

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

December 19, 2007

LaDonna Castañuela
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Executive Director's Closing Arguments
Waste Management of Texas, Inc.
MSW Permit Amendment No. MSW-66B

Dear Ms. Castañuela:

Enclosed is a copy of the original Executive Director's Closing Arguments for the above referenced matter. Please file stamp the copies and return the copies to our office.

If you have any questions or comments, please call me at (512) 239-5778. Thank you for your attention to this matter.

Sincerely,

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

Anthony Tatu, Staff Attorney
Environmental Law Division, MC 173

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 19, 2007

SOAH Docket Clerk for
The Honorable Sarah G. Ramos
Administrative Law Judge
State Office of Administrative Hearings

Re: SOAH Docket No. 582-07-0863
TCEQ Docket No. 2006-1931-MSW
Application of Waste Management of Texas, Inc.
For A Municipal Solid Waste Permit Amendment of
Permit No. MSW-66B

Dear Judge Ramos:

Please find enclosed the original Executive Director's Closing Argument for the above referenced matter.

If you have any questions or comments, please call me at (512) 239-5778. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Tatu", written over a horizontal line.

Anthony Tatu, Staff Attorney
Environmental Law Division, MC 173

SOAH DOCKET NO. 582-07-0863
TCEQ DOCKET NO. 2006-1931-MSW

2007 DEC 19 PM 3:12

APPLICATION OF WASTE MANAGEMENT §
OF TEXAS, INC. FOR A MUNICIPAL §
SOLID WASTE PERMIT AMENDMENT §
PERMIT NO. MSW-66B §

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR'S CLOSING ARGUMENT

The Executive Director of the Texas Commission on Environmental Quality submits this Closing Argument in the above-referenced matter.

The Executive Director has reviewed the record regarding this application and believes that the Commission can find that Waste Management of Texas, Inc. (WMTX or Applicant) has met its burden of proof regarding this application for a permit amendment. The Executive Director has prepared a draft permit for the proposed expansion of the municipal solid waste landfill.

I. BACKGROUND

A. Factual and Procedural Background:

The Applicant seeks authorization for a lateral expansion of its municipal solid waste landfill (Permit No. 66B). The lateral expansion involves the change in boundary from 96.07 acres to 244.12 acres and the increased waste disposal footprint, from 79 acres to 163.5 acres. The Applicant is not seeking a change to its vertical limit of 798 feet above mean sea-level. The location of the facility is

the southwest intersection of FM 1101 and Kohlenberg Lane, 5 miles north of state highway 46 and FM 1101 and two miles east of I-35 in New Braunfels. The street address for the current site is 1000 Kohlenberg Lane, New Braunfels, Texas 78130-2633, but there is a new entrance planned in the expansion.

The procedural history of the application is as follows. The application was filed on November 21, 2005, for a Type I MSW Landfill. The Executive Director declared the application administratively complete on December 13, 2005. The Notice of Receipt of Application and Intent to Obtain a Permit was published on December 19, 2005. Notices of deficiencies were issued on February 3, 2006, and on April 24, 2006. The Executive Director declared the application technically complete on July 14, 2006. The Notice of Application and Preliminary Decision was published on August 29, 2006. The public comment closed on September 28, 2006. There was a minor revision to the application filed on October 20, 2006. The Applicant requested a direct referral on October 31, 2006. A public meeting was held on March 19, 2007. A Preliminary Hearing was held on April 13, 2007. The Executive Director filed his Response to Comment on June 28, 2007. The Chief Clerk's Office mailed the Response to Comment out on June 29, 2007. The hearing on the merits was held October 22-29, 2007.

The Executive Director has determined that WMTX's permit amendment application complies with the applicable statutory and regulatory requirements. Specifically, Mr. Pladej "Eunt" Prompungorn, Municipal Solid Waste (MSW) Project Manager, Waste Permits Division, Office of Permitting, Registration, and Reporting, representing the Executive Director of the TCEQ, testified

that WMTX's application complies with the agency's requirements for an expansion of the landfill in accordance with 30 TAC Chapter 330. See ED Exhibit No. 3, page 30, lines 11-13. Additionally, Mr. John Austin Williamson, P.G. Geologist V, Municipal Solid Waste (MSW), Waste Permits Division, Office of Permitting, Registration, and Reporting testified that WMTX's application complies with the agency's regulations on geology and hydrogeology issues, specifically dealing with the geological issues in permit amendment application MSW No. 66B, including site characterization, location restriction demonstrations for unstable areas, faulting, and seismic activity, and ground-water monitoring. See Prefiled Testimony of John Austin Williamson, ED Exhibit No. 8, page 9, lines 15-20. The Executive Director addresses below the major issues of the record based on the prefiled testimony, exhibits, and evidentiary hearing:

B. Standard of Review:

The fundamental issue in this hearing is whether WMTX has met the requirements, established by the Texas Legislature through statutes and the TCEQ through regulations, to obtain a permit amendment. 30 TAC § 80.17(a) provides that the burden of proof is on the moving party by a preponderance of the evidence, except as provided by subsections (b) - (d) (relating to water rates and enforcement matters). Therefore, it is WMTX's burden to prove that the application complies with applicable state laws and TCEQ regulations in order to obtain the proposed permit amendment.

Issues and evidentiary relevancy is limited in a direct referral matter. Pursuant to House Bill 801 amendments to the Texas Water Code at Section 5.557(a), codified in rule at 30 TAC § 55.210,

the central issue to be decided is whether the application complies with all applicable statutory and regulatory requirements. Issues presented in the RTC must be admitted pursuant to 30 TAC § 80.126. The evidentiary standard is material, relevant and not unduly repetitious, pursuant to 30 TAC § 80.127. The role of the Executive Director is to complete the administrative record pursuant to 30 TAC § 80.108(d) and § 80.118. The applicable rules are 30 TAC Chapter 330, as they existed at the time the application was filed. The technical summary is required by 30 TAC § 281.21(c).

II. COMPLIANCE WITH REQUIREMENTS PERTAINING TO THE GEOLOGY AND HYDROLOGY IN THE AREA

After analyzing all of the data provided by WMTX in its application and evidence during the hearing, the Executive Director recommends a finding that the landfill site will continue to be in compliance with existing TCEQ rules regarding geology and hydrology in the area. By operating according to the provisions in this permit and in compliance with the Commission regulations, the operation of this landfill should not adversely affect human health or the environment.

The Applicant has prepared a Geology Report as required by 30 TAC § 330.56(d). See ED Exhibit No. 8, page 4, lines 18-19. See also APP 202 at Part III (Site Development Plan), Attachment 4, of the Application. The Geology Report was prepared by a qualified ground-water scientist, as required by this rule. The cover page of the Geology Report is signed and sealed by Ms. Janet L. Rashkes Meaux, P.G. Additionally, Ms. Beth Ann Gross, P.E. signed and sealed the report. See ED Exhibit No. 8, page 4, lines 24-26. In the March 28, 2005, WMTX response to the First

Technical Notice of Deficiency, a detailed documentation of the qualifications of Ms. Meaux as a qualified ground-water scientist is provided in Comment/Response 93 on pages 19 –20. See ED Exhibit No. 8, page 4, lines 26-29.

The Applicant also provided a discussion of the regional physiography and topography in the vicinity of the facility, as required under 30 TAC § 330.56(d)(1) on pages 4-3 through 4-4 of the Geology Report, Attachment 4, of Part III of the application. See ED Exhibit No. 8, page 4, lines 35-37.

The Applicant also provided a description of the regional geology in the vicinity of the facility, as required under 30 TAC § 330.56(d)(2) on pages 4-5 through 4-8 in the Geology Report, Attachment 4, of Part III of the application. See ED Exhibit No. 8, page 4, lines 42-43. See also APP 202.

In addition, the Applicant also provided a geologic map of the region with text describing the stratigraphy and lithology, as required under 30 TAC §330.56(d)(2)(A) in Figure I/II-11 in the “Drawings” section of the Geology Report, Attachment 4, of Part III of the application. See ED Exhibit No. 8, page 5, lines 2-4. See also APP 202.

The Applicant also provided a description of the generalized stratigraphic column in the facility area, as required under 30 TAC § 330.56(d)(2)(B) in a regional stratigraphic column depicted in Table 4-1, Attachment 4, of Part III of the application. See ED Exhibit No. 8, page 5, lines 9-10. See also APP 202.

The Applicant provided the results of the subsurface investigation conducted at the site, as

required under 30 TAC § 330.56(d)(5)(A)(i) through (ix) are presented on pages 4-15 through 4-23, along with accompanying tables and drawings, in Attachment 4 of Part III of the application. See ED Exhibit No. 8, page 6, lines 18-20.

The Applicant has also provided data on faults located within the site pursuant to 30 TAC § 330.53(b)(10)(B) and § 330.303. Specifically, the Applicant identified any faults and subsidence in the vicinity of the landfill, as well as the potential for subsidence, as required under 30 TAC § 330.56(d)(3)(A), 30 TAC § 330.303, and 30 TAC § 330.305 at Part I/II, Section 5.6, pages I/II-20 through I/II-21, and Part III, Sections 3.1.3 (page 4-8), 4.1 (page 4-10), 6.1.2 (page 4-16), and 6.4 (pages 4-21 through 4-23), regarding the occurrence of faults within the site. See ED Exhibit No. 8, page 3, lines 14-21. Specifically, in Section 5.6, the Applicant has represented that "... Holocene faults are not located within a 1/2-mile radius of the site and, therefore, the location restriction criterion evaluated in this section is satisfied and a detailed fault study is not required." *Id.* A certification of compliance with this location restriction is included in Appendix I/II-D. *Id.*

The Applicant provided a discussion of the potential for seismic impact in the vicinity of the site on page I/II-22, Section 5.7, of Part I/II of the application, and provided a reference map - Figure I/II-14. The Applicant's conclusion was that "... the site is not located within a seismic impact zone, and the location restriction criterion evaluated in this section is satisfied." A certification of compliance with this location restriction is included in Appendix I/II-D. See ED Exhibit No. 8, page 3, lines 26-31.

The Applicant provided a description of the regional aquifers in the vicinity of the facility

including the information required under 30 TAC § 330.56(d)(4)(A) through (J). The Applicant provides this information on pages 4-12 through 4-24, along with accompanying tables and drawings, in Attachment 4 of Part III of the application. *See* ED Exhibit No. 8, page 6, lines 8-14. The Applicant has identified the Edwards Aquifer as the principle aquifer in the area, and has addressed the occurrence of groundwater in the overlying units – namely, the Eagle Ford Shale, Austin Chalk, Lower Taylor Group, and Quaternary/Tertiary alluvium. *Id.*

The Applicant identified the uppermost aquifer at this site, as well as any lower, hydraulically-connected aquifers, as required under 30 TAC § 330.56(e)(2), and has represented that the uppermost water-bearing unit at this site is Stratum III, which consists of oxidized clays/claystones of the Lower Taylor Group. This designation is found on pages 5-4 through 5-5 of Attachment 5 of the application. *See* ED Exhibit No. 8, page 7, lines 40-45. On pages 5-5 through 5-6, the Applicant also indicates that the lower aquifer at this site is the Edwards Aquifer, but that the Edwards Aquifer is not hydraulically connected to the shallow, water-bearing units at this site, but instead separated by hundreds of feet of low hydraulic conductivity, unweathered, unfractured clays/claystones serving as a lower confining unit to Stratum III. *Id. See also* APP 202.

The Applicant represents that the Edwards Aquifer is not only the primary source of groundwater for the facility area, but for the entire New Braunfels region as well. *Id. See also* APP 202. Overlying formations (Eagle Ford Shale, Austin Chalk, Lower Taylor Group, and Quaternary/Tertiary alluvium) are too fine-grained and impermeable to yield sufficient quantities of groundwater necessary to be utilized as aquifers. *Id. See also* application 202. The Applicant

estimates that the top of the Edwards Aquifer (comprised of the Edwards Limestone and overlying Georgetown Limestone) is approximately 500 to 600 feet below land surface at the landfill site. *Id.* See also application 202.

The Applicant provided a Ground-water Investigation Report which includes records of water-level measurements collected at the site and a description of the proposed ground-water monitoring system and analysis of the most likely contaminant pathway as required under 30 TAC § 330.56(d)(5)(C)(i) through (iv). The Ground-water Investigation Report is included in Attachment 4 of Part III of the application on pages 4-32 through 4-40. See ED Exhibit No. 8, page 6, lines 35-36. The proposed ground-water monitoring system is discussed on pages 5-10 through 5-15 of Attachment 5 of Part III of the application. Certification of the system design is found on page 5-17. The proposed ground-water monitoring system is depicted in Drawing 5-1, with related technical information provided in Table 5-1, in Attachment 5. See ED Exhibit No. 8, page 6, lines 35-40.

III. ADEQUACY OF GROUNDWATER MONITORING SYSTEM

After analyzing all of the data provided by WMTX in its application and evidence during the hearing, the Executive Director recommends a finding that the landfill site will continue to be in compliance with existing TCEQ rules regarding the Adequacy of the Groundwater Monitoring System. By operating according to the provisions in this permit and in compliance with the Commission regulations, the operation of this landfill should not adversely affect human health or

the environment.

The Applicant has addressed contaminant migration. *See* ED Exhibit No. 8, page 7, lines 1-7. The Applicant's conclusion about the potential pathway for contaminant migration, which is found on pages 4-39 through 4-40 in Attachment 4 of Part III of the application, is that Stratum III that underlies the facility would be the geologic unit most likely to serve as a pollutant migration pathway, because it is the main stratum intersected by the base of the landfill unit, and its greater vertical and horizontal hydraulic conductivity compared to the other shallow strata. ED Exhibit No. 8, page 7, lines 1-7. *See also* APP 202. The Applicant asserts that "(t)here is no potential for landfill constituent migration from the facility to the underlying Edwards Aquifer during the active life, closure, and post-closure care period." *See* ED Exhibit No. 8, page 7, lines 4-7.

The Applicant provided a Ground-water Investigation Report which includes records of water-level measurements collected at the site and a description of the proposed ground-water monitoring system and analysis of the most likely contaminant pathway as required under 30 TAC § 330.56(d)(5)(C)(i) through (iv). The Ground-water Investigation Report is included in Attachment 4 of Part III of the application on pages 4-32 through 4-40. *See* ED Exhibit No. 8, page 6, lines 35-40. The proposed ground-water monitoring system is discussed on pages 5-10 through 5-15 of Attachment 5 of Part III of the application. Certification of the system design is found on page 5-17. The proposed ground-water monitoring system is depicted in Drawing 5-1, with related technical information provided in Table 5-1, in Attachment 5. *See* ED Exhibit No. 8, page 7, lines 12-20.

The Applicant provided a description of the existing or proposed monitoring system,

engineering drawings of a typical monitoring well, and a table of data for all proposed wells as required under 30 TAC § 330.56(d)(6). Specifically, the Applicant provided a description of the proposed ground-water monitoring system on pages 5-10 through 5-15 of Attachment 5 of Part III of the application. Certification of the system design is found on page 5-17. The proposed ground-water monitoring system is depicted in Drawing 5-1, with related technical information provided in Table 5-1, in Attachment 5. A construction diagram for a typical facility monitor well is depicted in Drawing 5-2 of Attachment 5 of Part III of the application, and the table of data for all existing/proposed monitor wells is found in Table 5-1 in Attachment 5 of Part III of the application. *See* ED Exhibit No. 8, page 7, lines 12-20.

The Applicant also provided a Ground-water Characterization Report, as required under 30 TAC § 330.56(e) in Attachment 5 of Part III of the application. *See* ED Exhibit No. 8, page 7, lines 25-26. *Id.*

The Applicant provided a tabulation of all relevant groundwater monitoring data from wells on site, as required under 30 TAC § 330.56(e)(1), and provided both a discussion and accompanying figures regarding the relevant ground-water data from this site. The discussion is found on pages 5-8 and 5-9, and the tabulation is provided as Appendix 5-A, both parts of Attachment 5 of Part III of the application. *See* ED Exhibit No. 8, page 7, lines 31-34.

The Applicant provided a description of any plume of contamination detected by the existing ground-water monitoring system as required under 30 TAC § 330.56(e)(4) through (8). The Applicant has represented on pages 5-8 through 5-9 of Attachment 5 of the application that this

facility is in detection monitoring, and that there has not been any leakage from the facility detected by the ground-water monitoring system. *See* ED Exhibit No. 8, page 8, lines 16-22. *See also* APP 202. Specifically, the application states on page 5-9 that "... to date, no statistically significant change over background has triggered assessment monitoring in any well, nor any corrective action, at the facility. There is no known contamination plume at the site." *Id.*

The Applicant also provided a topographic map that identifies the locations of the monitoring wells, the waste management unit boundaries, and the proposed point of compliance for the ground-water monitoring system, as required under 30 TAC § 330.56(e)(3) at Drawing 5-1 of Attachment 5, Part III of the application, was provided in compliance with this rule. *See* ED Exhibit No. 8, page 8, lines 9-10. *See also* APP 202.

The Applicant provided a Ground-water Sampling and Analysis Plan, as required under 30 TAC § 330.56(k) as Attachment 11 of Part III of the application. *See* ED Exhibit No. 8, page 9, lines 5-6. *See also* APP 202. The Ground-water Sampling and Analysis Plan meet the requirements of 30 TAC § 330.233 regarding the sampling and analytical requirements for such plans. *See* ED Exhibit No. 8, page 9, lines 12-13. *See also* APP 202.

IV. ADEQUACY OF GROUNDWATER AND SURFACE WATER PROTECTION PLAN AND DRAINAGE PLAN

A. Issues Relating to Drainage:

Based on the information submitted in the application and the testimony at the hearing, the

Executive Director recommends a finding that the application meets all regulatory requirements related to surface water protection and drainage.

On behalf of the Executive Director, Pladej “Hunt” Prompuntagorn testified that as required by TCEQ rules found at 30 TAC § 330.55(b) and at 30 TAC § 330.56(f), a surface drainage plan was submitted as Attachment 6 of the Site development plan. The plan incorporates certain engineered features which allow for the development of the facility, including final contours and drainage structures. The Applicant’s engineer that signed and sealed Attachment 6 has stated that natural drainage patterns will not be significantly altered as a result of the proposed landfill development, and provided a demonstration in Attachment 6. See Executive Director Exhibit No. 3, page 18, lines 34-40.

Mr. Prompuntagorn testified that under § 330.53(b)(12) of the Commission’s MSW rules, the application must include floodplains statement that provide data on floodplains in accordance with Chapter 301, Subchapter C of this title (relating to Approval of Levees and Other Improvements). Statements and maps provided in the application regarding floodplain were prepared by the applicant's licensed professional engineer who certifies and attests to the accuracy and the latest available of the data at the time of the application submittal. The Applicant has provided an adequate floodplain map as required by the rule and based on the provided FEMA Floodplain Map, Figure I/II-13 of Part I/II of the application; the proposed waste disposal limits are not located in the 100-year floodplain. Executive Director Exhibit No. 3, page 20, lines 17-27.

Mr Prompuntagorn also testified that pursuant to TCEQ’s MSW rules at 30 TAC §

330.56(f)(4), a drainage and storm water run-off control and analysis must be provided to demonstrate that the existing or natural drainage patterns will not be significantly altered as a result of the proposed facility expansion. The Applicant provided a drainage analysis in Attachment 6 to Part III of the application that states that the proposed facility will not increase run-off onto adjacent property. The proposed landfill facility is designed to not significantly alter natural drainage patterns. Executive Director Exhibit No. 3, page 21, lines 10-16.

In response to questions from the Executive Director's attorney, Mr. Prompungorn testified that the Applicant provided a discussion and analysis to demonstrate that there will be no significant alternation of natural drainage patterns after the proposed landfill development. (Tr. page 1046, lines 14-17.)

In response to questions from TJFA's attorney, Mr. Prompungorn testified that the three factors TCEQ staff focus on when determining whether natural drainage patterns would be significantly altered are peak flow rate, run off volume, and velocity. (Tr. page 946, lines 2-6). Mr. Prompungorn also explained that the Applicant provided calculations comparing the developed conditions with both the "pre development" and "existing conditions." (Tr. page 1049, lines 2-18).

B. Issues Relating to Flooding:

Mr. Prompungorn testified that pursuant to the TCEQ's MSW rules at 30 TAC § 330.55(b)(7), the Applicant is required to protect the site from flooding by constructing suitable levees to provide protection from a 100-year frequency flood or perform a watershed analysis to

demonstrate that the 100-yr frequency flood will not reach any portions of the site. The 100-yr frequency flood analysis is included in the application as presented in Attachment 6 – 6G to Part III of the application. Backwater effects from Freedom Lake were not considered in the 100-yr frequency flood analysis because the water levels of Freedom Lake prior to the 100-yr storm will be very low due to the low outlet structure of the Freedom Lake. Executive Director’s Exhibit No. 3, page 20, lines 39-45 and page 21, lines 1-2.

V. COMPLIANCE WITH GEOTECHNICAL WITH GEOTECHNICAL REQUIREMENTS, INCLUDING SLOPE STABILITY

After analyzing all of the data provided by WMTX in its application and evidence during the hearing, the Executive Director recommends a finding that the landfill site will continue to be in compliance with existing TCEQ rules regarding Geotechnical Requirements, including Slope Stability. By operating according to the provisions in this permit and in compliance with the Commission regulations, the operation of this landfill should not adversely affect human health or the environment.

The Applicant provided a Geotechnical Report, including the results of required soils testing, as required under 30 TAC § 330.56(d)(5)(B) on pages 4-24 through 4-31 of Attachment 4 of Part III of the application, and includes the soils tests required under this rule. Accompanying tables and drawings were also provided. *See* ED Exhibit No. 8, page 6, lines 25-27. *See also* APP 202.

The Soil and Liner Quality Control Plan was prepared by the Applicant’s consultant, Mr.

Scott M. Graves, P.E., and complies with the requirements of 30 TAC § 330.205. *See* ED Exhibit No. 8, page 8, lines 36-37 and 45-46. Pursuant to 30 TAC § 330.200(a)(1); Section 4.2.1 of Attachment 5 (GW characterization report) and section 1.6 of Attachment 10 (soil and liner quality control plan), the Applicant proposed the option for either a standard Subtitle D liner or the ALD liner. The Applicant provided a Soil and Liner Quality Control Plan, as required under 30 TAC § 330.56(j) and § 330.200-206). The Soil and Liner Quality Control Plan is provided as Attachment 10 of Part III of the application. The Soil and Liner Quality Control Plan meets the requirements of 30 TAC § 330.205 regarding the construction requirements for such plans. *See* ED Exhibit No. 8, page 8, lines 36-37 and 45-46.

The Executive Director has reviewed the final cover design and has determined that the final covers are acceptable and comply with the requirements of 30 TAC § 330.253(c). The final cover has been designed to prevent sliding. As presented in Section 6 of Attachment 14 to Part III of the application, an active gas vents system is proposed and will be installed concurrent with the installation of the final cover to prevent the possible positive pressure beneath the final cover system and lateral migration of landfill gas. *See* ED Exhibit No. 3, page 23, lines 38-44. Engineering details of the gas vents system are shown in Drawings 14-4, 14-5, and 14-8 of Attachment 14 to Part III of the application. *Id.* The gas vents system contains sufficient information for landfill gas management and control acceptable for the final cover system. In addition, the plan was signed and sealed by Mr. Scott Graves, P.E., a licensed professional engineer, to ensure accuracy of the design.

Id.

With respect to slope stability, The Executive Director's witness, Mr. Pladej Prompuntaḡorn, testified that the closest thing TCEQ has to a rule for slope stability is found at 30 TAC § 330.205 (e) which states that "Unless alternate construction procedures have prior written approval by the executive director, all constructed soil liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining." (Tr. page 1053, lines 7-16).

The Applicant also provided a discussion regarding the potential for unstable soil conditions in the vicinity of the landfill in Part I/II, Section 5.8, pages I/II-22 through I/II-23, and Part III, Section 4.2, page 4-10. See ED Exhibit No. 8, page 3, lines 37-42. The Applicant's conclusion was that "(s)ince the site is not located in an unstable area, the location restriction criterion evaluated in this section is satisfied." *Id.* A certification of compliance with this location restriction is included in Appendix I/II-D. *Id.*

According to 30 TAC § 330.205(a), all constructed liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining. See ED Exhibit number 3, page 22, lines 25-46. As presented in Appendix 4F of Attachment 4 to Part III of the application, the proposed final cover slopes are stable with acceptable factors of safety against sliding under all conditions analyzed. *Id.* Given the calculated conservative value of factors of safety for final cover slope stability, geosynthetics anchoring is not required. *Id.* The Applicant will be required to implement the applicable requirements contained in Attachments 4, 12, 13, and Part IV of the application for the slope construction and maintenance during the post-closure care period. *Id.* In addition, the Final Cover Quality Control Plan (FCQCP) presented in Appendix 12-A of Attachment

12 to Part III of the application indicates that testing of final cover materials (soils and geosynthetic components) for interface strength will be performed prior to construction to verify the required interface strength specified in the slope stability analysis. *Id.* Furthermore, under 30 TAC § 330.51(d) of the TCEQ's MSW rules, MSW permit applications must be prepared, signed and sealed by a professional engineer. *Id.* The slope stability analysis was prepared and sealed by Mr. Scott Graves, P.E., a licensed professional engineer, to ensure accuracy of the analysis and calculations. *Id.*

As stated above, Part I/II of the application was prepared by Mr. Scott M. Graves, P.E. and the General Geology and Soils Statement provided therein represents that the proposed Mesquite Creek Landfill facility is underlain by Quaternary clay, the Quaternary-Tertiary Uvalde Gravel, and the Lower Taylor Group. Soils present are highly plastic clay underlain by clayey gravel and gravelly clay, then underlain by oxidized clay and/or claystone, then underlain by unoxidized clay and/or claystone. *See* ED Exhibit No. 8, page 3, lines 1-9. The Applicant provided a discussion regarding the potential for unstable soil conditions in the vicinity of the landfill in Part I/II, Section 5.8, pages I/II-22 through I/II-23, and Part III, Section 4.2, page 4-10. *Id.* The Applicant's conclusion was that "(s)ince the site is not located in an unstable area, the location restriction criterion evaluated in this section is satisfied." *Id.* A certification of compliance with this location restriction is included in Appendix I/II-D. *Id.*

The Applicant provided a discussion regarding the potential for unstable soil conditions in the vicinity of the landfill in Part I/II, Section 5.8, pages I/II-22 through I/II-23, and Part III, Section

4.2, page 4-10. *Id.* The Applicant's conclusion was that "(s)ince the site is not located in an uns able area, the location restriction criterion evaluated in this section is satisfied." *Id.* A certification of compliance with this location restriction is included in Appendix I/II-D. *Id.*

VI. ADEQUACY OF SITE OPERATING PLAN AND FACILITY ENTRANCE DESIGN

A. Operating Hours:

Upon review of the information provided in the permit application and a review of the testimony offered during the hearing, the Executive Director recommends that the operating hours in the draft permit be approved. Although there were some discussions during the hearing of the Applicant amending the requested operating hours as part of a settlement agreement, the Executive Director has not received any request from the Applicant to change the proposed operating hours of 24 hours a day, seven days a week.

The Applicant's first witness, Mr. Donald James Smith, testified in response to questions from TJFA's attorney that the permit application requests operating hours of 24 hours a day, seven days a week. (Tr. page 34, lines 21-24.) Mr. Smith further testified that WMTX does not intend to accept waste 24 hours a day and seven days a week, but WMTX wants the flexibility allowed by such operating hours to be able to serve the community in the event of an emergency or equipment failure. (Tr. page 36, lines 16-20.)

The Executive Director's witness, Mr. Pladej Prompungorn, was also questioned by TJFA's

attorney about the operating hours requested in the application. In response to questions from Mr. Dunbar, Mr. Prompuntagorn testified that he was generally aware of the settlement agreement between the Applicant and Guadalupe County, but he did not know the details of the agreement. (Tr. page 1033, lines 20-21). Mr. Dunbar asked specifically that if the settlement agreement limits the operating hours to something less than 24/7, whether it would be appropriate to include that limitation in the draft permit. (Tr. page 1034, lines 2-6). Mr. Prompuntagorn responded that such a change could be made (Tr. page 1034, line 7). Mr. Prompuntagorn also testified that if the permit were issued with something less than operating hours of 24/7 and the Applicant later decided to increase the operating hours, a permit modification would be needed. (Tr. page 1035, lines 1-4).

B. Fire Protection:

Based on information submitted in the application and testimony at the contested case hearing, the Executive Director recommends a finding that the information contained in the application (site operating plan) relating to fire protection at the site will continue to be in compliance with existing TCEQ rules.

In response to questions from TJFA's attorney, the Executive Director's witness, Mr. Pladej Prompuntagorn testified that the permit application indicates that there will be one bulldozer and one scraper on site at all times. (Tr. page 1033, lines 3-5). Mr. Prompuntagorn further testified that it was his opinion that this equipment was acceptable as a minimum of required equipment for fire protection purposes, for a working face with an area of 200 feet by 200 feet. (Tr. page 1033, lines 6-

9). Subsequently, Mr. Prompuntagorn explained that there were a few special case scenarios when the working face would be larger than 200 feet by 200 feet, such as when a new cell is started (Tr. page 1054, lines 20-23).

C. Texas Parks and Wildlife Recommendations:

Based on the testimony at the contested case hearing, the Executive Director recommends a finding that the Applicant has complied with all applicable regulations relating to threatened or endangered species.

Ms. Barbara Castille, on behalf of the Applicant, testified that the Texas Parks and Wildlife Department has recommended that certain precautions should be taken at the landfill site to avoid impacts to the Mountain Plover, a rare bird species. (Tr. page 405, lines 7-14.) Ms. Castille testified that TPWD recommends taking measures to educate landfill personnel. Id. Ms. Castille also testified that TPWD recommends that land clearing activities not be conducted during the general bird nesting season from March to August. (Tr. page 406, lines 14-19). In addition, TPWD recommends that maintaining vegetated buffers along the riparian corridors to minimize impacts to ecosystems, and revegetating disturbed areas with the project area with site specific native plant species. (Tr. page 409). Ms. Castille testified that she agrees with these recommendations and plans to discuss them with WMTX at a future point in time, closer to construction activities, when there will be a lot more information disseminated and coordinated for endangered species. (Tr. page 408, lines 7-11.)

The Executive Director's witness, Mr. Pladej Prompuntagorn, explained that while TCEQ

rules do address threatened or endangered species, there is no TCEQ rule which would require placing language in the draft permit to require the Applicant to educate landfill personnel about rare bird species. (Tr. page 1066, lines 16-24). However, Mr. Prompungorn also testified that if the Applicant requested that such language be placed in the Site Operating Plan, TCEQ would not object. (Tr. page 1044, lines 1-5). With regard to the other recommendations by TPWD, Mr. Prompungorn testified that it was typical for landfills to use native plant species in vegetating the closure, or over the closure. (Tr. page 1069, lines 21-25).

VII. CONCLUSION

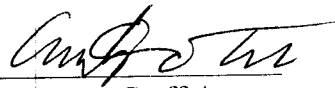
Based on evidence admitted and issues identified in the record, the Executive Director contends that all regulatory requirements for an MSW landfill expansion were met by the Applicant, Waste Management of Texas, Inc. Therefore, the TCEQ's Executive Director stands by the preliminary decision to issue MSW permit amendment No. 66B.

Respectfully Submitted,

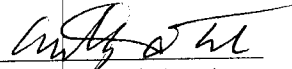
TEXAS COMMISSION
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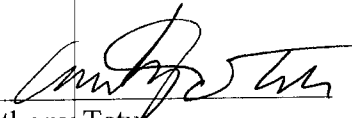
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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CHIEF CLERKS OFFICE

CERTIFICATE OF SERVICE

I certify that on December 19, 2007, the foregoing was sent by first-class mail, agency mail, or facsimile to all persons on the attached mailing list.



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FOR
WASTE MANAGEMENT OF TEXAS, INC.
FOR A MUNICIPAL SOLID WASTE PERMIT AMENDMENT OF
PERMIT NO. 66B**

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**SERVICE LIST
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PROPOSED PERMIT NO. 66B
CONTINUED**

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