

TCEQ DOCKET NO. 2024-0677-MWD

APPLICATION BY	§	BEFORE THE
QUADVEST, L.P.	§	
FOR TPDES PERMIT NO.	§	TEXAS COMMISSION ON
WQ0016247001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests on an application by Quadvest, L.P. (Applicant) for a new TPDES Permit No. WQ0016247001. The Office of the Chief Clerk received a contested case hearing request from James Burton, Larry Kresta, Regina Kresta, Noe Martinez, Jr, and Lisa Sellars.

The Executive Director recommends that the Commission grant the hearing requests for Ms. Sellars and deny all other hearing requests.

Attached for Commission consideration are satellite maps of the area showing the locations of the facility, discharge route, and requestors.

II. FACILITY DESCRIPTION

Quadvest, L.P, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016247001. The Applicant proposes to operate the Trails at Cochran Ranch Wastewater Treatment Facility to serve the Trails at Cochran Ranch Subdivision. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.0625 million gallons per day (MGD) in the Interim I phase, 0.125 MGD in the Interim II phase, and 0.250 MGD in the Final phase.

The facility will be located approximately 2.8 miles south of the intersection of Betka Road and Cochran Road, in Waller County, Texas 77484. The Trails at Cochran Ranch Wastewater Treatment Facility will be a single-stage nitrification activated sludge process plant operated in the conventional mode. Treatment units in the Interim I phase will include bar screens, an aeration basin, a final clarifier, a sludge digester, and a chlorine contact chamber. Treatment units in the Interim II phase will include bar screens, two aeration basins, a final clarifier, two sludge digesters, and a chlorine contact chamber. Treatment units in the Final phase will include bar screens, four aeration basins, a final clarifier, four sludge digesters, and a chlorine contact chamber. The effluent limitations in the Interim I and II phases in the draft permit, based on a 30 day average, are 10 mg/l five-day biochemical oxygen demand (BOD₅), 15 mg/l total suspended solids (TSS), 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at

least 20 minutes based on peak flow. The effluent limitations in the Final phase in the draft permit, based on a 30 day average, are 10 mg/l CBOD5, 15 mg/l TSS, 3.0 mg/l ammonia-nitrogen (NH3-N), 126 CFU or MPN of E. coli per 100 ml, and 4.0 mg/l minimum DO. The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent will be discharged via pipe to a detention pond and channel, thence to an unnamed tributary, thence to an unnamed impoundment, thence to Dodd Lake, thence to an unnamed tributary, thence to Harris Creek, thence to Irons Creek, thence to Brazos River Below Navasota River in Segment No. 1202 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for the detention pond and channel and for the unnamed tributary upstream of the unnamed impoundment, and high aquatic life use for the unnamed impoundment and Dodd Lake and for the unnamed tributary downstream of Dodd Lake. The designated uses for Segment No. 1202 are primary contact recreation, public water supply, and high aquatic life use.

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

III. PROCEDURAL BACKGROUND

TCEQ received the application for the proposed new permit on November 14, 2022, and declared it administratively complete on December 14, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in *Houston Chronicle* on December 28, 2022, and in Spanish in *La Voz*, on January 4, 2023. The application was determined technically complete on March 6, 2023. The Notice of Application and Preliminary Decision (NAPD) was published in English in *Houston Chronicle* on April 19, 2023 and in Spanish in *La Voz* on April 19, 2023. The public meeting notice was published in English in *Houston Chronicle* on June 21, 2023, and in Spanish in *La Voz*, on June 21, 2023.

The comment period for this application closed on July 18, 2023. The hearing request period closed April 8, 2024. This application was filed after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55.

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

HB 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. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.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 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 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.²

B. Hearing Request Requirements

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the time, 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

¹ 30 Texas Administrative Code (TAC) Section (§) 55.209(d).

² 30 TAC § 55.209(e).

³ 30 TAC § 55.201(c).

- 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 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 comments that the requestor disputes and 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/"Affected Person" Status

To grant a contested case hearing, the Commission must determine that a requestor is an "affected" person by conducting the following analysis:

- (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) Except as provided by § 55.103 of this title (relating to Definitions), 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) for a hearing request on an application filed on or after September 1, 2015, 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.

⁴ 30 TAC § 55.201(d).

- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, 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 ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.

D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.”⁵ The Commission may not refer an issue to the State Office of Administrative Hearings (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 whose hearing request is granted; and
- (3) is relevant and material to the decision on the application.⁶

V. ANALYSIS OF THE REQUESTS

The ED has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d) and 55.203

1. Parties the Executive Director recommends the Commission find Affected Persons

Lisa Sellars

- Ms. Sellars submitted timely comments and a hearing request which contained her name, address, and phone number pursuant to 30 TAC § 55.201(d). According to the address she provided, the property she identified in her request is located 1.43 miles from the proposed wastewater

⁵ 30 TAC § 50.115(b).

⁶ 30 TAC § 50.115(c).

treatment facility. Ms. Sellars does not appear on the adjacent landowners list.

In her hearing request she requested that all of her comments on the application be incorporated by reference. In her comments, she raised specific issues regarding the draft permit and its impact on her property and the area surrounding the facility. These concerns in the comments included odor, adequate notice, water quality, flooding, as well as impacts to wildlife and livestock. Pursuant to 30 TAC § 55.201(d)(2), individuals requesting a hearing must identify a justiciable interest and explain how they are uniquely affected by the application. While Ms. Sellars raised numerous issues in her comments, only in her hearing request did she articulate how she would be affected rather than identify interests of the general public. In her request she specifically focused on the suitability of the discharge route to contain the effluent which she believes will affect her ability to raise cattle on her property which is in the vicinity of the discharge route.

While TCEQ cannot specifically address erosion as part of the wastewater permitting process, TCEQ's rules set forth under 30 TAC Chapter 307 require that discharges may not impair surface waters be toxic to livestock. TCEQ's rules also require odor abatement practices under 30 TAC Chapter 309. Due to the proximity of Ms. Sellar's property to the proposed discharge route and her interest in raising cattle, she has demonstrated that her interests could be affected in ways unique from the general public.

Having complied with the substantive requirements of 30 TAC § 55.201 & .203, the ED recommends that the Commission find that Ms. Sellers is an affected person.

2. Parties the Executive Director recommends the Commission not find Affected Persons

James Burton

- Mr. Burton submitted timely comments and a hearing request which contained his name, address, and phone number pursuant to 30 TAC § 55.201(d). In his hearing request the only address he provided was an address for a property in Houston located 30.17 miles from the proposed wastewater treatment facility. Upon review of the adjacent landowners list, Mr. Burton appears to own two properties adjoining the project site.

In Mr. Burton's request he stated that he would, "like to file a Contested Hearing on the permit WQ0016247001 for a Waste Water plant across my property and the waste water running through my property." No additional information was provided in Mr. Burton's request.

Under 30 TAC § 55.201(d)(2), hearing requests must identify a person's personal justiciable interest affected by the application, the location of the requestor's interests and an explanation as to why that person believes they will be affected by the application in ways not common to members of the general public. Mr. Burton's request did not provide any information related to these requirements.

Therefore, the ED recommends that the Commission deny Mr. Burton's hearing request as he did not substantially comply with the requirements of 30 TAC § 55.201(d)(2).

Larry and Regina Kresta

- The Krestas submitted timely comments and a hearing request which contained their names, addresses, and phone number pursuant to 30 TAC § 55.201(d). According to the address they provided, the property they identified is located 3.4 miles away from the proposed wastewater treatment facility.

In their request the Krestas raised several issues about the application that they believe will harm both their health and their ability to raise cattle. These concerns include the permit's effluent limits, pharmaceuticals in the effluent, water quality of the effluent, and an emphasis on flooding as a result of discharge.

Under 30 TAC § 55.203(c), the Commission shall consider several factors to determine whether someone is an affected person. These include likely impacts on personal interests and whether a reasonable relationship exists between the interest claimed and the activity regulated. The Krestas' property is located 3.4 miles away from the proposed facility. Given this distance, it is unlikely that reasonable relationship exists nor is it likely that the effluent would impact the Krestas. Furthermore, the Krestas emphasize flooding as a significant concern to their property and contend that the flood waters would carry effluent onto their property thus affecting their health and livestock.

While TCEQ's rules in 30 TAC Chapter 307 regulate the water quality of effluent to ensure public health and the health of livestock, TCEQ's jurisdiction over flooding is confined regulating aspects of TPDES facility construction to ensure applicants mitigate the effects of flooding on the wastewater treatment facility itself. The Commission lacks the jurisdiction to otherwise consider flooding impacts as part of the permitting process.

The ED recommends that the Commission find that the Krestas are not affected persons as their hearing request has not sufficiently demonstrated they have a personal justiciable interest affected by the application under 30 TAC § 55.203(c).

Noe Martinez, Jr.

- Mr. Martinez submitted timely comments and a hearing request which contained his name, address, and phone number pursuant to 30 TAC § 55.201(d). According to the address he provided, the property Mr. Martinez identified is located 0.24 miles from the proposed wastewater treatment facility.

In his request, Mr. Martinez requested information regarding various regulatory compliance questions about the application. These included stormwater permits and flood mitigation. Mr. Martinez concluded his request stating that a hearing should be held to answer questions and concerns of local residents, but he did not otherwise state how he personally would be affected.

While TCEQ has jurisdiction to regulate aspects of stormwater and flooding relating to the construction of TPDES facilities, Mr. Martinez's hearing request did not contain any explanation as to how the proposed facility's compliance with these issues would affect him. Under 30 TAC § 55.201(d)(2), Mr. Martinez is required to identify a way his interests are uniquely affected by the application.

Therefore, as Mr. Martinez did not identify a personal justiciable interest affected by the application, the ED recommends that the Commission deny the hearing request pursuant to 30 TAC § 55.201(d)(2).

B. Whether the Issues the Requestor Raised are Referable to the State Office of Administrative Hearings (SOAH).

1. Whether the draft permit is adequately protective of wildlife and livestock. (RTC Response 2)

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. If it can be shown the draft permit is not protective of livestock and other terrestrial wildlife, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

2. Whether the draft permit complies with TCEQ's rules regarding nuisance odors. (RTC Response No. 8)

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. If it can be shown the draft permit violates TCEQ's odor rules, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

VI. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find Lisa Sellars an affected person and deny all other hearing requests.
2. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.
3. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
4. If referred to SOAH, refer the following issues as raised by the affected person as identified by the Executive Director:
 - **Issue A) Whether the draft permit is adequately protective of wildlife and livestock.**
 - **Issue B) Whether the draft permit complies with TCEQ's rules regarding nuisance odors.**

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel,
Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Harrison Cole Malley
Staff Attorney
Environmental Law Division
State Bar of Texas No. 24116710
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-1439
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on August 5, 2024, the “Executive Director’s Response to Hearing Request” for TPDES Permit WQ0016247001 for Quadvest, L.P. was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Harrison Cole Malley

MAILING LIST
Quadvest, L.P.
TCEQ Docket No./TCEQ Expediente N.º 2024-0677-MWD;
TPDES Permit No./TPDES Permiso N.º WQ0016247001

FOR THE APPLICANT/PARA EL SOLICITANTE

Mark Urback, P.E.
Quadvest, L.P.
26926 Farm-to-Market Road 2978
Magnolia, Texas 77354

FOR THE EXECUTIVE DIRECTOR/PARA EL DIRECTOR EJECUTIVO
via electronic mail/vía correo electrónico:

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

Deba Dutta, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC-148
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/PARA ABOGADOS DE INTERÉS PÚBLICO
via electronic mail/vía correo electrónico:

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/PARA LA RESOLUCIÓN ALTERNATIVA DE DISPUTAS
via electronic mail/vía correo electrónico:

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

FOR THE CHIEF CLERK/PARA EL SECRETARIO OFICIAL
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) SOLICITANTE(S)

See attached list/Ver lista adjunta.

REQUESTER(S) SOLICITANTE(S)

Burton, James
9934 Deanwood St
Houston TX 77040-3934

Kresta, Larry Joe
13795 FM 359 Rd
Hempstead TX 77445-3435

Kresta, Regina
Irons Creek Ranch
13795 FM 359 Rd
Hempstead TX 77445-3435

Martinez Jr, Noe
14508 Bridle Ln
Waller TX 77484-9142

Sellars, Lisa
36211 Repka Rd
Waller TX 77484-5187

Attachment A

Quadvest, L.P.

TPDES PERMIT NO. WQ0016247001

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: 8/5/2024
CRF 0108596
Cartographer: MAttoh



- Facility Point
- 3 - James Burton
- 1 - Lisa Sellars
- 2 - Noe Martinez Jr.
- 4 - Regina Kresta & Larry Joe Kresta
- └─┘ 0.5 Miles from Facility Point
- └─┘ 1.0 Miles from Facility Point
- └─┘ 1.5 Miles from Facility Point
- 1.0 Miles Discharge Route

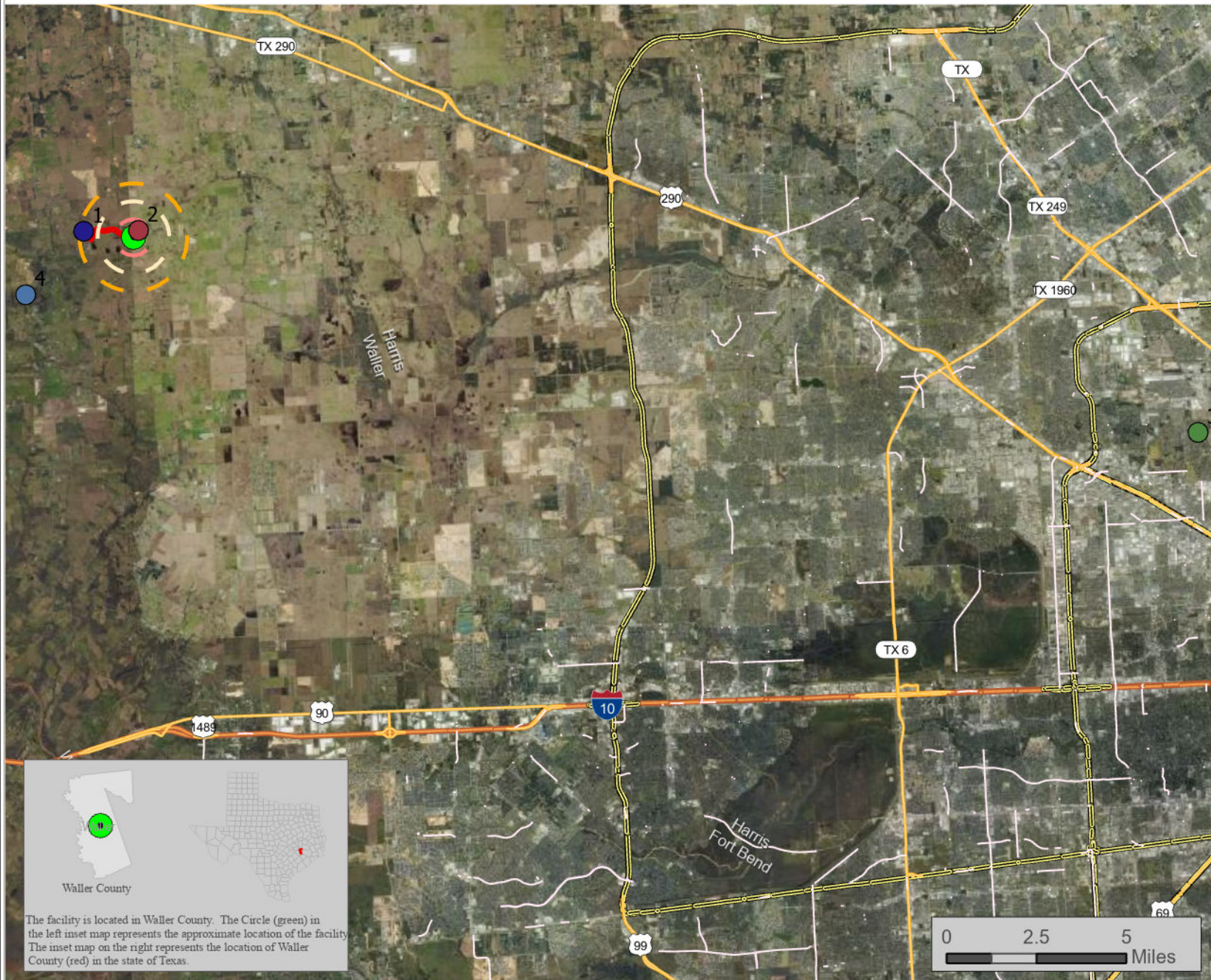
Distance From Facility Point To Requestors:

Lisa Sellars: 1.40 Miles
Noe Martinez Jr.: 0.24 Miles
James Burton: 30.17 Miles
Regina Kresta & Larry Joe Kresta: 3.40 Miles

While the applicant represented Mr. Burton as an adjacent landowner, Mr. Burton did not provide that property address in his hearing request. This map represents the address he submitted in his hearing request.

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

Attachment B

Quadvest, L.P.

TPDES PERMIT NO. WQ0016247001

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: 8/5/2024
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Cartographer: MAttoh



- Facility Point
- 3 - James Burton
- 1 - Lisa Sellars
- 2 - Noe Martinez Jr.
- 4 - Regina Kresta & Larry Joe Kresta
- 0.5 Miles from Facility Point
- 1.0 Miles from Facility Point
- 1.5 Miles from Facility Point
- 1.0 Miles Discharge Route

Distance From Facility Point To Requestors:

Lisa Sellars: 1.40 Miles
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Regina Kresta & Larry Joe Kresta: 3.40 Miles

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

0 0.4 0.8 Miles