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March 19, 2008

Via Hand Delivery

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

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 Williamson County's Reply to Protestants' Exceptions. Please return one file-stamped copy to the courier. Thank you.

Respectfully submitted,

R. Mark Dietz MBP

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 REPLY
TO PROTESTANTS' EXCEPTIONS

COMES NOW Applicant Williamson County and, per 30 Tex. Admin. Code § 80.257(a), files this consolidated reply to Protestants' exceptions to the Administrative Law Judges' ("***ALJs'***") Proposal for Decision ("***PFD***") in the above-captioned matter. As set forth below, Protestants' exceptions lack support in the evidentiary record and cannot be reconciled with the statutory and regulatory requirements applicable to Williamson County's application. Accordingly, Protestants' exceptions provide no basis for amending the PFD or any provision of the order proposed by the ALJs (the "***Proposed Order***").

Each of the exceptions put forth by Protestants concern issues that were fully addressed in Williamson County's Closing Argument and Response to Protestants' Closing Arguments. In their exceptions, Protestants fail to refute or otherwise rebut the evidence put forward by Williamson County, which, as the ALJs determined, resolves each of these issues in favor of issuance of the proposed permit. Protestants' exceptions are largely restatements of their closing arguments. Indeed, many of their arguments were taken verbatim from their closing briefs and merely repackaged and reargued as "exceptions" to the ALJs' PFD. Given that these arguments were fully briefed and argued by the parties, and thoroughly considered by the ALJs, they can be resolved by reference to the ALJs' PFD and Williamson County's Closing Argument and Response to Protestants' Closing Arguments.

Where Protestants' have done nothing more than restate their closing arguments, there is no need to repeat Williamson County's prior responses to those same arguments. Accordingly, to avoid repetition, this consolidated reply seeks only to address Protestants' exceptions that raise new or revised arguments. However, where appropriate and for clarity, this brief may provide concise additional responses to Protestants' exceptions that were more fully addressed and rebutted in Williamson County's Closing Argument and Response to Protestants' Closing Arguments.

I.
PRELIMINARY ISSUES

A. THE IDENTITY OF THE OWNER, OPERATOR, APPLICANT AND RELATED ISSUES

It is undisputed that Williamson County owns the Williamson County Recycling and Disposal Facility (the "***Facility***") and that Waste Management of Texas, Inc. ("***WMTX***") operates the facility.[1] These two simple, undisputed facts would logically lead anyone to conclude – regardless of their knowledge of municipal solid waste ("***MSW***") statutory or regulatory requirements – that Williamson County is the owner of the Facility and WMTX is the operator of the Facility. As the ALJs correctly found, application of the relevant statutory and regulatory provisions to the facts of this case renders the same common-sense, logical conclusion.

Protestant TJFA would have the Commission believe that proper application of the relevant statutory and regulatory provisions in the context of this case, as proposed by the ALJs, would spell the collapse of TCEQ's entire MSW permitting program. TJFA's exceptions paint a parade of horrors that will befall the Commission and the regulated community if the agency

[1] *See* PFD at 8.

follows the law and identifies the operator of a facility in the facility's permit. With such thinly-veiled claims, one is only left to wonder why TJFA even attempts to shield its true motives.

TJFA consumes six pages in its exceptions brief, claiming that it is a legitimate "real estate investment company" concerned with the proper operation of landfills; then, in another ten pages or more, in what can fairly be described as a baseless rant, attempts to persuade the Commission of the terrible consequences that would befall it if the entity that was actually operating a landfill was identified in the landfill's permit.[2] The more than 16 pages of TJFA's exceptions that are spent on these issues far outweigh any discussion of operational requirements and belie TJFA's claim that it is legitimately devoted to improving landfill operations. In any event, as set forth below, TJFA's claims are as unsupportable as they are transparent.

1. Per The Texas Solid Waste Disposal Act, Williamson County Is The Owner Of The Facility And WMTX Is The Facility Operator

The requirement to identify both the owner and the operator of a MSW facility, in the facility's permit, is prescribed by law. As discussed in the ALJs' PFD, the Texas Solid Waste Disposal Act ("***Solid Waste Disposal Act***" or the "***Act***")[3] requires all solid waste permits issued by the Commission to "include . . . the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility."[4] By its express terms, the Act unambiguously contemplates that a facility may be owned by one party and operated by another.[5] If that is the case – as it is with respect to

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[2] Notably, neither the evidence adduced by TJFA at the hearing, nor its closing arguments or exceptions, concern the procedures that will be followed for the day-to-day operation of the Facility (i.e., Part IV of the application – the Site Operating Plan).

[3] TEX. HEALTH & SAFETY CODE Ch. 361.

[4] *Id.* § 361.087(1); *see also* PFD at 12-17.

[5] *See* PFD at 14.

the Facility in this matter – the law requires the permit to identify both the owner and operator by name.[6]

Based upon the evidence put forth in this proceeding, the ALJs found that Williamson County is the owner of the land on which the Facility is and will be located, and that WMTX, through a contractual agreement with Williamson County, is the operator of the Facility and the entity in charge of its day-to-day operation.[7] Accordingly, in no uncertain terms, the Solid Waste Disposal Act requires that both Williamson County (as owner) and WMTX (as operator) be identified in the Facility's permit. The ALJs correctly applied the law to the facts of this case and reached the same determination.[8]

Protestants claim that it is improper to identify in a MSW permit an entity that operates a MSW facility pursuant to a contract with the facility owner. While Protestants seek to label such an operating entity as a "contract operator," they fail to explain how such an operator is distinguishable from the "operator" contemplated by the Solid Waste Disposal Act.[9] The Act does not recognize different "types" of operators. The Act does not allow the identity of a facility operator to be withheld merely because of the legal arrangement between the facility owner and operator. Indeed, the Act does not allow the operator's identity to be withheld under any circumstances. Protestants' position simply cannot be reconciled with the statutory requirement to identify the "operator" of a solid waste disposal facility in the facility's permit.[10]

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6 *See id.* at 13.

7 *See id.*

8 *See id.* at 13-14.

9 The term "contract operator" is not found in the Solid Waste Disposal Act or TCEQ's rules. There is no legal authority whatsoever to support Protestants' attempts to distinguish a so-called "contract operator" from an "operator" as that term is used in the Act and used and defined in TCEQ's rules.

10 *See* TEX. HEALTH & SAFETY CODE § 361.087(1).

Furthermore, Protestants' position cannot be reconciled with the Legislature's express recognition that a facility may be owned by one party and operated by another.[11] Apparently driven by their desire to confound the issues and defeat this application, Protestants strain for a construction of the Solid Waste Disposal Act that renders the facility "operator" legally indistinguishable from, and necessarily the same as, the owner of the facility. It cannot be reasonably disputed that the Act contemplates that "the operator or person in charge of the facility" may be someone other than the facility's owner. The Solid Waste Disposal Act in no way limits the means by which that operating entity – an entity other than the facility owner – may fulfill the legally-recognized role of an "operator" and assume responsibility for the day-to-day operations of the facility.

Nevertheless, Protestants contend that an entity cannot take on the role of "operator" through a contractual agreement with the facility owner that obligates the entity to operate the facility, yet Protestants offer no explanation as to how an entity other than the owner could attain the title of "operator" under their construction of the Act.[12] Adopting such an interpretation would render meaningless the Act's statutorily-prescribed distinction between an owner and operator, and the Act's express recognition that a facility may be owned by one party and operated by another. The ALJs properly avoided construing the Act in a manner that makes its

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[11] *See* PFD at 14 (finding that "the Legislature intended the identity of an operator to be disclosed on an MSW permit, if different from the land owner").

[12] Protestants' construction of the Solid Waste Disposal Act would lead to the absurd conclusion that an entity contractually obligated to operate the facility cannot be an "operator" as that term is used in the Act, whereas an entity with no contractual obligation with the facility owner for operation of the facility *would* be considered the legally-recognized facility "operator."

provisions superfluous; the Commission should do the same and affirm the ALJs' proper interpretation of the law.[13]

2. Per TCEQ's MSW Regulations, Williamson County Is The Owner Of The Facility And WMTX Is The Facility Operator

TCEQ's MSW rules in 30 Tex. Admin. Code Chapter 330 ("***Chapter 330***") were promulgated under the authority of, and to implement the requirements of, the Solid Waste Disposal Act.[14] Thus, where definitions are not found in the statute itself, TCEQ's rules define the statutory terms, as interpreted and applied by TCEQ. With respect to the issue at hand, the terms "owner" and "operator" are not defined in the Solid Waste Disposal Act. Nevertheless, as noted above, by legislative directive TCEQ must distinguish an "owner" from an "operator" when the entities are different, and the agency did so in its Chapter 330 rules. In Chapter 330, TCEQ has defined these terms specifically in the context of MSW permitting and regulation.

TCEQ's Chapter 330 rules define an "owner" as "[t]he person who owns a facility or part of a facility," and an "operator" as "[t]he person(s) responsible for operating the facility or part of a facility."[15] In accordance with the statute under which they were promulgated, TCEQ's Chapter 330 definitions of "owner" and "operator" also recognize that a facility may be owned by one party and operated by another. Here again, based upon the evidence put forth in this proceeding, the ALJs found that Williamson County is the owner of the Facility, and that WMTX, through a contractual agreement with Williamson County, is the entity responsible for

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13 *See* TEX. GOV'T CODE § 311.021. ("In enacting a statute, it is presumed that . . . the entire statute is intended to be effective.").

14 *See* 30 TEX. ADMIN. CODE § 330.1(a); TEX. HEALTH & SAFETY CODE § 361.024(a).

15 30 TEX. ADMIN. CODE § 330.2(91), (94).

operating the Facility.[16] Accordingly, the ALJs correctly determined that Williamson County is the "owner" of the Facility, and that WMTX is the "operator" of the Facility, as those terms are defined in TCEQ's MSW regulations in Chapter 330.[17]

3. As Defined And Used In TCEQ's MSW Regulations, "Operator" Is Synonymous With The Identical Term Used In The Solid Waste Disposal Act

As set forth above, the Solid Waste Disposal Act requires that "the person who is or will be the operator or person in charge of the facility" be identified in all permits issued under the Act and, pursuant to the Act, TCEQ has defined the term "operator" as "[t]he person(s) responsible for operating the facility or part of a facility."[18] Despite the fact that the precise statutory term is defined in Chapter 330, TJFA paradoxically contends that the term "operator" as used in TCEQ's MSW rules in Chapter 330 does not define the same exact term ("operator") as used in the Solid Waste Disposal Act. Rather, TJFA maintains that "[c]ommon sense tells us" that the term "operator" in the Act should be equated with the term "site operator" as used in TCEQ's Chapter 330 rules.[19] TJFA cites no statutory or regulatory history for this proposition; no case law or prior agency determinations; no agency policy or guidance documents. "Common sense" is all the authority that TJFA can muster. For multiple reasons, TJFA's position is neither common nor sensible.

First and foremost, it simply defies common sense to conclude that, when TCEQ set out to promulgate regulations implementing the Solid Waste Disposal Act, TCEQ opted to befuddle the regulated community and the public by defining the term "operator" found in the Act as a

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16 *See* PFD at 9-11.

17 *See id.*

18 TEX. HEALTH & SAFETY CODE § 361.087(1); 30 TEX. ADMIN. CODE § 330.2(91).

19 TJFA's Exceptions at 20.

"site operator" in the agency's regulations, while at the same time providing a definition of "operator" that inexplicably refers to someone other than an "operator" under the Act. Indeed, the Chapter 330 definition of "site operator" does not even relate to the actual operation of a facility. Specifically, a "site operator" is defined in Chapter 330 as "[t]he holder of, or the applicant for, a permit (or license) for a municipal solid waste site".[20] The common sense conclusion is that the term "operator" as used in TCEQ's MSW rules in Chapter 330 refers to the identical term used in the Act.

Additionally, the entirety of TCEQ's Chapter 330 rules serve as evidence that TCEQ's use of the term "operator" in its regulations is equivalent to use of the identical term in the Solid Waste Disposal Act. Aside from its definition in Chapter 330, the term "site operator" is used only *nine* times in the entire body of TCEQ's Chapter 330 rules. "Operator" is by far the predominant term used throughout Chapter 330, with *387* references to the term in TCEQ's MSW rules.[21] For instance, in Subchapter E of TCEQ's Chapter 330 rules, which prescribes the permitting procedures for MSW facilities, the term "operator" is used throughout (a total of 71 times); the term "site operator" is not used even once.[22] Moreover, TCEQ's rules provide that a MSW permit "may authorize the owner or *operator*" – not the "site operator" – "to construct, install, modify, or operate" a MSW facility.[23]

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[20] 30 TEX. ADMIN. CODE § 330.2(132).

[21] The term "site operator" is used only twice in the entire body of TCEQ's 2006-revised MSW regulations. *See* 30 TEX. ADMIN. CODE §§ 330.151, 330.675(a)(4) (2007). In fact, when TCEQ re-wrote its Chapter 330 rules in 2006, it confirmed in the preamble to those rules that it intended to use the terms "owner" and "operator" – not "site operator" – throughout the rules. *See* 31 TEX. REG. 2502, 2503 (Mar. 24, 2006).

[22] *See* 30 TEX. ADMIN. CODE Ch. 330, Subch. E.

[23] 30 TEX. ADMIN. CODE § 330.2(97) (emphasis added). TJFA incorrectly asserts that MSW permits are issued only to operators and only authorize the operation of the facility. *See* TJFA's

Furthermore, the Solid Waste Disposal Act applies not only to MSW permitting and regulation, but also to the permitting and regulation of all other solid waste facilities, including industrial hazardous and non-hazardous waste facilities.[24] Specifically, § 361.087 of the Act, which requires the facility "operator" to be included in the facility's permit, specifies the contents of all permits issued under the Act and, therefore, applies to permits authorizing MSW facilities, as well as industrial waste facilities.[25] Thus, common sense suggests that, when TCEQ set out to define a statutory term ("operator") that applies equally to MSW and industrial waste permits, the agency would use similar, if not identical, definitions to refer to this operating entity in both contexts. Therefore, if TJFA is correct – that the term "site operator" as used in TCEQ's MSW rules in Chapter 330 defines the term "operator" as used in the Solid Waste Disposal Act – then one would reasonably expect to find a definition of "site operator" in TCEQ's industrial waste rules that defines the very same statutory term. However, "site operator" is nowhere defined in TCEQ's industrial waste rules in 30 Tex. Admin. Code Chapter 335, whereas those rules do define a facility "operator" in substantially the same terms as TCEQ used to define an "operator" under its Chapter 330 rules.[26]

Exceptions at 3-4. Such an assertion is clearly contrary to TCEQ's MSW rules, which specify that a MSW permit provides authority for the facility's construction, installation, modification, or operation to "the owner *or* operator." 30 TEX. ADMIN. CODE § 330.2(97) (emphasis added).

[24] *See* TEX. HEALTH & SAFETY CODE §§ 361.011 (Commission jurisdiction over MSW), 361.017 (Commission jurisdiction over industrial solid waste and hazardous municipal waste).

[25] *See id.* §§ 361.087 (specifying the contents of permits issued under Subchapter C of the Solid Waste Disposal Act); 361.061 (providing that "the [C]ommission may require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under" the Solid Waste Disposal Act).

[26] *See* 30 TEX. ADMIN. CODE § 335.1(102) (defining an "operator" as "[t]he person responsible for the overall operation of a facility").

Yet another test that TJFA's version of common sense fails is the simple replacement of the term "operator" in the relevant provision of the Solid Waste Disposal Act with TCEQ's Chapter 330 definition of the term "site operator." This substitution renders the statutory provision meaningless and wholly disregards the Legislature's intent that the entity operating the facility be identified in the permit. If such a replacement is made, the revised statutory provision effectively requires all solid waste permits issued by the Commission to "include . . . the name and address of each person who owns the land on which the solid waste facility is located and the *holder of, or the applicant for, a permit (or license) for a municipal solid waste facility*."[27] This statutory construction advocated by TJFA thwarts the Legislature's express requirement that the operator of the facility be identified – as the operator – in the facility's permit. Indeed, as set forth below, such a construction could be used to shield from disclosure the identity of the entity that is actually operating the facility, contrary to legislative intent, TCEQ's rules, and the public's interest.

Finally, TJFA's position – that the term "site operator" as used in TCEQ's Chapter 330 rules is synonymous with the term "operator" as used in the Solid Waste Disposal Act – cannot withstand TJFA's own criticism. In its exceptions to the ALJs' PFD, TJFA argues that the ALJs "incorrectly equated 'contract operator'" with the term "operator," as used in the Act, because the Act "does not use the term 'contractor' or 'contract operator.'"[28] Thus, applying TJFA's own reasoning, "site operator" as used in TCEQ's Chapter 330 rules cannot be equated with the term "operator" as used in the Act because the Act does not use the term "site" or "site operator."

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27 *Cf.* TEX. HEALTH & SAFETY CODE § 361.087(1) and 30 TEX. ADMIN. CODE § 330.3(134).

28 TJFA's Exceptions at 3, 18.

TJFA apparently believes that its tortured attempts at statutory construction do not have to meet the standards that TJFA itself seeks to apply to the ALJs.

4. To Ensure Protection Of Public Health And The Environment, The Facility Operator Should Be Identified In The Facility's Permit

As a county government charged with protecting the health and welfare of its citizenry, and as a TCEQ-regulated entity, Williamson County finds it curious, if not troubling, that Protestants are demanding that the proper interpretation of the Solid Waste Disposal Act and TCEQ's rules is to withhold or otherwise hide the identity of an entity that is conducting the day-to-day operations at a MSW facility. During the evidentiary hearing, the TCEQ Executive Director's witness, Mr. Prompuntagorn, testified that, if a landfill is being operated by an entity other than the permit holder, TCEQ wants to know the identity of the entity operating the facility.[29] Proper accountability and enforcement of TCEQ's MSW rules demand as much.[30] Indeed, both the Legislature and TCEQ require no less.

As discussed above, in its enactment of the Solid Waste Disposal Act, the Legislature unambiguously expressed its intent that operators of solid waste disposal facilities be identified in the facility's permit.[31] Similarly, TCEQ's rules, which were promulgated under the authority of the Act, require an applicant for a MSW permit to demonstrate that the proposed operator of the facility has the requisite experience and competence to operate a landfill.[32] Such a

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[29] *See* Trial Tr. at 1608:18 to 1609:25 (Prompuntagorn); *see also* PFD at 15 ("When a landfill is operated by an entity other than the permit holder, the Commission wants to know the identity of the operator.").

[30] *See* PFD at 15 ("For emergency and enforcement purposes, this is necessary information.").

[31] *See* TEX. HEALTH & SAFETY CODE § 361.087(1).

[32] *See* 30 TEX. ADMIN. CODE § 330.52(b)(9)(E); *see also* PFD at 15 ("[T]he Commission's rules require the Applicant to demonstrate that the operator of the Facility possesses the experience and competence to manage the site.").

demonstration necessarily requires the disclosure of the operator's identity. Accordingly, the "Evidence of Competency" portion of Williamson County's application to expand the Facility accurately provides:

> *The applicant and owner of the Williamson County RDF is Williamson County*. Williamson County has been the owner of the Williamson County RDF since the facility was first authorized to receive municipal solid waste on 23 December 1981 by the Texas Department of Health (Permit No. 1405). . . . *Waste Management of Texas, Inc. (WMTX) has operated the Williamson County RDF for approximately 14 years.* The following individuals are the principal persons *responsible for the landfill operation*.[33]

The application then goes on to list the key WMTX personnel that are responsible for the day-to-day operation of the Facility.

To ensure the protection of public health and the environment, TCEQ, local governments, and the public must be kept informed of the identity of the entities that are operating landfills in this state.[34] TCEQ must be given the opportunity to evaluate an operator's experience and competency to operate a landfill *prior to* the operator commencing those operations.[35] Similarly, local governments and the public must be assured that landfills in this state are being operated competently, by operators with the requisite experience and training, who have been evaluated by TCEQ and found to be competent. Additionally, local governments, including county governments, need to know who is operating the landfills in their respective jurisdictions so that they can have ready and direct access in times of emergencies to the person(s) at the facility responsible for daily operations.

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[33] Ex. APP-202 at 59 (emphasis added); *see also* PFD at 15.

[34] *See* PFD at 15 ("For emergency and enforcement purposes, this is necessary information.").

[35] *See* 30 TEX. ADMIN. CODE § 330.52(b)(9)(E); *see also* PFD at 15 ("[T]he Commission's rules require the Applicant to demonstrate that the operator of the Facility possesses the experience and competence to manage the site.").

If TJFA and the other Protestants were to prevail on this issue, an operator could contract with the facility owner and effectively shield its identity, its competency, and its accountability from the agency, local governments, and the public. Similarly, facility owners could unilaterally authorize an entity to operate a facility, without giving TCEQ, local governments, and the public the opportunity to evaluate that operator's competency. TJFA contends that anyone interested in knowing who is operating a given facility should review the facility's annual reports, not its permit.[36] Such an approach places an unnecessary burden on the enforcement authorities and the public.[37] Annual reports provide information regarding the facility's operations in the *preceding* year, thus an operator could operate a site for up to a year without ever being disclosed to enforcement authorities or the public, and there is no guarantee that the same operator will be in place or perform the same role at the facility for the coming year.[38] Moreover, such annual reports do not provide TCEQ, local governments, or the public with any information regarding the operator's experience or competency.[39]

Keeping landfill operators secret only hinders TCEQ and local governments in their mission to protect public health and the environment, and could endanger the public and the environment by facilitating solid waste operations by persons that may not have the requisite experience or competence to conduct such operations. While TJFA and its principals may have

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[36] *See* TJFA's Exceptions at 4, 25; PFD at 15 & n.50.

[37] *Cf.* PFD at 15 ("For the ALJs, this would lead to more confusion and the inability to quickly identify the operator of a major landfill.").

[38] Ironically, TJFA claims that "[t]he ALJs' approach . . . allows a party to receive rights and responsibilities under the permit without having to identify itself." TJFA's Exceptions at 5. To the contrary; the ALJs approach would require full disclosure of the operator's identity in the permit, whereas TJFA favors hiding the identity of the facility operator in the pages of the facility's annual report.

[39] *See, e.g.*, 30 TEX. ADMIN. CODE § 330.603(a)(1)(C) (specifying the requisite report information).

an interest in facilitating such operations,[40] for its part, Williamson County wants its operator to be known and accountable to the County, TCEQ, and the public for its operation of the Facility.

5. The Structure And Wording Of TCEQ's Part I Form For MSW Applications Supports The ALJs' Proposal Regarding How Williamson County And WMTX Should Be Identified In The Permit

TCEQ's interpretation and application of the statutory and regulatory requirements discussed above is reflected in the structure and wording of TCEQ's "Part I Application Form" for MSW applications (i.e., Form TCEQ-0650, formerly the "Part A Application Form") (the "***Part I form***"). The Part I form is available online from TCEQ's website, and the first page of the form is attached as ***Attachment 1*** for the Commission's convenience.[41] As discussed below, the structure and wording of the Part I form supports the ALJs' proposal to identify Williamson County as the "owner" and "site operator" of the Facility, and WMTX as the "operator" of the Facility, in the Facility's permit.

Section A of the Part I form, entitled "General Information," requires the applicant to enter the name and address of the "operator."[42] This section also requires the applicant to enter, in a separate box, the name and address of the "permittee."[43] Notably, the form provides that "*[i]f the permittee is the same as the operator*," then the applicant can simply fill in the "permittee" box by typing "Same as Operator" (i.e., by denoting that the operator and the permittee are the same entity).[44] Clearly, the Part I form contemplates that the entity that

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40 *See, e.g.*, TJFA's Exceptions at 18 (expressing concern that, if a facility operator is identified in a permit, it might be held accountable by TCEQ in an enforcement action).

41 *See* http://www.tceq.state.tx.us/assets/public/permitting/waste/msw/forms/0650.pdf.

42 *See* Attachment 1.

43 *See id.*

44 *Id.* (emphasis added).

operates the facility (i.e., the "operator") may be different than the entity that holds the facility's permit (i.e., the "permittee" or "site operator"). In other words, that the "operator" of a MSW facility may be someone other than the "permittee." Furthermore, the footnote at the bottom of the first page of the Part I form cites the Solid Waste Disposal Act and provides that "[t]he permit will specify the *operator and owner* who is listed on this application." [45]

The ALJs' proposal to identify Williamson County as the "owner" and "site operator" of the Facility, and WMTX as the "operator" of the Facility, in the Facility's permit complies with the Part I structure and instructions. As defined in TCEQ's Chapter 330 rules, the "site operator" is "[t]he holder of, or the applicant for, a permit . . . for a municipal solid waste site."[46] As Protestant TJFA notes in its exceptions, the "site operator" is the same as the entity commonly referred to as the "permittee,"[47] the only difference being that "site operator" is a defined term in TCEQ's MSW rules, whereas "permittee" is not.[48]

6. TJFA's Hyperbole And Unsubstantiated Claims Find No Support In The Evidentiary Record Or The Applicable Statutory And Regulatory Requirements

TJFA's exceptions regarding the "operator" issue are rife with hyperbole, speculation, and sweeping assertions in a blatant attempt to mislead the Commission with wholly unsubstantiated claims that the proverbial sky will fall if the Commission adheres to the law and identifies WMTX as the operator of the Facility in the Facility's permit. Whereas TJFA's

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45 *Id.* n.1 (emphasis added).

46 30 TEX. ADMIN. CODE § 330.2(132).

47 TJFA's Exceptions at 20 (noting that the "site operator" "is the person who would be the permittee if a permit is issued").

48 *Cf.* Ex. HCG-6 (Sept. 18, 2007 letter from Williamson County Judge Dan Gattis to the Executive Director stating the County's intent to be "the permittee, site Owner, and Site Operator" under MSW Permit No. 1405-B).

exceptions are replete with hysterical ranting, they are almost devoid of any citations to the evidentiary record. This is not a case of counsel inadvertently failing to cite to the record; in this case, there is simply no evidence in the record to support TJFA's doomsday prophecies.

For instance, in its exceptions, TJFA attempts to offer its opinion – for the first time in this case – on whether contractual operating agreements of the kind that Williamson County has with WMTX are commonplace at MSW landfills throughout the state.[49] There is no testimony or other evidence in the record to support TJFA's guesswork, which is confirmed by the fact that TJFA does not and cannot substantiate its claims with even a single citation to the record. With respect to operations at landfills other than the Facility, the only testimony offered in this case concerns operations at the Texas Disposal Systems Landfill, which apparently is owned by one entity and operated by another.[50]

Similarly, TJFA claims to have conducted a search of MSW permits and annual reports.[51] There is simply no evidence in the record regarding such a search or substantiating TJFA's many allegations regarding the entire history of MSW permitting in Texas. These allegations are stated as fact by TJFA but appear for the first time in TJFA's exceptions. No evidence of any kind was offered in this proceeding to substantiate these sweeping allegations. TJFA did not sponsor or elicit any testimony in this case that even remotely validates TJFA's claims. Neither Williamson County nor the ALJs have been given an opportunity to question the person or persons who claim to have conducted this supposed search.

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[49] *See* TJFA's Exceptions at 4, 19.

[50] *See* Applicant's Motion to Deny TJFA, L.P. Party Status; Gregory Dep. 30:6-8; ALJs' Order No. 4; PFD at 13 n.42. It is unclear whether TCEQ is even aware that a different legal entity operates the Texas Disposal Systems Landfill, which further demonstrates the exact situation that the Legislature intended to prevent when it enacted the Solid Waste Disposal Act.

[51] *See* TJFA's Exceptions at 4, 22-23.

The record in this case closed months ago. Mere allegations are inherently unreliable and carry no weight. It is the fundamental purpose of an evidentiary hearing to go beyond mere allegations and establish an evidentiary record. The law is clear: the Commission may amend the ALJs' PFD, but any such amendment and ultimate order "*shall be based solely on the record made before the administrative law judge[s].*"[52] Furthermore, TJFA's attempt to argue information that was never offered or admitted into evidence in this proceeding is improper and prohibited by the Texas Rules of Civil Procedure.[53] Accordingly, TJFA's exceptions that reference and rely upon such non-record information should not be considered by the Commission. Although numerous, these exceptions are readily identifiable in TJFA's brief – they lack any citation or other reference to the evidentiary record.

In any event, TJFA cannot reasonably claim to have scrutinized every MSW permit that TCEQ has ever issued. As TJFA itself notes in its exceptions, a MSW permit includes substantially more than the cover page to the permit.[54] It also includes the permit itself, the Part I form, and Parts I through IV of the permit application. As noted above, the Solid Waste Disposal Act requires only that a MSW permit "include" the name and address of the facility

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[52] TEX. GOV'T CODE § 2003.047(m) (emphasis added); *see also id.* § 2001.141(c) (providing that "[f]indings of fact may be based only on the evidence and on matters that are officially noticed"); *id.* § 2001.174(2)(E) (providing for reversal of administrative findings and decisions that are "not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole").

[53] *See* TEX. R. CIV. P. 269(e) ("Counsel shall be required to confine the argument strictly to the evidence and to the arguments of opposing counsel."); *see also Bryant v. Lucent Techs, Inc.*, 175 S.W.3d 845, 849 (Tex. App.—Waco 2005, pet. filed); MICHOL O'CONNOR, O'CONNOR'S TEXAS RULES – CIVIL TRIALS 605 (Michol O'Connor & Byron P. Davis eds., 2006) (In final arguments, "[l]awyers are required to stay inside the evidence presented at trial.") (citing *Tex. Sand Co. v. Shield*, 381 S.W.2d 48, 57-58 (Tex. 1964); *Lone Star Ford v. Carter*, 848 S.W.2d 850, 853 (Tex. App.—Houston [14th Dist.] 1993, no writ)).

[54] *See* TJFA's Exceptions at 25.

"operator."[55] The law is silent with respect to where in the permit this information must be included. While TJFA and other Protestants are focused on the cover page of the permit in this matter, the "operator" may be identified, as required by law, anywhere in the permit, including in the application (e.g., in the "Evidence of Competency" section, as noted above).

While Williamson County maintains that no consideration should be given to TJFA's attempts to offer and argue information outside of the record, should the Commission decide to consider TJFA's unlikely claim that it has reviewed every MSW permit in this state, then it should also consider similar other, limited, non-record information which indicates that TJFA's claim lacks merit. Unlike TJFA, Williamson County does not purport to have reviewed every page of every MSW permit that TCEQ has issued; however, one need not look beyond the landfills here in Central Texas to find a MSW permit that identifies an "owner" and "permittee" and a separate entity as the facility "operator." The permit for the Kerrville Landfill, TCEQ Permit No. MSW 1506-A, specifically lists the City of Kerrville as the "site owner" and "permittee" and Kerrville Landfill TX, LP as the "operator." Certified copies of the relevant pages of this permit are attached at ***Attachment 2*** and are provided for the Commission's consideration only if the Commission decides to consider the non-record allegations of TJFA, a decision to which Williamson County would object for the reasons set forth above.[56]

The many other unsubstantiated and unsupportable claims and allegations in TJFA's exceptions can be readily dismissed with equal ease, as follows:

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[55] TEX. HEALTH & SAFETY CODE § 361.087(1).

[56] *See* TEX. WATER CODE § 5.174(a) (providing that a certified copy of any document filed with the Commission "is admissible as evidence in any court or administrative proceeding").

- TJFA claims that MSW permits authorize only the operation of the facility and, therefore, only the activities of the operator – i.e., that MSW permits grant no authority to the owner.[57] Debunking TJFA's claim requires nothing more than a reference to the definition of "permit" in TCEQ's MSW rules in Chapter 330. As noted above, TCEQ's rules provide that a MSW permit "may authorize the ***owner or operator*** to construct, install, modify, or operate" a MSW facility.[58]

- TJFA maintains that the ALJs' proposal to identify, in the Facility permit, the owner and site operator (Williamson County) and operator (WMTX) would somehow be problematic because "three entities [would be] named on the permit."[59] Neither TJFA nor any other Protestant disputes that Williamson County should be named in the permit as the Facility owner and site operator. Thus, TJFA is apparently comfortable with two entities being named in the permit, but would draw an arbitrary line in the sand at three. In any event, as set forth above, by law, the Facility operator must be named in the permit.[60] Additionally, because each of these three terms is specifically defined in TCEQ's Chapter 330 rules, there can be no reasonable claim of confusion regarding the respective roles of Williamson County and WMTX.[61]

- TJFA asserts that the ALJs' proposal to identify the Facility operator in the permit – as required by the Solid Waste Disposal Act – will result in the unintended transfer or issuance of MSW permits to operators, like WMTX, that operate facilities under contract with the facility owner.[62] However, TJFA fails to offer any explanation as to how such an unintended transfer or issuance would occur, particularly given that

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57 *See* TJFA's Exceptions at 19.

58 30 TEX. ADMIN. CODE § 330.2(97) (emphasis added).

59 TJFA's Exceptions at 22.

60 *See* TEX. HEALTH & SAFETY CODE § 361.087(1).

61 *See* 30 TEX. ADMIN. CODE § 330.2(91), (94), (132).

62 *See* TJFA's Exceptions at 22.

the ALJs' proposal would expressly identify, by name, the "holder of" or the "applicant for" the permit (i.e., the "site operator") in the permit itself.[63]

- TJFA maintains that a facility operator must participate in a contested case hearing as the "applicant" for a permit that identifies the operator as the facility's "operator."[64] Here again, TJFA's position cannot withstand even the most basic scrutiny under TCEQ's rules. TCEQ's MSW rules in Chapter 330 – which are specific to MSW permits and permit applications – expressly provide that it is the "site operator," not the "operator," that is the "applicant for" a MSW permit.[65] Additionally, as noted above, TCEQ's Part I form expressly contemplates that the entity that operates the facility (i.e., the "operator") may be different than the entity that holds the facility's permit (i.e., the "permittee" or "site operator") (i.e., that the "operator" of a MSW facility may be someone other than the "permittee").

- TJFA asserts that the ALJs' proposal to identify, in the Facility permit, the owner and site operator (Williamson County) and operator (WMTX) would somehow complicate TCEQ's enforcement efforts "due to inconsistent definitions between" TCEQ's rules in Chapter 330 and 30 Tex. Admin. Code Chapter 305 ("***Chapter 305***").[66] Even assuming that there are definitions in Chapter 330 that are inconsistent with the definitions of similar terms in Chapter 305, such inconsistencies are immaterial to enforcement of TCEQ's Chapter 330 rules or MSW permits issued under, and governed by, those rules. As the ALJs correctly

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63 30 TEX. ADMIN. CODE § 330.2(132); *see also id.* §§ 330.62(a) ("The granting of a permit does not convey any property rights or interest in either real or personal property; nor does it authorize any injury to private property, invasion of personal rights, or impairment of previous contract rights . . . ."), 305.64(a) ("A permit is issued in personam and may be transferred only upon approval of the [C]ommission."), 305.125(13) ("A permit may be transferred only according to the provisions of § 305.64 . . . ."); 305.125(16) ("A permit does not convey any property rights of any sort, or any exclusive privilege."); 305.122(b) ("A permit . . . does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee."); 305.122(c) ("The issuance of a permit does not authorize any injury to person or property or an invasion of other property rights, or any infringement of state or local law or regulations.").

64 *See* TJFA's Exceptions at 22.

65 30 TEX. ADMIN. CODE § 330.2(132).

66 *See* TJFA's Exceptions at 22.

found in the PFD, TCEQ's Chapter 305 rules are rules of general applicability, whereas TCEQ's rules in Chapter 330 are specific to MSW permitting and regulation.[67] Even assuming that inconsistencies exist between the two chapters, the more specific rules in Chapter 330 trump the more general rules in Chapter 305,[68] and the Chapter 330 rules specifically describe the respective roles of the owner, site operator, and operator of a MSW facility.[69] Finally, as noted above, if TJFA were honestly concerned about enforcement of TCEQ's MSW rules, it would favor full disclosure – in the facility permit – of the identity of the entities operating MSW landfills in this state. TJFA, however, prefers to keep facility operators, as well as the Commission, local governments, and the public, in the dark.

- In its exceptions, TJFA references and discusses comments that TCEQ has purportedly received regarding a proposed rulemaking concerning TCEQ's rules in Chapter 305.[70] Here again, these comment letters, to the extent they exist, are not part of the evidentiary record in this proceeding. Furthermore, ad hoc rulemaking in the context of this contested case proceeding is unlawful. If TJFA truly believes that changes to Chapter 305 are necessary, then it should involve itself in the pending rulemaking; it cannot change the rules in the context of this proceeding to support its case. Additionally, if the sweeping concerns expressed by TJFA in its exceptions are genuine, then it would appear that the Chapter 305 rulemaking provides TJFA with a ready opportunity to address those concerns on a statewide level.

- TJFA claims that federal regulations, promulgated by the United States Environmental Protection Agency ("***EPA***"), support its position on the "operator"

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67 *See* PFD at 9.

68 *See id.*; *cf.* TEX. GOV'T CODE § 311.026(b) ("If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision . . . ."); *see also* TEX. HEALTH & SAFETY CODE § 361.024(e) (providing that the Commission must follow the rules that it adopts under the Solid Waste Disposal Act).

69 *See* 30 TEX. ADMIN. CODE § 330.2(91), (94), (132).

70 *See* TJFA's Exceptions at 21.

issue.[71] Notably, TJFA cites 40 C.F.R. § 270.10(b) for this proposition.[72] EPA's rules in 40 C.F.R. Part 270 apply solely to permits issued under the ***hazardous waste*** permit program administered by EPA.[73] Indeed, EPA's Part 270 regulations are entitled "EPA Administered Permit Programs: The Hazardous Waste Permit Program." Williamson County is not seeking a hazardous waste permit; thus, EPA's hazardous waste permitting regulations have no applicability in this proceeding.

7. Per TCEQ's MSW Rules, Williamson County's Amendment Application Was Submitted In Compliance With The Applicable Requirements Of Chapter 305

In their PFD, the ALJs correctly find that the requirements of § 305.43(b) of Chapter 305 were satisfied by WMTX submitting the instant application on behalf of Williamson County.[74] Williamson County has maintained from the outset of this case that its application was submitted in compliance with § 305.43(b).[75] Tracing the regulatory path leading to the applicability of § 305.43(b) further demonstrates that Williamson County alone is the permittee in this proceeding.

Close and detailed scrutiny of TCEQ's rules regarding amendments to MSW permits necessarily starts with the agency's MSW rules in Chapter 330. As noted above, and as noted by the ALJs in their PFD, the Chapter 305 rules are rules of general applicability, whereas TCEQ's rules in Chapter 330 are specific to MSW permitting and regulation.[76] TCEQ's MSW rules in Chapter 330 specifically provide that "[a]ny change to a condition or term of an issued permit

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71 *See id.* at 4, 17.

72 *See id.* at 17, 24.

73 *See* 40 C.F.R. § 270.1(a).

74 *See* PFD at 8-9, 12.

75 *See* Statement of Applicant Williamson County at 1 (entered into evidence as TJFA Ex. 7).

76 *See* PFD at 9; 30 TEX. ADMIN. CODE §§ 305.1, 330.3.

requires a permit amendment in accordance with § 305.62."[77] Williamson County's application is an application to amend its existing permit, and was submitted in compliance with § 305.62, as required by TCEQ's MSW rules in Chapter 330.

Section 305.62 is found in Subchapter D of Chapter 305, entitled "Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits," which specifically "set[s] forth the standards and requirements for applications and actions concerning amendments . . . of permits."[78] When the application at issue is for a permit amendment, § 305.62(a) provides that "[t]he permittee or an affected person may request an amendment."[79] Obviously, this rule contemplates and prevents the hypothetical horrors advanced by TJFA regarding the hostile takeover of TCEQ permits by unscrupulous operators. Section 305.62(a) specifically limits the universe of entities that may seek a permit amendment to the permittee or an affected person and, when the amendment is sought by someone other than the permittee, § 305.62(a) sets forth special procedures for evaluating the requested amendment.[80]

This case, however, is the more ordinary of the two scenarios contemplated by § 305.62(a). Here, the permittee, Williamson County, requested that its permit be amended. In such routine cases, § 305.62(b) provides that the application for the requested amendment "shall be submitted in the form and manner and under the procedures specified in Subchapter C" of Chapter 305.[81] Section 305.43(b) is among the regulations in Subchapter C, entitled

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77 30 TEX. ADMIN. CODE § 330.4(m).

78 *Id.* Ch. 305, Subch. D; *id.* § 305.61.

79 *Id.* § 305.62(a).

80 *See id.* (providing special procedures specific to permit amendments requested by affected persons).

81 *Id.* § 305.62(b).

"Application for Permit or Post-Closure Order," which generally applies to "permit applications" submitted under various statutes administered by the Commission.[82] Section 305.43(b) provides that, if "a facility is owned by one person and operated by another, . . . it is the duty of the operator to submit an application for a permit."[83]

Two points are evident from this regulatory framework: (1) only a permittee may amend its permit, except in unusual circumstances to which special procedures apply; and (2) once a permittee elects to amend its permit, if it is not also the operator of the facility, the application must be submitted by the operator of the facility. Williamson County's compliance with these regulatory requirements – with both § 305.62 and § 305.43(b) – is readily demonstrated in the evidentiary record. It is undisputed that Williamson County is identified in the Facility's existing permit as the "permittee,"[84] and Judge Gattis testified, and the ALJs found, that Williamson County requested the amendment at issue in this proceeding.[85] Additionally, as noted above, the ALJs also found that the requirements of § 305.43(b) were satisfied by WMTX (the operator) submitting the application on behalf of Williamson County (the permittee).[86]

B. LAND OWNERSHIP

In its exceptions, TJFA claims – for the first time in this case – that there is "an outstanding question" regarding the ownership of a tract of land comprising a portion of the existing Facility. Although TJFA apparently determined that this claim was meritless and not worth raising in its closing arguments, the same claim was raised in the closing arguments of

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82 *Id.* Ch. 305, Subch. C; *id.* § 305.41.

83 *Id.* § 305.43(b).

84 *See* Ex. APP-214.

85 *See* PFD at 12.

86 *See* PFD at 8-9, 12.

Protestant Mount Hutto Aware Citizens. Accordingly, this claim was fully addressed and rebutted in Williamson County's Response to Protestants' Closing Arguments, and the parties' arguments were considered by the ALJs and addressed in their PFD.[87]

As more fully discussed in Williamson County's Response to Protestants' Closing Arguments, and as the ALJs determined, there is no support in the record, the law, or the applicable regulations for TJFA's claim regarding property ownership. Per § 330.62(a) of TCEQ's Chapter 330 rules, the only "property right" required for issuance of a MSW permit is "a sufficient interest in or right to use the property for which [the] permit is issued," and such "interest in or right to use" may be possessed or later acquired by either the "owner or operator" of the facility.[88] As the ALJs found, there can be no reasonable dispute that Williamson County possesses "a sufficient interest in or right to use" the tract of land at issue.[89] Judge Gattis testified that Williamson County has title to the land and the County's application contains a sworn affidavit averring that "Williamson County is the record owner of 100% interest in the site."[90]

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87 *See id.* at 20.

88 30 TEX. ADMIN. CODE § 330.62(a).

89 *See* PFD at 20; *cf.* TEX. HEALTH & SAFETY CODE § 364.014(a) ("A county may acquire by purchase, lease, gift, condemnation, or any other manner . . . property or an interest in property necessary or convenient to exercise the powers and purposes provided" to counties under Chapter 364 of the Solid Waste Disposal Act.)

90 *See* Trial Tr. at 47:9-10, 47:25 to 48:3 (Gattis) (testifying that Williamson County has title to the tract at issue); *see also* Ex. APP-202 at 50 (sworn affidavit averring that "Williamson County is the record owner of 100% interest in the site").

II.
LAND USE COMPATIBILITY

Protestants' exceptions regarding land use fail or refuse to acknowledge the plain wording of the applicable TCEQ regulations that specify the land use information required as part of the application.[91] It was Williamson County's burden in this case to demonstrate compliance with these applicable regulatory requirements.[92] As the Executive Director, the Office of Public Interest Counsel ("***OPIC***"), and the ALJs determined, Williamson County satisfied its burden and demonstrated compliance with all applicable land use requirements.[93] No more and no less was required of the County.

Protestants contend that Williamson County was required to go beyond the applicable regulatory requirements – that the County had "some burden" to provide "some analysis" to demonstrate compliance, to Protestants' satisfaction, with subjective criteria that Protestants apparently have created but have not disclosed.[94] Indeed, Protestants Hutto Citizens Group and The Heritage on the San Gabriel Homeowners Association (collectively, "***HCG***") demand that county governments, such as Williamson County, be held to a different, higher standard than other applicants.[95] Here again, the standard that Protestants seek to apply is anything but clear. Absent defined standards, demonstrating the sufficiency of the land use portion of an application becomes an impossible task that only Protestants can divine and judge.

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91 *See* 30 TEX. ADMIN. CODE § 330.53(b)(8).

92 *See* TEX. WATER CODE § 5.557(a); 30 TEX. ADMIN. CODE §55.210(b).

93 *See* PFD at 25-26, 39.

94 Protestants Hutto Citizen Group and The Heritage on the San Gabriel Homeowners Association's Exceptions to the Proposal for Decision (hereinafter, "***HCG's Exceptions***") at 2, 6.

95 *See id.* at 3.

Williamson County does not carry the burden of satiating Protestants' endless demands for more and more information and proving compliance with their subjective, self-styled criteria for land use compatibility. Williamson County has the burden of proof only with respect to whether its application "complies with all applicable statutory and regulatory requirements."[96] Whereas Protestants vaguely claim that Williamson County did not provide "enough information,"[97] the Executive Director, OPIC, and the ALJs all concluded (1) that Williamson County's application complies with all requirements applicable to the land use portion of the application, and (2) that Williamson County provided information sufficient to determine that the proposed expansion of the Facility is compatible with surrounding land uses.[98] There is no applicable statutory or regulatory provision that requires the additional information or analyses, however ambiguous, that Protestants demand.

Protestants' exceptions regarding land use are scarcely more than a rehashing of their closing arguments, which were fully addressed by Williamson County in its closing briefs, and which were painstakingly considered by the ALJs in their PFD. While there is little, if anything, left to argue regarding these claims that has not already been argued at length, two of Protestants' assertions warrant brief additional responses because they are flatly false and misleading. First, Protestants claim that Williamson County failed to provide information in its application regarding community growth trends.[99] Protestants refuse to acknowledge that there is an entire section in Williamson County's application entitled "Population and Community

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96 TEX. WATER CODE § 5.557(a); 30 TEX. ADMIN. CODE §55.210(b).

97 HCG's Exceptions at 3.

98 *See* PFD at 25-26, 39.

99 *See* HCG's Exceptions at 3; TJFA's Exceptions at 27.

Growth Trends" wherein the County discusses the growth of communities in the vicinity of the Facility, including the community nearest the landfill, Hutto.[100]

Second, Protestants also falsely contend that Williamson County relied on the testimony of its rebuttal witness, Mr. Worrall, to satisfy its burden to demonstrate compliance with all requirements applicable to the land use portion of the application.[101] This claim is soundly refuted by the individual determinations of the Executive Director, OPIC, and the ALJs, who each concluded that Williamson County demonstrated compliance with all applicable requirements independent of the testimony of Mr. Worrall.[102] Furthermore, there was nothing unique or abnormal about how the parties presented evidence in this case on land use issues. Williamson County presented direct testimony and evidence demonstrating compliance with all applicable requirements; Protestants presented direct testimony and evidence in an attempt to portray the Facility as an incompatible land use; and Williamson County presented rebuttal testimony, rebutting Protestants' claims and confirming that the expanded Facility would be compatible with surrounding land uses.

III.
GEOLOGY, HYDROGEOLOGY, AND DRAINAGE

Protestant TJFA was the only party that filed exceptions regarding this portion of the ALJs' PFD. TJFA's exceptions add nothing new to the discussion of geology, hydrogeology, and drainage in this proceeding. TJFA's exceptions are a near-verbatim regurgitation of the arguments that TJFA put forward in its closing briefs. Word for word, these arguments were squarely refuted by Williamson County in its closing briefs, and were thoroughly considered and

100 *See* Ex. APP-202 at 25-26 (Part I/II, § 3.1.3).

101 *See* HCG's Exceptions at 3.

102 *See* PFD at 25-26.

ultimately rejected by the ALJs in their PFD. TJFA's attempt to reargue these very same claims in its exceptions serves no constructive purpose, and Williamson County will not compound the unnecessary burden on the Commission, the ALJs, and the parties by repeating its prior arguments in response to these claims. Accordingly, with the exception of the limited, brief additional responses below, in response to TJFA's restated claims, Williamson County respectfully refers the Commission to its Closing Argument and Response to Protestants' Closing Arguments, as well as the ALJs' treatment of these issues in the PFD.

A. GEOLOGY AND GROUNDWATER PROTECTION

TJFA attempts to make much of the ALJs' notation in the PFD that the Commission may condition issuance of Williamson County's permit on the addition of one or more wells along the western boundary of the existing facility.[103] Williamson County recognizes, as the ALJs did in the PFD, that the Commission has the authority to issue permits containing special conditions. However, such authority is not unlimited. As noted above, the Commission may amend the ALJs' PFD, but any such amendment and ultimate order "*shall be based solely on the record made before the administrative law judge[s]*."[104] Notably, TJFA fails to acknowledge the express findings that the ALJs made based on the record before them.

Specifically, with respect to the addition of monitoring wells along the upgradient, western boundary of the existing Facility, the ALJs concluded, without reservation, as follows:

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103 *See* TJFA's Exceptions at 34; PFD at 73.

104 TEX. GOV'T CODE § 2003.047(m) (emphasis added); *see also id.* § 2001.141(c) (providing that "[f]indings of fact may be based only on the evidence and on matters that are officially noticed"); *id.* § 2001.174(2)(E) (providing for reversal of administrative findings and decisions that are "not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole").

> The preponderance of the evidence shows Williamson County correctly established the point of compliance along the northern, eastern, and southern boundaries of the proposed expanded facility. The point of compliance should *not* be extended to the western boundary as contended by TJFA.[105]

After assessing all of the evidence and the parties' arguments, the ALJs reconfirmed their foregoing conclusion in two definitive statements in the PFD just prior to the notation that TJFA attempts to misconstrue:

> The preponderance of the evidence shows that the point of compliance should *not* be extended along the western boundary of the existing facility. ***The point of compliance should be approved as shown in the Application.*** . . .[106]

Thus, while the Commission undoubtedly has the authority to amend the ALJs' PFD and require the installation of additional monitoring wells, the evidence in the record before the ALJs demonstrates that such additional wells are neither required nor necessary. As the ALJs determined, the testimony of Ms. Gallup and Mr. McCoy established unequivocally that westerly groundwater flow at the Facility is not supported by the groundwater information in the application, the facility's historic groundwater monitoring data, or the other documentary evidence in the record.

B. DRAINAGE PATTERNS

TJFA's exceptions raise no new substantive arguments concerning Williamson County's demonstration, and the ALJs' finding, that natural drainage patterns will not be significantly altered by development of the expanded Facility.[107] Here again, Williamson County would respectfully refer the Commission to its Closing Argument and Response to Protestants' Closing

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105 PFD at 68 (emphasis added).

106 *Id.* at 73 (emphasis added).

107 *See id.* ("The ALJs find Williamson County successfully demonstrated that natural drainage patterns would not be significantly altered as a result of the development" of the Facility.).

Arguments, as well as the ALJs' treatment of drainage issues in the PFD. The Commission will readily find, as the ALJs did, that TJFA's arguments find no support in the evidentiary record, TCEQ's MSW rules, or Commission precedent. Nevertheless, additional, brief responses to two of TJFA's exceptions are warranted to correct TJFA's inaccurate and disingenuous account of the facts of this case and those concerning TCEQ precedent.

1. The ALJs' Findings Are Consistent With TCEQ Precedent

TJFA erroneously contends that the ALJs' findings regarding drainage are not consistent with the Commission's ruling in the ***Blue Flats*** case.[108] In comparing the facts of this case to those of the ***Blue Flats*** matter, TJFA misleadingly fails to acknowledge (1) that the application at issue in ***Blue Flats*** did not contain calculations of runoff volumes or velocities, and (2) that Williamson County's demonstration that natural drainage patterns will not be significantly altered was based not only on calculations and analyses of peak flows, but also on calculations and analyses of runoff volumes and velocities.

In its exceptions, TJFA claims that the application at issue in the ***Blue Flats*** case, if granted, "would have increased the storm water runoff volume by about 300% at a given discharge point."[109] Exactly how TJFA arrives at such a claim is not clear from a review of the PFD and Commission order in ***Blue Flats***, particularly given that the ALJs and the Commission in that case specifically found that the application did not include calculations or analyses of

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[108] *See* TJFA's Exceptions at 6-7; ***see also An Order Denying the Application of Blue Flats Disposal, L.L.C., for Permit No. MSW-2262***, TNRCC Docket No. 98-0415-MSW, SOAH Docket No. 582-98-1390 (Jan. 2, 2001) [hereinafter ***Blue Flats Order***].

[109] TJFA's Exceptions at 6.

existing or post-development runoff volumes.[110] TJFA further fails to note that the *Blue Flats* application also did not contain calculations or analyses of existing or post-development runoff velocities.[111] TJFA, however, would appear to be correct that the *Blue Flats* application only discussed peak flow rates leaving the site, as that appears to be the *only* drainage parameter that the applicant calculated.

As demonstrated in the evidentiary record, the facts of this case are markedly different. It is undisputed that, in addition to peak flows, Williamson County's application contains calculations and analyses of runoff volumes and velocities in both the natural and post-development drainage conditions.[112] Thus, unlike the applicant in the *Blue Flats* case, Williamson County did not limit its calculations and analyses to peak flows when demonstrating that natural drainage patterns will not be significantly altered as a result of the proposed expansion of the Facility. As Mr. Murray testified, he considered both runoff volumes and velocities, in addition to peak flows and other factors, in reaching his expert determination that expansion of the Facility, as proposed in Williamson County's application, would not

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[110] *See In the Matter of the Application of Blue Flats Disposal, L.L.C., for Proposed Permit No. MSW-2262*, SOAH Docket No. 582-98-1390, TNRCC Docket No. 98-0415-MSW, Proposal for Decision at 33 (Oct. 2, 2000) [hereinafter *Blue Flats PFD*] ("The ALJs are also concerned that [the applicant] did not present calculations of runoff volume or velocity before and after development."); *Blue Flats Order*, *supra* note 108, at 5, Finding of Fact No. 40 (finding that the "application does not include any calculations or analyses of existing or post-development runoff volumes to the northwest or northeast.").

[111] *See Blue Flats PFD*, *supra* note 110, at 33-34 (finding that the applicant "failed to offer any evidence about runoff velocity"); *Blue Flats Order*, *supra* note 108, at 5, Finding of Fact No. 41 (finding that the "application does not include any calculations or analyses of existing or post-development runoff velocities to the northwest, northeast, or south.").

[112] *See* Ex. APP-202 at 1146-48; Ex. APP-200 at 47:1-10, 51:1-12 (Murray); Trial Tr. at 249:17-25 (Murray).

significantly alter natural drainage patterns.[113] The Executive Director's expert agreed with this determination.[114] The ALJs agreed with this determination.[115] There is no testimony in the record to the contrary.

2. The ALJs' Findings Are Consistent With TCEQ Guidance

TJFA claims that TCEQ's guidance document, *Guidelines for Preparing a Surface Water Drainage Plan for a Municipal Solid Waste Facility* ("***Surface Water Guidelines***"),[116] was "created in response to the Commission's rulings in the *Blue Flats* case."[117] Although there is no information in the record of this case to support such a claim, the impetus behind the creation of the guidance document is irrelevant. However, Williamson County does take issue with TJFA's suggestion that the *Surface Water Guidelines* somehow represent a departure from the Commission's ruling in *Blue Flats*, and in a subsequent case, that stormwater discharges should be analyzed at the facility's permit boundary and not downstream. Williamson County also disputes TJFA's claims that the ALJs' findings are inconsistent with the *Surface Water Guidelines*.

In its exceptions, as it did in its closing arguments, TJFA focuses on alleged "potential impacts downstream" of the Facility, claiming that Williamson County should have analyzed

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113 *See* Ex. APP-200 at 49:1 to 53:21 (Murray); Trial Tr. at 252:15 to 253:16, 254:13-21, 256:1-13, 259:8 to 260:18, 275:4-5, 275:10-14, 279:7-10, 285:18-19, 288:8-11, 290:1-3, 296:12-22, 304:19 to 305:20, 323:15-22, 325:9-13, 333:23 to 334:8, 357:19-24 (Murray); PFD at 74-75, 76 ("Mr. Murray testified that he analyzed the flow rates, velocities, and volume of water at the discharge points.").

114 *See* Trial Tr. at 1616:11-17, 1619:11-20, 1621:24 to 1622:3, 1622:10-25 (Prompuntagorn); PFD at 76.

115 *See* PFD at 73, 77, 78.

116 *See* TCEQ, WASTE PERMITS DIV., GUIDELINES FOR PREPARING A SURFACE WATER DRAINAGE PLAN FOR A MUNICIPAL SOLID WASTE FACILITY, RG4-17 (June 2004) [hereinafter *Surface Water Guidelines*].

117 TJFA's Exceptions at 39.

stormwater discharges from the Facility at points downstream of the Facility's permit boundary.[118] As discussed in Williamson County's Closing Argument, and in the ALJs' PFD, both Mr. Murray and the Executive Director's expert, Mr. Prompuntagorn, testified that there is no basis in the applicable regulations for such an analysis, nor is there any defined criteria by which one would undertake such an analysis.[119] As Mr. Murray explained, the determinative point for purposes of the drainage analysis is at the permit boundary, not downstream:

> [T]he critical point is where we're discharging . . . the stormwater from the site. That's the critical point because as you go further downstream, you mitigate any effects of the development of the landfill. So the critical point is that point [at] which we discharge from the site.[120]

Furthermore, as the ALJs recognized in this case, the Commission has previously ruled that off-site, downstream analyses of stormwater drainage are not part of, nor relevant to, the drainage demonstrations required by TCEQ's rules.[121] In the PFD in the *Blue Flats* case, the ALJs concluded that it may be appropriate to examine the potential off-site impacts to drainage patterns "beyond the permit boundary" of a landfill.[122] When the TCEQ Commissioners considered the *Blue Flats* PFD, they specifically rejected the ALJs' Proposed Findings of Fact related to off-site impacts of stormwater drainage "because *Commission rules and precedent require that the determination of significant alteration be made at the permit boundary, not off*

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118 TJFA's Exceptions at 40.

119 *See* Trial Tr. at 253:19-25, 255:25, 262:20 to 263:21, 265:24-25 (Murray); *id.* at 1616:18 to 1617:4 (Prompuntagorn).

120 *Id.* at 253:19-25 (Murray); *see also id.* at 263:16-21 (Murray) (testifying that the "worst-case condition" is the point of discharge from the facility to the downstream receiving channel at the facility permit boundary); *id.* at 265:22-23 (Murray) ("The further downstream, the more it's mitigated."); *id.* at 267:23-24 ("[T]he more you get downstream, the more the effect is mitigated."); *id.* at 309:18-19 (Murray) (testifying that the "worst-case condition" is the point of discharge from the facility to the downstream receiving channel at the facility permit boundary).

121 *See* PFD at 77-78.

122 *Blue Flats PFD*, *supra* note 110, at 31.

site."[123] Following the Commission's order in the *Blue Flats* case, the issue of off-site, downstream stormwater analyses was revisited in the *North Texas Municipal Water District* case, wherein the ALJ reviewed the *Blue Flats* order and concluded that "*calculations and analyses of off-site drainage patterns are wasted motion*."[124] The ALJ's exclusion of off-site drainage analyses was affirmed by the TCEQ Commissioners when they considered the ALJ's PFD.[125]

TJFA's exceptions appear to suggest that the Commission's *Surface Water Guidelines*, which were developed following the *Blue Flats* decision, somehow represent a departure from the Commission's holding that the demonstration of no significant drainage alterations is to be made at the facility's permit boundary, not off-site. First and foremost, it must be recognized that the *Surface Water Guidelines* expressly provide that the agency's guidance "is not intended to be used as rules or policy and does not include all acceptable practices."[126] Turning to TJFA's claims, to the extent that the *Surface Water Guidelines* were "created in response to the Commission's rulings in the *Blue Flats* case," the agency's guidance was developed to expound on Commission precedent, not change it (which non-binding guidance could not accomplish in any event).

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123 *Blue Flats Order*, *supra* note 108, at 8 ("Explanation of Changes to the ALJs' Proposed Findings of Fact and Conclusions of Law") (emphasis added).

124 *In re Application of North Texas Municipal Water District for Municipal Solid Waste Permit No. MSW-2294*, SOAH Docket No. 582-02-3386, TCEQ Docket No. 2002-0745-MSW, Proposal for Decision at 28 & n.98 (July 18, 2003) (emphasis added).

125 *An Order Approving the Application of North Texas Municipal Water District for Municipal Solid Waste Permit No. MSW-2294*, TCEQ Docket No. 2002-0745-MSW, SOAH Docket No. 582-02-3386, at 18 (Finding of Fact No. 105), 27 (Conclusion of Law No. 27) (Oct. 20, 2003).

126 *Surface Water Guidelines*, *supra* note 116, at 2, § 1.1; *see also* 30 TEX. ADMIN. CODE § 330.6 (providing that MSW technical guidelines "are not mandatory" and "shall not be used to extend the scope or increase the stringency" of TCEQ's rules in Chapter 330); Trial Tr. at 1610:23 to 1611:21 (Prompuntagorn).

While the *Surface Water Guidelines* may have been developed to aid applicants in avoiding the errors made by the applicant in *Blue Flats* (i.e., failing to calculate runoff volumes and velocities), the guidance document in no way purports to depart from the Commission's holding that the demonstration of no significant drainage alterations is to be made at the facility's permit boundary, not downstream from the facility. Indeed, the *Surface Water Guidelines* are consistent with the Commission's orders in the *Blue Flats* and *North Texas Municipal Water District* cases; with the testimony of Mr. Murray and Mr. Prompuntagorn; and with the ALJs' findings in this case. Specifically, the guidelines provide additional support for the conclusion that the point of discharge from the facility to the downstream receiving channel ***at the facility's permit boundary*** is the critical point for purposes of determining whether a facility's stormwater discharge will significantly alter natural drainage patterns.[127]

IV.
GEOTECHNICAL INVESTIGATIONS AND CONCLUSIONS: SLOPE STABILITY

Protestant TJFA was also the only party that filed exceptions regarding the geotechnical portion of the ALJs' PFD and, once again, TJFA's exceptions add nothing new to the discussion. Here too, TJFA's exceptions are little more than a "cut-and-paste" job – another near-verbatim regurgitation of the arguments that TJFA put forward in its closing briefs. As discussed above, TJFA's attempt to reargue these very same claims in its exceptions serves no constructive

[127] *See Surface Water Guidelines*, *supra* note 116, at 5, § 2.1.3 ("Another important way to show that there is no significant alteration of natural drainage patterns is to demonstrate that the velocity of the flow exiting the site *at the discharge point along the permit boundary* does not cause an increase in erosion. . . . Typically, the postdevelopment geometry of the drainage way *at the permit boundary* . . . should be consistent with the predevelopment condition. Therefore, if the postdevelopment flow rate is equal to or less than the predevelopment flow rate *at the discharge point*, the postdevelopment velocity will also be less. . . . A focus of a storm water management system design for a MSW facility should be to return the storm water flow to its predevelopment condition before it leaves *the permit boundary* . . . . To achieve this goal, . . . allow flow to return to the predevelopment condition *at the permit boundary*.") (emphasis added).

purpose. Each and every one of these arguments were addressed and refuted by Williamson County in its closing briefs, and were considered and ultimately rejected by the ALJs in their PFD. Williamson County will not compound the unnecessary burden on the Commission, the ALJs, and the parties by repeating its prior, prevailing arguments in response to these repetitious claims. Accordingly, in response to TJFA's restated claims, Williamson County respectfully refers the Commission to its Closing Argument and Response to Protestants' Closing Arguments, as well as the ALJs' treatment of these issues in the PFD.

V.
SITE OPERATING PLAN, SOURCES OF WASTE, AND BOUNDARY ISSUES

Protestants HCG and TJFA filed exceptions regarding this portion of the ALJs' PFD. Once again, Protestants' exceptions are merely word-for-word restatements of their closing arguments – arguments which were addressed and refuted by Williamson County in its Response to Protestants' Closing Arguments, and which were considered and ultimately rejected by the ALJs in their PFD. Accordingly, Protestants' exceptions offer nothing of substance that has not previously been argued.

For its part, Protestant HCG again fails to explain why the fire protection measures in the application, which are worded such that they can be specifically applied to each working face at the Facility,[128] should be repeated separately for each working face. Repeating the same fire protection measures multiple times in the application for each working face would only result in repetition and the potential for confusion; it would not increase the protectiveness of the Facility's fire protection plan.

[128] *See* Trial Tr. at 404:17 to 408:8 (Murray); *id.* at 1446:14 to 1449:21(Prompuntagorn); PFD at 84.

Similarly, TJFA fails yet again to provide a reasoned explanation for its claim that a 25-foot discrepancy in the description of a pipeline easement at the Facility should result in denial of Williamson County's application. TJFA's claim is particularly unreasonable given that the applicable regulation prohibits solid waste disposal only "within 25 feet of the center line of any utility line or pipeline easement."[129] The pipeline at issue has been physically located in the field, and the record evidence shows that the proposed expansion of the Facility has been designed to maintain at least 130 feet between the centerline of the pipeline and the extent of the waste disposal area.[130]

VI.
REPORTING AND TRANSCRIPTION COSTS

No party filed exceptions regarding the ALJs' proposed allocation of reporting and transcription costs in this proceeding. And that includes Williamson County, who will solely incur the entirety of those costs. Williamson County did not take exception to the ALJs' proposed allocation, and does not do so here. However, the County wants to be sure that the Commission is well aware that the contest of Williamson County's permit application has caused the County to expend significant public resources in pursuit of a permit for a public landfill that will guarantee revenue to Williamson County for many years to come.

The County is not opposed to participating in, and incurring the costs of, a proceeding wherein concerned citizens are provided an opportunity to state their concerns and have the issues of importance to them decided. However, the worthy and admirable purpose of this proceeding is severely diminished when entities, such as TJFA, can take part purely for

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129 30 TEX. ADMIN. CODE § 330.121(a).

130 *See* Trial Tr. at 203:7-20, 205:6-11, 208:7-13 (Murray).

competitive gain. Williamson County understands that the TCEQ Commissioners may not wish to determine the subjective intent of each party that comes before the Commission, and that the applicable law arguably may not give the Commission the freedom to deny party status to the likes of TJFA.

Nevertheless, as set forth in Williamson County's prior motion to deny TJFA party status,[131] it is abundantly clear that TJFA exists for the sole purpose of abusing the Commission's contested case process in an effort to gain its principals a competitive business advantage in the Central Texas landfill market. This exploits the environmental permitting process as a means to stifle competition and benefit competing business interests; it does a disservice to the contested case process, to the public, and to the Commission. The contested case process was established to provide a forum for parties with legitimate, justiciable, and, most importantly, environmental concerns, not for businesses solely interested in undermining their competition.

Williamson County is a county government with budgetary constraints and limited funds. Its citizens should not have had to bear even an incremental cost as a result of TJFA's clear efforts to obstruct the permitting process for anti-competitive, private gain, but the inescapable truth is that the cost to the County's citizenry from TJFA's participation in this matter has been significant.

131 *See* Applicant's Motion to Deny TJFA, L.P. Party Status.

VII.
CONCLUSION

For the foregoing reasons, Protestants' exceptions to the ALJs' PFD are not supportable and provide no basis for amending the PFD or the ALJs' Proposed Order. Accordingly, Applicant Williamson County respectfully requests that the ALJs' Proposed Order be modified as proposed in Williamson County's Brief in Response to the ALJs' PFD and issued by the Commission with those modifications.

Respectfully submitted,

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I certify that a true and correct copy of the foregoing brief has been served on the following on this the 19th day of March, 2008:

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Texas Commission on Environmental Quality Alternative Dispute Resolution Program

R. Mark Dietz

R. Mark Dietz

ATTACHMENT 1

Texas Commission on Environmental Quality

Permit or Registration Application for Municipal Solid Waste Facility

Part I

A. General Information

Facility Name:				
Physical or Street Address (if available):				
(City) (County)(State)(Zip Code):			TX	
(Area Code) Telephone Number:				
Charter Number:				

If the application is submitted on behalf of a corporation, provide the Charter Number as recorded with the Office of the Secretary of State for Texas.

Operator Name[1]:				
Mailing Address:				
(City) (County)(State)(Zip Code):				
(Area Code) Telephone Number:				
(Area Code) FAX Number:				
Charter Number:				

If the permittee is the same as the operator, type "Same as Operator".

Permittee Name:				
Physical or Street Address (if available):				
(City) (County)(State)(Zip Code):			TX	
(Area Code) Telephone Number:				
Charter Number:				

If the application is submitted by a corporation or by a person residing out of state, the applicant must register an Agent in Service or Agent of Service with the Texas Secretary of State's office and provide a complete mailing address for the agent. The agent must be a Texas resident.

Agent Name:				
Mailing Address:				
(City) (County)(State)(Zip Code):				
(Area Code) Telephone Number:				
(Area Code) FAX Number:				

Application Type:

☐	Permit	☐	Major Amendment	☐	Minor Amendment
☐	Registration	☐	Modification	☐	Temporary Authorization
		☐	w/Public Notice		
		☐	w/out Public Notice	☐	Notice of Deficiency Response

[1] The operator has the duty to submit an application if the facility is owned by one person and operated by another [30 TAC 305.43(b)]. The permit will specify the operator and the owner who is listed on this application [Section 361.087 Texas Health and Safety Code].

ATTACHMENT 2

Permit No. MSW 1506-A

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

PERMIT FOR MUNICIPAL SOLID WASTE MANAGEMENT SITE issued under provisions of Texas Health & Safety Code Ann. Chapter 361 (Vernon)

Name of Permittee and Site Owner:	City of Kerrville 800 Junction Highway City of Kerrville, Kerr County, Texas 78028
Facility Name:	Kerrville Sanitary Landfill
Classification of Site:	Type I Municipal Solid Waste Management Facility
Wastes to be Accepted:	Municipal solid waste from municipal, community, commercial, institutional, agricultural, and recreational activities, non-hazardous Class 2 and Class 3 industrial wastes, yard wastes, and approved special wastes.

The permittee is authorized to store, process, and dispose of wastes in accordance with the limitations, requirements, and other conditions set forth herein. This amended permit is granted subject to the rules and Orders of the Commission and laws of the State of Texas. Nothing in this permit exempts the permittee from compliance with other applicable rules and regulations of the Texas Natural Resource Conservation Commission. This permit will be valid until canceled, amended, or revoked by the Commission, or until the site is completely filled or rendered unusable, whichever occurs first.

APPROVED, ISSUED AND EFFECTIVE in accordance with 30 Texas Administrative Code Chapter 330.

ISSUED DATE: FEB 15 2001

For the Commission

STATE OF TEXAS
MAR 17 2008

Texas Commission on Environmental Quality

Permit or Registration Application for Municipal Solid Waste Facility

Part I

A. General Information

Facility Name:	Kerrville Landfill			
Physical or Street Address (if available):	3315 Loop 534			
(City) (County) (State) (Zip Code):	Kerrville	Kerr	TX	78028
(Area Code) Telephone Number:	(830) 257-3831			
Charter Number:				

If the application is submitted on behalf of a corporation, provide the Charter Number as recorded with the Office of the Secretary of State for Texas.

Operator Name:	Kerrville Landfill TX, LP			
Mailing Address:	2575 IH 35 South, Suite 103			
(City) (County) (State) (Zip Code):	San Marcos	Hays	TX	78666
(Area Code) Telephone Number:	512-392-9105			
(Area Code) FAX Number:	512-392-9106			
Charter Number:				

If the permittee is the same as the operator, type "Same as Operator".

Permittee Name:	City of Kerrville			
Physical or Street Address (if available):	800 Junction Highway			
(City) (County) (State) (Zip Code):	Kerrville	Kerr	TX	78028
(Area Code) Telephone Number:	(830) 257-8000			
Charter Number:				

If the application is submitted by a corporation or by a person residing out of state, the applicant must register an Agent in Service or Agent of Service with the Texas Secretary of State's office and provide a complete mailing address for the agent. The agent must be a Texas resident.

Agent Name:	Michael Stewart			
Mailing Address:	2575 IH 35 South, Suite 103			
(City) (County) (State) (Zip Code):	San Marcos	Hays	TX	78666
(Area Code) Telephone Number:	512-392-9105			
(Area Code) FAX Number:	512-392-9106			

Application Type:

☐	Permit	☐	Major Amendment	☐	Minor Amendment
☐	Registration	☐	Modification	☒	Temporary Authorization
		☐	w/Public Notice		
		☐	w/out Public Notice	☐	Notice of Deficiency Response