

TEXAS SOUTHERN UNIVERSITY
3100 CLEBURNE STREET • HOUSTON, TEXAS 77004
713-313-7011



CLINICAL LEGAL STUDIES PROGRAM
OFFICE: 713-313-7275

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2006 OCT 13 PM 4:13
CHIEF CLERKS OFFICE

*MSW
38040*

October 13, 2006

OPA *H*

OCT 16 2006

BY *jb*

LaDonna Castanuela, Chief Clerk
Office of the Chief Clerk
Texas Commission for Environmental Quality
Mail Code 105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Notice of Contested Case Hearing of Application and Preliminary Decision for a Municipal Solid Waste Permit Amendment; Proposed Permit Amendment No. 261B; McCarty Road Landfill TX, L.P., 5757 A Oates Road, Houston, TX 77078-4811

Dear Ms. Castanuela:

Pursuant to 30 TAC 55.201(b) (4), the Environmental Law and Justice Center, on behalf of the individual residents and/or property owners listed in Exhibit A, respectfully request a contested case hearing on the matter referenced as: Municipal Solid Waste Permit Amendment, Proposed Permit Amendment No. 261B. Specifically, Allied Waste Industries, as owner and operator of the McCarty Road Landfill located in Houston, Harris County, Texas has applied to the Texas Commission for Environmental Quality for issuance of the aforementioned permit or allow for vertical expansion of its existing facility located at 5757 Oates Road in Houston, Harris County, Texas.

Each of the individual residents and/or property owners either resides or owns property within two miles or less of the facility. Each of the persons listed and identified is concerned with the adverse impacts that the proposed facility will have on the health and safety of their individual families.

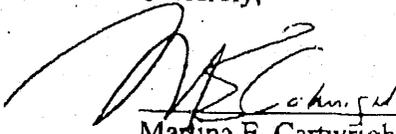
Specifically, the following represents the relevant and material concerns of each of the identified residents and/or property owners regarding the potential effects and/or harm to the health and safety of each and/or their respective families posed by the proposed vertical expansion.

- Significant increase of storm water run-off from the site;
- Potential vector infestation (e.g. rodents, mosquitoes, etc.) from a substantial increase—an estimated 400,000 tpy—in waste expected to be received by the facility over the next decade or so;
- Exacerbation of existing groundwater contamination caused by the facility;
- Increased in rank and stinking odors from the facility, including nuisance odors;
- Inadequate control and monitoring of harmful gases from the landfill;
- Increase in air emissions, including particulates, from a significant increase in truck traffic to the site;
- Extremely high potential for slope failure. The proposed final landfill height is expected to increase (198 ft from its 188 ft height), which is much higher than any prior design approved for Harris County. The permit amendment does not present adequate slope stability analyses to assure the general public that the landfill will not experience slope stability failures;
- Increased potential for windblown debris from truck traffic to the site;
- Increased potential for windblown debris from landfill, including windblown debris from the slope of the landfill during stormy weather;
- Adverse health impacts on the local community (e.g. increase in cancer, respiratory illness, allergies, etc.);
- Loss of natural trees and impairment of the growth and development of animals because of increased groundwater contamination, storm water run-off;
- Impairment of the health, growth and development of native and domestic animals due to the attraction and infestation of avian, mammalian, and reptilian animal vectors.
- Increased risk of flooding as a result of diminishing trees and vegetation growth and development;
- Increased contamination of nearby standing waters already contaminated by past leaching of chemical residue;

Each of the individuals identified in Exhibit A requests a contested case hearing with regard to the impact of the facility on the health and safety of persons residing near the facility, and further requests a hearing on each of these specific issues listed above. Neither the Executive Director, nor Applicant, has provided information demonstrating that these concerns have been adequately addressed. In consideration of these issues, it is expected that the applicant will not meet the statutory and regulatory requirements contained within 30 TAC Chapter 330. Based on the aforementioned information, each of the individuals listed and identified in Exhibit A clearly meets the requirements of an affected person as outlined in 30 TAC § 55.203.

Thank you, in advance for your assistance and we eagerly await the Commission's decision.

Sincerely,



Martina E. Cartwright,
Managing Attorney

LaKisha Ledbetter,
Student Attorney

RaChell Hunt,
Student Attorney

EXHIBIT A

Terry Downing
Nancy Crnkovic
9251 Linda Vista
Houston, Texas 77078

Wallace R. Romero
9302 Linda Vista
Houston, Texas 77078

Nora Fisher
9315 Linda Vista
Houston, Texas 77078

Katherine Barr
C.G. Barr
9219 Linda Vista
Houston, Texas 77078

Roy McCandless
Donna McCandless
9338 Richland Drive
Houston, Texas 77078

Roy Villareal
Adlea Villareal
8502 Banting
Houston, Texas 77078

Tonya Senegal
8532 Green River Drive
Houston, Texas 77078

Earsey Ross
Mary Ross
9218 Linda Vista
Houston, Texas 77078

Mary Dorsey
9122 Laura Koppe
Houston, Texas 77078

*CIDA # 38040
HR
10/13*

OCT-13-2006 14:54 FROM:

OCT 13 2006 10:01
TO:51 793311

P.00
P.6/8

Marilyn Henderson
James Henderson
9105 Homewood
Houston, Texas 77078

Adolph Hartman
9106 Homewood
Houston, Texas 77078

Alice C. Lux
8718 Banting Street
Houston, Texas 77078

Lena Hernandez
Dan Hernandez
9309 Talton
Houston, Texas 77078

Maryland Whittaker
9014 Livings
Houston, Texas 77078

Shirley Perkins
Steven Ray Perkins
9246 Richland Drive
Houston, Texas 77078

Thelmarie Tharp
Walter Tharp
9215 Linda Vista
Houston, Texas 77078

Willie Thomas
9619 Balsam
Houston, Texas 77078

Thomas Walker
Effie Walker
9623 Balsam
Houston, Texas 77078

Jerestene Leath
9006 Sultan Drive
Houston, Texas 77078

OCT-13-2006 14:54 FROM:

OCT 13 2006 16:01

P.07

TO:51 93311

P.7/8

James Mukes, Jr.
8109 Swonden
Houston, Texas 77078

C.L. Broussard
9715 Lakewood
Houston, Texas 77078

Vernita Johnson
8002 Richland Drive
Houston, Texas 77078

Gloria McCausland
Andrew McCausland
8526 Furray
Houston, Texas 77028

Ollie Roberson
9327 Linda Vista
Houston, Texas 77078

Cassie Bowie
James Bowie
9323 Linda Vista Road
Houston, Texas 77078

James Gray
Mary Gray
9319 Linda Vista
Houston, Texas 77078

Micky Fish
Gene Fish
4335 Linda Vista
Houston, Texas 77078

Velma Washington
General Washington, Jr
9322 Linda Vista
Houston, Texas 77078

Raul Aranda
9243 Linda Vista
Houston, Texas 77078

FROM:

OCT 13 2006 16:02

P.08

OCT-13-2006 14:54 FROM:

TO:5 393311

P.8/8

Thomas E. Green
9527 Balsam
Houston, Texas 77078

Ernest M. Black
9246 Linda Vista
Houston, Texas 77078

Arthur Campbell
Doris Campbell
8525 Furray
Houston, Texas 77028

Gumesindo Santos
Isaura Santos
9505 Crestview
Houston, Texas 77078



TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL OF LAW
CLINICAL LEGAL STUDIES PROGRAM
3100 Cleburne Avenue
Houston, Texas 77004
713-313-7275 (v) 713-313-1191 (f)

FACSIMILE TRANSMITTAL SHEET

TO: LuDanna Castanuela FROM: Martina Cartwright

COMPANY: _____ DATE: _____

Thurgood Marshall School of Law

FAX NUMBER: _____ TOTAL NO. OF PAGES, INCLUDING COVER: _____

512-239-3311

PHONE NUMBER: _____ SENDER'S REFERENCE NUMBER: _____

(713) 313-7275 / (713) 313-1019

RE: Request for Contested Hearing YOUR REFERENCE NUMBER: _____

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

COMMENTS:
There are 35 individuals requesting a
contested case hearing

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE TRANSMISSION IS CONFIDENTIAL. IT MAY ALSO BE SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE OR TO BE PRIVILEGED WORK PRODUCT OR PROPRIETARY INFORMATION. THE INFORMATION IS INTENDED FOR THE EXCLUSIVE USE OF THE PERSON(S) WHOSE NAME(S) IS/ARE INDICATED ABOVE. IF THE READER OF THIS NOTICE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION, COPYING OF THIS INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS INFORMATION IN ERROR, PLEASE NOTIFY THE SENDER NAMED ABOVE AND RETURN THE ORIGINAL INFORMATION TO THE FOLLOWING: TEXAS SOUTHERN UNIVERSITY, THURGOOD MARSHALL SCHOOL OF LAW, CLINICAL LEGAL STUDIES PROGRAM, 3100 CLEBURNE STREET, HOUSTON, TEXAS, 77004 VIA THE UNITED STATES POSTAL SERVICE AT OUR EXPENSE.

38640
M40

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2005 FEB 14 PM 3:05

ENVIRONMENTAL JUSTICE CLINIC

THURGOOD MARSHALL SCHOOL OF LAW
3100 Cleburne Avenue
Houston, Texas 77004

*Martina E. Cartwright,
Director/Managing Attorney*

CHIEF CLERKS OFFICE
713 - 313-1019 - OFFICE
713 - 313-1191 - FAX



H OPA
FEB 15 2005
BY al

February 10, 2005

LaDonna Castanuela, Chief Clerk
Office of the Chief Clerk
Texas Commission for Environmental Quality
Mail Code 105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit Amendment; Proposed Permit Amendment No. 261B; McCarty Road Landfill TX, L.P., 5757 A Oates Road, Houston, TX 77078-4811

Dear Ms. Castanuela:

Pursuant to 30 TAC 55.251(a)(4), the Environmental Law and Justice Center, on behalf of Northeast Environmental Justice Association (hereinafter referred to as "NEEJA") and its members respectfully requests a contested case hearing on the matter referenced as: Municipal Solid Waste Permit Amendment; Proposed Permit Amendment No. 261B. Specifically, Allied Waste Industries, as owner and operator of the McCarty Road Landfill located in Houston, Harris County, Texas has applied to the Texas Commission for Environmental Quality for issuance of the aforementioned permit to allow for vertical expansion of its existing facility located at 5757A Oates Road in Houston, Harris County, Texas.

NEEJA is a local association, comprised of local residents and/or business interests located in and around the existing site designated for expansion. The association's focus is to advance community environmental justice concerns, fighting to ensure the health and safety of the predominately minority and low-income residents of Northeast Houston. The contact person for NEEJA is: Robin Germain-Curtis. However, any and all correspondence regarding the requested contested case hearing is to be forwarded to my office.

NEEJA's participating members are located within a mile or less of the proposed site. For instance, the following residents: Joseph and Guadalupe Pinzon, 9230 N Green River and Lawrence and Bernice Cranford, 9102 Lake Forest live within one mile or less of the existing site, the subject of the application for expansion.

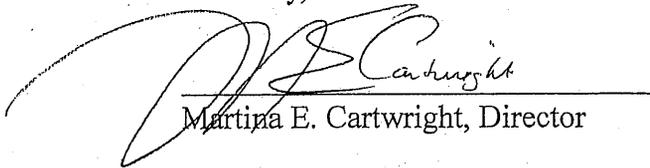
Specifically, the following represents the relevant and material concerns of the association—and its members—regarding the potential effect and/or harm to the health and safety of NEEJA members and local residents posed by the proposed vertical expansion:

- Significant increase of stormwater run-off from the site;
- Potential vector infestation (e.g. rodents, mosquitoes, etc) from a substantial increase—an estimated 400,000 tpy—in waste expected to be received by the facility over the next decade or so;
- Exacerbation of existing groundwater contamination caused by the facility;
- Increase in rank and stinking odors from the facility;
- Continued and/or increased migration of landfill gases from the footprint of the landfill;
- Increase in air emissions from a significant increase in truck traffic to the site; and/or
- Potential for slope failure. The proposed final landfill height is expected to be much higher than any prior design approved for Harris County. The permit amendment does not present adequate slope stability analyses to assure the general public that the landfill will not experience slope stability failures.

As such, it is expected that the applicant will not meet the statutory and regulatory requirements contained within 30 TAC Chapter 330. Based on the aforementioned information, the association clearly meets the requirements of an "association" as outlined in 30 TAC § 55.252.

Thank you, in advance for your assistance and we eagerly await the Commission's decision.

Sincerely,


Martina E. Cartwright, Director

38040
MSW

ENVIRONMENTAL JUSTICE CLINIC

THURGOOD MARSHALL SCHOOL OF LAW

3100 Cleburne Avenue

Houston, Texas 77004

Martina E. Carwright,
Director/Managing Attorney

713 - 313-1019 - OFFICE
713 - 313-1191 - FAX



OPA *H*

FEB 11 2005

BY *js*

CHIEF CLERKS OFFICE

2005 FEB 10 PM 4:02

TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

February 10, 2005

LaDonna Castanuela, Chief Clerk
Office of the Chief Clerk
Texas Commission for Environmental Quality
Mail Code 105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit Amendment; Proposed Permit Amendment No. 261B; McCarty Road Landfill TX, L.P., 5757 A Oates Road, Houston, TX 77078-4811

Dear Ms. Castanuela:

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NEEJA is a local association, comprised of local residents and/or business interests located in and around the existing site designated for expansion. The association's focus is to advance community environmental justice concerns, fighting to ensure the health and safety of the predominately minority and low-income residents of Northeast Houston. The contact person for NEEJA is: Robin Germain-Curtis. However, any and all correspondence regarding the requested contested case hearing is to be forwarded to my office.

NEEJA's participating members are located within a mile or less of the proposed site. For instance, the following residents: Joseph and Guadalupe Pinzon, 9230 N Green River and Lawrence and Bernice Cranford, 9102 Lake Forest live within one mile or less of the existing site, the subject of the application for expansion.

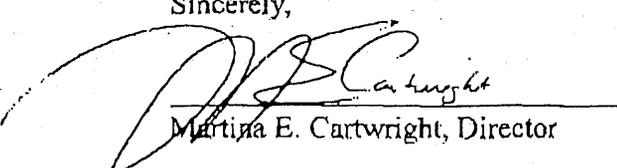
Specifically, the following represents the relevant and material concerns of the association—and its members—regarding the potential effect and/or harm to the health and safety of NEEJA members and local residents posed by the proposed vertical expansion:

- Significant increase of stormwater run-off from the site;
- Potential vector infestation (e.g. rodents, mosquitoes, etc) from a substantial increase—an estimated 400,000 tpy—in waste expected to be received by the facility over the next decade or so;
- Exacerbation of existing groundwater contamination caused by the facility;
- Increase in rank and stinking odors from the facility;
- Continued and/or increased migration of landfill gases from the footprint of the landfill;
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As such, it is expected that the applicant will not meet the statutory and regulatory requirements contained within 30 TAC Chapter 330. Based on the aforementioned information, the association clearly meets the requirements of an "association" as outlined in 30 TAC § 55.252.

Thank you, in advance for your assistance and we eagerly await the Commission's decision.

Sincerely,


Martina E. Cartwright, Director

From:
OCT-13-2006 13:25 FROM:

Oct 13 2006 14:32 P.01
TO:5 193311

P.1/3

TEXAS SOUTHERN UNIVERSITY

3100 CLEBURNE STREET • HOUSTON, TEXAS 77004

713-313-7011



CLINICAL LEGAL STUDIES PROGRAM
OFFICE 713-313-7276

OPA *H*

OCT 16 2006

BY *[Signature]*

October 13, 2006

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 OCT 13 PM 2:26
CHIEF CLERK'S OFFICE

LaDonna Castanuela, Chief Clerk
Office of the Chief Clerk
Texas Commission for Environmental Quality
Mail Code 105
P.O. Box 13087
Austin, Texas 78711-3087

*MSW
38040*

Re: Notice of Contested Case Hearing of Application and Preliminary Decision for a Municipal Solid Waste Permit Amendment; Proposed Permit Amendment No. 261B; McCarty Road Landfill TX, LP., 5757 A Oates Road, Houston, TX 77078-4811

Dear Ms. Castanuela:

Pursuant to 30 TAC 55.201(b)(4), the Environmental Law and Justice Center, on behalf of Northeast Environmental Justice Association (hereinafter referred to as "NEEJA") and its members respectfully requests a contested case hearing on the matter referenced as: Municipal Solid Waste Permit Amendment; Proposed Permit Amendment No. 261B. Specifically, Allied Waste Industries, as owner and operator of the McCarty Road Landfill located in Houston, Harris County, Texas has applied to the Texas Commission for Environmental Quality for issuance of the aforementioned permit or allow for vertical expansion of its existing facility located at 5757 Oates Road in Houston, Harris County, Texas.

NEEJA is a local association, comprised of local residents and/or business interests located in and around the existing site designated for expansion. The association's focus is to advance community environmental justice concerns. This purpose includes fighting to ensure that the health and safety of the predominately minority and low-income residents of Northeast Houston is protected. The contact person for NEEJA is: Robin Germain-Curtis. However, any and all correspondence regarding the requested contested case hearing is to be forwarded to our office.

NEEJA's participating members are all located within five miles or less of the proposed site, with some NEEJA members residing as close as within one mile of the proposed site. For instance, the following residents are members of NEEJA: Joseph and Guadalupe Pinzon residing at: 9230 N. Green River Drive, which is 1.5 miles or less from the proposed facility, and Lawrence and Bernice Cranford, residing at 9102 Lake Forest Boulevard, which is 1.0 mile or less from the proposed facility.

NEEJA is concerned regarding the adverse impacts that the proposed facility will have on the health and safety of persons residing in the area of the proposed facility, including NEEJA members. Specifically, the following represents the relevant and material concerns of the association and its members regarding the potential effects and/or harm to the health and safety of NEEJA members and local residents posed by the proposed vertical expansion.

- Significant increase of storm water run-off from the site;
- Potential vector infestation (e.g. rodents, mosquitoes, etc.) from a substantial increase—an estimated 400,000 tpy—in waste expected to be received by the facility over the next decade or so;
- Exacerbation of existing groundwater contamination caused by the facility;
- Increased in rank and stinking odors from the facility, including nuisance odors,
- Inadequate control and monitoring of harmful gases from the landfill;
- Increase in air emissions, including particulates, from a significant increase in truck traffic to the site;
- Extremely high potential for slope failure. The proposed final landfill height is expected to increase (198 ft from its 188 ft height), which is much higher than any prior design approved for Harris County. The permit amendment does not present adequate slope stability analyses to assure the general public that the landfill will not experience slope stability failures;
- Increased potential for windblown debris from truck traffic to the site;
- Increased potential for windblown debris from landfill, including windblown debris from the slope of the landfill during stormy weather;
- Adverse health impacts on the local community (e.g. increase in cancer, respiratory illness, allergies, etc.);

From:

Oct 13 2006 14:32

P.03

OCT-13-2006 13:25 FROM:

TO:5 393311

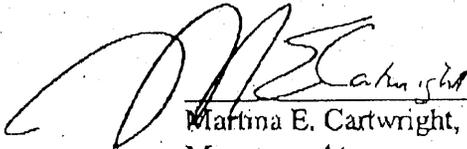
P.3/3

- Loss of natural trees and impairment of the growth and development of animals because of increased groundwater contamination, storm water run-off;
- Impairment of the health, growth and development of native and domestic animals due to the attraction and infestation of avian, mammalian, and reptilian animal vectors.
- Increased risk of flooding as a result of diminishing trees and vegetation growth and development;
- Increased contamination of nearby standing waters already contaminated by past leaching of chemical residue;

NEEJA requests a contested case hearing with regard to the impact of the facility on the health and safety of persons residing near the facility, and further requests a hearing on each of these specific issues listed above. Neither the Executive Director, nor Applicant, has provided information demonstrating that these concerns have been adequately addressed. In consideration of these issues, it is expected that the applicant will not meet the statutory and regulatory requirements contained within 30 TAC Chapter 330. Based on the aforementioned information, the association clearly meets the requirements of an association as outlined in 30 TAC § 55.205.

Thank you, in advance for your assistance and we eagerly await the Commission's decision.

Sincerely,



Martina E. Cartwright,
Managing Attorney

LaKisha Ledbetter,
Student Attorney

RaChell Hunt,
Student Attorney

TCEQ Public Participation Form
McCarty Road Landfill TX, L.P.
Public Meeting
Proposed Amendment to MSW Permit No. 261B
Thursday, December 2, 2004

PLEASE PRINT:

Name: MARTINA CARTWRIGHT

Address: 3100 CLEBURNE AVENUE

City/State: HOUSTON, TX Zip: 77004

Phone: (713) 313-1019

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? NEEJA / N.E. 2000

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓/BELOW

I wish to provide formal oral comments.

I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted any time during the meeting.)

Please give this to the person at the information table. Thank you.

From: Brown McCarroll

10/13/2006 4:23 PM PAGE 3/012 Fax Server

Oct 13 2006 16:29

P.03

Brown McCarroll
L.L.P.

111 Congress Avenue, Suite 1400, Austin, Texas 78701-4043
512-472-5456 fax 512-479-1101

MONICA JACOBS
Direct: (512) 479-9720
Direct Fax: (512) 226-7273
E-mail: mjacobs@mailbmc.com

October 13, 2006

VIA FACSIMILE (512) 239-3311

Ms. LaDonna Castañuela
Office of the Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, MC-105
Austin, TX 78753

Chros

OPA

OCT 16 2006

BY

gr

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OCT 13 PM 4:31
CHIEF CLERKS OFFICE

RE: Request for Contested Case Hearing on
MSW Permit No. 261B Amendment Application
McCarty Road Landfill TX, LP
5757-A Oates Road
Houston, TX 77078-4811

Dear Ms. Castañuela:

The purpose of this letter is to request a contested case hearing regarding Municipal Solid Waste ("MSW") Permit No. 261B Amendment Application ("Application" or "Amendment Application") by McCarty Road Landfill TX, LP ("Applicant") on behalf of the following entities:

1. Weingarten Realty Investors
2. WRI/7080 Express Lane, Inc.
3. AN/WRI Partnership, Ltd
4. AN/WRI Partnership #1, Ltd.
5. Eagle Ind., L.P.

For purposes of today's letter, this group of entities will be referred to as "Weingarten."

Official communications and documents regarding this request may be sent to Weingarten's legal representative:

Ken Ramirez
Monica Jacobs
BROWN MCCARROLL, L.L.P.
111 Congress Ave., Suite 1500
Austin, TX 78701
Telephone: (512) 479-9720
Facsimile: (512) 226-7273
E-Mail: mjacobs@mailbmc.com

Ms. LaDonna Castañuela
October 13, 2006
Page 2

Weingarten owns property ("Property") immediately adjacent to the McCarty Road Landfill ("Landfill"). More specifically, the Property is located directly to the west and south of the Landfill. The Property is currently being used as a thriving business park containing approximately 2.5 million square feet of office and warehouse space where people conduct daily business operations and often exercise at lunchtime. The affected area includes over 128,000 square feet of consumer food storage and distribution, and another approximate 1,000,000 square feet of finished consumer goods storage and distribution. The total number of square feet in the business park is 2.5 million.

The viability of these business interests is tied directly to the condition of the land and the water resources located around the Property. There is a direct link between Weingarten's property holdings and potential impacts of the expansion sought in this Amendment Application. Attachment A of this letter is a map showing Weingarten's Property in relationship to the Landfill.

Under 30 TAC §55.203, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by an application. Weingarten is an "affected person" with respect to the Amendment Application based on relevant and material disputed issues of fact that include, but are not limited to, the following, as referenced here relative to the Executive Director's ("ED's") Response to Public Comments:

Odor Impacts (Comment 1)

- Odor issues associated with the Landfill's expansion are a major concern to Weingarten. Weingarten believes that existing odor problems at the Landfill will be exacerbated by the expansion and that additional odor control measures specified in the ED's response to Comment 1, which could have been made to existing landfill operations at the site but have not, will be insufficient to address the odor problems that will be manifest by such a large expansion project.

Impacts to Property and Business Interests (Comment 34)

- The property and business interests described above and that are located immediately adjacent to the Landfill will likely suffer business, economic and environmental problems if the Amendment Application is granted. The ED's response to Comment 34 notes that the municipal solid waste rules do not explicitly address the consideration of potential negative impacts to residential and business property values, but do address human health and the environment. Granting of the Application by the Texas Commission on Environmental Quality ("TCEQ" or "Commission") will likely result in human health and environmental impacts. Those impacts, in turn, will have direct business and economic consequences, because those impacts will affect how these businesses adjacent to the Landfill are able to use their property.

Impacts to Pre-Subtitle D Landfill Cells and Liner Systems (Comment 30)

- As an immediately adjacent neighbor, Weingarten continues to share Harris County Public Health and Environmental Services' ("HCPEHS") concern regarding the impacts of the proposed expansion on the pre-Subtitle D landfill

Ms. LaDonna Castañuela

October 13, 2006

Page 3

cells and liner systems, to the extent any exist. In its response to Comment 30, the ED notes that "[a]ll of these liners were constructed in accordance with the requirements of the MSW Rules that were effective at the time of placement." While Weingarten does not currently dispute this statement, this assertion of past compliance with an obsolete standard provides little comfort given the extensive groundwater contamination associated with the Landfill, which suggests that the liner system has either failed or was inadequate when initially installed.

Impacts to Human Health and the Environment (Comment 1)

- The Landfill's vertical expansion combined with its existing problems - especially groundwater problems - could negatively impact the health and safety of Weingarten's employees and those who do business at the Property with Weingarten, such as tenants and business guests. In responding to similar concerns, the ED states that "[t]he Executive Director has received no information that shows that the proposed facility presents a threat to human health or the environment." This response does not alleviate Weingarten's concerns since a) contamination at the existing facility has been shown to present a continuing threat to human health and the environment; and b) the additional weight and leachate generated from the proposed expansion will only serve to increase the stress on liner systems that have failed or are currently failing.

Impact from Run-off (Comments 8 and 23)

- The Landfill's vertical expansion will impact runoff that could directly impact Weingarten. The ED's response to Comments 8 and 23 opine that run-off from the Landfill "will not significantly increase from the currently permitted conditions" and that "[i]n comparison to the existing permit conditions, the estimated surface run-off rates and volumes proposed by this permit amendment do not represent significant increases." Under the applicable requirements of 30 TAC §330.56(4)(A)(iv), the Applicant must demonstrate that "natural drainage patterns will not be significantly altered as a result of the proposed landfill development." First, the ED's comment does not address natural drainage. Second, stating that run-off will not significantly increase is not the same as stating that patterns will not be significantly altered. Regardless, what TCEQ deems an insignificant increase may well create a significant impact for Weingarten. The Applicant has not complied with §330.56(4)(A)(iv) because the Applicant has failed to demonstrate that natural drainage patterns will not be significantly altered.

Applicant's Compliance History (Comment 33)

- The Applicant's compliance history remains a concern for Weingarten, which it believes should be fully explored and offered into evidence at a public hearing. The Texas Solid Waste Disposal Act specifically contemplates the admission into evidence of noncompliance with TCEQ rules, permits, other orders, or state and federal statutes at a permit amendment hearing, and requires the Commission to

Ms. LaDonna Castañuela
October 13, 2006
Page 4

consider evidence of noncompliance in determining whether to amend an existing permit. Weingarten appreciates the ED's updated compliance history review, which is noted in the ED's response to Comment 33, but continuing issues regarding recent enforcement actions cause Weingarten to believe that the Applicant's compliance problems warrant denial of the Amendment Application. See TEX. HEALTH & SAFETY CODE §361.084(c) & (d). For example, the Applicant has been working for years on a complex corrective action program necessitated by serious groundwater contamination. That contamination could only have been caused by a severely leaking landfill, a breach of the most basic environmental standards, and therefore a strong indicator of poor compliance history.

Weingarten is also interested in examining the Applicant's compliance history at other facilities besides the Landfill. The Applicant's cumulative environmental record is a central component of the Applicant's overall compliance history; Weingarten has serious concerns regarding the completeness of the Applicant's compliance history. Finally, TCEQ's response does not address the local compliance issues noted in Comment 33. TCEQ's Region 12 office routinely refers local environmental complaints to local governmental entities. Consequently, failing to fully consider environmental violations documented by local governmental entities is a failure to truly consider and evaluate the Applicant's compliance record.

Consideration of Protection for Maximum Life of Landfill (Comment 31)

- Issuance of the permit amendment would increase the capacity of the Landfill by 35 million cubic yards and the estimated site life by 10.9 years. This additional capacity could negatively impact Weingarten by dramatically increasing the sheer volume of garbage located next to Weingarten and by lengthening by 10.9 years the time that the Landfill will operate. In addition, there is no guarantee that the life of the permit will not, in actuality, extend well beyond the 10.9-year estimate. In its response to Comment 31, the ED acknowledges that projected site life is "just an approximation of the life span of the Landfill," while at the same time asserting that the proposed Landfill will be protective of human health and the environment "for the projected site life." These statements do not address the concern expressed in Comment 31, which is shared by Weingarten, that the necessary protections for the *maximum* life of the Landfill have been considered and properly addressed in the proposed permit amendment.

Soil Importation (Comment 35)

- Under the proposed amendment, the solid waste acceptance rate will increase by approximately 400,000 tons per year. This, in turn, will increase the number of truckloads of garbage that pass through the neighborhood, thereby negatively affecting the local environment and having a negative impact on Weingarten's use of its Property. In addition, Weingarten disagrees with the ED's statement that the "number of trucks that would be needed to provide [soil from offsite

Ms. LaDonna Castañuela
October 13, 2006
Page 5

sources] would be a very small percentage of the normal traffic flow to, from, and near the site." See Responses to Comments 16 and 35. Weingarten's preliminary estimates (based on daily cover requirements and the additional cubic yardage of waste proposed) indicate that soil importation for daily cover and final cover could in fact increase traffic by over 20 percent.

Truck Traffic (Comments 5 and 16)

- If the Application is granted, the Applicant will move the entrance from its current facility access road to Mesa Drive. This will cause a significant increase in traffic of garbage trucks and tracking of mud on the very streets where Weingarten owns property and conducts business. (See Attachment A). Although the ED's response to Comment 5 attempts to address this concern, the reality remains that human health, the environment, and Weingarten's use of its Property are likely to be negatively impacted by the movement of the entrance and this significant increase in traffic. For example, daily soil cover is minimally 10-15% of the waste volume – i.e., six inches of daily soil cover typically applied over a four to five-foot layer of waste received in a given day. TCEQ responses indicate approximately an additional 33 million cubic yards of waste will be disposed. Soil cover at ten percent is 33 million cubic yards. Considering that a typical tandem trailer can haul about seven cubic yards at a time – soil cover importation could require over 43,000 trucks per year or 118 trucks per day (365 days per year). Considering that the current landfill traffic is 500 vehicles per day, soil importation could increase traffic over 20% - hardly a small percentage as TCEQ opined. Further, soil hauling vehicles are well-known for safety violations.

Closure and Post-Closure Plan (Comment 38)

- Weingarten remains concerned about the closure plans for the Landfill. Weingarten does not believe that the limited shallow, lateral monitoring of groundwater will provide assurance and protection for adjacent properties due to the potential for deeper migration of contamination.

Landfill Gases (Comment 29)

- It is obvious that the Applicant is unable to control the migration of its landfill gas, a very serious problem. Weingarten continues to question whether the Landfill can control migration of landfill gases in a manner that will be protective of Weingarten's employees, lessees, business partners and the visiting public. The ED's response to the concerns raised in Comment 29 that the current gas collection and control system is inadequate to control off-site migration of landfill gas is merely to note that "significant changes to the existing gas monitoring and collection system" are being made in a separate, currently pending application at TCEQ. Weingarten feels strongly that gas migration issues at the Landfill should be finalized *before* a landfill expansion is approved or be addressed as part of a proceeding on this Application. It makes no sense for TCEQ to undertake the authorization of landfill expansion and landfill gases in two separate proceedings.

Ms. LaDonna Castañuela
October 13, 2006
Page 6

Air Issues (Comment 43)

- The ED's response to Comment 43 notes that "air quality is largely... outside the scope of this review." Recent amendments to the municipal solid waste regulations, although not directly applicable to this Application, show that air issues and concerns are relevant to this type of application. Indeed, part of TCEQ's charge is to consider "air pollution control and ambient air quality aspects" in matters related to municipal solid waste management. TEX. HEALTH & SAFETY CODE §361.011(d). Weingarten remains concerned regarding air quality issues relating to the Landfill and believes that they should be fully explored in a public hearing.

Slope Stability (Comment 17)

- In addition to the concerns regarding vertical expansion noted above, Weingarten continues to have concerns regarding the stability of the Landfill. The ED's response to Comment 17 did not answer questions regarding the expanded Landfill's overall stability, settlement of the foundation soils, and related impacts to Landfill components or adjacent property. With respect to the final cover analysis addressed in Response 17, Weingarten is also concerned that the unique stability problems associated with geosynthetic cover components have not been adequately considered.

Groundwater Contamination (Comments 10, 14, 24-26, 37 and 45)

- The Landfill has already contaminated the groundwater, requiring the implementation of remediation measures such as a slurry wall; active groundwater extraction; recovery wells; and in-situ biotreatment. The dramatic vertical expansion would serve to exacerbate those existing groundwater problems, which will have a direct impact on Weingarten's business interests and environmental conditions. It may also negatively impact the health and safety of Weingarten's employees and those who do business with Weingarten. The ED touches on related topics in its responses to Comments 10, 14, 24-26, 37 and 45, noting that the Landfill is in the process of dealing with its existing leakage and contamination problems; however, the ED does not directly address whether and how existing groundwater contamination will be exacerbated by the proposed vertical expansion, which, of course, is a critical question in determining whether TCEQ should grant the Application. Experience shows (and common sense suggests) that the weight of a vertical waste volume addition will tend to force leachate and gas out of existing waste, thereby increasing the release of contaminated water and landfill gas. As the Landfill's immediate neighbor, Weingarten remains extremely concerned about this issue. Moreover, Weingarten is not confident that the Applicant has adequately controlled the source or identified the scope of the releases into the groundwater, as required by the applicable regulations.

From:
Brown McCarroll

10/13/2006 4:23 PM

Oct 13 2006 16:31 P.09
PAGE 9/012 Fax Server

Ms. LaDonna Castañuela
October 13, 2006
Page 7

In short, the proposed Amendment Application for a municipal solid waste landfill permit amendment has not shown that the Applicant has met or will meet the applicable regulatory requirements contained in 30 TAC Chapter 330. With respect to the ED's Response to Comments, Weingarten specifically disagrees with Responses 1, 3, 5, 8, 10, 14, 16, 17, 23-26, 29-31, 33-35, 37, 38 and 45 for the reasons summarized above. Weingarten is an affected person and requests a contested case hearing on the Amendment Application for MSW Permit No. 261B in which the relevant and material disputed issues of fact summarized above can be fully explored. If all of Weingarten's concerns were addressed in a manner that assured Weingarten that all applicable regulatory requirements were being met and that Weingarten's use of its Property would be protected, Weingarten would consider withdrawing its request for hearing.

Very truly yours,



MONICA M. JACOBS

MMJ:jn
Enclosure

From:
Brown McCarroll

10/13/2006 4:23 PM

Oct 13 2006 16:31 P.10
PAGE 10/012 Fax Server

ATTACHMENT A

Railwood Aerial Key

BUILDING NAME	OWNED BY*	COMMENTS
Ferro Union Steel	MacSteel (Edgecomb Metals)	
Delta Steel	Delta Steel	
Baldwin Steel	MacSteel (Edgecomb Metals)	
Consolidated Freightways	Estes Express Lines	
USF Distribution	Weingarten Realty Investors	Finished Consumer Goods
Shell Oil Company	ANWR Development Ltd.	Finished Consumer Goods
Baker Drywall	Baker Drywall	
Houston Community Cablevision	Houston Community Cablevision	
Unifirst	Unifirst	
49.3 Acres	Sain Motor Lines / Eagle Ind. LP	Approximately 36 acres of this tract were recently sold to Sain Motor Lines, Inc. for use in building
Acme Inc	Weingarten Realty Investors	Produce & delivery plant and warehouse, 200,000 sq ft
Vitaolic	Vitaolic	
Distribution International	Weingarten Realty Investors	
Building A	Weingarten Realty Investors	
Building B	ANWR Partnership Ltd.	
Houston Cement Industries	Hest 7800 Express, Lamer, Inc.	Consumer Food Storage & Distribution
American Port Services	Warehouse Associates	Finished Consumer Goods
Southwest Freight	Southwest Freight	
Building B	ANWR Partnership Ltd.	
Building C	ANWR Partnership Ltd.	Finished Consumer Goods
49.3 Acres	Eagle Ind. LP	

NOTE: The shaded areas are properties owned by Weingarten

From:
Brown McCarroll

Oct 13 2006 16:29 P.01
10/13/2006 4:23 PM PAGE 1/012 Fax Server

Brown | M^cCarroll
|
L.L.P.

FAX COVER SHEET

Austin ▪ Dallas ▪ Houston ▪ Longview ▪ El Paso

AUSTIN OFFICE
111 Congress Avenue, Suite 1400
Austin, Texas 78701-4043

Main Number

Main FAX

TO: LaDonna Castanuela
Company: TCEQ
Fax: (512) 239-3311
Phone: (512) 239-3300
Date: 10/13/2006 4:23:02 PM

FROM:
Direct Fax:
Direct Phone:
User Name: Judy Nichols
Client/Matter No.: 37667.11

MESSAGE:

CHIEF CLERKS OFFICE

2006 OCT 13 PM 4:30

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

This facsimile message is **PRIVILEGED** and **CONFIDENTIAL** attorney-client communication and is transmitted for the exclusive information and use of the addressee. Persons responsible for delivering this communication to the intended recipient are admonished that this communication may not be copied or disseminated except as directed by the addressee. If you receive this communication in error, please notify us immediately by telephone at (512) 472-5456, ext. 2613.

Date and time of transmission: 10/13/2006 4:23:02 PM
Number of pages including this cover sheet: 12

From: Brown McCarroll

10/13/2006 4:23 PM

Oct 13 2006 16:29

P.02

PAGE 2/012

Fax Server

BROWN MCCARROLL LLP

Attorneys At Law

Austin • Dallas • Houston • Longview • El Paso

FAX COVER SHEET

AUSTIN OFFICE
111 Congress Avenue
Suite 1400
Austin, Texas 78701-4043

(512) 479-1101 (FAX)

From:	Monica Jacobs	Client/Matter No.:	37667.11
User ID:	1691	Total Pages:	11

Recipient	Company	Phone No.	Fax No.
LaDonna Castañuela	TCEQ-Office of the Chief Clerk	(512) 239-3300	(512) 239-3311

DATE: October 13, 2006

Original Will Follow? Yes

Confirmation Receipt Required? Yes

MESSAGE: Please review the attached letter. I would appreciate it if you could return a file stamped copy to my attention via my Facsimile No. (512) 226-7273.

Monica Jacobs

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Completed By: _____ Date: _____ Time: _____

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2006 OCT 13 PM 4:31
CHIEF CLERKS OFFICE

Harris County
HCPHES
Public Health & Environmental Services

Hermila Palacio, M.D., M.P.H.
Executive Director
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Houston, Texas 77027
Tele: (713) 439-6000
Fax: (713) 439-6000

H. Z. (Bud) Karachwala, M.S., M.P.H.
Division Director
Pollution Control & Environmental Health
2223 West Loop South
Houston, TX 77027
Tele: (713) 439-6262
Fax: (713) 439-6316

*Chong
Crisler*

October 16, 2006

OPA *RFR
H*

OCT 16 2006

BY *[Signature]*

VIA FACSIMILE 512-239-3311 AND FIRST CLASS MAIL

Ms. LaDonna Castañuela, Chief Clerk
TCEQ, MC 105
P.O. Box 13087
Austin, TX 78711-3087

RE: Proposed Major Amendment No. 261B
McCarty Road Landfill TX, LP

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 OCT 16 PM 12:55
CHIEF CLERKS OFFICE

Dear Ms. Castañuela:

In the matter of the Municipal Solid Waste Permit Amendment Application for Allied Waste's McCarty Road Landfill TX, LP, MSW 261B (hereafter "site"), please accept these requests and comments on behalf of Harris County

Request for a Reconsideration

Harris County requests reconsideration of the Executive Director's ("ED") decisions on two issues. Briefly, these issues are groundwater contamination and related issues of vertical expansion.

Request for a Hearing

In addition, please allow this letter to serve as a timely request for a contested case hearing. We request a contested case hearing on behalf of Harris County.

Affected Person Determination

Harris County is an "affected person" because it meets the requirements of an "Affected Person" under 30 Tex. Admin. Code §§ 55.203(b) and (c)(6). That is, Harris County has authority under state law over issues contemplated by the application under Tex. Health and Safety Code, Chapter 361 and 382, and Tex. Water Code, Chapter 26. *See e.g.* Tex. Health and Safety Code § 361.032(b); Texas Water Code § 7.351. Specifically, Harris County Public Health and Environmental Services, Environmental Public Health Division (HCPHES EPH) inspects municipal solid waste facilities for compliance with

state laws and rules, and also closely reviews permit applications and provides comments to the TCEQ on permitting actions. HCPHES EPH has enforcement authority for these types of permitting facilities, and inspects and investigates conditions concerning solid waste management and control. HCPHES EPH also works closely with the TCEQ's Houston regional office which, as a matter of course, refers a substantial portion of environmental complaints from Harris County citizens to HCPHES EPH. HCPHES EPH then investigates these complaints and takes appropriate action whether that be issuing notices of violations or referring cases to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement.

Relevant and Material Disputed Issues of Fact/Issues for Reconsideration of ED's Decision

We appreciate the spirit of the negotiations with Allied Waste over several issues that are incorporated as proposed changes to the Draft Permit and a revised Site Operating Plan; and the fact that the ED has included these in the Responses to Comments. However, there are some fundamental issues that still require more scrutiny in making a determination on whether granting this amendment application will be protective of human health and the environment.

Please accept the two issues specified below as relevant and material disputed issues that were raised during the public comment period and that are the basis of the hearing request. These issues also give reasons why the ED's decision must be reconsidered.

Groundwater Contamination

As noted in responses to Comments 14, 24, 25, 26 and 30, the site is under a Corrective Action Plan for groundwater contamination outside of the point of compliance monitoring system. However, this has been an on-going condition in excess of 10 years and the ED fails to mention that contamination extends beyond the new ground water wells placed in the plume. This ground water contamination plume, due to its close proximity to Greens Bayou, is or threatens to be a surface water contaminant. While current projections from the applicant's ground water consultants indicate that portions of the plume are diminishing and responding to treatment, the compliance endpoint in the Corrective Action Implementation and Effectiveness Work Plan (Corrective Action Plan) has not been attained. The 2005 Corrective Action Report lists the following constituents in one or more groundwater wells located outside of the groundwater protection system in excess of the Groundwater Protection Standard: benzene; 1,1 - dichloroethane; vinyl chloride; carbon tetrachloride; and 1,1 - dichloroethene. While future compliance plans may address groundwater contamination as it occurs, we are concerned about the placement of additional waste into a landfill with a liner system and a ground water protection system that has been proven to be ineffective in containing the contamination.

With respect to response to Comment 30, while it is true that the liners were represented as being constructed according to the rules at the time of placement, two items have changed. First, the federal government has determined that these types of liners are not

protective of public health and the environment, and more protective requirements (Subtitle D) are required for new waste fills. The TCEQ has even recognized this in its revised Chapter 330 rules by requiring new vertical expansions of existing facilities to include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-centimeter depth of leachate over the liner. 30 Tex. Admin. Code § 330.331(a). Second, with the current amended permit and original permit, the anticipated weight was about 100 vertical feet of waste fill to be placed over portions of this clay liner system. As proposed under this amendment, we have concerns that this liner system will be adversely impacted by about three times the initial design weight.

Vertical Expansion on Pre-Subtitle D Liner System

In answer to response to Comments 3 (health related concerns), 10 (leaching of chemicals), 14 (water quality), 20 (monitoring for negative effects on human health and the environment), and 26 (vertical expansion exacerbate the existing groundwater problems), we offer the following. As noted in Section 3.1.1 of the Description of Facility in the ED's Response, only approximately 14% of the liner system on this site meets the Subtitle D requirements for landfills. This Subtitle D Area is in the southeast portion of the site. Attachment II in Attachment 1 of Part III (contained in Volume 1 of 6) of the Application shows that the surface of the liner system slopes to the northeast; and thus at least approximately 86% of the leachate generated could pool on the pre-Subtitle D liner system and flow to the northeast. Unfortunately, this northeast area is where the failed groundwater protection system subject to the Corrective Action Plan is located. While leachate generated in the 14% of the site above the Subtitle D liner and leachate collection system will be better contained, drawn off and properly disposed of, the remaining 86% of the site drains to the area of failed ground water protection system in the northeast portion of the site. This area not only has pre-Subtitle D clay liner systems but also has had containment/remediation attempts provided by three additional slurry trenches.

While state rules related to Subtitle D requirements to expand this landfill may allow the vertical expansion at the site, allowing a vertical expansion when there is known uncontained groundwater contamination in the northeast portion of this site adjacent to Greens Bayou does not meet the state's policy and purpose of Chapter 361 of Tex. Health and Safety Code which is to "safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste . . ." Tex. Health and Safety Code § 361.002. The Commission is also required to consider water pollution control and water quality aspects and air pollution control and ambient air quality aspects in matters relating to municipal solid waste. Tex. Health and Safety Code § 361.011(d). We are concerned about the placement of additional waste in an already failed groundwater protection system located on an inadequate pre-Subtitle D liner. The ED's draft permit and response to comments does not address these concerns and if the permit is issued, we fear that future generations will adversely face the consequences of expansion of this site.

Response to Comment 47 concludes that it would be the applicant's option to prohibit special wastes from the non-Subtitle D portion of the landfill. Such a consideration should not be left as an option but should instead be a requirement since it will segregate wastes with a higher environmental threat to a more protective portion of the landfill. The reason Subtitle D exists, and is applicable to new landfills and landfill expansions, is the recognition that municipal solid waste (including but not exclusively attributable to special wastes) contains many wastes that compromise traditional liner systems and pose a threat to ground and surface water. Exclusion of special wastes may not address all the problems, given the environmental threat posed by municipal solid wastes that are not special wastes; however, segregation of special wastes to the Subtitle D Area will remove some level of environmental threat.

The issues of whether 1) the proposed vertical expansion will protect ground water and surface water quality; 2) the draft permit complies with the intent of Subtitle D and Tex. Health and Safety Code, Chapter 361; and 3) the draft permit is protective of human health and the environment, are relevant and material to this application and are disputed issues of fact. In addition, these issues require reconsideration by the ED of his decision.

Conclusion

Harris County has carefully reviewed the application and the ED's decision including the response to comments, however, the issue of allowing a vertical expansion of a landfill on an existing landfill that has continuing ground water contamination remains a fundamental issue. For that reason, Harris County requests a hearing as well as a reconsideration of the ED's decision.

If you have any questions, please contact Steve Hupp, HCPES EPH, at (713) 740-8725 or by email at shupp@harriscountyhealth.com.

Sincerely,



Herminia Palacio, M.D., M.P.H.

Executive Director

Cc: Commissioner El Franco Lee, Harris County Precinct One
Commissioner Sylvia R. Garcia, Harris County Precinct Two
Bud Karachiwala, HCPHES EPH
Steve Hupp, HCPHES EPH
Snehal R. Patel, Harris County Attorney's Office

Harris County HCPHES

Public Health & Environmental Services

ENVIRONMENTAL PUBLIC HEALTH DIVISION
2223 WEST LOOP SOUTH
HOUSTON, TX 77027

FACSIMILE TRANSMITTAL SHEET

TO Ms. LaDonna Castanuela, Chief Clerk	FROM B. Z. Karachiwala
COMPANY TCEQ, MC 105	DATE 10/16/2006
FAX NUMBER 512-239-3311	TOTAL NO. OF PAGES INCLUDING COVER 5
PHONE NUMBER 512-239-3300	SENDER'S REFERENCE NUMBER
RE Proposed Major Amendment No. 261B McCarry Road Landfill TX, LP	YOUR REFERENCE NUMBER

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS

Enclosed are the comments and requests of Harris County in the above-referenced application.

2006 OCT 16 PM 12:56
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Harris County
HCPHES
Public Health & Environmental Services

Herminia Palacio, M.D., M.P.H.
Executive Director
2223 West Loop South
Houston, Texas 77027
Tel: (713) 439-6000
Fax: (713) 439-6080

OPA ^{RFR}
OCT 23 2006
BY JK

B. Z. (Bud) Karachiwala, M.S., M.B.A.
Division Director
Pollution Control & Environmental Health
2223 West Loop South
Houston, TX 77027
Tel: (713) 439-6262
Fax: (713) 439-6316

Handwritten: CHOC / OSW

October 16, 2006

VIA FACSIMILE 512-239-3311 AND FIRST CLASS MAIL

Ms. LaDonna Castañuela, Chief Clerk
TCEQ, MC 105
P.O. Box 13087
Austin, TX 78711-3087

RE: Proposed Major Amendment No. 261B
McCarty Road Landfill TX, LP

RECEIVED

OCT 18 2006

WASTE PERMITS DIVISION
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
LLH

CHIEF CLERKS OFFICE
OCT 20 AM 9:31
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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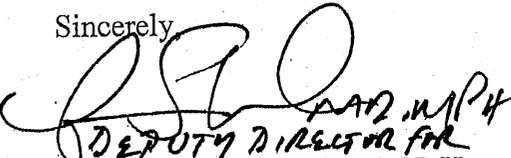
The issues of whether 1) the proposed vertical expansion will protect ground water and surface water quality; 2) the draft permit complies with the intent of Subtitle D and Tex. Health and Safety Code, Chapter 361; and 3) the draft permit is protective of human health and the environment, are relevant and material to this application and are disputed issues of fact. In addition, these issues require reconsideration by the ED of his decision.

Conclusion

Harris County has carefully reviewed the application and the ED's decision including the response to comments; however, the issue of allowing a vertical expansion of a landfill on an existing landfill that has continuing ground water contamination remains a fundamental issue. For that reason, Harris County requests a hearing as well as a reconsideration of the ED's decision.

If you have any questions, please contact Steve Hupp, HCPES EPH, at (713) 740-8725 or by email at shupp@harriscountyhealth.com.

Sincerely,


DEPUTY DIRECTOR FOR
Herminia Palacio, M.D., M.P.H.
Executive Director

Cc: Commissioner El Franco Lee, Harris County Precinct One
Commissioner Sylvia R. Garcia, Harris County Precinct Two
Bud Karachiwala, HCPHES EPH
Steve Hupp, HCPHES EPH
Snehal R. Patel, Harris County Attorney's Office

TRANSMISSION VERIFICATION REPORT

TIME : 10/16/2006 03:34
NAME : HCPHES
FAX : 7134396316
TEL : 7134396316
SER.# : BROE4J582439

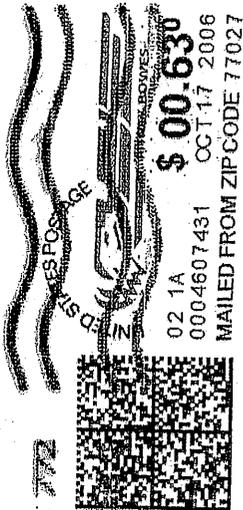
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RESULT	OK
MODE	STANDARD
	ECM

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 OCT 20 AM 9:32
CHIEF CLERKS OFFICE

Harris County
HCPHES
Public Health & Environmental Services
ENVIRONMENTAL HEALTH
2223 West Loop South
Houston, Texas 77027

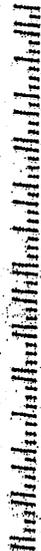
HOUSTON TX 772

17 OCT 2006 PM



Johnny Williamson
Texas Commission on Environmental Quality
Waste Permits Division MC-124
P.O. Box 13087
Austin, Texas 78711-3087

RECEIVED
OCT 18 2006
TCEQ MAIL CENTER



78711-3087

Harris County

HCPHES

Public Health & Environmental Services

ENVIRONMENTAL PUBLIC HEALTH DIVISION
2223 WEST LOOP SOUTH
HOUSTON, TX 77027

CHIEF CLERKS OFFICE

2006 OCT 20 AM 9:31

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

FACSIMILE TRANSMITTAL SHEET

TO:	Ms. LaDonna Castanuela, Chief Clerk	FROM:	B. Z. Karachiwala
COMPANY:	TCEQ, MC 105	DATE:	10/16/2006
FAX NUMBER:	512-239-3311	TOTAL NO. OF PAGES INCLUDING COVER:	5
PHONE NUMBER:	512-239-3300	SENDER'S REFERENCE NUMBER:	
RE:	Proposed Major Amendment No. 261B McCarty Road Landfill TX, LP	YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Enclosed are the comments and requests of Harris County in the above-referenced application.

RECEIVED

OCT 18 2006

WASTE PERMITS DIVISION
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
LLH

DIVISION DIRECTOR - ENVIRONMENTAL PUBLIC HEALTH DIVISION



30040
MSD

OPA

H

FEB 14 2005

Kenneth Ramirez
Partner

BY *KL*

111 Congress Avenue, Suite 2300
Austin, Texas 78701-4061
Office: 512.494.3611
Fax: 512.479.3911
ken.ramirez@bracepatt.com

February 11, 2005

Via Hand Delivery

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

FEB 11 PM 4:34
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit Amendment; Proposed Permit Amendment No. 261B; McCarty Road Landfill TX, LP, 5757 A Oates Road, Houston, TX 77078-4811

Dear Ms. Castañuela:

Enclosed for filing, please find an original and one copy of Weingarten Realty's request for contested case hearing in the above-referenced matter.

Please the original, date-stamp the copy and return the copy to our messenger.

Thank you for your time and attention to this matter. If you have any questions, please contact me, at (512) 494-3620.

Very truly yours,

Bracewell & Patterson, L.L.P.

Kenneth Ramirez

KR/sv
Enclosure



Kenneth Ramirez
Partner

111 Congress Avenue, Suite 2300
Austin, Texas 78701-4061
Office: 512.494.3611
Fax: 512.479.3911
ken.ramirez@bracepatt.com

February 11, 2005

Via Hand Delivery

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

RECEIVED
FEB 11 PM 4:34
CHIEF CLERKS OFFICE

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COMMISSION
ON ENVIRONMENTAL
QUALITY

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2. WRI/7080 Express Lane, Inc.
3. AN/WRI Partnership, :Ltd.
4. An/WRI Partnership #1, Ltd.
5. Eagle Ind., L.P.

For purposes of today's letter, this group of entities will be referred to as "Weingarten."

Official communications and documents regarding this request may be sent to Weingarten's legal representatives:

Kenneth Ramirez
Monica Jacobs
Bracewell & Patterson, L.L.P.
111 Congress Ave., Suite 2300
Austin, TX 78701
Telephone: (512) 494-3621
Facsimile (512) 479-9123



Ms. LaDonna Castañuela
February 11, 2005
Page 2

Weingarten owns property immediately adjacent to the McCarty Road Landfill ("Landfill" or "McCarty Road"). More specifically, the property is located directly to the west and south of the Landfill. The property is currently being used as a thriving business park containing approximately 2.5 million square feet of space where people conduct daily business operations and often exercise at lunchtime. The affected area includes over 128,000 square feet of consumer food storage and distribution, and another approximate 1,000,000 square feet of finished consumer goods storage and distribution. The total number of square feet in the business park is 2.5 million.

The viability of these business interests is tied directly to the condition of the land and the water resources located around the property. There is a direct link between Weingarten's property holdings and potential impacts of the expansion sought in this permit amendment application. Attachment A of this letter is a map showing Weingarten's property in relationship to the Landfill.

Under 30 TAC §55.256, 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. Weingarten is an "affected person" with respect to the McCarty Road Proposed Permit No. 261B. Reasons that Weingarten constitutes an affected person included, but are not limited to the following:

1. The property and business interests described above and that are located immediately adjacent to McCarty Road could very well suffer business, economic and environmental problems directly because of the Proposed Permit No. 261B
2. The Landfill's vertical expansion combined with its existing problems – especially groundwater problems – could negatively affect the current value of Weingarten's property, as well as Weingarten's long-term investment in the property.
3. 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 hurt Weingarten's property business, and could threaten or worsen environmental conditions such as soil, air and water. It may also impact the health and safety of Weingarten's employees and those who do business with Weingarten.
4. The permit amendment would increase the capacity of the Landfill by 35 million cubic yards and the estimated site life by 11 years. This additional capacity could negatively impact Weingarten by dramatically increasing the sheer volume of garbage



Ms. LaDonna Castañuela
February 11, 2005
Page 3

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5. The solid waste acceptance rate will increase by approximately 400,000 tons per year. This, in turn, will increase the number of truckloads of garbage that pass through the neighborhood, thereby having a negative impact on Weingarten's business and property interests.

6. 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 on the very streets where Weingarten owns property and conducts business. (See Attachment A).

7. The McCarty Road Landfill has already contaminated the groundwater, requiring the installation of remediation measures such as a slurry wall; active groundwater extraction; recovery wells; and in-situ biotreatment. The dramatic vertical expansion would serve to exacerbate those existing groundwater problems, which will have a direct impact on Weingarten's business interests and environmental conditions. It may also negatively impact the health and safety of Weingarten's employees and those who do business with Weingarten.

Specific issues that could negatively impact Weingarten's business, economic, environmental, and health/safety concerns are:

1. Whether McCarty Road maintains sufficient training, documentation and notification procedures to be certain prohibited wastes are excluded;

2. Whether McCarty Road maintains sufficient gas monitoring and remediation plans to protect Weingarten from explosive or other gases;

3. Whether leachate or gas condensate will be correctly managed in a way that protects Weingarten;

4. Whether the Landfill expansion will worsen existing groundwater contamination problems and negatively impact Weingarten's property, business and health/safety issues;

5. Whether the closure and post-closure care plans will adequately protect Weingarten after the Landfill has closed. This includes whether monitoring, testing, groundwater remediation, or other closure and post-closure matters are sufficient to protect Weingarten;



Ms. LaDonna Castañuela
February 11, 2005
Page 4

6. Whether the cost estimates and financial assurance are sufficient to protect Weingarten during closure and post-closure;

7. Whether Weingarten maintains sufficient training, documentation and notification procedures to protect Weingarten regarding any special waste McCarty Road might accept;

8. Whether the functions and minimum qualifications for each category of key personnel to be employed at McCarty Road will be sufficient to protect Weingarten Realty;

9. Whether the procedures for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous wastes, PCBs and others will be sufficient to protect Weingarten Realty;

10. Whether McCarty Road will maintain protections against fire in the expanded or existing area sufficient to protect Weingarten Realty;

11. Whether the working face of the expanded or existing area will be maintained and operated to control windblown solid waste in a manner sufficient to protect Weingarten;

12. Whether the hauling of waste through the neighboring streets and the unloading of waste once received at McCarty Road will be sufficient to protect Weingarten;

13. Whether McCarty Road's operations might violate any applicable requirement of Federal Clean Air Act, any approved state implementation plan developed under the Federal Clean Air Act, or any applicable provisions of the Texas Clean Air Act;

14. Whether operation of McCarty Road 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;

15. Whether McCarty Road will maintain its Landfill cover in a manner that sufficiently protects Weingarten Realty;

16. 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:



Ms. LaDonna Castañuela
February 11, 2005
Page 5

1. the discharge or imminent threat of discharge of municipal solid waste into or adjacent to the waters in the state without obtaining specific authorization for such discharge from the commission
2. the creation and maintenance of a nuisance; or
3. the endangerment of the human health and welfare or the environment.

17. Of specific concern is BFI's compliance, which should be fully explored and offered into evidence at a public hearing. The Texas Solid Waste Disposal Act specifically contemplates the admission into evidence of noncompliance with agency rules, permits, other orders, or state and federal statutes at a permit amendment hearing, and requires the commission to consider evidence of noncompliance in determining whether to amend an existing permit. Weingarten has reason to believe that BFI's compliance history warrants denial of the amendment application. Tex. Health & Safety Code 361.084(c) & (d).

In short, the McCarty Road Landfill application for a municipal solid waste landfill permit amendment has not shown that the applicant has met or will meet the regulatory requirements contained in 30 TAC Chapter 330. Weingarten is an affected person and requests a contested case hearing on Proposed MSW Permit No. 261B. If all of Weingarten's concerns were addressed in a manner that assured Weingarten that all applicable regulatory requirements were being met and that Weingarten's property interests would be protected, Weingarten would consider withdrawing its request for hearing.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez', is written over the typed name.

Kenneth Ramirez

KR/sv

Enclosures

Railwood Aerial Key

BUILDING NAME	OWNED BY*	COMMENTS
Ferro Union Steel	MacSteel (Edgecomb Metals)	
Delta Steel	Delta Steel	
Baldwin Steel	MacSteel (Edgecomb Metals)	
Consolidated Freightways	Estes Express Lines	
<i>USF Distribution</i>	<i>Weingarten Realty Investors</i>	<i>Finished Consumer Goods</i>
<i>Shell Oil Company</i>	<i>AN/WRI Devo #1, Ltd.</i>	<i>Finished Consumer Goods</i>
Baker Drywall	Baker Drywall	
Houston Community Cablevision	Houston Community Cablevision	
Unifirst	Unifirst	
<i>49.3 Acres</i>	<i>Sava Motor Lines / Eagle Ind, LP</i>	<i>Approximately 36 acres of this tract were recently sold to SAVA, Eagle Ind, LP owns remaining</i>
<i>Advo Inc</i>	<i>Weingarten Realty Investors</i>	<i>Processes & delivers print advertisement via mail</i>
Vitaulic	Vitaulic	
<i>Distribution International</i>	<i>Weingarten Realty Investors</i>	
<i>Building E</i>	<i>Weingarten Realty Investors</i>	
<i>Building D</i>	<i>AN/WRI Partnership, Ltd.</i>	
<i>Houston Central Industries</i>	<i>WRI/7080 Express Lane, Inc.</i>	<i>Consumer Food Storage & Distribution</i>
American Port Services	Warehouse Associates	Finished Consumer Goods
Southwest Freight	Southwest Freight	
<i>Building B</i>	<i>AN/WRI Partnership, Ltd.</i>	
<i>Building C</i>	<i>AN/WRI Partnership, Ltd.</i>	<i>Finished Consumer Goods</i>
<i>All Land Tracts other than 49.3 acres</i>	<i>Eagle Ind, LP</i>	

NOTE: The shaded areas are properties owned by Weingarten



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2005 FEB 11 PM 4: 28

CHIEF CLERKS OFFICE

Kenneth Ramirez Partner

111 Congress Avenue, Suite 2300 Austin, Texas 78701-4061 Office: 512.494.3611 Fax: 512.479.3911 ken.ramirez@bracepatt.com

38040 msw

OPA

H FEB 14 2005

BY ML February 11, 2005

Via Hand Delivery

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

Re: Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit Amendment; Proposed Permit Amendment No. 261B; McCarty Road Landfill TX, LP, 5757 A Oates Road, Houston, TX 77078-4811

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Bracewell & Patterson, L.L.P.

Kenneth Ramirez

KR/sv
Enclosure

FEB. 11. 2005 4:18PM

BRAC

LL PATTERSON AUSTIN

NO. 7850

P. 3

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2005 FEB 11 PM 4: 28

CHIEF CLERKS OFFICE

Kenneth Ramirez
Partner111 Congress Avenue, Suite 2300
Austin, Texas 78701-4061
Office: 512.494.3611
Fax: 512.479.3911
ken.ramirez@bracepatt.com

February 11, 2005

Via Hand Delivery

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Office of the Chief Clerk, MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

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Monica Jacobs
Bracewell & Patterson, L.L.P.
111 Congress Ave., Suite 2300
Austin, TX 78701
Telephone: (512) 494-3621
Facsimile (512) 479-9123



Ms. LaDonna Castañuela
February 11, 2005
Page 2

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Ms. LaDonna Castañuela
February 11, 2005
Page 3

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Ms. LaDonna Castañuela
February 11, 2005
Page 4

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FEB. 11. 2005 4:19PM

BRACEWELL PATTERSON AUSTIN

NO. 7850 P. 7



Ms. LaDonna Castañuela
February 11, 2005
Page 5

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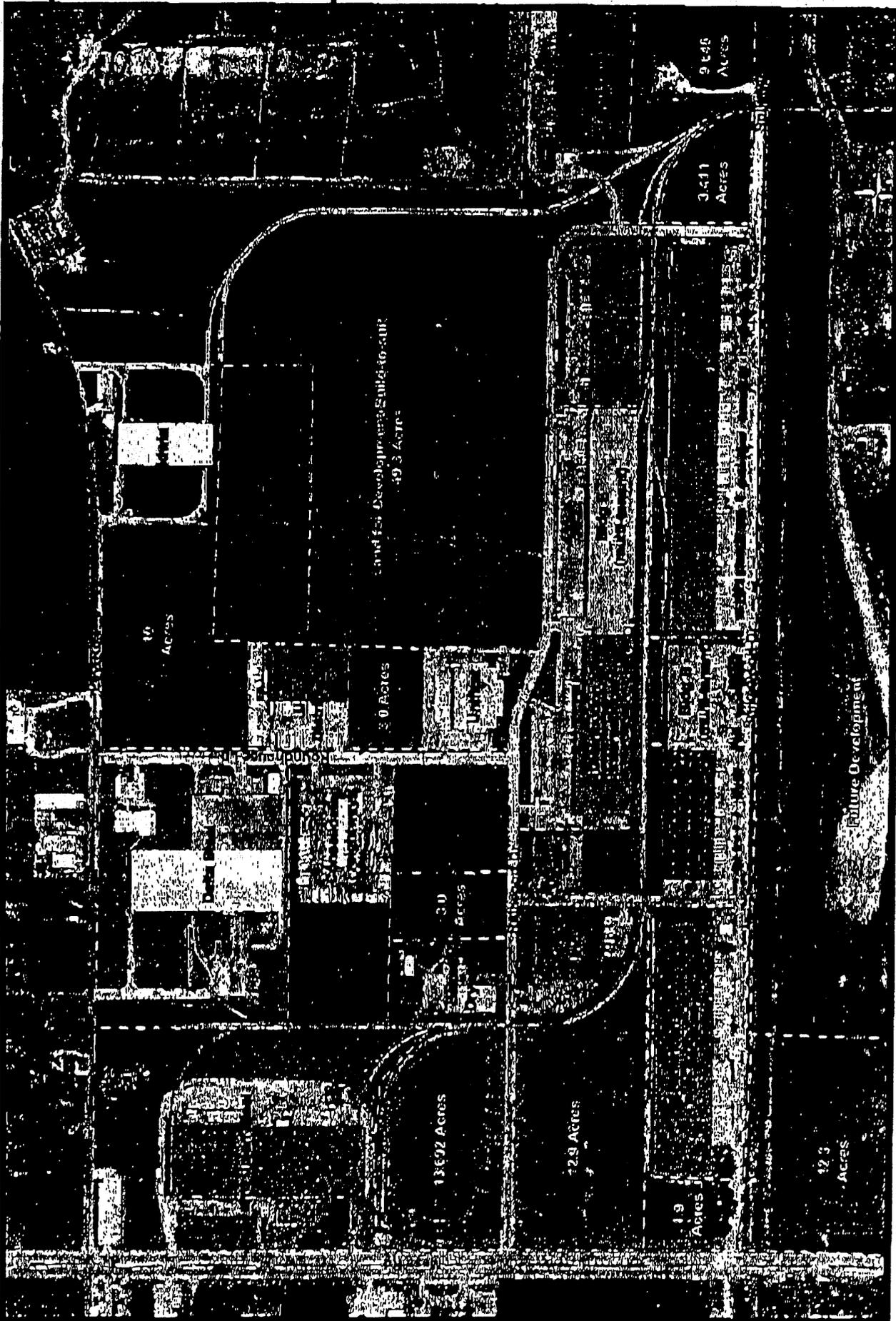
Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez', written over a horizontal line.

Kenneth Ramirez

KR/sv

Enclosures



Railwood Aerial Key

BUILDING NAME	OWNED BY*	COMMENTS
Ferro Union Steel	MacSteel (Edgecomb Metals)	
Delta Steel	Delta Steel	
Baldwin Steel	MacSteel (Edgecomb Metals)	
Consolidated Freightways	Estes Express Lines	
Baker Drywall	Baker Drywall	
Houston Community Cablevision	Houston Community Cablevision	
Unifirst	Unifirst	
Vitaulic	Vitaulic	
American Port Services	Warehouse Associates	Finished Consumer Goods
Southwest Freight	Southwest Freight	

NOTE: The shaded areas are properties owned by Weingarten

FEB. 11. 2005 4:17PM

BRA JLL PATTERSON AUSTIN

NO. 7850

P. 1

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2005 FEB 11 PM 4: 28

CHIEF CLERKS OFFICE



111 Congress Ave, Ste 2300
Austin, Texas 78701-4061
Phone: 512.472.7800
Toll Free: 800.478.6271

Fax Cover Letter

Please deliver the following pages to Ms. LaDonna Castanuela, Chief Clerk, TCEQ

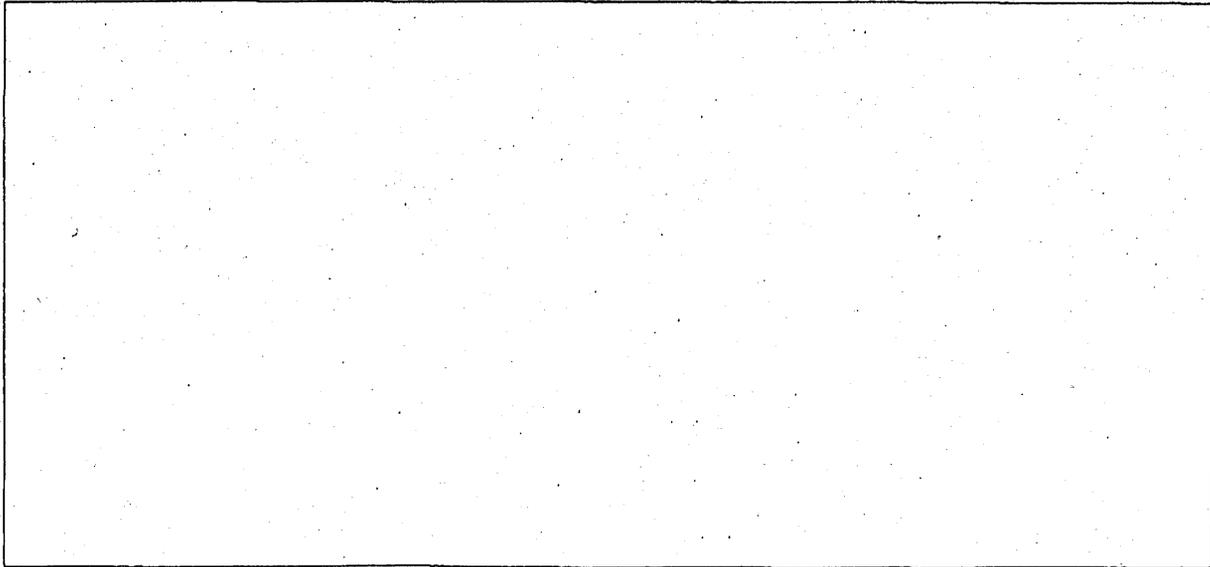
Fax Number: 512-239-3311

This fax is from Kenneth Ramirez

and is being transmitted on 2/11/2005 at . The length of this fax, (including the cover letter), is 9 pages.

The fax machine number is 512.472.9123. If you do not receive all pages, please call 512.472.7800..

Message



Confidentiality Notice

This fax from the law firm of Bracewell & Patterson, L.L.P. contains information that is confidential or privileged, or both. This information is intended only for the use of the individual or entity named on this fax cover letter. Any disclosure, copying, distribution or use of this information by any person other than the intended recipient is prohibited. If you have received this fax in error, please notify us by telephone immediately at 512.472.7800 so that we can arrange for the retrieval of the transmitted documents at no cost to you.