

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 7, 2009

To: Persons on the attached mailing list (By mail and facsimile as indicated)

Re: Application by Waste Control Specialists, LLC for Radioactive License No. R04100; TCEQ Docket No. 2005-1994-RAW.

This letter is in response to the request filed on January 5, 2009 by Marisa Perales on behalf of Sierra Club in the above-referenced matter. That letter requests an extension of time to file a reply to the response to the hearing requests filed by Waste Control Specialists, LLC until January 19, 2009 and requests that the matter be continued to the January 28, 2009 public meeting.

In consideration of Sierra Club's request and pursuant to 30 Texas Administrative Code §1.10(h) and the Commission's Resolution in Docket No. 2006-0973-RES, this letter hereby extends the time for those persons who filed hearing requests to file a reply to the responses to the hearing requests filed by the Executive Director, Office of Public Interest Counsel, and Waste Control Specialists, LLC until **12:00 p.m. on Monday, January 12, 2009**. An original and 7 copies of any reply must be filed with the Chief Clerk of the TCEQ at: Office of the Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711 [Fax (512) 239-3311]. Replies should be served on the Executive Director, Public Interest Counsel, and Waste Control Specialists, LLC on the same day the document is filed with the Chief Clerk.

This letter does not continue the Commission's consideration of the item and thus, it remains on the Commission's **January 14, 2009** public meeting beginning at **9:30 a.m.**, as previously notified by the Office of the Chief Clerk. If you have any questions concerning this matter, please contact Tracy Gross, Assistant General Counsel, at (512) 239-1736.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Les Trobman".

Les Trobman
General Counsel

Mailing List

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TCEQ DOCKET NO. 2005-1994-RAW; LICENSE NO. R04100

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 12, 2008

TO: Persons on Attached Mailing List

RE: **Docket No. 2005-1994-RAW**, Waste Control Specialists, LLC; Requests for a contested case hearing filed regarding Radioactive License No. R04100.

The above-referenced application and all timely filed requests for contested case hearing (requests) filed on the application will be heard by the Commissioners of the Texas Commission on Environmental Quality during the public meeting on **January 14, 2009**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with Commission rules, copies of the requests have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. They may file written responses to these requests on or before 5:00 p.m. on **December 23, 2008**. Persons who filed requests (requesters) may file a written reply to responses on or before 5:00 p.m. on **January 8, 2009**. All responses and replies must be filed with the Chief Clerk of the TCEQ, and sent on the same day to all individuals on the attached mailing list. The address of the Chief Clerk's Office is: Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 (Fax 512/239-3311). The procedures for evaluating requests are found in Chapter 55 of the Commission's rules. Commission Rules 1.10, 1.11, and 55.254 concern the filing and serving of documents.

The Commissioners will not take oral argument or public comment on this matter, but may wish to ask questions of the applicant, hearing requesters, or staff. The Commissioners will make their decision based on the requests, written responses to the requests, any written replies to those responses, and any response to questions.

Copies of all requests have also been referred to the Alternative Dispute Resolution Office, where they will be evaluated to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand public participation and the processing of requests. Individual members of the public may seek further information concerning the application, public participation, the processing of requests, copies of Commission rules, or the attachment, by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink, appearing to read 'LaDonna Castañuela'.

LaDonna Castañuela, Chief Clerk

Public Participation in TCEQ Proceedings

The Commission encourages public participation. The Commission's Office of Public Assistance (OPA) provides individual members of the public information on applications, and on Commission procedures. OPA may respond to your inquiries in writing and provide you with information. OPA may be reached, toll free, at 1-800-687-4040.

The formal way for public participation is through the contested case hearing. The law allows for holding contested case hearings on certain types of applications; the remainder of this document provides an overview of the processing of requests for a contested case hearing. It describes the requirements for a hearing request and how the Commission processes hearing requests.

A hearing request must:

- (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application;
- (3) request a contested case hearing;
- (4) provide any other information specified in the public notice of application;
- (5) be timely filed with the Chief Clerk, as set out in the public notice; and
- (6) be pursuant to a right to hearing authorized by law.

The three Commissioners determine the validity of hearing requests, and vote to approve or deny the hearing requests during a public meeting, which are usually held every other Wednesday in Austin. Leading up to the meeting, the following occurs:

- (1) the written hearing requests are distributed to the Executive Director, the Public Interest Counsel, and the Applicant; these persons may file a response to the hearing requests 20 days before the meeting;
- (2) the hearing requester may then file a reply to the responses six days before the meeting; this is the hearing requester's opportunity to correct any deficiencies in the hearing request that have been identified by TCEQ staff or the applicant. The hearing requester should be sure to submit any information (for example, maps or diagrams showing the requester's location relative to the applicant's proposed activities) by this deadline he or she wishes the Commissioners to consider the information; and
- (3) the Commissioners read the hearing requests, the responses to the hearing requests, and the replies, before the public meeting. Then, during the public meeting the Commissioners discuss the application and the hearing requests, and vote to grant or deny the hearing requests.

If the Commissioners deny the hearing requests then they often will proceed and vote to approve or deny the application. If the Commissioners grant the hearing requests they will refer the application to the State Office of Administrative Hearings (SOAH), which will conduct a contested case hearing. A SOAH judge will then submit a recommendation to the Commission to approve or deny the application.

The Commission's evaluation of a hearing request is based on Texas Water Code Chapter 5, which provides the Commission need not grant a hearing request if the requester does not have a personal justiciable interest. The Commission's rules on processing hearing requests are at 30 Texas Administrative Code, Chapter 55. The "personal justiciable interest" requirement means that a hearing requester must be impacted personally, not just as a member of the general public, by the Commission's decision on the application. Also, the hearing requester's interest must be "justiciable," meaning the Commission will grant hearing requests only if the requester complains of matters within the Commission's authority. So a hearing request complaining of other matters outside the Commission's authority would be denied.

The Alternative Dispute Resolution Office may contact hearing requesters to learn if they would participate in informal discussions with the applicant and a mediator. The Public Interest Counsel may also provide information on the processing of hearing requests.

By necessity this document gives a very general description of Commission procedures. Call the Office of Public Assistance to get answers about your specific questions. Again, the telephone number is 1-800-687-4040.

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DOCKET NO. 2005-1994-RAW; LICENSE NO. R04100

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