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September 28, 2006

**Via Facsimile: (512) 239-3311  
and Federal Express**

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. 66B

Dear Ms. Castañuela:

Attached are comments submitted on behalf of our client TJFA, L.P. TJFA owns real property approximately ½ mile from the Mesquite Creek Landfill operated under current TCEQ MSW Permit No. 66A. It is our opinion that the operation of this facility and the proposed facility permit amendment referenced above have an adverse impact on the use and value of TJFA and its property in a way that is not common to the general public because of such proximity.

A public notice (Attachment 1) of an Application and Preliminary Decision on Proposed MSW Permit No. 66B was published in the Seguin Gazette-Enterprise on August 29, 2006. Public comments are due September 28, 2006. We are submitting the attached public comments (Attachment 2) on behalf of our client in response to this public notice. It is our understanding the permit amendment application was processed under the MSW regulations in effect prior to March 29, 2006. In our opinion, under those regulations, the proposed permit amendment does not adequately address the attached list of relevant and material issues. On behalf of our client, we request the Executive Director return the proposed permit amendment to the applicant for further changes consistent with the attached comments and resubmit 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. Our client believes there is a significant degree of public interest in the application, and therefore, requests a public meeting for other members of the public to submit comments or to ask questions about the application.


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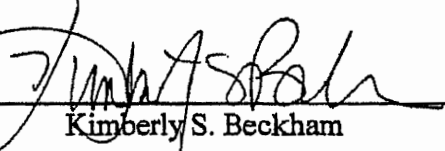
If you have any questions on these public comments or requests, you may reach us at (512) 435-2300.

Very truly yours,

**ARMBRUST & BROWN, L.L.P.**

By:   
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David B. Armbrust

By:   
\_\_\_\_\_

Kimberly S. Beckham

Enclosures

**TEXAS  
COMMISSION ON ENVIRONMENTAL QUALITY**

***Revised*  
NOTICE OF  
APPLICATION AND PRELIMINARY  
DECISION  
FOR A MUNICIPAL SOLID WASTE  
PERMIT AMENDMENT**

PROPOSED MSW PERMIT NO. 66B

**APPLICATION AND PRELIMINARY DECISION.** Waste Management of Texas, Inc., 8611 Covell Road, San Antonio, Texas 78252-2701 has applied to the Texas Commission on Environmental Quality (TCEQ) for a major permit amendment to authorize a lateral expansion of their existing Comal County Landfill. The application proposes to change the name of the facility to Mesquite Creek Landfill. The facility is a Type I municipal solid waste landfill. The facility would be authorized to accept municipal solid waste, non-hazardous industrial solid waste that is Class 1 due to asbestos content; Class 2 & 3 non-hazardous industrial solid *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 the draft permit, subject to the limitations and special provisions provided *in the draft permit*. The facility is a 244 acre site located at the southwest intersection of Farm-to-Market Road (FM) 1101 and Kohlenberg Lane, approximately 5 miles north of the intersection of State Highway 46 and FM 1101. The facility's address is 1000 Kohlenberg Lane, New Braunfels, Texas 78130. The TCEQ received this application on November 21, 2005.

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 New Braunfels Public Library, 700 East Common Street, New Braunfels, Texas and the Seguin - Guadalupe County Public Library, 707 E. College, Seguin, Texas.

**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 substantial public interest in the application or if requested by a local

legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments, along with the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the 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 person who may be affected by the proposed facility is entitled to request a contested case hearing from the Commission. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.**

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name; address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**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 reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county

mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**All written public comments and requests *for a public meeting or contested case hearing* must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 787113087 within 30 days from the date of newspaper publication of this notice.**

**AGENCY CONTACTS AND 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. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.state.tx.us](http://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. Ric Green at (210) 623-8800.

Issuance Date: August 23, 2006

Published August 29, 2006 | [Save](#) this ad.

**Attachment 2**  
**Public Comments on Proposed MSW Permit No. 66B**  
**In Comal and Guadalupe Counties by Waste Management of Texas, Inc.**

<b>Public Comments on Relevant and Material Issues</b>
The Part A Application form is incorrect because it is stated that the permittee will not accept Class I industrial waste, but will accept special waste; however, special waste includes Class 1 industrial solid waste of all kinds and the Part A Application form specifically reference §330.137 which is applicable to disposal of Class I industrial waste.
The Part A Application form is incomplete because State Representative Carter Casteel of District 73 in Comal County was not listed to receive notice.
Applicant incorrectly indicates on Part A Application form that it is not required to comply with TPDES storm-water plan requirements. Applicant incorrectly indicates on the core data form.
Applicant incorporates incorrect information and misleads TCEQ and the general public by stating that Subtitle D equivalent alternate liner systems were installed in Phases III and IV. In fact, there is no regulatorily recognized equivalent alternative liner system.
The applicant states the landfill expansion area is lower than the currently permitted height. This is misleading because the maximum height of the proposed landfill expansion will rise approximately 190 additional feet above parts of the surrounding landscape.
Applicant makes no commitment to implement or maintain any waste reduction program.
The site is to become operational 24 hours per day and 7 days per week.
Insufficient traffic study was performed. This is particularly critical given the rapid growth that is occurring in Comal/Guadalupe County area.
Traffic study states that increases in traffic are the same as the estimated increases in population growth at 2% per year, but 1.75% growth was actually used in the traffic study.
The application states traffic will be discouraged on Schwarzlose Road in Guadalupe County, but according to the traffic study, at least 10 percent of the vehicles coming to the landfill will use this road for access.
The traffic study also likely underestimates current and future traffic accessing the landfill. The application states that currently 172 vehicles per day enter and leave the

landfill. The application also states that the landfill receives over 1,300 tons per day of waste. This means that each vehicle must bring in an average of over 7 tons of waste. If an allowance for onsite workers and mom and pop haulers is allowed, each vehicle must carry even more waste. Even if the waste were already compacted to 1,500 tons per cubic yard, which it would not be, and half the vehicles are workers and mom and pop haulers, each of the remaining vehicles would be carrying 20 cubic yards of waste, an impossibly high amount for vehicles smaller than transfer trailers. The projections of traffic increases are similarly flawed.

The information provided in Attachment 4 of the permit amendment application indicates Stratum III is the uppermost water-bearing unit, describing Stratum IV as the underlying aquiclude, yet the alternative liner design demonstration says Stratum III and Stratum IV constitute the uppermost water-bearing unit and that Stratum V is the underlying aquiclude. Yet, the application states that no borings penetrated through Stratum IV.

The Ground and Surface Water Statement does not contain any discussion of the Edwards Aquifer, which is stated to occur about 500-600 feet below the landfill, but Table I/II-3 shows it at 245 feet below the Taylor Formation, which is stated to be only 260 feet thick.

The site soils are said to belong to the Houston Black-Houston association when in fact there is no such association.

The operation is using a stream crossing over Mesquite Creek without apparent authorization from or disclosure to the Army Corp of Engineers.

The landfill Unit 1 west of the proposed Mesquite Creek does not show a perimeter road around the entire landfill for maintenance access, but only on the southwest side.

If the landfill expansion is permitted as proposed vehicles loaded with waste must cross Mesquite Creek to reach Unit 3 of the landfill after the current entrance is closed and moved to the area at the new Unit 2 to the southeast. This is not discussed in the permit application nor does it appear to have been conveyed to the Army Corps of Engineers.

The analysis of impact of encroachment of the storm water detention ponds on the flood pool of Freedom Lake is erroneous because it assumes that the detention ponds are empty and that some of the Freedom Lake floodwaters can be stored in the storm water detention ponds. The analysis did not take into consideration the timing of peak flood levels for Freedom Lake and the timing of discharge into and from the storm water detention ponds. If the storm water detention ponds are full, or even partially full, the ponds are unavailable to compensate for the loss of valley storage related to Freedom Lake.

Drainage facilities, including all channels, were designed for the 25-year/24-hour storm event; however, contrary to good engineering practice and to the MSW regulations, there is no discussion or demonstration that this is the most critical event for determining peak

discharge.
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.
The 100-year flood analysis performed by the applicant neglected to consider the backwater effects of Freedom Lake and the stated fact in the application that the Freedom Lake flood pool does encroach upon the landfill site.
The Subtitle D liner design is flawed due to the proposed anchoring of Subtitle D liner and the overlying geosynthetic drainage layer in the same trench.
The alternative final cover system proposed presumes infiltration barrier of $1 \times 10^{-7}$ cm/sec or less, but this hydraulic conductivity will not be maintained over time due to wetting and drying, freezing and thawing, and animal activities during the life of the landfill and a thirty-year post-closure care period.
The alternative liner system demonstration incorporated into the permit application is fatally flawed because it is for a site located over the Wilcox, which does not exist at the site. Since this flawed demonstration was the basis for use of an alternate liner system in portions of Unit I and for the yet to be built Unit 3, the facility is in violation of the federal Subtitle D rule and the state's MSW regulations and should be designated an open dump. Open dumps cannot be permitted.
The subsurface investigation was inadequate because there was no attempt to reconcile the inconsistencies in the soil borings done for this application and the soil borings done previously, therefore, it presents a flawed analysis of subsurface conditions.
The landfill expansion area in Unit 2 will bottom below the water table. Attachment 4 does not contain a poorly permeable demonstration to support their position, nor is one provided elsewhere in the permit application.
A water well is listed as an irrigation well in one place and then referred to as a domestic well in another attachment.
Information provided concerning local water wells is inconsistent with the other information provided, indicating the wells inventory was inadequate.
The seismic impact statement says the Balcones Fault has a minimal chance of reactivation, but there is no explanation or data in the application to support this statement. The application acknowledges that there is a fault through the landfill site.
No piezometers were completed in Stratum IV of the expansion unit to test for and to compare hydraulic conductivity for the upper most water-bearing unit and the underlying aquiclude. The application used information generated by others for Unit 1 of the



landfill, which was developed years ago.
The application is also inconsistent because in one place it states there were 48 soil borings and in another it states there were 32 borings.
The permit amendment application is inconsistent in that it states in one place that all split spoon samples were evaluated for water content, but in another place it says only selected samples were evaluated. Such inconsistencies do not provide a clear understanding of subsurface conditions at the site.
The ground-water level is at the base of the tributary to Mesquite Creek on the southwest side of the existing landfill Unit 1 based on Drawing 4-13, and ground-water is indicated to flow from northeast to southwest through the landfill to the tributary, creating an unauthorized discharge of leachate into a surface water course. Since portions of Unit 1 have insitu or compacted clay pre-Subtitle D liner systems, movement of groundwater (becoming leachate) through the landfill waste is a reasonable inference.
Monitor Well No. 1 is not an up gradient well, but it is being used as an up gradient well in Drawings 4-13, 4-13A and 4-13B.
There is no discussion of how to transition from the standard final cover system to an alternative final cover system.
The applicant uses two different models to evaluate the final cover system, but there is no discussion of whether the results are consistent or not.
There is no discussion of when to install gas monitoring wells with the final cover system.
The cross-section diagrams in Attachment 2 and Attachment 4 do not match and are inconsistent.
Unit 3 does not have an up or down gradient monitoring well proposed.
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 it states the leachate and contaminated water will be placed in storage tanks with no recirculation, but there are no controls to prevent recirculation of the combined leachate and contaminated water from happening. Therefore, the ground and surface water protection plan is inadequate.
Appendix 6G states run-off from daily cover is contaminated, but does not provide for containment or treatment of this run-off other than at the working face. Runoff from daily cover is simply to be allowed to discharge into surface water courses without approval from TCEQ in violation of the MSW regulations

<p>The slope stability analysis in Appendix 4F uses installed strength parameters and there was no analysis performed on the stability of the waste considering the decrease in strength parameters due to alternate wetting and drying as shown by Stephen Wright, Professor of Geotechnical Engineers at the University of Texas.</p>
<p>The slope stability analysis used an unrealistic weight of 2,160 pounds per cubic yard and the weight in the site life calculations was only 1,500 pounds per cubic yard.</p>
<p>The closure and post-closure care costs in Attachment 8 are suspect. For example, the costs for ground water monitoring appear too low and there are no costs allocated for closure of liquids stabilization facilities.</p>
<p>The storm-water discharge for Point E nearly doubles after development. This storm water is then discharged through a culvert beneath Schwarzlose Road, but there is no analysis, which shows that the culvert can convey twice the storm-water discharge. This potentially constitutes a significant alteration of natural drainage in violation of the MSW regulations.</p>
<p>The storm-water ponds are to also act as sedimentation ponds, but will be ineffective for control of sedimentation because the discharge inverts are at the bottom of the ponds.</p>
<p>Although natural, permit amendment discharge of Mesquite Creek exceeds non-erosional velocities with no erosion controls provided, the proposed post development discharge also exceeds non-erosional velocities and no erosional controls are provided. Therefore, there is no protection for Freedom Lake from sediment accumulation provided in the proposed site development plan.</p>
<p>The GWSAP in the permit amendment application is contradictory because it states there will be no field filtering allowed, but there is a provision to collect dissolved metals which requires field filtering or filtering at the laboratory. Also, the list of metals for total and dissolved samples are not the same</p>
<p>The application is merely permissive for the operator to use ordinary water quality parameters for evaluating ground-water quality.</p>
<p>A standard Subtitle D final cover system is proposed that incorporates a flexible membrane, yet the gas management plan presented includes no provisions for venting or collection of landfill gas generated within the landfill from beneath the flexible membrane. 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.</p>
<p>The standard Subtitle D final cover system does not show how the geomembrane and geonet will be anchored on the side slope or discuss how sliding will be prevented.</p>
<p>The permit amendment application states that leachate and landfill gas condensate will</p>

be pumped through a force main to evaporation ponds, which means the force main(s) from Units I and III will have crossing Mesquite Creek. No design details are provided for a force main system that can support the pressure or be protected from damage or destruction where any force main crosses Mesquite Creek. In addition, it does appear the Army Corps of Engineers was informed about the need for a force main system to cross Mesquite Creek. Thus, the options should not be permitted.

The application does not require the use of leak detention systems on the leachate force mains.

The application does not preclude the recirculation of leachate in Unit 3 over an alternative liner design.

The application does not preclude the recirculation of leachate collected from Units 1 and 3 and recirculating the leachate in Unit 2 in violation of the Subtitle D rule.

There are no calculations showing the impact of annual rainfall on the storage capacity of the leachate evaporation ponds.

Section 24.1.1 of the Site Operating Plan says contaminated run-off will be handled the same as leachate, but does not indicate how this will be accomplished.