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Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 4, 2008

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
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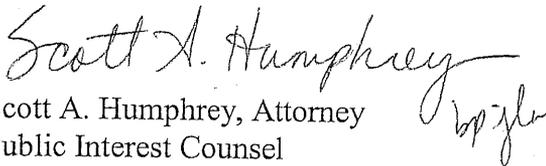
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 JAN -4 PM 3:35
CHIEF CLERKS OFFICE

RE: **IESI TX LANDFILL, LP**
TCEQ DOCKET NO. 2007-1302-MSW

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Requests for Hearing and Reconsideration in the above-entitled matter.

Sincerely,


Scott A. Humphrey, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. Box 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: www.tceq.state.tx.us

TCEQ DOCKET NO. 2007-1302-MSW

APPLICATION BY IESI TX
LANDFILL, LP
FOR MSW PERMIT
NO. 2332

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§
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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

CHIEF CLERKS OFFICE

2008 JAN -4 PM 3:35

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO REQUESTS FOR HEARING & RECONSIDERATION OF THE EXECUTIVE DIRECTOR'S DECISION

TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing and Requests for Reconsideration of the Executive Director's Decision in the above-referenced matter.

I. INTRODUCTION

IESI TX Landfill, LP (IESI or Applicant) has submitted a permit application for the proposed Jacksboro Landfill. The landfill would be located in Jack County, approximately 13 miles southeast of the City of Jacksboro and approximately 1.25 miles south of the intersection of State Highway (SH) 199 and Farm to Market (FM) Road 1156. The proposed landfill is a Type I municipal solid waste landfill with a total disposal capacity (waste and daily cover) of approximately 42,500,500 cubic yards of waste. The total area within the permit boundary is approximately 274.64 acres. Approximately 202 acres will be used for actual waste disposal operations. The facility will consist of a site entrance with appropriate security fencing, access roads, gatehouse, scales, a maintenance building, an office building, soil stockpiles, and controls

include a perimeter drainage system to convey storm water runoff around the site, berms, ditches, detention ponds and associated drainage structures.

The TCEQ received the permit application on April 5, 2005, and the Executive Director (ED) declared the application administratively complete on April 29, 2005. The Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit was published on May 13 and 17, 2005 in the *Jacksboro Gazette-News* and the *Jack County Herald*. The TCEQ held a public meeting for the application on October 18, 2005 in Jacksboro, Texas. The ED declared the application technically complete on October 25, 2006. The Notice of Application and the Preliminary Decision was published on December 22 and 26, 2006 in the *Jack County Herald* and the *Jacksboro Gazette-News*. The public comment period ended on January 25, 2007.

In response to the notices, the TCEQ received requests for a contested case hearing from the following: Tommy Aslin; the Commissioners Court of Jack County filed by Mitchell G. Davenport, County Judge, Jack County; M. Brad Dixon; BJ & Shelly Haffly; James H. Henderson; the Two Bush Community Action Group (TBCAG) represented by Marisa Perales; Kathy & Roger Pruitt; Gloria Sprencel; and James R. & Linda Henderson Thompson. In addition, the hearing requests from Mr. Dixon and James H. Henderson also include a request for reconsideration of the ED's Decision. OPIC recommends granting all of the hearing requests except for those submitted by Mr. Aslin and James R. & Linda Henderson Thompson. OPIC further recommends denying both requests for reconsideration of the ED's decision.

II. REQUIREMENTS OF APPLICABLE LAW

A. Contested Case Hearing

Under the applicable statutory and regulatory requirements, a person requesting a hearing must file the request in writing with the chief clerk no later than 30 days after the Chief Clerk's transmittal of the Executive Director's response to comments. 30 TAC § 5.201(c). The request must also substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application. 30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), 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." This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors include:

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

- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the commission's decision on the application. 30 TAC § 55.211(c).

Accordingly, pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commentator in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

B. Request for Reconsideration

A Request for Reconsideration allows for the Commission's review of the Executive Director's decision on an application. A person may file a request for reconsideration, contested case hearing or both no later than 30 days after the chief clerk's transmittal of the Executive Director's decision and Response to Comments. TEXAS WATER CODE § 5.556; 30 TAC § 55.201(a) and (e).

Any person may file a Request for Reconsideration of the Executive Director's Decision. 30 TAC § 55.201(e). The Request for Reconsideration must state the reasons why the decision

should be reconsidered. 30 TAC § 55.201(e). Responses to requests for reconsideration should address the issues raised in the request. 30 TAC § 55.209(f).

III. DISCUSSION

A. Determination of Affected Person Status

1. James H. Henderson

Mr. Henderson indicates he has a 235-acre farm adjacent to the proposed landfill tract. He has three water wells on the farm, and he uses groundwater for household use and livestock. The groundwater hydraulic gradient indicates the flow of subsurface fresh water within the Trinity Aquifer from beneath the landfill site to a position beneath his farm. Furthermore, a significant portion of his farm is topographically lower than the elevation at the landfill site and downstream on Jasper Creek. He is particularly vulnerable to contamination of surface water, groundwater and soil from substances that will be introduced into the landfill. He also refers to his prior comments in which he discusses additional environmental and human health hazards including contaminants that will be emitted into the air by the landfill.

OPIC concludes that Mr. Henderson is an affected person entitled to a contested case hearing. He indicates he is an adjacent landowner, and OPIC has confirmed his location on the maps accompanying the application. His concerns regarding water and soil contamination and adverse affects on human health are interests protected by the law under which this application will be considered. A reasonable relationship exists between the interests claimed and the activity regulated. There is a likely impact of the activity regulated on the health, safety, use and property of the requester. In addition, there is a likely impact of the regulated activity on the use

of the impacted natural resource by the requester. Therefore, OPIC concludes that Mr. Henderson is an affected person and his request for a contested case hearing should be granted.

2. **Gloria Sprencel**

Ms. Sprencel's land borders the proposed landfill site. She is opposed to the location of the landfill and believes its only purpose is for the generation of revenue for Jacksboro. However, she expresses concern about the potential displacement of wildlife, trees and plant life as well as noise, light and air pollution and the landfill's effect on the water and her water supply. Specifically, she is concerned about the landfill's effect on the natural springs in the area and the shallow water table.

OPIC has identified her property on the adjacent landowners' map. Her concerns regarding water contamination, air pollution and effects on plants and wildlife in general are interests protected by the law under which this application will be considered. A reasonable relationship exists between the interests claimed and the activity regulated. There is a likely impact of the activity regulated on the health, safety, use and property of the requester. There is also a likely impact of the regulated activity on the use of the impacted natural resource by the requester. Therefore, Ms. Sprencel is an affected person entitled to a contested case hearing.

3. **The Two Bush Community Action Group (TBCAG)**

TBCAG was organized for the express purposes of protecting the public health, the environment and property interests of its members, who generally live or own property in the area of the proposed landfill, and to protect the natural beauty and wildlife in Southeast Jack County. TBCAG has several members who own land adjacent to the landfill or in the immediate vicinity, including the aforementioned James Henderson, Danny Blankenship and J.C. Benson,

and many of the members obtain their drinking water from wells on their property. TBCAG disagrees with the responses to comments by the ED and states the ED is either incorrect or mischaracterizes the comments. Thus, TBCAG requests a hearing on all issues raised and identified in the ED's response to comments and any others properly raised.

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

TBCAG has identified three members who, by virtue of their proximity to the site and the likely impact of the facility on their property and drinking water, would be personally affected by the proposed application. The association's concerns include all issues raised in the ED's response to comments. In order for TBCAG to address these matters, it would not be necessary for these members to participate in the hearing.

The issues raised in the ED's response to comments include interests that are protected by the law under which the application will be considered.¹ A reasonable relationship exists between the interests claimed and the activity regulated. There is a likely impact of the regulated activity on the health, safety and use of the members' property as well as on the use of impacted natural resources by the members. Therefore, OPIC recommends finding that TBCAG is an affected person entitled to a contested case hearing.

¹ These issues will be discussed in greater detail in the issues analysis *infra*

4. M. Brad Dixon

Mr. Dixon lives less than 4 miles from the proposed facility. Most of his property is “bottom land” with sandy soils and very shallow groundwater (about 20 feet from the surface). A large creek runs through the property and is surrounded by large mature trees, primarily pecans.

Mr. Dixon has an old hand-dug well in his pecan orchard that is approximately 35 feet deep, with the water level at approximately 20 feet. Contamination of the shallow aquifers in this area would jeopardize his water and everybody else’s in the area. Since the groundwater is so shallow, it has to be recharged by surface run-off in the local area. He is concerned about how the landfill will contaminate groundwater through leaching and surface run-off.

OPIC notes that Mr. Dixon is not on the affected landowner’s list; nevertheless, OPIC would still recommend a finding that Mr. Dixon is an affected person entitled to a contested case hearing. Mr. Dixon lives less than four miles from the facility, and the underground aquifers can and do stretch for miles. His concern about how the landfill might contaminate the water in his well is a concern not common to members of the general public. He has identified an interest that is protected by the law under which the application will be considered. A reasonable relationship exists between the interest claimed and the activity regulated. There is a likely impact of the regulated activity on the health, safety and use of his property as well as on the use of an impacted natural resource. Therefore, OPIC recommends finding that Mr. Dixon is an affected person entitled to a contested case hearing.

5. B.J. & Shelly Haffly

Mr. and Mrs. Haffly live within a five-mile radius of the proposed landfill. The issues

they address include nuisance odors, flooding and water contamination. They note that their well shares the same drainage as the proposed facility. Furthermore, the proposed location is at the highest elevation point within a 25 mile radius. The well is the only source of drinking water. Because the proposed site is at a much higher elevation than any other property in the area, and there are two creek beds that envelope the entire proposed location, the Applicant cannot guarantee there will not be seepage into the local water aquifer.

OPIC would note that Mr. and Mrs. Haffly are not identified on the adjacent landowner's list; nevertheless, OPIC would recommend a finding that they are affected persons entitled to a contested case hearing. Since their well shares a common drainage area with the proposed landfill, they have identified an interest not common to the members of the general public. Potential nuisance odors and potential groundwater contamination are interests that are protected by the law under which the application will be considered. OPIC believes a reasonable relationship exists between the interests claimed and the activity regulated. There is a likely impact of the regulated activity on the health, safety and use of their property as well as on the use of an impacted natural resource. Therefore, OPIC recommends finding that Mr. and Mrs. Haffly are affected persons entitled to a contested case hearing.

6. Roger & Kathy Pruitt

Mr. and Mrs. Pruitt live about two miles from the proposed landfill site. They believe that using one of the highest topographic elevations atop the recharge area of the Trinity Aquifer adjacent to Jasper Creek is environmentally unsound. They depend solely on fresh groundwater for household and livestock use. They are also worried about air pollution in the area.

OPIC notes that Mr. and Mrs. Pruitt are not on the adjacent landowner's list;

nevertheless, OPIC recommends a finding that they are affected persons entitled to a contested case hearing. Since they rely on the Trinity Aquifer as their water source, they have identified an interest in this case not common to members of the general public. Potential groundwater contamination and air pollution are interests protected by the law under which the application will be considered, and there is a reasonable relationship exists between the interests claimed and the activity regulated. There is also a likely impact of the regulated activity on the health, safety and use of the his property as well as on the use of an impacted natural resource. Therefore, OPIC recommends finding that Mr. and Mrs. Pruitt are affected persons entitled to a contested case hearing.

7. Commissioners Court of Jack County

The Commissioners Court of Jack County adopted a resolution requesting a contested case hearing, and Judge Davenport submitted the resolution. The resolution recognizes the concerns of many of the citizens of Jack County and identifies issues including property values, potential contamination of soil and water and endangerment to human life.

OPIC recommends finding the Commissioners Court of Jack County is an affected person, entitled to a contested case hearing. Under 30 TAC § 55.203(c)(6), a governmental entity may be an affected person if it has statutory authority over or interest in issues relevant to the application. First, according to Tex. Health & Safety Code § 121.003, the governing body of a municipality or a commissioners court of a county may enforce any law that is reasonably necessary to protect the public health. In addition, Tex. Health & Safety Code § 364.011 states a commissioners court by rule may regulate solid waste collection, handling, storage and disposal in areas of the county not in a municipality or the extraterritorial jurisdiction of a municipality. Furthermore,

potential contamination of soil and water and endangerment to human life are issues relevant to this application. Therefore, OPIC recommends finding that the Commissioners Court of Jack County is an affected person entitled to a contested case hearing.

8. Tommy Aslin

Mr. Aslin expresses concerns regarding potential heavy rainfall. There was recently a 14-inch rain event in the proposed area. He is concerned about possible overflow and contamination in the surrounding area.

Mr. Aslin has a post office box in an adjacent county. Although he identifies relevant issues in his hearing request, OPIC cannot say that his interests are not common to those of the general public. Therefore, at this time, OPIC cannot recommend that Mr. Aslin is an affected person entitled to a contested case hearing. If Mr. Aslin could provide more information about how he is personally affected by this application, OPIC would reconsider its recommendation.

9. James R. Thompson & Linda Henderson Thompson

Mr. and Mrs. Thompson own land in Jack County in close proximity to the Northeast boundary of the site. They state that their property is downstream on Jasper Creek, which passes from this site, then later through the Thompson's property, on its way to Lake Bridgeport several miles more to the Northeast. They contend that the proposed site is inherently vulnerable and fragile and holds a high potential for pollution, which could be of catastrophic magnitude. They also state the geologic soil characteristics are highly unsuitable. The request notes that fresh, potable groundwater exists very close to the surface, and many wells in the vicinity were dug by hand. This groundwater is consumed by people and livestock throughout the vicinity. They also state the land tends to be unstable and highly prone to erosion by both wind and water. Also, the

landfill site is locally elevated relative to the surrounding countryside, and that could pose a significant threat of air pollution.

Mr. and Mrs. Thompson state they own land nearby the proposed site, but OPIC is unable to locate their property on the affected landowners' map. Although they raise several important and relevant concerns, OPIC cannot without additional information state that these concerns amount to interests not common to members of the general public. Therefore, OPIC cannot at this time recommend a finding that Mr. and Mrs. Thompson are affected persons entitled to a contested case hearing. If they could provide more information as to how they are personally affected by this application, OPIC would reconsider its recommendation.

B. Issues Raised in the Hearing Requests

TBCAG has requested a hearing on all issues contained in the Executive Director's Response to Comments. Therefore, OPIC will list the disputed issues in the same order as the ED in his response to comments:

1. whether proper notice was provided regarding revisions to the application;
2. whether proper notice of the application was provided;
3. whether the application was submitted according to TCEQ rules;
4. whether there should be a second public meeting or a contested case hearing;
5. whether there will be a barrier erected all around the area, what will be done about odors that envelope the area, what will happen to the water supply under the landfill when the liner starts to decay and what is the liability for the owner when contamination occurs;
6. whether the landfill will affect the water;
7. where the Applicant will get its water to operate the landfill;

8. whether the Applicant can assure that disposal of toxic waste from oil field drilling will not affect drinking water;
9. whether the plan for firefighting is adequate, whether the Applicant evaluated the possible consequences of active mineral development upon the hydrology underlying the site and whether the Applicant has evaluated the consequences of a breach in containment and whether the Applicant has presented a feasible plan for dealing with such an event;
10. whether the Applicant will monitor to prevent toxic waste, pesticides and needles from being put into the landfill;
11. whether proper data was used to calculate rainfall;
12. whether the archeological investigation was adequate;
13. whether the groundwater monitoring system is adequate;
14. whether the surface water controls are adequate;
15. whether the application adequately considers the presence of mineral development;
16. whether the evaluation of endangered species was adequate;
17. whether the information on geology and hydrology was adequate;
18. whether the landfill would be properly designed with proper quality control for the liners;
19. whether the application presents adequate transportation information;
20. whether the application demonstrates adequate proof of property interests, including adequate interests in the site to protect against inconsistent future uses, such as mineral development;
21. whether the site operating plan is adequate;
22. whether the application includes adequate information regarding location of floodplain and risks of flooding, existence of wetlands, other site-specific issues requiring special consideration, the types of soils at the site and the size and extent of design storms.
23. whether the proposed life of the facility is justified and whether the representations by

whether the Applicant are incorporated into the proposed permit in a clear and enforceable manner;

24. whether the proposed landfill will negatively impact property values;

25. whether the proposed buffer and screenings are adequate;

26. whether the proposed facility is compatible with surrounding land uses;

27. whether there is a more suitable location for the landfill;

28. whether the proposed permit would result in groundwater contamination;

29. whether the proposed landfill will create gas and air pollution problems;

30. whether the proposed permit will prevent and control the existence of disease vectors;

31. whether the amount of money proposed for closure and post-closure is reasonable;

32. whether the proposed permit properly addressed health hazards, nuisances and other adverse effects to the public and environment;

33. whether the proposed facility is compatible with the Regional Solid Waste Plan prepared by the regional council of governments;

34. whether the Applicant's compliance history warrants issuance of the proposed permit;

35. whether there should be restrictions regarding from where waste may come;

36. whether the proposed background and detection monitoring analysis is adequate;

37. whether there should be a water treatment and purification plan in the proposed permit;

38. whether the proposed permit complies with applicable TCEQ air quality rules;

39. whether the transportation analysis was adequate;

40. whether the proposed permit will result in excessive noise or lights;

41. whether odors will be adequately controlled; and

42. whether the proposed permit adequately prevents windblown waste.

OPIC notes that the Executive Director had responses to two additional comments. However, those comments expressed general opposition and support for the permit rather than any substantive issues.

1. Issues Disputed

There is no agreement of the parties on these issues. OPIC presented the issues in the same order as the ED did in his Response to Comments. TBCAG expressed general disagreement with all of the responses. The other parties expressed more specific disagreement with certain issues, but no one expressed agreement with any of the ED's Response to Comments.

2. Issues of Fact

All of the above-referenced disputes are issues of fact. Because these are issues of fact, rather than issues of law or policy, these issues are appropriate for referral to hearing. See 30 TAC § 55.211(b)(3)(A)(B).

3. Issues Raised During the Comment Period

The requests for hearing state issues that were raised in comments received during the comment period. These comments have not been withdrawn. At this time, there is no agreement between the parties regarding the issues.

4. Relevant and Material Issues

Most of the issues raised are relevant and material to the commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) & 55.211(c)(2)(A). The following issues are not relevant and material and should not be referred to SOAH:

a. Whether there should be a second public meeting or contested case hearing

This refers to the ED's response to Comment No. 4. The Commission is now considering whether there should be a contested case hearing, and OPIC is recommending referral to SOAH. Therefore, it is not necessary to make the referral itself an issue.

b. Source of water to operate the landfill

This refers to ED's response to Comment No. 7. OPIC is not aware of any requirement to identify sources of water to operate the landfill.

c. How the proposed landfill might affect property values

This refers to the ED's response to Comment No. 24. The TCEQ has no authority to consider property values in the review of a municipal solid waste application.

d. Whether there is a more suitable location for the landfill

This refers to the ED's response to Comment No. 27. Apart from land use compatibility, the TCEQ has no authority over the Applicant's selected location of the landfill.

e. Treatment and purification plans for effluent fluids percolating through the landfill

This refers to the ED's response to Comment No. 37. The TCEQ has no requirements for treatment and purification plans for effluent fluids percolating through the landfill.

The remaining issues in the response to comments are relevant and material to the Commission's decision.

5. Issues Recommended for Referral to Hearing

Based on the discussion above and the Commission requirements of 30 TAC §§50.115(b), 55.211(b)(3)(A)(i), the OPIC recommends that the Commission refer the following disputed issues to the State Office of Administrative Hearings for a contested case hearing:

1. Did the Applicant comply with TCEQ requirements for notice and filing the application?
2. Does the proposed permit comply with 30 TAC § 330.116 public access requirements?
3. Does the proposed permit comply with TCEQ Site Operating Plan requirements?
4. Does the proposed permit comply with TCEQ Site Development Plan requirements?
5. Will the proposed permit adequately protective of groundwater and surface water?
6. Was the rainfall data properly calculated and evaluated?
7. Was the archeological and historical data property evaluated?
8. Is the proposed groundwater monitoring system adequate?
9. Are the proposed surface water controls adequate?
10. Did the permit evaluation adequately consider the presence of mineral development?
11. Did the permit evaluation adequately consider endangered species?
12. Is the information in the permit application regarding hydrology and geology adequate?
13. Are the liners for the proposed landfill properly designed?
14. Is information in the permit application regarding transportation adequate?
15. Does the permit application contain adequate information regarding proof of property interests?
16. Does the application contain adequate information regarding the Surface Water Protection Plan and Drainage Plan?
17. Should the proposed permit be issued for the life of the site?
18. Are the proposed buffer and screenings adequate?
19. Is the proposed facility compatible with surrounding land uses?
20. Is the information regarding the Landfill Gas Management Plan adequate?
21. Is the proposed permit adequately protective in the prevention and control of vectors?
22. Are the financial estimates for closure and post-closure care accurate?
23. Is the proposed landfill adequately protective of human health and the environment?
24. Is the proposed landfill compatible with the Solid Regional Waste Plan?
25. Does the Applicant's compliance history warrant the granting of the permit?
26. Should the proposed permit contain provisions restricting from where waste will be accepted?
27. Is the proposed permit's Groundwater Sampling and Analysis Plan adequate?
28. Does the proposed permit comply with all applicable TCEQ air quality rules?
29. Is the proposed permit adequately protective to prevent nuisance conditions?
30. Is the proposed permit's Odor Management Plan adequate?
31. Does the proposed permit adequately control against windblown waste?

C. Recommended Expected Duration of Hearing

Section 55.115(d) of the TCEQ's rules requires the Commission to specify the maximum expected duration of the hearing in its order when referring a matter to the State Office of

Administrative Hearings. The rules specify that the Commission must state the duration of the hearing from the preliminary hearing to the Administrative Law Judge's issuance of the Proposal for Decision ("PFD"). To assist the Commission, OPIC estimates that the maximum expected duration of a hearing on this matter would be nine months from the date of the preliminary hearing until the PFD is issued.

D. Reconsideration of Executive Director's Decision

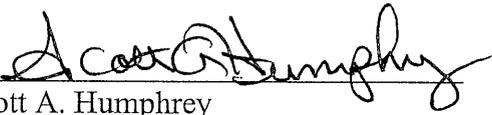
In addition to requesting a contested case hearing, Mr. Dixon and James E. Henderson also requested reconsideration of the Executive Director's decision. These requests for reconsideration raised the same issues discussed *supra*. The requests alone do not provide a sufficient basis for denying the permit. A hearing is necessary to develop these issues. In the absence of an evidentiary record, OPIC cannot recommend the permit be denied. Therefore, OPIC cannot support their requests for reconsideration.

IV. CONCLUSION

For these reasons, the OPIC recommends the Commission deny the hearing requests filed by Tommy Aslin and James R. & Linda Henderson Thompson, and grant the remaining requests for a contested case hearing and refer the above-reference issues to SOAH with a maximum expected duration for hearing of nine months. In addition, OPIC recommends denying the requests for reconsideration of the Executive Director's decision.

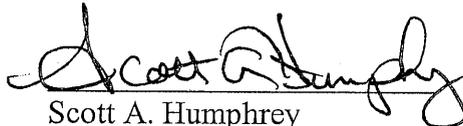
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2008 the original and eleven copies of the Office of the Public Interest Counsel's Response to Requests for Hearing were filed with the Chief Clerk and a copy was served by facsimile, interoffice mail or U.S. Mail to the persons on the attached mailing list.


Scott A. Humphrey

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TCEQ DOCKET NO. 2007-1302-MSW

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