

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 11, 2024

Via Electronic Filing

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

RE: **Application by Hill Country Waste Solutions, L.L.C.; MSW Permit No. 2419;
TCEQ Docket No. 2024-1580-MSW**

Dear Laurie Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the Executive Director's Response to Hearing Request.

If you have any questions, please do not hesitate to contact me, Anthony Tatu, at Anthony.Tatu@tceq.texas.gov or (512) 239-5778.

Thank you for your attention to this matter.

Sincerely,

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

Anthony Tatu, Staff Attorney
Environmental Law Division

Enclosures

cc: Mailing List

MAILING LIST
Hill Country Waste Solutions, L.L.C.
TCEQ Docket No. 2024-1580-MSW

FOR THE APPLICANT

via First Class Mail

Karlis Ercums IV, President
Hill Country Waste Solutions, L.L.C.
P.O. Box 960

REQUESTERS / INTERESTED PERSONS

via First Class Mail

Helen Aumeier
192 Breezy Oak Road
Spring Branch, Texas 78070-6359

Grant Donaldson
152 Winding Meadow Lane
Spring Branch, Texas 78070-6448

Alejandro Ruiz
3218 Buck Meadow Trail
Spring Branch, Texas 78070-6390

Silvia Ruiz
3218 Buck Meadow Trail
Spring Branch, Texas 78070-6390

State Senator Donna Campbell
The Senate of Texas, District 25
Room 3E.8
P.O. Box 12068
Austin, Texas 78711-2068

State Senator Donna Campbell
The Senate of Texas, District 25
Suite 105
229 Hunters Village
New Braunfels, Texas 78132-5313

James B. Lee III
181 Breezy Oak Road
Spring Branch, Texas 78070-6359

Ruth A. Lee
181 Breezy Oak Road
Spring Branch, Texas 78070-6359

FOR THE EXECUTIVE DIRECTOR

via electronic mail

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

Frank Zeng, Technical Staff
Texas Commission on
Environmental Quality
Waste Permits Division, MC-124
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>

TCEQ DOCKET NO. 2024-1580-MSW

APPLICATION BY	§	BEFORE THE
HILL COUNTRY WASTE	§	
SOLUTIONS LLC	§	TEXAS COMMISSION ON
FOR NEW MUNICIPAL SOLID WASTE	§	
PERMIT NO. 2419	§	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 Requests (Response) on the application by Hill Country Waste Solutions LLC (Applicant) seeking new Municipal Solid Waste Permit No. 2410 and the Executive Director's preliminary decision.

The Office of the Chief Clerk received contested case hearing requests from Helen Aumeier, James Lee, and Ruth Lee.

The Executive Director recommends that the Commission find that Helen Aumeier is an affected person and grant her hearing request.

Attached for the Commission's consideration is a GIS map of requestors in the area (Attachment A), and a list of adjacent landowners that was included in the application (Attachment B). The Draft Permit, Technical Summary, Executive Director's Preliminary Decision and the Executive Director's Response to Public Comment can be found in the Agenda backup materials filed for the Commission's consideration.

A. Description of Facility

Hill Country Waste Solutions (Applicant), an MSW management company, has applied to the TCEQ for a permit to authorize the proposed Spring Branch Transfer Station, a Type V MSW facility, to accept, store and transfer municipal household waste, commercial solid waste, construction debris, and treated and de-watered sewage sludge. The Spring Branch Transfer Station will be located at 11301 U.S. Highway 281 North, Spring Branch, Texas 78070-6301.

B. Application Description

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

C. Procedural Background

The application was received on May 19, 2023, and declared administratively complete on July 7, 2023. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published on July 22, 2023, in the *Herald-Zeitung*. The Executive Director completed the technical review of the application on March 14, 2023, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published on March 22, 2024, in the *Herald-Zeitung*. A public meeting was held on April 4, 2024. The public comment period ended on April 22, 2024.

This application was filed on or 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 Chapters 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

II. The Evaluation Process for 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. Senate Bill 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. Legal Authority to Respond to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each 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 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.²

¹ 30 TAC § 55.209(d)

² 30 TAC § 55.209(c)

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 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 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; and
- (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 Executive Director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and provide any other information specified in the public notice of application.⁴

³ 30 TAC § 55.201(c)

⁴ 30 TAC § 55.201(d).

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. 30 TAC § 55.203 sets out who may be considered an affected person. 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. Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- (a) whether the interest claimed is one protected by the law under which the application will be considered;
- (b) distance restrictions or other limitations imposed by law on the affected interest;
- (c) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (d) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (e) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (f) whether the requestor timely submitted comments on the application which were not withdrawn; and
- (g) for governmental entities, their statutory authority over or interest in the issues relevant to the application.⁵

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

- (a) 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;
- (b) the analysis and opinions of the Executive Director; and
- (c) any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.⁶

⁵ 30 TAC § 55.203

⁶ 30 TAC § 55.203(d)

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.”⁷ 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 whose hearing request is granted; and
- (3) is relevant and material to the decision on the application.⁸

III. Analysis of Hearing Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify 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 Hearing Requests Complied with Section 55.201(c) and (d).

The Executive Director reviewed the factors in 30 TAC § 55.201(c) and (d) and 55.203 for determining if a requestor is an affected person and recommends the Commission find that the following requestors are affected persons. All hearing requests were in writing, provided the required contact information, and raised the issues that are the basis of the individual hearing requests in the requestors’ timely comments.

1. Helen Aumeier

The Executive Director reviewed the factors found in 30 TAC § 55.201 (c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that Helen Aumeier is an affected person.

The residential address provided by Helen Aumeier is less than half a mile from the proposed facility. Helen Aumeier submitted two timely hearing requests in writing, provided the required contact information, and raised issues that are the basis of her hearing request in her timely comments.

In her hearing requests, Helen Aumeier raised several concerns, including odors, environmental impacts of sludge treatment, water contamination, potential impacts of expanded operations on her property, and increased traffic.

Based on the location and distance of Helen Aumeier residence and the issues she raised, the Executive Director has determined that Helen has demonstrated a personal justiciable interest in the application that is not common to members of the general public, and therefore, is an affected person.

⁷ 30 TAC § 50.115(b)

⁸ 30 TAC § 50.115(c)

In her request, Helen Aumeier raised issues 1-5 which the Executive Director recommends referring. Helen Aumeier also raised issues 6-7, which the Executive Director does not recommend referring.

2. James Lee and Ruth Lee

The Executive Director reviewed the factors found in 30 TAC § 55.201 (c) and (d) and 55.203 for determining if a person is an affected person and recommends the Commission find that James Lee and Ruth Lee are not affected persons because they did not raise any comments during the comments period as the basis for their hearing requests.

B. Whether Issues Raised Are Referable to SOAH for a Contested Case.

The Executive Director has identified issues of disputed questions of fact or mixed questions of law and fact, raised during the comment period, in the requests for contested case hearing, and relevant and to the decision on the application that could be referred to SOAH if the Commission determines that a requestor is an affected person. The issues discussed were raised during the public comment period and addressed in the Executive Director's Response to Public Comment. None of the issues were withdrawn. All issues identified in this response are considered disputed, unless otherwise noted.

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

1) Whether the proposed facility will cause nuisance odors

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 does not provide sufficient controls to prevent nuisance odors, that information would be relevant and material to a decision on the application. This issue was raised by Helen Aumeier.

2) Whether the proposed facility will cause water contamination

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 does not provide sufficient controls to prevent water contamination that information would be relevant and material to a decision on the application. This issue was raised by Helen Aumeier.

3) Whether the processing of sludge at the facility will result in nuisances.

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 does not provide sufficient controls to prevent a negative impact to human health, safety, or quality of life, that information would be relevant and material to a decision on the application. This issue was raised by Helen Aumeier.

- 4) Whether the proposed facility will result in increased traffic:

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 does not comply with TCEQ rules regarding traffic, that information would be relevant and material to a decision on the application. This issue was raised by Helen Aumeier.

- 5) Whether the proposed facility will have adequate measure to control vectors and pests.

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 does not provide sufficient controls to address vectors and pests at the facility, that information would be relevant and material to a decision on the application. This issue was raised by Helen Aumeier.

ii. Issues That Are Not Relevant And Material To The Commission's Consideration Of The Application Or That Are Matters Of Law Or Policy

- 6) Whether the proposed facility will cause air pollution

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. However, this issue is outside the scope of the MSW application.

- 7) Whether the proposed facility will result in a decrease in property values.

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn; however, it is not relevant and material to a decision on the application. This issue was raised by Helen Aumeier.

IV. 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.

V. Requests for Reconsideration

The Executive Director did not receive any Requests for Reconsideration regarding this application.

VI. Executive Director's Recommendations

The Executive Director recommends the following actions by the Commission:

- 1) The Executive Director recommends that the Commission find that Helen Aumeier is an affected person and grant her hearing request.
- 2) The Executive Director recommends that the Commission find that James Lee and Ruth Lee are not affected person and deny their hearing requests.
- 3) 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.
- 4) If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
- 5) If referred to SOAH, refer issues 1-5 listed above in Part III of this response.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Executive Director

Charmaine K. Backens,
Deputy Director, Environmental Law Division



Anthony Tatu, Staff Attorney
Environmental Law Division
State Bar No. 00792869
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-5778
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

**Attachment A – Geographic Information Systems (GIS) Map of
Requestors in the Area**

Hill Country Waste Solutions Transfer Station

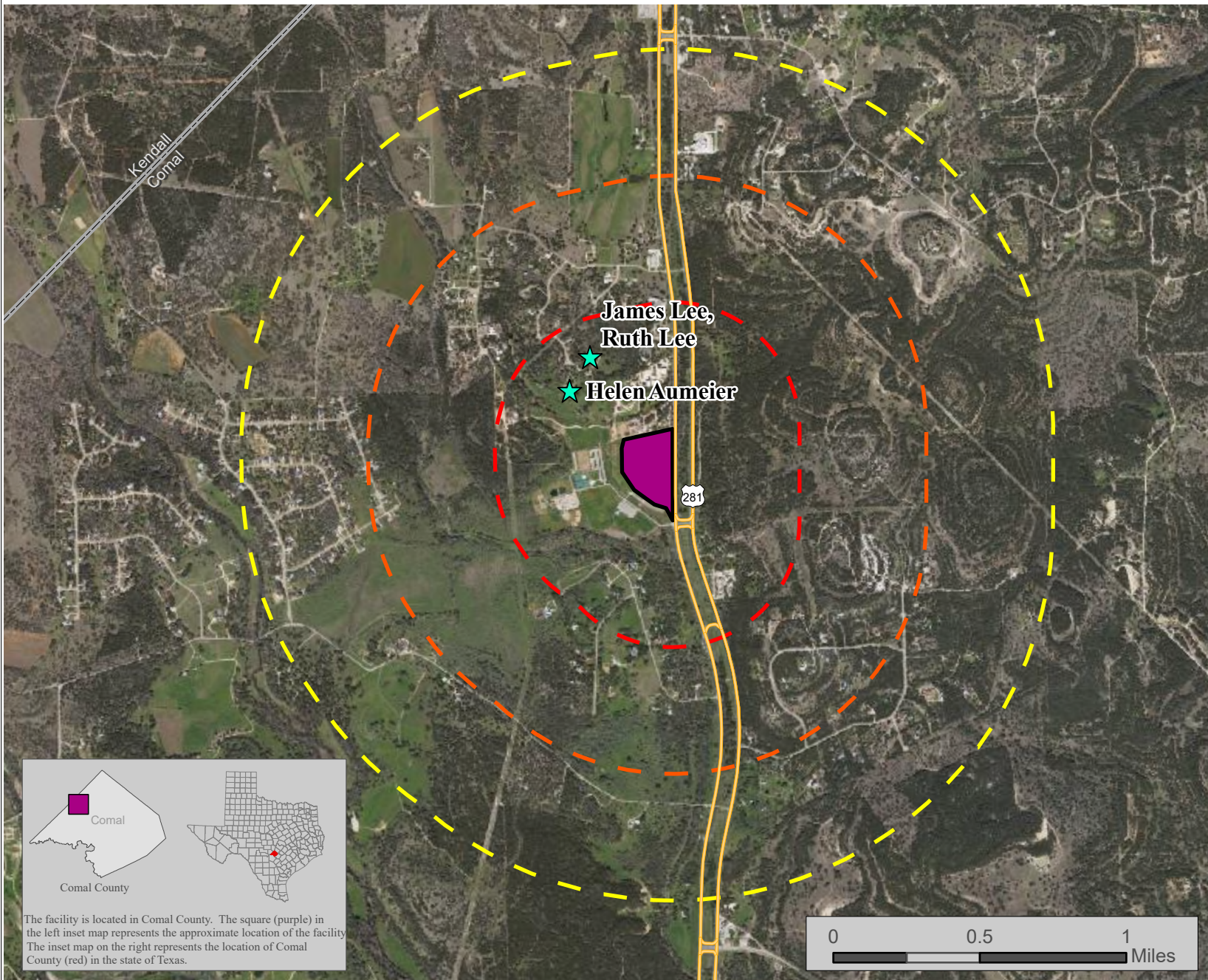
MSW Permit No. 2419

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



*Protecting Texas by
Reducing and
Preventing Pollution*

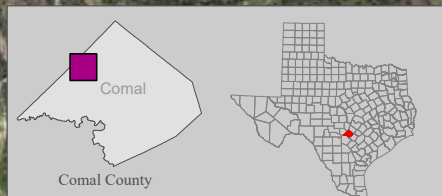
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 10/2/2024
CRF 0112098.1
Cartographer: RKukushk



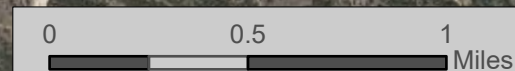
Distance from Facility Boundary

Helen Aumeier - 1,312.7 ft
James and Ruth Lee - 1,603.6 ft

- Requestors
- Facility Boundary
- 1.5 miles
- 1 mile
- 0.5 miles
- County Boundary
- Highway



The facility is located in Comal County. The square (purple) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Comal County (red) in the state of Texas.



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

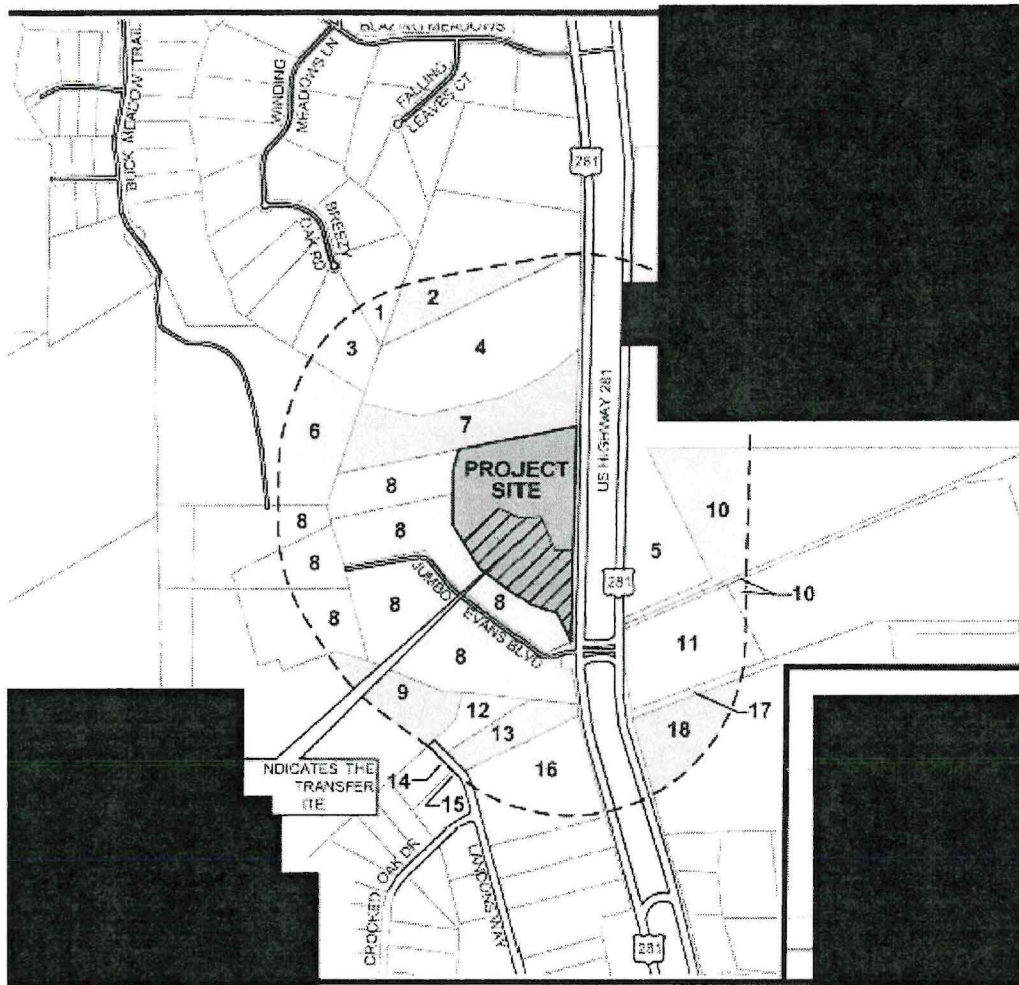
Attachment B – List of Adjacent Landowners in the Application

SPRING BRANCH TRANSFER STATION
ADJACENT LANDOWNERS LIST - NAMES AND ADDRESSES

The information below was obtained from the Comal County Appraisal District in September 2022. The following list contains the names and addresses of all landowners with a quarter mile radius of the Spring Branch Transfer Station's boundaries. This list has been numerically cross referenced with the attached Adjacent Landowners Map.

Note: No mineral interest ownerships were listed for these properties on the Comal County Appraisal District website.

- | | | | |
|----|--|----|---|
| 1 | JAMES B LEE, III
181 BREEZY OAK RD
SPRING BRANCH, TX 78070-6359 | 13 | JOEL HAYNES & KYLEE WOOLEN
758 LANDONS WAY
SPRING BRANCH, TX 78070 |
| 2 | SPRING BRANCH BAPTIST CHURCH
% TREASURER
P.O. BOX 1257
SPRING BRANCH, TX 78070-1257 | 14 | RUSSELL J & LONI B LAMM
775 LANDONS WAY
SPRING BRANCH, TX 78070 |
| 3 | HELEN AUMEIER
192 BREEZY OAK RD
SPRING BRANCH, TX 78070-6359 | 15 | BRUCE K & HEATHER MIEWALD
703 LANDONS WAY
SPRING BRANCH, TX 78070 |
| 4 | SPRING BRANCH PARTNERS LLC
11737 US HWY 281 N
SPRING BRANCH, TX 78070 | 16 | JARED AND KRISTEN OFFTERMATT
722 LANDONS WAY
SPRING BRANCH, TX 78070 |
| 5 | DANA L EVANS ET AL
203 PRESTON HOLLOW
NEW BRAUNFELS, TX 78132-3828 | 17 | GERRARDO & LETICIA HERNANDEZ
3835 OX-EYE DAISY
SAN ANTONIO, TX 78261-2861 |
| 6 | KARLIS ERCUMS, III
696 S WASHINGTON
NEW BRAUNFELS, TX 78130 | 18 | WHOLLY OAKS LLC
10950 US HWY 281 N
SPRING BRANCH, TX 78070-4940 |
| 7 | K & DE REAL ESTATE HOLDINGS LLC
696 S WASHINGTON AVE
NEW BRAUNFELS, TX 78130-4370 | | |
| 8 | COMAL COUNTY
DBA JUMBO EVANS PARK
150 N SEGUIN AVE STE 201
NEW BRAUNFELS, TX 78130-5122 | | |
| 9 | MICHAEL M & SHEILA G KNIBBE
3459 COUNTY ROAD 102
CALDWELL, TX 77836-5286 | | |
| 10 | JAMES ANDREW MAYER
PO BOX 898
SPRING BRANCH, TX 78070-0898 | | |
| 11 | MARTIN C MAYER & PAUL S MAYER
1318 CARNATION LN
NEW BRAUNFELS, TX 78130-3507 | | |
| 12 | JAY V LINDSAY
P.O. BOX 59
SPRING BRANCH, TX 78070-0099 | | |



CERTIFICATE OF SERVICE

I certify that, on October 11, 2024, the Executive Director's Response to Hearing Requests on the application by Hill Country Waste Solutions, L.L.C., MSW Permit No. 2419 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 hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Anthony Tatu, Staff
Attorney
Environmental Law Division
State Bar No. 00792869
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-5778
Fax: (512) 239-0606