SOAH DOCKET NO. 582-06-3321
TCEQ DOCKET NO. 2005-0337-MSW

APPLICATION OF WILLIAMSON COUNTY FOR A PERMIT AMENDMENT TO EXPAND A TYPE I MUNICIPAL SOLID WASTE LANDFILL FACILITY; (PERMIT NO. MSW-1405B)	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TJFA, L.P.'S RESPONSE

TO APPLICANT WILLIAMSON COUNTY'S

MOTION TO DENY TJFA, L.P. PARTY STATUS

November 27, 2006

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EXHIBIT LIST

Exhibit Number	Exhibit Description
1	October 26, 2006 Preliminary Hearing Exhibit TJFA-1
2	October 26, 2006 Preliminary Hearing Exhibit TJFA-2
3	TJFA Comment Letter to TCEQ, May 12, 2006
4	TJFA Comment Letter to TCEQ, July 27, 2006
5	Certificate of Limited Partnership of TJFA, L.P.

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TJFA, L.P.'S RESPONSE TO APPLICANT WILLIAMSON COUNTY'S MOTION TO DENY TJFA, L.P. PARTY STATUS

TO THE HONORABLE TRAVIS VICKERY, ADMINISTRATIVE LAW JUDGE (ALJ) OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS:

COMES NOW, Protestant, TJFA, L.P. ("TJFA"), and hereby files this Response to Applicant Williamson County's ("Applicant")[1] Motion to Deny TJFA, L.P. Party Status in the above-styled case as follows:

I. SUMMARY

TJFA is a real estate investment business whose economic interests include two income-producing residential properties in the immediate vicinity of the existing Williamson County landfill that will be adversely affected by the proposed permit amendment number MSW-1405B. As such, TJFA meets the legal requirements of an "affected person" under the Texas Commission on Environmental Quality ("TCEQ") rules to have the right to participate as a party in this contested case hearing to challenge Applicant's proposed permit amendment application. The Applicant has failed to cite any legal authority or fact that would preclude TJFA from being an "affected person" with the right to participate in the above-styled matter. TJFA is entitled to assert the rights of a landowner granted to similarly situated persons under the TCEQ rules.

[1] Even though the application and some of the published public notices still list both Williamson County and Waste Management of Texas, Inc. ("WMI") as co-applicants, the reference to Applicant in this response only refers to Williamson County since WMI is not a party to this proceeding.

The Applicant's Motion to deny TJFA party status in this proceeding is based on the misguided belief, contrary to the facts, that "...TJFA exists for the sole purpose of abusing the contested case process..." and "... should not be afforded the privilege of party status in this matter..." (Applicant's Motion pg. 1). TJFA urges the ALJ to disregard inflammatory issues that are simply irrelevant to the determination of whether TJFA is an affected person. The facts presented herein show that TJFA is a legitimate real estate investment business and landowner that is an "affected person" like all of the other landowners who have been granted party status in this matter, and as such, TJFA has a right to participate in this proceeding to protect its interests under the TCEQ rules. The Applicant's Motion sounds more like an attempt to prevent a Protestant landowner who is knowledgeable about landfills from participating in this landfill hearing.

For these reasons as set forth more fully below, the Applicant has failed to state a legal basis for denying TJFA party status and, therefore, TJFA files this Response requesting the ALJ deny the Applicant Williamson County's Motion to Deny TJFA, L.P. Party Status and deny the request in the alternative to certify the question to the TCEQ commissioners.

II. WHAT ARE TJFA'S INTERESTS

TJFA is a real estate investment business run primarily by Bobby Gregory. Mr. Gregory also is involved in the ownership and operation of a landfill in Travis County. Because of Mr. Gregory's knowledge and experience in the operation of a landfill, his business strategy for TJFA as a real estate investment business is to purchase investment properties in the vicinity of landfills that have the potential to generate income and eventually increase in value. See Gregory Depo. pp. 36-37, 40-42, 48-49, 67-69.

TJFA has purchased 10 properties in close proximity to 6 existing landfills, including the landfill he is associated with in Travis County. See Gregory Depo. pp. 32-42, 91. Seven of the ten properties are currently leased for residential use and produce income to TJFA. Id. One of the ten is leased for agricultural use and also produces income to TJFA. Id. The remaining two properties are currently being evaluated for commercial development.

Mr. Gregory explained his investment strategy for TJFA during his deposition by the Applicant (Deposition Transcript is Attachment 1 of the Applicant's Motion), and the reasons why TJFA purchases property near landfills. See Gregory Depo. pp. 36-37, 40-42, 48-49, 67-69. At times, there will be reasons why TJFA might want to contest a permit amendment for an existing landfill in the immediate vicinity of one of TJFA's properties, such as in this case. See Gregory Depo. pp. 49-55. However, there may also be times when TJFA decides there is no reason to contest a permit amendment, such as happened recently at the Covel Gardens landfill in Bexar County, a WMI landfill. See Gregory Depo. pp. 48-49, 54, 62, 75. In that case, TJFA determined that the permit application met the TCEQ rules and if operated in accordance with the permit amendment, the landfill should not adversely affect the health, safety and property of the public. Therefore, there was no reason to request a contested case hearing to protect TJFA's interests in the area.

This case is different. Here, TJFA owns two properties in close proximity to the existing Williamson County landfill. Both properties have residences that are rented to individuals and TJFA derives rental income from these individuals. See Gregory Depo at pp. 91-92. TJFA has reviewed the application for permit amendment and found concerns that have been expressed to the TCEQ. TJFA has determined that its property interests in the vicinity of this landfill will be

adversely affected by this application and therefore is seeking party status as an "affected person."

III. TJFA'S INTERESTS SATISFY THE LEGAL REQUIREMENT OF AN "AFFECTED PERSON"

The Texas Solid Waste Disposal Act says in § 361.002 "it is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people." The purpose of this contested case hearing is to gather evidence on and evaluate whether the Applicant's proposed permit amendment complies with this Act and the TCEQ rules promulgated thereunder. In describing who may be an "affected person" entitled to participate in a contested case to ensure the state's policy is followed, Texas Water Code § 5.115(a) states that the term means "a person who has a personal justiciable interest related to a legal right, duty, privilege, power, *or economic interest* affected by the administrative hearing." (emphasis added). Clearly the Texas Legislature thought that effects on the use of one's property and economic interests such as TJFA has at stake in this proceeding is sufficient to make persons such as TJFA an "affected person" with standing.

The TCEQ adopted procedures for conducting contested case hearings, and stated that "affected persons shall be parties to hearings on permit applications..." based on standards set forth relating to the determination of an "affected person" (30 TAC § 80.109(b)(5)). TCEQ rule 30 TAC § 55.203(a) defines an "affected person" the same as the above definition found in the Texas Water Code. The TCEQ also specifies a non-inclusive list of the "factors to be considered" in determining whether one is an "affected person" (30 TAC § 55.203(c)). That rule

states, in determining whether a person is an affected person, that 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; and
>
> (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

What this rule clearly states is that both the application's effect on the use of one's property and its relationship to the interests protected by the Texas Solid Waste Disposal Act, including economic interests, are *factors to be considered* in determining whether a person has standing to participate in a contested case hearing. No single factor is a *requirement.* However, where, as here, TJFA's use of its property and other economic interests (in sustaining its ability to continue to lease its land and residential property at market values not hampered by an improperly permitted or operated landfill facility) are so clearly at stake, the Texas Solid Waste Disposal Act and the TCEQ rules establish TJFA as an "affected person."

TJFA owns two separate properties within one mile of the proposed permit boundary of MSW-1405B. (See Exhibits No. 1 and 2, October 26, 2006 preliminary hearing exhibits TJFA-1 and TJFA-2). One property is directly across the road from the current permit (MSW-1405A) property boundary and the other property is approximately one-half mile to the north-northwest

of the proposed permit expansion, down wind of the prevailing winds. TJFA properties are close enough within the proximity of the regulated activity to give it standing under § 55.203 under the factors listed above. Both properties have residences that are rented to individuals and TJFA derives rental income from these individuals. See Gregory Depo. at pp. 7-42. TJFA has previously submitted comments to the TCEQ regarding the issues with the application for MSW-1405B that will impede the use, enjoyment, value and ability to generate rental income from these properties. These comments dealt with design and operational flaws that would expose these properties to such regulated impacts such as dust, odor, litter, surface water run-off, groundwater contamination, etc. These potential impacts to TJFA's properties give it standing under Sec. 55.203 under the factors listed above in items (3) and (4). These comments were submitted May 12, 2006 (Exhibit 3) and July 27, 2006 (Exhibit 4). These comments and concerns were also discussed in Mr. Gregory's deposition. See Gregory Depo. at p. 50, lines 6-9; p. 52, line 24 to p. 55, line 11; and p. 68, lines 16-24. These issues are the interests protected by state law and included in the 30 TAC § 55.203 factors listed above. All of these concerns are appropriate considerations in evaluating a landfill application. 30 TAC § 330.53(b)(8) & (9). As a property owner uniquely located to raise such concerns, TJFA should be deemed an "affected person" under multiple factors both listed and unlisted in 30 TAC § 55.203.

IV. APPLICANT'S LEGAL CITES DO NOT SUPPORT ITS POSITION

The Applicant has not cited any legal precedent in its motion to support its motion to deny TJFA's party status. There is no rule or case the ALJ could rely on to grant Applicant's motion. The Applicant is actually making an argument for a change in the law that can only be done by the Legislature, not by an ALJ decision or by a policy statement of the Commission.

It is not as contended by the Applicant on p. 7 of its Motion, that "[p] rotection of property values is not within TCEQ's jurisdiction." The single statement in the Texas Register that the Applicant quotes is inapposite. At 29 Tex. Reg. 8403, TCEQ legal staff was speaking only of the TCEQ's jurisdiction in the context of evaluating air quality standard permits for concrete batch plants. The statement that "traffic safety, noise, appearance, and property values" are outside the scope of a hearing on concrete batch plant registration applications for air emissions is completely irrelevant to a hearing on an application for managing municipal solid waste at a municipal landfill under 30 TAC Chapter 330. Indeed, all four of the matters mentioned in this quotation from the Texas Register are routinely considered in deciding standing in landfill application cases. *See* the TCEQ's final orders in the application of BMFS, Inc. for Permit No. MSW-2249 ("Spring-Cypress Landfill"), TNRCC Docket No. 96-1634-MSW (March 23, 1998); the application of Industrial Disposal Service Co., Inc., for Permit No. 1878 (Texas Department of Health, January 6, 1988). "Traffic" is a consideration for landfill permitting expressly mentioned in 30 TAC § 330.53(b)(9), while noise, appearance (i.e., visibility), and effects on property values are included in "compatibility of land use" and "other factors associated with the public interest" as concerns identified in 30 TAC § 330.53(b)(8).

The only TCEQ decision that has been found even calling into question the significance of the devaluation of real property to the TCEQ's consideration of a landfill application was not in determining standing by a party, but in its final order denying the application of Sentry Environmental, L.P. for proposed Permit No. MSW-2171, where the TCEQ simply stated: "There is no law or rule which specifies the Commission may deny a permit application for a municipal solid waste facility on the basis of effects on market value alone." Clearly, this statement by the Commission has left open the possibility that property values, in conjunction

with other land use and compatibility problems and/or jurisdictional issues, could combine to form the basis for a permit denial.

Moreover, even if adverse effects on property values were not appropriate considerations for the TCEQ in deciding whether to issue or deny a landfill permit application, this would not mean that an adjacent property owner whose real estate value would be affected by the landfill would not have *standing* as an "affected person" who could participate in the contested case hearing and there raise any pertinent issues regarding any defects in the application, when such defects relate to land use, technical requirements, site development, or any other criteria that the application is required to meet. *See* 30 TAC § 330.51 – 330.55.

V. TJFA, L.P. IS A SEPARATE LEGAL ENTITY

A key element to the Applicant's argument is it basically asks the ALJ to ignore the fact that TJFA is a separate and distinct entity from Mr. Gregory and other companies controlled by Mr. Gregory by calling TJFA "an obvious fiction". TJFA is a registered Texas limited partnership (Exhibit 5). TJFA can add other investors who share in its investment philosophy. It has its own source of financing. See Gregory Depo at p. 92. TJFA holds title to real estate in its own name. (Exhibits 1 and 2). TJFA has standing to sue or be sued for its actions. TJFA files its own separate income tax returns. See Gregory Depo, at p. 58. TJFA prepares its own separate financial statements. TJFA does not meet the requirements of Financial Interpretations 46(R) of the Financial Accounting Standards Board that requires certain business enterprises to file consolidated financial statements with any other related companies.

Mr. Gregory explained TJFA's investment strategy in depth throughout his deposition conducted by WMI's legal counsel on behalf of Williamson County. See Gregory Depo, at pp. 37, 41-42, 49, 69. TJFA's has a goal of maximizing property values and rental income by

protecting the use and enjoyment of the property by promoting full compliance by the Applicant's landfill with the regulations on dust, odor, litter, surface water run-off, groundwater contamination, methane migration, etc. as indicated in TJFA comments to the TCEQ dated May 12, 2006.

The Applicant's argument is based on the premise that TJFA's status as a separate legal entity should be ignored. The Applicant is asking the ALJ to ignore TJFA's financial stake in properties impacted by the application just because one of its investors also has investments in other companies that compete with the Applicant and WMI. The Applicant fails to identify any legal basis for its argument that the intent of TJFA or of the individual with controlling interest in TJFA, or of other companies also controlled by the individual who owns a controlling interest in TJFA, should be the basis for disqualifying TJFA's party status as an "affected person."

VI. NO BASIS FOR MOTIVE TO NEGATE TJFA'S "AFFECTED PERSON" STATUS

The Applicant claims [in its motion on page 2] that the motive behind TJFA's property purchases is the only fact in dispute. After taking Mr. Gregory's deposition, during which the Applicant explored TJFA's motives, no facts were determined to form a basis to negate TJFA's "affected person" status. Motive is not an issue in this case. Motive is not specifically listed as a factor in §55.203 as an issue for determining whether a protestant is an "affected person." Motive is irrelevant in determining party status for TJFA.

According to the Applicant's logic, because the county owns a landfill, it could not challenge another entity's proposed landfill in its capacity as a county government even if the proposed landfill were planned to be next door to a county park or a county owned facility, such as a jail, a surface water control facility or a drinking water reservoir. The county could not

protect its other interests since it also owns a competing landfill. In this instance, TJFA does not have a competing landfill or any other facility that could be construed as competitive. The facilities owned by other separate entities should not be attributed to TJFA. The Applicant's own logic leads to irrational results and should not be considered as a legally supportable basis to deny TJFA's party status.

Applicant is apparently willing to allow WMI, who is not a party in this hearing process, to use this permit amendment process to voice its fear that TJFA might raise concerns about one or more WMI Central Texas landfill permit amendments currently being reviewed by the TCEQ. TJFA cannot understand why the competitive interests of unrelated companies, who are not parties to this public hearing process, can be used as a legitimate basis to deny TJFA's party status as an "affected person" in this proceeding.

VII. OTHER IRRELEVANT ISSUES RAISED BY APPLICANT'S MOTION

The Applicant has raised several other irrelevant issues in addition to motive in a blatant attempt to obfuscate the true fact there is no legal basis to deny TJFA party status. These irrelevant issues do not deserve any legal analysis, but TJFA feels compelled to respond in order to clarify some of the following issues:

1. TJFA's general partner, Garra de Aguila, Inc. has a stockholder by the name of Bobby Gregory. Mr. Gregory also owns the controlling interest in Texas Disposal Systems Landfill, Inc. ("TDSL"), Texas Disposal Systems, Inc. ("TDS") and Texas Landfill Management, L.L.C. ("TLM"). TDSL owns and operates a landfill in southeast Travis County. TDS primarily collects solid waste and recyclable materials and TLM is a contractor that operates the TDSL landfill, as well as numerous other solid

waste processing facilities. Because of this fact, the Applicant claims in attacks on these companies that they are exploiting the environmental permitting process in order to stifle competition. This is false since these companies have no involvement in this proceeding. Mr. Gregory has developed considerable knowledge through his work with TDSL, TDS, and TLM regarding property values around landfills and the lessened impact on surrounding properties when permits require operators to meet regulatory requirements. This knowledge includes the fact that property values are protected and rise when the landfill is permitted and operated to the standards required under the applicable rules.

Mr. Gregory has created TJFA to use his specialized knowledge through the implementation of TJFA's investment strategy. TJFA has brought its party status request to seek to have addressed the issues raised in its May 12, 2006 and July 27, 2006 letters. TJFA believes if these issues are addressed, then its property value will be protected, and TJFA will be able to continue to rent its property and residences at a market value unaffected by a poorly run and improperly permitted waste processing and disposal facility, and property values will increase. This is TJFA's motivation. It has nothing to do with exploiting the environmental permitting process. Rather, TJFA believes that its involvement in this contested case hearing will enhance the environmental permitting process by providing evidence regarding deficiencies in the current permit application that if left unchecked would adversely affect the health, safety

and property of the public. Further, TJFA believes that the manner in which WMI has attempted to arrange the taking of an ownership interest in the proposed amended permit constitutes an effort to exploit the environmental permitting process.

2. The Applicant takes issue with TJFA's purchase of other properties around other landfills. The Applicant implies that TJFA is targeting WMI related landfills to challenge each expansion application. TJFA is unsure why the Applicant is concerned specifically about WMI owned landfills in Central Texas. But the reality is TJFA owns property near landfills that are owned and/or operated by WMI, Allied Waste, IESI, TDSL, City of Austin, and the Applicant. Of course, that is part of the investment strategy and these are the landfills with which TJFA is more familiar. The key to optimizing the value of these properties is to have a well-run facility that protects the public health, welfare and the environment.

For example, TJFA owns property near WMI's Covel Gardens landfill in Bexar County. After a review of this facility's operation and expansion application, TJFA did not ask to be a party to contest the recent application because it appeared to be a well designed plan and operations proposal . This is consistent with TJFA's investment strategy and directly refutes the claim by the Applicant and WMI that TJFA was created for the purpose of abusing the permitting process.

The Applicant points out that TJFA did submit written comments on WMI's Mesquite Creek landfill (a/k/a Comal County Landfill) in

Comal and Guadalupe Counties. This landfill application has major problems with geologic faults, lack of sufficient sediment controls, flooding problems, etc. TJFA owns two properties within a mile of this landfill and requested a contested case hearing to ask for these problems to be noticed by the TCEQ and be corrected.

3. The Applicant erroneously claims that Mr. Gregory will personally benefit financially if this permit amendment application is denied. If this permit amendment application is denied, the Applicant's landfill will continue to operate under its existing permit that has approximately 40 years of capacity remaining, according to Applicant's most recent Annual Report to the TCEQ. The current competitive nature of the Applicant's landfill will not be diminished and has no relationship to Mr. Gregory's personal financial status or the financial welfare of TDSL.

4. The Applicant wrongly asserts Williamson County citizens will expend significant public resources due to TJFA's involvement in the permitting process. The Applicant conveniently overlooks the fact that TJFA is one of twelve protestant parties in this proceeding. As long as another protestant is still participating in the proceeding, The incremental cost due to TJFA's party status will have a negligible impact to the Applicant.

5. The Applicant states Williamson County will lose revenue due to TJFA's exercise of its legal rights. As noted above the landfill will not close if the permit amendment application is denied. It will still generate the same amount of revenue from its current waste flow. The additional

capacity sought by this application would allow new revenue to be generated in the distant future, but long after most of the individual persons involved in this proceeding have expired.

6. The Applicant claims TJFA's exercise of its legal rights is an abuse of the process. The process was established by the legislature and agency rules. TJFA is publicly availing itself of this process just like the other protestants have done. TJFA has not asked for any special treatment, nor has it filed meritless motions. TJFA has asked that its justiciable interest be measured as any other protestant.

7. The Applicant suggests there is some plot revealed by the timing of TJFA's investment acquisitions. The Applicant focuses on acquisitions made after expansion applications were filed. The Applicant fails to mention acquisitions made around other landfills that do not have any expansion applications on file. The Applicant also points to an acquisition near WMI's Comal County landfill made days before the close of the comment period, but fails to mention TJFA had already purchased another property more than a year before in the same general area.

8. The Applicant accuses Mr. Gregory of engaging in efforts to interfere with the Applicant's contract with WMI. If the Applicant or WMI truly believes this then there are other forums that are appropriate to pursue this claim, not this proceeding. But in truth, Mr. Gregory has an ownership interest in two companies that pay taxes to the Applicant, TJFA and TDS. This gives Mr. Gregory the basis to make comments about how the

Applicant is conducting its business and handling the extremely valuable landfill permit. Mr. Gregory has a constitutional right to petition the government concerning matters of governmental concern. Mr. Gregory has simply pointed out to the Applicant a better method of developing and operating the facility than WMI has proposed that will increase revenue to the Applicant, increase the tax base, have lesser impact on the neighbors, and provide more protection for the environment.

9. The Applicant's request to the ALJ to certify a question about TJFA's party status is without merit. Certified questions concern policy interpretations by TCEQ that affect how an application is reviewed. Certified questions are intended to clarify existing rules. There is no rule that authorizes the ALJ to deny TJFA party status on the issues raised by the Applicant in its Motion. The Applicant is essentially requesting the ALJ to legislate from the bench by creating, in effect, a new rule or asking the TCEQ commissioners to do so without going through the rulemaking process that protects the public.

10. Since the Applicant s has no legal basis to support the denial of TJFA's party status, one of the tactics in its brief is to use inflammatory statements and name calling in an attempt to prejudice TJFA's legal and technical issues with the application. Examples of their inflammatory statements and name calling include phrases such as:

- "obvious fiction";
- "sole purpose of abusing the contested case process";

- "means to stifle competition";
- "protestant for profit company";
- "anti-competitive private gain";
- "even if one were to suspend reason"; and
- "suspect purchases".

TJFA has provided evidence it is a separate company with a legitimate business plan and strategy. TJFA has shown it is a passive real estate investment company, not a competitor to the Applicant and WMI. TJFA has been open and forthcoming regarding Mr. Gregory's ownership interest. Perhaps the Applicant is concerned that its application does not comply with the TCEQ rules and fears the presence of a knowledgeable protestant participating in this proceeding. In any event, its use of these prejudicial tactics does not diminish TJFA's standing in this proceeding.

VIII. CONCLUSION

The Applicant has not stated a legal basis to deny TJFA party status. TJFA has presented evidence it meets the criteria in 30 TAC § 55.203 for an "affected person". The Applicant's motion to deny TJFA party status should therefore by denied. Furthermore, the question of whether TJFA is an "affected person" is not appropriate for a certified question to the Commission and the Applicant's request in the alternative for a certified question to the TCEQ commissioners on this matter should also be denied. This administrative proceeding is not the proper forum to address the Applicant's complaints. The Applicant should approach the Legislature or the TCEQ commissioners to change

the law or regulations through the normal statutory and rule revision process, if it truly believes its request has merit. Since the Applicant's permit (MSW-1405A) currently contains approximately 40 years of remaining landfill capacity, there is sufficient time for the Applicant to withdraw this permit amendment application, if necessary, consider revisions to cure the problems identified in TJFA's May 12, 2006 and July 27, 2006 comments and address the concerns of the eleven other protestants already accepted as "affected persons" with party status in this public hearing process.

IX. PRAYER

THEREFORE, PREMISES CONSIDERED, TJFA prays that Applicant's Motion to Deny TJFA, L.P. Party Status be denied and that Applicant's motion for a certified question also be denied.

Respectfully submitted,

DUNBAR, HARDER & BENSON, LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above instrument has been served upon Defendant as provided by the Texas Rules of Civil Procedure.

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November 27, 2006

LAWRENCE G. DUNBAR

EXHIBIT 1

(TJFA-1)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WARRANTY DEED

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS: THAT
COUNTY OF WILLIAMSON §

RONICA RENEE LEDESMA ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration to Grantor in hand paid by **TJFA, L.P.**, a Texas limited partnership ("Grantee"), whose mailing address is c/o Armbrust & Brown, L.L.P., Attention: Kimberly S. Beckham, 100 Congress, Suite 1300, Austin, Texas 79701, the receipt and sufficiency of which consideration are hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the following described property:

(i) That certain real property in Travis County, Texas, which is described on Exhibit "A" attached hereto and incorporated herein by reference, together with all oil, gas, and other minerals in or under the surface thereof, and all executory leasing rights with respect thereto (the "Land");

(ii) All buildings, structures, parking areas, utility lines, utility facilities, utility improvements, street and drainage improvements, and other improvements of any kind or nature located in, on, or under the Land (all of the foregoing being referred to herein collectively as the "Improvements");

(iii) All equipment, fixtures, and other items of any kind or nature which are attached or affixed to the Land or the Improvements, including, without limitation, all electrical, gas, plumbing, air conditioning, and heating installations and equipment, and all built-in appliances and other items of equipment (all of the foregoing being referred to herein collectively as the "Fixtures"); and

(iv) All appurtenances benefitting or pertaining to the Land or the Improvements, including, without limitation, all of Grantor's right, title, and interest in and to all streets, alleys, rights-of-way, or easements adjacent to or benefitting the Land, and all strips or pieces of land abutting, bounding, or adjacent to the Land (all of the foregoing being referred to herein collectively as the "Appurtenances").

The Land, Improvements, Fixtures, and Appurtenances are collectively referred to herein as the "Property".

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors or assigns, forever; and, subject to all of the matters set forth or referred to herein, Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to: (a) all of the title exceptions revealed in or by the recorded documents and other matters listed on Exhibit "B" attached hereto and incorporated herein by reference; and (b) all standby fees, taxes and assessments by any taxing authority for the current and all subsequent years and all liens securing the payment of any of the foregoing.

EXECUTED AND DELIVERED as of the 29 day of December, 2004.

Ronica Renee Ledesma
RONICA RENEE LEDESMA

STATE OF TEXAS §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on December 29, 2004, by Ronica Renee Ledesma.

(SEAL) Terri Talley Nassour
Notary Public
State of Texas
My Commission Expires
JANUARY 03, 2007

Notary Public Signature

11-GF# 4249201 TTN
RETURN TO: HERITAGE TITLE
401 CONGRESS, SUITE 1500
AUSTIN, TEXAS 78701

EXHIBIT "A"

PROPERTY DESCRIPTION

Lot 2B, RESUBDIVISION OF LOT 2, KERLIN PLACE, a subdivision in Williamson County, Texas according to the map or plat thereof, recorded in Cabinet N, Slide 148 of the Plat Records of Williamson County, Texas.

EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. Restrictive covenant recorded in Cabinet H, Slide 103, and Cabinet N, Slide 148 of the Williamson County, Texas.

2. Public utility easement 10 feet in width along the rear property line, as shown by the Plat recorded in Cabinet N, Slide 148 of the Plat Records of Williamson County, Texas.

3. Subject property lies within the boundaries of the Upper Brushy Creek Water Control and Improvement District.

4. Apparent easement as evidenced by the location of overhead utility line and power pole outside of designated utility easement as shown on survey dated December 1, 2004, prepared by Holt Carson, Registered Professional Land Surveyor No. 5166.

EXHIBIT 2

(TJFA-2)

DEED 2005066584
8 PGS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS: THAT
COUNTY OF WILLIAMSON §

BOB E. GREGORY, an individual residing in Travis County, Texas ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration to Grantor in hand paid by **TJFA, L.P.**, a Texas limited partnership ("Grantee"), the receipt and sufficiency of which consideration is hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee, subject to all of the reservations, exceptions and other matters set forth or referred to herein, the following described property:

That certain real property as more particularly described on the attached Exhibit "A" (the "Property").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors or assigns, forever; and, subject to all of the matters set forth or referred to herein, Grantor does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof; provided, however that this conveyance is made by Grantor and accepted by Grantee subject to all restrictions, easements, reservations and other encumbrances of record in Tom Green County, Texas or visible and apparent on the ground, but only to the extent that such encumbrances are valid, subsisting and, in fact, affect the Property; and (b) all standby fees, taxes and assessments by any taxing authority for the current and all subsequent years, and all liens securing the payment of any of the foregoing.

GRANTOR HAS EXECUTED AND DELIVERED THIS GENERAL WARRANTY DEED AND HAS CONVEYED THE PROPERTY AND GRANTEE HAS RECEIVED AND ACCEPTED THIS SPECIAL WARRANTY DEED AND HAS PURCHASED THE PROPERTY "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL. WITHOUT LIMITATION ON THE FOREGOING, GRANTEE, BY ACCEPTANCE OF THIS DEED, ACKNOWLEDGES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE ACREAGE, WATER, SOIL OR GEOLOGY; (B) THE INCOME

TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING WITHOUT LIMITATION ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS; (E) THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS OR TOXIC MATERIALS; (F) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (H) THE STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (I) THE EFFECTIVENESS AND VALIDITY OF ANY REGULATORY PERMIT, LICENSE, OR APPROVAL; OR (J) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, EXCEPT THE WARRANTY OF TITLE EXPRESSLY SET FORTH HEREIN.

EXECUTED AND DELIVERED the 26 day of JANUARY, 2005.

GRANTOR:

BOB F. GREGORY

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned authority, on this day personally appeared BOB E. GREGORY, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein contained.

Given under my hand and seal this 26th day of January, 2005.

(SEAL) ANGIE M. DIETZ Notary Public, State of Texas My Commission Expires February 06, 2006

Angie M. Dietz
Notary Public Signature

AFTER RECORDING, RETURN TO:

Kimberly S. Beckham
Armbrust & Brown, L.L.P.
100 Congress Avenue, Suite 1300
Austin, Texas 78701

EXHIBIT "A"
LEGAL DESCRIPTION

FIELD NOTES DESCRIBING 5.04 ACRES OF LAND, OUT OF THE JOHN F. FURGUSON SURVEY, ABSTRACT NUMBER 130, WILLIAMSON COUNTY, TEXAS, SAME BEING THAT CERTAIN MCCRARY 5.00 ACRE TRACT DESCRIBED BY INSTRUMENT RECORDED IN DOCUMENT NUMBER 2002093472, OFFICIAL PUBLIC RECORDS, WILLIAMSON COUNTY, SAID 5.04 ACRES OF LAND TO BE MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pipe found in the easterly right-of-way line of County Road Number 130, at the southwest corner of the Meche 5.00 acre tract described by instrument recorded in Document Number 9615898, Official Records, Williamson County, at the northwest corner of said McCrary tract, for the northwest corner hereof;

THENCE North 70 degrees 58 minutes 17 seconds East, along the common line of said Meche and said McCrary tracts, 650.10 feet to an iron rod found in the westerly line of the Ledbetter 84.50 acre tract described by instrument recorded in Volume 2705, Page 39, Real Property Records, Williamson County, at the southeast corner of said Meche tract, same being the northeast corner of said McCrary tract, for the northeast corner hereof;

THENCE South 18 degrees 53 minutes 40 seconds East, along the common line of said Ledbetter and said McCrary tracts, 332.35 feet to an iron pipe found at the northeast corner of the Jolly 5.01 acre tract, described by instrument recorded in Document Number 9734801, Official Records, Williamson County, at the southeast corner of said McCrary tract, for the southeast corner hereof;

THENCE South 71 degrees 00 minutes 00 seconds West, along the common line of said Jolly and said McCrary tracts, 670.39 feet to an iron rod set, in the easterly right-of-way line of County Road Number 130, at the northwest corner of said Jolly tract, same being the southwest corner of said McCrary tract, for the southwest corner hereof;

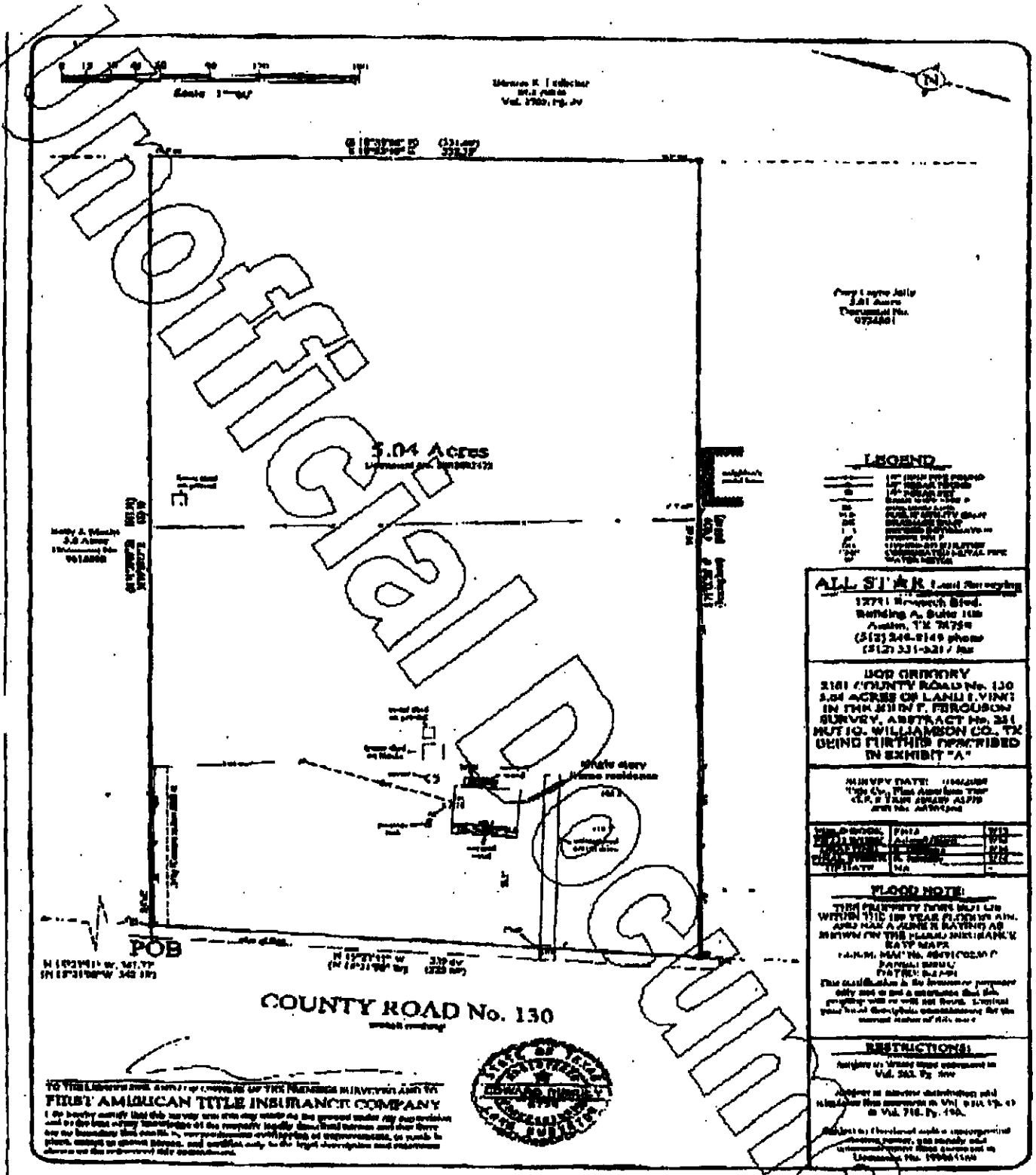
THENCE North 15 degrees 23 minutes 21 seconds West, along said right-of-way line and the westerly line of said McCrary tract, 332.60 feet to the POINT OF BEGINNING and containing 5.04 acres of land, more or less.

THIS LEGAL DESCRIPTION IS TO BE USED IN CONJUNCTION WITH THE ATTACHED SURVEY PLAT (BY SEPARATE INSTRUMENT) ONLY.

Edward Rumsey
TX R.P.L.S #5729
Job # A0705504

Date

STATE OF TEXAS
REGISTERED
EDWARD RUMSEY
5729
PROFESSIONAL
LAND SURVEYOR



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS 2005006684

Nancy E. Rister

01/27/2005 12:17 PM

MARY $24.00

NANCY E. RISTER, COUNTY CLERK

WILLIAMSON COUNTY, TEXAS

EXHIBIT 3

BLACKBURN CARTER
A Professional Corporation
Lawyers

James B. Blackburn, Jr.
Mary W. Carter
Francis E. Chin

4709 Austin
Houston, Texas 77004
Telephone (713) 524-1012
Telefax (713) 524-5165

May 12, 2006

Via Facsimile: (512) 239-3311
and Federal Express
Ms. LaDonna Castañuela
Office of the Chief Clerk, MC 105
Texas Commission for Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

RE: Proposed MSW Permit No. 1405B

Dear Ms. Castañuela:

I am submitting these comments on behalf of my client TJFA, L.P. TJFA owns real property approximately ½ mile from the entrance of the Williamson County Landfill operated under current TCEQ MSW Permit No. 1405A. The operation of this facility and the proposed facility permit amendment referenced above has an adverse impact on the use and value of this company's property described above.

A public notice (Attachment 1) of an Application and Preliminary Decision on Proposed MSW Permit No. 1405B was published in the *Austin American-Statesman* on April 12. 2006. Public comments are due May 12, 2006. I am submitting the attached public comments (Attachment 2) in response to this public notice. It is my understanding the permit amendment application was processed under the MSW regulations in affect prior to March 29, 2006. In my opinion, under those regulations, the proposed permit amendment does not adequately address the attached list of relevant and material issues. I request the Executive Director return the proposed permit amendment to the applicant for further changes consistent with the attached comments and resubmittal when corrected. Furthermore, as a person affected by the current and proposed facility, TJFA respectfully requests that a contested case hearing be held on the disputed relevant and material issues contained in the attached comments. I also believe there is a significant degree of public interest in the application, and therefore, I also request a public meeting for other members of the public to submit comments or to ask questions about the application.

If you have any questions on these public comments or requests, please call at (713)524-1012.

Sincerely,

BLACKBURN CARTER, P.C.

by Mary W. Carter
Mary W. Carter

First Date Published: 12-Apr-06

NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR A MUNICIPAL SOLID WASTE PERMIT AMENDMENT PROPOSED MSW PERMIT NO. 1405B APPLICATION AND PRELIMINARY DECISION. Williamson County (Owner), a county government and Waste Management of Texas, Inc. (Operator), have applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize a lateral and vertical expansion of their existing Williamson County Landfill facility, a Type I municipal solid waste landfill. The facility would be authorized to accept municipal solid waste, Class I industrial non-hazardous solid waste only because of asbestos content; Class 2 & 3 nonhazardous industrial waste; and a certain special waste. The acceptance of the special wastes is contingent upon such wastes being handled in accordance with Title 30 Texas Administrative Code (30 TAC) Section ( )330.136, and in accordance with the listed and described procedures in Part IV found in Attachment A of this permit, subject to the limitations and special provisions provided herein. The facility is a 575 Acres site located on the west side of FM 1660 approximately 1-mile north of the FM 1660 and CR 133 intersection in Williamson County, Texas. The mailing address is Waste Management of Texas, Inc., 9900 Giles Road, Austin, TX 78754. This application was submitted to the TCEQ on November 21, 2003. 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 proposed permit, if issued, meets all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Williamson County Courthouse, 301 SE, Inner Loop, Suite 109, Georgetown, Texas 78626, telephone (512) 943-1550. **MAILING LISTS.** You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TCEQ permits in the county. **PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the public the opportunity to submit comments or to ask questions about the application. The TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing. You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 **within 30 days from the date of newspaper publication of this notice. OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material public comments. **The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court. **A person who may be affected by the facility or the proposed facility is entitled to request a contested case hearing from the commission.** A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision onthe application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing. **EXECUTIVE DIRECTOR ACTION.** The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for consideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. **INFORMATION.** If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from Waste Management of Texas, Inc. at the address stated above or by calling the applicant representative, Mr. Tim Champagne at (512) 272-6261. Issuance Date: MAR 24 2006

Public Comments Submitted by TJFA, L.P. on the Technically Complete Draft of TCEQ Proposed MSW Permit No. 1405B For a Landfill Near Hutto, Williamson County, Texas Which was Prepared by Waste Management of Texas, Inc.

Rule Citation	Public Comments on Disputed Issues of Fact that are Relevant and Material to the TCEQs Decision
39.501	The Public Notices are insufficient since earlier public notices listed only Williamson County as the applicant. The application process should begin again and provide the accurate listing of the applicant.
305.43 305.44	The Part A Form lists both Williamson County and Waste Management as the applicant. The Part A Form should be returned and then resubmitted after it is corrected.
305.66	The site operator, Waste Management, Inc., has a history of noncompliance at facilities in the CAPCO region that supports denial of the application.
330.51	Applicant did not obtain CAPCO approval of the application. Applicant did not adequately respond to CAPCO Solid Waste Plan Conformance Checklist; e.g., a compliance history was not provided as requested, applicant states will accept only Class 1 Industrial waste that is Class 1 because of its asbestos content yet will take special waste and special waste includes all Class 1 industrial waste. Several questions were only partially answered or the answers were vague and lacked specificity, or simply not answered at all. CAPCO requested a copy of the Site Operating Plan, too, but there is no indication that this provided.
330.52 – 330.57	In addition, although the applicant's response to CAPCO's question related to the height of the proposed landfill indicates that upon completion the landfill will "blend in with the surrounding land uses," based on the information provided in Attachment 12, the shape of the landfill and height above the surrounding land surface will simply be grassed and will present a rather imposing structure that will hardly blend in with the surrounding land uses. No special screening or vegetative treatments are planned as required and it will be the most topographically prominent feature within two miles.
330.51	The Customer number is not provided in the Core Data Form and the Regulatory Entity number provided on the core data form is different from the RN number provided on the Part A application Form.

Rule Citation	Public Comments on Disputed Issues of Fact that are Relevant and Material to the TCEQs Decision
330.54	The Part A Application form is incorrect because it is stated that the permittee will not accept Class I industrial waste, except that which is Class 1 because of its asbestos content, but will accept special waste; however, special waste includes Class 1 industrial solid waste of all kinds.
330.51	Applicant indicates on Part A Application form that it is not required to comply with NPDES (or TPDES), which is incorrect.
330.54	Applicant incorporates incorrect information and misleads TCEQ and the general public by stating that Subtitle D composite liner systems were installed after the effective date of Subtitle D on October 9, 1993. In fact, Waste Management, the operator obtained approval from the Texas Water Commission, the regulatory entity at that time, to open a vast area of the current landfill, far in excess of short-term needs, in advance of the Subtitle D implementation date so that actual Subtitle D liner systems would not have to be installed until the next century. In addition, the liner system installed was not a Subtitle D composite liner system, but a performance-based, alternative liner system that was simply called a composite liner system.
330.52	The maximum height of the proposed landfill expansion will increase from the currently permitted 766 feet in elevation to 840 feet in elevation, rising some 160 feet above the surrounding landscape; this vertical expansion will also take place over pre-Subtitle D liner systems.
330.51	Applicant makes no commitment to implement or maintain any waste reduction program.
330.51 330.53(b)(8)(C)	There is no land use report; specifically growth trends of the nearest communities and directions of major development are not provided as required by 30 TAC §330.53(b)(8(C), a critical omission considering the rapid growth that is occurring in Williamson County and the potential impact of the construction of Texas 130 within a few miles of the landfill.
330.52(b)(4)	The general maps do not include the required information in sufficient detail and are not representative of actual conditions as required.
330.52(b)(5)	The required landowners list does not include accurate information on some of the property owners within 500 feet.

Rule Citation	Public Comments on Disputed Issues of Fact that are Relevant and Material to the TCEQs Decision
330.53(b)(8)	Not all proximal land uses are identified in the permit application, and there is no documentation that there are no historic sites in the vicinity of the landfill. In fact correspondence from the Texas Historical Commission, dated December 18, 2002, states that the residence on the southeast corner of the proposed expansion property and west of FM 1660 is eligible for listing in the National Register of Historic Places, and that a Ms. Linda Roark should be contacted for a determination; if this was done, it is not reflected in the correspondence included in the permit amendment application. Alternative proposals with less adverse impact on human health or the environment have not been identified or presented.
330.52(b)(9)	The evidence of competency is insufficient due to the lack of qualified employees of the applicant.
330.53(b)(6)	The required aerial photograph was taken almost a year before the submittal of the application, and therefore does not accurately reflect current growth trends in the area, especially in the direction of the City of Hutto.
330.53(b)(8)	The site is to become operational 24 hours per day and 7 days per week.
330.53(b)(9)	No traffic study was performed. This is particularly critical given the rapid growth that is occurring in Williamson County and the potential impact of the construction of Texas 130 within a few miles of the landfill and extension of Chandler Road on the south. Furthermore, it does not appear that TxDOT was fully satisfied with respect to the future impact of the landfill, as no final response is included with the permit amendment application.
330.53(b)(9)	The resolution by the Williamson County Commissioners Court to change the name of the access road from CR 128 to Landfill Road was not included in Appendix I/II-A.8 the permit amendment application as was stated.
330.53(b)(10)	The Geology and Soils description under the General Geology and Soils Statement does not comport with the geologic map of the area published by the University of Texas Bureau of Economic Geology nor does it comport with the information provided in the Ground and Surface Water Statement and in Attachment 4 of Part III of the permit amendment application.

Rule Citation	Public Comments on Disputed Issues of Fact that are Relevant and Material to the TCEQs Decision
330.53(b)(11)	The Ground and Surface Water Statement does not contain any discussion of the Edwards Aquifer, which is stated to occur only about 600 feet below the landfill.
330.53(b)(13)	The statement in the permit amendment application that the Texas Parks and Wildlife does not anticipate adverse impacts to rare, threatened, or endangered species from proposed project activities is not definitive, as substantiated by the December 6, 2002, correspondence from the agency.
330.56	Drainage facilities, including all channels, are said to have been designed for the 25-year/ 24-hour storm event, however, there is no discussion or demonstration that this is the most critical event for determining peak discharge.
330.53(b)(12)	The floodplain analysis was performed with an outdated floodplain map which does not accurately reflect the 100-year floodplain location today and therefore cannot show that landfill operations will not restrict the 100-year flood or cause a washout of solid waste. There is no current wetland study included to support the application's suggestion there are no wetlands that could be impacted.
330.56	The alternative final cover system proposed presumes that a 36-inch thick soils infiltration barrier can be compacted to a hydraulic conductivity of 1 x 10E-7 cm/sec or less and that this hydraulic conductivity will not increase with time through wetting and drying, freezing and thawing, and animal activities during the life of the landfill and a thirty-year post-closure care period.
330.56	The liner system design, as proposed, is inadequate, specifically with respect to the geotechnical and hydraulic properties testing.
330.56	The subsurface investigation was inadequate.
330.56	Information provided concerning local water wells in revised Parts I/II is inconsistent with the information provided in Attachment 4.

Rule Citation	Public Comments on Disputed Issues of Fact that are Relevant and Material to the TCEQs Decision
330.304	In accordance with 30 TAC §330.304, a seismic impact zone is an area with a ten percent or greater probability that the maximum horizontal acceleration, expressed as a percentage of the Earth's gravitational pull, will not exceed 0.10g in 250 years. The seismic impact map provided in Figure III-4.9 is for only a 50-year period; there is no explanation of the relationship of the information provided by this map and required by the regulations, and the map is not one generated by Algermissen et al. (1990) as stated in the permit amendment application.
330.56	Statements in the geotechnical report concerning permeability do not take into account the occurrence of fracture porosity and permeability.
330.56	The piezometers set in the lower claystone and upper limestone do not provide an adequate basis for distinguishing between the hydraulic characteristics of the two materials likely leading to erroneous analyses and conclusions with respect to hydraulic conductivities.
330.56	There is no explanation of why water levels in the surficial clay/claystone were mapped separately from the claystone/ limestone, when the entire stratigraphic interval is defined as a single "hydrostatic" unit.
330.56	Darcy's Law improperly applied to assess groundwater flow velocities.
330.56	The analysis of potential pollution pathways is deficient and inadequate.
330.56	The proposed monitoring well system is likely inadequate due to inadequate characterization of the hydrogeology of the proposed landfill expansion area; at a minimum, the screens of monitoring wells will not penetrate the fill thickness of the aquifer surrounding and beneath the proposed landfill.
330.56	The justification provided for stating that the storm water detention ponds will not impact the occurrence and distribution of groundwater in the underlying clays does not hold water (so to speak). The applicant neglects the occurrence of and fluid movement capabilities of fractures that will develop in the clays at the site and relies on laboratory permeabilities that do not take the fractures into account in determining bulk permeabilities, as would insitu tests.

Rule Citation	Public Comments on Disputed Issues of Fact that are Relevant and Material to the TCEQs Decision
330.56	There is no real management plan for contaminated water. A statement in Attachment 6, Groundwater and Surface Water Protection Plan and Drainage Plan, simply states that contaminated water will be managed in accordance with applicable regulations and references Attachment 15, and Attachment 15 simply refers back to the content of Attachment 6. Furthermore, the permit amendment application is inconsistent with respect to whether runoff from daily cover is considered contaminated or isn't considered contaminated. If the former is true, the surface water protection plan is inadequate.
330.5(e)(6)(A)(ii)	The permit amendment application allows for recirculation of a mixture of contaminated water and leachate, which is contrary to 30 TAC 330.5(c)(6)(A(*ii*).
330.56	The slope stability analyses in Appendix C to Attachment 6, do not consider all critical slopes; specifically, no analysis was performed of the stability of the waste placed approximately 70 feet higher over the existing waste and the pre Subtitle D cells of the landfill.
330.52(b)(11) 330.56(h)	The closure and post-closure care costs in Attachment 8 are suspect. For example, the costs for groundwater monitoring appear too low and there are no costs allocated for closure of liquids stabilization facilities.
330.56	Calculations of ballasting and dewatering requirements and the underdrain design are likely in error because of failure to consider groundwater flow in fractures present in the host materials.
330.56	The alternative final cover design may be inadequate because of erroneous assumptions related to the hydraulic conductivity of the 36-inch thick infiltration layer.
330.56	A standard Subtitle D final cover system is also proposed that incorporates a flexible membrane, yet the gas management plan presented in Attachment 14 includes no provisions for venting or collection of landfill gas generated within the landfill. Passive landfill vents are shown on the Site development Plan drawings in Attachment 1 and a typical design is shown in Attachment 14, but no discussion of the basis for the design or vent spacing is provided. Installation of a final cover system lacking an appropriate landfill gas venting or collection system is a recipe for failure of the final cover system.

Rule Citation	Public Comments on Disputed Issues of Fact that are Relevant and Material to the TCEQs Decision
330.56	The permit amendment application states that leachate and landfill gas condensate will be managed in a number of ways: pumped directly into tanker trucks, recirculated, or pumped through a force main to evaporation ponds or other on-site storage or treatment facilities. No designs are provided, however, for a force main system, evaporation ponds, or other on-site storage or treatment facilities. Thus, these options should not be permitted by this permit amendment application.
330.114	The Site Operating Plan is inadequate. For example, equipment operators are tasked to perform random inspections, only two vehicles per week will be subject to random inspections, fire protection standards are deficient, and few screening provisions are specified. One method specified to extinguish a fire at the working face is to compact the waste with the landfill compactors. For screening, it is stated that existing vegetation will be left in place to the extent possible, but the site has been historically used primarily as agricultural land and little or no vegetation is evident on the aerial photo of the site. All other screening is to be temporary. Water having contacted waste, leachate or landfill gas condensate is to be handled in accordance with Attachment 15, but Attachment 15, provided no instructions other than to refer to Attachment 6.
330.111	The application does not adequately describe where the site operating record will be kept.
330.112	The application does not adequately address Pre-operation notices of the reports required in 330.206.
330.113	The application does not adequately address all the records that are required to be kept.
330.114	There is no information on every piece of equipment that will be used or whether liquids solidification will be done on the site, where it will be located, how it will operate, and how odor and stormwater runoff from such a facility will be controlled. There is no detailed description on how hazardous wastes will be kept out of the landfill.

EXHIBIT 4

BLACKBURN CARTER
A Professional Corporation
Lawyers

James B. Blackburn, Jr.
Mary W. Carter
Francis E. Chin

4709 Austin
Houston, Texas 77004
Telephone (713) 524-1012
Telefax (713) 524-5165

July 27, 2006

Via Facsimile: (512) 239-3311
and Federal Express
LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality - MC105
12100 Park 35 Circle
Austin, Texas 78753

Re: Proposed Permit No. 1405B; Application for Municipal Solid Waste Permit Amendment by Williamson County and Waste Management of Texas, Inc.

Dear Ms. Castañuela:

These comments are being submitted on behalf of TJFA, L.P. regarding the above referenced permit application, and are in addition to comments previously submitted on May 12, 2006.

There has been considerable confusion surrounding this permit application, notably, which entity is the applicant, and which entity is the permittee? These questions arise in the context of various documents that have been submitted by Williamson County and Waste Management of Texas to the TCEQ. Additionally, the rules found at 30 T.A.C. § 305.43(b) lend additional confusion to the situation.

WHO IS THE APPLICANT?

> For solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit or a post-closure order, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit or post-closure order.

30 T.A.C. § 305.43(b).

Various documents submitted to the TCEQ indicate that Williamson County and Waste Management of Texas are "co-applicants", which appears to be in violation of the above TCEQ Rule. Specifically, the Applicant's Statement dated October 10, 2003 submitted by RJR Engineering is signed by John C. Doerfler on behalf of the County of Williamson County, and there is a separate Applicant's Statement signed by Steve Jacobs, Area Landfill Manager, for Waste Management of Texas, Inc. dated October 9, 2003. Similarly, Judge Doerfler signed the Applicant's Certification on behalf of the County of Williamson County and Mr. Jacobs signed the Applicant's Certification on behalf of Waste Management of Texas, Inc.

The Applicant's Statement dated July 15, 2005 is similarly signed by both Judge Doerfler on behalf of the County of Williamson County and a separate Applicant's Statement signed by Steve Jacobs on behalf of Waste Management of Texas, Inc. Additionally, the Applicant's Certification also dated July 15, 2005 is signed by John C. Doerfler, Williamson County Judge and a separate Applicant's Certification signed by Steve Jacobs, Area Landfill Manager.

Another Applicant's Statement dated November 28, 2005 is signed by John C. Doerfler, Williamson County Judge on behalf of the County of Williamson County and separately by Steve Jacobs, Area Landfill Manager, on behalf of Waste Management of Texas, Inc. Again, an Applicant's Certification is signed by John C. Doerfler and a separate Applicant's Certification is signed by Steve Jacobs, Area Landfill Manager.

Further increasing the confusion are the several inconsistent public notices issued by the TCEQ:

1. Notice of Application and Preliminary Decision - May 18, 2004.
   Williamson County is identified as the Applicant.

2. Notice of Public Meeting - September 14, 2004.
   Williamson County is identified as the Applicant.

3. Amended Notice of Receipt of Applicant and Intent to Obtain Permit Amendment - May 13, 2005.
   Williamson County is identified as the Applicant.
   Waste Management of Texas, Inc. is identified as site operator.

4. Notice of Public Meeting - July 28, 2005.
   Williamson County is identified as the Applicant.

5. Notice of Application and Preliminary Decision - March 24, 2006.
   Williamson County and Waste Management of Texas, Inc. are identified as Applicants.

6. Notice of Public Meeting - June 28, 2006.
   Williamson County and Waste Management of Texas, Inc. are identified as Applicants.

In response to a letter dated June 2, 2006 from Steve Jacobs and Judge John C. Doerfler addressed to Richard C. Carmichael, the TCEQ changed page 1 of the Draft Permit to identify that Williamson County is the name of the permittee and site owner, and Waste Management of Texas, Inc. is the site operator. The accompanying letter to Judge John Doerfler indicated that this change was a "minor editorial change." We do not believe that this is a minor editorial change, but rather has implications for not only this permit application but for others within the State of Texas.

If both the County of Williamson County and Waste Management of Texas, Inc. are Applicants for this Permit Amendment, then who is the rightful permittee? Waste Management of Texas has been identified as the operator of the Williamson County landfill and Williamson County has been identified as the owner of the Williamson County landfill. The definition of owner is, "the person who owns a facility or part of a facility". 30 T.A.C. § 305.2(26). The operator is defined as, "the person responsible for the overall operation of a facility." 30 T.A.C. § 305.2(24). There is no definition of "permittee," but the definition for permit is as follows:

> "a written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate in accordance with stated limitations, a stated facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radio active material disposal license and an injection well permit."

30 T.A.C. § 305.2(27).

If the Rules state that it is the duty of the operator to submit an application for a permit, then who is rightfully the permittee? If two entities submit the application, why are they not co-permittees, or should this application have been submitted only by Waste Management of Texas, Inc. in accordance with the rules? It appears that originally the draft permit was issued to co-permittees Williamson County and Waste Management of Texas, Inc.

We do not believe that this permit application should proceed until it is clear who is the permittee. Further, the implications of the 30 T.A.C. § 305.43(b) should be fully understood and explained by the TCEQ. For example, does the operator control the permit?

Thank you for consideration of these comments.

Sincerely,

BLACKBURN CARTER, P.C.

by Mary W. Carter
Mary W. Carter

c: Richard Carmichael

EXHIBIT 5

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697

Roger Williams
Secretary of State

Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

TJFA, L.P.
Filing Number: 800418937

Certificate of Limited Partnership — November 29, 2004

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on November 27, 2006.

Roger Williams
Secretary of State

FILED
In the Office of the
Secretary of State of Texas

NOV 29 2004

Corporations Section

CERTIFICATE OF LIMITED PARTNERSHIP

OF

TJFA, L.P.

The undersigned general partner, being desirous of forming a limited partnership pursuant and subject to the Texas Revised Limited Partnership Act, does hereby certify as follows:

1. The name of the limited partnership is TJFA, L.P. (the "Partnership").

2. The address of the Partnership's registered office and the principal office shall be 100 Congress Avenue, Suite 1300, Austin, Texas 78701-2744.

3. The name and address of the Partnership's registered agent for service of process is as follows:

Kimberly S. Beckham
100 Congress Avenue, Suite 1300
Austin, Texas 78701-2744

4. The books and records of the Partnership are kept at its principal office for purposes of inspection.

5. The name, mailing address and street address of the business of the general partner are as follows:

Garra de Aguila, Inc.
100 Congress Avenue, Suite 1300
Austin, Texas 78701-2744

IN WITNESS WHEREOF, the undersigned have signed this Certificate of Limited Partnership this 19th day of November, 2004.

GENERAL PARTNER:

GARRA de AGUILA, INC., a Texas corporation

By: _____
Bob E. Gregory, President