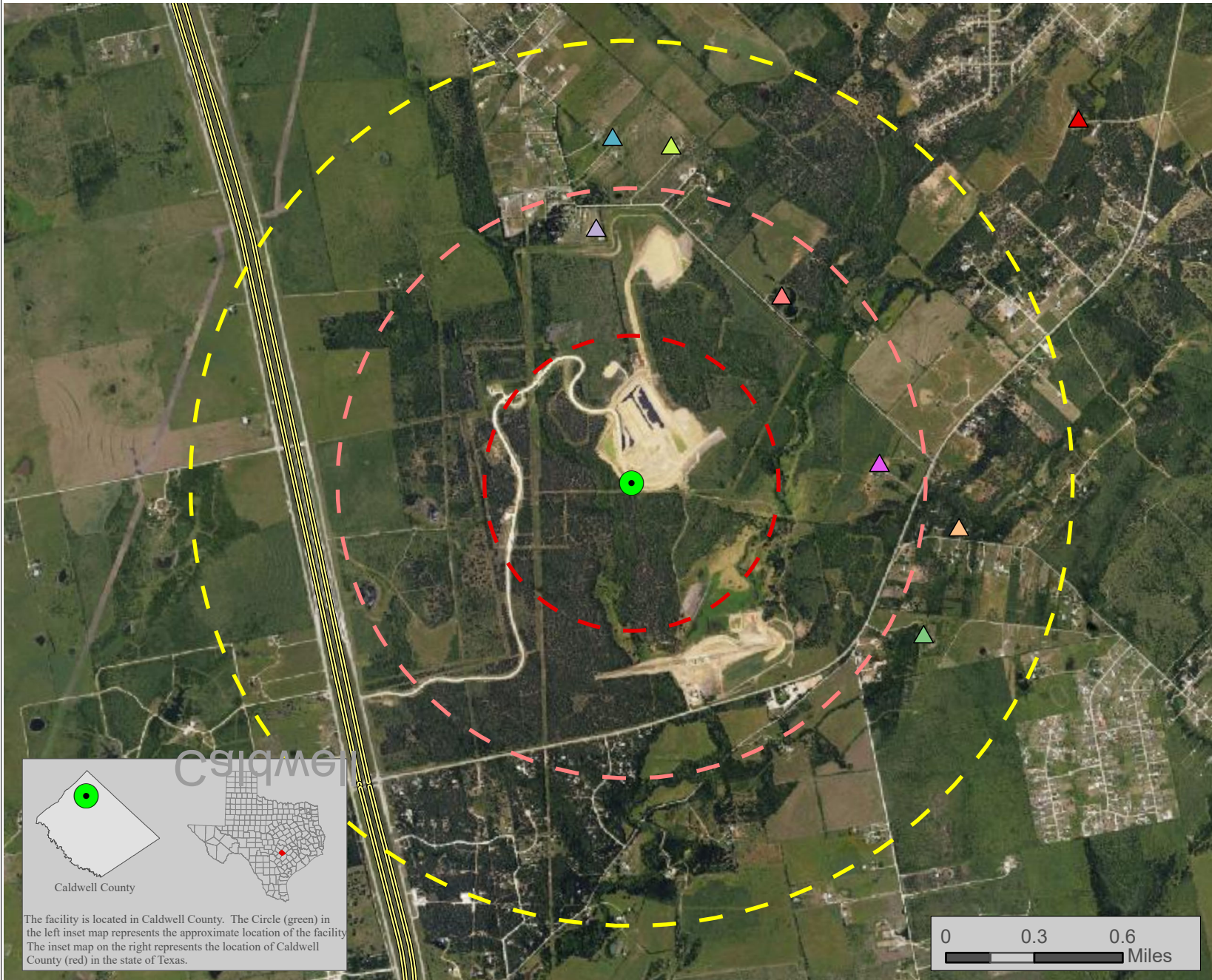
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 10/11/2023
CRF 0095534
Cartographer: MAttoh



-  Jennifer Aviles
-  Jodie and Byron Friedrich
-  Patton King - King Family Trust-1
-  Susan Elizabeth Lane
-  Patton King - King Family Trust-2
-  Claudia Shroyer Brown and Robert Brown
-  Dora Gudino Trejo
-  Frank L. Sughrue
-  Leslie Holder
-  Facility Centroid
-  0.5 Mile from Facility Point
-  1 Mile from Facility Point
-  1.5 Miles from Facility Point

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 Caldwell 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 Caldwell County (red) in the state of Texas.

ATTACHMENT B
ZOOMED-OUT MAP

130 Environmental Park

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



*Protecting Texas by
Reducing and
Preventing Pollution*

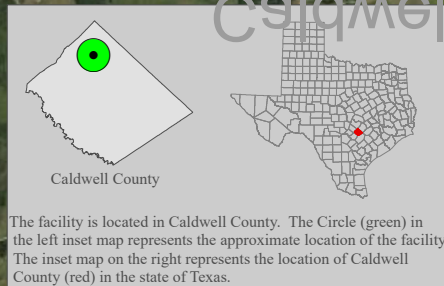
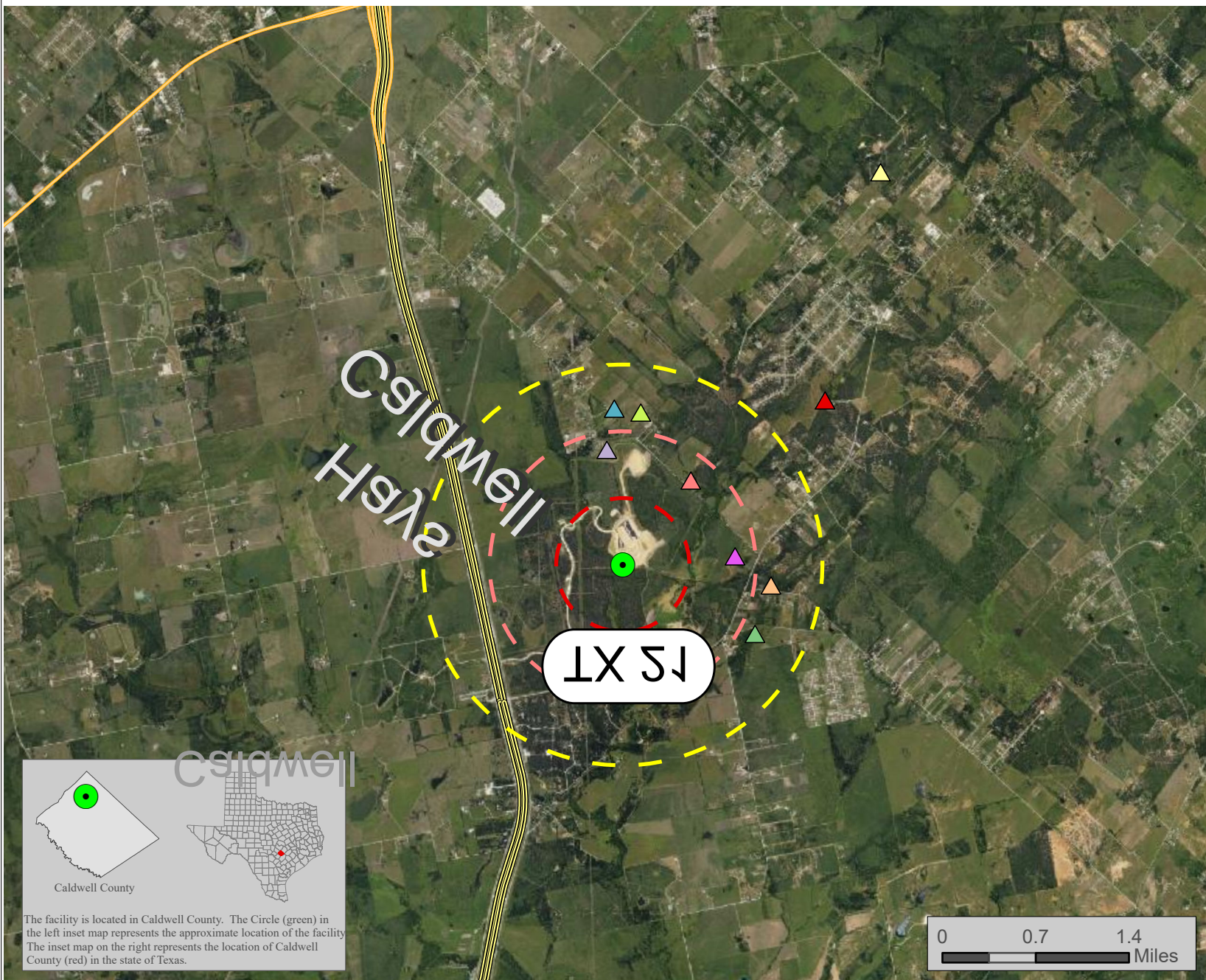
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
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Date: 10/11/2023
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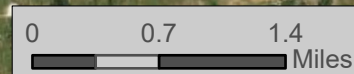
- Jennifer Aviles
- Jodie and Byron Friedrich
- Patton King - King Family Trust-1
- Susan Elizabeth Lane
- Patton King - King Family Trust-2
- Claudia Shroyer Brown and Robert Brown
- Dora Gudino Trejo
- Frank L. Sughrue
- Leslie Holder
- Facility Centroid
- 0.5 Mile from Facility Point
- 1 Mile from Facility Point
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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.

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



ATTACHMENT C
APPENDIX A/LIST OF LANDOWNERS

Appendix A for 130 Environmental Park GIS Map

Name	Lat	Long	State	Distance To Facility Point
Jennifer Aviles	29.982886	-97.659362	TX	1.18 Miles
Jodie and Byron Friedrich	29.966566	-97.644624	TX	0.85 Mile
Patton King - King Family Trust - 1	29.974905	-97.649962	TX	0.82 Mile
Susan Elizabeth Lane	29.982402	-97.656052	TX	1.16 Miles
Patton King - King Family Trust - 2	29.983296	-97.632931	TX	1.96 Miles
Claudia Shroyer Brown and Robert Brown	29.958096	-97.642333	TX	1.12 Miles
Frank L. Sughrue	29.96332	-97.640198	TX	1.12 Miles
Dora Gudino Trejo	29.978429	-97.660402	TX	0.88 Mile
Leslie Holder	30.007949	-97.625372	TX	3.53 Miles