

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 29, 2024

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: WASTE CORPORATION OF TEXAS FOR MUNICIPAL SOLID WASTE
Permit No. 1586B; TCEQ DOCKET NO. 2023-1585-MSW**

Dear Ms. Gharis,

I have enclosed for filing the "Executive Director's Response to Hearing Requests."
Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Michael Martinez".

Michael Martinez, Staff Attorney
Environmental Law Division

TCEQ DOCKET NO. 2023-1585-MSW

**APPLICATION BY
WASTE CORPORATION OF TEXAS
FOR MUNICIPAL SOLID WASTE
PERMIT NO. 1586B**

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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 on the application by Waste Corporation of Texas, L.P. (Waste Corp.) for a major amendment to Municipal Solid Waste (MSW) Permit No. 1586B for the Greenbelt Landfill in Harris County (Greenbelt). The major permit amendment requests authorization for a lateral and vertical expansion of a Type IV MSW landfill. The Office of the Chief Clerk (OCC) received one timely hearing request from Sigifredo Ruiz.

The Executive Director recommends that the Commission find that Sigifredo Ruiz is NOT an affected person and deny his hearing request as required by Tex. Water Code §5.556(c).

Attached for the Commission's consideration is a Geographic Information Systems (GIS) map created by the Executive Director that depicts the locations of the existing facility and the requestor's residence (Attachment A). 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

Waste Corp. submitted an application requesting a major permit amendment to authorize the lateral and vertical expansion of a Type IV MSW landfill in Harris County, Texas. The total permitted facility will include approximately 136 acres, of which approximately 106.9 acres will be used for waste disposal. The final elevation of the waste fill and final cover material will be 182 feet above mean sea level (msl).

Solid waste to be disposed of will consist of brush, construction-demolition waste, rubbish (trash) that is free of putrescible waste and free of household waste, inert material, non-regulated asbestos containing material (non-RACM), Class 3 industrial solid waste (non-hazardous), Class 2 industrial solid waste (non-hazardous), man-made inert material, yard waste, scrap tires that have been split and quartered or shredded, and dredged material after it has been tested to determine that it is not a special waste.

The landfill may not accept wastes that are expressly prohibited by Title 30 Texas Administrative Code (30 TAC) Chapter 330, and any waste that is not authorized for acceptance.

Authorized wastes will be accepted at an initial rate of approximately 3,200 cubic yards per day. It is estimated that the waste acceptance rates will hold relatively steady at 3,200 cubic yards per day during the life of the facility. The estimated life of the landfill is approximately 20 years.

III. PROCEDURAL BACKGROUND

The TCEQ received this application on November 19, 2021, and declared it administratively complete on January 6, 2022. The Notice of Receipt of Application and Intent to Obtain a MSW Permit was published in English and Spanish on January 26, 2022, in *The Houston Chronicle* and *La Voz de Houston* in Harris County, Texas.

The Executive Director completed the technical review of the application on February 23, 2023, and prepared a draft permit. The Notice of Application and Preliminary Decision was published in English and Spanish on March 15, 2023, in *The Houston Chronicle* and *La Voz de Houston*.

The Executive Director filed a Response to Public Comment on September 20, 2023. The period in which to file a hearing request or a request for reconsideration closed on October 27, 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 in 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;
- (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

¹ 30 TAC § 55.209(d).

² 30 TAC § 55.209(e).

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;
- (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.

³ 30 TAC § 55.201(c).

⁴ 30 TAC § 55.201(d).

- (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.
- (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

V. ANALYSIS OF THE REQUEST

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, whether Sigifredo Ruiz 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 Requestor Complied with 30 TAC §§ 55.201(c) and (d) and 55.203

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. Sigifredo Ruiz submitted a timely hearing request and provided the correct contact information. However, he did not raise any issues during the public comment period or in his hearing request. A hearing request must be based on the requestor’s timely comments as required by 30 TAC § 55.201(c). Further, Sigifredo Ruiz 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 Executive Director recommends the Commission find that Sigifredo Ruiz is NOT an affected person.

⁵ 30 TAC § 55.203.

⁶ 30 TAC § 50.115(b).

⁷ 30 TAC § 50.115(c).

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

No issues were raised in Sigifredo Ruiz's hearing request; therefore, the Executive Director does not recommend referring any issues to SOAH.

VI. CONTESTED CASE HEARING DURATION

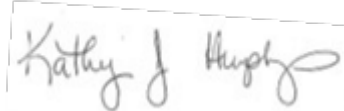
If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a Proposal for Decision to the Commission.

VII. EXECUTIVE DIRECTOR'S RECOMMENDATION

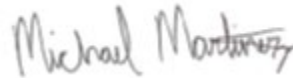
The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission find that Sigifredo Ruiz is not an affected person and deny his hearing request.
2. 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.
3. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.

Respectfully submitted,
Texas Commission on Environmental Quality
Kelly Keel
Executive Director
Erin Chancellor, Director
Office of Legal Services
Charmaine Backens, Deputy Director
Environmental Law Division



Kathy Humphreys, Staff Attorney
Environmental Law Division
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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on January 29, 2024, the “Executive Director’s Response to Hearing Requests for a major amendment to Municipal Solid Waste (MSW) Permit No. 1586B was filed with the Texas Commission on Environmental Quality’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.



Michael Martinez, Staff Attorney
State Bar of Texas No. 24137012

Attachment A

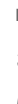
Greenbelt Landfill - MSW Permit No. 1586B

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: 11/8/2023
CRF 0096639
Cartographer: jbartlin

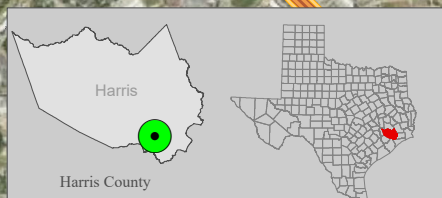
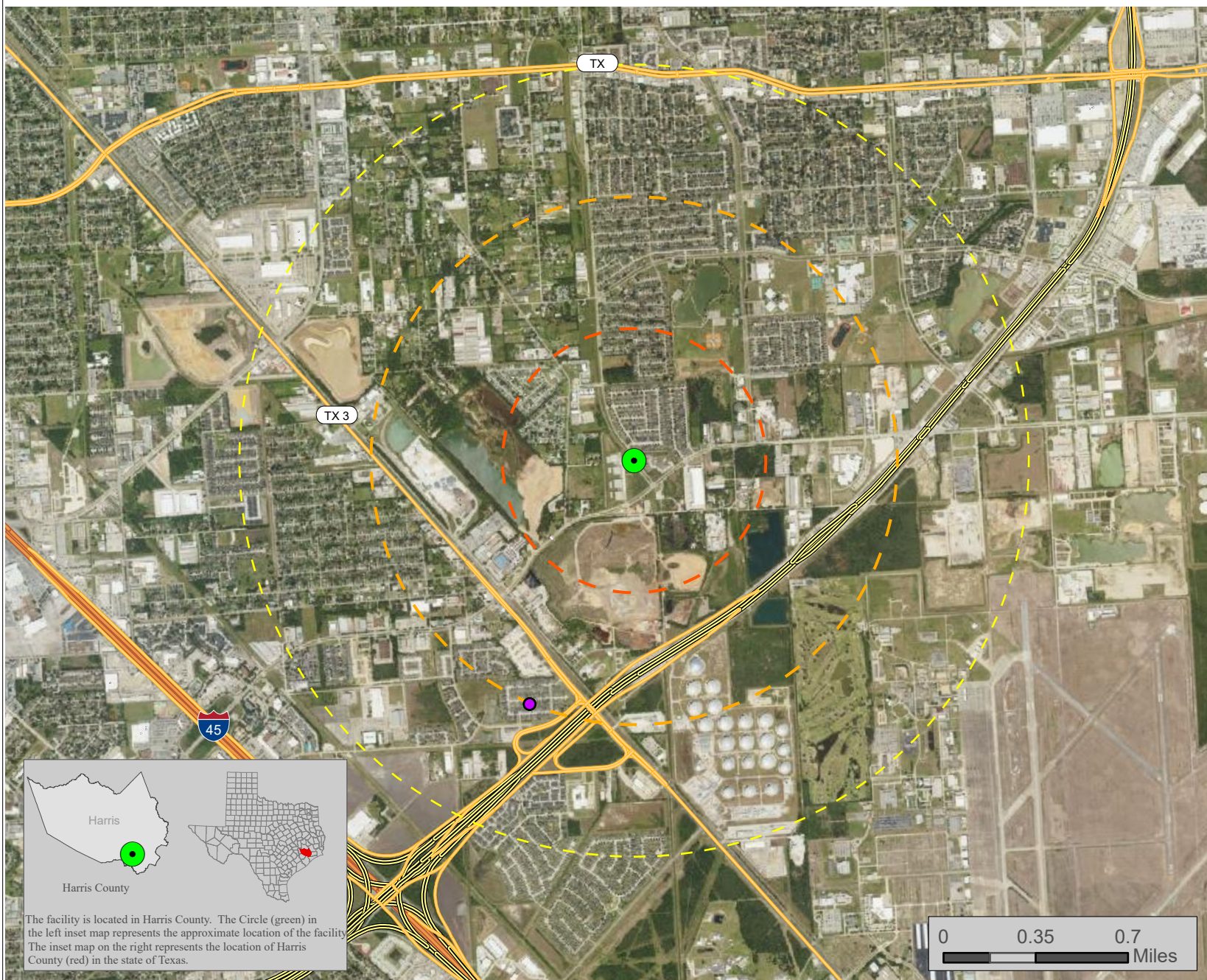


- Requestor
- Facility
- - - 0.5 Mile Radius
- - - 1.0 Mile Radius
- - - 1.5 Mile Radius

The requestor, Sigifredo Ruiz,
is 1 mile away from the
facility.

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

MAILING LIST

Waste Corporation of Texas, L.P.
TCEQ Docket No. 2023-1585-MSW; Permit No. 1586B

FOR THE APPLICANT

Marcos Elizondo, Area Landfill Director
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Marcos Elizondo, Area Landfill Director
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J. Roy Murray, P.E., Vice President Murray
James, III
SCS Engineers
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Houston, Texas 77077

REQUESTER(S)/INTERESTED PERSON(S):

See attached list.

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

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FOR PUBLIC INTEREST COUNSEL

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Office of Chief Clerk, MC-105
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