State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

March 27, 2008

Les Trobman
General Counsel
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

VIA FACSIMILE 512/239-5533

Re: 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

Dear Mr. Trobman:

We have reviewed the exceptions and replies to exceptions to the Proposal for Decision (PFD) in this case. With the exception of a change recommended by the ED and some non-substantive corrections and clarifications suggested by Williamson County, we are not making any changes to either the PFD or the proposed order that we have presented to the Commission. We continue to stand by the analyses presented in the PFD and we recommend that the Commission adopt the proposed order, as amended. However, we do wish to respond to some of the exceptions to clarify our recommendations.

Executive Director's Exceptions

The ED has excepted to the ALJs' proposed Finding of Fact No. 162, regarding hours for emergency operations. The ED proposes that Finding of Fact No. 162 be deleted, and that emergency operations be governed by the provisions of 30 TEX. ADMIN. CODE § 305.70(m). The ALJs agree with the ED's exception to Finding of Fact No. 162.

The ALJs also agree with the language of the ED's revised Draft Permit, attached as Exhibit A to the ED's exceptions. The ALJs, however, are aware of their recommendation in the PFD at page 17, that references to Williamson County as the "Permittee" and "Site Owner" be removed from the Draft Permit. This was intended as a practical suggestion based on Williamson County's concern that any descriptors not defined in 30 TEX. ADMIN. CODE. ch. 330 would be grounds for confusion and appeal by certain Protestants. In reality, Williamson County is the Permittee and its identification as such is entirely accurate; the ALJs believe the ED's suggested language is consistent with common sense and 30 TEX. ADMIN. CODE. ch. 330.

Williamson County's Exceptions

In its exceptions, Williamson County proposed that the Facility's operating hours be established consistent with 30 TEX. ADMIN. CODE § 330.118(a). In response, Protestants raised concerns, including concerns over land use compatibility with operations outside normal business hours. While the ALJs are not opposed to operating hours consistent with the Commission's rules, they are also governed by the record, which is now closed. The ALJs defer to the Commission on whether this matter warrants further discussion at the agenda.

The ALJs have reviewed Williamson County's "proposed modifications to correct inadvertent typographical errors," found on pages five through seven of its exceptions, and agree with all of the proposed corrections.

Protestants' Exceptions

The ALJs do not recommend any changes to the PFD or proposed order based on Protestants' exceptions, many of which are arguments already set forth in post-hearing briefing and analyzed in the PFD, or dealt with in pre-hearing rulings. One matter, however, requires clarification. Certain Protestants point out that the ALJs discuss Williamson County's intent regarding references to Waste Management of Texas, Inc. in the Application. In an attempt to provide thorough analysis, the ALJs addressed intent because Williamson County has been accused of providing false information in the Application. In addition, during the course of this proceeding, concerns were raised that Waste Management sought some form of property interest in the Facility. Contrary to Protestants' assertions, the ALJs did not attempt to divine the intent of particular individuals, but rather discussed probable, rational explanations for references to Waste Management and the lack of any evidence that Williamson County intended to misrepresent facts or confuse the identity of the owner or operator of the Landfill.

In conclusion, we continue to maintain the recommendations contained in the PFD. From our perspective, this matter may be set for Open Meeting at the Commission's earliest convenience, and the ALJs will appear and be prepared to answer any questions the Commissioners may have at that time.

Sincerely,

Travis Vickery
Administrative Law Judge

Henry D. Card
Administrative Law Judge

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STYLE/CASE: **WILLIAMSON COUNTY RECYCLING & DISPOSAL FACILITY**

SOAH DOCKET NUMBER: **582-06-3321**

REFERRING AGENCY CASE: **2005-0337-MSW**

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REGARDING: **EXCEPTIONS LETTER (BY ALJ)**

DOCKET NUMBER: **582-06-3321**

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