

TCEQ DOCKET NO. 2024-0576-IHW

APPLICATION BY  
US ECOLOGY TEXAS, INC  
FOR IHW PERMIT NO. 50052

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

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I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by US Ecology Texas, Inc. (US Ecology or Applicant) for a Class 3 modification of Permit No. 50052 (Application). The Office of the Chief Clerk received one timely hearing request from Elida Castillo.

The Executive Director recommends that the Commission find that Elida Castillo is not an affected person and deny her hearing request as required by Tex. Water Code Section (§) 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 US Ecology facility and Elida Castillo's residence. (Attachment A). The Draft Permit, Technical Summary and Executive Director's Preliminary Decision, and Executive Director's Response to Public Comment are available in TCEQ Office of the Chief Clerk and are being filed for the Commission's consideration as Agenda backup materials on behalf of the Executive Director.

II. BACKGROUND

*A. Facility Description*

US Ecology owns and operates a commercial hazardous and non-hazardous industrial solid waste management facility, which is authorized to accept waste from off-site sources on a commercial basis for storage, processing, and disposal. The facility is located on a 473-acre tract of land at 3277 County Road 69, Robstown, Texas 78380. The facility is located within the drainage area of Segment Petronila Creek Tidal of the Nueces-Rio Grande Coastal Basin (North Latitude 27°43'43", West Longitude 97°39'28").

*B. Application Description*

USET applied to the TCEQ for a Class 3 modification to authorize an increase in permitted container storage capacity for an outdoor container storage area (Permit Unit No. 9); adding additional waste codes for management in permitted tank systems (Tanks WT-1, WT-2, WT-3 and WT-4), adding twenty-two (22) new tanks for storage and

processing, adding a new shredder unit as a miscellaneous unit, and reformatting the application and table information to comply with the new TCEQ formatting requirements. This Application is classified as a Class 3 permit modification under 30 TAC §§305.69(k), 305.69(k)(F)(1)(a), 305.69(k)(G)(1)(a), and 305.69(k)(G)(5)(a) because the requested changes will authorize addition of storage capacity for an outdoor container storage area and add new tanks, a new miscellaneous unit, and waste codes that require different management practices.

### ***C. Procedural Background***

The Executive Director received the Application from USET on November 28, 2022. The Executive Director declared the Application administratively complete on January 9, 2023. The Notice of Receipt of Application and Intent (NORI) to Obtain Permit was published on January 18, 2023, in the *Corpus Christi Caller Times*. USET held an applicant-led public meeting on February 28, 2023. The Executive Director completed the technical review of the Application and issued the Final Draft Permit on August 8, 2023. The Notice of Application and Preliminary Decision (NAPD) was published on August 22, 2023, in the *Corpus Christi Caller Times*. The public comment period for the Application closed on October 6, 2023. The technically complete Application and the Executive Director’s Preliminary Decision are available for review and copying at the Nueces County Keach Family Library located at 1000 Terry Shamsie Blvd., Robstown, Nueces County, Texas 78380.

## **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. The Commission implemented HB 801 by adopting procedural rules in 30 Tex. Admin. Code Chapters 39, 50, and 55. Senate Bill 709 revised the requirements for submitting public comment and the Commission’s consideration of hearing requests. This application was declared administratively complete on January 9, 2023; therefore, it is subject to the procedural requirements adopted pursuant to HB 801 and SB 709.

### ***A. Legal Authority to Respond to Hearing Requests***

“The executive director, the public interest counsel, and the applicant may submit written Responses to [hearing] requests”<sup>1</sup>

“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;

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<sup>1</sup> 30 TAC §55.209(d).

- (3) Whether the dispute involves questions of fact or of 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."<sup>2</sup>

### ***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"<sup>3</sup>

"A hearing request must substantially comply with the following:

- (1) Give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) Identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) Request a contested case hearing;"<sup>4</sup>
- (4) (B) "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

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<sup>2</sup> 30 Tex. Admin. Code §55.209(e).

<sup>3</sup> 30 Tex. Admin. Code §55.201(c).

<sup>4</sup> 30 Tex. Admin. Code §55.201(d).

hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to 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.”<sup>5</sup>

### ***C. Requirement that Requestor be an Affected Person***

In order to grant a contested case hearing, the Commission must determine that a requestor is an affected person.

- (a) “For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
  - (1) Whether the interest claimed is one protected by the law under which the application will be considered;
  - (2) Distance restrictions or other limitations imposed by law on the affected interest;
  - (3) Whether a reasonable relationship exists between the interest claimed and the activity regulated;
  - (4) Likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
  - (5) Likely impact of the regulated activity on use of the impacted natural resource by the person;
  - (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.<sup>6</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> 30 Tex. Admin. Code §55.203.

(d) [In making this determination,] the commission may also consider the following:

- (1) The merits of the underlying application and supporting documentation in the commission’s administrative record, including whether the application meets the requirements for permit issuance;
- (2) The analysis and opinions of the executive director; and
- (3) Any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.”<sup>7</sup>

#### ***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 hearings (SOAH) for a hearing.”<sup>8</sup> “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.”<sup>9</sup>

### **IV. ANALYSIS OF THE REQUEST**

The Executive Director has analyzed the hearing request to determine whether the request complies with Commission rules, whether Elida Castillo qualifies as affected person, which issues, if any, may be referred to SOAH, and the appropriate duration of a hearing.

Elida Castillo’s request for hearing was submitted in writing to the Chief Clerk, via TCEQ portal upload during the public comment period and requested a contested case hearing.

However, Elida Castillo’s request for hearing did not identify a justiciable interest that is not shared in common with members of the general public because the requestor asserted that the scheduled time of the applicant-held public meeting for this application was inconvenient for the public, that the public has not been provided adequate information on the application, requested that the public be told what the amendment means for the community and provide additional time for the public to study the application, that Robstown is an environmental justice community, and recommended denial of the application.

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<sup>7</sup> 30 Tex. Admin. Code §55.203.

<sup>8</sup> 30 Tex. Admin. Code §50.115(b).

<sup>9</sup> 30 Tex. Admin. Code §50.115(c).

Elida Castillo's request for hearing claims an interest that is protected by the law under which the application is considered. Specifically, the Commission is granted jurisdiction over hazardous waste and industrial solid waste, granted authority to issue permits for solid waste facilities, instructed to adopt rules establishing the minimum standards for management of hazardous waste and required to maintain state authorization over the Texas hazardous waste program, in accordance with Tex. Health & Safety Code §§361.017, 361.024, 361.061, and required to provide for public notice of solid waste applications in accordance with Tex. Water Code Chapter 5, Subchapter M.

A reasonable relationship exists between the requestor's interest and the regulated activity.

There are no applicable distance limits or restrictions, and the requestor's residence is located approximately twenty-three miles from the facility.

The hearing request did not allege that the regulated activity would impact the requestor's health or safety.

The request raised an issue of fact by alleging that the scheduled time of the applicant-held public meeting for this application was inconvenient for the public and that the public has not been provided adequate information on the application.

The requests do not claim an impact to a natural resource.

The request is based on a timely public comment.

***A. Whether the Hearing Request Complied with 30 Tex. Admin. Code §55.201 (c) and (d) and §55.203.***

***1. Elida Castillo***

The Executive Director reviewed the factors in 30 Tex. Admin. Code §55.201(c) and (d) and §55.203 for determining whether a requestor is an affected person and recommends the Commission find that Elida Castillo is not an affected person because her request did not identify a justiciable interest that is not shared in common with members of the general public. Elida Castillo's request was in writing, provided the required contact information, was timely received on February 28, 2023, during the public comment period, and raised an issue of fact that is relevant and material to the Commission's consideration of the Application.

The Executive Director recommends that the Commission find that Elida Castillo is not an affected person.

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

If the Commission finds that Elida Castillo is an affected person and grants the hearing request, the Executive Director recommends that the Commission refer the following issues to SOAH for a Contested Case Hearing.

Issue No. 1. Whether the applicant-held public meeting complied with the requirements of 30 TAC §39.509(b) and (c) and §305.69(d)(4).

Issue No. 2 Whether notice of the Application complied with the requirements of 30 TAC §§39.411, 39.418, 39.419, and 39.509.

***C. Issues raised by the requestor during the comment period. The public comment and hearing request received from Elida Castillo during the public comment period raised the following issues.***

Issue No. 1. Whether the applicant-held public meeting complied with the requirements of 30 TAC §305.69(d)(4).

An applicant for a Class 3 modification is required to provide public notice of and hold an applicant-held public meeting in accordance with 305.69(d)(4). The requirements for the applicant-held public meeting do not dictate which days of the week or at what times an applicant-held public meeting may be held.

This comment raises a disputed issue of fact. (Executive Director's Response to Public (RTC) Comment No. 1).

Issue No. 2. Whether notice of the Application complied with the requirements of 30 TAC §§39.411, 39.418, 39.419, and 39.509.

An applicant for a Class 3 modification is required to provide public notice of the application in accordance with 30 TAC §39.509(b) and (c). The notice and public participation requirements for a Class 3 Modification application allow the public access to the application from the date NORI is published through the technical review period and for an additional 30-day public comment period. (30 TAC §§39.418, 39.419, and 39.509). An applicant is required to place a copy of an application for a Class 3 modification in a public place for viewing and copying in accordance with 30 TAC §§ 39.411(b)(8), 39.418(b)(3), 39.509 and 305.69(d)(3). Additionally, an applicant for a Class 3 modification must provide evidence of publication of the initial notice (NORI), and of the final notice (NAPD) after the executive director has completed the technical review. Following publication of the NAPD, the owner or operator must place the Technical Summary and Executive Director's Preliminary Decision, and the Final Draft Permit in a public place for viewing and copying in accordance with 30 TAC §§39.411(c)(5), 39.419, and 39.509.

The Applicant submitted information demonstrating that it held an applicant-held public meeting on February 28, 2023. Additionally, the Applicant submitted

evidence that it published the NORI, published the NAPD, and placed a copy of the Application for the public to review and copy in the Nueces County Keach Family Library, 1000 Terry Shamsie Boulevard, Robstown, Texas.

This comment raises a disputed issue of fact. (RTC Comment No. 1).

Issue No. 3. That Robstown is an environmental justice community.

This comment does not raise a disputed issue of fact. (RTC Comment No. 2).

## **V. CONTESTED CASE HEARING DURATION**

If the Commission finds that Elida Castillo is an affected person and grants the hearing request on this application, the Executive Director recommends a hearing duration of six months from the date of the preliminary hearing to the presentation of a proposal for decision to the Commission.

## **VI. EXECUTIVE DIRECTOR'S RECOMMENDATION**

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission deny the Hearing Request of Elida Castillo.
2. If the Commission finds Elida Castillo is an affected person and grants the hearing request, establish a hearing duration of six months from the date of the preliminary hearing to the presentation of the proposal for decision to the Commission.
2. If the Commission refers the Application to SOAH, refer Issues No. 1 and 2.



Respectfully submitted,  
Texas Commission on Environmental Quality  
Kelly Keel  
Executive Director  
Erin E. 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

**ATTACHMENT A - GEOGRAPHIC INFORMATION SYSTEMS (GIS) MAP DEPICTING  
LOCATION OF THE PROPOSED FACILITY AND THE REQUESTOR'S RESIDENCE**

# Application by US Ecology Texas, Inc, for a Class 3 Modification of IHW Permit 50052

## Hearing Request Agenda TCEQ Docket No. 2024-0576-IHW

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



Protecting Texas by  
Reducing and  
Preventing Pollution

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 4/4/2024  
CRF 0099531  
Cartographer: MAttoh



Nueces County

The facility is located in Nueces County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Nueces County (red) in the state of Texas.

- Facility Point
- Hearing Requestor's Residence – Elida Castillo
- IHW Facilities
- Texas Cities
- Canal/Ditch
- Pipeline
- Stream/River
- Coastline
- Lake/Pond
- Reservoir
- Swamp/Marsh

**Distance from Requestor(Elida Castillo)  
to Facility Point: 23.2 Miles**

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.

## CERTIFICATE OF SERVICE

I certify that, on April 15, 2024, the “Executive Director’s Response to Hearing Request” received on the application by US Ecology Texas, Inc. for a Class 3 modification of IHW Permit Nos. 50052 was filed with the TCEQ’s Office of the Chief Clerk and that a complete copy was served to all persons listed on the attached mailing list via the methods indicated.



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## MAILING LIST

US Ecology Texas, Inc.  
TCEQ Docket No. 2024-0576-IHW; IHW Permit No. 50052

### FOR THE APPLICANT

Via U.S. Mail:

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Robstown, Texas 78380

Celina Camarena  
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### ATTORNEYS FOR THE APPLICANT

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### FOR THE CHIEF CLERK

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