

Brooke T. Paup, *Chairwoman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 26, 2025

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: Plum Creek Caldwell, LP for TPDES Permit No. WQ0015738001
TCEQ Docket No. 2025-1320-MWD

Dear Ms. Gharis:

Enclosed you will find the Executive Director's Response to Hearing Requests and Requests for Reconsideration.

Please do not hesitate to contact me at Harrison.Malley@tceq.texas.gov if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Cole Malley".

Cole Malley, Staff Attorney - Environmental Law Division

TCEQ DOCKET NO. 2025-1320-MWD

**APPLICATION BY PLUM CREEK
CALDWELL, LP FOR
TPDES PERMIT NO.
WQ0015738001**

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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 (Commission or TCEQ) files this Response to Hearing Requests on an application by Plum Creek Caldwell, LP (Applicant) for a new TPDES Permit No. WQ0015738001. The Office of the Chief Clerk received separate contested case hearing requests from Guadalupe-Blanco River Authority (GBRA) and from Michael Ohlendorf on behalf of Ben O Corp Farm. GBRA withdrew their hearing request on September 12, 2025, and no longer contests this application.

The ED recommends that the Commission grant the hearing request for Ben O Corp Farm.

Attached for Commission consideration is a satellite map of the area showing the locations of the discharge point, discharge route, and requestor.

II. FACILITY DESCRIPTION

The applicant has applied for an amendment of the existing permit to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 0.16 million gallons per day (MGD) to an annual average flow not to exceed 3.08 MGD. The proposed wastewater treatment facility will serve the Caldwell County Municipal Utility (MUD) 1 Development - 3,134 acres of single-family, multi-family, and commercial properties.

The plant site will be located approximately 600 feet south of the intersection of Dickerson Road and State Highway 80, in Caldwell County, Texas 78655.

The Caldwell County MUD 1 Wastewater Treatment Facility will be a membrane bioreactor facility. Treatment units in the Interim I Phase will include one mechanical screen, one vortex grit chamber, two fine screen, two anoxic basins, two aeration basins, two membrane basins and one Ultraviolet Light (UV) chamber. Treatment units in the Interim II Phase will include one mechanical screen, one vortex grit chamber, two fine screens, four anoxic basins, four aeration basins, four membrane basins, and three UV chambers. Treatment units in the Final Phase will include two mechanical screens, two vortex grit chambers, four fine screens, twelve anoxic basins, twelve aeration basins, twelve membrane basins, and six UV chambers.

The draft permit would authorize a discharge of treated domestic wastewater (effluent) at a daily average flow limit in Interim I Phase of 0.5 MGD, at an annual average flow limit in Interim II Phase of 1.5 MGD, and at an annual average flow limit

in the Final Phase of 3.08 MGD (proposed discharge) from the Applicant's Wastewater Treatment Facility. The facility has not been constructed.

The treated effluent will be discharged to Dickerson Creek, thence to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for Dickerson Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. 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. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected.

III. PROCEDURAL BACKGROUND

TCEQ received the Application on March 23, 2023, and received additional information on April 13, 2023, and September 22, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on April 27, 2023, in the *Lockhart Post Register* in English and on April 27, 2023, in the *El Mundo* newspaper in Spanish. The Combined Notice of NORI and Notice of Application and Preliminary Decision (NAPD) was published on February 22, 2024, in the *Lockhart Post Register* in English and on October 11, 2024, in the *El Mundo* in Spanish. A public meeting was scheduled for March 26, 2024, at the request of Senator Judith Zaffirini. Publication of the Notice of Public Meeting was published on February 20, 2024, in the *Lockhart Post Register* in English and February 15, 2024, in the *El Mundo* Newspaper in Spanish. A public meeting was held on March 26, 2024, at the Lockhart Evening Lions Club in 220 Bufkin Lane, Lockhart, Texas, 78644.

The public comment period ended at the close of the meeting on March 26, 2024. The hearing request period ended on June 2, 2025. 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 Chapters 39, 50, and 55. The Texas Legislature enacted SB 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

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 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

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

² 30 TAC § 55.209(e).

³ 30 TAC § 55.201(c).

- 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.
- (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.

⁴ 30 TAC § 55.201(d).

- (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 and 55.203

1. Party the Executive Director recommends the Commission find an Affected Person

- Ben O Corp Farm
 - Michael Ohlendorf submitted timely comments and a hearing request on behalf of himself and the other owners of Ben O Corp Farm. The hearing request contained the relevant contact information pursuant to 30 TAC § 55.201(d). According to the property description he provided in the hearing request, the properties he identified which comprise the farm are located approximately 0.25 miles from the proposed wastewater discharge point.

In the hearing request, Mr. Ohlendorf expressed concerns about the permit’s impact on the farm he and his family own. According to Mr. Ohlendorf, the discharge route runs directly through these properties. In the hearing request, he outlined five concerns he and the owners of the farm have with the permit. These issues are: accuracy of the discharge route, impacts to grazing and agriculture, impacts to recreation, impacts to livestock, and the question of whether a previous settlement agreement regarding reuse has been incorporated into the draft permit.

⁵ 30 TAC § 50.115(b).

⁶ 30 TAC § 50.115(c).

Pursuant to 30 TAC § 55.203(c), the Commission considers multiple factors in determining whether a person is an affected person. This includes whether a reasonable relationship exists between the interest claimed and the activity regulated, the likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person and the likely impact of the regulated activity on use of the impacted natural resource by the person.

The issues the farm is most concerned about are related to water quality impacts from the discharge. Specifically, the farm is concerned that the permit does not adequately identify the proposed discharge route. Mr. Ohlendorf stated that if the effluent were to be discharged as authorized in the current draft of the permit, effluent would spill over onto their farm because the contours of the discharge route are not accurate as they are defined in the permit. Mr. Ohlendorf claimed that the discharge route had previously been dredged and now floods the farm fields during heavy rains. The farm is concerned that effluent would not be contained within the route and would flow onto the farmland. This inundation would negatively impact their ability to use the farm for agricultural purposes. Additionally, Mr. Ohlendorf expressed concerns about the water quality impacts on the cattle that graze his property which could drink from the affected creek. He also emphasized how the water quality would negatively impact the recreational uses the farm owners enjoy on the creek.

Based on these specific water quality related issues and the close proximity of their land along the discharge route, the farm has established that there is a reasonable relationship between their interests and discharge activity from the proposed facility. Further, the farm established the likelihood that the use of the land could be impacted from the proposed discharge and could affect their ability to use and enjoy it.

Regarding the farm's concerns about a previous settlement agreement, this issue is not relevant to the Commission's decision on the application. The applicant requested that the terms for settlement agreement be incorporated into current draft permit. Under Other Requirement No. 8, the applicant would be required to obtain a Chapter 210 Reuse Authorization prior to initiating operation of the wastewater treatment facility. The applicant would then be required to reuse 75% of the effluent generated by the facility on an annual basis. As the settlement agreement has been incorporated into the permit, there is no disputed question of fact or law about this issue so it should not be referred to SOAH. The Commission should only refer issues related to the specific water quality concerns raised in the hearing request.

Therefore, having complied with the substantive requirements of 30 TAC §§ 55.201 & 55.203, the ED recommends that the Commission find that Ben O Corp Farm is an affected person and grant their hearing request.

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

Issues Recommended for Referral

1. Whether the draft permit adequately identifies and properly characterizes the functioning of the discharge route. (RTC Response 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 that the draft permit does not adequately identify and properly characterize the functioning of the discharge route, 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 is protective of aquatic life, livestock and existing uses, in accordance with the Texas Surface Water Quality Standards in 30 TAC Chapter 307. (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 water quality by failing to comply with the standards specified in Chapter 307, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

3. Whether the draft permit incorporates the terms of a settlement agreement from the previous permittee. (RTC Response 12)

The issue does not involve a disputed question of mixed fact or law. While it was raised during the comment period and was not withdrawn, it is neither relevant nor material to the issuance of the draft permit. The Executive Director recommends not referring this issue to SOAH

VII. CONCLUSION

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find Ben O Corp Farm an affected person and grant their hearing request.
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 adequately identifies and properly characterizes the functioning of the discharge route.**
 - **Issue B) Whether the draft permit is protective of aquatic life, livestock and existing uses, in accordance with the Texas Surface Water Quality Standards in 30 TAC Chapter 307.**

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel,
Executive Director

Phillip Ledbetter, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division

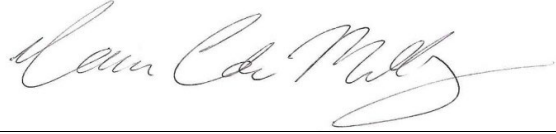


Harrison Cole Malley
Staff Attorney
Environmental Law Division
State Bar of Texas No. 24116710
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-1439
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on September 26, 2025, the “Executive Director’s Response to Hearing Request” for TPDES Permit WQ0015738001 for Plum Creek Caldwell, LP 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
Staff Attorney
Environmental Law Division

MAILING LIST
Plum Creek Caldwell, LP
TCEQ Docket No./TCEQ Expediente N.º 2025-1320-MWD
Permit No./ Permiso N.º WQ0015738001

FOR THE APPLICANT/PARA EL SOLICITANTE

Shannon Livingston
Plum Creek Caldwell, LP
1909 Woodall Rodgers Freeway, Suite 300
Dallas, Texas 75201

Chris Vela, P.E.
Kimley-Horn and Associates
801 Cherry Street, Suite 1300, Unit 11
Fort Worth, Texas 76102

Helen Gilbert
Barton Benson Jones PLLC
7000 North Mopac Expressway, Suite 200
Austin, Texas 78731

FOR THE EXECUTIVE DIRECTOR/PARA LA DIRECTOR EJECUTIVA

via electronic mail/vía correo electrónico:

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

Sonia Bhuiya, 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 LA SECRETARIA 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)/

Ohlendorf, Michael W
1845 FM 1977
Martindale Tx 78655-3974

Attachment A

Plum Creek Caldwell, LP TPDES Permit No. WQ0015738001








*Protecting Texas by
Reducing and
Preventing Pollution*



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

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 8/8/2025
CRF 0127338
Cartographer: JStalsby



-  Outfall
-  Discharge Route
-  0.5 Mile Radius
-  1.0 Mile Radius
-  1.5 Mile Radius

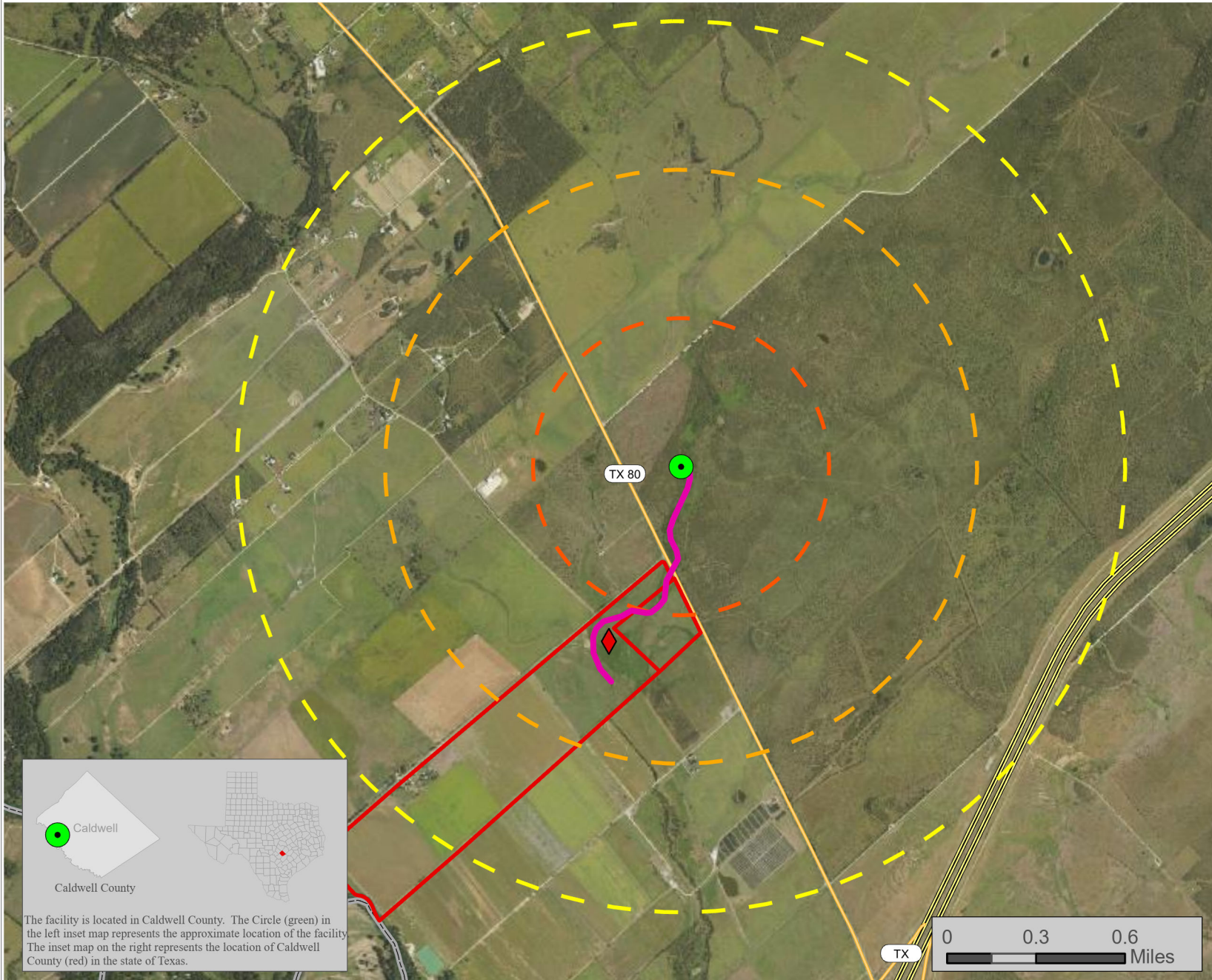
Requestor

-  Ben O Corp Farm
-  Requestor Parcels

This map was requested by the Office of Legal Services (OLS) and is based on information provided in the application and hearing requests. The applicant provided site location information and the hearing requestors provide physical addresses. The map is a visual representation and approximation.

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