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TRANSCRIPT OF

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY HEARING, ITEM 1

TCEQ DOCKET NO. 2005-0337-MSW;SOAH DOCKET NO. 582-06-3321

HELD ON FEBRUARY 11, 2009

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A P P E A R A N C E S

Les Trobman - General Counsel, Texas Commission on Environmental
Quality

Chairman Garcia - Texas Commission on Environmental Quality

Commissioner Shaw - Texas Commission on Environmental Quality

Commissioner Soward - Texas Commission on Environmental Quality

Judge Henry Card - Administrative Law Judge, Williamson County

Judge Travis Vickery - Administrative Law Judge, Williamson County

Mark Dietz - Attorney for Applicant, Williamson County

Judge Dan Gattis - County Judge, Williamson County

Marisa Perales - Attorney for Protesting Parties (Hutto Citizen's
Group, Mount Hutto Aware Citizens, Heritage on the
San Gabriel Homeowners' Association, and Jonah
Water Special Utility District)

Chris Ekoh - Attorney for Municipal Solid Waste

Scott Humphrey - Public Interest Council

John Riley - Attorney for Waste Management

Richard Carmichael - Municipal Solid Waste

Guy Henry - Senior Attorney, Municipal Solid Waste

1 (TCEQ HEARING - ITEM 1 BEGINS)

2 **LES TROBMAN:** That brings us to the new business agenda this morning. Item
3 number 1 Administrative Law Judges' Proposal for Decision and Proposed Order
4 concerning the application of Williamson County for a major amendment to
5 vertically and laterally expand its Type I MSW landfill. Uh, Judges Vickery
6 and Card are here for the record. Also, in terms of order of presentation,
7 Administrative Law Judges will present with no time limit followed by the
8 Applicant, the protestants, Executive Director, and OPIC in that order. The
9 parties have been notified that the Applicant and the protestants
10 collectively would have ten minutes on each side, and Executive Director and
11 OPIC, five.

12 **CHAIRMAN GARCIA:** Uh, I just want to make note as a courtesy we allow, we
13 usually allow uh, elected officials to speak first, but since Williamson
14 County in this case is the Applicant, uh, I would just as soon allow them to
15 speak in the allotted time if that's okay with my colleagues. Thank you,
16 proceed.

17 **JUDGE HENRY CARD:** Good morning. My name is Henry Card, and I'm with Travis
18 Vickery. We are the Judges assigned to this case. I apologize for my
19 voice. I'm getting over a cold, so please bear with me. This is the
20 application of Williamson County to expand its municipal solid waste
21 landfill. The current site is 202 acres with a maximum permitted elevation
22 of 766 feet above mean sea level. As proposed, this site would be 575 acres
23 with a maximum height of 840 feet above msl. There are a number of
24 intervenors, and they've raised a lot of different issues. Uh, some of
25 those were the name and the style on the permit, land use compatibility,
traffic, geology and ground water protection, the alteration of natural
grade patterns, slope ability, hours of operation, acceptance of waste -- or
not accepting waste from outside of Williamson County. And there were some

1 other less major concerns, as well.

2 In general, the two of us resolved those issues in favor of the
3 Applicant. We recommend approval of the application with some modifications
4 to the site operating plan. In the exceptions there were some minor changes
5 raised by the Executive Director and Williamson County. We agree with those
6 minor changes, as we stated in our letter to you. And we will be glad to
7 attempt to answer any questions.

8 **CHAIRMAN GARCIA:** Thank you, Judge. Any questions at this time?

9 **COMMISSIONER SHAW:** No.

10 **CHAIRMAN GARCIA:** Thank you.

11 **LES TROBMAN:** Mr. Riley? Counsel for the Applicant.

12 **MARK DIETZ:** Good morning, Commissioners. My name is Mark Dietz, and I'm
13 here on behalf of the Applicant, Williamson County. And with me today I
14 have the entire Commissioner's Court of Williamson County in support of the
15 application. We have Valerie Covey, Judge Dan Gattis, Commissioner Ron
16 Morrison, Commissioner Cynthia Long, and Commissioner Cynthia -- uh, Lisa
17 Birkman. And in preparation for today's proceedings, we had the County
18 Judge prepare the presentation and I'll turn it over to the County Judge at
19 this time.

20 **CHAIRMAN GARCIA:** Good morning, Judge.

21 **JUDGE DAN GATTIS:** Good morning, Commissioners. If my glasses fail, I
22 apologize to you here. Good morning, Commissioners. I'm Dan Gattis, County
23 Judge from Williamson County. And I'm here to speak on behalf of Williamson
24 County in support of adoption of the permit 1405B. I live in Hutto, Texas.
25 I am familiar with the landfill since its beginning as a County operation in
the 1980's. It was opened in 1985, and the County began acquiring
additional land for its expansion in 1990. It was necessary because the
County was growing fast. The population went from 139,000 in 1980 to

1 200,000 by 2000, and our growth continues today. Our estimated population
2 total is 360,000 people, the third fastest growing county in the State of
3 Texas, and the population is expected to triple in the next twenty years to
4 1.1 million. Commissioner's Court recognizes that the site did not have
5 sufficient capacity to handle the growth population in 2003 following this
6 application.

7 It recognizes that expansion of the landfill is not something easily
8 accepted by our citizens, particularly by those who live close. And it was
9 determined by the Commissioner's Court to send the permit application to the
10 State for administrative hearings by direct referral to allow as many
11 individuals to participate in the process as possible. I participated and
12 testified at the hearing. This permit is more than just about increasing
13 the size of the landfill. The proposed permit increases the number of
14 ground water monitoring wells from 8 to 35. The new permit provides for
15 leachate control and collection, and incorporates a state-of-the-art system
16 to assure that it does not make it into the ground water. The storm water
17 plan is a 100-year storm water plan, rather than the 25-year plan that is
18 currently in existence.

19 Waste Management has operated the landfill for the County since 1987.
20 However, I want to make it clear that Williamson County owns the landfill
21 and the permit. Much has been made about this issue in the process. I want
22 to make it clear that Williamson County is the sole Applicant for the
23 permit, and that Williamson County is the Permittee. Williamson County owns
24 the site, is the site Operator, as I understand those definitions by the
25 Texas Administrative Code and the Texas Health and Safety Code. Waste
Management is a contractor to the County, and we want to make sure that the
permit reflects this fact.

In addition, these concerns -- in addition concerns to the former

1 Executive -- I'm sorry, sir, I addressed these concerns to the former
2 Executive Director in 2007. And I know that our lawyers have communicated
3 to the agency that if allowed by law, we want our County's name on the
4 permit. If it requires that Waste Management, Incorporated be named to the
5 permit, and you are going to require that other public entities that use
6 contract operators, then we understand the Commission's position as a matter
7 of law that applies equally to everyone in the state who owns landfills.

8 Thank you for the opportunity to speak before you on behalf of
9 Williamson County, and we reserve the remainder of our time for rebuttal.
10 Thank you very much.

11 **CHAIRMAN GARCIA:** Thank you. Any questions of the Judge? Thank you very
12 much.

13 **JUDGE DAN GATTIS:** Thank you.

14 **LES TROBMAN:** Counsel for the protesting parties.

15 **MARISA PERALES:** Good morning, Commissioners, Mr. Trobman. I'll be
16 presenting comments this morning on behalf of the -- the following
17 protesting parties: The Hutto Citizen's Group, Mount Hutto Aware Citizens,
18 the Heritage on the San Gabriel Homeowners' Association, and the Jonah Water
19 Special Utility District. And my intention is to reserve at least half of
20 the time, five minutes, for counsel for the other protesting party, TJFA.
21 For the record, my name is Marisa Perales. And I'm with the Law Firm of
22 Lowerre, Frederick, Perales, Allmon & Rockwell. And uh, during the
23 contested case hearing, I represented the homeowners' association, although
24 the protesting parties were aligned.

25 Today these protesting parties urge you to deny this application for
this permit amendment. But, if you are going to grant it, then the
protesting parties urge you to grant it in the name of the correct Applicant
and the correct Permittee, and that is Williamson County. The County has

1 requested that it be the sole entity reflected on the permit, and it in fact
2 produced a letter to the Commissioners requesting this. And obviously all
3 of the protesting parties requested the County be the sole entity reflected
4 on the face of the permit because the County is their local government that
5 is responsible for this landfill. It is their tax dollars that go to this
6 local government. And they would like to be able to ensure that they
7 maintain some control over the operation of this landfill, and in fact,
8 complete control over the operation of this landfill.

9 The only entity here that is opposed to having Williamson County
10 reflected as the sole entity listed on the permit is Waste Management. And
11 we can only speculate as to their motivations because Waste Management was
12 not a party to this contested case proceeding.

13 Now, you've all heard the whole Owner, Permittee, Operator issue here
14 discussed before you ad nauseam, and I've been one of those discussing it
15 here before you. And uh, some have kind of characterized this issue as much
16 ado about nothing. But that's really not the case, at least not for the
17 citizens of Williamson County.

18 Now, one of the recommended fixes that's been proposed here to
19 alleviate the confusion surrounding Operator as that term is um, used in the
20 330 definitions versus Operator, as that term is used in the 305 definitions
21 and the confusion surrounding exactly what Waste Management's role is here
22 is to simply uh, characterize the county as both the Owner and the site
23 Operator, and list Waste Management as the Operator with some sort of
24 inherent understanding that Operator is intended to refer to the Operator in
25 Chapter 330, and not the Operator in Chapter 305. But in fact, that does
nothing to alleviate the confusion, and here's why.

In this case, the Administrative Law Judges concluded that because
Waste Management was the Operator, they were required to submit the

1 application under Rule 305.43. And that's because uh, the County is the
2 Owner, but Waste Management is the Operator for purposes of 305.43. And the
3 term Operator is defined in that same chapter under Chapter 305 "as the
4 person responsible for the overall operation of the facility." In other
5 words, the ALJ's concluded that because Waste Management is the Operator
6 under Chapter 305, it was proper for Waste Management to submit this
7 application.

8 Now, what is the significance of submitting an application
9 anyway? Well, I suggest that the significance of determining -- of
10 submitting an application is that it determines who must satisfy the burden
11 of proof regarding the application in a contested case hearing. In other
12 words, it determines who the proper party is in the contested case hearing.
13 In this case, Waste Management was not a party, although its attorneys were
14 certainly there.

15 So, basically simply inserting the term "Operator" on the face of the
16 permit really does nothing to alleviate the myriad concerns here. So,
17 unless Waste Management's name is removed from the permit, there is always
18 an argument to be made that Waste Management submitted this application, and
19 thus, has some control over the permit. And its name, therefore, can never
20 be removed from the permit without Waste Management's consent.

21 And again, I remind you, Waste Management was not a party to this
22 contested case proceeding, and the protesting parties that I am here
23 representing today had no opportunity to cross-examine um, Waste Management
24 or ask them how it intended to meet its burden of proof.

25 Now, as for the law -- the law -- the statutes and the Health and
Safety Code do not require that a contract Operator's name be included on
the face of the permit. To the contrary, the statute all but mirrors the
definition of Operator in Chapter 305, the person in charge of a facility.

1 And that is clearly Williamson County. Similarly, there is nothing in the
2 Federal regulations that requires a contract Operator to be named on the
3 face of the permit.

4 Understandably, the TCEQ uh, desires to know the identity of the
5 contract Operator, or the person who will be conducting the day-to-day
6 operations. And that can be included in any part of the application. It
7 can be included uh, on the Certificate of Competency. But in order to make
8 it clear that only Williamson County is in charge and responsible for the
9 overall operation of the facility, and is in charge for uh, seeking any
10 modifications to the permit, only Williamson County should be reflected on
11 the face of that permit. And that's the way the TCEQ has always interpreted
12 it. That's the way that almost all of its permits are written, and that's
the way this permit should be written.

13 Now, I'd like to turn very briefly to uh, the topic of land use
14 compatibility. As that was one of the main issues that was raised by the
15 protesting parties that I represent here. Now, obviously the County having
16 been the Applicant in this case had access to all sorts of information that
17 one might consider um, relevant and useful to a land use compatibility
18 analysis. And it certainly had access to communications with the City of
19 Hutto representatives. Yet, in the application, the land use compatibility
20 section included only the bare minimum of information. The information that
is specifically set out in the TCEQ regulations.

21 There was no discussion of prospective growth trends or prospective
22 growth patterns. And there was no real analysis to speak of. And in fact,
23 the first time that any analysis or any land use expert was provided with
24 regard to this application was during the rebuttal phase of the contested
case hearing, not during the case in chief.

25 Now, I submit to you that the rebuttal phase is not the appropriate

1 time to satisfy a party's burden of proof. And it certainly cannot be what
2 the TCEQ regulations intended when they included a land use compatibility
3 analysis in their -- in their rules. It seems to me that what was intended
4 was that a land use compatibility analysis go into the design of the
5 landfill, go into the preparation of the application so that the operating
6 hours that are proposed are compatible with surrounding land uses and with
7 prospective growth patterns. So, that the height that's proposed is
8 compatible with surrounding land uses and prospective growth patterns. So
9 that the screening that's proposed is compatible with land uses and
prospective growth patterns.

10 And yet, that obviously was not done in this case because, as I
11 mentioned, the first time that a land use expert was brought into this
12 application process, and the first time that any analysis was performed was
13 during the rebuttal phase of the contested case hearing. And even then this
14 land use expert uh, was not given access to all of the information that was
15 necessary for a thorough land use compatibility analysis. Uh, he was
16 unclear about some of the construction and the roadways that were being
17 built, and uh, and again it appeared that there was no coordination with
officials from the City of Hutto.

18 And finally, if this application is granted, I urge you to reflect in
19 the permit that the operating hours should be limited. They should not be
20 twenty-four seven as the County has requested. And uh, when I mention
21 operating hours, I don't mean only waste acceptance hours, but all operating
22 hours. Uh, the moving of heavy equipment causes substantial noise, and
23 that's something that should be taken into consideration and limited uh --

24 **UNKNOWN FEMALE:** That's time.

25 **MARISA PERALES:** Thank you.

CHAIRMAN GARCIA: Thank you. Any questions of Ms. Perales at this point?

1 Thank you very much. Mr. Tatu? Who -- where are we going now?

2 **LES TROBMAN:** Is there five minutes remaining on the protestants? Is that a
3 no?

4 **CHAIRMAN GARCIA:** They wanted to save their five. Oh, you want to go now
5 for the next five minutes? Did they use all ten?

6 **LES TROBMAN:** I think we go to the Executive Director now.

7 **CHAIRMAN GARCIA:** Executive Director, thank you.

8 **CHRIS EKOH:** Good morning, Mr. Chairman, Commissioners, General Counsel, and
9 the Public Interest Counsel. My name is Chris Ekoh. I have here with me
10 today Guy Henry, Senior Attorney in charge of Municipal Solid Waste and
11 Industrialized Waste. Anthony Tatu has worked very hard on this case. I
12 would also like to acknowledge him. He is out sick today, so it is now
13 taking both of us to cover for him. Also present today is Mr.
14 Prompuntagorn. He's the project manager. I have behind me Wes McCoy, the
15 Project Geologist. And I believe Dr. Carmichael is also here, Section
16 Manager for the Municipal Solid Waste section.

17 The Executive Director basically agrees with the proposal for decision
18 recommending that the Commission issue MSW Permit No. 1405B to Williamson
19 County with the following revisions as identified in the PFD.

20 One, the permit should identify Williamson County as the Owner and site
21 Operator. Waste Management of Texas should be identified as the Operator.
22 This is basically consistent with the statute. If you look at Section
23 361.087, that would be consistent designating of having Operator identified
24 and the permit should be consistent with that section. We also have the
25 330.2 rules that specifically defines site Operator and also defines Owner.

The second revision that we are recommending, which the PFD also
supports is to basically remove Waste Management Texas from Page 1 of the
application on that heading that is identified "Applicant Name." And also

1 in the section of the application that has "Customer Reference Number."
2 That section should only have Williamson County and Williamson County's
3 customer reference number.

4 As the protestants also acknowledged, and as the Judge has recommended
5 in this case, the operating hours also should be revised. And that should
6 be revised to reflect the fact that the facility should operate Monday
7 through Friday between 5:00 a.m. and 8:00 p.m., and on Saturday between 6:00
8 a.m. and 4:00 p.m.

9 The only digression we have with the findings of fact, which is really
10 not too significant in this case is the ill-defined special section to
11 finding of fact No. 162. I recall that that finding of fact basically
12 states that in the event of an emergency, the Applicant is authorized to
13 operate the facility twenty-four hours per day, seven days per week for the
14 duration of the emergency, as authorized by the Executive Director. That
15 section primarily would not be necessary in this case, in light of the fact
16 that we have a specific rule that addresses the procedure for temporary
17 authorizations. And that rule is Rule 305.62(j). That allows for temporary
18 authorizations, and under certain circumstances that authorization can be
19 obtained verbally.

20 We are available to answer any questions that you might have. Thank
21 you.

22 **CHAIRMAN GARCIA:** Thank you. Any questions of staff at this time?

23 **LES TROBMAN:** Mr. Humphrey.

24 **SCOTT HUMPHREY:** Good morning, Commissioners. My name is Scott Humphrey.
25 I'll be speaking on behalf of the Public Interest Council. We do support
the proposal for decision. Regarding a couple of the issues, one of the
issues that the homeowners raised, which we do agree with is that the
rebuttal phase of the testimony should not be used to satisfy burden of

1 proof.

2 And we do agree those should be done in the case of the chief. Having said
3 that, uh, we did conclude that they did meet the requirements for the land
4 use based on the content of the application. There are very few structures
5 in that area. And based on the information that was provided in the
6 application, we were unable to recommend denial based on land use
7 compatibility.

8 We also do support the limited operating hours, as proposed by the
9 Executive Director. And we are available for questions. Thank you.

10 **CHAIRMAN GARCIA:** Thank you, Mr. Humphrey. Any questions of OPIC?

11 **LES TROBMAN:** I think there is a balance of time for Williamson County.

12 **MARK DIETZ:** Commissioners. To the Operator issue, which has troubled this
13 entire case, and the issue I think as the Commissioners well understand is
14 framed by the statutory requirement that requires the person who owns the
15 land and the Operator be listed in the permit. The issue that was long
16 litigated was this case determined under a 305 or 330 rule determination.
17 That being said, I think the well-reasoned opinion by the SOAH Judges, we
18 now understand that the 330 rules are appropriate.

19 So, the sole issue that I think that the Commissioner's Court that I
20 represent wants to make sure that since this is a matter of first
21 impression, that this is equally applied to any other contract Operator in
22 the State of Texas who serves the land owner, and that that requirement be
23 imposed on any future permits that come before this Commission. And that
24 sums what my response to that is, and I know Mr. Riley will speak briefly on
25 land use issues.

26 **JOHN RILEY:** Good morning, Commissioners. (Clears throat) For the record,
27 my name is John Riley, and I apologize too because I'm also getting over a
28 cold. It's been about a month since I've been getting over it, but I see

1 the end ahead of me.

2 On land use issues, I just would like to address those briefly. Some
3 of the points made by Ms. Perales that we put the land use analysis in the
4 application. Of course, we disagree with that, but the application speaks
5 for itself.

6 As to the propriety of calling a rebuttal witness in the form of John
7 Worrall, an expert land use uh, certainly was proper in this case because
8 there was land use testimony introduced in the protestants' case. And so, as
9 the Judges found a land use rebuttal case was appropriate. The fact that
10 Mr. Worrall did not have some of the information that Ms. Perales cross-
11 examined on is also indicative that he was truly authorized as a rebuttal
12 witness. He analyzed the information that had been offered in support of
13 the protestants' witnesses on land use, and he had a different opinion and a
14 contrary opinion to the lay witness's opinion of land use.

15 With that said, excuse me just one second, I think it is accurate to
16 say that Ms. Perales essentially admitted that the Applicant met its burden
17 of proof for at least a prima facie showing of the land use, the components
18 required by rule regarding land use. And that although Ms. Perales would
19 like to have seen more analysis in the application, it's simply not required
20 by the rules. We rely on the record as to the additional land use issues,
21 particularly Mr. Worrall's opinion that the expansion of the landfill will
22 be, and is and will be compatible with present and future land use.

23 I appreciate your time, and we stand for any questions you might have.

24 **CHAIRMAN GARCIA:** Any questions of Mr. Riley? Thank you. Any comments,
25 Commissioners, at this point uh, or questions of staff? Commissioner Shaw?

26 **COMMISSIONER SHAW:** I do. Thank you. Uh, one of the issues before is
27 obviously operating hours. Well, let me back up and first say uh, I think
28 the ALJ's did an excellent job of going through and addressing each of these

1 individual issues. And so, it was a very clear undertaking that you lay
2 before us. I appreciate you making it where I can get my mind around that.

3 **JUDGE HENRY CARD:** Thank you.

4 **COMMISSIONER SHAW:** One of the issues I guess is that we still need to
5 discuss with regard to operating hours is you know there's a -- there are no
6 specific hours that were in your recommendation for the heavy machinery and
7 deliveries and what have you. And so, part of where we're looking at these
8 hours of operation Monday through Friday, let me see if I can get the
9 numbers again in the recommendation. Uh, looking at 5:00 a.m. to 8:00 p.m.
10 and Saturday 6:00 a.m. to 4:00 p.m. potentially as waste acceptance hours.
11 One of the questions I have for ED staff, looking at if we impose different
12 or the same hours for heavy equipment operation and transportation
13 materials, I want to make sure that we don't inadvertently lead to
14 challenges with meeting the environmental needs of the landfill.

15 And so, if we were looking at allowing waste to be accepted through
16 8:00 p.m. on a Monday through Friday basis, would allowing the heavy
17 equipment operations to exist uh, an hour before and an hour after waste
18 receiving hours, is that adequate to ensure that the waste is properly
19 covered? The site is properly filled? Of if you could get some insight
20 into what we might -- or what would be appropriate from the standpoint of
21 ensuring that the landfill could be properly managed?

22 **RICHARD CARMICHAEL:** Yes sir, Commissioner Shaw. I'm Richard Carmichael.
23 Municipal Solid Waste permits -- generally speaking we allow landfills two
24 hours on either side of the waste acceptance hours. To begin operations in
25 the morning, start up the equipment, get the working face if it's covered or
they use alternative daily cover to get it ready for acceptance of waste.
And then at the close of business to allow that material to be brought in to
cover and to pretty much button it down. And that's why we distinguish

1 between waste acceptance and the operating.

2 **COMMISSIONER SHAW:** Thank you, that's exactly what I wanted to know. Thank
3 you.

4 **CHAIRMAN GARCIA:** Is there a mechanism in the rule already regarding
5 temporary authorization uh, I'm just asking this because as we go down
6 that's in addition to some of his -- some of the comments Commissioner Shaw
7 made regarding the operation hours. Uh, finding of Fact 162 in particular,
8 I was thinking was already covered.

9 **RICHARD CARMICHAEL:** Yes sir. The new 330 rules allow temporary
10 authorizations to be issued. The regional office may issue temporary
11 authorizations in case of a disaster situation since they are the ones at
12 the front. Other temporary authorizations for routine matters can be issued
13 through the permits. The rule also allows the landfill to operate five days
14 out of the year using alternative hours. Uh, the day after Thanksgiving
15 when they're closed and they need to operate the day after New Years, uh,
16 when they need additional hours because they've been closed and there is
17 additional waste. So, they can specify five days.

18 **CHAIRMAN GARCIA:** Thank you. Any other questions of staff? Does staff -- do
19 y'all anticipate any enforcement problems if there is more than one county
20 or more than one entity on the permit -- listed on the permit?

21 **GUY HENRY:** Uh, Chairman, we don't expect any problems with enforcement
22 actions.

23 **CHAIRMAN GARCIA:** Thank you.

24 (SHORT PAUSE)

25 **CHAIRMAN GARCIA:** It has been brought to my attention, Ms. Perales, that you
used up the ten minutes, and that perhaps that wasn't your intent? Is that
correct?

MARISA PERALES: (Inaudible).

1 **CHAIRMAN GARCIA:** Yeah. That was I think clearly your intent, but the ten
2 minutes were used up, and I defer to my colleagues on whether or not they
3 want to allow a couple of more minutes, and then of course, allow the
4 Applicant a couple more minutes. I'm not necessarily in favor of doing that
5 uh, but I'm willing to open that up if you all are interested. I think she
6 clearly wanted to allow someone else to speak a little.

7 **COMMISSIONER SHAW:** If we're going to hear something new, I guess I would
8 be, but if there's -- I mean those ten minutes was fairly adequate to cover
9 that. So --

10 **CHAIRMAN GARCIA:** Very well. Then if y'all are prepared for a motion, the
11 Chair is interested in adopting the ALJs' proposed order, but I'd be willing
12 to hear your motion.

13 **COMMISSIONER SHAW:** My motion will get at some changes with regard to those
14 operating hours, as I discussed with the Executive Director. But I'll take
15 a stab, and we can discuss from there.

16 Mr. Chairman, Commissioner Soward, I move that we adopt the ALJs'
17 Proposed Order granting Williamson County's permit amendment with the
18 following changes:

- 19 (A) We adopt the typographical corrections noted in Williamson
20 County's brief in response to PFD;
- 21 (B) Delete finding of Fact No. 162, as recommended in the ED's
22 exceptions;
- 23 (C) Modify finding of Fact No. 161, and ordering provision No. 3 to
24 specify the following facility operating hours:
- 25 (1) Waste acceptance Monday through Friday 5:00 a.m. to 8:00
p.m., and Saturday 6:00 a.m. to 4:00 p.m., as agreed by the
Applicant;
- (2) Heavy equipment operation and transportation of

1 materials Monday through Saturday 3:00 a.m. to 10:00 p.m.;

2 (3) Other activities with no specified hours as set forth in
3 former 30 TAC Section 330.118, which applies to this
4 application.

5 Two, that we approve the issuance of ED's revised draft permit in the
6 form attached to the ED's exceptions to the PFD without the highlights
7 and with changes to the operating hours consistent with this motion and
8 No. 1 2A, Days and Hours of Operation; and

9 Three, Adopt the ED's response to comments and second response to
10 comments pursuant to 30 TAC sections 550.117 and 80.126. That we
11 direct that the second response to comments be mailed to the parties
12 and interested persons on the mailing list by the chief clerk with the
13 Commissions' order.

14 **CHAIRMAN GARCIA:** Before you second, or we move on this, uh, do you have any
15 thought on transcript costs? Would you be interested in portioning that?

16 **COMMISSIONER SHAW:** I would. I actually had intended to bring that up in my
17 discussion. Uh, it's my understanding and consistent with 30 TAC Section
18 80.23D we look at the use of and who participated in and the benefit, as
19 well as the influence on the outcome. But it appears to me that on a
20 portion of those is slightly different from the ALJ's recommended as
21 appropriate. I was interested in something along the lines of perhaps
22 having fifty percent to the Applicant uh, twenty-five percent to TJFA, and
23 perhaps split the other twenty-five percent among Ms. Perales' clients.

24 **CHAIRMAN GARCIA:** And that could be uh, under this motion, it would be
25 subsection D, I guess under the -- we could put that in there under D?

26 **COMMISSIONER SHAW:** Uh, I believe that could be a good spot to include that.

27 **COMMISSIONER SOWARD:** And Commissioner Shaw, I believe you would need to
28 revise conclusion of law number 68 to reflect your motion.

1 **COMMISSIONER SHAW:** I'll bet you're right. (Laughs) Thank you,
2 Commissioner. I would like to add that to my motion.

3 **LES TROBMAN:** As well as modify the finding of fact number 188.

4 **COMMISSIONER SHAW:** I thought that went without saying, but if you think
5 we need to do that, as well. No, in all seriousness let's please modify
6 that at 188. Thank you.

7 **COMMISSIONER SOWARD:** Second.

8 **CHAIRMAN GARCIA:** All in favor.

9 **COMMISSIONER SHAW:** Aye.

10 **COMMISSIONER SOWARD:** Aye.

11 **CHAIRMAN GARCIA:** Thank you.

12 (TCEQ HEARING - ITEM 1 ENDS)

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CERTIFICATE OF SERVICE

I, DEBRA JENKINS, do hereby certify that the above and foregoing transcript was prepared by me, to the best of my abilities, and is a true and accurate record of the conversations between the parties herein; that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties hereto, nor financially interested in these matters; that the parties herein were not sworn, to my knowledge, by any authority; that the video link from which this transcript was prepared was recorded outside of my presence, and was provided to me for the purpose of preparing this transcript.

SIGNED this _____ day of March, 2009.

DEBRA JENKINS

THE STATE OF TEXAS *
 *
COUNTY OF TRAVIS *

BEFORE ME, the undersigned authority, on this day personally appeared DEBRA JENKINS, known to me to be the person whose name is subscribed above, and acknowledged to me that she executed the above and foregoing document for the purposes therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of March, 2009.

Notary Public in and for
The State of Texas