

DOCKET NO. 2024-0576-IHW

IN RE THE APPLICATION OF	§	BEFORE THE
U.S. ECOLOGY TEXAS INC. FOR	§	
CLASS 3 MODIFICATION OF	§	TEXAS COMMISSION ON
IHW PERMIT NO. 50052	§	ENVIRONMENTAL QUALITY

APPLICANT’S RESPONSE TO REQUEST FOR HEARING

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, U.S. Ecology Texas, Inc. (“U.S. Ecology”), applicant for the Class 3 Modification of Industrial Hazardous Waste (“IHW”) Permit No. 50052, by and through its attorney, and submits this, its response to the request for a contested case hearing, pursuant to 30 TEX. ADMIN CODE § 55.209(d) of the rules of the Texas Commission on Environmental Quality (the “TCEQ” or the “Commission”), and respectfully shows the following:

I.

FACILITY DESCRIPTION AND PROCEDURAL BACKGROUND

U.S. Ecology owns and operates a commercial hazard and non-hazardous industrial solid waste management facility at 3277 County Road 69, Robstown, Texas 78380 (“Facility”) which is authorized to accept waste from off-site sources on a commercial basis for storage, processing, and disposal. U.S. Ecology seeks a Class 3 Modification to: (i) authorize an increase in the capacity of an outdoor Container Storage Area (Unit No. 9); (ii) add additional waste codes for management in permitted tank systems (Tank Unit Nos. WT1 through WT4); (iii) add twenty-

two (22) new Tanks for storage and processing (Proposed Unit Nos. DW01 through DW22); (iv) add a new shredder unit (proposed Misc. Unit No. 2); and (v) reformat the application and table information to comply with TCEQ formatting requirements.

U.S. Ecology filed its application on November 28, 2022, and the Executive Director declared it administratively complete on January 9, 2023. The Notice of Receipt of Application and Intent to Obtain Permit was published on January 18, 2023, in the *Corpus Christi Caller Times*. 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 was published on August 22, 2023 in the *Corpus Christi Caller Times*.

The Executive Director Filed her Response to Comments (“RTC”) with the Chief Clerk on November 9, 2023, and hearing requests were due by December 14, 2023.

Because the Application was received after September 1, 2015, this application is subject to the requirements adopted pursuant to House Bill 801, 76th Legislature (1999), and Senate Bill 709, 84th Legislature (2015).

II.

LEGAL BASIS

Chapter 55, Subchapter F of the TCEQ’s rules provides that a request for a contested case hearing shall be granted if certain standards are met.

Affected Person

First, the request must be filed by an “affected person.” 30 TEX. ADMIN. CODE § 55.201(b). 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.” *Id.* at § 55.203(a). In determining whether an individual is an affected person, the rules require consideration of various factors, including:

- (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.

Id. at § 55.203(c).

In determining whether a person is an affected person, the Commission may also consider:

- (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.

Id. at § 55.203(d).

Other Hearing Request Requirements

Even if filed by an affected person, TCEQ rules require that, for an application filed on or after September 1, 2015, a request for a contested case hearing shall be granted only if it:

- (1) raises disputed issues of fact or mixed question of fact or law that were raised during the comment period by the affected person whose request is granted, that were not withdrawn, and that are relevant and material to the commission's decision on the application;
- (2) is timely filed with the chief clerk;
- (3) is pursuant to a right to hearing authorized by law; and
- (4) complies with the requirements of § 55.201.

30 TEX. ADMIN. CODE § 55.211(c)(2)(A)(ii) and (B)-(D).

Section 55.201, in turn, requires that, for applications filed on or after September 1, 2015, the hearing request substantially comply with the following:

- (1) give the name, address, [and] daytime telephone number of the person who files the request;
- (2) identify the person's personal justiciable interest;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request; and
- (5) provide any other information specified in the public notice of the application.

Id. at § 55.201(d).

Section 55.209 requires that responses to hearing requests 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;
- (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.

Id. at § 55.209(e).

III.

DETERMINATION OF AFFECTED PERSONS (§ 55.209(e)(1))

Elida I. Castillo was the only person to request a contested case hearing. As Ms. Castillo does not meet the requirements of an “affected person,” her request should be denied.

Ms. Castillo identified her residence as 131 Lerdo Street, Taft, Texas, 78390. Based on a Google Maps search, her property appears to be between approximately twenty-five (25) and thirty (30) miles away from the facility, making her not affected by the Facility in a way different from the general public. Because Ms. Castillo is not an affected person, her hearing request should be denied.

Furthermore, Ms. Castillo’s comment requests a “public hearing.” Based on the terminology used and other context in the comment, U.S. Ecology believes that Ms. Castillo intended to request a public meeting, not a contested case hearing.

IV.

ISSUES PRESENTED

While U.S. Ecology does not find that Ms. Castillo is an affected person, if the Commission disagrees with this finding, the Commission should deny Ms. Castillo’s hearing request based on the issues raised. In her request, Ms. Castillo does not raise any issues of

disputed fact or law; rather, she asks for more time to study the application and for TCEQ to “disclose what [the] amendment means for the community” and “do better.” These stated issues are not relevant and material to the Commission’s decision on the application. Therefore, because Ms. Castillo is not an affected person and does not raise any relevant questions of disputed fact or law, her hearing request should be denied.

V.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, U.S. Ecology respectfully requests that the Commission deny the hearing request of Ms. Castillo and authorize the issuance of the Class 3 Modification to IHW Permit No. 50052 by the Executive Director.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2024, a true and correct copy of the foregoing Applicant's Response to Request for Hearing was served on the following entities and individuals by electronic mail and/or e-filing.


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