

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 26, 2008

TO: Persons on the attached mailing list.

RE: Zapata County
Permit No. 783

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 Amended 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 Zapata County Courthouse, 200 East 7th Avenue, Suite 115, Zapata, Texas 78076.

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/er

Enclosures

MAILING LIST

for
Zapata County
Permit No. 783

FOR THE APPLICANT:

The Honorable Rosalva Guerra
The Honorable David Morales
Zapata County Judges
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FOR THE CHIEF CLERK:

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Proposed Amendment to TCEQ MSW Permit No. 783

2008 JUN 19 PM 4:09

Application by	§	Before the
ZAPATA COUNTY	§	TEXAS COMMISSION
for amendment to	§	ON
TCEQ MSW	§	ENVIRONMENTAL
Permit No. 783	§	QUALITY

CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S AMENDED RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) files this Amended Response to Public Comment on the application by Zapata County (“Applicant” or “the applicant”), for an amendment to TCEQ Municipal Solid Waste (MSW) Permit Number 783 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 comments.¹ TCEQ’S Office of the Chief Clerk timely received comment letters from Victor Gonzales, Jr., PE, RPLS and Monica Jacobs, Attorney with the firm of Kelly, Hart, & Hallman, P.C., on behalf of client Victor Gonzales, Jr.² This response to public comment addresses all timely public comments received, whether or not withdrawn.

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

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

2 For clarity, comments directly from Mr. Gonzalez and those made by his attorney on his behalf will be attributed to Mr. Gonzalez throughout this Response.

I. Description of Facility

Zapata County's San Ygnacio Landfill facility is located in Zapata County, Texas off an unnamed gravel road, approximately 0.4 miles northeast of US Highway 83, two miles south of the City of San Ygnacio. Elevation and Coordinates of Current Permanent Benchmark: Latitude: 27° 02' 15" N, Longitude: 99° 25' 14" W, Elevation: 390 feet above mean sea level (msl). The total area within the permit boundary is approximately 30 acres. The facility consists of a site entrance with a lockable gate and an 8-foot high chain link fence along the permit boundary, a paved entrance road from State Highway 83, all-weather access roads, a gatehouse, scales, a maintenance building, an office building, soil stockpiles for waste cover, crushed stone stockpiles for access road repairs, and the Type I and Type IV solid waste disposal areas. Structures for surface drainage and stormwater run-on/runoff controls include a perimeter drainage system to convey stormwater runoff around the site, berms, ditches, a detention pond, and associated drainage structures.

This facility is authorized to accept municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational and industrial activities. These wastes include garbage; putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, yard waste, Class 2 non-hazardous industrial solid waste, Class 3 non-hazardous industrial solid waste, and certain special wastes.

The current application, MSW Permit Amendment Application No. 783-A (application), requests an amendment to the existing permit to expand the landfill vertically and laterally. It requests the expanded landfill to have a below-grade excavation of approximately 20 to 30 feet to an elevation of 380 feet above mean seal level (msl) with continuous area filling with waste, and above-grade aerial fill of approximately 10 to 25 feet, to an elevation of 420 to 435 feet above msl. The proposed lateral expansion will add 20 acres to the existing permitted boundary of 10 acres for a total of 30 acres. The expansion would result in a total disposal capacity of approximately 422,000 cubic yards. The permit amendment application was prepared and submitted in accordance with Title 30, Texas Administrative Code, Section 305.62.

II. Procedural History

On August 22, 2006, TCEQ received this application for an amendment to Municipal Solid Waste Permit No. 783. On October 6, 2006, the Executive Director declared the application administratively complete. On October 19, 2006, the Notice of Receipt of Application and Intent to Obtain a Type I Municipal Solid Waste Permit for this application was published in English in *The Zapata County News*, the newspaper of largest circulation in the county in which the facility that is the subject of the application for amendment is proposed. On November 30, 2006, the Notice of Receipt of Application and Intent to Obtain a Type I Municipal Solid Waste Permit for this application was published in Spanish in *The Zapata County News*.

On May 30, 2007, the Executive Director completed the technical review of the application and prepared a draft permit. On July 5, 2007, the Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit was published in both English and Spanish in *The Zapata County News*. On March 27, 2008, a Revised Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit was published in both English and Spanish in *The Zapata County News*.

On April 28, 2008, 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, statutory law, and other information that applies to this application:

Texas statutes

<http://www.state.tx.us>

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

TCEQ rules, codified in
Title 30, Texas Administrative Code

www.tceq.state.tx.us
and
www.sos.state.tx.us/tac

Secretary of State

www.sos.state.tx.us

Federal statutes and rules

<http://www.epa.gov>

The administratively complete application is available for viewing and copying at the TCEQ's Laredo Regional Office at 707 East Calton Road, Suite 304. The application has also been available for review and copying at the Zapata County Courthouse in Zapata, Texas since the application was first submitted to the TCEQ, and the technical summary and draft permit have also been available at that location since publication of the Notice of Application and Preliminary Decision.

Additional TCEQ records on this application are available at the TCEQ Central File Room (Building E) and in the MSW Permits Section (Building F), 12100 Park 35 Circle, Austin, Texas 78753.

IV. Comments and Responses

COMMENT 1

Mr. Gonzalez commented that the amendment proposed would destroy his planned community, and that he would not be able to develop his property as he has planned, causing him and his family great financial loss.

RESPONSE 1

The Texas Solid Waste Disposal Act (TSWDA), Chapter 361 of the Texas Health & Safety Code, specifies criteria related to the health and safety of humans and the environment that the commission is required or authorized to consider when determining whether to issue a landfill permit. The TSWDA does not allow the commission to consider economic or financial impacts on neighboring landowners when making its decision.

COMMENT 2

Mr. Gonzalez commented that Zapata County has failed on several occasions in the operations of the landfill, as reflected by TCEQ records, and that it is run very poorly. He further commented that the Applicant's compliance history should be fully explored at a public hearing. He also expressed concern that the Applicant's prior violations of TCEQ rules show that it is unable to maintain the landfill in a manner that is protective of human health and the environment. Finally, Mr. Gonzalez expressed concern with the fact that the Applicant had to apply to the TCEQ for a Temporary Overfill Authorization in March of 2006 and has been accepting waste in excess of originally permitted amounts since that time.

RESPONSE 2

The TCEQ's MSW permit application review process requires that a compliance history of the owner and the operator of the landfill be searched for violations and compiled. Under 30 Tex. Admin. Code Section 60.1(b), the compliance history period included in the review of a permit application is comprised of the five years prior to the date the permit application is received by the Executive Director. The compliance history prepared for this permit application includes six violations within the five-year compliance period, all of which were resolved to the agency's satisfaction.

The compliance history for the application will be forwarded with the draft permit and other applicable documents to either the Executive Director, in the case of an uncontested application, or to the commissioners, in the case of a contested application, and may be taken into account in the decision whether to issue the amended permit. Compliance history information may be also taken into account if the application comes under the jurisdiction of the State Office of Administrative Hearings. Questions or comments regarding actions taken by the TCEQ Laredo Regional Office should be addressed to Ms. Rose Luna-Pirtle, Air/Water/Waste Program Manager, TCEQ Region 16 Office, 707 East Calton Rd., Suite 304, Laredo, Texas 78041-3887.

COMMENT 3

Mr. Gonzalez expressed concern that trash, debris and papers flying over the containment fence onto his property create unhealthy, unsafe, and unsightly conditions, and that this problem would be exacerbated by the proposed landfill expansion.

RESPONSE 3

During an investigation of the facility conducted on February 3, 2005, a TCEQ investigator noted a violation for failure to control windblown litter. This violation was resolved by collection and proper disposal of the windblown waste and instruction given to the site operator regarding preventing waste from migrating from the waste disposal face. There have been no violations regarding windblown waste in the three subsequent investigations that have been conducted by the TCEQ.

30 TAC Section 330.139 requires that the working face of the landfill be maintained and operated in a manner to control windblown solid waste, and further requires that windblown material and litter be collected and properly managed to control unhealthy, unsafe, or unsightly conditions. The rule also requires that litter scattered throughout the site, along fences and access roads, and at the gate be picked up once a day on the days the facility is in operation and properly managed, and that the site operating plan (SOP) must specify the means for complying with this requirement.

The SOP for the proposed expanded facility provides several methods for controlling windblown waste and litter, including proper unloading of waste, compaction, and cover procedures, use of portable litter control fences, proper orientation of the working face relative to the prevailing wind direction, and placement of screening berms. (See Part IV, Page SOP-18, Section 13 – Control of Windblown Solid Waste and Litter). Additionally, the SOP provides that personnel will be assigned to pick up and return windblown waste and litter to the active working face and perform other litter control measures, as necessary. The Executive Director determined that the application meets the rule requirements related to controlling windblown waste.

COMMENT 4

Mr. Gonzalez expressed concern that the Application does not provide sufficient measures to prevent nuisance odors. He comments that odors are currently emanating from the facility, and expressed concern that odor problems would be exacerbated by the proposed expansion.

RESPONSE 4

30 TAC Section 330.15(a)(2) requires that the facility be operated in a way that prevents the occurrence of nuisance odor conditions. 30 TAC Section 33.149 requires the SOP to have an odor management plan that addresses the sources of odors and includes general instructions to control odors or sources of odors. The SOP must also provide related procedures for compliance with storage requirements;⁴ use of approved containers;⁵ spill prevention and control;⁶ ventilation and air pollution control.⁷ If objectionable odors occur, the facility must initiate measures to alleviate the condition.

The facility's SOP, located in Part IV, pages SOP-1 through SOP-23 of the application, provides a plan for odor control in Section 18, "Air Criteria; Odor Management Plan," which provides for "waste management procedures, the placement of cover materials, the control of ponded water, and landfill gas control". The plan provides that:

- Wastes will be deposited at the working face, spread into layers that can be readily compacted, and covered with a minimum of six inches of soil or with an approved alternate daily cover material.
- Dead animals will be covered immediately upon placement into the working face with three feet of waste or two feet of soil.
- Waste that is identified as particularly odorous by the gate attendant or equipment operator will be buried immediately upon receipt in the working face with prompt compaction and covered with incoming waste and/or daily cover.

⁴ See 30 TAC § 330.209.

⁵ See 30 TAC § 330.211.

⁶ See 30 TAC § 330.227.

⁷ See 30 TAC § 330.245.

The site operator is required to comply with the commission rules concerning burning and air pollution control and ensure compliance with the state implementation plan developed under the Federal Clean Air Act. Further, the draft permit requires that waste fill areas be covered daily with clean soil or an alternate approved daily cover (*see* Draft Permit, p. 10, Standard Permit Condition I). The Executive Director has determined that this application complies with the rules designed to prevent nuisance odors.

There have been no violations regarding nuisance odors noted during periodic investigations of the facility conducted by TCEQ over the last five years, nor has the TCEQ received any complaints regarding odor. For information on TCEQ odor complaint investigation procedures, interested persons are encouraged to visit the following webpage:

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

COMMENT 5

Mr. Gonzalez expressed concern that the facility is visible from the majority of his property's viewing area, which is unpleasant and unsightly and diminishes his use and enjoyment of his property. He comments that the current visual screening mechanisms are inadequate, and expresses concern that visual screening issues will be exacerbated by the proposed expansion.

RESPONSE 5

30 TAC Section 330.175 requires visual screening of waste. Visibility is also minimized by rules requiring application of daily, intermediate, and final cover⁸; maintenance of buffer zones⁹; and use of landfill development patterns that will minimize exposure of the working face. Section 330.175 states that "Visual screening of deposited waste materials at a municipal solid waste facility must be provided by the owner or operator for the facility where the executive director determines that screening is necessary or as required by the permit." The applicant included the requirement from the rule in its application at Part IV SOP, Page SOP-23, Section 31: Visual Screening of Deposited Waste. The facility will also be required to utilize screening berms as indicated in Part IV SOP, Page SOP-18, Section 13: Control of Windblown Solid Waste and Litter. Under its current permit, the facility is not required to construct screening berms, therefore, if such berms are not an

⁸ See 30 Tex. Admin. Code Section 330.165

⁹ See 30 Tex. Admin. Code Section 330.141(b)

existing feature of the site, the amended permit, if issued, would require construction of berms to control windblown waste. The Executive Director has determined that the application provides a sufficient plan to satisfy the rule requirement for visual screening of waste materials.

During the five-year period reviewed in connection with this application for expansion, no investigations resulted in violations regarding lack of visual screening, and no complaints as to visual screening were received by the TCEQ regional office.

COMMENT 6

Mr. Gonzalez commented that the County made a gift to him of a dedication of the landfill facility's land to be used as parkland, and that the current action is a breach of that agreement.

RESPONSE 6

30 Tex. Admin. Code Section 330.59(d) requires the applicant to submit with its application information related to property ownership, including the identifying reference of the current ownership record. Pages 9 to 10 of Part I of the application contain the Property Owner Affidavit, dated October 2, 2006; Applicant's Statement, dated August 4, 2006, and an Applicant's Certification, dated August 17, 2006, signed by the Honorable David Morales, the County Judge (at that time this permit application was submitted) for Zapata County indicating that Zapata County is the property owner for the 30 acres depicted and narrated in the Legal Description which is provided in Part I, Page I-C and signed by Mr. Raul Garcia, P.E., Registered Professional Surveyor. The Executive Director determined that the information submitted fulfills the requirements for property owner information under Section 330.59(d).

Further, under 30 Tex. Admin. Code 330.67:

It is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the surface estate of the property for which a permit is issued, including the access route. The granting of a permit does neither convey any property rights or interest in either real or personal property; nor does it authorize any injury to private property, invasion of personal rights, or impairment of previous contract rights; nor any infringement of federal,

state, or local laws or regulations outside the scope of the authority under which a permit is issued.

Any agreement between Zapata County and Mr. Gonzales is solely between those two parties and therefore does not bind the TCEQ. Such an agreement may not be considered by the commission in its decision whether to issue the amended permit, as it is outside the scope of municipal solid waste statutes and rules.

COMMENT 7

Mr. Gonzalez expressed concern that the application does not provide sufficient measures to control disease vectors such as rodents. Specifically, Mr. Gonzalez believes that a chain link fence is not a protective enough barrier.

RESPONSE 7

30 Tex. Admin. Code Section 330.151 requires the site operator to control on-site populations of disease vectors using proper compaction and daily cover procedures, and the use of other approved methods when needed. The rule requires that the site operating plan (SOP) submitted with the application specify general control methods and performance-based frequencies.

The procedures for controlling on-site populations of disease vectors provided in Section 19 of Part IV of the application (the SOP) meet the requirements of 30 TAC §330.151. The procedures include minimizing the size of the working face, application of daily, intermediate and final cover, and professional pesticide application, if necessary, which should adequately control scavenging animals and vectors. Complaints or concerns regarding disease vectors at the site should be addressed to the TCEQ Region 16 office in writing or in person at 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, or by telephone at (956) 791-6611.

COMMENT 8

Mr. Gonzalez commented that the application does not provide necessary information regarding transportation and site access. He expressed concern that without this information, human health and safety may be at risk.

Mr. Gonzalez commented that the information included in the Application regarding impact on traffic resulting from the landfill expansion is inaccurate.

Mr. Gonzalez commented that the Application does not demonstrate that the Applicant possesses adequate rights to use access roads to the facility.

RESPONSE 8

Under 30 Tex. Admin. Code Section 330.61(i), the application must include data on the availability and adequacy of roads that the owner or operator will use to access the site, data on the volume of vehicular traffic within one mile of the facility during the expected life of the facility, and a projected volume of traffic expected to be generated by the facility within one mile. The site owner or operator must also include documentation showing coordination with the Texas Department of Transportation (TxDOT). 30 Tex. Admin. Code Section 330.67(a) provides that it is the responsibility of the owner or operator to acquire a sufficient interest in or right to use access roads to the facility.

The application includes information related to traffic and the adequacy of access roads and in Part II, Section 2.2. Coordination with TxDOT is demonstrated by the letter from TxDOT included as an attachment to Part II. Information provided in the application indicates that the primary entrance to the facility is from U.S. Highway 83, and that there is no existing TxDOT traffic study regarding this portion of the highway. The application states that the area is rural, with low traffic volumes and that the proposed facility expansion would not result in any significant increase in average daily trips. The letter from TxDOT, dated September 25, 2006, indicates that TxDOT will not require any upgrades to the existing roadways for site access, and further states that TxDOT is planning to upgrade the section of US 83 providing access to the facility by making it a four-lane

divided highway. The Executive Director's staff reviewed this information and determined that it adequately addresses transportation issues.

The applicant must also comply with any local city or county regulations that apply related to transportation. If garbage trucks or other vehicles are observed operating in an unsafe manner, or if trucks are traveling on roads in violation of restrictions, this information may be reported to local law enforcement agencies (police or sheriff). The TCEQ does not have jurisdiction to limit routes taken by garbage trucks. If roads need repair, this information should be reported to the city, county or state road maintenance department.

COMMENT 9

Mr. Gonzalez expressed concerns regarding whether the Application provides adequate dust control measures, given additional traffic and activity that would result from the proposed landfill expansion.

RESPONSE 9

30 Tex. Admin. Code Section 330.153(b) prohibits creation of a nuisance to surrounding areas from dust from on-site and other access roadways. Additionally, 30 Tex. Admin. Code Section 330.15(a)(2) generally prohibits the creation or maintenance of a nuisance, such as nuisance dust conditions.

Section 20 of the SOP provides that a water source and necessary equipment or other means of dust control approved by the TCEQ will be provided. Further, landfill haul roads and access roads will be maintained in a reasonably dust-free condition by periodic spraying from a water truck.

The Executive Director has determined that the application complies with all applicable requirements regarding control of dust. Complaints or concerns regarding nuisance dust conditions at the site should be addressed to the TCEQ Region 16 office in writing or in person at 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, or by telephone at (956) 791-6611.

COMMENT 10

Mr. Gonzalez expressed concern that the Applicant may not be able to maintain sufficient training, documentation, and notification procedures to be certain prohibited wastes are excluded from the facility and special wastes are properly accepted and handled.

RESPONSE 10

30 Tex. Admin. Code Section 330.127(5) requires that the SOP submitted with the application include procedures for the detection and prevention of the disposal of prohibited wastes. The rule requires that this program include random inspections of incoming loads, including compactor vehicles, and trained staff observation of each load disposed of. It must also include provisions for keeping records of inspections, training personnel, notifying the executive director and certain local agencies on receipt or disposal of certain types of prohibited waste, and remediating such an incident. 30 TAC 330.133(b) requires that trained facility staff involved with unloading/inspection have the authority to reject unauthorized loads, have the unauthorized load removed by the transporter, and/or assess appropriate surcharges, and have the material removed by on-site personnel, and that a record of any such removal be kept. 30 TAC §330.113(c) prohibits the unloading of prohibited wastes at the facility and requires the owner or operator to take steps necessary to ensure compliance with the rule. The rule further requires that any prohibited waste be either returned immediately to the transporter or otherwise properly managed by the landfill.

30 Tex. Admin. Code Section 330.171 provides rules and procedures applicable to acceptance and/or disposal of special wastes at this facility. The Applicant has not requested approval from the executive director permitting it to accept special wastes other than those described in 330.171(c) and (d) and 330.173, or to accept regulated asbestos-containing material (RACM). Under 30 Tex. Admin. Code Section 330.127, the SOP must include provisions for site management and the site operating personnel to meet the requirements regarding proper disposal of special wastes. If the applicant does not comply with the handling and disposal procedures laid out in 30 Tex. Admin. Code Sections 330.171 and 330.173, it will be in violation of the rules and subject to enforcement action.

Part II, Section 1.1 of the application states that the landfill will accept from health care-related facilities special waste that has been treated in accordance with Chapter 330, Subchapter Y.

It also states that the landfill will not accept RACM or any regulated hazardous wastes, radioactive wastes, or Class I industrial wastes. Acceptance of materials other than what is provided in the permit, of which the application is part, is a violation and could result in enforcement action by the TCEQ.

Section 7 of the SOP provides procedures for detection and control of the receipt of prohibited wastes, including training for facility personnel responsible for inspecting or observing incoming loads to recognize regulated hazardous waste and PCB waste. Records on employee training will be kept onsite in the Site Operation Record. The application includes a list of indications of prohibited wastes to look for and how to direct the load out of the flow of traffic and reject loads containing prohibited wastes. The application provides that gate/scale attendants will be instructed to be particularly diligent with loads from industrial facilities, microelectronics manufacturers, electronics companies, metal plating industry, automotive and vehicle repair service companies, and dry cleaning establishments. The SOP also provides for random inspections of incoming loads at the rate of at least 1% or one vehicle per day. Other measures for controlling prohibited wastes include posting signs that identify prohibited wastes and providing lists of prohibited wastes to customers, pre-acceptance screening methods, monitoring and observance of received waste; training of staff; maintaining inspection records, etc. The Executive Director has determined that the provisions contained in the application for detection and prevention of disposal of prohibited/unauthorized waste meet rule requirements.

Section 29 of the SOP provides information regarding acceptance and disposal of special wastes at the facility. The application provides that the Type IV area of the landfill will not accept any special wastes. The application provides that dead animals and non-friable asbestos containing material will be covered with a minimum of three feet of solid waste or two feet of soil immediately upon receipt. The Executive Director has determined that the provisions for acceptance and disposal of special waste at the site meet the requirements of 30 TAC §330.171 and §330.173

In addition to procedures specific to waste acceptance, the application contains general information related to employee training. Section 6 of the SOP describes job positions and lays out the training requirements for each. It provides that the personnel training program will be directed by a person trained in waste management procedures, and will include instruction that teaches facility personnel waste management procedures and contingency plan implementation relevant to the positions in which they are employed. The application states that new employees will receive

comprehensive training as well as periodic continued training, including a training meeting at least once a month. One of the topics specified by the application for the training meetings is prohibited waste management; another is random inspection procedures.

COMMENT 11

Mr. Gonzalez expressed concern that the Applicant may not be able to maintain personnel with minimum qualifications for each category of key personnel to be employed at the landfill sufficient to be protective of human health and the environment.

RESPONSE 11

The Executive Director acknowledges receipt of this comment. Please see Response 10, above, for more information on employee training requirements included in the application. If the application is granted, the application will be incorporated as part of the permit. If the applicant is unable to maintain personnel with minimum qualifications for each category of key personnel and this results in violation of a rule or law or failure to comply with its permit, it may be subject to enforcement action by the TCEQ.

COMMENT 12

Mr. Gonzalez expressed concern that the Applicant may not be able to properly manage leachate or gas condensate in a way that is protective of human health and the environment.

RESPONSE 12

The existing San Ygnacio landfill is classified as a Type I AE (Arid Exempt) landfill. As part of this application (Appendix B), the landfill has submitted a new certification of arid exempt eligibility as required by 30 TAC Section 330.65(d)(5). The Executive Director's staff has reviewed the certificate and determined that it complies with the rule. As provided by 30 TAC Sections 330.5(a)(1) and (2), arid exempt landfills are exempt from 30 TAC Chapter 330, Subchapter H, Liner System Design and Operation, and Subchapter J, Groundwater Monitoring and Corrective Action.

Therefore, there are fewer applicable rule requirements for leachate and gas condensate management than for landfills that do not qualify for arid exemption.

Part III-4, Section j describes management of contaminated water by diversion to a holding pond. Section m provides that methane gas will be monitored on a quarterly basis, with field sampling points along the perimeter of the site at intervals of approximately 600 feet. The application further specifies that the samples collected will be checked using a methane analyzer, and the results reported to TCEQ. The Executive Director has determined that the management plan meets the rule requirements for arid exempt landfills.

COMMENT 13

Mr. Gonzalez expressed concern that the Applicant may not be able to operate the landfill in a manner that is protective of groundwater and that protects human health and the environment from runoff from the landfill. In addition, Mr. Gonzalez further questioned whether the existing groundwater at and in the vicinity of the site has been adequately characterized.

RESPONSE 13

30 TAC §330.63(c) and §330.303, §330.305, and §330.307 require the applicant to provide a surface water drainage report that demonstrates that the owner or operator will design, construct, maintain and operate the facility to manage run-on and runoff during the peak discharge from at least a 25-year storm, ensure erosional stability of the landfill during all phases of landfill operation, closure, and post-closure care, provide structures to collect and control at least water volume resulting from a 24-hour, 25-year storm, protect the facility from washouts, and ensure that existing and permitted drainage patterns are not adversely altered.

Section h on Page III-3 (Run-Off Management System, Attachment 6 (Groundwater and Surface Water Protection Plan and Drainage Plan), and Attachment 15 (Leachate and Contaminated Water Plan) of Part III of the application provides discussions and detailed design, calculations, and operational considerations for the collection, control, and discharge of stormwater from the facility as required by the above-referenced rules. The surface water management plan described in the application consists of perimeter channels that will convey on site stormwater run-off into an

existing 1.4 acre-foot detention pond located at the northwest corner of the site. In addition a 4.6 acre-foot detention pond will also be constructed at the northeast corner of the expansion area to collect onsite run-off and also intercept the run-on. These perimeter channels and detention ponds allow better control of the site stormwater run-off and reduce peak outflow from the site so that the development of the site will not significantly alter the existing drainage patterns outside the boundary of the landfill. Furthermore, control of stormwater run-off on the proposed landfill will consist of the diversion of uncontaminated stormwater and containment of potentially contaminated water. Diversion berms will separate active sectors (working face and potentially contaminated) from areas of intermediate cover (uncontaminated). These berms will direct uncontaminated stormwater away from the working face, and into the perimeter channels of the site drainage system. Containment of stormwater at the working face will be accomplished by berms (in aerial sectors) or by adjacent unexcavated sectors (below grade). Contaminated water will be removed via vacuum truck. In addition, a contaminated water holding pond will hold contaminated water should an extreme weather event occur and it becomes necessary to pump contaminated water from the active area. The contained contaminated water will be taken to the wastewater plant operated by Zapata County.

A demonstration that existing permitted drainage patterns will not be adversely altered is provided under Section h on Page III-3 (Run-Off Management System, Attachment 6 (Groundwater and Surface Water Protection Plan and Drainage Plan), and Attachment 15 (Leachate and Contaminated Water Plan) of Part III of the application as required. The application indicates that the facility will handle uncontaminated stormwater and contaminated water as described above. No adverse impact on the existing receptors is expected, since contaminated water will be handled separately from uncontaminated stormwater and the existing permitted drainage pattern will not be adversely altered.

The Executive Director has determined that the application complies with all applicable requirements regarding management of runoff, including drainage and erosion controls.

30 TAC 330.61(k)(1) requires the owner or operator to submit data about the site-specific groundwater conditions at and near the site.

The Applicant provided a geology report in Attachment 4 to Part III of the application. The geology report indicates that groundwater was encountered in one boring, labeled as B-1, at a depth of approximately 135 feet below ground surface. The remaining eight borings were drilled to an approximate depth of either 25 feet or 65 feet below ground surface and did not encounter any

groundwater. The geology report also includes a groundwater certification statement that indicates that the existing landfill has not impacted groundwater at the site based on groundwater samples collected from boring B-1. A professional geoscientist (PG) on the Executive Director's staff reviewed the geology report and determined that it provides the groundwater characterization data required by 30 TAC 330.61(k)(1).

COMMENT 14

Citing the Applicant's compliance history, Mr. Gonzalez expressed concerns regarding whether the Applicant will maintain its landfill cover in a sufficiently protective manner.

RESPONSE 14

The proposed expanded landfill would consist of a Type IAE area and a Type IVAE area. 30 TAC Section 330.165(a) requires that a Type IAE landfill apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each day. 30 TAC Section 330.165(b) requires that a Type IVAE landfill must apply cover no less than weekly. 30 TAC Section 330.165(c) requires that any area that will be inactive for 180 days or more be covered with an intermediate or final cover of at least six inches of earthen material suitable for plant growth and requires erosion control.

In the application materials, SOP Section 26 provides that the facility will be covered daily with six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste, and that intermediate cover of six inches of earthen material supportive of plant growth will be added over any area that will be inactive for 180 days or more and will be seeded or sodded to prevent erosion. The SOP provides that periodic inspections and restorations will be conducted as required by rule and that erosion of final or intermediate cover will be repaired within five days of detection. Further, the SOP provides for the maintenance of a cover application record on-site and available for TCEQ review. The Executive Director's staff has reviewed the portions of the application regarding landfill cover and determined that it complies with the applicable rules.

COMMENT 15

Mr. Gonzalez is concerned that the Applicant's closure and post-closure plans may not adequately protect human health and the environment after the landfill has closed.

RESPONSE 15

30 TAC Section 330.457(e) lays out requirements applicable to the San Ygnacio facility's closure plan. The plan must describe the steps necessary to close all MSW landfill units at any point during the active life at the unit. It must include, at a minimum: a description of the final cover design, methods, and procedures to be used to install the cover; an estimate of the largest area of the MSW facility ever requiring final cover at any time during the active life of the facility; an estimate of the maximum inventory of wastes ever on-site over the active life of the facility; a schedule for completing closure activities; and a final contour map depicting proposed final contours.

Applicable post-closure care requirements are laid out in 30 TAC Section 330.463(b)(3). The rule requires that the post-closure care plan include, at a minimum: a description of the monitoring and maintenance activities required for each unit and the frequency at which the activities will be performed; the contact information for the person responsible for overseeing and/or conducting post-closure care activities; a description of the planned uses of any portion of the closed unit during the post-closure care period (30 years); and a detailed written estimate of the cost of post-closure care maintenance and any corrective action required and which satisfies requirements of Chapter 330, Subchapter L.

The Final Closure Plan and Post Closure Plan can be found in the application as Attachments 12 and 13 to Part III. The Final Closure Plan includes a description of the final cover design, as an 18-inch earthen infiltration layer that has a coefficient of permeability of no greater than 1×10^{-5} covered by a minimum of six inches of topsoil suited for plant growth. The plan provides that the topsoil will be seeded with native grasses to prevent erosion and specifies the mix of grass seed proposed to be used and the method for seeding. The plan also provides for testing by an independent soils testing lab to verify the suitability of the materials used in the final cover. The plan projects that the largest volume of waste that will be stored in the landfill is estimated at 345,000 cubic yards in the Type I AE area and 77,000 cubic yards in the Type IV AE area. The plan

estimates that the largest area ever requiring final cover will be fourteen (14) acres. Finally, the plan provides an estimated closure cost of \$327,500 (2007 dollars). In addition to the requirements of the rule, the plan includes requirements for implementation.

The Executive Director's staff reviewed the plans and determined that they include each of the requirements laid out in the applicable rules.

COMMENT 16

Mr. Gonzalez is concerned that the cost estimates may not be accurate and that the Applicant may not be able to provide sufficient financial assurance to be protective of human health and the environment during closure and post-closure.

RESPONSE 16

30 TAC Chapter 330, Subchapter L (§§330.501 et.seq.) lays out rules related to cost estimates for closure, post-closure, and corrective action. The rules require the submission of cost estimates upon application for a modification to an existing MSW permit, therefore, the applicant is required to submit cost estimates with this application. The rules require the owner or operator to submit a detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the largest waste fill area that could potentially be open in the year to follow and those areas that have not received final cover in accordance with the final closure plan. The applicant must also submit a written cost estimate of the cost of hiring a third party to conduct post-closure care activities for the facility, in accordance with the post-closure care plan.

Attachment 8 to Part III of the application includes cost estimates for closure and post-closure care for the proposed expanded landfill. The closure cost estimate of \$327,500 includes costs for engineering, construction, contractor performance bond, and legal fees. The post-closure cost estimate of \$147,300 includes engineering and construction costs, such as annual costs for reseeding and re-grading final cover, site inspection, and quarterly gas monitoring for the duration of the 30-year post-closure care period. The Executive Director's staff reviewed the cost estimates submitted and determined that they comply with the requirements of Subchapter L.

Under 30 TAC 330.503(b) and 330.507(b), the owner or operator of a municipal solid waste unit must establish financial assurance for closure and post-closure care in accordance with 30 TAC Chapter 37, Subchapter R. Under 30 TAC 37.8031(a), the applicant may use any of the financial assurance mechanisms provided for in Chapter 37, Subchapter C. According to Attachment 8 to Part III of the application, the applicant elected to use the Local Government Financial Test, as provided by 30 TAC 37.271. The Executive Director's staff reviewed the information submitted regarding the selected financial assurance mechanism and found that it meets requirements for the Local Government Financial Test.

COMMENT 17

Mr. Gonzalez expressed concern that the Applicant may not be able to maintain protections against fire in the expanded or existing area sufficient to protective of human health and the environment.

RESPONSE 17

30 Tex. Admin. Code Section 330.129 requires the owner or operator of the facility to maintain a source of earthen material in such a manner that it is available at all times to extinguish any fires. The rule requires the SOP submitted with the application to include demonstrations of the adequacy of the earthen material and equipment that will be used to transport it, as well as a fire protection plan that identifies standards to be used at the facility and how personnel are trained. Proper compaction and cover are also required.

The fire protection plan for the facility is contained in the SOP at Section 8. It includes a prohibition on open burning of waste at the landfill and smoking in active landfill areas or near the brush grinding operation, and requirements that fuel spills be cleaned up immediately, and non-flammable cover be used daily, among other things. It also includes steps that landfill staff must follow in the event that a fire is discovered, starting with contacting the local fire department. The application includes information about appropriate fire-fighting methods for burning solid waste, including smothering with soil, separating and isolating burning material, and spraying with water. The application also provides that a minimum of 100 cubic yard of soil or enough soil to cover the working face with at least six inches of compacted soil will be stockpiled within 2,500 feet of the

working face, and further provides that, due to the size of the landfill, the stockpile will actually be no further than 750 feet from the working face. The application states that the operator will, at all times, maintain sufficient equipment for moving the soil stockpile and placing a six-inch soil cover over the working face within one hour of detecting a fire at the working face. The application also includes information regarding fire equipment to be kept on site, fire protecting training for on-site personnel, and provides for the required notification of TCEQ in the event of a reportable fire.

After reviewing the fire protection plan in the application, the Executive Director's staff has determined that it includes all of the information and demonstrations required by 30 TAC 330.129.

V. Changes Made in Response to Comments

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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CERTIFICATE OF SERVICE

I certify that on June 19, 2008, the "Executive Director's Amended Response to Public Comment" for MSW Permit No. 783 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Shana L. Horton

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