

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



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB -4 AM 11:14

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

February 1, 2008

To: Persons on the attached mailing list (by mail and facsimile as indicated)

Re: Executive Director's Request for Remand of the application by Zapata County for amendment to Municipal Solid Waste Permit No. 783; TCEQ Docket No. 2007-1792-MSW.

The above-named matter is scheduled to be considered by the Texas Commission on Environmental Quality at its February 27, 2008, public meeting. The Executive Director filed a request on January 31, 2008, to remand this matter to allow re-notice of the application. Pursuant to 30 TAC § 10.4, the matter is hereby remanded to the Executive Director.

If you have any questions about this matter, please contact Elaine Lucas, Assistant General Counsel, at 512-239-6215.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Les Trobman".

Les Trobman
General Counsel

Mailing List

h:/counsel/lucas/letters/remand/ZapataCounty.rmd

Mailing List
Zapata County
TCEQ Docket No. 2007-1792-MSW

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 FEB -1 PM 3: 56

CHIEF CLERKS OFFICE

February 1, 2008

VIA HAND DELIVERY

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

**RE: Docket No. 2007-1792-MSW
Zapata County San Ygnacio Landfill
Requests filed on Permit No. 783A**

Please find enclosed for filing an original and eleven copies of Zapata County's Objection to the Executive Director's Motion to Remand.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Hector Uribe
Counsel for Zapata County
Commissioners Court

cc: Mailing List

TCEQ DOCKET NO. 2007-1792-MSW

2008 FEB -1 PM 3: 56

APPLICATION BY ZAPATA COUNTY FOR AMENDMENT TO TCEQ MSW PERMIT NO. 783A § BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

ZAPATA COUNTY'S OBJECTION TO THE EXECUTIVE DIRECTOR'S MOTION TO REMAND

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Zapata County Commissioners Court respectfully objects to the Executive Director's request that Zapata County's Application for amendment to Municipal Solid Waste (MSW) Permit Number 783 be remanded to the Executive Director and in support of its objection would show as follows:

1. Notice is sufficient. The notice reasonably conveys the information required by TCEQ rules at 30 TAC §§ 39.411, 39.419, and 39.501 and apprises the public of the nature of the permitted activities, so that they may raise any concerns and fully participate in the process. In fact, the notice fully apprised Mr. Gonzalez, the sole hearing requestor, of the application and allowed him to fully participate in the process.
2. An "Amendment" to an existing permit *correctly* describing the application as "a lateral expansion to add 20 acres to the existing site" for disposal of Type IV waste sufficiently and *correctly* notifies the public of the action pursued by the Applicant.
3. The Executive Director's confession of an "inconsistency" in the notice does not render the notice legally "deficient," since it provides substantial and effective notice of the action contemplated by the Applicant. On the contrary, the "inconsistency" that warns of multiple actions evokes a higher degree of attention and a higher duty to respond on the part of the hearing requestor. If he failed to appropriately reply he has waived the issues that he has failed to raise.
4. "Out of an abundance of caution" is not an appropriate legal standard by which to recalibrate rights between adverse parties. If the Commission remands to the Executive Director, Applicant will be disadvantaged and the hearing requestor will be benefited as follows: the hearing requestor will be

permitted to raise issues not previously raised by his original requests for hearing and the process will be lengthened. In other words, he will get a second bite at the apple. A remand would be inconsistent with previous rulings regarding notice issues.

5. Equity does not favor the hearing requestor. The hearing requestor can not claim **actual** surprise because the initial notice actually apprised him of the purpose of the amendment. Furthermore, he is the immediate, previous owner of the site on which a landfill has been operated since 1976. The documents that he has presented to TCEQ demonstrate that he made a "gift" of the site to the County of Zapata.

Therefore, Applicant requests that on the basis of equity, law and fact, that the Objection of the Applicant be sustained and that the Executive Director's Motion to Remand be Denied.

Respectfully Submitted,



Hector Uribe,
Attorney for Applicant
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hecuribe@aol.com

CERTIFICATE OF SERVICE

I certify that on the February 1, 2008, an original and eleven copies of the foregoing Zapata County's Objection to the Executive Director's Motion to Remand was served upon the Chief Clerk of the TCEQ and a copy was served upon the parties identified below by first class mail and facsimile.



Hector Uribe

CHIEF CLERKS OFFICE

2008 FEB - 1 PM 3: 56

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FOR REQUESTER

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Representing Victor Gonzalez, Jr.

FOR THE EXECUTIVE DIRECTOR:

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FOR OFFICE OF PUBLIC ASSISTANCE:

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TCEQ MSW Permit No. 783
TCEQ Docket No. 2008 - _____-MSW

2008 JAN 31 PM 3: 35

Application by	§	Before the
Zapata County	§	Texas Commission on
For Amendment of	§	Environmental Quality
MSW Permit No. 783	§	

CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S MOTION FOR REMAND

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Executive Director respectfully requests that the Commission remand to the Executive Director the application by Zapata County for amendment to Municipal Solid Waste (MSW) Permit number 783, and in support of this request shows the following:

1. Consideration of the application and hearing requests and related filings is currently set for the Commission's February 27, 2008 agenda. The deadline for filing responses to hearing requests is February 1, 2008.
2. Zapata County has applied for an amendment to MSW Permit No. 783. The amended permit, if issued, would add twenty acres to the existing footprint of the facility and increase the maximum permitted height by 9.5 feet.
3. The Executive Director issued two notices regarding this application, as required by rule: the Notice of Receipt and Intent to Obtain Municipal Solid Waste Permit Amendment (NORI) and the Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit (NAPD). The NORI described the application as requesting "a lateral expansion to add 20 acres to the existing site, and expanding the Type IAE area for disposal of Type IV waste." The NAPD described the application as requesting "a permit to authorize a Type I municipal solid waste landfill facility...".
4. Concerns were raised regarding the inconsistencies between the two notices, which may have caused notice to be deficient. Out of an abundance of caution, the Executive Director requests this remand so that he may re-issue notice of the application.

Therefore, given the above facts and circumstances, the Executive Director respectfully requests remand of the Zapata County application for amendment to MSW Permit No. 783 from the Commission's February 27, 2008 agenda.

Respectfully Submitted,



Shana L. Horton, Staff Attorney

Environmental Law Division

State Bar No. 24041131

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(512) 239-1088

Representing the Executive Director of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on January 31, 2008, the original of the Executive Director's Motion for Remand for the application by Zapata County for amendment of MSW Permit No. 783 was filed with the Office of the Chief Clerk at the Texas Commission on Environmental Quality, and a complete copy was mailed to all persons on the mailing list, below.


Shana L. Horton

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