

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 6, 2008

TO: Persons on the attached mailing list.

RE: US Oil Recovery
Permit No. 2336

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Pasadena Public Library, 1201 Jeff Ginn Memorial Drive, Pasadena, Texas 77506.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You should submit your request to the following address:

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

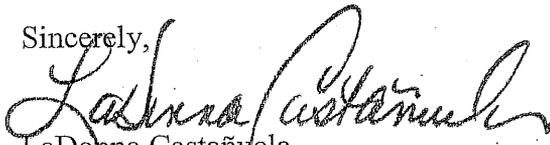
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/mr

Enclosures

MAILING LIST

for

US Oil Recovery

Permit No. 2336

FOR THE APPLICANT:

Klaus Genssler, President
US Oil Recovery
400 North Richey Street
Pasadena, Texas 77506

James W. Gartrell, Jr., P.E.
Gulf Cost Engineering & Surveying
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INTERESTED PERSONS:

See attached list.

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FOR OFFICE OF PUBLIC ASSISTANCE:

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FOR PUBLIC INTEREST COUNSEL:

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FOR THE CHIEF CLERK:

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Proposed TCEQ MSW Permit No. 2336

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Application by
US Oil Recovery, LP
For MSW Permit No. 2336

Before the
Texas Commission on
Environmental Quality
CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment on the application by US Oil Recovery, LP (USOR) for new MSW Permit Number 2336 and on the Executive Director's preliminary decision on the application.

Before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant public comments.¹ The Office of the Chief Clerk timely received comment letters and comments at the public meeting from the following persons:

Tim Tritico, on behalf of Aqua-Zyme Services, Inc. (Aqua-Zyme)

David Foster, on behalf of Clean Water Action

Gwen Allen, Dan Noyes, Gwen Scarborough, and Mary Wimbish,
on behalf of Downstream Environmental, LLC²

Chuck Klosky, on behalf of Equality Community Housing
Corporation

B.Z. Karachiwala, on behalf of Harris County Public Health and
Environmental Services (Harris County)

J.D. Head, on behalf of Liquid Environmental Solutions

William Vern

This response to public comment addresses all timely public comments received, whether or not withdrawn.

¹ 30 TEX. ADMIN. Code § 55.156 (2007).

² To acknowledge the four individuals who spoke on behalf of Downstream Environmental, LLC, this response to public comment will attribute their comments to each individual by name instead of attributing the comments of all four collectively to the organization they represent.

If you would like more information about this application or the permitting process, you may call TCEQ's Office of Public Assistance at (800) 687-4040. General information about TCEQ may be found at our Web site at www.tceq.state.tx.us.

I. Description of the Facility

USOR has applied to TCEQ for a new permit that would authorize it to operate a Type V liquid waste processing facility. The facility is located at 400 North Richey Street, in Pasadena, Harris County, Texas. The facility currently has authorization to process municipal solid waste under MSW Registration No. 43020. If TCEQ issues this permit, the permit will authorize the facility to process up to 200,000 gallons per day of grease trap, grit trap, and septage waste.

The total area within the permit boundary is approximately 6.5 acres. If the permit is issued, the facility would consist of a site entrance with appropriate security fencing, an all-weather access drive, a contained off-loading area, holding tanks, and processing equipment.

II. Procedural History

On May 11, 2005, TCEQ received this application for a new municipal solid waste permit. On June 9, 2005, the Executive Director declared the application to be administratively complete. On August 16, 2006, the Notice of Receipt of Application and Intent to Obtain a Type V MSW Permit was published in the *Houston Chronicle*.

On October 20, October 27, and November 3, 2005, the Notice of Public Meeting was published in the *Houston Chronicle*. On November 8, 2005, the Executive Director held a public meeting in Conroe. In response to public comment, the Executive Director held a second public meeting. On May 18, May 25, and June 1, 2006, the Notice of Public Meeting was published in the *Houston Chronicle*. On June 6, 2006, the Executive Director held the second public meeting in Conroe.

On December 7, 2006, the Executive Director completed the technical review of the application and prepared a draft permit. On January 24 and 25, 2007, the Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit was published in the *Houston Chronicle*.

On February 24, 2007, the public comment period ended.

Because this application was declared administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted under House Bill 801.³

III. Rules, Law, and Records

The following Web sites contain rules, statutes, and other information that apply to this application:

Texas statutes	www.state.tx.us
TCEQ rules in Title 30, Texas Administrative Code	www.tceq.state.tx.us and www.sos.state.tx.us/tac
Municipal solid waste rules that govern this application	www.tceq.state.tx.us/permitting/waste_permits/ msw_permits/msw_330rules_old.html
Secretary of State	www.sos.state.tx.us

Because this permit application was declared to be administratively complete on June 9, 2005, the Executive Director reviewed this application under the municipal solid waste rules that were in effect before March 27, 2006.⁴

TCEQ records on this application are available for viewing and copying at the Pasadena Public Library, 1201 Jeff Ginn Memorial Drive, Pasadena, Texas. Additional TCEQ records on this application are available at TCEQ's Central File Room (Building E) and at the MSW Permits Section (Building F), 12100 Park 35 Circle, Austin, Texas 78753.

³ Tex. H.B. 801, 76th Leg., R.S. (1999).

⁴ 30 TEX. ADMIN. CODE § 330.1(a) (2007) (stating that applications for new permits that are administratively complete as of the effective date of the 2006 Revisions shall be considered under the former rules). *See also* 31 Tex. Reg. 2502 (2006).

If you would like to file a complaint, you may contact TCEQ at (888) 777-3186, or you may contact the Region 12 office at (713) 767-3500.

IV. Comments and Responses

Comments have been organized under topic headings. Comments that produce the same response have been grouped together.

NOTICE

Comment 1:

Clean Water Action and Mary Wimbish commented that notice of the public meeting was defective because it was not published in an alternative-language newspaper.

Response 1:

Permit applications that TCEQ receives after November 30, 2005, are subject to TCEQ rules that require notice to be published in alternative-language newspapers.⁵ Because the Executive Director received USOR's permit application on May 11, 2005, notices for this application do not need to be published in alternative-language newspapers.

Comment 2:

Clean Water Action commented that the application was not available to the public at the Pasadena Public Library for the entire comment period.

Harris County commented that TCEQ should require USOR to provide Harris County with a complete, corrected copy of the application.

Response 2:

USOR must make its application, including any revisions, available to the public.⁶ In response to public comment, the Executive Director extended the comment period to

⁵ 30 TEX. ADMIN. CODE § 39.405(h) (2007).

⁶ 30 TEX. ADMIN. CODE § 39.405(g) (2007).

provide the public the opportunity to review the application. The Executive Director held a second public meeting on June 6, 2006.

Under TCEQ rules, the local health authority receives notice of a permit application.⁷ TCEQ rules do not require an applicant to send a copy of its application directly to a local health authority. On June 15, 2005, the Chief Clerk mailed Harris County notice of the application. The application is available for public review at the Pasadena Public Library, 1201 Jeff Ginn Memorial Drive, Pasadena, Texas.

LAND USE

Comment 3:

The Equality Community Housing Corporation commented that the facility would present an unreasonable burden for low-income residents of the area. The Equality Community Housing Corporation commented that rent is the only source of revenue supporting the tax-exempt municipal bonds used to finance the nearby housing project, and if TCEQ issues this permit, that rental income could decrease and jeopardize the housing project.

Response 3:

The Texas Legislature established TCEQ's jurisdiction over waste management in the Texas Solid Waste Disposal Act, which limits TCEQ's authority.⁸ TCEQ does not have jurisdiction to consider possible impacts on property values when determining whether to approve or deny a permit application. The Executive Director's review of a permit application determines whether the application meets the requirements of TCEQ rules.

TCEQ considers the impact of a proposed facility in terms of compatibility of land use, zoning, community growth patterns, and other factors associated with the public interest.

⁷ 30 TEX. ADMIN. CODE §§ 39.413(2), 39.418(b)(2) (2007).

⁸ TEX. HEALTH & SAFETY CODE ANN. Chapter 361 (2001).

An applicant must include in its application a description of land use within one mile of the proposed facility, growth trends within five miles, and known wells within 500 feet.⁹

USOR submitted the required land use information in its application. The Executive Director determined that the land use in the area of the proposed facility does not warrant recommending denial of this application.

In 1993, the Environmental Equity Program was established to improve communication between government, local communities, and neighboring industries. Individuals may raise concerns about environmental equity or environmental justice with TCEQ by calling the Environmental Equity Program toll free at (800) 687-4040 or by writing to Environmental Equity, Texas Commission on Environmental Quality, P.O. Box 13087 (MC-108), Austin, Texas 78711-3087, facsimile (512) 239-4007. Additional information about the Environmental Equity Program may be found on our Web site: www.tceq.state.tx.us/comm_exec/opa/envequ.html.

ODOR AND VECTORS

Comment 4:

Clean Water Action and Harris County commented that the application does not provide details about odor control facilities, so it cannot be determined whether odor control will be adequate. Harris County commented that only sweeping liquid wastes is not sufficient to control vectors and odors. Harris County recommended that TCEQ require USOR to wash down daily those portions of the facility that have contact with waste, primarily the unloading ramp and the receiving pit. Harris County commented that the application does not provide specifications of the container and storage facilities to ensure that liquids or spills will be properly contained.

Response 4:

Solid waste processing facilities must be designed and operated in a manner that does not create nuisance conditions.¹⁰ The facilities must also be designed to facilitate proper cleaning.¹¹

⁹ 30 TEX. ADMIN. CODE § 330.53(b)(7)-(8) (2006).

The application provides procedures for odor control and states that USOR will sweep and wash down daily all areas that come into contact with waste.¹² USOR will also use high-pressure equipment to wash down the plant.¹³ If objectionable odors occur, USOR must initiate appropriate measures to alleviate the condition and may face administrative enforcement action, including fines, if it fails to do so.¹⁴

The Executive Director determined that the application satisfies the requirements for odor management, spill containment, and spill cleanup.

Complaints regarding odor should be directed to TCEQ's Region 12 Office in Houston at (713) 767-3500. TCEQ also maintains a twenty-four-hour hotline at (888) 777-3186.

Additional information about TCEQ's odor complaint investigation procedures may be found on our Web site:

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

ENGINEERING SEAL

Comment 5:

Dan Noyes and Mary Wimbish commented that the application lacked required engineers' stamps, surveyors' stamps, seals, and signatures. Dan Noyes and Mary Wimbish commented that the engineer who placed the engineering seal on the original application has withdrawn his name from the application.

¹⁰ 30 TEX. ADMIN. CODE §§ 330.59(b)(5)-(6), 330.59(d)(4)(C), 330.125(b), 330.5(a)(2) (2006).

¹¹ 30 TEX. ADMIN. CODE § 330.59(b)(2), 330.59(d)(5)(B)-(C) (2006).

¹² Application Part III, page 10; Part III, page 6.

¹³ Application Part III, page 25.

¹⁴ 30 TEX. ADMIN. CODE § 330.5(a)(2) (2006).

Mary Wimbish commented that the engineer did not properly stamp the Federal Emergency Management Agency report, the Federal Emergency Management Agency Elevation Certificate, and the closure cost estimates.

Response 5:

The title or contents page of an application, each sheet of engineering plans, and all engineering drawings must display the seal of the engineer.

The permit application includes the required engineers' seals and signatures in the following places: Part I, pages 1-3; Part II, pages 22-30; and Part III, Closure Cost Estimate, Attachment 8, pages 47 and 48.

The Executive Director determined that all portions of the amended application are properly sealed by an engineer as required.

HISTORIC MONUMENT

Comment 6:

Gwen Allen, Dan Noyes, Gwen Scarborough, and Mary Wimbish commented that the application does not include a letter from the Department of Monuments and Antiquities regarding a historic monument located near the proposed facility.

Response 6:

An applicant must submit a review letter from the Texas Historical Commission (formerly the Texas Antiquities Committee).¹⁵ USOR sent a letter dated August 1, 2005, to the Texas Historical Commission. USOR received a response dated November 16, 2005, stating that the project may proceed.¹⁷

¹⁵ 30 TEX. ADMIN. CODE § 330.51(d)(1) (2006) (requiring the engineer's name, the engineer's seal, the place and date of execution, and the intended purpose, in accordance with the Texas Engineering Practice Act and 22 TEX. ADMIN. CODE 131.138).

¹⁶ 30 TEX. ADMIN. CODE § 330.51(b)(9) (2006).

¹⁷ Application Part I, page 69(a).

TECHNICAL QUALIFICATIONS

Comment 7:

Mary Wimbish commented that USOR's technical process description fails to demonstrate that USOR possesses the technical expertise and qualifications to process this type of waste.

Response 7:

An applicant must submit evidence of competency.¹⁸ Evidence must include a list of Texas solid waste sites that the applicant has owned or operated in the last ten years, a list of national and international solid waste sites in which the applicant has a direct financial interest, the name of an employee who is a licensed solid waste facility supervisor, and the names of principals and supervisors with their previous solid waste affiliations. An applicant must also submit a list of key personnel with their related experience, their related licenses, and the number and size of each type of equipment to be dedicated to site operation.

The Executive Director determined that the application contains information that meets the requirement for evidence of competency.¹⁹

APPLICATION REVISION

Comment 8:

Mary Wimbish commented that the application USOR first submitted was a duplicate of an application that Downstream Environmental had submitted in the past. Dan Noyes and Mary Wimbish commented that the revised application is completely different from the application originally submitted. Mary Wimbish commented that she believes USOR submitted a false affidavit to TCEQ.

¹⁸ 30 TEX. ADMIN. CODE § 330.52(b)(9) (2006).

¹⁹ Application Part I, page 53.

Response 8:

A Notice of Deficiency notifies an applicant that it needs to provide additional information for its application to be processed.

The Executive Director reviewed the initial application and issued a notice of deficiency to USOR. USOR responded to the notice of deficiency by submitting a revised application, which superseded the original application it had submitted. An affidavit submitted to the agency is presumed to be valid. TCEQ has not received evidence that would invalidate the current affidavit.

The Executive Director determined that the revised application meets the requirements under TCEQ rules.²⁰

Comment 9:

Gwen Allen and Mary Wimbish commented that the permit application contains revision dates and was supplemented without going through TCEQ's formal process of notifying an applicant of deficiencies in its application.

Response 9:

The Executive Director issued notices of deficiency that contained a list of different items. USOR responded to the notices by submitting the required material on different dates. USOR may have dated particular material according to when USOR prepared the material or according to when USOR submitted the material to the Executive Director. Material submitted in response to a notice of deficiency may be submitted on different dates, and the revision dates do not need to reflect the dates of submission.

The Executive Director compared the revised material with the original material and determined that the revisions addressed the deficiency.

COMPLIANCE HISTORY

Comment 10:

Aqua-Zyme and Mary Wimbish commented that the facility operated as a Type V facility without authorization from TCEQ. William Vern commented that USOR is operating under the authority of a letter written by someone at TCEQ, and there is no basis in law for that authorization. William Vern requests that TCEQ rescind that authorization. Mary Wimbish commented that USOR changes waste by dewatering or other means. Mary Wimbish commented that, by changing waste, USOR does not meet the statutory definition of a transfer facility because the definition requires waste to leave a transfer facility in the same form in which it arrived. Dan Noyes commented that, when USOR signs waste manifests, USOR represents that its facility is a secondary transport disposal site, but USOR does not perform secondary transport. Gwen Allen commented that, although USOR has not been issued a permit, the application states that USOR currently operates as a Type V facility and accepts Class 1 and Class 2 hazardous waste. Mary Wimbish commented that the facility operated without posting a closure bond and without obtaining a pre-opening inspection.

Response 10:

On June 16, 2003, TCEQ staff received a letter from USOR, providing notice of intent to operate a liquid waste transfer station. USOR received a notification tier authorization based on that letter. On April 29, 2005, TCEQ staff sent USOR a letter stating that processing liquid waste requires a registration or permit. On May 11, 2005, TCEQ received USOR's application for an MSW permit. On June 1, 2005, TCEQ staff received USOR's application for MSW registration.

The Executive Director reviewed the correspondence and determined that USOR could continue to process waste for a limited period. On July 18, 2006, the Executive Director granted USOR's application for MSW Registration No. 43020.²¹ Since that time, USOR has not had a pre-opening inspection and is not currently accepting municipal solid waste.

²¹ The Executive Director first issued MSW Registration No. 43020 to USOR on December 30, 2005. A motion to overturn the Executive Director's decision was filed. On April 5, 2006, TCEQ issued an order granting the motion to overturn, based on USOR's failure to make the application available for public review, and

Class 1 and Class 2 wastes are classifications of industrial nonhazardous wastes. USOR had been accepting industrial solid waste under TCEQ General Permit No. WQG600000 while its application for an industrial solid waste permit was pending. On December 5, 2007, the Executive Director granted USOR's application for Industrial Nonhazardous Waste Permit No. 52123, which replaced USOR's authorization under TCEQ General Permit No. WQG600000.

Comment 11:

Harris County commented that TCEQ should deny this permit application because USOR has a poor compliance history with TCEQ, including a pending enforcement action for unauthorized discharge (TCEQ Docket No. 2006-1959-WQ-E), and has a poor compliance history with Harris County. Harris County commented that it has cited USOR for two violations that do not appear in USOR's compliance history with TCEQ. Harris County commented that it has referred one unauthorized discharge violation to the Harris County District Attorney's office for criminal prosecution. Aqua-Zyme, Clean Water Action, Liquid Environmental Solutions, and Mary Wimbish commented that USOR's long history of repeated noncompliance and violations indicate that USOR will not comply with the proposed permit.

Mary Wimbish commented that she believes USOR committed a number of crimes including illegal dumping and theft of city services by unauthorized dumping of waste into waste lines belonging to the City of Pasadena.

Response 11:

During technical review of an application, the Executive Director prepares a compliance history for an applicant and facility. The compliance history covers the five-year period immediately preceding the date the Executive Director receives the application. The

remanded the application to the Executive Director for re-notice to ensure that the application was available for the full duration of public review. Tex. Comm'n on Env'tl. Quality, *An Interim Order concerning the Motion to Overturn filed by Mary Wimbish concerning MSW Registration No. 43020, issued to US Oil Recovery, LP;* TCEQ Docket No. 2006-0085-MSW (granting motion to overturn). After re-notice and review of comments, the Executive Director granted the application.

Executive Director considers the compliance history in determining whether to recommend issuance of a permit.²²

A compliance history includes the following information: enforcement orders, court judgments, consent decrees, criminal convictions, chronic excessive-emissions events, investigation dates, notices of violations, dates of letters regarding audits and violations disclosed under the Texas Environmental, Health, and Safety Audit Privilege Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution-reduction programs, and early compliance with state or federal environmental requirements.²³

An applicant's compliance history may have one of the following ratings:

High	above-average compliance,
Average by Default	classification for sites that have never been investigated,
Average	general compliance, or
Poor	below-average compliance. ²⁴

The Executive Director prepared and reviewed USOR's compliance history from 2000 to 2006.

USOR's history with the Gulf Coast Waste Disposal Authority and with the City of Pasadena does not contain the types of information that TCEQ rules require to be included in a compliance history; however, the Executive Director considered the comments about USOR's history with the Gulf Coast Waste Disposal Authority and with the City of Pasadena. USOR's compliance history has a classification of average. The

²² 30 TEX. ADMIN. CODE § 60.1(b) (2007).

²³ 30 TEX. ADMIN. CODE § 60.1(c) (2007).

²⁴ 30 TEX. ADMIN. CODE § 60.2(a) (2007).

Executive Director determined that USOR's compliance history does not warrant denial of this application.

Comment 12:

Dan Noyes asked whether USOR has paid the state tipping fees and taxes, and if not, whether the state will require USOR to pay tipping fees for processing USOR has already conducted.

Response 12:

Tipping fees are assessed based on the quarterly volume of waste a facility accepts.²⁵ Each quarter, USOR must report the volume of waste it accepts and must pay all assessed tipping fees.

USOR had unpaid tipping fees for waste it accepted under the notification tier authorization. On March 16, 2006, USOR paid its outstanding tipping fees.

Comment 13:

Dan Noyes commented that he has detected traces of industrial waste going into the municipal water treatment plant, in violation of USOR's permit with the publicly-owned treatment works. Dan Noyes commented that USOR has discharged waters containing lead, chrome, and other hazardous waste. Mary Wimbish commented that Downstream Environmental has provided TCEQ with evidence that USOR continues to pollute.

Response 13:

Regulated entities must dispose of waste in an authorized manner according to their authorizations and TCEQ rules.

When Region 12 receives a complaint of unauthorized activity, region staff investigate the alleged activity and reach a determination in line with agency enforcement initiation criteria. The name of the complainant is kept confidential regardless of whether the name is provided. The investigation will include a review of the entity's TCEQ authorizations,

²⁵ 30 TEX. ADMIN. CODE §§ 330.601(b)(1), 330.602(b), and 330.603(a)(1)(A) (2006).

a review of its operating records, and an inspection of the facility or operation. The investigation may also include the collection and analysis of samples. Under the Texas Water Code, if TCEQ initiates enforcement proceedings using information submitted by a private individual, the information must have been collected according to TCEQ protocols.²⁶

TCEQ received information regarding USOR's compliance, including photographs and other documents. The investigators could not verify the sample analytical data provided because of omissions on the chain of custody document. In addition, TCEQ protocol was not followed in sample preservation. The investigators, therefore, could not reach any determination that could lead to enforcement proceedings. Investigators could not link the samples to USOR without supporting evidence.

Additional information, including how to collect, preserve, and submit information or evidence according to TCEQ requirements, may be found on our Web site:

www.tceq.state.tx.us/compliance/complaints/protocols/evi_proto.html.

Comment 14:

Dan Noyes commented that there is existing contamination of Vince Bayou due to runoff from the facility. Mary Wimbish commented that she believes USOR is not containing hazardous or toxic storm water.

Response 14:

A Region 12 investigator went to the location and investigated possible contamination of Vince Bayou but found no conclusive evidence that Vince Bayou was contaminated due to this facility.

²⁶ TEX. WATER CODE ANN. § 7.0025(d) (2006).

PERMIT ENFORCEABILITY

Comment 15:

Harris County commented that, if TCEQ issues a permit with this application incorporated as part of the permit, the permit would contain sections that would be unenforceable and would therefore cause difficulty for regulatory agencies seeking to determine compliance with permit requirements.

Response 15:

In addition to the application documents, the draft permit incorporates the requirements of Chapters 37, 281, 305, and 330, as well as future revisions to those rules, as permit provisions and conditions.²⁷ A person may not store, process, or dispose of waste at an unauthorized facility or in violation of a permit. The provisions and conditions of a permit include the issued permit document, the documents of the application, and the incorporated applicable rules. The Executive Director may seek recourse against persons who violate any permit provision or condition.²⁸

The Executive Director reviewed the application and prepared a draft permit. The Executive Director determined that the permit is enforceable.

WASTEWATER DISCHARGE

Comment 16:

Harris County commented that the application indicates USOR would discharge treated effluent to the Gulf Coast Waste Disposal Authority (Figure 16), to the City of Pasadena (Figure 32), or to the facility's industrial solid waste processes for reuse (with wastewater from the industrial solid waste processes going to the Gulf Coast Waste Disposal Authority).

²⁷ Draft Permit Prov. VII.B. *See also* 30 TEX. ADMIN. CODE chs. 37, 281, 305, and 330 (2007).

²⁸ 30 TEX. ADMIN. CODE § 330.4(a) and (b) (2006).

Harris County and Dan Noyes commented that Figure 31 does not identify the discharge point to the City of Pasadena, does not identify all the facilities associated with the municipal solid waste facility, and lacks a bar scale. Harris County commented that Figure 34 does not include the wastewater discharge or the industrial process reuse of treated water.

Response 16:

The operator of a proposed processing site must submit in its processing design information about how the operator proposes to dispose of the effluent from treatment and processing operations.²⁹

Figures 32 and 38 depict the proposed disposal of effluent. On Figure 38, the structure labeled M-54 is a clean well and discharge point to the City of Pasadena. Figure 32, the site layout plan, shows areas for incoming waste, discharge lines for the Gulf Coast Waste Disposal Authority, and discharge lines for the City of Pasadena. Figure 38 indicates the discharge points for all waste streams, including all treated effluent.

Figure 34 shows processing of grease and does not show reuse or sale of recycled materials, including treated water. Figure 34 shows that USOR will sell recycled or recovered grease stored in tank M-8. Figure 34 also shows that USOR will discharge treated water stored in tank M-7 to the City of Pasadena.

The Executive Director determined that Figures 32 and 38 satisfy the requirements to identify discharge points.³⁰ Discharge points do not need to appear on Figure 16 (which indicates parts of the facility USOR proposes to use only for processing municipal solid waste) or Figure 31 (which indicates the containment capacity of the storage tank units and does not need a scale).

²⁹ 30 TEX. ADMIN. CODE § 330.59(d)(4)(H) (2006).

³⁰ Application Part III.

Comment 17:

Liquid Environmental Solutions, Dan Noyes, and Mary Wimbish commented that USOR cannot meet requirements of its contracts for wastewater treatment services with the City of Pasadena and the Gulf Coast Waste Disposal Authority. Liquid Environmental Solutions commented that USOR's facility has on numerous occasions grossly exceeded limits on total suspended solids, chemical oxygen demand, and biological oxygen demand. Liquid Environmental Solutions, Dan Noyes, and Mary Wimbish commented that USOR's waste stream will cause an upset at the wastewater treatment plant.

Response 17:

The operator of a proposed processing site must submit written documentation that all processed wastes leaving the site can be adequately handled for treatment by other facilities.³¹

USOR submitted information regarding its pretreatment agreement with the City of Pasadena. The pretreatment limits are a monthly discharge of four million gallons, 83,400 pounds of biological oxygen demand, and 83,400 pounds of total suspended solids. A daily average is calculated (in this case, 4,170 pounds or 2,500 parts per million of biological oxygen demand and 2,500 parts per million of total suspended solids), and the City of Pasadena levies a surcharge if USOR exceeds the daily limit.³²

Exceeding the limits specified in the agreement does not appear to violate the agreement, which covers specific limited services and sets the cost for additional services. The agreement appears to indicate that a violation would occur only if USOR discharges biological oxygen demand greater than 83,400 pounds in any month.

In response to comment, the Executive Director added a special provision to the permit requiring USOR to comply with its wastewater agreement with the City of Pasadena. If USOR changes its wastewater discharge agreement or enters into a new agreement, the

³¹ 30 TEX. ADMIN. CODE § 330.59(d)(2) (2006).

³² Application Part III, pages 13b through 13e (detailing pretreatment agreement).

special provisions would require USOR to submit a permit modification to update the permit.³³

The Executive Director determined that the discharge agreement with the City of Pasadena included with the permit application satisfies the requirement for documentation that processed waste leaving the site can be adequately handled for treatment by other facilities.

Comment 18:

Liquid Environmental Solutions and Dan Noyes commented that the initial application included higher rates of biological oxygen demand than the revised application, but the revised application does not indicate any corresponding change in proposed technology. Liquid Environmental Solutions asks TCEQ to examine the technology, compare it with other industries, and determine whether USOR can meet the revised rate for biological oxygen demand.

Response 18:

TCEQ rules do not require an applicant's proposed technology to meet a particular level of biological oxygen demand. The Executive Director reviewed the application and determined that the application meets the requirements of the rules.

FLOODING AND STORM WATER

Comment 19:

Harris County and Dan Noyes commented that the Elevation Certificate in the application states that the facility's processing floor is 17.3 feet above mean sea level but does not describe the elevation of other parts of the facility. Harris County commented that the lip of the ramp where waste is off-loaded is 13.88 feet above mean sea level (Part III, page 2 of 3, figure labeled "MSF Off Load Facility"), that the service ramp is 7.75 feet above mean sea level, and that the service ramp has a containment water surface depth of 7.75 feet above mean sea level. Harris County commented that the Elevation Certificate

³³

Draft Permit, Special Permit Prov. VIII.A.

should state the elevation of the facility as 13.88 feet or 7.75 feet above mean sea level to reflect accurately the facility's vulnerability to flooding.

Response 19:

An application must include a process design that describes the locations and engineering design details of all containment dikes or walls proposed for enclosing treatment, processing, and storage components, including details of the associated freeboard; and the locations and engineering details of all loading and off-loading areas.³⁴

The Elevation Certificate depicts elevations of 17.3 mean sea level for the processing floor, 13.88 mean sea level for the service ramp, and 7.75 mean sea level for the waste receiving pit.³⁵ The ramp and off-load facility design also shows an asphalt berm at 14.2 mean sea level to protect the ramp and off-loading area from inundation.³⁶

The Executive Director determined that the hatched line represents the current base flood elevation, according to the Federal Emergency Management Agency.

The Elevation Certificate and the off-load facility design provide the information required under the rules regarding containment in the treatment, processing, and storage components and in all loading and off-loading areas.

Comment 20:

Harris County, Dan Noyes, and Mary Wimbish commented that the facility lies within the 100-year floodplain. Dan Noyes and Mary Wimbish commented that the USOR survey incorrectly shows the facility as being located above the 100-year floodplain. Mary Wimbish commented that if the facility is found to be within the 100-year floodplain, the application would be incomplete if it does not include the additional requirements for projects in a floodplain.

³⁴ 30 TEX. ADMIN. CODE § 330.59(d)(4)(F) (2006),

³⁵ Application Part III, page 28.

³⁶ Elevation Certificate, Application Part II, page 28; Figures 40(b), 40(c), and 40(d), Application Part III, pages 40(b)-(d).

Harris County commented that TCEQ should deny the permit application because the application does not meet the requirements under TCEQ rules 301.34(6) and 330.55(b)(7)(B) for three feet of freeboard above the 100-year floodplain. Clean Water Action, Harris County, and Dan Noyes expressed concerns about flood protection because of the proximity of the facility to surface water bodies and the lack of demonstration of adequate elevation above the 100-year floodplain.

Harris County and Dan Noyes commented that Figure 28 in the application contains conflicting lines to illustrate the 12-foot flood stage. Harris County commented that the flood zones in Houston have recently been reevaluated. Harris County asked TCEQ to review the flooding issues in the application and to require USOR to provide additional, updated information.

Response 20:

An applicant must submit accurate information to TCEQ in its permit application or its permit application may be denied. If an applicant becomes aware of additional information, or if information in an application changes, the application must be updated accordingly so that TCEQ may consider and base its permitting decision on correct information.

J.W. Gartrell, Jr., P.E., sealed the technically complete version of the application to ensure that all information is accurate and was prepared under his supervision as required. A signed and sealed letter of appointment is provided in the application for J.W. Gartrell, P.E. No false information was apparent during technical review of the application.

The waste processing facility floor is five feet above the 100-year floodplain and does not lie within the 100-year floodplain. The Executive Director reviewed the application and determined that USOR has provided all required elements.

Comment 21:

Mary Wimbish commented that the amended application contains an incomplete engineer's Federal Emergency Management Agency report.

Response 21:

An application must include a floodplains and wetlands statement.³⁷ The Site Development Plan in an application must contain enough information to demonstrate that the site would be protected from a 100-year frequency flood.³⁸ The Site Development Plan must also provide the groundwater and surface-water protection plan and the drainage plan.³⁹ These plans must show the 100-year floodplain and must provide flood control and analysis information.⁴⁰

The Federal Emergency Management Agency map shows the floodplain and elevation on a facility layout map.⁴¹ The Federal Emergency Management Agency Elevation Certificate shows the floodplain elevation of 12 feet mean sea level, the processing floor elevation of 17.3 feet mean sea level, and the contained off-loading area elevation of 14.2 feet mean sea level.⁴² Flood levees were not required because processing occurs above the flood elevation, which bisects the driveway and parking lot.

The Executive Director determined that the information provided complies with TCEQ requirements.

Comment 22:

Gwen Allen, Dan Noyes, Gwen Scarborough, and Mary Wimbish commented that the application does not include a letter from the flood control authority or a letter regarding wetlands. Dan Noyes commented that he has not seen a certificate from the Corp of Engineers.

³⁷ 30 TEX. ADMIN. CODE § 330.53(b)(12) (2006).

³⁸ 30 TEX. ADMIN. CODE § 330.55(b)(7) (2006).

³⁹ 30 TEX. ADMIN. CODE § 330.56(f) (2006).

⁴⁰ 30 TEX. ADMIN. CODE §§ 330.56(f)(3), 330.56(f)(4)(B) (2007).

⁴¹ Federal Emergency Management Agency map, Application Part II, page 30; Facility layout map, Part II, page 29, and Part III.

⁴² Application Part II, page 28.

Response 22:

An application must include a wetlands determination under applicable federal, state, and local laws.⁴³ USOR sent a letter to the Department of the Army, Galveston District Corps of Engineers dated August 1, 2005, and received a response dated November 18, 2005, for the jurisdictional wetlands determination, stating that the site is not wetlands under its jurisdiction.⁴⁴

An applicant must receive approval from a governmental entity to begin construction in a floodplain.⁴⁵ USOR does not plan to build in a floodplain and so is not required to obtain this approval. USOR plans to use existing structures, which the application indicates were constructed in the 1960's and which are above the floodplain.⁴⁶

Comment 23:

Clean Water Action noted that USOR's plan to build up the property to lift the facility above the floodplain is inadequate.

Response 23:

USOR does not propose to raise the elevation of any portion of the facility. The property was re-graded by a former owner. The Executive Director determined that the processing facility is not in the floodplain.

Comment 24:

Harris County and Dan Noyes commented that the facility is close to a floodway rated on a Flood Insurance Rate Map, but the application does not illustrate where the facility lies in relation to the 12-foot elevation line.

⁴³ 30 TEX. ADMIN. CODE § 330.51(b)(7) (2007).

⁴⁴ Application Part I, pages 63–64(c).

⁴⁵ 30 TEX. ADMIN. CODE § 330.51(b)(4)(A) (2006).

⁴⁶ Application Part II, page 14.

Harris County commented that Figures 23 (Flood Profiles), 28, and 29 (the Flood Insurance Rate Map) are illegible, in violation of TCEQ rules 301.33(b)(1), 301.33(b)(2), and 330.51(f)(1). Harris County commented that the locations of the floodway on the figures are not visible, so it is difficult to verify whether the application complies with 301.34 and 330.55(b)(7).

Response 24:

All information on an application must be legible.⁴⁷ An applicant must make a copy of its application and all revisions to the application available for review and copying.⁴⁸

Figure 23 depicts the flood profile from the Houston ship channel to Weir Road along Vince Bayou. Figure 23 does not need to show the floodway.

Figure 28 depicts the 100-year floodplain elevation.⁴⁹ It is not necessary for this figure to depict the location of the floodway or where the facility lies in relation to the 12-foot elevation line.

Figure 29 is a copy of the Flood Insurance Rate Map for the area that encompasses the facility and which depicts the location of the 100-year floodplain.

An application must include an existing contour map.⁵⁰ Figure 40E depicts the 12-foot flood elevation line in relation to facility structures.⁵¹

The Executive Director reviewed the application and found all documents to be legible. In response to comments, the Executive Director extended the comment period on the application. On June 6, 2006, the Executive Director held a second public meeting. The Executive Director determined that the application met the requirements of the rules.

⁴⁷ 30 TEX. ADMIN. CODE § 330.51(f)(1) (2006).

⁴⁸ 30 TEX. ADMIN. CODE § 39.405(g) (2007).

⁴⁹ Application Part II.

⁵⁰ 30 TEX. ADMIN. CODE § 330.56(c) (2007).

⁵¹ Application Part III.

The Executive Director determined that Figure 40E fulfills the requirements for an existing contour map.

Comment 25:

Gwen Allen, Dan Noyes, and Mary Wimbish commented that the area is prone to heavy rain, that the application does not include adequate containment of runoff, and that there are no retaining walls at the facility. Dan Noyes asked why runoff, drainage, and flooding calculations do not apply to this application.

Response 25:

A facility must control surface drainage to minimize surface water running onto, into, and off the treatment area.⁵² The rule does not require containment of runoff from non-treatment areas. The Site Development Plan must contain sufficient information to show that the facility will not cause a prohibited discharge into the waters of the state or of the United States.⁵³ In addition, run-on and runoff management systems must be capable of controlling water from at least a 24-hour, 25-year storm event.⁵⁴ The Site Operating Plan must also include provisions for the control of accidental spillage.⁵⁵

The facility is designed so that all contaminated water is captured and processed. The containment system consists of a wall that surrounds the entire off-loading area and processing floor to prevent release if a tank should rupture. Trucks back in over curbs designed to maintain continuity of the containment wall in the off-loading area. The floor is sloped to a system of drains. Anything caught in the containment area, including any run-on or spills, goes down a drain, moves through a pipe, and empties into a tank. Spilled waste may be vacuumed and pumped into the drainage tank or may be washed

⁵² 30 TEX. ADMIN. CODE § 330.153(a) (2006).

⁵³ 30 TEX. ADMIN. CODE § 330.55(b)(1) (2006).

⁵⁴ 30 TEX. ADMIN. CODE § 330.55(b)(2) and (3) (2006).

⁵⁵ 30 TEX. ADMIN. CODE § 330.59(b)(5)(B) (2006).

down a drain.⁵⁶ The contents of the tank are then pumped into the waste processing system.

The Executive Director determined that the facility design will prevent contaminated water from running off of the processing area and will trap and contain any contaminated run-on.⁵⁷ The amended application includes calculations for run-on, runoff, and flooding.⁵⁸ The design is also adequate to contain any spills that may occur in the processing area.

TCEQ rules prohibit municipal solid waste facilities from discharging untreated contaminated water from a site.⁵⁹ Storm water that has come into contact with waste is considered to be contaminated water. All discharges of storm water must be in accordance with the requirements of the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System or with the requirements of the Texas Pollutant Discharge Elimination System, as applicable. If TCEQ issues this permit and an unauthorized discharge occurs, USOR may be subject to enforcement action.

Comment 26:

Harris County commented that the off-loading pit and the washout area are several feet apart, and because a vehicle would need to traverse part of the receiving area, waste from the vehicle could fall off or get tracked onto the surface. Harris County commented that the waste in the receiving area would then drain into the storm water collection system. Harris County recommended that (1) all wash out activity take place on the off-loading ramp so the wash water would flow to the receiving pit or (2) that USOR modify the facility to collect runoff in the area between the off-loading pit and the wash out area.

Harris County commented that Figures 32, 38, 39, 40, and the "Facility Site Plan Details" in Part III, Attachment 1, show different arrangements of off-loading facilities and are

⁵⁶ Application Part III, page 25.

⁵⁷ Application Part II, page 31.

⁵⁸ Application Part III, page 33A, Figure 33A. 30 TEX. ADMIN. CODE § 330.59(b)(2)(A) (2006).

⁵⁹ 30 TEX. ADMIN. CODE § 330.55(b)(1)(A) and (B) (2006).

inconsistent—for example, in the Facility Site Plan Details, a structure is labeled the “Washout Enclosed Building” but in Figures 38-40, the same structure is labeled the “Yellow Grease Enclosed Building.” Dan Noyes and Harris County commented that the figure titled, “Facility Site Plan Details” has illegible details and therefore does not comply with 330.51(f)(1). Harris County recommended a special provision regarding the location and drainage for off-loading and transferring of waste to address spill and surface water quality concerns.

Response 26:

Figure 32 is a large-scale, general site layout plan that does not contain details of the off-loading location. Figures 38–40 are small-scale plans of the actual processing area and include details not depicted in the general site layout plan.

Figure 40(b) depicts the off-loading facility design and shows that the off-loading pit and washout area lie within the containment area.⁶⁰ This area provides containment for the largest-capacity liquid-waste tanker so that any amount of spillage is contained and prevented from running off. The area has a sloped floor leading to a drain, which drains into the processing facility.

All information on an application must be legible.⁶¹ An applicant must make a copy of the application and all revisions to the application available for review and copying.⁶²

The Executive Director reviewed the application and found all documents to be legible. In response to comments, the Executive Director extended the comment period on the application. On June 6, 2006, the Executive Director held a second public meeting. The Executive Director determined that the application met the requirements of the rules.

The Executive Director does not find “Yellow Grease Enclosed Building” and “Washout Enclosed Building” to be mutually exclusive descriptors. The same building can have

⁶⁰ Application Part III.

⁶¹ 30 TEX. ADMIN. CODE § 330.51(f)(1) (2006).

⁶² 30 TEX. ADMIN. CODE § 30 39.405(g) (2007).

multiple functions and uses. An applicant may submit different drawings in its application to satisfy different purposes.

The Executive Director determined that the facility design, including off-loading and containment, complies with TCEQ rules regarding runoff and spill control and provides adequate protection of surface water quality.

It is an offense for a municipal solid waste facility to discharge contaminated water into the waters of the state or the United States.⁶³ If TCEQ issues this permit, and an unauthorized discharge occurs, USOR may be subject to enforcement action.

Comment 27:

Harris County commented that TCEQ should deny the permit application because the facility is within 200 feet of the confluence of Vince Bayou and Little Vince Bayou, and within half a mile of the Houston Ship Channel. Harris County recommended that the storm water sump located at the site entrance be removed from service.

Response 27:

In response to comment, the Executive Director added a special provision to the permit. The special provision would require USOR to collect storm water runoff from the parking lot in the sump and sample the collected storm water for contaminants. If contaminants are present, USOR would be required to process the collected storm water.⁶⁴ If no contaminants are present, USOR may discharge the storm water only with the permission of TCEQ.

FAULT MAP

Comment 28:

Harris County and Dan Noyes commented that the copy of the Fault Map that is available at the City of Pasadena Library is illegible and does not comply with 330.51(f)(1). Harris

⁶³ 30 TEX. ADMIN. CODE § 330.5(a) (2006).

⁶⁴ Draft Permit Special Prov. VIII.C.

County commented that because the map is illegible, it is difficult to verify whether the application complies with 330.303(b).

Response 28:

All information on an application must be legible.⁶⁵ An applicant must make a copy of its application and all revisions to the application available for review and copying.⁶⁶

The Executive Director reviewed the application and found all documents to be legible. In response to comments, the Executive Director extended the comment period on the application. On June 6, 2006, the Executive Director held a second public meeting. The Executive Director determined that the application met the requirements of the rules.

WASTE STREAMS AND WASTE MANAGEMENT

Comment 29:

Dan Noyes and Harris County commented that the application does not identify all waste streams or describe how USOR will manage each waste stream. Harris County commented that USOR must specify what waste streams it refers to in the application (Part III, page 9), where USOR describes handling other waste streams, and must specify the proper management of the waste streams. Mary Wimbish commented that the application does not include sufficient detail about how USOR proposes to separate water, solids, and oil in grit trap and septage waste. Dan Noyes expressed concern about the adequacy of procedures for separating waste streams.

Response 29:

An operator must submit information regarding waste identification.⁶⁷ The application must also describe the processes to be used, including graphic and narrative detail sufficient to enable evaluation of the operational capabilities, design safety features,

⁶⁵ 30 TEX. ADMIN. CODE § 330.51(f)(1) (2006).

⁶⁶ 30 TEX. ADMIN. CODE § 39.405(g) (2007).

⁶⁷ 30 TEX. ADMIN. CODE § 330.59(d)(1) (2006).

pollution control devices, and other health and environmental protective measures.⁶⁸ In addition, the record-keeping rules require the owner or operator of a Type V facility to retain at the site operating records, including all waste manifests and trip tickets involving special waste.⁶⁹

The application describes each waste stream and lists each waste stream USOR proposes to accept.⁷⁰ The application adequately describes the management of each of the waste streams proposed to be permitted and describes the process for grease trap, grit trap, and septage wastes, including separation and processing, storage, and disposition of effluent and solid wastes.⁷¹ The application also includes the following figures: Figure 34 (Process Flow Chart for Grease), Figure 35 (Process Flow Chart for Grit), and Figure 36 (Process Flow Chart for Septage).⁷²

This permit, if issued, would authorize USOR to accept only municipal solid waste. The facility design provides separate storage units for industrial wastes that the facility may accept under other authorizations.

The Executive Director reviewed the graphic and narrative descriptions of processes to be used and determined that the application complies with the rules.

Comment 30:

Harris County and Dan Noyes commented that USOR needs to correct the inconsistency between Figure 32 of the Site Plan (which contains a handwritten statement that industrial and municipal solid wastes are segregated and are not commingled) and USOR's statement in Part III, page 9 of the application (which states that USOR will use treated water from its municipal solid waste processes in its industrial solid waste processes).

⁶⁸ 30 TEX. ADMIN. CODE § 330.59(b)(1)(A) (2006).

⁶⁹ 30 TEX. ADMIN. CODE § 330.113(b)(10) (2006).

⁷⁰ Application Part III, page 8; Part I, page 8.

⁷¹ Application Part III, page 5.

⁷² Application Part III.

Response 30:

Once wastewater is treated, it becomes a recycled product, and is therefore removed from the statutory definition of waste. Treated wastewater that is reused is no longer waste, so treated wastewater used in other waste-treatment processes does not lead to commingling of waste.

If USOR treats wastewater from its municipal solid waste processes and reuses the resulting product in its industrial solid waste processes, it would not be commingling industrial solid wastes with municipal solid wastes.

Comment 31:

Harris County and Dan Noyes commented that the Site Operating Plan does not contain conditions to trigger removal of excess solids and does not specify how often washdowns occur.

Response 31:

TCEQ rules do not require a site operating plan to provide specificity regarding conditions that trigger removal of excess solids or frequency of washdowns.⁷³ Processing facilities that operate continuously must be swept daily and washed down at least twice a week.⁷⁴ USOR's Site Operating Plan is not required to include this.⁷⁵ The permit application states that USOR will sweep and wash down all surfaces daily.⁷⁶

Comment 32:

Harris County commented that USOR should verify the size of its dumpsters. Harris County commented that the application (Part III, page 12) states that USOR will store

⁷³ 30 TEX. ADMIN. CODE § 330.114 (2006).

⁷⁴ 30 TEX. ADMIN. Code § 330.152(a) (2006).

⁷⁵ Application Part IV, Site Operating Plan.

⁷⁶ Application Part III, page 5.

trash in a dumpster that has a capacity of twenty cubic yards, but Harris County is unaware of dumpsters that size.

Dan Noyes commented that the size of dumpsters that USOR proposes to use is inaccurate.

Response 32:

The rules and laws governing this application do not require specific capacity or size of dumpsters to be used at the facility. Therefore, any size of dumpster adequate to maintain compliance with applicable rules is acceptable.

It is the responsibility of an applicant to provide the Executive Director with sufficiently accurate data, and the Executive Director may return the application for failure to provide complete and accurate information.⁷⁷ Chapter 281 also provides TCEQ with authority to return incomplete applications during administrative review or, in certain circumstances, during technical review.⁷⁸ The applicant is required to submit accurate information to TCEQ in its permit application or a permit may be denied. If an applicant becomes aware of additional information, or if information in an application changes, the application must be updated accordingly so that TCEQ may consider and base its permitting decision on correct information.

The technically complete version of the application is provided and sealed by Mr. J.W. Gartrell, Jr., P.E., to ensure that all information is accurate and the application meets all of the rule requirements.

Comment 33:

Harris County and Dan Noyes commented that the application does not provide the location or containment capacity of grit storage.

⁷⁷ 30 TEX. ADMIN. CODE § 330.51(b)(2) (2006).

⁷⁸ 30 TEX. ADMIN. CODE §§ 281.18, 281.19 (2007).

Harris County and Dan Noyes commented that the application does not specify where the facility separates grit from the incoming waste streams.

Response 33:

The operator of a proposed processing site must submit a process design that includes generalized construction details, including approximate dimensions and capacities, of all storage components.⁷⁹

The application indicates that solid waste will be stored in roll-off boxes before disposal in a municipal solid waste landfill and that solids produced by the process are discharged and stored in a 25-cubic-yard roll-off box.⁸⁰ The draft permit requires a maximum storage limit of 72 hours for processed waste materials; thus, the roll-off box must be picked up and transported off-site for disposal of its contents at least once every three days, and replaced with an empty box.⁸¹ Figures 31 and 38 indicate that the roll-off box will be located next to ramp M-38 or in building Y-61.⁸²

The Executive Director determined that the design described in the application is adequate protection against any nuisance or threat to public health that could be caused by storage of solid waste.⁸³ The Executive Director determined that the information provided in the application complies with the rules.

Comment 34:

In Part III, page 9 of the application, USOR describes the possibility of transporting oil and sludge waste in a box to a landfill.

⁷⁹ 30 TEX. ADMIN. CODE § 330.59(d)(4)(D) (2006).

⁸⁰ Application Part III, pages 5 and 12.

⁸¹ Draft Permit Prov. II.E.

⁸² Application Part III.

⁸³ 30 TEX. ADMIN. CODE § 330.59(b)(5) (2007).

Harris County commented that USOR needs to clarify what kind of box it refers to. Harris County commented that transport by box could lead to surface contamination.

Response 34:

Vehicles and equipment used for collection must be constructed, operated, and maintained to prevent loss of liquid or solid waste material and to minimize health and safety hazards to solid waste management personnel, the public, and the environment.⁸⁴

Transporters are prohibited from discharging or allowing a discharge of waste during transportation, and transporters are required to take immediate action should a spill occur.⁸⁵

USOR provides that all solids will be dewatered and solidified before being put in the boxes and sent for final disposal.⁸⁶ In support of this provision, the application shows a filter press as the final stage of processing for these wastes.⁸⁷

UNAUTHORIZED WASTE

Comment 35:

Harris County commented that USOR needs to specify in the application (Part III, page 18) the analytical testing and methods it will perform for each truckload of waste it accepts to guide proper sampling and analysis of each load of waste and to ensure compliance. Harris County commented that USOR should provide specific tests and methods for storage and labeling samples in the application (Part III, page 18), for testing each load of waste USOR accepts to ensure compliance with proper sampling methods.

Harris County and Dan Noyes expressed concern about whether the screening process for all incoming loads was adequate, whether the period and method of sampling and

⁸⁴ 30 TEX. ADMIN. CODE § 30.330.33(a) (2006).

⁸⁵ 30 TEX. ADMIN. CODE § 30.330.34(b) (2006).

⁸⁶ Application Part III, page 13, Proposed Disposition of Effluent.

⁸⁷ Application Part III, page 34.

analyzing incoming waste was adequate, and whether the laboratory equipment to test the sampling of incoming waste was adequate.

Harris County and Dan Noyes expressed concern about whether personnel were adequately trained to screen incoming loads to ensure the facility would not receive unauthorized wastes.

Harris County commented that colorimetric sample tubes are inadequate to detect solvents in incoming waste loads. Harris County recommended that TCEQ require USOR to use a flame ionization detector or photo-ionization detector technology to screen incoming waste loads for organic solvents.

Harris County commented that USOR should be required to use an on-site lab.

Harris County commented that the application (Part III, page 17) needs to include how often USOR will conduct specific test parameters and needs to include what portion of the process or what incoming wastes USOR will check in these tests.

Response 35:

An operator must perform random inspections of incoming loads, train staff to recognize prohibited waste, and maintain appropriate records.⁸⁸ The rules require sampling to be done randomly; therefore, the inspection of each incoming load exceeds the requirement.

TCEQ rules do not restrict the method of sampling and analysis, the lab equipment that may be used, or the specifics regarding personnel training. A permittee may select any appropriate means of meeting the rule requirements. Municipal solid waste rules do not require the facility to maintain an onsite lab.

USOR's Site Operating Plan indicates that a trained employee will conduct visual inspections of all incoming loads to minimize the acceptance of unauthorized waste.⁸⁹

⁸⁸ 30 TEX. ADMIN. CODE § 330.114(5)(A) (2006).

⁸⁹ Application Part IV, page 10.

A permittee must keep all documents, manifests, trip tickets, etc., regarding special waste such as liquid waste.⁹⁰ The Site Operating Plan must include procedures for the detection and prevention of acceptance of prohibited wastes.⁹¹

Additionally, an operator must submit data identifying the sources and characteristics of wastes it proposes to receive as well as an analysis of each type of waste including constituent concentrations and characteristics (i.e., pH, grease and oil concentrations, total suspended solids, and biological oxygen demand).⁹²

If issued, this permit would allow USOR to accept only municipal solid waste, including grease, grit, and septage. If USOR accepts any waste it is not authorized to accept under this permit or under any other permits or authorizations the facility may hold, USOR may be subject to enforcement action.

The Executive Director determined that the provision for the inspection of loads, including the Site Operating Plan and the record-keeping provisions, fulfill the rule requirements for inspection of incoming waste loads.⁹³

SAMPLING

Comment 36:

Harris County commented that the industrial nature of USOR's service area requires more frequent sampling for a wider range of constituents than the annual sampling of solids for benzene, total lead, and petroleum hydrocarbon described in the proposed permit.

⁹⁰ 30 TEX. ADMIN. CODE § 330.113(b)(10) (2006).

⁹¹ 30 TEX. ADMIN. CODE § 330.114(5) (2006).

⁹² 30 TEX. ADMIN. CODE § 330.59(d)(1) (2006).

⁹³ Application Part IV, pages 10 and 12.

Response 36:

The operator of a proposed processing site must submit specifications on the characteristics and constituent concentrations of wastes emanating from the facility.⁹⁴

The nature of industry around the facility would not affect the types of waste USOR would be authorized to receive under the proposed permit. If issued, this permit would authorize the acceptance of waste from only municipal sources. The rules do not require additional sampling based on the nature of the surrounding land use.

The Executive Director determined that the proposed constituent sampling for solids identified in the application meets the rule requirements.⁹⁵

Comment 37:

Harris County asks TCEQ to require USOR to sample waste solids at least quarterly for toxicity characteristic leaching procedure, total hydrocarbon, pathogen reduction qualification, or vector attraction qualification. Harris County commented that without these requirements, regulatory agencies will have difficulty determining whether the facility complies with the permit.

Response 37:

Municipal solid waste rules do not require specific sampling of produced solids for a permitted processing facility. The rules require an applicant to submit proof that process wastes leaving the site can be adequately handled for treatment by other facilities.⁹⁶

The Executive Director determined that constituent sampling identified in the application meets the requirements.⁹⁷

⁹⁴ 30 TEX. ADMIN. CODE § 330.59(d)(2) (2006).

⁹⁵ Application Part III, page 13.

⁹⁶ 30 TEX. ADMIN. CODE § 330.59(d)(2) (2006).

⁹⁷ Application Part III, page 13.

Comment 38:

Harris County commented that Part III, page 13 of the application and Special Provision B provide inadequate testing parameters and frequency requirements. Harris County proposes that USOR test the effluent monthly for speciation of the organics present by using a GC/MS, with the sample taken as a daily composite sample on a randomly selected 24-hour period.

Harris County proposed that USOR sample daily for biological oxygen demand (5-day) and total suspended solids on days that USOR discharges to the City of Pasadena or to the Gulf Coast Waste Disposal Authority.

Response 38:

The operator of a proposed processing facility must document that all processed wastes leaving the site can be adequately handled for treatment by other facilities.⁹⁸ The process design must include the proposed disposition of effluent resulting from all treatment and processing operations.⁹⁹

The City of Pasadena required the wastewater discharge parameters in Part III and Special Provision B.¹⁰⁰ These requirements meet TCEQ rules. The City of Pasadena will test the effluent emanating from USOR's facility for biological oxygen demand and total suspended solids to determine a daily loading rate.

The proposed permit will authorize the storage and processing of exclusively municipal solid wastes, grease, grit, and septage. This permit will not authorize storage or processing of industrial wastewater. Municipal solid waste rules do not require daily sampling and testing of effluent waters before discharge.

⁹⁸ 30 TEX. ADMIN. CODE § 330.59 (d)(2) (2006).

⁹⁹ 30 TEX. ADMIN. CODE § 330.59 (d)(4)(H) (2006).

¹⁰⁰ Application Part III, page 3.

Comment 39:

Harris County recommended sampling first-time transporters for ethyl benzene and xylenes (BTEX) and total heavy metals. Harris County commented that USOR should sample all transporters randomly at least annually and should specify the method of analysis used for the sampling.

Response 39:

There is no rule requiring additional testing for first-time transporters or random annual testing for all transporters.

Comment 40:

Harris County commented that USOR should demonstrate in the application (Part III, page 18) that USOR follows the U.S. Environmental Protection Agency's analytical procedures and other testing requirements in its pretreatment sampling procedures. Harris County commented that USOR needs to specify in the application (Part III, page 18) how samples will be stored and labeled. Harris County commented that USOR needs to specify in the application (Part III, page 18) the parameters for the sampling it says it will take every 60 days.

Harris County commented that USOR needs to sample solids quarterly instead of annually for total benzene, total lead, and petroleum hydrocarbon.

Harris County also commented that USOR needs to sample quarterly for total benzene, toluene, ethyl benzene and xylenes (BTEX), all heavy metals, and total petroleum hydrocarbon, using the U.S. Environmental Protection Agency's current methods of sampling solid wastes.

Harris County proposes that USOR provide references of analytical methods for each parameter in sampling biological oxygen demand (5-day) and total suspended solids.

Response 40:

The Site Development Plan includes anticipated concentrations of greases, total suspended solids, water, pH, and biological oxygen demand, in compliance with the rule.¹⁰¹ Additional testing is not required.

Comment 41:

Dan Noyes and Harris County commented that Part III, page 24 of the application does not include a rinse cycle in the decontamination sequence for sampling equipment.

Response 41:

The Site Operating Plan requires procedures for detection and prevention of disposal of prohibited wastes.¹⁰² USOR voluntarily submitted the decontamination details in Part III.¹⁰³ These details are not required by rule statute. Lack of any information regarding decontamination processes is not a deficiency in the application.

CLOSURE

Comment 42:

Harris County commented that closure costs in Attachments 8 and 13 do not include costs of removing contaminated storm water, inspecting the storm water collection system, pressure-washing all treatment surfaces, disposing of resulting wash water, removing remaining wastes, cleaning surfaces.

Harris County commented that USOR's Final Closure Plan in the application (Attachment 13) needs to address removing all remaining wastes and products, cleaning all surfaces, and disposing of resulting wash water.

¹⁰¹ Application Part III, page 8.

¹⁰² 30 TEX. ADMIN. CODE § 330.114(5) (2006).

¹⁰³ Application Part III, page 24.

Mary Wimbish commented that the closure cost estimates are inaccurate and were changed without explanation. Mary Wimbish commented and that the application does not provide adequate information for calculating the dollar amount of the closure bond.

Response 42:

Chapter 330, Subchapter K, contains the requirements regarding the closure cost estimate and final closure plan. An applicant must provide a detailed written cost estimate showing the cost of hiring a third party to close the process facility by cleaning up litter and debris from the site and hauling it to a landfill as well as dismantling vital operational parts and locking up the facility.¹⁰⁴ The rule requires the closure cost estimate to be equal to the cost of closing the facility at the time in its active life that the extent and manner of its operation would make closure most expensive.

The final closure costs in the amended application account for disposal of 64,000 gallons of contaminated water. 64,000 gallons is the maximum storage capacity of the facility and includes wash water or contaminated storm water required to be processed through the facility.¹⁰⁵ The 64,000 gallons does not include uncontaminated storm water. The final closure plan also includes disposal of 35 cubic yards of solid waste. Closure will include leaving tanks in place, emptying and securing tanks, and disconnecting utility services.¹⁰⁶ Special Provision VIII.F of the draft permit provides for decontaminating processing equipment, storage tanks, and any surfaces that have been in contact with waste.

An applicant must provide closure cost estimates in accordance with Subchapter K.¹⁰⁷ The closure cost estimate must be based on hiring a third party to perform closure and for the disposal of the maximum volume of processed and unprocessed waste stored.¹⁰⁸ The

¹⁰⁴ 30 TEX. ADMIN. CODE § 330.282(a) (2006).

¹⁰⁵ Application Part III, page 14; Draft Permit Special Prov. VIII.C.

¹⁰⁶ Application Part III, page 47.

¹⁰⁷ 30 TEX. ADMIN. CODE § 330.56(h) (2006).

¹⁰⁸ 30 TEX. ADMIN. CODE § 330.282(a)(2)(A) and (B) (2006).

closure cost estimate provides for disposal of the maximum volume of waste stored on-site and includes both processed and unprocessed waste, consulting fees, and laboratory testing of waste for classification. The Executive Director determined the closure cost to be adequate.

During the response to the first notice of deficiency, USOR discovered that it had overestimated the price per gallon to dispose of contaminated water upon closure of the facility at approximately 86 cents per gallon for 36,000 gallons. Upon investigation of actual costs, USOR recalculated the cost of disposal of contaminated water with a lower, more accurate estimation of 16 cents per gallon for 64,000 gallons, resulting in the decrease in the estimate.

The Executive Director determined that the closure cost estimate is sufficient for the operations authorized under the proposed permit and meets all requirements.

Comment 43:

Dan Noyes asks who is responsible for cleanup if USOR fails to clean up the property, and whether the state is responsible for cleanup.

Response 43:

USOR is responsible for cleanup of the property. Subchapter K requires USOR to provide financial assurance to guarantee funds for facility clean-up, closure, and post-closure care. Furthermore, the draft permit requires USOR to provide financial assurance upon issuance of the permit.¹⁰⁹ The amount of financial assurance must be adjusted if USOR modifies the facility's closure plan.¹¹⁰

In the event that USOR is required to clean up the property and fails to do so, the state may clean up the property using the financial assurance funds. USOR would be subject to enforcement action for any contamination and failure to abide by its permit.

¹⁰⁹ Draft Permit Prov. IV.A-D.

¹¹⁰ 30 TEX. ADMIN. CODE § 330.282(a)(2) (2006).

OUTSIDE THE SCOPE

Comment 44:

Clean Water Action, Liquid Environmental Solutions, Dan Noyes, and Mary Wimbish commented that USOR has not demonstrated that it can recycle ten percent of its grease trap waste. Mary Wimbish commented that USOR's recycling plan is vague. Mary Wimbish commented that USOR cannot comply with the registration requirements for processing grease trap, grit trap, and septage waste. Mary Wimbish commented that TCEQ cannot issue a registration for a facility whose treated wastewater will not meet the discharge standards established by the publicly-owned treatment works with which the facility has a contract. Mary Wimbish commented that, because USOR disregarded letters from TCEQ dated February 24, 2004, and April 29, 2005, indicating that USOR was not authorized to process grease trap waste, TCEQ should not issue a registration to USOR. Mary Wimbish commented that USOR has consistently violated its discharge permit with Gulf Coast Waste Disposal Authority. Mary Wimbish asks that TCEQ consider USOR's compliance history with Gulf Coast Waste Disposal Authority in determining whether to grant USOR's registration application. Mary Wimbish commented that the comment period needs to be extended to at least December 1, 2005.

Response 44:

On July 18, 2006, TCEQ issued MSW Processing Registration No. 43020 to USOR. USOR's registration addresses issues such as recycling requirements that are necessary for USOR to maintain its registration. Issues related to USOR's registration are outside the scope of review for this application.

If TCEQ issues Permit No. 2336 to USOR, the permit would not require USOR to recycle grease trap waste.

Comment 45:

Harris County and Dan Noyes commented that Figure 37 shows a flow labeled Class I and Class II, but the application does not describe flows for Class I and II.

Response 45:

Each permit application must include a map that shows the location of any waste disposal activities conducted on the tract not included in the current application.¹¹¹ Class I and Class II flows are industrial nonhazardous wastes. Class I and Class II flows are outside the scope of review for USOR's application for municipal solid waste permit.

Comment 46:

Dan Noyes commented that he suspects the City of Pasadena has not notified TCEQ that it will begin accepting waste from USOR and has not modified its permit to accept waste from USOR. Dan Noyes commented that USOR is a large industrial user of wastewater discharge services.

Response 46:

In addition to waste management facilities, TCEQ regulates wastewater treatment facilities. Issues related to the City of Pasadena's wastewater treatment permit are outside the scope of review for USOR's application for municipal solid waste permit.

Complaints regarding wastewater treatment plants may be reported to TCEQ's Region 12 Office in Houston at (713) 767-3500. TCEQ also maintains a twenty-four-hour hotline at (888) 777-3186.

OPPOSITION

Comment 47:

Clean Water Action, Harris County, Dan Noyes, William Vern, and Mary Wimbish ask TCEQ to deny the permit application.

¹¹¹ 30 TEX. ADMIN. CODE § 305.45(a)(6)(C) (2007).

Response 47:

TCEQ approves or denies permit applications based on whether an application meets requirements under the rules. An application can be denied if it raises significant technical or regulatory concerns.

The Executive Director determined that the application meets all technical and regulatory requirements.

V. Conclusion

In response to public comment, the Executive Director made changes to the draft permit. The Special Provisions included in the draft permit are as follows:

VIII. Special Permit Provisions

- A. The permittee shall maintain and abide by the provisions of the wastewater discharge agreement with the City of Pasadena. Wastewater discharge must not disrupt the City of Pasadena wastewater treatment plant. If changes are made to the wastewater discharge agreement or if the facility enters into a new agreement, the permittee must submit a permit modification application in accordance with 30 TAC §305.70, to update this permit within 30 days of finalizing the new agreement.
- B. The permittee shall maintain records in the site operating record of daily effluent oil and grease and total petroleum hydrocarbon (TPH) concentrations and shall not discharge oil and grease at a concentration greater than 200 mg/liter or TPH at a concentration greater than 10 mg/liter.
- C. The permittee shall keep closed at all times the valve on the storm water sump located at the facility entrance and shall prevent the sump from overflowing. The permittee shall record, in the site operating record, (1) storm water sample inspection observation results, (2) the date of each waste spill, (3) a description of the procedures utilized to clean up each waste spill, and (4) the identity of the authorized facility that manages or processes waste resulting

from each waste spill. The permittee shall keep records of all waste transported off site and processed on site. The permittee shall retain copies of waste manifests, if applicable. The permittee's site operating record and waste manifests shall be made available for inspection by TCEQ. The permittee shall visually inspect the sump for wastewater or storm water. If wastewater or storm water is visible in the sump, the permittee shall pump the collected water out of the sump and have the water treated by an authorized facility. The permittee shall maintain records such as dates, quantities, and waste profiles, of all contaminated storm water and spilled liquid waste transferred to the permittee's facility, or shipped off site for treatment and disposal. At no time shall the permittee discharge water collected in the sump without TCEQ authorization.

D. This permit, upon issuance, supercedes any other authorization granted under 30 TAC §330.4. In accordance with 30 TAC §305.66(a)(3), MSW Registration No. 43020 is revoked upon issuance of MSW Permit No. 2336.

E. Upon issuance of this permit, the permittee shall provide financial assurance instrument(s) for demonstration of closure in an amount equal to but not less than \$17,820.00 for closure in 2005 dollars. The amount of financial assurance to be posted annually shall be determined as described in Section IV.B. of this permit.

F. The permittee shall, as part of closure, decontaminate processing equipment, storage tanks, and any surfaces that have been in contact with waste. The permittee shall properly dispose of all wash water used for closure decontamination.

Based upon the technical review of the application, the Executive Director made a preliminary decision that the proposed municipal solid waste application, including all special provisions, meets the statutory, technical, and regulatory requirements of the Texas Administrative Code, Chapter 305.

Respectfully submitted;

Texas Commission on Environmental
Quality

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Certificate of Service

I certify that on January 31, 2008, the "Executive Director's Response to Public Comment" for the application by US Oil Recovery, LP, for new MSW Permit No. 2336 was filed with the Office of the Chief Clerk at the Texas Commission on Environmental Quality.

Dawn Burton

Dawn Burton

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