

TCEQ DOCKET NO. 2023-1586-AGR

**APPLICATION BY
PETER H. SCHOUTEN SR.
AND NOVA D. SCHOUTEN
FOR NEW TPDES PERMIT
NO. WQ0005387000**

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**BEFORE
THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) files this Response to Hearing Requests on the application by Peter Henry Schouten Sr. and Nova Darlene Schouten (Applicants) for new Texas Pollutant Discharge Elimination System (TPDES) permit number (No.) WQ0005387000 (proposed permit). Clifford Norris and James Karels both filed timely, written, requests for a Contested Case Hearing (Request(s)).

A. Attachments for Commission Consideration

Attachment A – ED's GIS Map

II. BACKGROUND

A. Application Request

The Applicants applied to the TCEQ for new TPDES permit No. WQ0005387000, to operate under an individual Concentrated Animal Feeding Operation (CAFO) permit to confine a maximum of 2,000 head of dairy cattle replacement heifers, none of which will be milking, with 43 acres making up the total land application area. The proposed permit authorizes the collection and placement of manure in a Retention Control Structure (RCS) and then land applied at the permitted facility along with associated wastewater from the RCS. No discharge of pollutants into Water in the State is authorized by the proposed permit.

B. Description of the Facility and its Authorization

The Golden Star Heifer Ranch (Permitted facility) is located on the north side of State Highway (SH) 6 on County Road 2495, which is nearly 5.5 miles east of the intersection of SH 6 and US Highway 281 in Bosque County, Texas.

The land application area is divided into two Land Management Units (LMU) with LMU No.1 covering 35 acres and LMU No.2 covering 8 acres. The list of alternative crops to be grown on the LMUs includes Alfalfa, Bahia, Cantaloupes, Coastal, Common grass, Corn, Cotton, Cowpea, Eastern Gama grass, Fescue, Sorghum grain, Guar, Johnsongrass, Klein, Legume, Midland Bermuda, Millet, Oats, Old World Bluestem, Peanut, Rice, Rye Grass, Small Grain, Sorghum Sudan, Soybean, Sunflower, Triticale, Watermelons, Weeping lovegrass, Popcorn, Vetch, Wheat and Winter Pea with various yield goals.

The Permitted facility includes one RCS with 16.85 acre-feet without freeboard of required capacity, and one domestic water well with the required 150-foot buffer.

The Permitted facility is in the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin and is subject to TWC §§ 26.502 and 26.503(d) that relates to a feeding operation confining cattle in a major sole source impairment zone that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls. No discharge is authorized by the proposed permit except as allowed by the provisions in the proposed permit and 40 Code of Federal Regulations Chapter 412, which is adopted by reference in 30 TAC § 305.541, and are related to a 25-year, 24-hour rainfall event.

The Applicant is required to obtain and operate under an individual permit because the Permitted facility is in a watershed of a river segment listed on the current EPA-approved CWA § 303(d) list of impaired waters where a TMDL implementation plan has been adopted by the TCEQ that establishes additional WQ protection measures for CAFOs as required by 33 USC § 1313(d).

The basis for the ED's Technical Review of a TPDES permit application comes from the Texas Legislature's passage of Chapter 26 (Water Quality Control) of the TWC into law, which gives the TCEQ primary authority over WQ in Texas. Chapter 26 combines the TCEQ's WQ authority with federally delegated CWA regulatory authority for the TPDES program, which controls discharges of pollutants into Texas' surface waterbodies, otherwise defined by the TWC as "Water in the State." To implement TCEQ's WQ control regime, Chapter 26 grants the TCEQ the authority to issue permits (and amendments) for the disposal of wastewater adjacent to Water in the State, so long as the parameters established through the ED's Technical Review of the application, comply with the TWC, TCEQ rules, and the TSWQS. However, the TCEQ may refuse to issue a permit when the ED's Technical Review finds that issuing the permit would violate the provisions of any state or federal law or rules or regulations derived from those laws, or when it finds that issuing the permit would interfere with the TCEQ's WQ control regime.

C. Procedural Background

The Permitted facility was previously permitted as a State-only dairy cattle facility with 480 head, all of which were milking cows under a CAFO individual TPDES permit No. WQ0003656000 that was canceled on October 12, 2021.

The TCEQ received the application on May 12, 2022, and declared it administratively complete on July 1, 2022. The Applicant published the NORI in Bosque County, Texas in the *Clifton Record* on July 13, 2022. The ED completed the technical review of the application on March 10, 2023, and prepared the proposed permit that if approved, would establish the conditions under which the Permitted facility must operate. The Applicant published the NAPD in Bosque County, Texas in the *Meridian Tribune* on June 7, 2023, the public comment period ended on July 7, 2023, the ED's Response to Comments (RTC) was filed on September 21, 2023, the ED's Final Decision Letter was mailed on September 28, 2023, and the time for filing a Request For Reconsideration (RFR) was October 27, 2023.

Because this application was received after September 1, 2015, and because it was declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and the procedural requirements and rules implementing Senate Bill 709, 84th Legislature, 2015, which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

D. Access to Rules, Laws, and Records

- All administrative rules: Secretary of State Website: www.sos.state.tx.us
- TCEQ rules: Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select TAC Viewer on the right, then Title 30 Environmental Quality)
- Texas statutes: www.statutes.capitol.texas.gov
- TCEQ website: www.tceq.texas.gov (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Current TCEQ Rules,” then “Download TCEQ Rules”).
- Federal rules: Title 40 of the Code of Federal Regulations (C.F.R.)
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl
- Federal environmental laws: <http://www.epa.gov/lawsregs/>
- **Environmental or citizen complaints may be filed electronically at:**
<https://www.tceq.texas.gov/compliance/complaints/index.html> (select “use our online form”) or by sending an email to the following address:
complaint@TCEQ.Texas.gov.
- Alternative language notice in Spanish is available at:
<https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.
El aviso de idioma alternativo en español está disponible en
<https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

Commission records for the Permitted facility are available for viewing and copying at TCEQ’s main office in Austin at 12100 Park 35 Circle, Building F, 1st Floor in the OCC, for the current application until final action is taken. Some documents located at the OCC may also be found in the TCEQ Commissioners’ Integrated Database at www.tceq.texas.gov/goto/cid.

The permit application, proposed permit, factsheet, and the ED’s preliminary decision have been available for viewing and copying at Bosque County Extension Office, located at 104 South Fuller Street, Meridian, Texas 76665, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision were available for viewing and copying at the same location since publication of the NAPD.

The ED has determined that the proposed permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, and human health. However, if individuals wish to file a complaint about the proposed facility concerning its compliance with the provisions of its permit or with TCEQ rules, the TCEQ’s OCE may be contacted through the TCEQ’s statewide toll-free number at 1-888-777-3186, the DFW Regional Office (Region 4) in Fort Worth, Texas at (817) 588-5800, or the TCEQ Stephenville Office at (254) 552-1900 or 1-800-687-7078 to address potential permit violations. In addition, complaints may be filed electronically by using the methods described above at the seventh bullet under “Access to Rules, Laws, and Records.” If an inspection by the TCEQ finds that the Applicant is not complying with all requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

III. 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 (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 Requests. This application was declared administratively complete on September 14, 2022; therefore, it is subject to the procedural requirements adopted pursuant to both HB 801 and SB 709.

A. LEGAL AUTHORITY TO RESPOND TO HEARING REQUESTS

"The executive director, the public interest counsel, and applicant may submit written responses to [hearing] requests... [which must specifically address:]"

1. whether the requestor is an affected person;
2. whether 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 by filing a written withdrawal letter with the chief clerk prior to the filing of the ED'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.¹

The issues described above in subparagraph A.6. are often referred to as "relevant and material fact issues."

B. HEARING REQUEST REQUIREMENTS

To consider a Request, the Commission must first conclude that the requirements in 30 TAC §§ 55.201 and 55.203, are met as follows.

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 requester's timely comments, and not 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 ED's Response to Comment.²

A hearing request must substantially comply with the following:

- (1) give the name, address, 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 is 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

¹ 30 TAC §§ 55.209(d) and (e) [combined].

² 30 TAC § 55.201(c).

location and distance relative to the 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 facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing.

(4) for applications filed.

(B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.³

C. REQUIREMENT THAT REQUESTOR BE AN AFFECTED PERSON

To grant a contested case hearing, the commission must determine, pursuant to 30 TAC § 55.203, 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 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 requester timely submitted comments on the application which were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁴

³ *Id.* at § 55.201(d).

⁴ 30 TAC § 55.203(a)-(c).

- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
- (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.⁵

D. REFERRAL TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing."⁶ "The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a 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

E. REQUESTS FOR RECONSIDERATION

According to 30 TAC § 55.201(e), any person may file a RFR of the ED's decision no later than 30 days after the Chief Clerk mails the ED's decision and RTC, if it expressly states that the person is requesting reconsideration of the ED's decision, is in writing, and gives reasons why the decision should be reconsidered.

IV. ANALYSIS OF THE HEARING REQUESTS

The ED analyzed whether the Requests followed TCEQ rules, the requestor's Affected Person qualifications, what issues to refer for a possible hearing, and the appropriate length of any hearing. After reviewing the Requests with the following analysis, the ED respectfully recommends granting the Requests of Clifford Norris and James Karels.

A. WHETHER THE REQUEST COMPLIED WITH 30 TAC §§ 55.201(C) AND (D).

1. **Clifford Norris** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of his Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Mr. Norris' Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Mr. Norris believes he will be affected by the application differently than the public. Mr. Norris' Request stated he owns property that is downwind, downstream, and in close proximity to the Permitted facility and raised issues relevant to a decision on the application,

⁵ *Id.* at § 55.203(d).

⁶ 30 TAC § 50.115(b).

⁷ *Id.* at § 55.203(d).

like nuisances such as odors and flies, which are issues addressed by the law under which the application is being considered.

The ED recommends finding that Clifford Norris' Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

2. **James Karels** filed a timely, written Request that provided the requisite contact information, raised relevant and material issues that form the basis of his Request in timely comments not withdrawn before the RTC was filed, and requested a hearing.

Mr. Karels' Request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Mr. Karels believes he will be affected by the application differently than the public. Mr. Karels' Request stated he owns property that is less than 100 yards away from the Permitted facility and raised issues relevant to a decision on the application, like decreased air quality from dust, and nuisances, such as odors and flies, which are issues addressed by the law under which the application is being considered.

The ED recommends finding that James Karels' Request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

B. WHETHER THE REQUESTOR IS AN AFFECTED PERSON UNDER 30 TAC § 55.203

1. **Clifford Norris**' Request effectively identified a personal, justiciable interest affected by the application.

Mr. Norris' Request raised relevant and material fact issues because of proximity to the Permitted facility. GIS map prepared by the ED's staff locates Mr. Norris 165 feet from the permitted facility and 327 feet from the RCS. Not only did Mr. Norris raise issues of odors and excessive flies, Mr. Norris' Request also raised concerns about runoff containing wastewater from the Permitted facility flowing onto his property, all of which are issues addressed in the proposed permit and are interests unique to him because of his proximity to the permitted facility, which increases the likelihood that Mr. Norris may be affected in a way not common to the public.

Because Mr. Norris' location is near the permitted facility, a reasonable relationship exists between the interests claimed and the activity regulated. Because Mr. Norris' Request demonstrated a personal justiciable interest not common to the general public as required by TWC § 5.115, the ED recommends the Commission find that Mr. Norris is an affected person.

The ED recommends that the Commission find that Clifford Norris is an Affected Person under 30 TAC § 55.203.

2. **James Karels**' Request effectively identified a personal, justiciable interest affected by the application.

Mr. Karels' Request raised relevant and material fact issues because of proximity to the Permitted facility. GIS map prepared by the ED's staff locates Mr. Karels 400 feet from the Permitted facility and 2,312 feet from the RCS. Not only did Mr. Karels raise issues of odors and excessive flies, but Mr. Karels' Request also raised concerns about groundwater contamination, and adverse impacts to air quality from dust from the permitted facility, all

of which are issues addressed in the proposed permit and are interests unique to him because of his proximity to the permitted facility and the health of Mr. Karels and his wife.

Because Mr. Karels' location is near the permitted facility, a reasonable relationship exists between the interests claimed and the activity regulated. Because Mr. Karels' Request demonstrated a personal justiciable interest not common to the general public as required by TWC § 5.115, the ED recommends the Commission find that Mr. Karels is an affected person.

The ED recommends that the Commission find that James Karels is an Affected Person under 30 TAC § 55.203.

V. ISSUES RAISED IN THE REQUESTS

The ED's analysis of the issues raised in Mr. Norris' and Mr. Karels' Requests identified the following relevant and material fact issues of:

1. Whether the proposed permit includes, according to the TCEQ rules, adequate provisions to protect against nuisances such as odors and flies.

(RTC Response Nos. 2 & 3) This is an issue of fact. If it can be shown that the proposed permit does not have adequate protections to protect against nuisances such as odors and flies consistent with state law and the TCEQ's rules, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

2. Whether the proposed permit includes, according to the TCEQ rules, adequate provisions to protect against groundwater contamination.

(RTC Response Nos. 1 & 4) This is an issue of fact. If it can be shown that the proposed permit does not have adequate protections to protect against groundwater contamination consistent with state law and the TCEQ's rules, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

3. Whether the proposed permit includes, according to the TCEQ rules, adequate provisions to protect against wastewater leaving the site.

(RTC Response Nos. 1 & 4) This is an issue of fact. If it can be shown that the proposed permit does not have adequate protections to protect against wastewater leaving the site consistent with state law and the TCEQ's rules, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

4. Whether the proposed permit includes, according to the TCEQ rules, adequate provisions to be protective of human health and the environment as it relates specifically to dust control.

(RTC Response No. 2) This is an issue of fact. If it can be shown that the proposed permit does not have adequate protections to be protective of human health and the environment as it relates specifically to dust control, that are consistent with

state law and the TCEQ's rules, that information would be relevant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

VI. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the ED 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 RECOMMENDATIONS

The ED recommends the following actions by the Commission:

1. Find that Clifford Norris and James Karels are affected persons under 30 TAC § 55.203.
2. Grant the Requests of Clifford Norris and James Karels.
3. Should the Commission decide to refer this case to SOAH.
 - a. refer the case to Alternative Dispute Resolution for a reasonable time.
 - b. refer the identified issues in section V. to SOAH for a Hearing.

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



Michael T. Parr II, Staff Attorney
Environmental Law Division
State Bar No. 24062936
P.O. Box 13087, MC 173
Austin, Texas 78711 3087
Telephone No. 512-239 0611
Facsimile No. 512-239-0626
REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VIII. CERTIFICATE OF SERVICE

I certify that on March 18, 2024, the Executive Director's Response to Hearing Requests for Permit No. WQ0005387000 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.

A handwritten signature in black ink, appearing to read "Michael T. Parr II". The signature is fluid and cursive, with the last name "Parr" being particularly prominent.

Michael T. Parr II, Staff Attorney
State Bar No. 24062936

MAILING LIST

Nova Darlene Schouten and Peter Henry Schouten, Sr.
TCEQ Docket No. 2023-1586-AGR TPDES Permit No. WQ0005387000

FOR THE APPLICANT:

Peter Henry Schouten Sr., Owner
Peter Henry Schouten, Sr. and Nova
Darlene Schouten
3728 County Road 229
Hico, Texas 76457

Jourdan Mullin, Consultant
Enviro-Ag Engineering, Inc.
9855 Farm-to-Market Road 847
Dublin, Texas 76446

Corey Mullin, Consultant
Enviro-Ag Engineering, Inc.
9855 Farm-to-Market Road 847
Dublin, Texas 76446

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Michael Parr, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711

Robert (Bobby) Chavez, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-150
P.O. Box 13087
Austin, Texas 78711

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711

FOR ALTERNATIVE DISPUTE RESOLUTION

via electronic mail :

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711

FOR THE CHIEF CLERK

via eFilings:

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

<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S):

James Karels
16303 State Highway 6
Hico, Texas 76457

Clifford M. Norris
16443 State Highway 6
Hico, Texas 76457

INTERESTED PERSON(S):

Harold P. Gervais
DDR Ranch
P.O. Box 540
Hico, Texas 76457

Attachment A

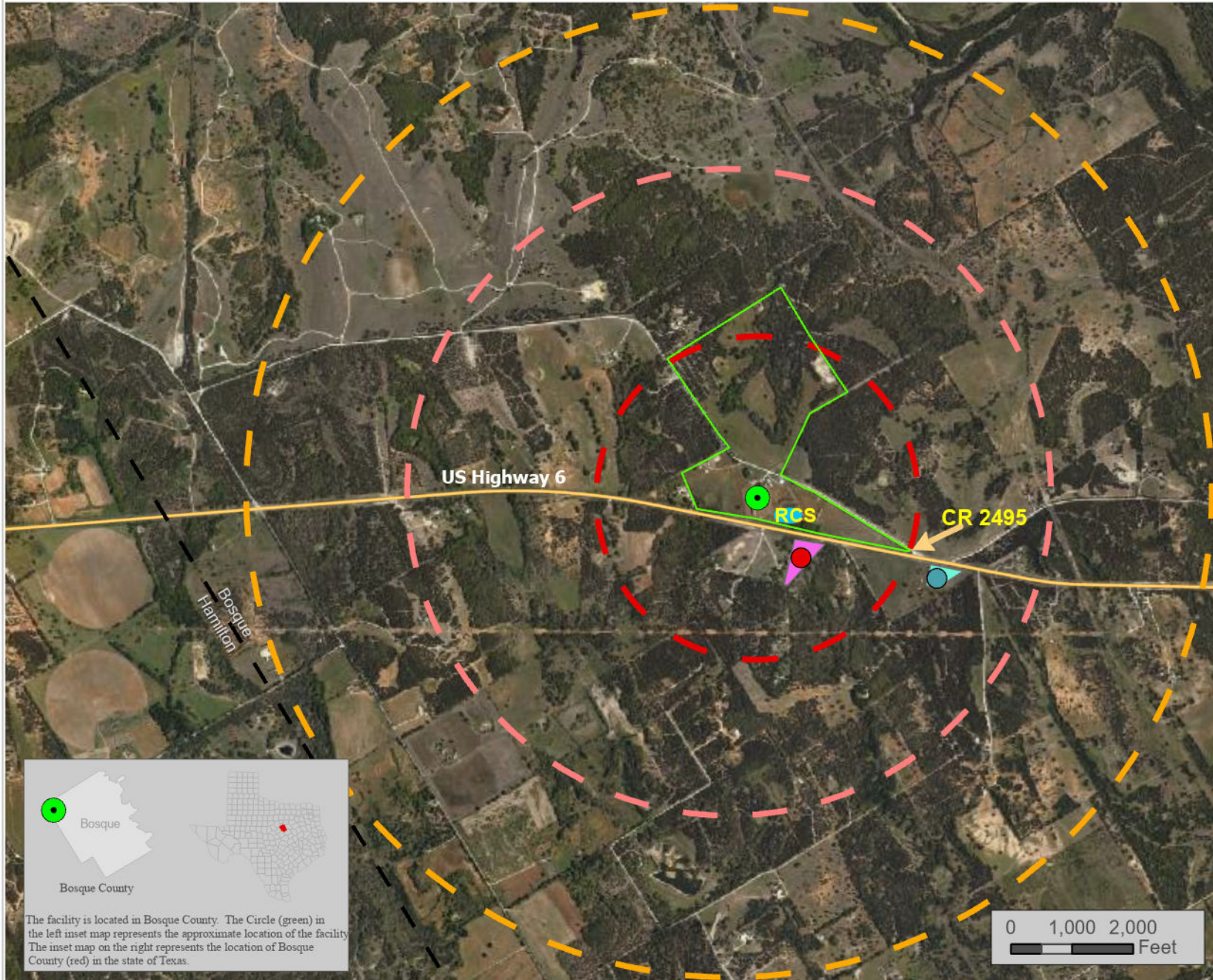
GOLDEN STAR DAIRY GIS MAP

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



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 3/14/2024
CRF 0097949
Cartographer: MAttoh



- Clifford Norris, No. 14 - approx 165 ft from facility boundary
- James Karels, No. 18 approx - 400 ft from facility boundary
- Facility Point
- Facility Boundary
- James Karels facility boundary
- Clifford Norris facility boundary
- Retention Control Structure
- └┐ 0.5 Mile From Facility Point
- └┐ 1.0 Mile From Facility Point
- └┐ 1.5 Mile From Facility Point
- US Highway 6
- ➔ County Road 2495

Approx distance from big pond on applicant's property to:

**Clifford Norris - 327 ft
James Karels - 2312 ft**

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