Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 4, 2007

TO: Persons on the attached mailing list.

RE: Zapata County
MSW 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 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/mr

Enclosures

MAILING LIST
for
Zapata County
MSW Permit No. 783

FOR THE APPLICANT:

The Honorable Rosalva Guerra
Zapata County Judge
P.O. Box 99
Zapata, Texas 78076

Raul H. Garcia, P.E.
Garcia and Wright Consulting Engineers, Inc.
407 West Rhapsody
San Antonio, Texas 78216

INTERESTED PERSONS:

Victor Gonzalez, Jr.
9627 Jason Bend
Helotes, Texas 78023

FOR THE EXECUTIVE DIRECTOR:

Shana Horton, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Mario Perez, Sr., Technical Staff
Texas Commission on Environmental Quality
Waste Permits Division
MSW Permits Section MC-124
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Proposed Amendment to TCEQ MSW Permit No. 783

2007 SEP 27 PM 3:47
CHIEF CLERKS OFFICE

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

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 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. 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.

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.

---

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

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 August 6, 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.[2]

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
TCEQ rules, codified in Title 30, Texas Administrative Code	www.tceq.state.tx.us and www.sos.state.tx.us/tac

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

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

Victor Gonzalez, Jr. 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

Victor Gonzalez, Jr. 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.

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

Victor Gonzalez, Jr. expressed concern that trash, debris and papers are flying over the containment fence onto his property.

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

Victor Gonzalez, Jr. expressed concern with the odors emanating from the facility.

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;[3] use of approved containers;[4] spill prevention and control;[5] ventilation and air pollution control.[6] 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.

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_protopdf.html.

---

[3] *See* 30 TAC § 330.209.

[4] *See* 30 TAC § 330.211.

[5] *See* 30 TAC § 330.227.

[6] *See* 30 TAC § 330.245.

COMMENT 5

Victor Gonzalez, Jr. expressed concern that the facility is visible from the majority of his property's viewing area, and is unsightly.

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 cover[7]; maintenance of buffer zones[8]; 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 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

Victor Gonzalez, Jr. 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.

---

7 *See* 30 Tex. Admin. Code Section 330.165
8 *See* 30 Tex. Admin. Code Section 330.141(b)

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 Section 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.

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

Robert Martinez
Deputy Director
Environmental Law Division

Shana L. Horton

Shana L. Horton, Staff Attorney
Environmental Law Division
State Bar No. 24041131
P.O. Box 13087, MC 173
Austin, TX 78711-3087
(512) 239-1088

CERTIFICATE OF SERVICE

I certify that on September 27, 2007, the "Executive Director's Response to Public Comment" for MSW Permit No. 783-A was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Shana L. Horton

Shana L. Horton, Staff Attorney
Environmental Law Division
State Bar No. 24041131