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March 7, 2008

Ms. La Donna Castañuela
Chief Clerk (MC-105)
ATTN: Agenda Docket Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F
Austin, Texas 78753

Via Hand Delivery

Re: TCEQ Docket No. 2005-0337-MSW; SOAH Docket No. 582-06-3321
Application of Williamson County for a Permit Amendment to Expand a Type I Municipal Solid Waste Landfill Facility; (Permit No. MSW-1405B)

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced docket, please find one original and twelve copies of Applicant's Brief in Response to the Administrative Law Judge's Proposal for Decision. Please return one file-stamped copy to the courier. Thank you.

Respectfully submitted,

R. Mark Dietz
Counsel for Applicant Williamson County

Enclosures
cc: Service List (*via electronic mail and/or facsimile*)

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**

APPLICANT WILLIAMSON COUNTY'S BRIEF IN RESPONSE TO THE ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION

COMES NOW Applicant Williamson County ("***Applicant***" or "***Williamson County***") and, per 30 TEX. ADMIN. CODE § 80.257(a), files this brief in response to the Administrative Law Judges' ("***ALJs***") Proposal for Decision ("***PFD***") in the above-captioned matter. Williamson County finds the ALJs' PFD to be thorough, well reasoned, and supported by the evidence put forth in this proceeding. Accordingly, Williamson County accepts – with few, limited exceptions – the ALJs' proposed Findings of Facts and Conclusions of Law. These few, limited exceptions are set forth below.

I. ARGUMENT

A. IF LIMITATIONS ARE TO BE PLACED ON OPERATING HOURS, PER THE APPLICABLE REGULATORY REQUIREMENTS, THE PERMIT SHOULD DISTINGUISH BETWEEN WASTE ACCEPTANCE HOURS AND ALL OTHER HOURS OF OPERATION

As discussed in the ALJs' PFD, in its application, Williamson County requested the flexibility to operate the Williamson County Recycling and Disposal Facility, as necessary, without limitations on the facility's operating hours.[1] In the PFD, the ALJs reasoned that, "[w]hile the evidence supports round-the-clock operations in emergency situations and for equipment repair, . . . normal operating activities outside normal business hours might become

[1] *See* PFD at 82-83.

incompatible with anticipated residential and commercial development in the area."[2] In light of the possibility of a future incompatibility, the ALJs proposed to limit the facility's "operating hours" to specific hours and days of operation.

While Williamson County maintains that allowing the facility the flexibility to operate without limitations on its operating hours would not be incompatible with future, anticipated development in the area of the facility, Williamson County nevertheless accepts – and does not take exception to – the ALJs' proposal to limit "normal operating activities" to specified and limited hours. However, Williamson County respectfully submits that the ALJs' proposal regarding "normal operating hours" should be clarified to recognize the regulatory distinction between waste acceptance hours and other hours of operation. Specifically, the regulation applicable to facility operating hours expressly distinguishes between (1) waste acceptance hours, (2) hours for transportation of materials on- or off-site and operation of heavy equipment, and (3) operating hours for other activities.[3] The third category of operating hours – hours for "other activities" – does not require specific approval from the Texas Commission on Environmental Quality ("***TCEQ***" or the "***Commission***"), thus the relevant distinction is between waste acceptance hours and hours for transportation of materials on- or off-site and operation of heavy equipment.[4]

To give effect to this regulatory distinction, Williamson County respectfully requests that the ALJs' proposed limitation on the facility's operating hours be clarified to provide that the

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2 *Id.* at 83.

3 *See* 30 TEX. ADMIN. CODE § 330.118(a) (distinguishing between "waste acceptance hours and the hours when materials will be transported on or off site, and the hours when heavy equipment may operate," as well as "[o]perating hours for other activities").

4 *See id.* ("Operating hours for other activities do not require other specific approval.").

limitation applies only to the hours during which the facility may accept waste – i.e., that the facility's authorized hours of waste acceptance are limited to Monday through Friday, 5:00 a.m. to 8:00 p.m., and Saturday 6:00 a.m. to 4:00 p.m., and that such limitation does not apply to any other facility activities, such as transportation of materials on- or off-site and operation of heavy equipment, which may be conducted, as necessary, at any time. This clarifying proposal would (1) honor and effectuate the ALJs' proposal to restrict the hours of "normal operating activities;"[5] (2) properly distinguish between waste acceptance hours and other hours of operation, in accordance with the regulatory distinction in TCEQ's rules;[6] (3) allow for round-the-clock operations – other than waste acceptance – in emergency situations and for equipment repair, which the ALJs expressly found to be supported by the evidence;[7] (4) avoid a debate and premature decision in the context of this proceeding concerning what constitutes an "emergency" situation sufficient to allow for extended hours of waste acceptance;[8] and (5) effectuate, at least in part, Williamson County's stated intentions regarding operation of the facility.[9]

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[5] PFD at 83. It cannot be reasonably disputed that waste acceptance activities constitute the "normal operating activities" of a municipal solid waste disposal facility.

[6] *See* 30 TEX. ADMIN. CODE § 330.118(a).

[7] *See* PFD at 83.

[8] TCEQ's rules specifically provide that TCEQ "may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste receipt at the facility." 30 TEX. ADMIN. CODE § 330.118(c). TCEQ's rules also provide that a facility may seek a temporary authorization to extend its waste acceptance hours "to accommodate special occasions, special purpose events, holidays, or other special occurrences." *Id.* § 330.118(b); *see also id.* at § 305.70(m)(2)-(4).

[9] *See* Trial Tr. at 12:13-21 (Gattis) (explaining that Williamson County's request to operate the facility without limitations on its operating hours would allow the facility operator to conduct "the necessary work they need to do even if we're not accepting waste there at that time"); *see also id.* at 57:12-22 (Gattis) (noting that Williamson County does not intend to "receive waste" at the facility 24 hours per day); *id.* at 57:23 to 58:6, 81:3-25 (Gattis) (discussing the need to have the flexibility to conduct equipment repairs whenever necessary).

For the foregoing reasons, Williamson County respectfully requests that proposed Findings of Fact 161 through 163 in the order proposed by the ALJs (the "***Proposed Order***")[10] be clarified as follows:

161. The Applicant is authorized to ~~operate~~ accept waste at the Facility Monday through Friday, 5:00 a.m. to 8:00 p.m. and Saturday 6:00 a.m. to 4:00 p.m. Activities other than waste acceptance, including, but not limited to, transportation of materials on- or off-site and operation of heavy equipment, are not limited to specified hours and may be conducted by the Facility, as necessary, at any time. Facility ~~operating~~ waste acceptance hours will be posted at the entrance to the Facility.

162. In the event of an emergency or other unforeseen circumstance or special occasion, ~~as determined by the ED,~~ the Applicant may seek authorization for additional temporary waste acceptance hours per applicable TCEQ rules ~~is authorized to operate the Facility 24 hours per day, seven days per week for the duration of the emergency~~.

163. The ~~operation~~ routine acceptance of waste at the Facility 24 hours per day, seven days per week in non-emergency conditions or outside of special occasions may be incompatible with future surrounding land uses.

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[10] *See* Proposed Order at 24.

On the same grounds, Williamson County also respectfully requests that proposed Ordering Provision 3[11] be modified as follows:

3. The Draft Permit No. MSW-1405B, shall state the Facility's ~~operating~~ waste acceptance hours as Monday through Friday, 5:00 a.m. to 8:00 p.m. and Saturday 6:00 a.m. to 4:00 p.m. The Draft Permit No. MSW-1405B shall further state that the Facility is authorized to conduct activities other than waste acceptance, including, but not limited to, transportation of materials on- or off-site and operation of heavy equipment, as necessary, at any time.

B. PROPOSED MODIFICATIONS TO CORRECT INADVERTENT TYPOGRAPHICAL ERRORS

In a few instances in the Proposed Order there are, what appear to be, simple, inadvertent, typographical errors that, if left uncorrected, could be potentially misleading or otherwise confusing. To address these inadvertent typographical errors, Williamson County proposes the following modifications to the ALJs' Proposed Order:

PAGE NO. (Proposed Order)	PARAGRAPH NO.	PROPOSED MODIFICATION	BASIS FOR MODIFICATION
4	18	Delete "Suite 502."	"Suite 502" refers to the ALJs' offices rather than the actual hearing room.
11	69	Insert "feet" before "above" in the second and third lines; move "feet" in the fourth line to be immediately adjacent to "above."	Clarification

[11] *See id.* at 37.

PAGE NO. (Proposed Order)	PARAGRAPH NO.	PROPOSED MODIFICATION	BASIS FOR MODIFICATION
11	70	The first sentence should be revised to read "A total of 44 borings have been drilled at the Facility. Williamson County drilled 17 soil borings within . . . ."	Clarification
12	71	The word "sampled" should be "samples."	Typo
13	80	The end of the sentence should read "along the perimeter of the combined footprints of the existing and proposed Landfill."	Clarification
15	96	The word "application" should be capitalized (i.e., "Application").	Consistency
15	104	The word "application" should be capitalized (i.e., "Application").	Consistency
19	134	Replace "TAC" with "TEX. ADMIN. CODE."	Consistency. The acronym "TAC" is not defined in the Proposed Order, and "TEX. ADMIN. CODE." is otherwise used throughout the Proposed Order.
21	147.b	The end of the sentence should read "slope stability."	Typo
27	180	Delete the phrase "will be allowed" in the second line.	Clarification
30	12	Insert "CODE" after "ADMIN."	Typo
34	41	Insert an additional parenthesis after "(A)" (i.e., to read "(A)),").	Typo

PAGE NO. (Proposed Order)	PARAGRAPH NO.	PROPOSED MODIFICATION	BASIS FOR MODIFICATION
34	42	Replace "TAC" with "TEX. ADMIN. CODE "	Consistency. The acronym "TAC" is not defined in the Proposed Order, and "TEX. ADMIN. CODE." is otherwise used throughout the Proposed Order.

II.
CONCLUSION

For the foregoing reasons, Applicant Williamson County respectfully requests that the ALJs' Proposed Order be modified as proposed above and issued by the Commission with those modifications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing brief has been served on the following on this the 7th day of March, 2008:

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