

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 2, 2007

VIA HAND DELIVERY

Ms. LaDonna Castañuela, Chief Clerk
Office of Chief Clerk
Texas Commission on Environmental Quality
Post Office Box 13087, MC-105
Austin, Texas 78711-3087

2007 MAR -2 PM 4:55
CHIEF CLERK'S OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Re: Executive Director's Response to Hearing Requests filed on McCarty Road Landfill TX, LP, Application for Amendment of MSW Permit No. 261B

Dear Ms. Castañuela:

I have enclosed for filing the original and eleven copies of "Executive Director's Response to Hearing Requests" on McCarty Road Landfill TX, LP, Application for Amendment of MSW Permit No. 261B.

If you have any questions or comments, please call me at 239-5731. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Diane Goss".

Diane Goss
Staff Attorney
Environmental Law Division

Enclosures

cc: Attached mailing list

Mailing List
McCarty Road Landfill TX, LP, MSW Permit No. 261B
TCEQ Docket No. 2006-1830

Paul Gosselink
Lloyd, Gosselink, Blevins, Rochelle & Townsend, PC
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Representing the Applicant

Scott Humphrey
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Ken Ramirez
Monica Jacobs
Brown McCarroll, L.L.P.
111 Congress Avenue, Suite 1500
Austin, Texas 78701
Representing Weingarten

Martina E. Cartwright
Environmental Justice Clinic
Thurgood Marshall School of Law
3100 Cleburne Avenue
Houston, Texas 77004
Representing Northeast Environmental Justice Association, et al.

Snehal R. Patel, Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77022
Representing Harris County Public Health & Environmental Services

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TCEQ MSW Permit No. 261B
TCEQ Docket No. 2006-1830-MSW

2007 MAR -2 PM 4: 56

Application by
McCarty Road Landfill TX, LP
For Amendment of
MSW Permit No. 261B

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Before the CHIEF CLERKS OFFICE
Texas Commission on
Environmental Quality

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this response to hearing requests on the application by McCarty Road Landfill, TX, LP (Applicant) for major amendment of Municipal Solid Waste (MSW) Permit No. 261B. The Executive Director received timely hearing requests from the following persons:

Martina E. Cartwright, attorney with the Environmental Law and Justice Center, representing Northeast Environmental Justice Association and its members (NEEJA). NEEJA's members include residents and persons with business interests said to be located within one mile or less from the facility. Martina E. Cartwright also represents the following individual residents and property owners, who claim to reside or own property within two miles of the facility: Raul Aranda, C. G. Barr, Katherine Barr, Ernest M. Black, Cassie Bowie, James Bowie, C. L. Broussard, Arthur Campbell, Doris Campbell, Nancy Crnkovic, Mary Dorsey, Terry Downing, Gene Fish, Mickey Fish, Nora Fisher, James Gray, Mary Gray, Thomas E. Green, Adolph Hartman, James Henderson, Marilyn Henderson, Dan Hernandez, Lena Hernandez, Vernita Johnson, Jerestene Leath, Alice C. Lux, Donna McCandless, Roy McCandless, Andrew McCausland, Gloria McCausland, James Mukes, Jr., Shirley Perkins, Steven Ray Perkins, Ollie Roberson, Wallace R. Romero, Earsey Ross, Mary Ross, Gumesindo Santos, Isaura Santos, Tonya Senegal, Thelmarie Tharp, Walter Tharp, Willie Thomas, Adlea Villareal, Roy Villareal, Effie Walker, Thomas Walker, General Washington, Jr., Velma Washington, Maryland Whittaker.

Kenneth Ramirez and Monica Jacobs, attorneys with Brown McCarroll, L.L.P., representing the following entities: Weingarten Realty Investors; WRI/7080 Express Lane, Inc.; AN/WRI Partnership, Ltd.; AN/WRI

Partnership #1, Ltd.; Eagle Ind., L.P. (collectively *Weingarten*). These entities claim to own property immediately adjacent to the facility.

Herminia Palacio, Executive Director, Harris County Public Health & Environmental Services (HCPHES), requesting on behalf of Harris County

The Executive Director has attached the following items to this response:

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| Attachment A | Draft Permit |
| Attachment B | Technical Summary and Executive Summary |
| Attachment C | Compliance History of the Applicant |
| Attachment D | Executive Director's Response to Public Comment |
| Attachment E | Maps provided with Permit Application |
| | Aerial Photograph depicting one mile radius from facility permit boundary dated February 2003 |
| | Site Location Map depicting permit boundary dated 1987 |
| | General Topographic Map bearing Engineer's seal dated March 31, 2004 |
| Attachment F | GIS Map, depicting facility location, locations of hearing requestors, and one and two mile radii from current facility entrance, dated February 27, 2007 |

The Executive Director has provided copies of this response to the hearing requestors through their representatives.

II. DESCRIPTION OF THE APPLICATION

A. Description of the Facility

The McCarty Road Landfill facility is located at 5757A Oates Road, Houston, Harris County, Texas. The facility is situated on approximately 458.25 acres, approximately seven miles northeast of downtown Houston and approximately 3.5 miles north-northeast

of the intersection of Interstate Highway 610 and Interstate 10. The facility is located at North Latitude 29° 49' 22", West Longitude 95° 14' 33". Elevation is 45.53 feet above mean sea level.

The majority of the land use immediately adjacent to the site is open space, residential, commercial, and industrial. The predominant land use within a one-mile radius of the site is industrial. There are no hospitals, licensed child-care facilities, ponds, lakes, or springs located within one mile of the facility, but there are approximately 2,000 residences in eleven neighborhoods, numerous commercial establishments, one school, eight churches, one cemetery, one park, and one golf course.

The facility is a currently permitted MSW Type I landfill authorized to dispose of municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, and yard waste; Class 1 nonhazardous industrial solid waste defined as such due to asbestos content; Class 2 nonhazardous industrial solid waste; Class 3 nonhazardous industrial solid waste; special waste and other waste as approved by the Executive Director.

The incoming waste rate is expected to increase at the same rate as the population of Harris County, Montgomery County, Liberty County, and surrounding areas. The facility currently receives approximately 2,190,000 tons per year or 2,777,425 cubic yards (assuming an in-place density of 1,577 pounds per cubic yard) of solid waste (6,000 tons-per-day, based on a typical 365-day operating schedule). Over the anticipated life of the facility, authorized wastes will be accepted at an average rate of approximately 6,532 tons per day, which results in an estimated life of approximately 10.9 years.

The estimated maximum annual waste acceptance rate is projected to be 2,577,265 tons-per-year or 3,268,567 cubic yards (assuming an in-place density of 1,577 pounds-per-cubic yard) of solid waste, calculated at 7,061 tons-per-day and based on a 365-day operating schedule. These projections are based on current market conditions and may vary with future market conditions.

B. Description of the Application

The Applicant submitted an application to TCEQ for a permit amendment that would authorize (1) a vertical expansion with maximum final elevation of final cover material at 316 feet above mean sea level and (2) continued operation of the facility.

III. PROCEDURAL BACKGROUND

On April 4, 2004, the Commission received the application. On April 19, 2004, the Executive Director declared the application administratively complete. On April 29, 2004, the Notice of Receipt of Application and Intent to Obtain a major permit amendment was published in *The Houston Chronicle*.

On November 11, 2004, November 17, 2004, and November 24, 2004, the Notice of Public Meeting was published in *The Houston Chronicle*. On December 2, 2004, the Executive Director held a public meeting in Houston at the Shadydale Elementary School.

On January 11, 2005, the Executive Director completed technical review of the application and prepared a draft permit. On January 14, 2005, the Notice of Application and Preliminary Decision was published in *The Houston Chronicle*.

The Executive Director extended the comment period to June 15, 2005, when the comment period officially ended. The Executive Director completed review of the Site Operating Plan on May 22, 2006. On September 11, 2006, the Executive Director filed the Response to Public Comment. On October 16, 2006, the period for requesting a contested case hearing ended.

Because this application was declared administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted under House Bill 801. Tex. H.B. 801, 76th Leg., R.S. (1999).

IV. EVALUATION PROCESS FOR HEARING REQUESTS

The regulations governing requests for contested case hearings are found at Title 30, Texas Administrative Code, Chapter 55. Section 55.201(c) and (d) require that a request for contested case hearing:

- 1) be in writing;
- 2) be timely filed;
- 3) ask for a contested case hearing;
- 4) provide the name, address, daytime telephone number, and fax number, if possible, of the person who files the request;
- 5) provide any other information specified in the public notice of the application; and
- 6) raise disputed issues.

In addition to requesting a contested case hearing, a person must be an *affected person* as that term is defined in 30 Tex. Admin. Code § 55.203(a).

For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

30 Tex. Admin. Code § 55.203(c) lists factors to consider in determining whether a person is an affected person, including the following:

- 1) whether the interest claimed is one protected by the law under which the application will be considered,
- 2) distance restrictions or other limitations imposed by law on the affected interest,
- 3) whether a reasonable relationship exists between the interest claimed and the activity regulated,
- 4) the likely impact of the regulated activity on the health and safety of the person and on the use of the property of the person,
- 5) the likely impact of the regulated activity on use of the impacted natural resource by the person, and

- 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

In addition to the individual persons, the rule also allows government entities, including local governments and public agencies with authority under state law over issues raised by the application to be considered affected persons. 30 Tex. Admin. Code § 55.203(b)

If the Commission determines that the hearing request is timely and that the requestor is an affected person, the Commission applies the following test to the issues raised to determine if any of the issues should be referred to the State Office of Administrative Hearings for a contested case hearing.

- 1) Does the issue involve questions of fact, not questions strictly of law or policy?
- 2) Was the issue raised during the public comment period?
- 3) Was the issue not withdrawn?
- 4) Is the issue relevant and material to the Commission's decision on the application?

V. ANALYSIS OF THE HEARING REQUESTS

A. Affected Person Status

Requestors in this case fall into four categories: an association, a group of individuals approximately two miles or less from the facility, adjacent landowners, and a county with regulatory authority. Because the requestors are all located in the general area, and because of the overlap of issues in this case, the Executive Director finds that all of the requestors are affected persons. Although some of the individuals who are located farther from the facility may not have standing in their own right, the Executive Director has recommended that they should all be considered affected persons because of the relationship between the issues and the requestors in this case.

1. Individuals

Raul Aranda, C. G. Barr, Katherine Barr, Ernest M. Black, Cassie Bowie, James Bowie, C. L. Broussard, Arthur Campbell, Doris Campbell, Nancy Crnkovic, Mary Dorsey, Terry Downing, Gene Fish, Mickey Fish, Nora Fisher, James Gray, Mary Gray, Thomas

E. Green, Adolph Hartman, James Henderson, Marilyn Henderson, Dan Hernandez, Lena Hernandez, Vernita Johnson, Jerestene Leath, Alice C. Lux, Donna McCandless, Roy McCandless, Andrew McCausland, Gloria McCausland, James Mukes, Jr., Shirley Perkins, Steven Ray Perkins, Ollie Roberson, Wallace R. Romero, Earsey Ross, Mary Ross, Gumesindo Santos, Isaura Santos, Tonya Senegal, Thelmarie Tharp, Walter Tharp, Willie Thomas, Adlea Villareal, Roy Villareal, Effie Walker, Thomas Walker, General Washington, Jr., Velma Washington, Maryland Whittaker.

Martina E. Cartwright, Environmental Law and Justice Center, filed a timely hearing request on October 13, 2006, on behalf of these individuals, representing that these individuals own property or reside within two miles of the facility. The properties or residences of most of these individuals appear on Attachment E GIS Map, which shows that many of these individuals reside within one mile of the facility. The hearing request letter provided contact information, identified the Applicant and the permit number, and requested a contested case hearing. The request raised the following issues of concern:

Issue 1: Will storm water runoff from the facility under the proposed vertical expansion significantly increase and potentially harm the health and safety of requestors?

Issue 2: Will the proposed vertical expansion adequately prevent vector infestation including rodents and mosquitoes?

Issue 3: Will existing groundwater contamination be exacerbated by operation of the facility under the proposed vertical expansion and potentially harm the health and safety of requestors?

Issue 4: Will the proposed vertical expansion result in odor potentially harmful to the health and safety of requestors?

Issue 5: Will the Applicant adequately monitor and control migration of harmful gas emissions?

Issue 6: Will truck traffic result in harmful air emissions?

Issue 7: Does the permit amendment present adequate slope analysis that assures slope stability failure will not occur?

Issue 8: Will truck traffic result in windblown debris that potentially may harm the health and safety of requestors?

Issue 9: Will the slope of the landfill result in windblown debris during storms and potentially harm the health and safety of requestors?

Issue 10: Will the proposed vertical expansion result in an increased risk of adverse health effects including cancer, respiratory disease, and allergies harmful to the health and safety of requestors?

Issue 11: Will groundwater contamination and storm water runoff from the proposed vertical expansion cause tree loss or impair animal growth?

Issue 12: Will growth and development of native and domestic animals be impaired by infestation of avian, mammalian, and reptilian animal vectors?

Issue 13: Will diminished tree and vegetation growth increase the risk of flooding?

Issue 14: Will contamination of standing waters near the facility increase?

The interests asserted by these individuals include issues that are protected by the Texas Solid Waste Disposal Act and TCEQ's municipal solid waste rules. A reasonable relationship exists between the interests of the requestors and the facility because of the proximity of the facility to the requestors' properties. As a result, the Executive Director concludes that these individuals qualify as affected persons.

2. Northeast Environmental Justice Association (NEEJA)

A group or association may request a contested case hearing only if the group or association meets all of the following requirements: (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right, (2) the interests the group or association seeks to protect are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in this case. 30 Tex. Admin. Code § 55.205(a) (2006).

Martina E. Cartwright, an attorney for Environmental Law and Justice Center, filed timely hearing requests on February 14, 2005, and October 13, 2006, on NEEJA's behalf,

raising the same issues that she raised for the individuals she represents. The requests represent that some of NEEJA's members include residents and persons with business interests located within one mile or less from the facility. The property of members Lawrence and Bernice Cranford is identified on the attached GIS map within approximately 1.1 miles of the facility according to the address provided by their attorney. The Cranfords would have standing to request a hearing in their own right. The request states that the purpose of the organization includes protecting the health and safety of residents in the area. Neither the claims asserted nor the relief requested require the participation of individual members of the group.

The interests asserted by this association include issues that are protected by the Texas Solid Waste Disposal Act and TCEQ's municipal solid waste rules. A reasonable relationship exists between the requestor's interests and the facility due to the proximity of the facility to members of the association. As a result, the Executive Director concludes that NEEJA qualifies as an affected person.

3. Weingarten

Weingarten is composed of a group of entities including Weingarten Realty Investors, WRI/7080, AN/WRI Partnership, Ltd., AN/WRI Partnership #1 Ltd., and Eagle Ind., L.P. Weingarten's attorneys, Kenneth Ramirez and Monica Jacobs, filed timely hearing requests on February 11, 2005, and October 13, 2006. Weingarten owns property immediately adjacent to the landfill. Weingarten's property is identified on the attached Land Ownership Map as Tract Nos. 32, 33, and 34. The hearing request letters provided contact information, identified the Applicant and the permit number, and requested a contested case hearing. The requests raised the following issues of concern:

Issue 15: Does the Applicant maintain adequate training, documentation, and notification procedures to be certain that prohibited wastes are excluded?

Issue 16: Does the Applicant maintain sufficient gas monitoring and remediation plans to protect Weingarten from explosive gases?

Issue 17: Will the Applicant control and manage leachate, landfill gases, and gas condensate correctly and in a manner that will be protective of Weingarten?

Issue 18: Will landfill expansion worsen existing groundwater contamination problems and negatively impact Weingarten's property, business, and health/safety issues?

Issue 19: Are the monitoring wells located at proper depths to detect migration of pollutants?

Issue 20: Is the current liner system adequate to prevent contamination of groundwater?

Issue 21: Is the liner system adequate to withstand increased stress on the liner systems?

Issue 22: Will the vertical expansion negatively impact the health and safety of Weingarten?

Issue 23: Did the Applicant provide an accurate estimate for the life of the permit?

Issue 24: Are closure and post-closure plans adequate to protect Weingarten after the facility is closed?

Issue 25: Are cost estimates and financial assurance sufficient to protect Weingarten during closure and post-closure?

Issue 26: Does the Applicant maintain sufficient training, documentation and notification procedures to protect Weingarten regarding special waste the Applicant may accept?

Issue 27: Are functions and minimum qualifications of key personnel to be employed at the facility sufficient to protect Weingarten?

Issue 28: Are procedures for the detection and prevention of the disposal of prohibited wastes including hazardous wastes, PCBs and others sufficient to protect Weingarten?

Issue 29: Will the Applicant maintain protections against fire in the expanded or existing area sufficient to protect Weingarten?

Issue 30: Will the working face of the expanded or existing area be maintained and operated to control windblown solid waste in a manner sufficient to protect Weingarten?

Issue 31: Are the procedures for hauling waste through the neighboring streets and for unloading wastes at the facility sufficient to protect Weingarten?

Issue 32: Will the increased truck traffic required to import soil cover from offsite sources increase traffic in an amount over 20% of normal traffic flow?

Issue 33: Will truck traffic track mud onto roads adjacent to the facility?

Issue 34: Will operation of this facility violate any applicable requirement of the Federal Clean Air Act, any approved state implementation plan developed under the Federal Clean Air Act, or any provisions of the Texas Clean Air Act?

Issue 35: Are air quality issues outside the scope of review for this application?

Issue 36: Will facility operation result in destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of endangered or threatened species?

Issue 37: Will the Applicant maintain its landfill cover in a manner sufficient to protect Weingarten?

Issue 38: Will the Applicant's operations cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste in a manner as to cause the unauthorized discharge or imminent threat of discharge of municipal solid waste into or adjacent to the waters in the state?

Issue 39: Will the Applicant's operations cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste in a manner as to cause the creation and maintenance of a nuisance?

Issue 40: Will the Applicant's operations cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste in a manner that endangers human health and welfare or the environment?

Issue 41: Should the permit be denied based on the Applicant's compliance history under Texas Health & Safety Code Chapter 361 and Commission rules?

Issue 42: Will the Applicant meet and has the Applicant met the regulatory requirements of 30 Tex. Admin. Code, Chapter 330?

Issue 43: Will odor problems at the facility be exacerbated by expansion?

Issue 44: Are the additional odor control measures specified in the Executive Director's response to Comment 1 in the Response to Public Comment be sufficient to address odor problems from the expansion?

Issue 45: Will granting this application have a potentially negative impact on residential and business property values?

Issue 46: Will runoff from the expansion be significant enough to impact Weingarten?

The issues asserted by these requestors include interests that are protected by the Texas Solid Waste Disposal Act and TCEQ's municipal solid waste rules. A reasonable relationship exists between the requestors' interests and the facility due to the proximity of the facility to the requestors' properties. As a result, the Executive Director concludes that these individuals qualify as affected persons.

4. Harris County

Harris County Public Health and Environmental Services filed a timely hearing request on behalf of Harris County. The request provided contact information, identified the Applicant and the permit number, and requested a contested case hearing. Harris County has authority under state law for issues raised by the application as required for a local government to be considered an affected person. The request raised the following issues:

Issue 47: Whether the proposed vertical expansion will protect groundwater and surface water quality.

Issue 48: Whether the draft permit complies with the intent of Subtitle D and Texas Health and Safety Code, Chapter 361.

Issue 49: Whether the draft permit is protective of human health and the environment.

The interests asserted by Harris County include issues that are protected by the Texas Solid Waste Disposal Act and TCEQ's municipal solid waste rules. A reasonable relationship exists between Harris County's interests and the facility due to the authority of the County to protect public health and the environment. As a result, the Executive Director concludes that Harris County is an affected person.

B. Issues

Because the individuals represented by Martina E. Cartwright and NEEJA raise the same issues, their issues are listed together.

1. Individuals and NEEJA

Raul Aranda, C. G. Barr, Katherine Barr, Ernest M. Black, Cassie Bowie, James Bowie, C. L. Broussard, Arthur Campbell, Doris Campbell, Nancy Crnkovic, Mary Dorsey, Terry Downing, Gene Fish, Mickey Fish, Nora Fisher, James Gray, Mary Gray, Thomas E. Green, Adolph Hartman, James Henderson, Marilyn Henderson, Dan Hernandez, Lena Hernandez, Vernita Johnson, Jerestene Leath, Alice C. Lux, Donna McCandless, Roy McCandless, Andrew McCausland, Gloria McCausland, James Mukes, Jr., Shirley Perkins, Steven Ray Perkins, Ollie Roberson, Wallace R. Romero, Earsey Ross, Mary Ross, Gumesindo Santos, Isaura Santos, Tonya Senegal, Thelmarie Tharp, Walter Tharp, Willie Thomas, Adlea Villareal, Roy Villareal, Effie Walker, Thomas Walker, General Washington, Jr., Velma Washington, Maryland Whittaker, and NEEJA.

Issue 1: Will storm water runoff from the facility under the proposed vertical expansion significantly increase and potentially harm the health and safety of NEEJA members?

The issue is whether drainage patterns will be significantly altered under 30 Tex. Admin. Code § 330.56(f)(4)(A)(iv).

Although the general issue is not appropriate for referral, the more specific issue concerning drainage patterns involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 2: Will the proposed vertical expansion adequately prevent vector infestation including rodents and mosquitoes?

The issue is whether the Applicant's site operating plan requires the Applicant to control vectors with proper compaction and daily cover in accordance with 30 Tex. Admin. Code § 330.126.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 3: Will existing groundwater contamination be exacerbated by operation of the facility under the proposed vertical expansion and potentially harm the health and safety of NEEJA members?

The issue is whether the facility will be protective of groundwater in accordance with 30 Tex. Admin. Code §§ 330.200-206.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 4: Will the proposed vertical expansion result in odor potentially harmful to the health and safety of NEEJA members?

The issue is whether the application proposes to control odors in accordance with 30 Tex. Admin. Code §§ 330.125(b), 330.133(a).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 5: Will the Applicant adequately monitor and control migration of harmful gas emissions?

The issue is whether the application provides for managing landfill gas in accordance with 30 Tex. Admin. Code §§ 330.56(n), and 330.130.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 6: Will truck traffic result in harmful air emissions?

The requested issue should not be referred to State Office of Administrative Hearings, because vehicle emissions are outside the scope of the Commission's review when processing waste disposal applications.

Issue 7: Does the permit amendment present adequate slope analysis that assures slope stability failure will not occur?

The issue is whether the application provides for slope stability in accordance with 30 Tex. Admin. Code § 330.253.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 8: Will truck traffic result in windblown debris that potentially may harm the health and safety of NEEJA members?

The issue is whether the application proposes to take appropriate measures so that vehicles hauling waste will avoid spilling waste and will pick up spilled waste on access roads in accordance with 30 Tex. Admin. Code §§ 330.123, 330.127.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 9: Will the slope of the landfill result in windblown debris during storms and potentially harm the health and safety of NEEJA members?

The issue is whether the application has provisions to control windblown waste in accordance with 30 Tex. Admin. Code § 330.120.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this

application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 10: Will the proposed vertical expansion result in an increased risk of adverse health effects including cancer, respiratory disease, and allergies harmful to the health and safety of NEEJA members?

The requested issue should not be referred to State Office of Administrative Hearings, because it is not a relevant and material issue of fact. Commission rules as a whole are intended to protect human health and the environment, but it is not appropriate to refer the overriding purpose of the rules as an issue for a hearing. It is appropriate to refer specific disputed facts that are relevant and material to determining compliance with specific rules. Compliance with all of the specific rules can then support a conclusion that an application complies with the general purpose of the rules.

Issue 11: Will groundwater contamination and storm water runoff from the proposed vertical expansion cause tree loss or impair animal growth?

The issue is whether the application protects ground water in accordance with 30 Tex. Admin. Code § 330.200-.206.

Although tree growth and animal loss are too general in nature to be referred, the more specific issues involve questions of fact as opposed to questions of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings. See previous discussion of groundwater protection under Issue 3.

Issue 12: Will growth and development of native and domestic animals be impaired by infestation of avian, mammalian, and reptilian animal vectors?

The issue is whether the application provides adequate control of vectors in accordance with 30 Tex. Admin. Code §§ 330.126, and 330.133(a).

Although the general issue is too broad and not appropriate for referral, the more specific issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this

application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 13: Will diminished tree and vegetation growth increase the risk of flooding?

The issue is whether drainage patterns will be significantly altered under 30 Tex. Admin. Code § 330.56(f)(4)(A)(iv).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings. See previous discussion of significant change and drainage under Issues 1 and 11.

Issue 14: Will contamination of standing waters near the facility increase?

The issue is whether the application protects surface waters in accordance with 30 Tex. Admin. Code §§ 330.55(b)(1).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings. See previous discussion of surface water protection under Issues 1, 11, and 14.

2. Weingarten

Issue 15: Does the Applicant maintain adequate training, documentation, and notification procedures to be certain that prohibited wastes are excluded?

The issue is whether the application includes adequate provisions to detect and prevent disposal of prohibited waste in accordance with 30 Tex. Admin. Code § 330.114(5).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings. See previous discussion of surface water protection under Issues 1, 11, 14, and 15.

Issue 16: Does the Applicant maintain sufficient gas monitoring and remediation plans to protect Weingarten from explosive gases?

The issue is whether the application provides for managing landfill gas in accordance with 30 Tex. Admin. Code §§ 330.56(n), and 330.130.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 17: Will the Applicant control and manage leachate, landfill gases, and gas condensate correctly and in a manner that will be protective of Weingarten?

The issues are (1) whether or not the application provides for managing landfill gas in accordance with 30 Tex. Admin. Code §§ 330.56(n), and 330.130, and (2) whether the facility will be protective of groundwater in accordance with 30 Tex. Admin. Code §§ 330.200-206.

These issues involve questions of fact as opposed to questions of law, were raised during the comment period, and are relevant and material to the Commission's decision on this application. The Executive Director concludes that these issues are appropriate to refer to State Office of Administrative Hearings. See previous discussion of these issues under Issues 3, and 5.

Issue 18: Will landfill expansion worsen existing groundwater contamination problems and negatively impact Weingarten's property, business, and health/safety issues?

The issues are (18a) whether the facility will be protective of groundwater under 30 Tex. Admin. Code §§ 330.200-206, (18b) whether approval of the landfill expansion will negatively impact property and business interests, and (18c) whether the application is protective of human health and the environment.

Issue 18a involves questions of fact as opposed to questions of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that issue 19a is appropriate to refer to State Office of Administrative Hearings.

Issue 18b should not be referred to State Office of Administrative Hearings because property and business interests are not relevant and material issues of fact that the Executive Director may consider under Commission Rules when determining whether to issue a municipal solid waste permit. Property and business interests are considered for the limited purpose of determining whether a person is an affected person, for the purposes of granting a request for a contested case hearing.

Issue 18c should not be referred to State Office of Administrative Hearings, because it is not a relevant and material issue of fact. The MSW rules as a whole are intended to protect human health and the environment, but the general purpose of the rules is not an appropriate issue to refer for a hearing. It is appropriate to refer specific disputed facts that are relevant and material to determining compliance with specific rules. Determining whether an application complies with all the specific rules can then lead to the conclusion that an application does or does not comply with the general purpose of the rules.

Issue 19: Are the monitoring wells located at proper depths to detect migration of pollutants?

The issue is whether the application meets the requirements for monitor wells in accordance with 30 Tex. Admin. Code § 330.200-206.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 20: Is the current liner system adequate to prevent contamination of groundwater?

The issue is whether the facility will be protective of groundwater under 30 Tex. Admin. Code §§ 330.200-206.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 21: Is the liner system adequate to withstand increased stress on the liner systems?

The issue is whether the facility will be protective of groundwater under 30 Tex. Admin. Code §§ 330.200-206.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 22: Will the vertical expansion negatively impact the health and safety of Weingarten?

The requested issue should not be referred to State Office of Administrative Hearings, because it is not a relevant and material issue of fact. The MSW rules as a whole are intended to protect human health and the environment, but it is not appropriate to refer the general purpose of the rules as an issue for a hearing. It is appropriate to refer specific disputed facts that are relevant and material to determining compliance with specific rules. Compliance with all of the specific rules can then support a conclusion that an application complies with the general purpose of the rules.

Issue 23: Did the Applicant provide an accurate estimate for the life of the permit?

The issue is whether the Applicant provided a calculation of estimated rate of solid waste deposition and operating life of the site in accordance with 30 Tex. Admin. Code § 330.55.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 24: Are closure and post-closure plans adequate to protect Weingarten after the facility is closed?

The issue is whether the Application provides for adequate closure and post-closure in accordance with 30 Tex. Admin. Code §§ 330.253-254.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 25: Are cost estimates and financial assurance sufficient to protect Weingarten during closure and post-closure?

The issue is whether the application complies requirements to provide cost estimates for closure and post-closure in accordance with 30 Tex. Admin. Code § 330.56(h) and 30 Tex. Admin. Code Chapter 330, Subchapter K.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 26: Does the Applicant maintain sufficient training, documentation and notification procedures to protect Weingarten regarding special waste the Applicant may accept?

The issue is whether the application complies with requirements for disposal of special waste in accordance with 30 Tex. Admin. Code § 330.136.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 27: Are functions and minimum qualifications of key personnel to be employed at the facility sufficient to protect Weingarten?

The issue is whether the proposed Site Operating Plan provides qualified personnel in accordance with 30 Tex. Admin. § 330.114(1).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this

application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 28: Are procedures for the detection and prevention of the disposal of prohibited wastes including hazardous wastes, PCBs, and others sufficient to protect Weingarten?

The issue is whether the application provides adequate procedures to prevent unauthorized wastes from entering the landfill in accordance with 30 Tex. Admin. Code § 330.114(5).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 29: Will the Applicant maintain protections against fire in the expanded or existing area sufficient to protect Weingarten?

The issue is whether the application provides adequate provisions for fire protection in accordance with 30 Tex. Admin. Code §330.115.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 30: Will the working face of the expanded or existing area be maintained and operated to control windblown solid waste in a manner sufficient to protect Weingarten?

The issue is whether the facility will be designed, operated, and managed to control windblown waste in accordance with 30 Tex. Admin. Code § 330.120.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 31: Are the procedures for hauling waste through the neighboring streets and for unloading wastes at the facility sufficient to protect Weingarten?

This general issue is too broad and not appropriate for referral; however, the more specific issue is whether the application complies with provisions related to unloading waste and cleanup of spilled materials in accordance with 30 Tex. Admin. Code §§ 330.117, 330.123.

This specific issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 32: Will the increased truck traffic required to import soil cover from offsite sources increase traffic in an amount over 20% of normal traffic flow?

The issue is whether the application complies with 30 Tex. Admin. Code § 330.53(b)(9).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to State Office of Administrative Hearings.

Issue 33: Will truck traffic track mud onto roads adjacent to the facility?

The issue is whether the application provides for adequate maintenance of site access roads in accordance with 30 Tex. Admin. Code § 330.127 (a).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to SOAH.

Issue 34: Will operation of this facility violate any applicable requirement of the Federal Clean Air Act, any approved state implementation plan developed under the Federal Clean Air Act, or any provisions of the Texas Clean Air Act?

Air issues are evaluated under the Applicant's air permit. The requested issue should not be referred to SOAH, because air issues are not relevant and material to the Commission's decision on this application.

Issue 35: Are air quality issues outside the scope of review for this application?

Although air quality issues are generally considered under separate authorizations, the application must comply with odor management provisions in accordance with 30 Tex. Admin. Code § 330.125(b) and dust control provisions in accordance with 30 Tex. Admin. Code § 330.127(b).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to SOAH.

Issue 36: Will facility operation result in destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of endangered or threatened species?

The issues are whether the application considers impacts to endangered or threatened species in accordance with 30 Tex. Admin. Code § 330.53(b)(13) and whether the application avoids impacts on endangered or threatened species in accordance with 30 Tex. Admin. Code § 330.129.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to SOAH.

Issue 37: Will the Applicant maintain its landfill cover in a manner sufficient to protect Weingarten?

The issue is whether the application provides adequate cover in accordance with 30 Tex. Admin. Code § 330.133.

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this

application. The Executive Director concludes that this issue is appropriate to refer to SOAH.

Issue 38: Will the Applicant's operations cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste in a manner as to cause the unauthorized discharge or imminent threat of discharge of municipal solid waste into or adjacent to the waters in the state?

The issue is whether the application protects surface waters in accordance with 30 Tex. Admin. Code § 330.55(b)(1).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to SOAH.

Issue 39: Will the Applicant's operations cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste in a manner as to cause the creation and maintenance of a nuisance?

The requested issue should not be referred to SOAH because it is not a relevant and material issue of fact. The MSW rules as a whole are intended to avoid causing a nuisance, but it is not appropriate to refer the general purpose of the rules as an issue for a hearing. It is appropriate to refer specific disputed facts that are relevant and material to determining the compliance with specific rules. Compliance with all of the specific rules can then support a conclusion that an application complies with the general purpose of the rules.

Issue 40: Will the Applicant's operations cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste in a manner that endangers human health and welfare or the environment?

The requested issue should not be referred to SOAH, because it is not a relevant and material issue of fact. The MSW rules as a whole are intended to protect human health and the environment, but it is not appropriate to refer the general purpose of the rules as an issue for a hearing. It is appropriate to refer specific disputed facts that are relevant and material to determining compliance with specific rules. Compliance with all of the

specific rules can then support a conclusion that an application complies with the general purpose of the rules.

Issue 41: Should the permit be denied based on the Applicant's compliance history under Texas Health & Safety Code Chapter 361, and Commission rules?

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to SOAH.

Issue 42: Will the Applicant meet and has the Applicant met the regulatory requirements of 30 Tex. Admin. Code Chapter 330?

The requested issue should not be referred to SOAH, because it is not a relevant and material issue of fact. It is appropriate to refer specific disputed facts that are relevant and material to determining compliance with specific rules.

Issue 43: Will odor problems at the facility be exacerbated by expansion?

The issue is whether the application proposes to control odors in accordance with 30 Tex. Admin. Code §§ 330.125(b), 330.133(a).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to SOAH.

Issue 44: Are the additional odor control measures specified in the Executive Director's response to Comment 1 in the Response to Public Comment be sufficient to address odor problems from the expansion?

This issue should not be referred to SOAH because it is not a relevant and material issue of fact in determining whether the application would be granted or denied.

Issue 45: Will granting this application have a potentially negative impact on residential and business property values?

The requested issue should not be referred to SOAH because it is not relevant and material fact issue to affect whether the application would be granted.

Issue 46: Will runoff from the expansion be significant enough to impact Weingarten?

The issue is whether drainage patterns will be significantly altered under 30 Tex. Admin. Code § 330.56(f)(4)(A)(iv).

This issue involves a question of fact as opposed to a question of law, was raised during the comment period, and is relevant and material to the Commission's decision on this application. The Executive Director concludes that this issue is appropriate to refer to SOAH.

3. Harris County

Issue 47: Will the proposed vertical expansion protect groundwater and surface water quality.

The issues are (1) whether the facility will be protective of groundwater under 30 Tex. Admin. Code §§ 330.200-206 and (2) whether the application protects surface waters in accordance with 30 Tex. Admin. Code § 330.55(b)(1).

These issues involve questions of fact as opposed to questions of law, were raised during the comment period, and are relevant and material to the Commission's decision on this application. The Executive Director concludes that these issues are appropriate to refer to SOAH.

Issue 48: Whether the draft permit complies with the intent of Subtitle D and Texas Health and Safety Code, Chapter 361.

The requested issue should not be referred to SOAH, because it is not a relevant and material issue of fact. The MSW rules as a whole and Subtitle D are intended to protect human health and the environment, but it is not appropriate to refer the general purpose of the rules as an issue for a hearing. It is appropriate to refer specific disputed facts that are relevant and material to determining compliance with specific rules. Compliance with all of the specific rules can then support a conclusion that an application complies with the general purpose of the rules.

Issue 49: Whether the draft permit is protective of human health and the environment.

The requested issue should not be referred to SOAH, because it is not a relevant and material issue of fact. The MSW rules as a whole are intended to protect human health and the environment, but it is not appropriate to refer the general purpose of the rules or the draft permit as an issue for a hearing. It is appropriate to refer specific disputed facts that are relevant and material to determining compliance with specific rules. Compliance with all of the specific rules can then support a conclusion that an application complies with the general purpose of the rules.

VI. DURATION OF THE CONTESTED CASE HEARING

The Executive Director recommends that the duration for a contested case hearing on this matter, from preliminary hearing to the presentation of a proposal for decision before the Commission, be nine months.

VII. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends the following actions by the Commission:

1. Find that Raul Aranda, C. G. Barr, Katherine Barr, Ernest M. Black, Cassie Bowie, James Bowie, C. L. Broussard, Arthur Campbell, Doris Campbell, Nancy Crnkovic, Mary Dorsey, Terry Downing, Gene Fish, Mickey Fish, Nora Fisher, James Gray, Mary Gray, Thomas E. Green, Adolph Hartman, James Henderson, Marilyn Henderson, Dan Hernandez, Lena Hernandez, Vernita Johnson, Jerestene Leath, Alice C. Lux, Donna McCandless, Roy McCandless, Andrew McCausland, Gloria McCausland, James Mukes, Jr., Shirley Perkins, Steven Ray Perkins, Ollie Roberson, Wallace R. Romero, Earsey Ross, Mary Ross, Gumesindo Santos, Isaura Santos, Tonya Senegal, Thelmarie Tharp, Walter Tharp, Willie Thomas, Adlea Villareal, Roy Villareal, Effie Walker, Thomas Walker, General Washington, Jr., Velma Washington, Maryland Whittaker, NEEJA, Weingarten Realty Investors; WRI/7080 Express Lane, Inc.; AN/WRI Partnership, Ltd.; AN/WRI Partnership #1, Ltd.; Eagle Ind., L.P, and Harris County are affected persons under 30 Tex. Admin. Code § 55.203(b).

2. Refer the following issues to the State Office of Administrative Hearings for a proceeding of nine months:
 1. Whether drainage patterns will be significantly altered under 30 Tex. Admin. Code § 330.56(f)(4)(A)(iv).
 2. Whether the Applicant's site operating plan requires the Applicant to control vectors with proper compaction and daily cover in accordance with 30 Tex. Admin. Code § 330.126.
 3. Whether the facility will be protective of groundwater in accordance with 30 Tex. Admin. Code §§ 330.200-206.
 4. Whether the application proposes to control odors in accordance with 30 Tex. Admin. Code §§ 330.125(b), 330.133(a).
 5. Whether the application provides for managing landfill gas in accordance with 30 Tex. Admin. Code §§ 330.56(n), and 330.130.
 6. Whether the application provides for slope stability in accordance with 30 Tex. Admin. Code § 330.253.
 7. Whether the application proposes to take appropriate measures so that vehicles hauling waste will avoid spilling waste and will pick up spilled waste on access roads in accordance with 30 Tex. Admin. Code §§ 330.123, 330.127.
 8. Whether the application has provisions to control windblown waste in accordance with 30 Tex. Admin. Code § 330.120.
 9. Whether the application protects surface waters in accordance with 30 Tex. Admin. Code § 330.55(b)(1) and 330.133(b).
 10. Whether the application provides adequate control of vectors in accordance with 30 Tex. Admin. Code §§ 330.126 and 330.133(a).
 11. Whether the application meets the requirements for monitor wells in accordance with 30 Tex. Admin. Code §§ 330.200-.206.

12. Whether the Applicant provided a calculation of estimated rate of solid waste deposition and operating life of the site in accordance with 30 Tex. Admin. Code § 330.55.
13. Whether the Application provides provision for adequate closure and post-closure in accordance with 30 Tex. Admin. Code §§ 330.253-254.
14. Whether the application complies with requirements for disposal of special waste in accordance with 30 Tex. Admin. Code § 330.136.
15. Whether the Site Operating Plan proposed qualified personnel in accordance with 30 Tex. Admin. Code 330.114(1).
16. Whether the application provides adequate procedures to prevent unauthorized wastes from entering the landfill in accordance with 30 Tex. Admin. Code § 330.114(5).
17. Whether the application provides adequate provisions for fire protection in accordance with 30 Tex. Admin. Code § 330.115.
18. Whether the facility will be designed, operated, and managed in a manner that controls windblown waste in accordance with 30 Tex. Admin. Code § 330.120.
19. Whether the application complies with provisions related to unloading waste and cleanup of spilled materials in accordance with 30 Tex. Admin. Code §§ 330.117 and 330.123.
20. Whether the application complies with 30 Tex. Admin. Code § 330.53(b)(9) related to transportation.
21. Whether the application provides for adequate maintenance of site access roads in accordance with 30 Tex. Admin. Code § 330.127(a)
22. Whether the application included a groundwater monitoring system in accordance with 30 Tex. Admin. Code § 330.231.

23. Whether the application complies with odor management provisions in accordance with 30 Tex. Admin. Code § 330.125(b) and dust control provisions in accordance with 30 Tex. Admin. Code § 330.127(b).
24. Whether the application considers impacts to endangered or threatened species in accordance with 30 Tex. Admin. Code § 330.53(b)(13) and whether the application avoids impacts on endangered or threatened species in accordance with 30 Tex. Admin. Code § 330.129.
25. Whether the application provides adequate cover in accordance with 30 Tex. Admin. Code § 330.133.
26. Whether the permit should be denied based on the Applicant's compliance history under Texas Health & Safety Code Chapter 361 and Commission rules.
27. Whether the application proposes to control odors in accordance with 30 Tex. Admin. Code §§ 330.125(b), 330.133(a).

Respectfully submitted,



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Representing the Executive Director of the
Texas Commission on Environmental
Quality

CERTIFICATE OF SERVICE

I certify that on March 2, 2007, the original and eleven copies of the Executive Director's Response to Hearing Requests for the application by McCarty Road Landfill TX, LP for amendment of MSW Permit No. 261B were filed with the Office of the Chief Clerk at the Texas Commission on Environmental Quality, and a complete copy was mailed to all persons on the attached mailing list.



Diane Goss

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CHIEF CLERKS OFFICE

2007 MAR -2 PM 4: 56

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
5708 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

MEMORANDUM

TO: [Name]
FROM: [Name]
SUBJECT: [Subject]

DATE: [Date]
RE: [Reference]

[Text block 1]

[Text block 2]

[Text block 3]

[Text block 4]

TCEQ MSW Permit No. 261B
TCEQ Docket No. 2006-1830-MSW

Application by
McCarty Road Landfill TX, LP
For Amendment of
MSW Permit No. 261B

§
§
§
§

Before the
Texas Commission on
Environmental Quality

List of Attachments

- | | |
|--------------|---|
| Attachment A | Draft Permit |
| Attachment B | Technical Summary and Executive Summary |
| Attachment C | Applicant's Compliance History |
| Attachment D | Executive Director's Response to Public Comment |
| Attachment E | Maps provided with Permit Application

Aerial Photograph depicting one mile radius from facility permit boundary dated February, 2003

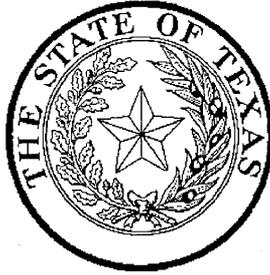
Site Location Map depicting permit boundary dated 1987

General Topographic Map bearing Engineer's seal dated March 31, 2004 |
| Attachment F | GIS Map depicting facility location, locations of Hearing Requestors, and one and two mile radii from current facility entrance dated February 27, 2007

GIS Map Key listing Hearing requestors by address |

Attachment A

Draft Permit
MSW Permit No. 261B
McCarty Road Landfill TX, LP



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

MSW Permit No. 261B

Name of Permittee McCarty Road Landfill TX, LP
and
Site Owner: 5757A Oates Road
 Houston, Texas 77078-4811

Facility Name: McCarty Road Landfill

Classification of Site: Type I Municipal Solid Waste Management Facility

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 and it replaces any previously-issued permit. Nothing in this amended permit exempts the permittee from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality. This amended 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 Title 30 Texas Administrative Code Chapter 330.

ISSUED DATE:

For the Commission

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Harris County
McCarty Road Landfill
MSW Permit No. 261B

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PART NO. 1

I. Size and Location of Facility

- A. Prior to this amendment, the McCarty Road Landfill was an existing facility, operating under authorization of Municipal Solid Waste Permit No. 261A. This amended permit authorizes continued operations at the existing facility, and the vertical expansion of the landfill at the site, which is described in Parts I - IV of the permit amendment application found in Attachment A of this amended permit. This facility is located in Harris County, Texas, approximately 7 miles northeast of downtown Houston and approximately 3.5 miles north-northeast of the intersection of Interstate Highway 610 and Interstate Highway 10.
- B. The legal description is contained in Parts I/II of the permit amendment application found in Attachment A of this permit.
- C. Coordinates and Elevation of Site Permanent Benchmark:
- | | |
|------------|---------------------------------------|
| Latitude: | N 29° 49' 22" |
| Longitude: | W 95° 14' 33" |
| Elevation: | 45.53 feet above mean sea level (msl) |

II. Facilities and Operations Authorized

A. Days and Hours of Operation

The operating hours for receipt of waste and for all landfill-related operations at this municipal solid waste facility shall be 24 hours a day, 7 days a week.

B. Wastes Authorized at This Facility

The permittee is authorized to dispose of municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational, and industrial activities, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, and yard waste. Class 1 nonhazardous industrial solid waste defined as such due to asbestos content, Class 2 nonhazardous industrial solid waste, Class 3 nonhazardous industrial solid waste, certain special wastes that are identified in Part IV of the permit amendment application found in Attachment A of this permit, and other waste as approved by the executive director, may also be accepted. The

acceptance of the special wastes, indicated in Part IV of the permit amendment application in Attachment A of this permit, is contingent upon such waste being handled in accordance with Title 30 Texas Administrative Code (TAC) Section (§) 330.136, and in accordance with the listed and described procedures in said Part IV found in Attachment A of this permit, subject to the limitations and special provisions provided herein.

C. Wastes Prohibited at This Facility

The permittee shall comply with the waste disposal restrictions set forth in 30 TAC §330.5(e). Class 1 nonhazardous industrial solid waste not defined as such due to asbestos content, regulated hazardous waste or PCB wastes regulated under 40 CFR Part 761, infectious medical waste, and any other waste not identified in Section II.B. of this permit shall not be accepted at this facility.

D. Waste Acceptance Rate

Authorized solid waste may be accepted for disposal at this site at the current rate of approximately 6,000 tons per day, increasing at the same rate as the population of Harris, Montgomery, and Liberty counties and surrounding areas to a maximum daily acceptance rate of approximately 7,061 tons per day. The estimated life of the site is approximately 10.9 years.

E. Waste Volume Available for Disposal

The landfill's total waste disposal capacity with the proposed expansion is approximately 42.67 million cubic yards. This capacity is based upon the information contained in Section 2.1.3 of Parts I/II found in Attachment A of this permit, and is the sum of the remaining landfill capacity, approximately 7.67 million cubic yards as of February 18, 2003, and the additional capacity obtained due to the vertical landfill expansion authorized under this permit as amended, approximately 35 million cubic yards.

F. Facilities Authorized

The permittee is authorized to operate a Type I municipal solid waste landfill that utilizes a combination of area excavation fill and aerial fill of the municipal solid waste landfill subject to the limitations contained herein. All waste disposal activities subject to permitting are to be confined to disposal units, structures, appurtenances, or improvements, which include access roads, dikes, berms,

temporary drainage channels, permanent drainage structures, detention ponds, landfill gas management system, contaminated water management system, final cover, ground-water monitoring system, landfill liner system, and other improvements related to landfill operations.

G. Changes, Additions, or Expansions

Any proposed facility changes must be authorized in accordance with Texas Commission on Environmental Quality (TCEQ) permit modification or amendment rules, 30 TAC Chapter 305 and 30 TAC Chapter 330.

III. Facility Design, Construction, and Operation

- A. Facility design, construction, operation, and maintenance must comply with: the provisions of this permit; Commission Rules, including, but not to be limited to, 30 TAC Chapter 330; any special provisions contained in this permit; and Parts I - IV of the permit amendment application found in Attachment A of this permit, and shall be managed in a manner to protect human health and the environment.
- B. The entire waste management facility shall be designed, constructed, operated, and maintained to prevent the release and migration of any waste, contaminant, or pollutant beyond the point of compliance as defined in 30 TAC §330.2, and to prevent inundation or discharge from the areas surrounding the facility components. Each receiving, storage, processing, and disposal area shall have a containment system that will collect spills and incidental precipitation in such a manner as to:
1. Preclude the release of any contaminated runoff, spills, or precipitation;
 2. Prevent washout of any waste by a 100-year storm; and
 3. Prevent run-on into the disposal areas from off-site areas.
- C. The site shall be designed and operated so as not to cause a violation of:
1. The requirements of Texas Water Code §26.121;
 2. Any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements under §402, as amended, and/or the Texas Pollutant Discharge Elimination System (TPDES);

3. The requirements under Federal Clean Water Act §404, as amended; and
 4. Any requirement of an area wide or statewide water quality management plan that has been approved under Federal Clean Water Act §208 or §319, as amended.
- D. All working-face contaminated water shall be handled, stored, treated, disposed of, and managed in accordance with 30 TAC §330.55(b)(6), 30 TAC §§330.56(o)(1) through (4), and 30 TAC §330.139, and in accordance with Part III of the permit amendment application found in Attachment A of this permit. Other methods may be considered for approval as a modification to this permit.
- E. Temporary erosion and sedimentation control measures shall remain functional until the permanent vegetative cover has become established, or as required to control erosion on areas having completed final cover throughout the post-closure care period in accordance with Part III Attachment 13 of the permit amendment application found in Attachment A of this permit.
- F. Storm water runoff from the active portion of the landfill shall be managed in accordance with 30 TAC §§330.55(b)(3) and 330.133(b), and as described in Part III of the permit amendment application found in Attachment A of this permit.
- G. All facility employees and other persons involved in facility operations shall be qualified, trained, educated, and experienced to perform their duties so as to achieve compliance with this permit. The permittee shall comply with 30 TAC §330.52(b)(9) and as described in Parts I/II of the permit amendment application found in Attachment A of this permit. The permittee shall further ensure that personnel are familiar with safety procedures, contingency plans, and the requirements of the Commission's rules and this permit, commensurate with their levels and positions of responsibility, in accordance with Part III and Part IV of the permit amendment application found in Attachment A of this permit. All facility employees and other persons involved in facility operations shall obtain the appropriate level of operator certification as required by statute and applicable regulations.
- H. The facility shall be properly supervised to assure that bird activities at the site will not increase and that appropriate control procedures will be followed. Any increase in bird activity that might be hazardous to safe aircraft operations will require prompt mitigation actions, in accordance with the facility Bird Abatement Plan.

IV. Financial Assurance

- A. General. Authorization to operate the facility is contingent upon compliance with provisions contained within the permit and maintenance of financial assurance in accordance with 30 TAC Chapter 37 and Subchapter K of 30 TAC Chapter 330.
- B. Closure Cost Estimates. Financial assurance documents shall be submitted within 30 days after permit amendment issuance for demonstration of closure of the landfill in accordance with 30 TAC §§330.253(d)(6) and 330.281. The closure cost estimate of \$15,169,234 in 2004 dollars is based on estimates as described in Part III Attachment 8 and Attachment 12 of the permit amendment application found in Attachment A of this amended permit.
- C. Post-closure Care Cost Estimates. Financial assurance documents shall be submitted within 30 days after permit amendment issuance for demonstration of post-closure care of the landfill in an amount for the entire landfill facility. The post-closure care cost estimate of \$14,385,600 in 2004 dollars is based on estimates as described in Part III Attachment 8 and Attachment 13 of the permit amendment application found in Attachment A of this amended permit.
- D. Corrective Action Cost Estimates. Financial assurance documents shall be submitted within 30 days after permit amendment issuance for demonstration of corrective action activities at the landfill in an amount for the entire landfill facility. The corrective action cost estimate of \$5,328,840 in 2004 dollars is based on estimates as described in Part III Attachment 8 of the permit amendment application found in Attachment A of this amended permit.
- E. The owner and/or operator shall annually adjust closure, post-closure care, and/or corrective action cost estimates for inflation within 60 days prior to the anniversary date of the establishment of the financial assurance instrument pursuant to 30 TAC §§330.281 and 330.283, as applicable.
- F. Modifications. If the facility's closure, post-closure care, or corrective action plans are modified in accordance with 30 TAC §305.70, the permittee shall provide new cost estimates in current dollars in accordance with 30 TAC §§330.253(d)(6), 330.254(b)(3)(D), 330.281, and 330.283, as applicable. The amount of the financial assurance mechanism shall be adjusted within 45 days after the modification is approved. Adjustments to the cost estimates and/or the financial assurance instrument to comply with any financial assurance regulation that is adopted by the

TCEQ subsequent to the issuance of this amended permit, shall be initiated as a modification within 30 days after the effective date of the new regulation.

V. Facility Closure

Closure of the facility shall commence:

- A. Upon completion of the disposal operations, and the site is completely filled or rendered unusable in accordance with Part III Attachment 12 of the permit amendment application found in Attachment A of this amended permit;
- B. Upon direction by the executive director of the TCEQ for failure to comply with the terms and conditions of this permit or violation of State or Federal regulations. The executive director is authorized to issue emergency orders to the permittee in accordance with §§5.501 and 5.512 of the Texas Water Code regarding this matter after considering whether an emergency requiring immediate action to protect the public health and safety exists;
- C. Upon abandonment of the site;
- D. For failure to secure and maintain an adequate bond or other financial assurance as required; or
- E. Upon the permittee's notification to the TCEQ that the landfill will cease to accept waste and no longer operate at any time prior to the site being completely filled to capacity.

VI. Site Completion and Closure

The landfill shall be completed and closed in accordance with 30 TAC Chapter 330, including, but not limited to, 30 TAC §330.250 and 30 TAC §§330.251 through 330.256. Upon closure, the permittee shall submit to the executive director documentation of closure as set out in 30 TAC §330.253. Post-closure care and maintenance shall be conducted in accordance with Part III Attachment 13 of the permit amendment application found in Attachment A of this amended permit, for a period of 30 years or as otherwise determined by the executive director pursuant to 30 TAC §330.254(a).

VII. Standard Permit Conditions

- A. Parts I - IV of the permit amendment application for MSW Permit No. 261B, as described in 30 TAC §330.51(a), are hereby made a part of this amended permit as Part No. 2: Attachment A. The permittee shall maintain Parts I - IV and Part V, as described in 30 TAC §330.51(a), at the facility and make them available for inspection by TCEQ personnel. The contents of Attachment A of this permit shall be known as the "Approved Site Development Plan," in accordance with 30 TAC §330.64(a). Improper cross references, incomplete and truncated sentences, and typographical errors in the text that are discovered while printing and copying the "Approved Site Development Plan" copies, may be corrected with revised pages, if the corrections do not change the intent of the original text.
- B. Minor amendments, modifications, and corrections that may be issued to this permit are hereby made a part of this permit as Part No. 3: Attachment B.
- C. The permittee shall comply with all conditions of this amended permit. Failure to comply with any permit condition may constitute a violation of the permit, the rules of the Commission, and the Texas Solid Waste Disposal Act and is grounds for an enforcement action, revocation, or suspension.
- D. A preconstruction conference shall be held pursuant to 30 TAC §330.64(d) prior to beginning any construction within the permit boundary to ensure that all aspects of this permit, construction activities, and inspections are met. Additional preconstruction conferences may be held prior to the opening of the facility.
- E. The permittee shall monitor sediment accumulations in ditches, culverts, and other surface drainage installations on a quarterly basis, and remove sediment at least once a year. More frequent sediment cleanup shall be performed if necessary to re-establish the design flow grades and capacity.
- F. Tracking of mud and associated debris onto public roadways must be removed at least once per day on days when mud and associated debris are being tracked onto the public roadway. The tracking of mud off-site onto any public right-of-way shall be minimized.
- G. In accordance with 30 TAC §330.7(a), the permittee shall record in the Deed Records of Harris County, a metes and bounds description of all portions of land within the permit boundary on which disposal of solid waste has and/or will take place. A

certified copy of the recorded document(s) shall be provided to the executive director in accordance with 30 TAC §330.7(b).

- H. Daily cover of the waste fill areas shall be performed with clean soil that has not been in contact with waste, or with an alternate daily cover which has been approved in accordance with 30 TAC §§330.133(c) and 305.70. Intermediate cover, and run-on and run-off controls, shall not be constructed from soil that has been scraped up from prior daily cover or which contains waste.
- I. During construction and operation of the facility, measures shall be taken to control runoff, erosion, and sedimentation from disturbed areas. Erosion and sedimentation control measures shall be inspected and maintained at least monthly and after each storm event that meets or exceeds the design storm event. Erosion and sedimentation controls shall remain functional until disturbed areas are stabilized with established permanent revegetation. The permittee shall maintain the on-site access road and speed bumps/mud control devices in such a manner as to minimize the buildup of mud on the access road and to maintain a safe road surface.
- J. In complying with the requirements of 30 TAC §330.123, the permittee shall consult with the local District Office of the Texas Department of Transportation or other authority responsible for road maintenance, as applicable, to determine standards and frequencies for litter and mud cleanup on state, county, or city maintained roads serving the site. Documentation of this consultation shall be submitted within 30 days after the permit amendment has been issued.
- K. The permittee shall retain the right of entry onto the site until the end of the Post-closure Care Period as required by 30 TAC §330.62(b).
- L. Inspection and entry onto the site by authorized personnel shall be allowed during the site operating life and until the end of the Post-closure Care Period as required by §361.032 of the Texas Health & Safety Code.
- M. The provisions of this amended permit are severable. If any permit provision or the application of any permit provision to any circumstance is held invalid, the remainder of this permit shall not be affected.
- N. Regardless of the specific design contained in Attachments A and B of this amended permit, the permittee shall be required to meet all performance standards required by the amended permit, the regulations, and as required by local, State, and Federal laws or ordinances.

- O. If differences arise between these permit provisions and incorporated Parts I - IV of the permit amendment application found in Attachment A of this amended permit, these permit provisions shall prevail.
- P. The permittee shall comply with all applicable air pollution control and permitting regulatory requirements, which include, but are not limited to, 30 TAC §106.534, and 30 TAC Chapters 106 and 116.
- Q. All discharge of storm water will be in accordance with the U.S. Environmental Protection Agency NPDES requirements and/or the State of Texas TPDES requirements as applicable.

VIII. Incorporated Regulatory Requirements

- A. To the extent applicable, the requirements of 30 TAC Chapters 37, 281, 305, and 330 are adopted by reference and are hereby made provisions and conditions of this amended permit.
- B. The permittee shall comply with all applicable Federal, State, and local regulations and shall obtain any and all other required permits prior to the beginning of any on-site improvements or construction approved by this amended permit.

IX. Special Provisions

- A. The permittee will conduct sampling and analysis of landfill leachate for concentrations of Polychlorinated Biphenyls (PCBs) every six months, using the wet weight method specified in 40 CFR Part 761. PCB concentrations shall be determined on a weight-per-weight basis. Discrete samples must be taken of leachate present at each sump. Dilution of the leachate is strictly prohibited. The results of the sampling and analysis shall be submitted to the executive director using reporting methods specified in 40 CFR Part 761 within 60 days of the date that the sampling took place. The permittee will conduct testing of landfill leachate for concentrations of Polychlorinated Biphenyls at least once a year, through an appropriate testing method pursuant to 40 CFR Part 761. The results of the testing shall be submitted to the executive director in report form within 60 days of the date that the testing took place.

B. Should two or more notices of odor violation be issued to the permittee by a regulatory authority in a 12-month period, the permittee must initiate additional odor abatement measures in consultation with the TCEQ, Harris County, and the City of Houston.

PART NO. 2

Attachment A

The "Approved Site Development Plan" as defined in Part No. 1, Section VII.A of this amended permit.

PART NO. 3

Attachment B

Minor Amendments, Modifications, and Corrections may be issued for MSW Permit No. 261B.

The minor amendment, modification, or correction document prepared and executed with an approval date shall be attached to this attachment. There is no limitation on the number of these documents that may be included in Attachment B of this amended permit.

Attachment B

Technical Summary and Executive Summary

MSW Permit No. 261B

McCarty Road Landfill TX, LP

TECHNICAL SUMMARY
of the
MCCARTY ROAD LANDFILL
MSW PERMIT AMENDMENT APPLICATION
No. 261B

Type I
Municipal Solid Waste Facility
Harris County, Texas

Applicant:
McCarty Road Landfill TX, LP

Date Prepared: September 30, 2004

Prepared and Issued by the
Texas Commission on Environmental Quality (TCEQ)
Office of Permitting, Remediation and Registration
Waste Permits Division
Municipal Solid Waste (MSW) Permits Section

This summary was prepared in accordance with 30 Texas Administrative Code Section 281.21(c). The information contained in this summary is based upon the permit amendment application. Not all of the information contained in this summary has been independently verified.

Name of Applicant: McCarty Road Landfill TX, LP
5757A Oates Road
Houston, Texas 77078-4811

Name of Facility: McCarty Road Landfill

Contact Person: Mr. Jim Stipe, General Manager - Houston District
5757A Oates Road
Houston, Texas 77078-4811
(713) 671-1559

Consulting Engineers: Mr. Jeffrey P. Young, P.E., Senior Engineer
Weaver Boos Consultants, LLC-Southwest
6420 Southwest Boulevard, Suite 206
Fort Worth, Texas 76109
(817) 735-9770

Type of Facility: 458.25-acre Type I Municipal Solid Waste Landfill Facility

1. **GENERAL**

1.1 Purpose:

This permit amendment application, submitted by McCarty Road Landfill TX, LP, requests a vertical expansion and continued operation of the MSW Type I McCarty Road Landfill in Harris County, Texas. The total permitted facility includes 458.25 acres of land, of which approximately 388.1 acres will be used for waste disposal. The maximum final elevation of final cover material will be 316.0 feet above mean sea level (MSL). The site will be authorized to accept the waste streams as listed below.

1.2 Wastes to be Accepted:

Solid waste to be disposed of will primarily consist of municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational and industrial activities, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, and yard waste. Class 1 nonhazardous industrial solid waste defined as such due to asbestos content, Class 2 nonhazardous industrial solid waste, Class 3 nonhazardous industrial solid waste, special waste (e.g., solidified sludges, dead animals, empty containers, regulated and nonregulated asbestos-containing materials), and other waste as approved by the Executive Director, may also be

accepted. The landfill will not be authorized to accept waste materials other than those mentioned above, nor any waste streams that are expressly prohibited by Title 30 Texas Administrative Code (30 TAC) Chapter 330.

1.3 Waste Acceptance Rate:

Over the anticipated life of the facility, authorized wastes will be accepted at an average rate of approximately 6,532 tons-per-day, which results in an estimated life of approximately 10.9 years. The site currently receives approximately 2,190,000 tons-per-year or 2,777,425 cubic yards (assuming an in-place density of 1,577 lb/cy) of solid waste (6,000 tons-per-day based on a typical 365-day operating schedule). It is assumed that the incoming waste rate will increase at the same rate as the population of Harris County, Montgomery, Liberty, and surrounding areas. The maximum annual waste acceptance rate is projected to be 2,577,265 tons-per-year or 3,268,567 cubic yards (assuming an in-place density of 1,577 pounds-per-cubic yard) of solid waste (7,061 tons-per-day based on a 365-day operating schedule). These projections are based on current market conditions, and may vary as market conditions change.

2. LOCATION AND SIZE

2.1 Location:

The McCarty Road Landfill is located within the City of Houston in Harris County, Texas at 5757A Oates Road, approximately 7 miles northeast of downtown Houston and approximately 3.5 miles north-northeast of the intersection of Interstate Highway 610 and Interstate 10. Refer to the General Location Map, Attachment 1 to this Technical Summary.

2.2 Elevation and Coordinates of Permanent Benchmark:

Latitude:	N 29° 49' 22"
Longitude:	W 95° 14' 33"
Elevation:	45.53 feet above MSL

2.3 Size:

The total area within the permit boundary under the proposed permit amendment is approximately 458.25 acres.

3. FACILITY DESIGN, CONSTRUCTION, AND OPERATIONS

3.1 Facilities Authorized:

The permittee will be authorized to operate the facility subject to the limitations contained in the permit. All waste disposal operations will be limited to the units and other features identified in the Site Development Plan and the Site Operating Plan as follows:

3.1.1 A Type I municipal solid waste landfill facility with a disposal footprint of approximately 388.1 acres. The landfill will have two major fill areas, the pre-Subtitle D and Subtitle D areas. The pre-Subtitle D Area is divided into five sectors (Sectors A, B, C, D, E) and encompasses 335.0 acres, or approximately 86% of the total waste fill area. The Subtitle D Area is divided into four sectors (Sectors F1, F2, F3 [Phase 1], F3 [Phase 2]) and encompasses 53.1 acres, or approximately 14% of the total waste fill area. The landfill has a maximum below-grade excavation to elevation 1.8 feet above MSL with continuous area filling with waste, and a maximum above-grade aerial fill to elevation 316.0 feet above MSL. The facility has a scale house, scales, flare facility, maintenance facility, office building, recycling plant, leachate storage tank, soil borrow area, drainage culverts and spillways, 25 ground-water monitoring wells, 32 soil vapor extraction wells, 242 vertical methane extraction wells, clay liner system in the pre-Subtitle D Area, and composite liner system and leachate collection system in the Subtitle D Area.

3.1.2 Access roads, temporary and permanent drainage features, all appurtenances, and other improvements shall be built, operated, and/or maintained in accordance with the conditions of the permit, Parts I - IV of the permit amendment application, and commission regulations. The facility shall be managed in a manner to protect human health and the environment.

4. LAND USE

4.1 The site is located within the City of Houston in Harris County, on the north side of the intersection of U.S. Highway 90 (also known as McCarty Road and the Beaumont Highway) and Oates Road, approximately 3.5 miles north-northeast of the intersection of Interstate Highway 610 and Interstate Highway 10.

4.2 The City of Houston has no zoning or other provisions for general land use.

- 4.3 The surrounding land, within a one-mile radius of the site, is used for light and heavy industrial ventures, general commercial ventures, agriculture, undeveloped areas (mostly floodplain areas), public activities, and residential properties.
- 4.4 Specific land uses within the 1-mile boundary of the site include, but are not limited to, the McCarty Road Landfill offices and entry facilities, a GSF Energy LLC landfill gas-to-energy facility, a rail-served industrial park consisting of several businesses, numerous large motor freight companies, warehouses, shopping centers, the Cordell Brick Plant, the Greens Bayou Power Plant, 2 solid waste facilities (closed Type I Bluebonnet Landfill and active Type IV WCA Landfill), 11 residential neighborhoods with approximately 2,000 homes, 1 school, 8 churches, 1 cemetery, 1 golf course, and 1 park.

5. TRANSPORTATION AND ACCESS

- 5.1 The primary access routes to the site are U.S. Highway 90, Oates Road, Mesa Drive, and Interstate Highway Loop 610.
- 5.2 Direct access to the site is currently provided by US Highway 90, a four-lane state-maintained highway intersecting Oates Road. Within 18 months after the approval of the major permit amendment application, the permittee will relocate the facility access road entrance from Oates Road to Mesa Drive. The location of the entrance facilities, such as the scales/scale house and offices, will remain unchanged. Mesa Drive is a four-lane major north-south roadway consisting of four travel lanes, paved shoulders, and a median. The two 33-foot asphalt travel ways are separated by a 30-foot median. Mesa Drive has a speed limit of 50 miles per hour. The legal maximum gross weight limit for the road is 80,000 pounds. Based on information obtained from the Texas Department of Transportation (TxDOT) the 2002 average daily traffic volume at the intersection of US Highway 90 and Mesa Drive is 36,000 vehicles per day traveling in both directions. For 2003, the application's traffic study determined a count of 4,922 vehicles per day for the intersection of US Highway 90 and Oates Road. The landfill facility is presently visited by an average of approximately 500 waste haul vehicles per day for the 7 days that the landfill is open per week. This information is contained in the application, and the application's traffic study indicates that the landfill access roads can sufficiently handle the current and anticipated future traffic volumes associated with this facility.
- 5.3 The nearest public use airport is the Houston Hobby Airport, which is located approximately 12.5 miles south of the site. The Federal Aviation Administration was contacted and did not object to the proposed permit amendment.

6. SURFACE WATER PROTECTION

6.1 Floodplain:

The 100-year floodplain extends along Greens Bayou, which runs to the east of the site. Over 4 feet of freeboard exists between the 100-year flood elevation in Greens Bayou and the limits of waste. The vertical expansion proposed in this permit amendment does not impact the flow of stormwater in Greens Bayou.

6.2 Stormwater:

Stormwater discharges through perimeter channels and detention ponds into Harris County Flood Control District (HCFCD) Ditch P116-00-00 to the north, HCFCD Ditch P114-00-00 to the south, and Greens Bayou to the east. Eight detention ponds are proposed to control stormwater from the landfill before discharging into the HCFCD channels. On September 12, 2003, the HCFCD issued an approval letter for the proposed drainage design associated with this vertical expansion.

6.3 Contaminated Water:

Stormwater which comes into contact with solid waste will be considered contaminated water. Contaminated water at the working face will be properly contained and managed. Contaminated water will be pumped to a City of Houston sewer line or transported via tanker trucks to properly permitted offsite facility for treatment.

7. GROUND-WATER PROTECTION

7.1 Ground-water Protection:

To reduce the potential for impacts to groundwater at the site resulting from waste disposal operations, the final cover of pre-Subtitle D fill areas will consist of, from the top down, a 12-inch thick grassed erosion layer, and an 18-inch thick clay infiltration layer with a coefficient of permeability that will not exceed 1×10^{-5} cm/s. The final cover of the Subtitle D fill area consists of a 24-inch thick erosion layer, a drainage geocomposite, a 40-mil smooth (topslope) and textured (sideslope) linear low-density polyethylene synthetic liner, and an 18-inch thick compacted clay infiltration layer with a coefficient of permeability that will not exceed 1×10^{-5} cm/s. The bottom and sides of the pre-Subtitle D fill areas are lined with either an in-situ clay liner or a 3-foot thick constructed clay liner. The bottom and sides of the Subtitle D fill area are lined with a 24-inch compacted clay subgrade overlain by a 60-mil high-density polyethylene flexible membrane liner, a leachate collection system, and a 24-inch protective soil cover layer, respectively from bottom to top.

7.2 Monitoring Wells:

The ground-water monitoring system which will provide for early detection of potential releases from the facility will consist of 25 ground-water monitoring wells that form the site Point of Compliance monitoring system. The ground-water monitoring network will be sampled, analyzed, and monitored in accordance with the procedures in the Ground-water Sampling and Analysis Plan (Attachment 11 of the permit amendment application), which is part of the facility permit.

8. CONTROL OF METHANE

- 8.1 The constructed final cover systems and the below grade liners, as described in Section 7.1 of this Technical Summary, help reduce the potential of methane gas migration.
- 8.2 Landfill gas (LFG) migration is monitored around the perimeter of the facility utilizing 22 permanent landfill gas monitoring probes. Attachment 14 of the permit amendment application contains information about the LFG monitoring system and monitoring procedures. If the monitored methane gas is above the regulatory limits, the contingency plan contained in Attachment 14 will be implemented.
- 8.3 The site is currently operating an active LFG collection and control system (CCS). Some modifications are proposed to adapt the existing CCS to the vertical expansion proposed in this permit amendment. The collected LFG is sent to a Landfill Gas-to-Energy facility, located adjacent to the site, for beneficial use.

9. SITE DEVELOPMENT AND OPERATION

The Site Development Plan (SDP), Part III of the permit amendment application, and the Site Operating Plan (SOP), Part IV, are intended to provide guidance from the design engineer to the facility site management and operating personnel to facilitate implementation, development, and operation of the solid waste management facility. The SOP is to provide an operating guide for site management to maintain the facility in compliance with the engineering design and applicable regulatory requirements of the TCEQ. These documents were prepared using 30 TAC Chapter 330 regulations and will become part of the facility permit if the proposed permit amendment is approved by the TCEQ.

10. PROTECTION OF ENDANGERED SPECIES

Correspondence with the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department indicate that minimal to no impacts to threatened or endangered plant or animal species are expected from the continued operation of this facility.

11. PROTECTION OF WETLANDS

The only Section 404 jurisdictional areas located on or near the site are HCFCF channels P100-00-00 (Greens Bayou, located east of the site) and HCFCF Ditch P114-00-00, which is located along the southern portion of the site. No development is proposed within Section 404 Jurisdictional Areas. A wetland jurisdictional determination from the U.S. Corps of Engineers (USACE) is included in the application. The USACE letter included in the permit amendment application notes that no Department of the Army permit under Section 404 of the Clean Water Act is required for this project.

12. FINANCIAL ASSURANCE

Authorization to operate this facility is contingent upon the maintenance of financial assurance in accordance with 30 TAC Chapter 330 (Municipal Solid Waste), Chapter 37 (Financial Assurance), and the provisions contained in the permit.

13. ATTACHMENTS

Attachments from the permit amendment application which provide illustrations of the site location, nearby land use, and site development include the following:

<u>Attachment</u>	<u>Description</u>	<u>Location in Permit Amendment Application</u>
#1	General Location Map	Parts I/II, Appendix I/IIA, Drawing 1
#2	Site Location Map	Parts I/II, Appendix I/IIA, Drawing 2
#3	Land Use Map	Parts I/II, Appendix I/II, Figure I/II-2
#4	General Phasing Drawing	Part III, Attachment 1B
#5	Final Contour Drawing	Part III, Attachment 7, Attachment 7A

14. ADDITIONAL INFORMATION

For information concerning the regulations covering this application, contact the Texas Commission on Environmental Quality:

Mr. Johnny Williamson
MSW Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711
(512) 239-6631

For more specific detailed technical information concerning any aspect of this permit amendment application or to request a copy of the Site Development Plan, please contact the Applicant's Agent or the Applicant at the address provided at the beginning of this summary.

15. PUBLIC PARTICIPATION PROCESS

The process through which the public is allowed to participate in the final decision on the issuance of a permit is outlined as follows.

- 15.1 A public meeting is held in the local area during the technical review period for all permit applications for a new municipal solid waste facility. During this meeting the Commission accepts formal comments on the application. There is also an informal question and answer period. Since the McCarty Road Landfill is not a new facility, and a permit amendment application is pending, a public meeting is not required under 30 TAC §39.501(e). Due to a significant number of requests for a meeting, though, including one from The Honorable Mario Gallegos, Jr., Texas State Senator, a public meeting will be held at 7:00 pm on December 2, 2004 at the Shadydale Elementary School, 5905 Tidwell Road, Houston, Texas 77016, in accordance with 30 TAC §55.154(c).
- 15.2 Technical review of the permit amendment application is completed, a final draft permit is prepared, and the application is declared technically complete. Information for the application, the draft permit, the notice, and summaries are sent to the Chief Clerk's office for processing.
- 15.3 The "Notice of Application" is sent to the applicant and published in the newspaper. This notice provides a 30-day period, from the date of publication, for the public to make comment(s) about the permit amendment application or draft permit. The notice also allows the public to request a public meeting for the proposed facility.
- 15.4 After the 30-day comment period has ended, a "Response to Comments" (RTC) is prepared for all comments received through the mail and at a public meeting. The RTC is then sent to all persons who commented on the permit amendment application. Persons who receive the comments have a 30-day period after the RTC is mailed in which to request a public hearing.
- 15.5 After the 30-day period to request a hearing is complete, the matter is placed on an agenda meeting for the TCEQ Commissioners to make a determination to grant any of the hearing requests and refer the matter to the State Office of Administrative Hearings for a public hearing.
- 15.6 A public hearing is a formal process in front of an Administrative Law Judge (ALJ) who conducts the hearing. The applicant and protestant party(ies) present witnesses

and testimony to support or dispute information contained in the permit amendment application. When all of this is complete, the ALJ will issue a Proposal for Decision (PFD). This PFD is placed on an agenda meeting of the TCEQ Commissioners for consideration of issuance or denial of the permit amendment.

- 15.7 After the commission has approved or denied an application, a motion for rehearing may be made by a party that does not agree with the decision. Any motion for rehearing must be filed no later than 20 days after the party or the party's attorney of record is notified of the decision. The matter could be set on another agenda for consideration by the Commission, or allowed to expire by operation of law.
- 15.8 Permit amendment applications for which no one requests a contested case hearing are considered uncontested matters after the 30-day comment period. The permit amendment application is placed on the Executive Director's signature docket and the permit amendment is issued. Any motion to overturn the Executive Director's decision must be filed no later than 23 days after the agency mails notice of the signed permit.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

EXECUTIVE SUMMARY

November 9, 2004

DESCRIPTION OF APPLICATION

Applicant: McCarty Road Landfill TX, LP

MSW Permit Application No. 261B

Type: Type I Municipal Solid Waste Landfill Facility

Request: To issue a municipal solid waste permit amendment, No. 261B; for the vertical expansion of a municipal solid waste Type I landfill facility and to operate this facility in accordance with the application.

Authority: Texas Commission on Environmental Quality rules, 30 TAC Chapter 330

STAFF RECOMMENDATION

Issue permit amendment as requested.

TECHNICAL INFORMATION

General: The facility is located in Harris County, Texas, within the City of Houston, at 5757A Oates Road, approximately 7 miles northeast of downtown Houston and approximately 3.5 miles north-northeast of the intersection of Interstate Highway 610 and Interstate 10. There are no hospitals, licensed child care facilities, ponds, lakes, or springs located within one mile of the facility, but there are approximately 2,000 residences in 11 neighborhoods, numerous commercial establishments, 1 school, 8 churches, 1 cemetery, 1 park, and 1 golf course. The majority of the land use immediately adjacent to the site would be classified as open space, commercial, residential, and industrial areas. The predominant land use within a one-mile radius of the site is for industrial activities. Depending on market conditions, the waste acceptance rate into the landfill will continue at its most recent estimated rate of approximately 6,000 tons-per-day (tpd) and at an expected maximum rate of 7,061 tpd in the distant future of municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational and industrial activities, Class 1 nonhazardous industrial solid waste defined as such due to asbestos content, Class 2 and Class 3 nonhazardous industrial solid waste, special waste, and other waste as approved by the Executive Director. The permit amendment application meets the requirements of the Commission's rules and provides the proper safeguards to protect the public health and safety, and the environment.

Conditions: Conditions of the permit are set forth in the final amended permit. Detailed information about the facility and its operation are contained in the Technical Summary.

Attachment C

Applicant's Compliance History
Dated August 1, 2006
MSW Permit No. 261B
McCarty Road Landfill TX, LP

Compliance History

Customer/Respondent/Owner-Operator:	CN601559222 McCarty Road Landfill TX, LP	Classification: AVERAGE	Rating: 4.05
Regulated Entity:	RN100213602 MCCARTY ROAD LANDFILL TX	Classification: AVERAGE	Site Rating: 0.51
ID Number(s):	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG08071
	AIR OPERATING PERMITS	PERMIT	1454
	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	49722
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	261A
	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	261B
	WASTEWATER	PERMIT	WQ0004134000
	WASTEWATER	PERMIT	TPDES0119326
	WASTEWATER	PERMIT	TX0119326
	AIR NEW SOURCE PERMITS	PERMIT	54395
	AIR NEW SOURCE PERMITS	REGISTRATION	75635
	AIR NEW SOURCE PERMITS	REGISTRATION	72609
	AIR NEW SOURCE PERMITS	PERMIT	2584
	AIR NEW SOURCE PERMITS	PERMIT	25610
	AIR NEW SOURCE PERMITS	PERMIT	45878
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG08071
	STORMWATER	PERMIT	TXR050074
	UNDERGROUND INJECTION CONTROL	PERMIT	5X2600413
Location:	5757 OATES RD # A, HOUSTON, TX, 77078		Rating Date: 9/1/2005 Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	August 01, 2006		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	April 06, 1999 to July 31, 2006		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: BOBBIE ROGANS Phone: 239-6197

Site Compliance History Components

- | | |
|--|--|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>BFI Waste Systems of North America, Inc.</u>
<u>McCarty Road Landfill TX, LP</u>
<u>BFI Waste Services of Texas, LP</u>
<u>SOUTHWEST LANDFILL TX, LP</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>BFI Waste Systems of North America, Inc.</u>
<u>SOUTHWEST LANDFILL TX, LP</u> |
| 5. When did the change(s) in ownership occur? | <u>01/10/2003</u>
<u>02/05/2003</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 09/17/2004 | (367144) |
| 2 | 09/17/2004 | (367145) |
| 3 | 02/24/2004 | (367146) |
| 4 | 01/08/2004 | (254104) |

5	09/17/2004	(367147)
6	09/17/2004	(367148)
7	09/17/2004	(367149)
8	09/17/2004	(367150)
9	09/17/2004	(367151)
10	09/17/2004	(367152)
11	09/17/2004	(367153)
12	03/06/2003	(25866)
13	09/12/2005	(431022)
14	09/17/2004	(367154)
15	08/18/2004	(367155)
16	10/30/2001	(80195)
17	07/25/2006	(482144)
18	09/17/2004	(367156)
19	12/17/2001	(80196)
20	09/17/2004	(367157)
21	01/02/2002	(80197)
22	03/10/2004	(262769)
23	05/30/2002	(80198)
24	08/08/2005	(397362)
25	09/17/2004	(367158)
26	10/19/2004	(367159)
27	02/16/2005	(427622)
28	03/28/2005	(390134)
29	04/13/2005	(427623)
30	01/02/2003	(19907)
31	06/22/1999	(62330)
32	12/30/2004	(390135)
33	06/09/2005	(427624)
34	12/30/2004	(390136)
35	11/12/2004	(390137)
36	12/30/2004	(390138)
37	01/25/2005	(390139)
38	05/09/2000	(62331)
39	02/10/2000	(62332)
40	05/31/2005	(377435)
41	11/01/1999	(62333)
42	04/15/2003	(31254)
43	02/16/2006	(451261)
44	01/03/2003	(16216)
45	06/16/2003	(327608)
46	06/16/2003	(327609)
47	06/16/2003	(327610)
48	07/24/2003	(327611)
49	08/25/2003	(327612)
50	09/16/2003	(327613)
51	10/21/2003	(327614)
52	11/18/2003	(327615)
53	12/16/2002	(327616)
54	12/19/2003	(327617)
55	01/15/2004	(327618)
56	07/15/2005	(447647)
57	01/15/2003	(234866)

58 07/15/2005 (447648)
 59 09/30/2005 (447649)
 60 11/18/2002 (234865)
 61 02/24/2004 (258026)
 62 10/10/2002 (234864)
 63 08/16/2001 (234863)
 64 07/11/2001 (234862)
 65 06/20/2001 (234861)
 66 05/16/2002 (234860)
 67 05/22/2001 (234859)
 68 04/11/2003 (234858)
 69 06/29/2004 (276250)
 70 04/10/2002 (234857)
 71 12/29/2004 (342751)
 72 03/11/2003 (234856)
 73 03/22/2002 (234855)
 74 03/13/2001 (234854)
 75 02/18/2004 (262284)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/29/2004 (276250)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 335, SubChapter A 335.6(c)
 Description: McCarty is permitted to take asbestos containing material (ACM). Because the ACM is recognized as a Class 1 waste; the facility is required to have and maintain a Notice of Registration (NOR). A review of the NOR (Attachment 3) indicates the presence of inaccurate information.

Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 330, SubChapter F 330.117(c)
 Description: McCarty received, from Oxyvinyl, waste contaminated with PCBs above regulatory levels from June 1998 to November 2003. McCarty received a shipment of TPH waste above regulatory limits from Albemarle in November 2003.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 330, SubChapter F 330.130
 Description: Since 1994 exceedances have been reported at probes M, O, P, Q, R, S, T1, and T5. The facility is required to report these exceedances and other quarterly data to both the TCEQ Central Office and the Regional Office. This information has not been reported since August 16, 2001.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 330, SubChapter K 330.281(b)
 Description: During the investigation on March 25, 2003 the facility provided a copy of financial assurance which had a effective date of April 1, 2003. A subsequent call to the financial assurance section of the TCEQ on April 8, 2004, indicated that the TCEQ had not received an revised document as required.

Date: 05/31/2004 (367151)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2002 (367157)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter

Date: 05/09/2000 (62330)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 330, SubChapter E 330.56(h)(1)(B)
 Description: FAILURE TO COMPLY

Date: 01/09/2004 (254104)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 101, SubChapter A 101.20(1)
 30 TAC Chapter 122, SubChapter B 122.143(4)
 40 CFR Chapter 60, SubChapter C, PT 60, SubPT WWW 60.755(a)(3)
 Rqmt Prov: OP IA
 Description: Failure to expand the gas collection system within 120 days of measuring an exceedance in gauge pressure at an extraction well after failing to achieve negative pressure at the gas extraction well within 15 days of measuring the exceedance.

Date: 03/07/2003 (25866)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 111, SubChapter B 111.201
 Description: Failure to conduct outdoor burning for fire extinguisher training so that the regulated entity met the exemption requirement found in 30 TAC Chapter 111.205(a) of providing the BAQC with 10 working days notice resulted in a violation of 30 TAC Chapter 111.201, for unauthorized outdoor burning.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter F 122.503(a)(1)
 Description: Failure to submit an application for a new authorization to operate to the TCEQ at a site where there is a change in any applicability determination or the basis of any determination in the GOP application.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter F 122.503(a)(3)
 Description: Failure to submit an application for a revised FOP to include a change in the permit identification of ownership or operational control of the site.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 122, SubChapter F 122.503(c)(2)
 Description: Failure to submit an application to the TCEQ for a change to the FOP before the change is operated.

Date: 12/31/2002 (234866)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2002 (234865)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)[G]
 Description: Failure to meet the limit for one or more permit parameter

- F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

Attachment D

Executive Director's Response to Public Comment

MSW Permit No. 261B

McCarty Road Landfill TX, LP

TCEQ PERMIT NUMBER 261B

APPLICATION BY	§	BEFORE THE
	§	
McCarty Road Landfill TX, LP	§	TEXAS COMMISSION ON
Type I Municipal Solid Waste Landfill Facility	§	ENVIRONMENTAL QUALITY
Harris County	§	

CHIEF CLERK'S OFFICE
 2017 SEP 11 PM 2:50
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application filed by McCarty Road Landfill TX, LP for the amendment to Permit Number 261B, and on the Executive Director's preliminary decision.

As required by Title 30 Texas Administrative Code § 55.156 (30 TAC § 55.156), before an application is approved, the Executive Director (ED) prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received formal written and oral comments from the following persons and groups: Elliot Arceneaux, Effie B. Arceneaux, W. E. Arthur, Ambra D. Asberry, Debra Asberry, Maurice Asberry, Odell Asberry, Patricia S. Avalos, Martina Cartwright, Tommy R. Banks, Mary Barnes, Nicole R. Bates, Rhonda Battle, Ruthie M. Bell, Wesley Benard, Brenda Bolden, Roy F. Candless, Earnestine Champine, Concerned Citizens, Andrea Cooksey, Chris Cornett, Scott L. Cornett, Bernice Cranford, Lawrence Cranford, Donite Curtis, Robin Germain Curtis, Eval Duracell, Joe Dickens, Lesley Ann Dickens, Lee R. Dunham, Mattie Ebon, Elfin Franklin, Texas State Senator Mario Galleon, Jr., on behalf of several members of the public, Fran Gentry, Maria German, United States Representative Raymond (Gene) Green, Seconded Won Green, Birdie Greer, Dr. Le Killam, Mary Godhra, Shirley Harris, Walter M. Heady, Mattie Johnson, Marshall Galantine, William Jones, Gloria Lane, James H Leonard, Melba Lewis, R. Lyes, Jacqueline Mayfrom, Jackie Mayhorn, Donna McCandless, Roy McCandless, Stephanie Melton, Betty J. Middleton, James Mukes Jr., Henry Earl Myleo, Eula L. Bush Myles, Otis R. Myles, Pearlie Myles, Amber Neuman, Northeast Environmental Justice Association (NEEJA), Barbara J. Oneil, Derrick D. Owens, Monica Owens, Andrea R. Phylar, Timothy Phylar, Pollution Control Division of Harris County Public Health & Environmental Services (HCPHES), Barry Price, Thelma Price, Terry Randall, Lois Richards, Joel Richards, Leann Robinson, Donald Sampay, Maida Sampay, T.P. Samuel, Dorothy Scott, Maxine L. Seaes, Imy M Senegal, Ima Smith, Javier Sobrevilla, Helen Swanson, Mae Syker, Thelmarie Tharp, Earlene Valentine, Darrell Walker, Lommie Watson, Rose Watson, Mamie G. Wells, Christel Wilkins, Hermise M. Wilkins, Ramona Wilkins, Helen Williams, Helena Williams, Ms Maureen Williams, Roy Williams, Laura Wilson, Mary Wilson, Bridget Wofford, Clarence Zenon, Earline Zenon. Lawrence Cranford, Joe Pinzon, Buck Buchanan, Ernest McGowan, Tommy Black, Louise Black, Andrea Cooksey, Mark Sweeney, Grover Hankins, Frank Watson, Weingarten entities which include Weingarten Realty Investors, WRI/7080 Express Lane, Inc., AN/WRI Partnership, Ltd., An/WRI Partnership #1, Ltd., and Eagle Ind., L.P. (collectively referred to as "Weingarten"). Notwithstanding the limitation in the rule to relevant and material, or significant comment, this Response addresses all timely public comments

received, whether or not withdrawn. If you need more information about this permit amendment application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

1. GENERAL

1.1 Purpose:

This permit amendment application, submitted by McCarty Road Landfill TX, LP, requests a vertical expansion and continued operation of the MSW Type I McCarty Road Landfill in Harris County, Texas. The total permitted facility includes 458.25 acres of land, of which approximately 388.1 acres will be used for waste disposal. The maximum final elevation of final cover material will be 316.0 feet above mean sea level (MSL). The site will be authorized to accept the waste streams as listed below.

1.2 Wastes to be Accepted:

Solid waste to be disposed of will primarily consist of municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational and industrial activities, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, and yard waste. Class 1 nonhazardous industrial solid waste defined as such due to asbestos content, Class 2 nonhazardous industrial solid waste, Class 3 nonhazardous industrial solid waste, special waste (e.g., solidified sludges, dead animals, empty containers, regulated and nonregulated asbestos-containing materials), and other waste as approved by the Executive Director, may also be accepted. The landfill will not be authorized to accept waste materials other than those mentioned above, nor any waste streams that are expressly prohibited by Title 30 Texas Administrative Code (30 TAC) Chapter 330.

1.3 Waste Acceptance Rate:

Over the anticipated life of the facility, authorized wastes will be accepted at an average rate of approximately 6,532 tons-per-day, which results in an estimated life of approximately 10.9 years. The site currently receives approximately 2,190,000 tons-per-year or 2,777,425 cubic yards (assuming an in-place density of 1,577 lb/cy) of solid waste (6,000 tons-per-day based on a typical 365-day operating schedule). It is assumed that the incoming waste rate will increase at the same rate as the population of Harris, Montgomery, and Liberty counties, and surrounding areas. The

maximum annual waste acceptance rate is projected to be 2,577,265 tons-per-year or 3,268,567 cubic yards (assuming an in-place density of 1,577 pounds-per-cubic yard) of solid waste (7,061 tons-per-day based on a 365-day operating schedule). These projections are based on current market conditions, and may vary as market conditions change.

2. LOCATION AND SIZE

2.1 Location:

The McCarty Road Landfill is located within the City of Houston in Harris County, Texas at 5757A Oates Road, approximately 7 miles northeast of downtown Houston and approximately 3.5 miles north-northeast of the intersection of Interstate Highway 610 and Interstate 10.

2.2 Elevation and Coordinates of Permanent Benchmark:

Latitude:	N 29° 49' 22"
Longitude:	W 95° 14' 33"
Elevation:	45.53 feet above MSL

2.3 Size:

The total area within the permit boundary under the proposed permit amendment is approximately 458.25 acres.

3. FACILITY DESIGN, CONSTRUCTION, AND OPERATIONS

3.1 Facilities Authorized:

The permittee will be authorized to operate the facility subject to the limitations contained in the permit. All waste disposal operations will be limited to the units and other features identified in the Site Development Plan and the Site Operating Plan as follows:

- 3.1.1 A Type I municipal solid waste landfill facility with a disposal footprint of approximately 388.1 acres. The landfill will have two major fill areas, the pre-Subtitle D and Subtitle D areas. The pre-Subtitle D Area is divided into five sectors (Sectors A, B, C, D, E) and encompasses 335.0 acres, or approximately 86% of the total waste fill area. The Subtitle D Area is divided into four sectors (Sectors F1, F2, F3 [Phase 1], F3 [Phase 2]) and encompasses 53.1 acres, or approximately 14% of the total waste fill area. The landfill has a maximum below-grade excavation to elevation 1.8 feet

above MSL with continuous area filling with waste, and a maximum above-grade aerial fill to elevation 316.0 feet above MSL. The facility has a scale house, scales, flare facility, maintenance facility, office building, recycling plant, leachate storage tank, soil borrow area, drainage culverts and spillways, 25 ground-water monitoring wells, 32 soil vapor extraction wells, 242 vertical methane extraction wells, clay liner system in the pre-Subtitle D Area, and composite liner system and leachate collection system in the Subtitle D Area.

- 3.1.2 Access roads, temporary and permanent drainage features, all appurtenances, and other improvements shall be built, operated, and/or maintained in accordance with the conditions of the permit, Parts I - IV of the permit amendment application, and commission regulations. The facility shall be managed in a manner to protect human health and the environment.

4. LAND USE

- 4.1 The site is located within the City of Houston in Harris County, on the north side of the intersection of U.S. Highway 90 (also known as McCarty Road and the Beaumont Highway) and Oates Road, approximately 3.5 miles north-northeast of the intersection of Interstate Highway 610 and Interstate Highway 10.
- 4.2 The City of Houston has no zoning or other provisions for general land use.
- 4.3 The surrounding land, within a one-mile radius of the site, is used for light and heavy industrial ventures, general commercial ventures, agriculture, undeveloped areas (mostly floodplain areas), public activities, and residential properties.
- 4.4 Specific land uses within the 1-mile boundary of the site include, but are not limited to, the McCarty Road Landfill offices and entry facilities, a GSF Energy LLC landfill gas-to-energy facility, a rail-served industrial park consisting of several businesses, numerous large motor freight companies, warehouses, shopping centers, the Cordell Brick Plant, the Greens Bayou Power Plant, 2 solid waste facilities (closed Type I Bluebonnet Landfill and active Type IV WCA Landfill), 11 residential neighborhoods with approximately 2,000 homes, 1 school, 8 churches, 1 cemetery, 1 golf course, and 1 park.

5. TRANSPORTATION AND ACCESS

- 5.1 The primary access routes to the site are U.S. Highway 90, Oates Road, Mesa Drive, and Interstate Highway Loop 610.
- 5.2 Direct access to the site is currently provided by US Highway 90, a four-lane state-

maintained highway intersecting Oates Road. Within 18 months after the approval of the major permit amendment application, the permittee will relocate the facility access road entrance from Oates Road to Mesa Drive. The location of the entrance facilities, such as the scales/scale house and offices, will remain unchanged. Mesa Drive is a four-lane major north-south roadway consisting of four travel lanes, paved shoulders, and a median. The two 33-foot asphalt travel ways are separated by a 30-foot median. Mesa Drive has a speed limit of 50 miles per hour. The legal maximum gross weight limit for the road is 80,000 pounds. Based on information obtained from the Texas Department of Transportation (TxDOT) the 2002 average daily traffic volume at the intersection of US Highway 90 and Mesa Drive is 36,000 vehicles per day traveling in both directions. For 2003, the application's traffic study determined a count of 4,922 vehicles per day for the intersection of US Highway 90 and Oates Road. The landfill facility is presently visited by an average of approximately 500 waste haul vehicles per day for the 7 days that the landfill is open per week. This information is contained in the application, and the application's traffic study indicates that the landfill access roads can sufficiently handle the current and anticipated future traffic volumes associated with this facility.

- 5.3 The nearest public use airport is the Houston Hobby Airport, which is located approximately 12.5 miles south of the site. The Federal Aviation Administration was contacted and did not object to the proposed permit amendment.

6. SURFACE WATER PROTECTION

6.1 Floodplain:

The 100-year floodplain extends along Greens Bayou, which runs to the east of the site. Over 4 feet of freeboard exists between the 100-year flood elevation in Greens Bayou and the limits of waste. The vertical expansion proposed in this permit amendment does not impact the flow of stormwater in Greens Bayou.

6.2 Stormwater:

Stormwater discharges through perimeter channels and detention ponds into Harris County Flood Control District (HCFCD) Ditch P116-00-00 to the north, HCFCD Ditch P114-00-00 to the south, and Greens Bayou to the east. Eight detention ponds are proposed to control stormwater from the landfill before discharging into the HCFCD channels. On September 12, 2003, the HCFCD issued an approval letter for the proposed drainage design associated with this vertical expansion.

6.3 Contaminated Water:

Stormwater which comes into contact with solid waste will be considered contaminated water. Contaminated water at the working face will be properly

contained and managed. Contaminated water will be pumped to a City of Houston sewer line or transported via tanker trucks to properly permitted offsite facility for treatment.

7. GROUND-WATER PROTECTION

7.1 Ground-water Protection:

To reduce the potential for impacts to groundwater at the site resulting from waste disposal operations, the final cover of pre-Subtitle D fill areas will consist of, from the top down, a 12-inch thick grassed erosion layer, and an 18-inch thick clay infiltration layer with a coefficient of permeability that will not exceed 1×10^{-5} cm/s. The final cover of the Subtitle D fill area consists of a 24-inch thick erosion layer, a drainage geocomposite, a 40-mil smooth (topslope) and textured (sideslope) linear low-density polyethylene synthetic membrane, and an 18-inch thick compacted clay infiltration layer with a coefficient of permeability that will not exceed 1×10^{-5} cm/s. The bottom and sides of the pre-Subtitle D fill areas are lined with either an in-situ clay liner or a 3-foot thick constructed clay liner. The bottom and sides of the Subtitle D fill area are lined with a 24-inch compacted clay subgrade overlain by a 60-mil high-density polyethylene flexible membrane, a leachate collection system, and a 24-inch protective soil cover layer, respectively from bottom to top.

7.2 Monitoring Wells:

The ground-water monitoring system, which will provide for early detection of potential releases from the facility, will consist of 25 ground-water monitoring wells that form the site Point of Compliance monitoring system. The ground-water monitoring network will be sampled, analyzed, and monitored in accordance with the procedures in the Ground-water Sampling and Analysis Plan (Attachment 11 of the permit amendment application), which is part of the facility permit.

8. CONTROL OF METHANE

8.1 The constructed final cover systems and the below grade liners, as described in Section 7.1 of this Background information, help reduce the potential of methane gas migration.

8.2 Landfill gas (LFG) migration is monitored around the perimeter of the facility utilizing 22 permanent landfill gas monitoring probes. Attachment 14 of the permit amendment application contains information about the LFG monitoring system and monitoring procedures. If the monitored methane gas is above the regulatory limits, the contingency plan contained in Attachment 14 will be implemented.

8.3 The site is currently operating an active LFG collection and control system (CCS).

Some modifications are proposed to adapt the existing CCS to the vertical expansion proposed in this permit amendment. The collected LFG is sent to a Landfill Gas-to-Energy facility, located adjacent to the site, for beneficial use.

9. **SITE DEVELOPMENT AND OPERATION**

The Site Development Plan (SDP), Part III of the permit amendment application, and the Site Operating Plan (SOP), Part IV, are intended to provide guidance from the design engineer to the facility site management and operating personnel to facilitate implementation, development, and operation of the solid waste management facility. The SOP is to provide an operating guide for site management to maintain the facility in compliance with the engineering design and applicable regulatory requirements of the TCEQ. These documents were prepared using 30 TAC Chapter 330 regulations and will become part of the facility permit if the proposed permit amendment is approved by the TCEQ.

10. **PROTECTION OF ENDANGERED SPECIES**

Correspondence with the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department indicate that minimal to no impacts to threatened or endangered plant or animal species are expected from the continued operation of this facility.

11. **PROTECTION OF WETLANDS**

The only Section 404 Jurisdictional Areas located on or near the site are HCFCD channels P100-00-00 (Greens Bayou, located east of the site) and HCFCD Ditch P114-00-00, which is located along the southern portion of the site. No development is proposed within Section 404 Jurisdictional Areas. A wetland jurisdictional determination from the U.S. Corps of Engineers (USACE) is included in the application. The USACE letter included in the permit amendment application notes that no Department of the Army permit under Section 404 of the Clean Water Act is required for this project.

12. **FINANCIAL ASSURANCE**

Authorization to operate this facility is contingent upon the maintenance of financial assurance in accordance with 30 TAC Chapter 330 (Municipal Solid Waste), Chapter 37 (Financial Assurance), and the provisions contained in the permit.

In compliance with the requirements of 30 TAC Section 330.111, the permittee submitted a revised Site Operating Plan on October 28, 2005 to address TCEQ rule changes to Subchapter F of 30 TAC Chapter 330, effective December 2, 2004. The rule changes affected topics such as, but not limited to, fire protection, pickup of litter along access roads, facility operating hours, access control, and the management of ponded water. In addition to these topics, other revisions were requested by the TCEQ to provide more specificity in the SOP concerning such categories as: the qualifications and experience of the facility staff, training topics, the dedicated equipment for landfill operations, waste

unloading procedures, the size of the working face(s), the Odor Management Plan, the coverage of waste, the management of special and prohibited wastes, and record keeping.

Procedural Background

This application is for an amendment to a municipal solid waste landfill permit. The permit application was received on April 6, 2004 and declared administratively complete on April 19, 2004. The Notice of Receipt and Intent to Obtain Permit (public notice) for this permit amendment application was published on April 29, 2004 in the Houston Chronicle. A public meeting was held on December 2, 2004 at the Shadydale Elementary School in Houston. The Notice of Application and Preliminary Decision was published on January 14, 2005 in the Houston Chronicle. The comment period formally closed on February 14, 2005. Subsequently, the applicant submitted a revision to its Site Operating Plan (SOP), consistent with revisions to the Municipal Solid Waste Rules, adopted in 2004. In response to comments from US Representative Green, the Executive Director extended the comment period to accept and consider public comments on the permit amendment application until June 15, 2005.

COMMENTS AND RESPONSES

Similar comments/portions of comments and concerns that can be addressed by one explanatory response are grouped to minimize redundancy.

To the extent that this permit amendment application is processed under the Chapter 330 Municipal Solid Waste Rules in place in April, 2004, all references to Chapter 330 rules in responses to comments below pertain to the Rules as they existed prior to revisions adopted in March 2006.

COMMENT 1: Several commenters expressed concern that the proposed expansion would result in odor problems. Comments received indicate that the landfill in its current state releases bad odors in the neighboring areas. One commenter stated that there is a smell akin to something being burned about three or four nights a week. Another commenter indicated that the odor problem exists throughout the entire year. Also, a comment received alleged that a city inspector found that no odor problem existed, although he failed to roll down the window of his automobile. A commenter stated that odor management provisions contained within the Site Operating Plan on Air Quality/LFG Control are vague and unenforceable. Specifically, the commenter questions the sufficiency of language concerning multiple odor management practices, including the odor-control mister system, leachate handling, and control efforts associated with gas collection wells. This commenter offers performance-based provisions for inclusion in the permit and Site Operating Plan. (Grover Hankins, Dr. Gillam, Lawrence Cranford, Joe Pinzon, Bernice Cranford, Lois Richards, Martina Cartwright, Jackie Mayhorn, Robin Germain Curtis, NEEJA, HCPHES, Weingarten).

RESPONSE 1: Under the TCEQ Municipal Solid Waste Rules [30 TAC Chapter 330], McCarty Road Landfill TX, LP is required to operate the landfill in such a way that it does

not create a nuisance, and specifically, to minimize odors, vectors, windblown litter or waste, etc. through the use of proper daily cover and compaction procedures at the landfill. Pursuant to 30 TAC § 330.133(a), landfills such as the McCarty Road Landfill that operate on a 24-hour basis are required to cover the working face or active disposal area at least once every 24 hours with 6 inches of clean, well-compacted earthen material (alternate material daily cover may be allowed by permit provision or permit modification, provided the alternative material is shown effective).

Additionally, an Odor Management Plan (Section 4.10.2) has been added to the SOP to more clearly define what measures will be maintained and added to address the complaints above. To supplement in-place odor management practices equipment, additional measures to be added include the progressive expansion of the facility landfill gas collection and control system, the installation of a larger enclosed gas flare, restrictions on the size of the working face during operating hours (dependent on incoming waste rate), minimization of the working face area during off-peak hours (10:00 PM - 5:00 AM), the use of portable deodorizers, and the installation of a deodorizer curtain.

The Executive Director has determined that the draft permit meets applicable TCEQ regulations. If objectionable odors occur, the owner or operator must initiate appropriate measures to alleviate the condition. Procedures concerning the covering of waste at the facility are addressed in the Site Operating Plan, Part IV of the application. If the owner or operator follows these procedures, odors from the landfill should be reduced. In addition, if the permit is approved, it would not limit the ability of a landowner to use common law remedies for a nuisance in response to activities that interfere with his use and enjoyment of his property. For information on TCEQ's odor complaint investigation procedures, interested persons are encouraged to visit the following webpage:

http://www.tceq.state.tx.us/compliance/complaints/protocols/odor_protodef.html

COMMENT 2: Certain commenters expressed concern about the presence of large numbers of birds and vector infestations, including insects and rodents at and around the landfill, and the potential for significant increase in bird and vector infestation due to the increase in volume of waste accepted by the landfill under the proposed permit amendment. (NEEJA, Dr. Gillam, Martina Cartwright).

RESPONSE 2: According to the TCEQ's MSW rules, specifically 30 TAC Section 330.151, the site operator must take the appropriate steps to prevent and control onsite populations of disease vectors using proper compaction and daily cover procedures, and the use of other approved methods when needed.¹ The Applicant's proposed vector control plan is addressed in the Site Operating Plan of the application. The application states that the operator will take

¹ The TCEQ's MSW Rules define a vector as an agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

the appropriate steps to prevent and control onsite populations of disease vectors through the proper placement and compaction of daily cover over the waste. The revised SOP also contains a Bird Abatement Plan. The Executive Director determined that the application complied with the requirements of 30 TAC Section 330.151. The application and its contents are incorporated into the permit amendment currently under consideration for issuance by the TCEQ.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action. Citizen-collected evidence may be used in such an action. See 30 TAC Section 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. The TCEQ has long had procedures in place for accepting environmental complaints from the general public but now has a new tool for bringing potential environmental problems to light. Under the citizen-collected evidence program, individuals can provide information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Report an Environmental Problem? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028, and may be downloaded from the agency website at www.tceq.state.tx.us (under Publications, search for Document No. 278.)

COMMENT 3: Several commenters expressed past, present, and future health-related concerns, and commented about illnesses such as cancer, emphysema, respiratory illness, and allergies (Martina Cartwright, Elliot Arceneaux, Effie B. Arceneaux, W. E. Arthur, Ambra D. Asberry, Debra Asberry, Maurice Asberry, Odell Asberry, Patricia S. Avalos, Tommy R. Banks, Mary Barnes, Rhonda Battle, Ruthie M. Bell, Wesley Benard, Brenda Bolden, Roy F. Candless, Earnestine Champine, Concerned Citizens, Chris Cornett, Scott L. Cornett, Bernice Cranford, Lawrence Cranford, Donte Curtis, Eval Duracell, Joe Dickens, Lesley Ann Dickens, Lee R. Dunham, Mattie Ebon, Elfin Franklin, Fran Gentry, Maria German, United States Representative Gene Green, Seconded Won Green, Birdie Greer, Mary Godhra, Shirley Harris, Walter M. Heady, Mattie Johnson, Marshall Galantine, William Jones, Gloria Lane, James H. Leonard, Melba Lewis, R. Lyes, Jacqueline Mayfrom, Donna McCandless, Roy McCandless, Stephanie Melton, Betty J. Middleton, James Mukes Jr., Henry Earl Myleo, Eula L. Bush Myles, Otis R. Myles, Pearlie Myles, Amber Neuman, Barbara J. Oneil, Derrick D. Owens, Monica Owens, Andrea R. Phylar, Timothy Phylar, Barry Price, Thelma Price, Terry Randall, Leann Robinson, Donald Sampay, Maida Sampay, T.P. Samuel, Dorothy Scott, Maxine L. Seaes, Imy M. Senegal, Ima Smith, Javier Sobrevilla, Helen Swanson, Mae Syker, Thelmarie Tharp, Earlene Valentine, Darrell Walker, Lommie Watson, Rose Watson, Mamie G. Wells, Christel Wilkins, Hermise M. Wilkins, Ramona Wilkins, Helen Williams,

Helena Williams, Ms Maureen Williams, Roy Williams, Laura Wilson, Mary Wilson, Bridget Wofford, Clarence Zenon, Earline Zenon Dr. Gillam, Donna McCandless, Joe Pinzon, Lois Richards, Robin Germain Curtis, Frank Watson, Senator Gallegos, Jr., Dan Doherty, HCPHES, Weingarten, NEEJA)

RESPONSE 3: The Executive Director has received no information that shows that the proposed facility presents a threat to human health or the environment. The Executive Director determined that the proposed landfill was designed in compliance with the Texas Solid Waste Disposal Act (TSWDA), and with the TCEQ's MSW Rules developed to protect human health and the environment.² If the proposed landfill is constructed and operated as shown in the application and as required by the regulations, the Executive Director expects human health and the environment to be protected.

COMMENT 4: Comments indicated a concern regarding airborne contaminants stemming from landfill operations, and hazards related to dust and airborne particles. The comments also express concern about a the potential for an increase in air emissions resulting from increase in truck traffic. (Dr. Gillam, Joe Pinzon, Bernice Cranford, Mark Sweeney, Senator Gallegos, Jr., Dan Doherty, NEEJA, Martina Cartwright, Weingarten)

RESPONSE 4: This is a municipal solid waste permit application and air quality is outside the scope of this review. Should the nature of the facility's operations necessitate, the applicant may be required to apply for separate permits which regulate air quality. That being said, the applicant is required to operate the landfill in such a way that it does not create a nuisance. In order to prevent the creation of dust reaching the level of a nuisance, the SOP requires that the applicant maintain landfill haul roads and access roads in a reasonable dust-free condition by periodic spraying from a water truck. During dry conditions, the landfill manager will routinely inspect the site and establish a frequency, if necessary, to spray the access roads with water to prevent nuisance conditions from developing (SOP Section 4.10.1). Additional landfill manager monitoring obligations are set forth in SOP Section 2.1.2.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

² The Texas Solid Waste Disposal Act is codified in Chapter 361 of the Texas Health and Safety Code. The TCEQ's MSW Rules are located in Chapter 330 of Title 30 of the Texas Administrative Code.

COMMENT 5: Comments indicated a concern regarding the tracking of mud onto area streets and public byways by trucks entering and exiting the landfill. (Weingarten, HCPHES, Dr. Gillam, Tommy Black)

RESPONSE 5: The Texas Department of Transportation performed a review of the permit amendment application, and submitted a September 22, 2004 letter to the TCEQ with their findings. One of the three findings was that provisions should be taken by the applicant to prevent the tracking of mud onto the highway. In addition, state rule 30 TAC Section 330.127(a) requires that the tracking of mud from a site onto public roadways be minimized. To meet these two criteria, the applicant describes in Section 4.12 of Part IV of the application how the paved entrance road and crushed-stone internal roads minimize the tracking of mud by vehicles both exiting and entering the landfill facility. Within six months of issuance of the permit amendment, the applicant would also install a truck wheel washing station near the facility entrance to help reduce the tracking of mud by vehicular traffic. The landfill manager will also be responsible for inspecting the site during wet weather and implementing additional mud reduction measures should the routine procedures not be adequate. The applicant also proposes to move the primary entrance into the facility from Oates Road to Mesa Drive within 18 months of issuance of the permit amendment. This would create a 1.5-mile long asphalt road in which to address the tracking of mud by vehicular traffic prior to leaving the site. After the proposed new entrance road is completed, the truck wheel washing station would continue to be utilized in reducing the tracking of mud when needed.

Additionally, based upon the comments received and discussions which ensued between the applicant and HCPHES, the language in the draft permit pertaining to the tracking of mud offsite has been revised to include the following language:

“Tracking of mud and associated debris onto public roadways must be removed at least once per day on days when mud and associated debris are being tracked onto the public roadway.”

COMMENT 6: Several commenters indicated that the landfill should be sited at a different location. These comments suggest that the landfill has existed at this location for a long period of time, and that the landfill operations should be relocated to another geographical location. Some commenters stated that the community has been unfairly targeted as the site of the landfill based upon the economic and/or racial makeup of the community. One commenter questions the absence of environmental justice information in the Land Use section of the application, in light of this landfill being subject of past environmental justice studies. (Dr. Gillam, Lawrence Cranford, Joe Pinzon, Bernice Cranford, Lois Richards, Martina Cartwright, Jackie Mayhorn, Tommy Black, Robin Germain Curtis, Frank Watson, Andrea Cooksey, Louise Black, Senator Gallegos, Jr., Dan Doherty, Joel Richards, NEEJA)

RESPONSE 6: The Commission’s municipal solid waste regulations at 30 TAC Section 330.53(b)(8) require that the Commission consider the impact of a site upon a city, community,

group of property owners, or individuals in terms of compatibility of land use, zoning, community growth patterns, and other factors associated with the public interest. To assist the Commission's consideration of these issues, the applicant is required to include a description of the land use within one mile of the proposed facility and the growth trend and direction of major development for the nearest community. The Executive Director has determined that the required information concerning surrounding land uses was submitted in the application.

While the TCEQ and EPA collaborate on the cumulative impacts from permitting activities, rules, and policies of both agencies, the TCEQ continues to actively manage a State Environmental Equity Program. Low-income and minority communities often believe that they are burdened with a disproportionate share of environmental risks. Hostilities can develop between these communities and the industries or facilities involved, making good-faith efforts to resolve disputes, address concerns, and seek solutions ineffective. The TCEQ's Environmental Equity Program was established in 1993 to help counter this trend by improving communication between government, local communities, and neighboring industries. Individuals may raise environmental equity or environmental justice concerns with TCEQ staff through a toll-free number, 1-800-687-4040, or at the following address and phone and fax numbers:

Environmental Equity (MC-108)
Texas Commission on Environmental Quality
P.O. Box 13087 Austin, TX 78711-3087
512/239-4000
512/239-4007 (fax)

Additional information can be found on the following website:

http://www.tceq.state.tx.us/comm_exec/opa/envequ.html

COMMENT 7: Several commenters indicated that the proposed permit amendment and continued operations at the landfill will have a negative effect on the property values of real estate within the community. (W. E. Arthur, Weingarten, Lawrence Cranford, Joe Pinzon, Andrea Cooksey, Senator Gallegos, Jr., Dan Doherty)

RESPONSE 7: Concerning siting and land use compatibility issues for municipal solid waste landfills, the Municipal Solid Waste Rules do not address the consideration of potential impacts to the property value of adjacent or area real estate holdings during the review of an application. The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider

property values when determining whether to approve or deny a permit application. The Executive Director's review of a permit application considers whether the proposed facility meets the requirements of Chapter 330 of the Commission's rules. Please note that 30 TAC Section 305.122(c) of the TCEQ's rules provides that the issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulation.

COMMENT 8: Comments received suggested that the proposed expansion of the landfill will result in a loss of native trees and growth causing displacement of animals, and causing risk of flooding in this flood plain. (Donna McCandless, Joe Pinzon, Senator Gallegos, Jr., Dan Doherty, Weingarten)

RESPONSE 8: Since the permit amendment application for the McCarty Road Landfill facility only proposes a vertical expansion of the landfill unit, and no lateral expansion, there would be no increase in the size of the landfill waste footprint, and no further clearing of existing trees or native growth surrounding the unit. Therefore, the potential impacts listed in the comment above concerning the loss of native trees, growth, or animals would not be applicable for this proposed permit amendment. The permit amendment application addresses the risk of flooding through the proposal to use eight detention ponds to control stormwater collected in the perimeter channels. Stormwater run-off from this landfill will discharge into the Harris County Flood Control District (HCFCD) ditches and Greens Bayou. As indicated in Attachment 6 of this application, the flow rates and volumes of the stormwater run-off from this landfill will not significantly increase from the currently permitted conditions. Please refer to Response to Comment Number 23 for more information on the drainage measures proposed for this landfill.

COMMENT 9: Comments suggested that continued operation of the landfill will lead to the death of domesticated animals due to air, water, and ground contamination. (Joe Pinzon, Senator Gallegos, Jr., Dan Doherty)

RESPONSE 9: While the Municipal Solid Waste Rules do not specifically address health concerns as they relate to domesticated animals, the Executive Director has determined that this proposed permit is protective of human health and the environment. Furthermore, as described in Response Number 6 above, 30 TAC § 330.58(b)(8) requires that the Commission consider the impact of a site upon a city, community, group of property owners, or individuals in terms of compatibility of land use, zoning, community growth patterns, and other factors associated with the public interest. In fashioning the proposed permit, the TCEQ professional staff considered the presence of residential makeup of the community and included appropriate safeguards, consistent with applicable law and regulations.

Finally, aside from the landfill operations regulated under this proposed permit amendment, persons are prohibited, under 30 TAC Section 101.4, from discharging any air contaminant in such a concentration which may adversely affect animal life, or interfere with the normal use and enjoyment of animal life, so as to cause a condition of nuisance. As indicated above, individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

COMMENT 10: Comments indicated a concern regarding past leaching of chemical residue onto soil and water onto landfill property, and contaminated standing water in nearby areas. (Bernice Cranford, HCPHES, Mark Sweeney, Weingarten, NEEJA, Martina Cartwright)

RESPONSE 10: The applicant will be required to implement the requirements contained in Attachments 6 and 15 to collect, store, and dispose of the landfill leachate and contaminated water. Contaminated water defined in the TCEQ Municipal Solid Waste Rules is water which has come into contact with waste, leachate, or gas condensate. The leachate and gas condensate will be either transported offsite for treatment at properly authorized treatment facilities, or recirculated into the landfill over areas underlain by Subtitle D composite liner and leachate collection systems in accordance with 30 TAC Section 330.56(o)(2). Contaminated water generated onsite will be pumped to a City of Houston sewer line or transported via tanker trucks to properly permitted offsite facility for treatment. Discharge of leachate, gas condensate, and contaminated water through surface drainage systems is prohibited. Section 4.19 of Part IV of the permit amendment application contains the procedures by which the landfill staff will address ponded water issues. Weekly inspections will be performed to detect the presence of ponding of water over areas where waste disposal has taken place. Ponded water will be removed as quickly as practicable, and contaminated water will be handled in accordance with the Leachate and Contaminated Water Plan (Attachment 15 of the permit amendment application).

COMMENT 11: Comments received indicated that citizen complaints presented to Harris County and the City of Houston resulted in unsatisfactory responses. (Bernice Cranford, Robin Germain Curtis)

RESPONSE 11: Citizen complaints can also be directed by correspondence to the TCEQ Region 12 Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, or by telephone at (713) 767-3500. Citizen complaints will be taken and recorded in Complaint Reports, assigned an Incident Number, and addressed through compliance investigations documented in a TCEQ Investigation Report, a copy of which will be forwarded to the complainant. The Investigation Report will include the specific complaint brought forth, a description of the

investigation performed, the investigation findings, and any actions to be taken by region staff in response to the complaint.

COMMENT 12: Comments received indicated that the City of Houston will realize a positive economic value as a result of the issuance of the proposed permit amendment. (Nicole R. Bates, Buck Buchanan, Ernest McGowan)

RESPONSE 12: Similarly to Response 7 above, the Municipal Solid Waste Rules do not address the consideration of potential economic impacts to local government entities in the review of the siting and land use compatibility of landfill units.

COMMENT 13: Comments received indicated that, according to state inspectors, BFI has conducted water well testing to ensure that the landfill is run right. (McGowan)

RESPONSE 13: The applicant has installed a certified ground-water monitoring system and sampling schedule as required by 30 TAC Sections 330.230 - 330.234. In addition, corrective measures have been taken to comply with the requirements of 30 TAC Sections 330.235 - 330.238 to address the current ground-water impacts by volatile organic compounds (VOCs). Depending on the type of ground-water sampling involved, ground-water samples are taken quarterly, semi-annually, or annually to document the quality of the groundwater, and presence of VOCs, in the uppermost aquifer beneath the McCarty Road Landfill site.

COMMENT 14: Commenters suggest that due to the landfill operations, the quality of water in the area is not at a safe drinking level, and that water contamination may impact the health and safety of local residents, employees, and other persons. (Weingarten, Donna McCandless, Joe Pinzon, Bernice Cranford, Lois Richards, Tommy Black, Robin Germain Curtis, Mark Sweeney, HCPHES, NEEJA, Martina Cartwright)

RESPONSE 14: As described in Response 27 below, the applicant has initiated corrective measures to address the presence of contaminated groundwater in order to comply with state rules 30 TAC Sections 330.235 - 330.238. A ground-water recovery trench and extraction wells have been installed to draw ground-water flow away from potential surface discharge points such as Greens Bayou, keeping contaminated groundwater in the proximity of the facility for remediation. The applicant has implemented the remediation work through a Corrective Action Implementation and Effectiveness Work Plan, which was approved by the TCEQ on September 8, 2004. The January 31, 2005 and February 14, 2006 Annual Corrective Action Reports concluded that the impacts to the uppermost aquifer by VOCs had been greatly reduced in lateral extent and concentration, and that the Enhanced Bioremediation Program would accelerate the degradation of the remaining constituents of concern.

Furthermore, the Executive Director has determined that the ground-water monitoring system and sampling schedule, as described in Response to Comment Number 13, above, will adequately ensure the protection of human health and the environment.

COMMENT 15: Commenters expressed concern about the presence of litter and debris on public roads and right of ways. One commenter suggested that Part 4 of the SOP should be revised to comply with best management practices to address the issue of windblown debris. (NEEJA, Martina Cartwright, Weingarten, HCPHES)

RESPONSE 15: Section 4.8 of the SOP, as revised, requires the daily cleanup of spilled solid waste materials along all access roads within a distance of two miles in either direction from both site entrances, which includes U.S. 90, Oates Road, Mesa Drive, Ley Road, and John Ralston Road. This frequency will be increased if the Landfill Manager deems necessary.

COMMENT 16: Comments received indicated that the landfill site has inadequate soil to meet facility requirements. (Mark Sweeney)

RESPONSE 16: The McCarty Road Landfill facility currently has a soil borrow area just east of the proposed new site entrance of Mesa Drive, at the extreme western portion of the facility. If the present soil borrow source should not be sufficient to provide the soil needed during the remaining site life of the facility, the applicant is not precluded by permit provision or state rule from having soil brought in from offsite sources to meet the future construction needs of the facility. The number of trucks that would be needed to provide this soil would be a very small percentage of the normal traffic flow to, from, and near the site.

For quite some time, the McCarty Road Landfill has had the liners for all proposed disposal cells constructed and covered with waste. Therefore, future soil stockpiles would mainly be needed for use as daily cover, fill, fire suppression stock, and to complete the final cover system prior to closure of the facility. There are no state rules, or proposed permit provisions, requiring a specific amount of soil to be available at the site for use in soil liner and final cover construction, the application of daily cover, or other uses. Requirements for the suitability of all soil material used at the site, regardless of source, are specifically addressed and defined in Attachment 4 (Geology and Geotechnical Report), Attachment 10 (Soils and Liner Quality Control Plan), Attachment 12 (Final Closure Plan), Appendix 12A (Final Cover System Quality Control Plan), and Part IV (Site Operating Plan) of the permit amendment application.

COMMENT 17: Comments received suggest that the permit amendment does not present adequate slope stability analysis. The comments indicate that there is no power metric sensitivity analysis,

and there is a failure in not considering potential problems associated with the site being adjacent to Greens Bayou. (Martina Cartwright, HCPHES, NEEJA)

Related comments indicate that there is inadequate soil and liner site-specific test information to assure proper stability analyses. "Please justify the parameters selected. Please justify the critical failure surfaces presented. It is impossible to know the soil strength parameters in areas without quality control at the waste-soil interface. Please justify your selections." (M. Sweeney)

RESPONSE 17: Attachment 4, Section 3.4 of this permit amendment application described the stability analysis performed for the interim and final cover. Section 3.4.1 states that XSTABLE 5.2, a computer program developed to model general slope stability by the Simplified Bishop and Rankine Block method, was used for the stability analysis. TCEQ MSW Rules or its guidelines do not specify the methods that have to be used for this type of analysis. Section 3.4.5 states that the proposed interim and final cover slopes are stable with a safety factor of 1.63 under the conditions analyzed. The safety factor of 1.63 was determined following the Corps of Engineers' manual and the EPA's technical guidance, and is higher than the safety factor recommended for long-term slope stability. The applicant will be required to implement the applicable requirements contained in Attachments 6, 12, 13, and Part IV of the permit amendment application for the slope construction and maintenance during the post-closure care period.

COMMENT 18: Comments received indicate that the permit amendment lacks a Risk Assessment which quantifies the risk(s) associated with a catastrophic event. (Martina Cartwright, NEEJA, Weingartner)

RESPONSE 18: The Municipal Solid Waste Rules do not address the requirement for a consideration of a Risk Assessment of potential catastrophic event scenarios during the review of an application. That being said, Section 7 of the SOP, as revised, contains a Fire Protection Plan which contains detailed methods/procedures for preventing or fighting various types of fires (vehicle, structure, equipment, working face, etc.) that could arise at the facility. Smoking is not allowed in any area proximal to flammable materials. Additionally, there is Safety Training which is required of facility personnel in order to promote safe site operating conditions. The training includes, among other topics, lectures on anticipating hazards, fire safety, and emergency response.

COMMENT 19: Comments received indicate that the landfill facility fails to have a holding pond. (Tommy Black)

RESPONSE 19: In responding to this comment, it is assumed that the commenter was referring to the detention pond used for surface run-off control. This permit amendment

application proposes to use eight detention ponds to control the onsite stormwater run-off collected in the perimeter channels. Please refer to Response to Comment Number 24, below, for more information on surface run-off control.

COMMENT 20: “There’s no testing beyond the parameters of the neighborhood. What should happen if you’re a good neighbor, there should be preventive measures to keep the community from having to react.” (Frank Watson)

RESPONSE 20: Monitoring requirements contained in the draft permit are designed to prevent negative effects upon human health and the environment. Specifically, the permit terms and conditions are crafted to address any impacts upon persons and property outside the facility site, irrespective of the distance a person or property may be situated from the landfill.

Regarding preventative measures, please see Response to Comment Number 18, above, which concerns permit terms and conditions intended to prevent negative consequences of landfill operations.

COMMENT 21: “The Green Bayou watershed has been revised by HCFCD. Construction permits may no longer be issued under the prior watershed parameters. The hydrology study no longer complies with local requirements. Please explain how a permit will be issued?” (M. Sweeney)

RESPONSE 21: The facility applied for a permit modification in 2003, and received approval in 2004, for improvements on the perimeter drainage systems that were built in accordance with the drainage system outlet design approved in 1987 by the HCFCD. The revisions proposed by the HCFCD to the Greens Bayou watershed parameters are presently in draft form, are yet to be implemented, and are therefore not in effect. This permit amendment application is for a landfill facility that was constructed in accordance to HCFCD requirements existing at that time.

COMMENT 22: One commenter questions the source of the cover material soils, and further questions whether the traffic study accounts for trucks transporting soil to the facility? (M. Sweeney)

RESPONSE 22: Please refer to Response to Comment Number 16, above.

COMMENT 23: Comments received suggest an anticipation of a significant increase in stormwater runoff from the site, should the permit amendment be issued. (NEEJA, Martina Cartwright)

The Landfill's vertical expansion will dramatically impact runoff that could directly impact Weingarten. McCarty Road Landfill has filed a Notice of Intent with TCEQ to discharge stormwater runoff pursuant to a TPDES Multi-Sector permit, and the discharge of that stormwater could affect neighboring property interests and the health and safety of residents, employees and others. (Weingarten)

RESPONSE 23: Review of the drainage systems for this permit amendment was based on the information provided in the application and in accordance with the applicable requirements contained in 30 TAC Chapter 330. Per Attachment 6 of the permit amendment application, onsite runoff will be collected in the perimeter channels, then conveyed to eight detention ponds, then discharged into the Harris County Flood Control District (HCFCD) ditches on the north (P116-00-00) and the south (P114-00-00) and the Greens Bayou on the east. This permit amendment proposes to use eight detention ponds to control surface discharge. Table 6-2 of this permit amendment application indicates that the discharge rates into the HCFCD ditches on the north and the south and the Greens Bayou on the east are the same or less than the currently permitted rates. The same table also indicates that the run-off volumes increase by two percent at the north ditch (P116-00-00), six-tenth of one percent at the south ditch (P114-00-00), and decrease by six percent at the Greens Bayou on the east. In comparison to the existing permitted conditions, the estimated surface run-off rates and volumes proposed by this permit amendment do not represent significant increases. The facility applied for a permit modification in 2003 and received approval in 2004 for improvements on the perimeter drainage systems that were built in accordance with the drainage system outlet design approved in 1987 by the HCFCD.

This landfill is prohibited from discharging any contaminated water offsite through the surface drainage system. The contaminated water generated onsite will be collected and transported offsite for treatment at properly authorized treatment facilities. This permit amendment application does not propose any offsite discharge points for the stormwater run-off other than those discharging into the HCFCD ditches and Greens Bayou.

COMMENT 24: Comments received suggest an anticipation of an exacerbation of existing ground-water contamination, should the permit amendment be issued. (NEEJA, Martina Cartwright, Bernice Cranford)

RESPONSE 24: The applicant has installed a certified ground-water monitoring system in accordance with 30 TAC Sections 330.230 - 330.234. In addition, corrective action/remediation measures have been initiated to address the ground-water contamination at the site, and are described in Response 27. As described in Response 14, above, the applicant has acted in response to the requirements of 30 TAC Sections 330.235 - 330.238 to prevent any movement of ground-water contamination beyond the proximity of the facility, and is addressing VOC contamination between the slurry walls and Greens Bayou through the Enhanced Bioremediation Program.

COMMENT 25: The landfill is currently polluting the groundwater as evidenced by the Corrective Measures Assessment. Even if remediation activity is beginning to “Clean-up” groundwater, capping of the non-Subtitle (D) areas must begin immediately. Please explain why placing an additional 35 million compacted cubic yards of MSW on this landfill will not provide additional infiltration resulting in continued polluting, in contravention of Draft Permit Condition IIIB. (Mark Sweeney)

RESPONSE 25: See Responses to Comment Numbers 26 and 28, below.

COMMENT 26: “The dramatic vertical expansion would serve to exacerbate those existing ground-water problems.” (Weingarten)

“Please explain how TCEQ is protecting the environment by allowing the proponent to vertically expand over a non-Subtitle D area with ground-water problems.” (M. Sweeney)

RESPONSE 26: The applicant has complied with the requirements of the Municipal Solid Waste Rules by implementing a ground-water corrective action program to address the impacts to site groundwater from the release of volatile organic compounds. Through the installation of two ground-water recovery well networks, a ground-water recovery trench, a ground-water treatment plant, two slurry walls, and three sumps, the applicant has redirected the flow of contaminated groundwater toward access points for extraction and remediation, thereby reducing the lateral extent of VOC-impacted groundwater and its opportunity for offsite migration toward Greens Bayou. The applicant has also initiated an Enhanced Bioremediation Program that will utilize the injection of a calcium-peroxide slurry to promote greater bioactivity in the degradation of the VOCs present in the upper water-bearing zone outside the slurry walls toward Greens Bayou.

COMMENT 27: “Please explain where the unfiltered ground-water test results are in the amendment. The owner must have been testing unfiltered ground-water samples since at least the Corrective Measures Assessment as TCEQ has no authority to issue a filter variance on ‘assessment constituents,’” per Appendix II to 40 Code of Federal Regulation, Part 258. (M. Sweeney)

RESPONSE 27: Field filtering is not allowed in the Ground-water Sampling and Analysis Plan that is contained within Attachment 11 of the permit amendment application, and which is incorporated by reference as a part of proposed Municipal Solid Waste Permit No. 261B.

COMMENT 28: “Please explain how the presented equipment dedicated to the McCarty Road Landfill will be capable of handling 6,000 tons of waste per day in an environmentally sound manner.” (M. Sweeney)

RESPONSE 28: Section 3 (Equipment) of the Site Operating Plan, as revised, contains Table 3.1 which provides a matrix for determining the minimum number of equipment pieces needed for specific functions, dependent upon the rate of acceptance of incoming waste at the time. The proposed minimum number of pieces for each of the identified waste rate ranges was determined by Staff to be reasonable and consistent with the practices of other facilities across the state. The applicant also commits to provide sufficient quantity and quality of equipment at the site to conduct operations within the facility design requirements, and in accordance with the permit. Other area sites operated by the applicant company are available to provide the McCarty Road Landfill facility with additional/replacement equipment when needed.

COMMENT 29: "The current gas collection and control system is inadequate to control migration of landfill gas. Seven existing gas probes have shown methane levels above the regulatory limit. Please explain why all extraction wells are not being replaced as part of this amendment so that well perforations run the entire thickness of the waste. Also, please explain how placing up to 128 feet of additional waste on the landfill will not negatively impact gas extraction. In addition, please explain how much ground-water pollution is occurring because of methane migration particularly from "light organic compounds". Another commenter is concerned whether "McCarty Road maintains sufficient gas monitoring and remediation plans to protect Weingarten from explosive or other gases." (M. Sweeney, Weingarten, NEEJA, Martina Cartwright)

RESPONSE 29: The current permit with its attached documents requires the landfill to implement gas monitoring and remediation procedures for the exceedance of the regulatory limit for detected landfill gas concentrations. Significant changes to the existing gas monitoring and collection system are the subject of a separate permit modification application, currently pending before the TCEQ. On October 28, 2005, the facility applied for a permit modification to revise the current Landfill Gas Management Plan and update the Landfill Gas Remediation Plan. The modification application was declared technically complete on December 29, 2005, and has undergone the public notice process. The proposed revisions reflect the ongoing expansion of the facility's landfill gas collection and control system. A final determination on the proposed permit modification is presently pending.

Attachment 14 Section 6.2 of the permit amendment application states "(a) as the site develops, additional extraction wells will be installed as needed to reduce the buildup of internal gas pressures caused by the increased generation of landfill gas (LFG). The locations and details of the anticipated proposed extraction wells for the currently permitted facility are shown in Drawing 14F-1." Section 6.3 proposes additional extraction wells for the vertical expansion proposed by this permit amendment. These additional extraction wells will be connected to the existing Gas Collection and Control System (GCCS), which discharges to the landfill gas recovery facility or to the flare facility for control. According to Sections 6.2 and 6.4 of the proposed permit amendment, future gas control capacity is designed with assistance of the EPA Landfill Gas Emissions Model. Each extraction well will be equipped with control valve and monitoring ports, to be used in conjunction with controls on the blowers, to allow the site

to regulate the vacuum and LFG levels at each individual extraction well. The existing blowers not only provide vacuum to the extraction wells but also the leachate risers through the leachate collection piping network.

In accordance with the MSW Rules (30 TAC Chapter 330), the landfill is required to implement the landfill gas monitoring procedures as contained in Attachment 14 of this permit amendment application. The existing and new landfill gas probes will be installed on the site perimeter to monitor methane concentrations. If methane is detected at or greater than the Lower Explosive Limit, the facility shall implement the procedures described in Attachment 14 to respond to and remediate the landfill gas migration issue.

COMMENT 30: Commenters expressed concern over the nature of the cover and liner. Respecting the height increase, "We are concerned about the impacts on the pre-Subtitle D liner systems; and whether positive final cover slopes can be maintained over the 30-year initial post closure period... Only about 20% of the current footprint is subject to the more protective Subtitle D requirement... For the remainder of the footprint, the proposed vertical expansion would fall under less protective pre-Subtitle D standards. Thus, our concerns are that as waste subsides over a number of years, it may affect the integrity of the pre-Subtitle D clay liner." (HCPHES, Weingarten)

RESPONSE 30: The pre-Subtitle D lined areas at the McCarty Road Landfill facility, comprising approximately 335 acres of the total waste fill footprint, were constructed in one of two ways - as either an "in-situ clay liner", or as an excavated and recompacted clay liner. The in-situ liner was constructed by excavating into the surficial Beaumont Clay Formation, with an additional 3-foot thick cap being placed over any areas exhibiting signs of granular material. The recompacted liner involved the excavation of the surficial clay material, and placement of at least 3 feet of recompacted clay with a coefficient of permeability of no more than 1×10^{-7} cm/sec. The area of the waste fill footprint that utilizes a Subtitle D liner system is approximately 53 acres, which was constructed using a 2-foot thick compacted clay liner, a 60-mil geomembrane liner, a leachate collection system, and a minimum thickness of 1 foot of protective cover. All of these liners were constructed in accordance with the requirements of the MSW Rules that were effective at the time of placement. The Executive Director has determined that the terms and conditions of the draft permit, specifically as they relate to the liners in place at this facility, are adequately protective of human health and the environment.

Attachment 6, Appendix 6A-D of this application, contains the final cover erosion layer design, including a thickness determination, soil loss estimates, and surface vegetation measures. Per page 6A-D-1, the design was conducted following the Universal Soil Loss Equation, a method recommended by the EPA and the TCEQ. Attachment 6, Appendix 6A-C, contains designs for drainage swale and drainage letdown, which will be constructed as erosion control measures over the final cover. Attachment 13, Section 2, contains monitoring and maintenance procedures for managing the final cover system. The applicant will be required to implement the requirements regarding final cover design and post-closure care as specified in this

application to ensure lasting durability of the final cover over the required post-closure care period. Please refer to Response 18 for information regarding the final cover slope stability.

As described above, the ground-water monitoring system, which collects data from the entirety of the landfill footprint, is designed to provide for early detection of potential releases from the facility. The ground-water monitoring network will be sampled, analyzed, and monitored in accordance with the procedures in the Ground-water Sampling and Analysis Plan (Attachment 11 of the permit amendment application), which is part of the facility permit. Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the facility permit, it will be subject to possible enforcement action.

COMMENT 31: “The permit provision concludes that the estimated life of the site is approximately 10.9 years. However, more waste can be filled as there is subsidence over the years and as more volume is created. To that extent, we would like assurances that all of the worst case scenarios have been considered, and this application over a maximum life span of the permit and the initial 30-year post-closure (care) period, will be protective of the environment, and public health and safety.” (HCPHES)

RESPONSE 31: Appendix IIIA of Part III of the application contains detailed calculations used in determining the approximate 10.9-year site life of the McCarty Road Landfill facility, which is contingent on the authorization of the proposed permit amendment application. The projected site life for a facility is just an approximation of the life span of the landfill, and the actual site life can vary from the projected figure due to future assumptions that are made for service area population growth, waste acceptance rates, density of emplaced waste, waste settlement, and other factors that can affect the site life calculations. Inputs into the calculations were conservative and reasonable, and the McCarty Road Landfill facility will be protective of human health and the environment for the projected site life if operated, closed, and maintained in accordance with the facility permit, as proposed, and the MSW Rules.

COMMENT 32: The applicant has failed to adequately identify the maximum area of the unloading area and establish that the working faces are confined to as small areas as practicable, pursuant to relevant rules. (HCPHES)

RESPONSE 32: Section 4.2.4 (Maximum Size of Unloading Areas) of the SOP, as revised, includes a matrix that specifies the maximum working face or unloading area sizes, dependent upon the rate of acceptance of incoming waste at the facility at any point in time. This section stipulates that controls will be used to confine the working face(s) to as small an area as

practicable dependent upon the rate of incoming waste, and safe and efficient working face operations.

COMMENT 33: The applicant has had issues of compliance which are brought to the attention of the TCEQ. Specifically, the Harris County Pollution Control issued 13 nuisance violations between September, 2000 and December, 2004. The City of Houston received odor complaints and issued several notices of violation for unidentified violations. The commenter requests that the permit and SOP include more enforceable terms, with specific emphasis on odor as a problem. Additionally, with respect to compliance history, Weingarten has reason to believe that BFI's compliance history warrants denial of the amendment application. (HCPHES, Weingarten)

RESPONSE 33: The terms and conditions of the proposed permit, pertaining to nuisance concerns, are discussed in detail in responses above, including Response to Comment Number 1. The various means for controlling odors and preventing conditions of nuisance have been developed based upon discussions between the applicant, the Agency, and interested parties, consistent with the concerns raised by commenters and applicable MSW rules.

During the technical review, a compliance history review of the company and the site is conducted based on the criteria in Title 30, Chapter 60 of the Texas Administrative Code. These rules may be found at the following website: <http://www.tceq.state.tx.us/rules/index.html>. The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history was prepared on October 20, 2004 that compiled the applicant's compliance with the TCEQ Municipal Solid Waste Rules and the facility permit for the period March 25, 1999 to October 20, 2004. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary onsite compliance assessments, voluntary pollution reduction programs and early compliance.

This permit application was received after September 1, 2002, and the company and site have been rated and classified pursuant to Title 30, Chapter 60 of the Texas Administrative Code. A company and site may have one of the following classifications and ratings:

High: rating < 0.10 (above-average compliance record)

Average by Default: rating =3.01 (these are for sites which have never been investigated)

Average: 0.10 < rating < 45 (generally complies with environmental regulations)

Poor: 45 < rating (performs below average)

This site has a rating of .51 and a classification of average. The applicant and its related entities (McCarty Road Landfill TX, LP, BFI Waste Services of Texas, LP, BFI Waste Systems of North America, Inc.) rating and classification, which is the average of the ratings for all sites the company owns, is 4.05 and a classification of average. Because the application has been pending for two years, a compliance history reflecting the 1999 through 2006 time period was reviewed. The ratings and classifications remain unchanged.

COMMENT 34: The property and business interests “located immediately adjacent to McCarty Road could very well suffer business, economic and environmental problems directly because of the Proposed Permit No. 261B.” (Weingarten)

RESPONSE 34: The Municipal Solid Waste Rules do not address the consideration of potential negative impacts to residential and business property values during the review of an application, but do function to ensure that permittees are protective of human health and the environment during the lifetime of their facilities. Municipal Solid Waste Rule 30 TAC Section 330.3(d) states that all municipal solid waste landfill units and municipal solid waste sites that receive waste on or after October 9, 1993 must comply with all requirements of the Texas municipal solid waste regulations, unless otherwise specified. The facility must also comply with all of the requirements of the facility permit, and is subject to periodic inspections by the applicable TCEQ regional office. If a permittee fails to comply with any of these requirements, a formal enforcement action could result with such repercussions as notices of violation, fines, and/or revocation of the permit, depending upon the severity and duration of the noncompliance.

COMMENT 35: If the permit amendment is granted, McCarty Road will move the entrance from its current facility access road to Mesa Drive. This will cause ever-increasing traffic of garbage trucks in the community, negatively impacting residential and business interests. (Weingarten)

RESPONSE 35: As referred to previously in Responses to Comment Numbers 7 and 34, above, the Municipal Solid Waste Rules do not address the consideration of potential negative impacts to residential and business property values during the review of an application.

The TCEQ’s jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider additional traffic when determining whether to approve or deny a permit application. However, the Texas Department of Transportation was consulted on this application, and stated in a September 22, 2004 letter to the TCEQ that “(t)he highways in the area, US 80, Oates Road, Mesa Drive, and Loop 610, are adequately designed to accommodate the additional traffic that may be generated by the proposed expansion of the landfill.”

Should additional traffic result in air emissions, nuisance-related regulatory provisions may be triggered. Title 30, TAC Section 101.4 prohibits a person from creating or maintaining a condition of nuisance that interferes with a landowner's use and enjoyment of his property. The scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his property.

COMMENT 36: One commenter is concerned "whether McCarty Road maintains sufficient training, documentation and notification procedures to be certain prohibited wastes are excluded." (Weingarten)

RESPONSE 36: Section 6 of Part IV (Site Operating Plan) of the permit amendment application addresses the methods for the detection and prevention of the disposal of unauthorized wastes at the McCarty Road Landfill facility. Through control of site access, prescribed procedures for inspection of incoming waste loads, specific required training of facility personnel on load screening techniques, and load inspection reporting and recordkeeping requirements, the facility has adequate procedures in place to meet the requirements of 30 TAC Section 330.117(c) to ensure that prohibited wastes are not unloaded at the facility for disposal.

COMMENT 37: One commenter is concerned "whether leachate or gas condensate will be correctly managed" to ensure the protection of the area residents and business owners and employees. (Weingarten)

RESPONSE 37: The applicant will be required to implement at the landfill the requirements contained in the permit and its attached documents, i.e. Attachments 6 and 15 of the pending permit amendment application, to collect, store, and dispose of the leachate, gas condensate, and contaminated water. The leachate and gas condensate generated onsite will be either transported offsite for treatment at properly authorized treatment facilities or re-circulated into the landfill. Contaminated water generated onsite will be pumped to a City of Houston sewer line or transported via tanker trucks to properly permitted offsite facility for treatment. Discharge of leachate, gas condensate, and contaminated water through surface drainage systems is prohibited.

COMMENT 38: One commenter is concerned "whether the closure and post-closure care plans will adequately protect Weingarten after the Landfill has closed. This includes whether monitoring, testing, ground-water remediation, or other closure and post-closure matters are sufficient to protect Weingarten." This also includes whether the cost estimates and financial assurance are sufficient to adequately protect neighboring interests during closure and post-closure. (Weingarten)

RESPONSE 38: After technical review of the application, the applicant was found to have satisfactorily addressed the requirements of 30 TAC Sections 330.250 - 330.256 in Attachments 12 and 13 (Final Closure Plan and Post-closure Care Plan) of Part III of the application document. These sections provide detailed information on such topics as the cover system design, the cover installation methods and procedures, the final closure schedule, the contents of the Final Cover Quality Control Plan, the post-closure activities for monitoring and maintenance, the requirements for decreasing and increasing the length of the post-closure period, and constraints on post-closure construction over the landfill "footprint" area. Ground-water monitoring, testing, and remediation requirements are found in the approved April 23, 2004 facility Corrective Action and Implementation Effectiveness Monitoring Work Plan and Addendum. The applicant proposed closure and post-closure financial assurance amounts of \$11,749,459 and \$13,636,800 in 2004 dollars, respectively, in the initial July 29, 2004 permit amendment application. TCEQ staff reviewed Attachments 12 and 13, and asked the applicant to revise these figures upward to \$15,169,234 and \$14,385,600, respectively, to ensure that adequate funding is provided to properly close the facility in full compliance with the Municipal Solid Waste Rules and the facility permit.

COMMENT 39: One commenter is concerned "whether Weingarten (McCarty) maintains sufficient training, documentation and notification procedures to protect Weingarten regarding any special waste McCarty Road might accept." (Weingarten)

RESPONSE 39: Similar to Response to Comment Number 36, above, the applicant has included Section 4.20 (Disposal of Special Wastes) in the SOP to establish standards of operation at the facility to effectively screen and accept special wastes in accordance with 30 TAC Section 330.136. Review of this section of the application found the content adequate to meet the requirements of the applicable MSW Rules, and provides specific guidelines for facility staff concerning training, documentation, and notification procedures regarding special waste. The applicant will also staff a Special Waste Department which will review pre-authorized requests for special waste disposal at the site. A Special Waste Liaison / Compliance Coordinator will work with the Special Waste Department to provide oversight of facility staff to ensure that the acceptance of special wastes is in full compliance with the Municipal Solid Waste Rules, the facility permit, and the Special Waste Section (4.20) of the SOP.

COMMENT 40: One commenter is concerned "whether the functions and minimum qualifications for each category of key personnel to be employed at McCarty Road will be sufficient" to ensure proper standards of safety and protection. (Weingarten)

RESPONSE 40: Section 2 of Part IV (Site Operating Plan) of the permit amendment application contains guidelines for the minimum qualifications of key facility personnel, and the training that each should receive, to maintain competency for the position held. After technical review, this portion of the SOP was found adequate to address the requirements of

30 TAC Section 330.114. The SOP requires that both the Landfill Manager and Shift Supervisor must hold a Class A Letter of Competency, and must receive training on a regular basis to maintain facility knowledge of daily operating procedures, the Site Development Plan, the Site Operating Plan, the facility permit, routine site inspection procedures, and applicable TCEQ regulations.

COMMENT 41: One commenter is concerned “whether the procedures for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous wastes, PCBs and others” are adequate to ensure proper standards of safety and protection. (Weingarten)

RESPONSE 41: Please See Response to Comment Number 36, above.

COMMENT 42: One commenter is concerned whether McCarty Road will maintain protections against fire in the expanded or existing area sufficient to protect Weingarten Realty.” (Weingarten)

RESPONSE 42: The applicant has included in the permit amendment application a section (Section 7 of Part IV, “Fire Protection Plan”) that contains requirements for facility fire protection training, fire protection standards (posted fire protection information, fire safety rules, identification and exclusion of “hot loads”), prohibition of open burning and smoking onsite, preventive procedures (use of fire extinguishers and maintaining soil stockpiles), methods for extinguishing vehicle, structure, equipment, and working face fires, and emergency personnel contact. This portion of the application has been found adequate in addressing the requirement of 30 TAC Section 330.114(6) for a facility fire protection plan.

COMMENT 43: One commenter is concerned whether McCarty Road’s operations might violate any applicable requirement of (the) Federal Clean Air Act, any approved s(t)ate implementation plan developed under the Federal Clean Air Act, or any applicable provisions of the Texas Clean Air Act. (Weingarten)

RESPONSE 43: In accordance with 30 TAC Chapter 330 of the TCEQ Municipal Solid Waste Rules, the landfill will be required to implement the landfill gas monitoring and remediation requirements contained in Attachment 14 of this permit amendment application, as described more fully in Responses to Comment Numbers 10, 27, and 39, above.

This is a municipal solid waste permit amendment application and air quality is largely, but not entirely, outside the scope of this review. Should the nature of the facility’s operations require, the applicant may be required to apply for separate permits which regulate air quality.

COMMENT 44: One commenter is concerned whether operation of the McCarty Road Landfill will result in destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. (Weingarten)

RESPONSE 44: Under Section 330.53(b)(13)(B) of the Commission's rules, the TCEQ must consider the impact of a solid waste disposal facility upon endangered or threatened species. In addition, the facility and the operation of the facility may not result in the destruction or adverse modification of the critical habitat of an endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. According to sections 330.51(b)(8), 330.53(b)(13), and 330.302 of the TCEQ's MSW Rules, the applicant must demonstrate compliance with the Endangered Species Act under state and federal laws. The information submitted in the application was determined by the Executive Director to meet the requirements in the TCEQ's MSW Rules. Correspondence with the United States Fish and Wildlife Service (April 24, 2003) and the Texas Parks and Wildlife Department (August 29, 2003) indicate that no to minimal impacts to threatened or endangered species of plants or animals are expected from the proposed vertical expansion of this facility.

COMMENT 45: One commenter is concerned "whether McCarty Road's operations will cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste in such a manner" as to cause unauthorized discharges, nuisances, or threats to human health and welfare or the environment. (Weingarten)

RESPONSE 45: The intent of the TCEQ Municipal Solid Waste Rules and the facility permit is to stipulate what a permittee must do to properly construct, operate, and close a landfill facility in order to protect human health and the environment by preventing unauthorized discharges, nuisances, or other negative impacts. If the permittee does not adhere to these requirements, or is found in violation of any rule or permit condition during routine inspections by TCEQ regional staff, a formal enforcement action could result with such repercussions as notices of violation, fines, and/or revocation of the permit, depending upon the severity and duration of the noncompliance.

As indicated above, individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

COMMENT 46: One commenter recommends that the language in Section VII(H) of the permit "be revised to correctly reflect the daily cover requirements in 30 TAC Section 330.133(a) for facilities operating on a 24-hour basis. During the Public Hearing for the current permit held on

September 3, 1985, the Applicant agreed to define daily cover as '(a)n intermediate cover of six inches of earthen material shall be applied to the working face at least every twenty-four hours in such a manner that no solid waste at the site remains exposed longer than twenty-four hours.' However, because of odor problems in the past, we also ask that daily cover be applied every 12 hours." (HCPHES)

RESPONSE 46: Please see Response to Comment Number 1, above.

COMMENT 47: One commenter stated that "Special waste, by definition, requires special handling and disposal to protect human health and the environment and if improperly disposed, it may pose a present or potential and industrial wastes to an area with Subtitle D protections would mean that the likelihood of ground-water contamination from special and industrial wastes would be considerably lessened." (HCPHES)

RESPONSE 47: The method for the disposal of special wastes described in this comment is neither required nor addressed through applicable MSW Rules. Should the applicant so choose, it may adopt such practice on a voluntary basis.

COMMENT 48: One commenter stated that "Special Provision IX provides that the leachate will be tested for Polychlorinated Biphenyls (PCBs) at least once a year through an appropriate method specified in 40 CFR Part 761. This provision needs to be strengthened because it is unclear what sampling methodology will be used to make it a representative sample." The commenter offered specific suggested permit language for consideration in development of the permit. (HCPHES)

RESPONSE 48: In response to HCPHES concerns, the applicant agreed to revise the application to address the sampling of landfill leachate for PCBs. Additionally, as a result of discussions between the applicant and HCPHES, the applicant has revised the application to address other issues raised by commenters. Such revisions include defining the terms "working face" and "active disposal area", and adding provisions to the draft permit to address the size and number of working faces, general management of odors at the site, additional odor abatements upon multiple odor violations, bird abatement, the number of random daily inspections, and the tracking of mud onto public roads.

COMMENT 49: One commenter stated that "The proposed permit states that minor amendments, modifications, and corrections, may be added to Part No. 3. We suggest specifying the rule citations that allow these actions." The commenter also stated that "[c]orrections, however, are not a mechanism authorized in the TCEQ rules (as applicable for MSW landfills)." (HCPHES)

RESPONSE 49: As indicated in 30 TAC Chapter 305, Subchapter D, corrections to municipal solid waste permits are a mechanism authorized in the TCEQ rules. Corrections are processed in accordance with 30 TAC Section 50.145.

COMMENT 50: One commenter stated that “there are provisions in the proposed permit and the SOP that would be difficult to enforce because the provisions are vague, and these provisions need to be clear.” The commenter offered specific suggested permit language for consideration in development of the permit concerning bird activities, the tracking of mud, and load inspections. (HCPHES)

RESPONSE 50: The entire permit amendment application, including its subsequent revisions to address TCEQ Notice of Deficiency items, is referenced twice in the permit (Part No. 1, Section VII.A, and Part No. 2, Attachment A), and is therefore a part of the permit. The application addresses the tracking of mud and load inspections in detail in Sections 4.12 and 6 of Part IV of the permit amendment application. Response to Comment Numbers 5 and 36, above, provide more detail on these two issues. Concerning bird population issues, the McCarty Road Landfill facility is located well away from any public or private airports, and therefore does not present potential problems for area aircraft. The Federal Aviation Administration concluded in letters of April 17, 2003 and May 21, 2003 that the agency had no objection to the proposed permit amendment from the standpoint of potential bird hazards to aircraft, and that the proposed structure itself does not exceed obstruction standards and would not be a hazard to air navigation. Bird populations are also minimized by proper application and compaction of daily cover. Response To Comment Number 2, above, addresses this issue in regards to the control of vectors at the site. Finally, draft permit language pertaining to issues raised through this comment has been revised, as described below.

COMMENT 51: One commenter stated that McCarty Road has increased the size of the lagoon situated on the McCarty Road Landfill property, that the slope of the landfill is adequate, and that the landfill cover is adequate. (Grover G. Hankins)

RESPONSE 51: The Executive Director acknowledges these comments.

COMMENT 52: One commenter stated that the facility should recycle a greater variety of waste. (Joseph L. Pinzon)

RESPONSE 52: The TCEQ encourages source reduction, reuse, and recycling in many ways, such as the Texas Recycling Program and Urban Recycling Events held throughout the state. Additionally, TCEQ rules provide incentives for facilities to recycle, but recycling is discretionary and not a mandatory requirement for a landfill permit.

COMMENT 53: One commenter requested air monitoring in the community and soil sampling of roadways where standing water frequently collects. (Bernice Cranford)

RESPONSE 53: Air monitoring and soil sampling in the adjacent community is outside the scope of review for a MSW permit amendment. Individuals are encouraged to report any environmental concerns by contacting the Regional TCEQ Office, Region 12, at (713) 767-3500 or by calling the twenty-four hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. Additionally, individuals may contact the Houston Health and Human Services Department Bureau of Air Quality Control at (713) 640-4200.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

In response to comments proffered by HCPHES as subsequent discussions between the applicant and HCPHES, certain changes to the draft permit have been made, as described below:

VII. Standard Permit Conditions

F. The tracking of mud offsite onto any public right-of-way shall be minimized. (Original language in draft permit)

Tracking of mud and associated debris onto public roadways must be removed at least once per day on days when mud and associated debris are being tracked onto the public roadway. (Revised language in draft permit)

H. The facility shall be properly supervised to assure that bird activities at the site will not increase and that appropriate control procedures will be followed. Any increase in bird activity that might be hazardous to safe aircraft operations will require prompt mitigation actions, *in accordance with the facility Bird Abatement Plan.* (Revised language in bold italics)

IX. Special Provisions

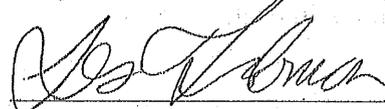
The permittee will conduct testing of landfill leachate for concentrations of Polychlorinated Biphenyls at least once a year, through an appropriate testing method pursuant to 40 CFR Part 761. The results of the testing shall be submitted to the executive director in report form within 60 days of the date that the testing took place. (Original language in draft permit)

The permittee will conduct sampling and testing of landfill leachate for concentrations of Polychlorinated Biphenyls (PCBs) every six months, using the wet weight method specified in 40 CFR Part 761. PCB concentrations shall be determined on a weight-per-weight basis. Discrete samples must be taken of leachate present at each sump. Dilution of the leachate is strictly prohibited. The results of the sampling and testing shall be submitted to the executive director using reporting methods specified in 40 CFR Part 761, within 60 days of the date that the sampling and testing took place. (Revised language in draft permit)

Should two or more notices of violation be issued to the permittee by a regulatory authority in a 12-month period, the permittee must initiate additional odor abatement measures in consultation with the TCEQ, Harris County, and the City of Houston. (Revised language in draft permit)

Additionally, several changes to the permit amendment application, which are incorporated into the draft permit, were made by the applicant through the submission of a revised SOP subsequent to the close of the comment period. Many of these changes relate to concerns raised by commenters, as discussed in detail above.

Respectfully submitted,



Les Trobman

Staff Attorney

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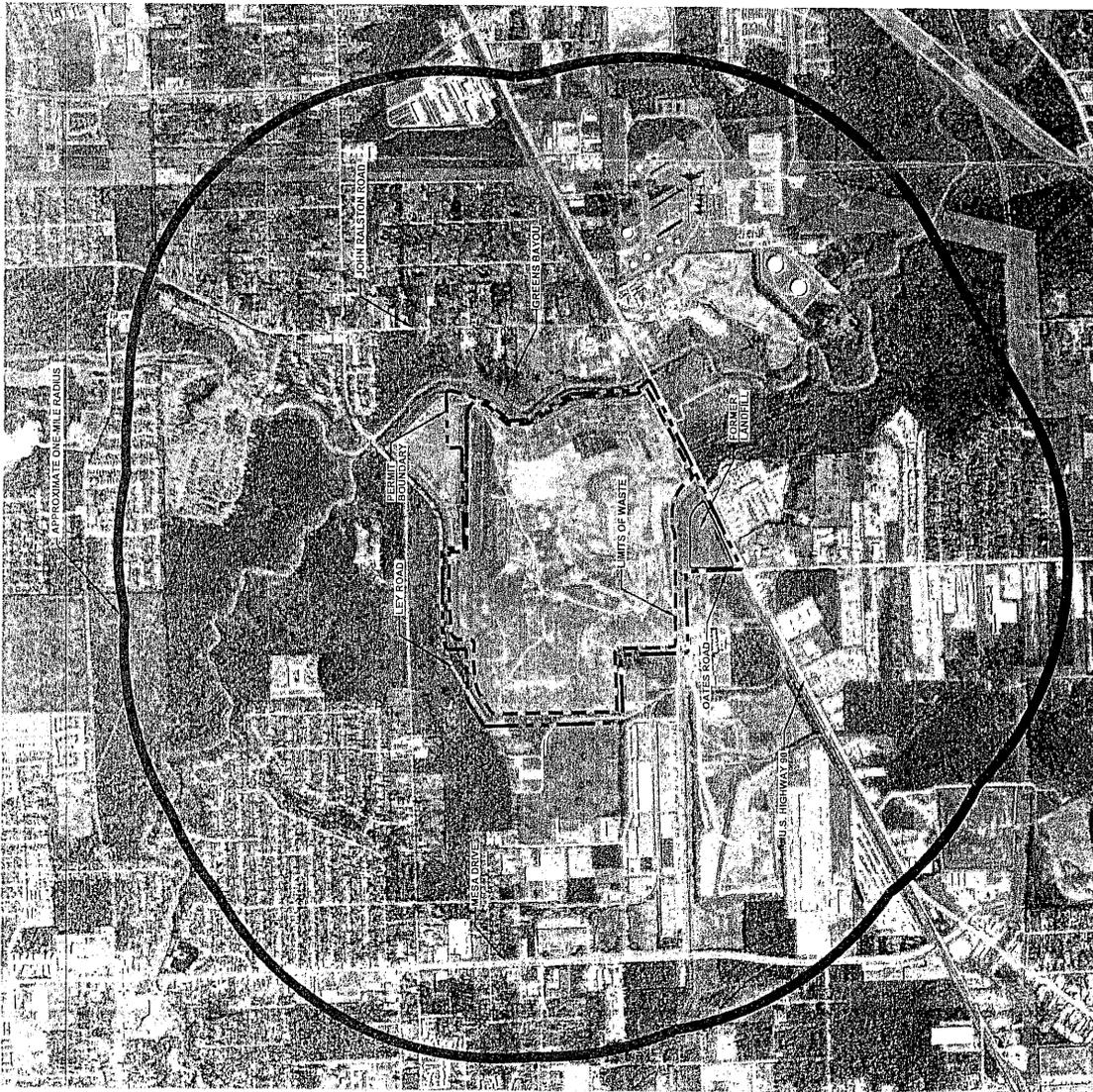
EXECUTIVE DIRECTOR OF THE

OF THE TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

Attachment E

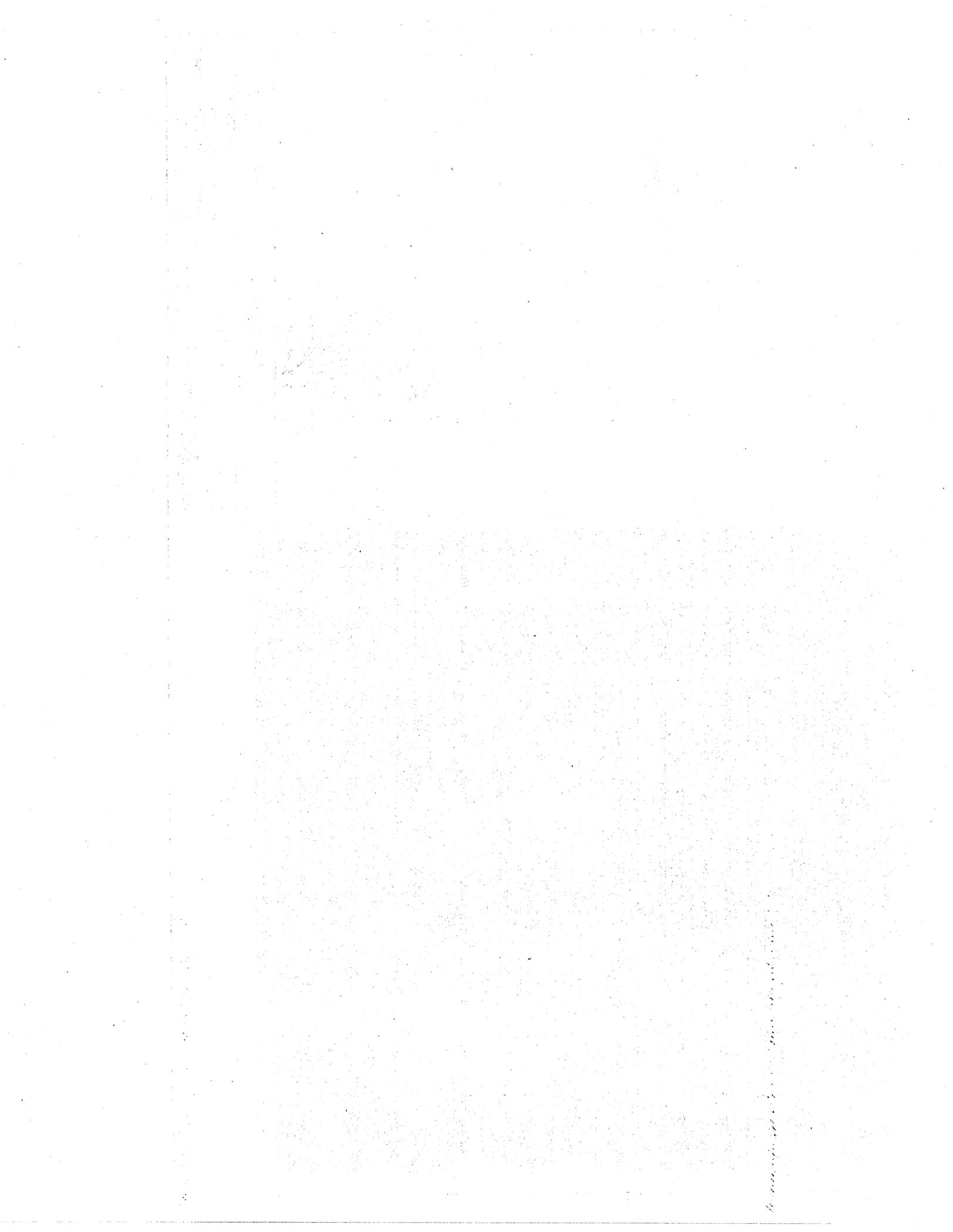
Maps provided with Permit Application
Aerial Photograph depicting one mile radius from facility
permit boundary dated February, 2003
Site Location Map depicting permit boundary dated 1987
General Topographic Map bearing Engineer's seal dated March 31, 2004
MSW Permit No. 261B
McCarty Road Landfill TX, LP



NOTES:
 1. AERIAL PHOTOGRAPHY
 FLOWN FEBRUARY 18, 2003.



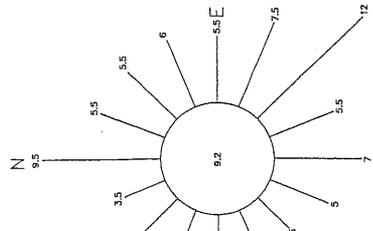
<input type="checkbox"/> DRAFT <input checked="" type="checkbox"/> FOR PERMITTING PURPOSES ONLY <input type="checkbox"/> ISSUED FOR CONSTRUCTION <input type="checkbox"/> CLIENT APPROVAL BY:	DRAWN BY: JYW CHECKED BY: SMH REVISIONS:	MAJOR PERMIT AMENDMENT AERIAL PHOTOGRAPH MCCARTY ROAD LANDFILL HARRIS COUNTY, TEXAS
	DATE: 03/20/04 FILE: 0120-123-11 CDR: E1 (ENGINEER)	
PROJECT: McCarty Road Landfill THIS DRAWING AND THE RECORDS OF THIS PROJECT ARE THE PROPERTY OF WEAVER BOOS CONSULTANTS, L.L.C. AND WILL BE LOANED TO YOU FOR YOUR USE ONLY. REPRODUCTION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF WEAVER BOOS CONSULTANTS, L.L.C. IS PROHIBITED.		WEAVER BOOS CONSULTANTS 10000 FORT WORTH, TX 76154 (817) 732-9770 WWW.WBCONCONS.COM
		FIGURE 1/11-6.1





SETTEGAST, TEX.
N2845-W85187.5
1982
USGS DIGITAL 1991

JACINTO CITY, TEX.
N2845-W8507.57.5
1982
USGS DIGITAL 1991



LEGEND

LANDFILL PERMIT BOUNDARY

WELLS - 2003 SEARCH

TWC LOCATED WELL

TWC PLATTED WELL

HARRIS GALVESTON COASTAL SUBSIDENCE DISTRICT LOCATED WELL

ROAD CLASSIFICATION

Heavy duty

Medium duty

Light-duty

Unimproved dirt

Interstate Route

U.S. Route

State Route

NOTES:

- THE SITE ACCESS ROADS WITHIN 1-MILE OF THE SITE INCLUDES JOHN RALSTON ROAD, LEY ROAD, AND OATES ROAD. REFER TO PARTS 1/II-SECTION 8 FOR ADDITIONAL INFORMATION.
- SEE FIGURE 1/II-51 FOR PROPERTY OWNERS WITHIN 500 FEET OF PROPOSED SITE.
- SEE SECTION 7.2 FOR DISCUSSION OF WATER WELLS.
- SEE ATTACHMENT 4 FOR ADDITIONAL WATER WELL LOCATION INFORMATION.
- THERE ARE NO KNOWN LICENSED DAY-CARE FACILITIES, HOSPITALS, ARCHAEOLOGICAL SITES, HISTORICAL SITES OR OTHER SENSITIVE AREAS WITHIN THE ONE-MILE RADIUS AS SHOWN ON THIS MAP. BAYOUS ARE LOCATED WITHIN ONE-MILE RADIUS AS WELL AS A FEW SMALL PONDS. REFER TO PARTS 1/II, APPENDIX 1/IC FOR ADDITIONAL LAND USE INFORMATION.
- NO PUBLIC USE AIRPORT IS LOCATED WITHIN FIVE MILES OF THE PERMIT BOUNDARY (SEE PARTS 1/II-SECTION 8 FOR MORE INFORMATION).
- WINDROSE REPRODUCED FROM TCEQ PUBLISHED WINDROSE FOR THE PERIOD 1984-1992 AT GEORGE BUSH INTERCONTINENTAL AIRPORT.
- HCCCD, CITY OF HOUSTON, HOUSTON PIPELINE COMPANY, AND HUBBARD EASEMENTS ARE SHOWN ON FIGURE 1/II-21. ADDITIONAL EASEMENT INFORMATION IS DISCUSSED IN SECTION 13 OF PARTS 1/II.



MAJOR PERMIT AMENDMENT
GENERAL TOPOGRAPHIC MAP
McCARTY ROAD LANDFILL
HARRIS COUNTY, TEXAS

MAJOR PERMIT AMENDMENT
GENERAL TOPOGRAPHIC MAP
McCARTY ROAD LANDFILL
HARRIS COUNTY, TEXAS

NO.	DATE	DESCRIPTION

DATE: 03/20/04
FILE: 0128-10-11
JOB: 001-100709

DRAWN BY: JPY
CHECKED BY: JPY
PROJECTED BY: JPY

SCALE OF COORDINATES

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Attachment F

GIS Map depicting facility location, locations of Hearing Requestors, and one and two mile radii from current facility entrance dated February 27, 2007

GIS Map Key listing Hearing requestors by address

MSW Permit No. 261B

McCarty Road Landfill TX, LP



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
February 27, 2007



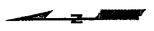
Projection: Texas Statewide Mapping System
(TSMS)
Scale 1:28,000

- Legend
- Landfill
 - Protestant

Source: The location of the landfill site was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestors. The locations of the requestors were obtained by geocoding.
The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is IX339_1-1.

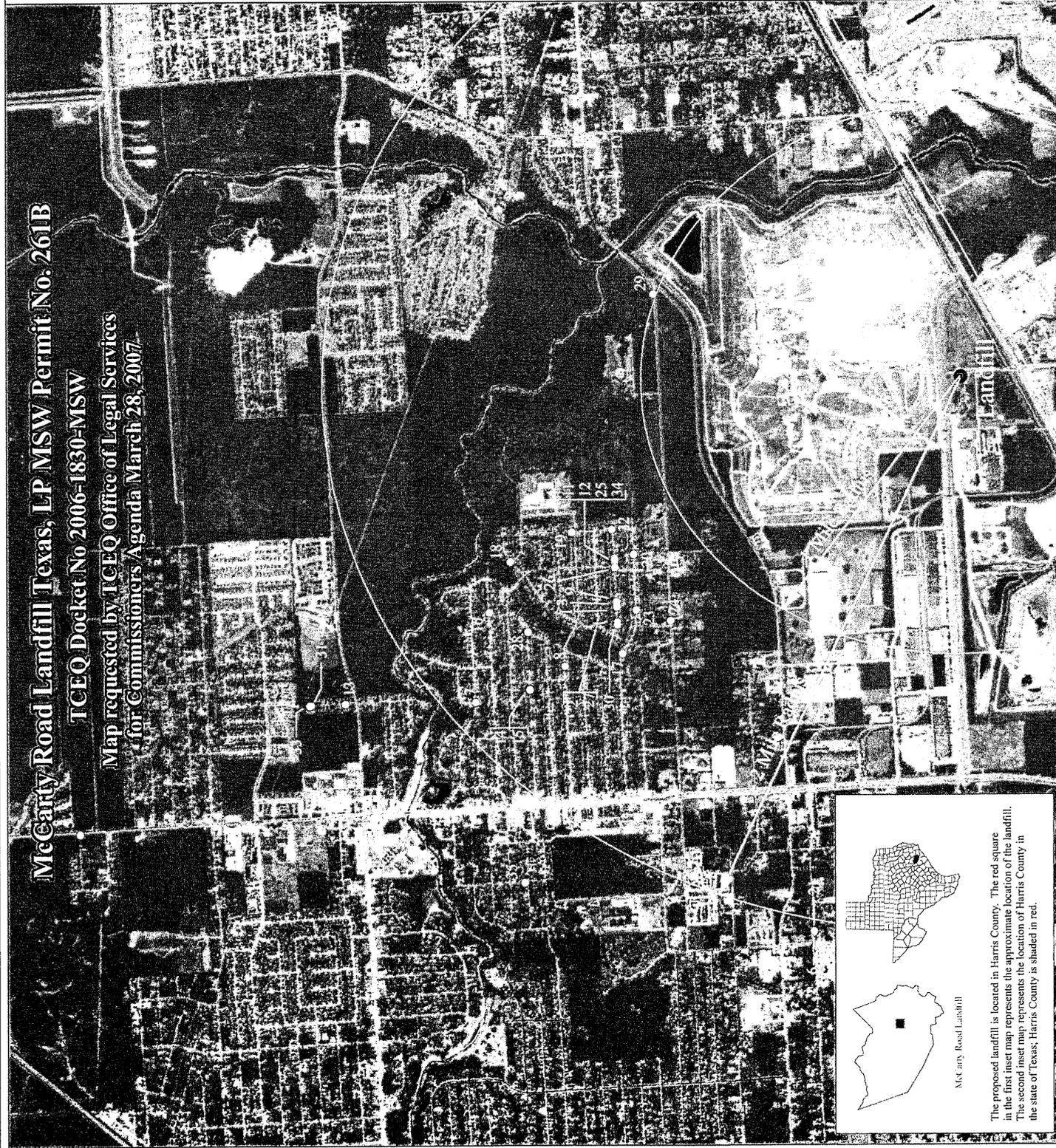
- This map depicts the following:
- (1) The approximate location of the landfill. This is labeled "Landfill".
 - (2) The approximate locations of the protestants.
 - (3) Arrows depicting the 2-mile radius and the 1-mile radius from the landfill.

Protestants not shown on map:
Mickey Fish
James Mukes, Jr.
Weingarten Realty Management (approximately 12 miles from landfill)



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

McCarty Road Landfill Texas, LP MSW Permit No. 261B
TCEQ Docket No 2006-1830-MSW
Map requested by TCEQ Office of Legal Services
for Commissioners Agenda March 28, 2007



McCarty Road Landfill

The proposed landfill is located in Harris County. The red square in the first inset map represents the approximate location of the landfill. The second inset map represents the location of Harris County in the state of Texas; Harris County is shaded in red.



Applicant:

McCarty Road Landfill
5757 A Oates Road
Houston, Texas 77078-4811

Protestants:

- 1) Raul Aranda
9243 Linda Vista
Houston, Texas 77078
- 2) Katherine Barr
C.G. Barr
9219 Linda Vista
Houston, Texas 77078
- 3) Ernest M. Black
9246 Linda Vista
Houston, Texas 77078
- 4) Cassie Bowie
James Bowie
9323 Linda Vista Road
Houston, Texas 77078
- 5) C. L. Broussard
9715 Lakewood
Houston, Texas 77078
- 6) Arthur Campbell
Doris Campbell
8525 Furray
Houston, Texas 77078
- 7) Lawrence & Bernice Cranford
9102 Lake Forest Boulevard
Houston, Texas 77078
- 8) Mary Dorsey
9122 Laura Koppe
Houston, Texas 77078
- 9) Terry Downing
Nancy Crnkovic
9251 Linda Vista
Houston, Texas 77078
- 10) Mickey Fish
Gene Fish
4334 Linda Vista
Houston, Texas 77078
- 11) Nora Fisher
9315 Linda Vista

Houston, Texas 77078

- 12) James Gray
Mary Gray
9319 Linda Vista
Houston, Texas 77078
- 13) Thomas E. Green
9527 Balsam
Houston, Texas 77078
- 14) Adolph Hartman
9106 Homewood
Houston, Texas 77078
- 15) Marilyn Henderson
James Henderson
9105 Homewood
Houston, Texas 77078
- 16) Lena Hernandez
Dan Hernandez
9309 Talton
Houston, Texas 77078
- 17) Vernita Johnson
8002 Richland Drive
Houston, Texas 77078
- 18) Jerestene Leath
9006 Sultan Drive
Houston, Texas 77078
- 19) Alice C. Lux
8718 Banting St.
Houston, Texas 77078
- 20) Roy McCandless
Donna McCandless
9338 Richland Drive
Houston, Texas 77078
- 21) Gloria McCausland
Andrew McCausland
8526 Furray
Houston, Texas 77028
- 22) James Mukes, Jr.
8109 Swonden
Houston, Texas 77078
- 23) Shirley Perkins
Steven Ray Perkins

9246 Richland Drive
Houston, Texas 77078

24) Joseph & Guadalupe Pinzon
9230 n. Green River Drive
Houston, Texas 77078

25) Ollie Roberson
9327 Linda Vista
Houston, Texas 77078

26) Wallace R. Romero
9302 Linda Vista
Houston, Texas 77078

27) Earsey Ross
Mary Ross
9218 Linda Vista
Houston, Texas 77078

28) Gumesindo Santos
Isaura Santos
9505 Crestview
Houston, Texas 77078

29) Tonya Senegal
8532 Green River Drive
Houston, Texas 77078

30) Thelmarie Tharp
Walter Tharp
9215 Linda Vista
Houston, Texas 77078

31) Willie Thomas
9619 Balsam
Houston, Texas 77078

32) Roy Villareal
Adlea Villareal
8502 Banting
Houston, Texas 77078

33) Thomas Walker
Effie Walker
9623 Balsam
Houston, Texas 77078

34) Velma Washington
General Washington, Jr.
9322 Linda Vista
Houston, Texas 77078

35) Weingarten Realty Management, Inc.

2600 Citadel Plaza Drive, Suite 300
Houston, Texas 77008

36) Maryland Whittaker
9014 Livings
Houston, Texas 77078