**TJFA, L.P.**

**8703 Willowick Drive**
**Austin, TX 78759**

September 23, 2019

*Via E-Comment*

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711

Re: **Comments on Texas Regional Landfill Company, LP Application for a Type IV Municipal Solid Waste Facility Permit No. 1841B, Travis County, Texas.**

Dear Ms. Bohac,

I represent TJFA, L.P. which is a property owner whose property is located adjacent to the site of the landfill. The proposed landfill expansion will adversely affect TJFA's property.

For the reasons listed below, TJFA seeks denial of this application.

**I. The application did not adequately address bird strike liability issues.**

There is no mention in the application of the occurrence of birds at the landfill, particularly those that consume putrescible waste. The landfill sits at the end of a runway at Austin Bergstrom International Airport. The landfill should never been allowed to open given the airport began operating passenger flights way before the landfill opened. Vultures are constantly present in the landfill because they are eating something in the waste. The permit application states, "Because of the types of wastes the facility is allowed to accept, and those that are prohibited, the attraction of vectors is expected to be minimal. In particular, the facility will not accept putrescible wastes, which are the types of wastes that most commonly attract disease vectors, such as rodents, excessive bird populations, flies and mosquitos." It also states, "use of bird control measures such as pyrotechnics, baiting, decoys, etc. to discourage birds at the site and scare them away if they become a nuisance," indicates birds could be present in the future, but the fact excessive bird populations are currently causing a problem is being ignored by the applicant (*Section 17, Page IV-48*). Other representations in the application that appear to be incorrect include, "more odorous putrescible wastes, or dead animals are not allowed to be accepted at the facility, thereby eliminating the potential source for generation of odors by these sources" "Potential odor sources at the facility may include allowable wastes being delivered to the landfill and undergoing decomposition, the open working face, ponded water, or contaminated water" (*Section 16.1, Page IV-46*). "Incoming wastes will be promptly landfilled and compacted. Wastes with odors will be promptly covered with other waste or with cover soil" (*Section 16.2, Page IV-46*).

The pretext conveyed in the text of the Site Operating Plan (SOP) is that those birds do not exist, or at least do not constitute a nuisance at the landfill. Although putrescible wastes and household wastes are prohibited (*Page IV-20*), it is clear that putrescible wastes, at the least, are getting into the landfill. Screening to prevent receipt of prohibited wastes, like putrescible wastes, ostensibly

is to be performed by the gatehouse attendant, by the equipment operators, and through daily random load inspections (*see Section 5.6.1 on Page IV-21, Section 5.6.2, pages IV-22 and IV-23, particularly nos. 6 and 7, and Section 5.6.3 on pages IV-23, IV-24, and IV-25*). It is quite apparent from the excessive number of birds at the landfill that the methods for preventing putrescible waste are not effective.

## II. Inadequate information regarding daily cover.

With respect to cover, 30 TAC §330.165(b) states that, "All Type IV landfills must follow the requirements of this section except the rate of cover must be no less than weekly, unless the executive director approves another schedule." In the permit application, it is stated that, "Cover soil will be applied to the working face at least once each week (as described in Section 24 of this SOP) and may be applied more frequently as needed to control windblown waste" (*Section 11, Page IV-40*). "Cover will be applied on a weekly basis at minimum (per section 24 of the SOP), to minimize conditions which could result in odors. If odors persist, cover soil will be placed more frequently than weekly or a cover soil thickness greater than 6-inches will be used" (*Section 16.2, Page IV-46*). "Cover will be placed at least weekly (i.e., all solid waste will be covered within one week or less of its placement at the working face)" (*Section 24.2, Page IV-57*).

Designated facility Operating Hours are 6:00AM to 7PM Monday-Saturday (*Section 9, Page IV-38*). "Facility personnel will collect litter within and around the site each day that the facility is operating (*Section 11, Page IV-40*). Typical working face size is one acre and the maximum working face size will be approximately 1.5 acres, but continues to attract excessive bird populations (*Section 6.4.1, Page IV-30*). There is to be no waste acceptance or use of heavy equipment for landfilling activities on Sunday (*Section 9, Page IV-38*). Yet waste is clearly uncovered on most Sundays suggesting that coverage is potentially only over waste deposited at least a week ago; those wastes deposited at the working face less than seven days ago -- say, perhaps, Tuesday through Saturday -- is left uncovered to draw birds and to be free to blow litter around (*see bottom of Table IV-1 on Page IV-4*).

## III. Contaminated Water Runoff.

The lack of frequently applied landfill cover, at least once a week or by the close of business on Saturday, along with the apparent lack of control of runoff to separate uncontaminated runoff from contaminated runoff suggests that separation of those types of wastes is not really occurring; see ponded water inspections (*end of Table IV-1 on Page IV-7*). It appears from aerial photos contaminated and uncontaminated water are drained to one pond and then pumped over a berm to flow into Onion Creek. "Contaminated water is defined by 30 TAC §330.6(36) as leachate, gas condensate, or water that has come in contact with waste" (*Section A2.1, Page IV-A-1*). See also other statements that appear inconsistent with the current design of the pond located onsite, "any contaminated water shall not be allowed to remain ponded and become stagnant, nor shall contaminated water be allowed to cause nuisance conditions (e.g. odors) or the attraction of vectors." "Quantities of contaminated water that would cause such problems shall be removed and disposed of at an authorized facility, as discussed subsequently in Section A3 of this plan" (*Section A2.2, Page IV-A-2*). "No discharge of contaminated water off-site or into waters of the United States shall occur.." and "If necessary, contaminated water will be transported off-site to a Publicly Owned Treatment Works (POTW), or similar facility, for treatment and disposal" (*Section A-3, Page IV-A-3*). One has to wonder if proper offsite disposal of contaminated water has ever occurred, and if so, when and how much since it appears all run-off is being pumped into Onion Creek at times.

## IV. Insufficient number of trained personnel and equipment.

The staffing and number and types of equipment at the landfill is also of concern; (*See also descriptions of duties of the Gate Attendant and Equipment Operators on Page IV-12*). For an Estimated Waste Acceptance Rate of less than 400,000 tons per year, there is to be only one gate attendant and two equipment operators on duty (*see Table IV-2 on Page IV-14; see also Table IV-3 on Page IV-15 where the two equipment operators have to handle the compactor [1], the bulldozer [1], the scraper or excavator [1], the haul truck [1], the motor grader [1], the water truck [1], as well as the rotary broom sweeper*). In addition, "Upon unloading, incoming waste will be spread at the working face by a bulldozer or landfill compactor. This equipment will then be used to move, shape, and make repeated passes on the material to sufficiently minimize voids and produce a compact mass" (*Section 23, Page IV-56*). Thus, it appears that the dozer is being used as a means of compaction, something experts knew over thirty years ago didn't work well.

## V. Geological Issues.

TJFA is concerned about impacts of expansive and unstable clay soil on and near the proposed landfill site. Applicant did not drill an adequate number of borings for a site this size. Nor are the borings at the correct locations and depths for the evaluation of the geology and groundwater, given the conditions at this site and the importance of the groundwater monitoring system to protect groundwater under the site.

The geology report has been inadequately prepared. As written, the geology report states that the Edwards Plateau is capped by a "limestone terrace" and that its elevation in the Austin area "ranges in elevation from 3,000 feet above mean sea level (ft MSL) to about 300 ft MSL" (P. 4-2, Section 2 of the Geology Report) although there is no place in Travis County that reaches 3,000 feet above mean sea level. In the Geology Report of Attachment 4, as it is written, it is stated that the "Site was originally underlain by weathered and unweathered clays/shales of the Taylor Group's Bergstrom Formation." (P. 4-5) despite the fact that the boring logs show that the site still is underlain by the Taylor. In the discussion presented on P. 4-7, it is stated, "the underlying soils at the Site are not expected to exhibit poor foundation conditions nor any meaningful differential settlement," (P. 4-7) and are not unstable. Yet on four boring logs, B-23, B-24, B-26, and B-31 the moisture content percentage reported for samples tested exceeds the liquid limit percentage, which implies that some of the underlying soils at the site will behave as a fluid providing no stability during landfill excavation and waste disposal. Overall, the geology report makes statements that indicate a partial review of the available literature without conveying real understanding of the underlying geology and hydrogeology at the landfill site. Overall, based on the paucity of samples tested, including none from the unweathered shale except at or near the top of the stratum, the general impression is that the geologic investigation was simply perfunctory and not intended to convey real understanding of the site.

## VI. Wetlands Issues.

Applicant has not properly evaluated jurisdictional wetlands at the site even though it is located on the banks of Onion Creek. At 30 TAC § 330.553, TCEQ rules provide that a municipal solid waste facility shall not be located in wetlands unless the owner or operator makes several demonstrations. The applicant, in this case, has failed to adequately investigate and identify jurisdictional wetlands.

## VII. Endangered and Threatened Species have not been properly addressed.

Applicant has stated that several different state listed endangered and threatened species may potentially be present at the site. But applicant has failed to show how the facility will be designed to protect endangered or threatened species. Applicant does not provide an adequate evaluation of the existence of habitats for such species or the risks of landfill activities on the habitat. Additionally, the SOP for the facility does not include adequate measures to ensure that the facility is operated in a manner that will protect all endangered and threatened species that may be discovered at the site.

## VIII. Drainage/Surface water Impacts of the Facility have not been adequately addressed.

Construction and operation of the proposed facility has the potential to significantly impact drainage patterns in the area. Applicant has not made an adequate demonstration that construction and operation of the facility will not significantly and adversely alter drainage patterns in the area, nor has the applicant demonstrated that surface water quality will be protected.

The applicant has failed to demonstrate that the proposed facility will not exacerbate drainage flows onto neighboring properties. Similarly, the applicant has failed to demonstrate that natural drainage patters will not be altered. And finally, the applicant has failed to properly evaluate impacts to the Onion Creek Watershed. The applicant failed to demonstrate that the facility will have no significant impact on natural drainage patters at the boundaries of the facility.

In addition, the designs for the channels and ponds are not adequate to address the floodplains identified in the Atlas 14 study. Drainage controls have not been designed to control historic levels of runoff and to protect surrounding properties, and as discussed above, the application itself shows that there will be significant changes to the drainage patterns at the landfill and off-site. The changes to the drainage patterns will result in damage to property off-site including increased erosion and loss of water supplies, and could impact the effectiveness of the reservoir for flood control. There are also inadequate controls to prevent contamination of storm water by wastes, leachate, or spills of materials at the landfill.

Further, the applicant has failed to present accurate information regarding floodplains that exist at the proposed site. This deficiency alone is sufficient to return the application. Floodplain information is an essential and basic element of a complete application, and without this information the application should never have been declared technically complete.

## IX. Concerns regarding Groundwater Issues.

Similarly, the applicant failed to accurately characterize the uppermost aquifer and the direction of groundwater flow in and around the proposed landfill. The subsurface geology and hydrogeology is complex, but applicant presents an overly simplistic description of the subsurface at the site. Applicant has simply failed to adequately characterize subsurface geology and hydrogeology and consequently failed to ensure the protection of groundwater resources.

The subsurface investigation conducted by the applicant is overly simplistic and lacking essential information. The information included in the boring logs is unreliable and lacking. And there were insufficient piezometers installed at useful locations, and thus, the applicant has failed to present a reliable potentiometric surface map or reliable information about groundwater characteristics, such as movement.

Because of the failure of the applicant to conduct an adequate subsurface investigation, it has proposed an unreliable and inadequate groundwater monitoring system. The system does not include a proper number of wells at the proper location and depths to collect representative samples of the groundwater at the various levels of the aquifer system. The applicant has failed to properly identify up-gradient and down-gradient wells or points of compliance. The system is not properly designed to detect releases of contaminated water from the landfill.

**X. Inadequate liner design and inadequate structural components.**

The applicant has failed to provide for an adequate liner given the site selected and the geology underlying the site. A review of the landfill application materials reveals that the landfill location is likely in an unstable area, and the slope stability analysis is inadequate. The geotechnical evaluation for the design of the landfill is inadequate as the slopes and materials for the sidewalls will not assure long-term stability

**XI. Applicant has not provided an adequate Site Operating Plan.**

A SOP for a landfill must contain instructions that will facilitate the daily operation of the facility and which are enforceable. This requires a level of specificity in such a plan beyond merely parroting the applicable rules. In many instances, the SOP for the landfill lacks the necessary specificity.

The applicant has not provided adequate details and enforceable requirements to guide day to day operations and to allow the enforcement of the SOP. The individual plans are often only restatements of the rules or promises to develop plans. The SOP does not provide the detail required for training and procedures to allow the employees to use the plans.

For instance, there is no substantive information provided in the application regarding the noise pollution and visual screening that the applicant intends to provide. The operational procedures will not prevent or even assure a minimization of the acceptance of lead acid storage batteries, used motor oil, used oil filters, whole scrap tires, items containing chlorinated fluorocarbons, liquid waste, hazardous waste, radioactive wastes or polychlorinated biphenyls. The SOP does not prevent or assure proper identification and response to fires and other safety or health hazards. The SOP does not prevent or minimize access by rats, insects, birds and other carriers of disease or the spread of such disease vectors off-site. The SOP does not address how to minimize bird strikes for plane takeoffs and landing over the landfill. The SOP does not prevent or minimize litter or windblown waste or provide for timely and adequate clean-up on site or on nearby private property. The SOP does not prevent or minimize windblown dusts, and run-off of soils and wastes from the site. The SOP does not prevent or minimize the ponding of water on the landfill. The SOP should move procedures for detecting and removing putrescible waste. The SOP does not prevent or minimize odors. The SOP does not provide adequate emergency response and contingency plans for fires, accidents, injuries spills, and other such conditions. The SOP does not assure adequate coordination with local fire and emergency response services or provide for adequate on site equipment, water, soil, and personal equipment for on-site responses. The SOP does not assure that the landfill site will have adequate controls over access by unauthorized persons. And the SOP does not provide for adequate control of animal or human scavenging.

The applicant's disease vector control plan fails to provide adequate and detailed procedures or instruction for personnel to prevent and control vectors in the vicinity of the site. Feral hogs are distributed throughout much of Texas, with the highest population densities occurring in East,

South and Central Texas. Feral hogs will be attracted to the landfill, potentially damaging the properties nearby.

The SOP is also inadequate with regard to operational procedures. The discussion of traffic control set forth in the SOP fails to address conflicting traffic patterns at the facility. In addition, while the application makes the claim that adequate turning radii have been provided for the operation of vehicles on-site, this has not been demonstrated.

In addressing windblown material, the SOP has failed to specify which devices will be used to control windblown material and litter, and has also failed to specify the conditions that would trigger implementation of these devices. As for maintenance of the access roads, the plan does not specify the frequency with which water-spraying to prevent dust will occur, nor does the plan provide any specific instruction as to when grading equipment will be used in consideration of the potential for depressions, ruts and potholes to form in the facility roadways.

The Odor Management Plan does not explain when and to what degree odors will be controlled. Specific provisions need to be incorporated for how waste odors are controlled in the SOP. Likewise, the provision of the plan that "appropriate measures" will be taken to address ponded water is not adequately specific.

**XII. Applicant has not adequately addressed traffic and transportation concerns.**

Applicant has failed to show that the nearby roadways are adequate and available to accommodate the traffic associated with the facility. The traffic created by the landfill is not compatible with the surrounding land use of the area. The applicant has not shown it can fully handle the additional traffic.

The proposed expansion of the solid waste landfill would be located less than ¾ of a mile from the intersection of Highway 183 and FM 812. The intersection of Highway 183 and FM 812 is a dangerous intersection and has been the site of numerous traffic accidents, including several fatal accidents, in the past several years. The proposed landfill is expected to eventually generate over 600 vehicle trips a day. The applicant has simply failed to provide adequate information regarding the negative impacts on traffic associated with this proposed facility.

Furthermore, it appears that when the height of the equipment is considered the equipment will breach the FAA Part 77 precision approach surface when located on the landfill at its peak elevation. Furthermore, there is no provision to provide complete assurance that trees will not be allowed to grow on the landfill extending into the FAA Part 77 restricted area. This is an unacceptable risk to human passengers traveling in and out of Austin Bergstorm International Airport.

**XIII. Land Use Compatibility.**

The proposed facility is not compatible with surrounding land uses, including but not limited to commercial airport residential, parks, agricultural, religious and other rural land uses with projected growth and development. Odors and other nuisance conditions will interfere with normal use and enjoyment of the surrounding properties and homes and interfere with desired grown patterns in the area. The proposed height of the landfill is incompatible with the surrounding area. The proposed buffer and screening are inadequate to protect surrounding land uses.

The number and routing of trucks is incompatible with current conditions in the area.

## XIV. Disparate burden on minority communities.

The proposed landfill, if permitted, will have a disproportionate impact on minority populations. Travis County has a population of 1,227,771. Of that population, within the area in the vicinity of the landfill 66.2% of the population is identified as Hispanic or Latino and 11% is African American.

Within the nearby area of the proposed facility, there already exists another landfill, a C & D processing facility, a wood grinding facility, and several vehicle salvage yards. With the permitting of the proposed landfill expansion, the minority communities in the area will be forced to bear a disproportionate share of environmental burdens, in violation of TCEQ's environmental equity program and federal regulations.

## XV. Inadequate financial assurance, closure and post-closure provisions.

The types and amounts of money proposed for closure and post-closure care are not based on reasonable worst case scenarios with closure by independent third parties, including contingencies for the need to bring water and dirt to the landfill site, the failure of the liner, and the shifting of the landfill.

## XVI. Landfill Gas Monitoring and Control.

The applicant has failed to include an adequate landfill gas monitoring system. A review of the landfill application reveals a system that could not detect all landfill gas excursions because of an insufficient number of gas probes in adequate locations.

## XVII. Other Issues.

The applicant has failed to show that the proposed site is not within an area that may be subject to differential subsidence or active faulting or within an unstable area.

Many of the representatives, conditions and aspects of the application that are incorporated into the permit are vague and unenforceable, including, but not limited to the SOP.

Finally, the issuance of the permit would be inconsistent with state policies including the legislative and regulatory directives that:

- Promote the maximum conservation and protection of the quality of the environment and the natural resources of the state;
- Prohibit discharges and actions that could result in pollution of water, ground or surface, of the state;
- Require the safeguarding of the state's air from pollution;
- Require the control of all aspects of the management of municipal solid waste by all practical and economically feasible methods consistent with the law;
- Prohibit the collection, storage, disposal, transportation, or processing of municipal solid waste in a fashion that:
    i. results in the discharge or imminent threat of discharge of municipal solid waste into or adjacent to the waters in the state;
    ii. creates or maintains nuisance conditions; and
    iii. endangers human health or welfare of the environment.

**XVIII. Conclusion.**

For the above reasons, TJFA hereby requests reconsideration of the technically complete determination. TJFA also requests that a contested case hearing be held regarding this application to address all of the issues that this application raises.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Dennis Hobbs

Dennis Hobbs
President