

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 27, 2011

TO: Persons on the attached mailing list.

RE: Ruffino Hills Transfer Station, LP
Permit No. 1355A

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 Morris Frank Library, a Houston Public Library Express Location, 10103 Fondren, Brays Oaks Towers Building, Houston, Texas 77096 or online at <http://www.wcawaste.com/Default.asp?Page=43>.

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 **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

Melissa Chao, Acting Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

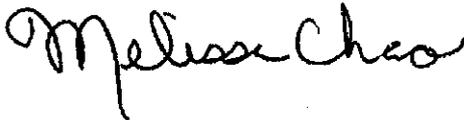
Processing of Requests.

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,



Melissa Chao
Acting Chief Clerk

MC/er

Enclosure

MAILING LIST
for
Ruffino Hills Transfer Station, LP
Permit No. 1355A

FOR THE APPLICANT:

Stephen H. Seed
Ruffino Hills Transfer Station, LP
c/o Fort Bend County Regional Landfill
14115 Davis Estates Road
Needville, Texas 77461

Charles G. Dominguez, P.E.
Golder Associates, Inc.
500 Century Plaza Drive, Suite 190
Houston, Texas 77073

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Anthony Tatu, Staff Attorney
Daniel W. Ingersoll, Staff Attorney
Texas Commission on Environmental
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Environmental Law Division MC-173
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Steve Odil, Technical Staff
Texas Commission on Environmental
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Waste Permits Division MC-124
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FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental
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Office of Public Assistance MC-108
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
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Public Interest Counsel MC-103
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FOR THE CHIEF CLERK
via electronic mail:

Melissa Chao
Texas Commission on Environmental
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Office of Chief Clerk MC-105
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PASADENA TX 77506

ALLEN , TOM P 1ST ASSISTANT CITY ATTY
CITY OF HOUSTON
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10714 PLAINFIELD ST
HOUSTON TX 77031-1021

BIEKMAN , GINA
11831 GATLINBURG DR
HOUSTON TX 77031-2310

BOADO , ARTEMIO
9331 PONDEROSA LN
HOUSTON TX 77074-1322

CHAN , JIM
9007 ABBEYDALE DR
HOUSTON TX 77031

CHAO , LIAN
12418 MILLBANKS DR
HOUSTON TX 77031

CHAPMAN , CINDY
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HOUSTON TX 77251-1562

CONCERNED CITIZEN ,
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KINGWOOD TX 77345

CRADDOCK , MICHAELNE
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CYPROW , JULIE
8711 COVENT GARDEN ST
HOUSTON TX 77031-3009

DINWIDDIE , AUDRIA
10950 WESTBRAE PKWY
HOUSTON TX 77031-3800

DOLLAHON , KAREN
9423 RENTUR DR
HOUSTON TX 77031

DOYLE , DAVID
9434 PORTAL DR
HOUSTON TX 77031-2213

DRYER , BARBARA & RICHARD
9303 PORTAL DR
HOUSTON TX 77031

EDMONDSON , BECKY
NO 107
5372 W BELLFORT ST
HOUSTON TX 77035

FIELDS , STACEY
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FIVECOATE , VIRGIL W
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STAFFORD TX 77497-2245

GASKAMP , ELAINE
PO BOX 710867
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GASKAMP , ERWIN
9315 PETERSHAM DR
HOUSTON TX 77031-2732

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CONGRESS
CONGRESS OF THE UNITED STATES HOUSE OF R
STE 460
3003 S LOOP W
HOUSTON TX 77054-1301

HTE , BARBARA
7707 VICKIJOHN DR
HOUSTON TX 77071

HOZZBAND , LENNY
9118 SPELLMAN RD
HOUSTON TX 77031

HURST , RUTH PRES
NEW BRAESWOOD REVITALIZATION
8503 TWIN HILLS DR
HOUSTON TX 77071-1103

KARACHIWALA , B Z
HARRIS COUNTY PUBLIC HEALTH & ENVIRONM
107 N MUNGER ST
PASADENA TX 77506-1322

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9022 WILLOW MEADOW DR
HOUSTON TX 77031

KREWINGHAUS , A BRUCE
6118 VALKEITH DR
HOUSTON TX 77096

LEEFTINK , CLAIRE
12323 CHESSINGTON DR
HOUSTON TX 77031

LETNESS , NANCY
GREATER FONDREN SOUTHWEST SUPER NEIGH
7626 BANKSIDE DR
HOUSTON TX 77071-1802

LETNESS , NANCY
9430 PORTAL DR
HOUSTON TX 77031-2213

MCLANE , JAMES
9318 WILLOW MEADOW DR
HOUSTON TX 77031-1014

MCNEIL , LAURA O
8815 WEYMOUTH DR
HOUSTON TX 77031

MILCH , SHIELA
12403 MILLBANKS DR
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9301 W BELLFORT ST
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9443 PORTAL DR
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HOUSTON TX 77074-1344

STEVENSON , ROD
9511 SUMMERBELL LN
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STEVENSON , SUSAN
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STE 460
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7411 PARK PLACE BLVD
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WIZIG , DAVID
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ PERMIT APPLICATION NO. 1355A

APPLICATION BY
RUFFINO HILLS TRANSFER
STATION, LP
FOR MAJOR AMENDMENT TO
PERMIT NO. 1355A

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

2011 MAY 24 AM 9:40

CHIEF CLERKS OFFICE

Executive Director's Response to Public Comment

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Application by Ruffino Hills Transfer Station, LP (Applicant), for a major amendment to Municipal Solid Waste Permit Number 1355A and on the Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from Mike Bercu, Fred Burnside, Anne Clutterbuck, Michaelene Craddock, Julie Cyprow, David Doyle, Margaret Ellis, Elaine Gaskamp, B.Z. Karachiwala (Director of Harris County Public Health & Environmental Services), Nancy Letness on behalf of the Greater Fondren Southwest Super Neighborhood Council #36, James McLane, Mehmet Okumus, Will Rountree, Oma Jean Stevenson, Debra Wilke, and Marcy Williams.

The Office of the Chief Clerk received timely, oral comments from Mike Bercu, Cindy Chapman, Michaelene Craddock, Becky Edmonson, Elaine Gaskamp, Lenny Holzband, Nancy Letness on behalf of the Greater Fondren Southwest Super Neighborhood Council #36, Mehmet Okumus, Naomi Ostfeld, David Robertson, Richard Rodriguez, Russell Schexnayder, Clyde Shelley, Rosamond Shelley, Walter Steets, Ron Stein, Judy Terry, Marcy Williams, and David Wizig at the public meeting held on March 24, 2011.

The Office of the Chief Clerk received timely, written comments from Bob Allen (Director of Harris County Pollution Control Services Department), Jim Chan, Stacey Fields, Erwin Gaskamp, Congressman Al Green, Nancy Letness on behalf of the Greater

Fondren Southwest Super Neighborhood Council #36, James McLane, Richard Rodriguez, Clyde Shelley, Rod Stevenson, and David and Debbie Wizig at the public meeting held on March 24, 2011.

This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.gov.

I. Background

A. Description of Facility

The Ruffino Hills Transfer Station is located on a 14.18-acre tract located in Harris County, approximately 2,400 feet southeast of the intersection of U.S. Highway 59 and the Sam Houston Tollway/Beltway 8 on Ruffino Road. The transfer station is a Type V municipal solid waste facility with a maximum waste transfer capacity of 850 tons per day (TPD). Currently the operating hours at the facility are from 5:00 am to 9:00 pm, Monday through Friday, and from 6:00 am to 8:00 pm, Saturday and Sunday, with waste acceptance hours from 7:00 am to 7:00 pm, Monday through Friday, and 8:00 am through 5:00 pm, Saturday and Sunday. If approved, the proposed amendment would increase the maximum capacity of the transfer station to 2,000 TPD, and establish operating hours from 3:00 am to 9:00 pm, seven days a week, with waste acceptance from 3:00 am to 7:00 pm, seven days a week. The Applicant would be allowed to store and process solid waste resulting from or incidental to municipal, community, institutional, and recreational activities, including garbage, putrescible waste, rubbish, ashes, brush, street cleaning waste, abandoned automobiles, and Class 2 and Class 3 industrial solid waste. The Applicant would not be authorized to accept hazardous waste, Class 1 non-hazardous industrial solid waste, regulated asbestos-containing materials, liquid waste, special waste other than Class 2 and Class 3 industrial solid waste, or any other prohibited waste as listed in Parts I/II, Section 3.1.1 of the Application.

B. Procedural Background

The Application was submitted on March 14, 2008, and declared administratively complete on April 16, 2008. The Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment was published on May 2, 2008, in the *Houston Chronicle*, and in Spanish on May 11, 2008, in the *Semana News*. The Executive Director completed the technical review of the Application on August 20, 2010, and prepared a draft permit. The Notice of Application and Preliminary Decision for Municipal Solid Waste Permit Amendment was published on October 15, 2010, in the *Houston Chronicle*, and in Spanish on October 14, 2010, in the *La Información*. The Notice of Public Meeting was published on March 4, 2011; March 11, 2011; and March 18, 2011 in the *Houston Chronicle*. A public meeting was held on March 24, 2011, at the Holiday Inn – Southwest Houston, 11160 Southwest Freeway, Houston, Texas. The comment period for this application closed on March 24, 2011. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

C. Access to Rules, Laws, and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State website: www.sos.state.tx.us;
- for TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select “TAC Viewer” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: www.capitol.state.tx.us/statutes/statutes.html;
- to access the TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Rules and Rulemaking,” then “Download TCEQ Rules”);

- for Federal rules in Title 40 of the Code of Federal Regulations: www.epa.gov/epahome/cfr40.htm; and
- for Federal environmental laws: www.epa.gov/epahome/laws.htm.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying and are located at Morris Frank Library, a Houston Public Library Express Location, 10103 Fondren, Brays Oaks Towers Building, Houston Texas, 77096.

II. Comments and Responses

Comment 1 (Noise):

Bob Allen, Mike Bercu, Jim Chan, Anne Clutterbuck, Michealene Craddock, Margaret Ellis, Stacey Fields, Elaine Gaskamp, Nancy Letness, Will Rountree, Clyde B. Shelley, Cecilia Vancas, Debra Wilke, Marcy Williams, David Wizig, and Debbie Wizig raised a concern that the proposed changes to the permit will increase noise levels from the facility. Margaret Ellis and Debra Wilke specifically noted that the new hours of operation will create problems with noise in the early morning hours when most residents are sleeping.

Response 1:

Section 330.239 of Title 30 TAC requires that the owner or operator of a transfer station provide screening or other measures that will minimize noise pollution and adverse visual impacts. Part IV, Section 17.0 of the Application indicates that waste transfer activities will occur within the building to minimize noise. Section 330.543(b) requires a minimum 50-foot buffer between the permit boundary and waste activities. Parts I/II, Figure 2-1, Site Layout Plan in the Application illustrates that the facility has a minimum buffer zone of 110 feet.

TCEQ rules do not specify limits on noise, but MSW facilities are generally prohibited from causing a nuisance under §330.15(a)(2). If noise creates a nuisance, please report the problem to the TCEQ Houston Regional Office at (713) 767-3500. The

Executive Director has determined that the information submitted in the Application meets the requirements of these rules.

Comment 2 (Noise Survey):

Erwin Gaskamp indicated that the TCEQ should perform a 24-hour noise survey along the permit boundary and develop a noise profile that meets legal requirements for residential areas.

Response 2:

While the Executive Director reserves the right to consider noise, particularly outside of authorized operating hours, as a nuisance, 30 TAC Chapter 330 has no specific provisions to assess noise and does not include requirements for the Commission or an applicant to perform noise surveys.

The City of Houston has a noise ordinance (Chapter 30, Noise and Sound Level Regulation) prohibiting some noise in excess of 68 dB(A), day or night. This permit amendment, if issued, would not authorize noise levels above those allowed by the City of Houston. Local law enforcement should be notified to enforce sound level limits within the city.

Comment 3 (Odor):

Bob Allen, Fred Burnside, Julie Cyprow, Margaret Ellis, Stacey Fields, Elaine Gaskamp, Nancy Letness, James McLane, Mehmet Okumus, Naomi Ostfeld, Will Rountree, Rosamond Shelley, Oma Jean Stevenson, Rod Stevenson, Cecilia Vancas, Debra Wilke, Marcy Williams, David Wizig, and Debbie Wizig expressed a concern that the proposed changes to the permit will exacerbate existing odor problems associated with the facility. Margaret Ellis and Debra Wilke noted that the Houston Health Department was called to investigate the odor problem at the facility, and noted during their investigation that the mister system was not operational.

Response 3:

Section 330.245(d) of 30 TAC requires a permittee to prevent nuisance odors from leaving the boundary of a facility. Part IV, Section 20.0 of the Application indicates that all waste transfer activities will take place within the transfer building and that odors will be controlled by buffer zones and the use of misters in the transfer building that will emit odor-neutralizing materials.

The Houston Department of Health and Human Services Bureau of Pollution Control and Prevention (BPCP) received and investigated two citizen complaints regarding odor from the Ruffino Hills Transfer Station. The first complaint was investigated by BPCP on March 25, 2010 and was unconfirmed; no odors were detected offsite of the transfer station. The second complaint was received and investigated on June 25, 2010. BPCP investigators noted that several of the nozzles that disperse deodorizer were not working and detected garbage odors downwind of the facility, which resulted in the issuance of a notice of violation for nuisance. On July 8, 2010, BPCP received a corrective action response from S. H. Seed on behalf of the Applicant. The response stated that he would replace malfunctioning nozzles the week of July 11th, adjust the flow of misting solution to maximize the system's capacity and remove excessively odorous materials as quickly as possible to reduce odors. The misters were operating during a site visit by TCEQ Central Office staff on March 24, 2011, and no significant odors were noted. As of March 21, 2011, BPCP had received no subsequent complaints regarding odor from the Ruffino Hills Transfer Station.

The Application contains sufficient information and the Executive Director has concluded that the Application meets TCEQ regulations. If objectionable odors occur, the owner or operator must initiate appropriate measures to alleviate the condition. Please report odor problems to the TCEQ Houston Regional Office at (713) 767-3500. For information on TCEQ odor complaint investigation procedures, interested persons are encouraged to visit:

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

Comment 4 (Environment, Public Health, Quality of Life):

Alma A. Allen, Mike Bercu, James Chan, Anne Clutterbuck, Stacey Fields, Elaine Gaskamp, Congressman Al Green, Nancy Letness, James McLane, Mehmet Okumus, Naomi Ostfeld, David W. Robinson, Richard Rodriguez, Clyde Shelley, Oma Jean Stevenson, Marcy Williams, David Wizig and Debbie Wizig raised general and specific concerns that the proposed changes to the permit will have a negative effect on the environment, public health, and quality of life.

Response 4:

For Municipal Solid Waste facilities, the Executive Director protects human health and the environment through the enforcement of 30 TAC Chapter 330 and other applicable regulations. The TCEQ rules are protective of human health and the environment, and if the facility is operated in accordance with the rules and the draft permit human health and the environment will be protected. With the changes noted at the end of this Response to Public Comment, it has been determined that the Application meets all applicable rules and is technically complete.

Comment 5 (Noise, Odor, Air Pollution):

Larry Holzband asked if the facility will be required to increase equipment to address additional noise, odors and air pollution.

Response 5:

There is no specific requirement under 30 TAC Chapter 330 to meet a prescribed ratio of equipment to daily acceptance rate of waste. 30 TAC Chapter 305 does not require an amendment application to proportionally increase equipment relative to an existing permit.

The existing buffers and the fact that transfer operations are conducted within a structure are expected to prevent nuisance noise and odor issues; however, should they occur, prohibitions on nuisance conditions and procedures for reporting them are

addressed elsewhere in this response. Air emissions from the facility will be authorized under 30 TAC Chapter 330, Subchapter U and so human health and the environment are presumed to be protected against air pollution from the facility.

Comment 6 (Vectors):

Fred Burnside, Jim Chan, Michaelene Craddock, Margaret Ellis and Debra Wilke raised a concern that the proposed changes to the permit will increase the presence of vectors, specifically insects or rodents.

Response 6:

TCEQ rule §330.15(a)(2) provides a general prohibition of practices that create nuisance conditions. Among possible nuisance conditions is the uncontrolled presence of vectors. Section 330.209(a) requires that all solid waste be stored in a manner that does not provide food or harborage for animals and vectors. Additionally, section 330.241(a) of 30 TAC prohibits the accumulation of solid waste in quantities that cannot be processed quickly enough to prevent nuisance conditions. Part IV, Section 22.2 of the Application indicates that the permittee will wash surfaces that come into contact with waste at least daily and store waste within the transfer building or within tarped transfer trailers, and if necessary will retain professional exterminators.

The Executive Director has determined that the information submitted in the Application meets the requirements of this rule.

Comment 7 (Traffic Hazard):

Alma A. Allen, Bob Allen, Mike Bercu, Jim Chan, Michealene Craddock, David Doyle, Becky Edmonson, Margaret Elllis, Stacey Fields, Elaine Gaskamp, Congressman Al Green, HCID, Larry Holzband, Nancy Letness, Mehmet Okumus, David Robertson, Richard Rodriguez, Clyde B. Shelley, Cecilia Vancas, Debra Wilke, Marcy Williams, David Wizig, and Debbie Wizig raised a concern that the increase in tonnage and operating hours will increase the number of large vehicles entering and exiting the

facility, thus creating a traffic hazard. David Doyle and Nancy Letness indicated that access roads for the facility are inadequate to accommodate the large vehicles that enter and exit the property. Several of these commenters indicated that the exit for the facility is improperly designed, which makes it necessary for large trucks to block several lanes of traffic on the Beltway 8 frontage road while turning. Nancy Letness indicated that... Table 4-9 states the capacity of Ruffino Road but not the condition of the road, and that Ruffino Road has not been updated in over 30 years.

Response 7:

In Parts I/II, Section 4.2 and Parts I/II, Appendix A-3, the Applicant has provided information required by 30 TAC §330.61(i), which considers the availability and adequacy of roads that the facility will use; volumes of vehicular traffic on roads within one mile of the facility, both existing and expected; projected volumes of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility; and documentation of coordination of all designs of proposed public roadway improvements. Appendix A-3 provides copies of correspondence between the Applicant and the Texas Department of Transportation (TxDOT). The Application indicates that TxDOT is responsible for maintenance of Beltway 8 (the Sam Houston Tollway access roads) and the City of Houston is responsible for Ruffino Road. The correspondence documents approval of the design for Ruffino Road by TxDOT and City of Houston Public Works and Engineering Department. The Executive Director relies on input from the Texas Department of Transportation and local agencies to assess the appropriateness of roads to be used by a Municipal Solid Waste facility.

The Executive Director has no authority over traffic violations. State and local traffic law enforcement agencies are charged with enforcing traffic laws and ticketing truck drivers who violate traffic laws, including reckless driving or failure to respect the rights of way of other vehicles.

Comment 8 (Traffic Calculations):

Nancy Letness shared concerns over information provided in the Application regarding traffic. She indicated that the calculations for percent traffic related to the transfer station on West Belfort and Beltway 8/Tollway are incorrect. She further stated that traffic count information indicates that there are 60,000 vehicles per day (vpd) on both the Sam Houston Tollway and on Beltway 8, but that it is very unlikely that the Tollway and Beltway have equal traffic counts. Elaine Gaskamp indicated that it is imperative that new traffic studies be conducted.

Response 8:

The Applicant has provided information required by 30 TAC Section 330.61 (i) relating to volumes of vehicular traffic on roads within one mile of the facility. The Executive Director has found that the information provided for traffic was sufficient to meet the requirements of the cited rule at the time that the Application was administratively complete. TCEQ rules do not require that traffic information be updated while the Application is under consideration. TxDOT and the City of Houston Public Works and Engineering Department approved the designs and implicitly approved the proposed traffic rates for the designated access roads. The 60,000 vpd value is a combined count for the Tollway and the Beltway, not a count for each

Comment 9 (Land Use Compatibility):

Anne Clutterbuck, Michealene Craddock, Julie Cyprow, Elaine Gaskamp, Nancy Letness, Richard Rodriguez, Will Rountree, Walter Steets, Judy Terry, and Adam J. Weiss expressed a concern that the activities conducted at the facility are not compatible with land uses in the surrounding area. Several of these commenters noted that the facility is close to residential areas, businesses, or areas that children will frequent and that the facility should be located somewhere else.

Response 9:

Section 330.61(h) states that “a primary concern is that the use of any land for a municipal solid waste site not adversely impact human health or the environment.” To assist the Commission in determining potential adverse impact, the Applicant must submit information regarding: zoning at the site and within two miles of the proposed facility; character of surrounding land uses within one mile of the proposed facility; growth trends within five miles of the facility and directions of major development; proximity to residences and other uses, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; the approximate number of residences and business establishments within one mile of the proposed facility and distances and directions to the nearest residences and businesses; and a description and discussion of all known wells within 500 feet of the proposed site. The final agency decision on land use compatibility is made by the Commissioners. The Executive Director reviews the Application to ensure that adequate information has been provided to assist the Commissioners in the determination. Review of the Application indicates that the required information is provided in Parts I/II, Chapter 4.

The Executive Director has no authority to require relocation of a proposed or existing municipal solid waste facility, but must assess any application against applicable rules.

Comment 10 (Property Values):

Michaelene Craddock, Julie Cyprow, and Stacey Fields indicated concern that the facility would lower property values.

Response 10:

The jurisdiction of the TCEQ is established by the Legislature and is limited to the issues set forth in statute and rules. When evaluating an application for a municipal solid waste permit amendment, the Executive Director is not authorized to consider the effect that a facility would have on property values.

Comment 11 (Land Use Information):

Nancy Letness and Richard Rodriguez stated that the land use information is not current. Nancy Letness, Mehmet Okumus, and Richard Rodriguez specifically noted the recent construction of the Turquoise Center, located less than 1,000 feet south of the transfer station, which is shown in the Application to be undeveloped property. Nancy Letness stated that four parks (Marion Park, BVW Subdivision Park, East Glenshire Park, and West Glenshire Park) were not included in land use analysis.

Response 11:

Parts I/II, Section 4.1 provides information required under 30 TAC §330.61(h). With exceptions to follow, the Executive Director believes that the information provided was accurate and sufficient to meet the requirements of the cited rule at the time that the Application was administratively complete. TCEQ rules do not require that land use information be updated while an application is under review.

It appears that Marian Park is more than one mile from the facility and so §330.61(h) would not require its discussion. The other parks have been characterized in the land use information as residential, which is a conservative assumption. The Executive Director has directed the Applicant to include the parks within one mile of the permit boundary in the discussion on recreational areas but has not required a change to the land use map as the information provided substantially complies with this rule based on land use at the time that the Application was administratively complete.

Comment 12 (Exceptional Aesthetic and Historical Sites):

Nancy Letness and Walter Steets noted that the Application does not include information on the Turquoise Center, which she feels is of exceptional aesthetic quality, or of the historical significance of the Riceville Cemetery.

Response 12:

As noted above, the Turquoise Center had not been constructed at the time the Application was submitted. The Riceville Cemetery is discussed in Parts I/II, Section 4.1.4; however, no reference is made to historical significance. Historical sites and sites with exceptional aesthetic quality are identified by coordination with the Texas Historical Commission (THC). Parts I/II, Appendix A-2 provides a coordination letter and the response from the THC that indicates “no historic properties affected project may proceed.” Chapter 330 does not require that land use information be updated while an application is being reviewed.

Comment 13 (Damage to Economic Development):

Elaine Gaskamp stated that the proposed application will be harmful to economic development in the area.

Response 13:

The TCEQ’s jurisdiction is established by the Legislature, and is limited to the issues set forth in statute and rules. Accordingly, the TCEQ has no rules or regulations that require applicants to consider impacts on property values, taxes, local economies, or local businesses. The Executive Director’s review of a permit application considers whether the proposed facility meets the requirements of Chapter 330 of the Commission’s rules. In addition, section 305.122(c) of the TCEQ’s rules provide that the issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulation.

Comment 14 (Fuel Tanks):

Nancy Letness cited concern over apparent fuel tanks at the facility and requested information about their use, whether secondary containment is in place, and how the facility would respond in the event of a leak.

Response 14:

Chapter 330 of 30 TAC does not require an applicant to provide information regarding fuel storage, and so the Application does not provide information regarding these tanks. The tanks were noted during a site visit before the public meeting held March 24, 2011. The Applicant's consultant was contacted for information regarding these tanks. According to the Applicant, there is a 1,000-gallon and an 8,000-gallon fuel tank located at the facility. They are double-walled to provide secondary containment. The facility has a Spill Prevention Control and Countermeasure (SPCC) plan updated in October 2010.

SPCC requirements are regulated under 40 Code of Federal Regulations Chapter 112 by the United States Environmental Protection Agency (USEPA). Questions or concerns regarding SPCC requirements or complaints regarding these tanks may be directed to Donald Smith, USEPA Oil Program Lead, at smith.donaldp@epa.gov.

Comment 15 (Litter Cleanup):

Fred Burnside provided concern over pickup of windblown waste on and near the facility. Nancy Letness requested details regarding litter cleanup on the facility and for a distance of two miles in either direction along roads used to access the facility, specifically which roads, whether all vehicles delivering garbage were included, and who should be called if litter is detected within two miles of the site. Cindy Chapman indicated that there has been illegal dumping near the facility.

Response 15:

Ms. Letness refers to requirements for municipal solid waste transfer stations under § 330.233 and § 330.235. Section 330.233 requires pickup of waste onsite at least once a day on days the facility is operating. In Part IV, Section 15.0 of the Application, the Applicant affirms that the facility will meet this requirement. Section 330.235 requires pickup of waste along roads being used by the facility. The rule does not apply to specific vehicles, but to all waste materials spilled within the rights-of-way of public access roads if that road is used to deliver waste to or remove waste from the transfer

station. Cleanup must be performed at least daily on days that the facility is operating. In Part IV, Section 15.0 of the Application, the Applicant affirms that the facility will meet this requirement. Parts I/II, Table 4-9 defines the access roadways as Ruffino Road, West Belfort Road, U.S. Highway 59 and associated access roads, and the Sam Houston Tollway and associated access roads (Beltway 8).

Please note that the two mile distance is measured along applicable roads, not radially from the facility. These requirements would include illegally dumped materials within these areas. If litter is detected on applicable roads within two miles of the site, the facility may be contacted to address the issue. If the issue is not addressed by the facility, or there is a desire to make a complaint, the TCEQ Houston Regional Office should be called at (713) 767-3500.

Comment 16 (Incinerators):

Elaine Gaskamp requested that the public record be noted to indicate that the citizens do not want incinerators at the site.

Response 16:

The Executive Director acknowledges the comment. No incinerator is proposed under this Application. Should the Applicant wish to propose the addition of an incinerator in the future, another permit amendment application would be required, including all applicable public notice.

Comment 17 (Watershed Error):

Nancy Letness and Russell Schexnayder identified errors in the Part I form and in Parts I/II of the Application regarding the watershed and basins within which the facility is located and surface water drainage paths from the facility.

Response 17:

The Executive Director has directed the Applicant to correct these errors.

Comment 18 (Surface Water and Groundwater Quality):

Becky Edmonson, Nancy Letness and Russell Schexnayder expressed concern over the effects that this facility will have on surface water quality and groundwater quality.

Response 18

Groundwater and surface water are protected at Municipal Solid Waste processing facilities by control of waste and any wastewater, including water that has contacted waste or surfaces that have contacted waste. Part III, Section 2.3 of the Application indicates that waste will be processed on a concrete tipping floor within the processing building. Water from waste or from cleaning of the tipping floor will drain into the loading bay and discharge through a trench drain to the City of Houston sanitary sewer system. The Executive Director has concluded that the submitted information meets the requirements for protection of surface water and groundwater under § 330.63(b)(4).

Comment 19 (Water Wells):

Nancy Letness noted that the Application states that there are no known water wells within 500 feet of the permit boundary, but then indicated that there is a capped water well on the Ruffino Hills site and an open water well on the West University property, which lies immediately east of the permit boundary.

Response 19:

Section 330.61(h)(5) of TCEQ's rules requires a description and discussion of all known wells within 500 feet of the proposed facility, and 30 TAC § 330.61(l)(1) requires notification of all existing or abandoned water wells within the permit boundary. The onsite well was plugged and abandoned on December 14, 2004.

For the purposes of 30 TAC § 330.61(h)(5), the Executive Director expects a complete list of wells recorded with the Texas Water Development Board (TWDB). Wells on private property that are not recorded with the TWDB are beyond due diligence requirements for reporting. The Applicant made an attempt to locate the well during a site visit but was unable to do so. The Applicant has met due diligence expectations and the Application is substantially compliant with rule requirements but will be directed to provide a reference to a known, but unlocated, well on the West University Property.

The Executive Director has directed the Applicant to include brief discussions of these wells in the Application.

Comment 20 (Public Meeting):

Margaret Ellis, on behalf of the Glenshire Community Association, Debra Wilke, and Nancy Letness requested the TCEQ to hold a public meeting so that local residents could ask questions and voice their concerns regarding the permit application.

Response 20:

In response to significant public interest, a public meeting was held March 24, 2011, at the Holiday Inn – Southwest Houston, 11160 Southwest Freeway in Houston.

Comment 21 (Previous Litigation):

Michael Bercu asked if the TCEQ has considered previous litigation between the Applicant and neighborhood groups. Michael Bercu and Larry Holzband stated that the previous owners of the facility had promised not to seek an expansion.

Response 21:

The Executive Director has received no evidence of legally binding agreements involving the Applicant or this facility and so none were considered in the evaluation of

this Application. The Executive Director did not consider previous litigation between the Applicant and the neighborhood groups.

Comment 22 (Type of Application):

Michael Bercu asked if the Application is major or minor amendment.

Response 22:

The Application for amendment would increase the daily acceptance rate at a Type V processing facility and is therefore a major amendment as identified by §305.62(j)(1)(C).

Comment 23 (Endangered Species):

B.Z. Karachiwala suggested that Section 4.3.1 in Part I/II of the Application, regarding Geology and Soils, failed to describe the Edna and Bernard-Edna soils located on the site. Mr. Karachiwala indicated that this is important because pimple mounds, or “mima mounds,” can occur in these soils, and are often home to the endangered Texas Prairie Dawn. Mr. Karachiwala suggested that the Application should be updated to include this soil information, that a registered Professional Geoscientist with experience in pimple mounds inspect the site and, if pimple mounds are found, the Applicant should perform a new Endangered Species Assessment between March and mid-summer (the flowering period for the Texas Prairie Dawn).

Response 23:

Section 330.61(n)(1) requires applicants to consider the effect that a solid waste facility will have on endangered or threatened species. This is typically addressed through a threatened and endangered species assessment. TCEQ rules do not specify the time of year that these assessments must be performed or who must perform them. The Applicant has provided a threatened and endangered species assessment, performed by Berg Oliver Associates, Inc., on September 25, 2007. The assessment report, dated

February 26, 2008 and provided in Parts I/II, Appendix B-3, indicates that no threatened or endangered species were observed and that the site does not contain suitable habitat for any state or federally listed threatened or endangered species identified as potentially occurring in Harris County. The Executive Director has concluded that the submitted information meets the requirements of 30 TAC §330.61(n).

Comment 24 (Facility Closure):

Michaelene Craddock stated that the transfer station should be closed.

Response 24:

The Executive Director may require a facility to close if it fails to comply with the terms and conditions of their permit, if it violates state or federal regulations, or if there is an emergency requiring immediate action to protect the public health and safety. The Executive Director is unaware of any existing condition that would necessitate this action.

Comment 25 (Errors Regarding Legislator):

Nancy Letness noted that the Part I form provides the incorrect State Congressional District and State Representative.

Response 25:

The Executive Director has directed the Applicant to correct this error.

Comment 26 (Environmental Justice):

Nancy Letness expressed her concern that this facility represents an environmental injustice to the surrounding community.

Response 26:

Although the TCEQ and USEPA collaborate on the cumulative effects from permitting activities, rules, and policies of both agencies, the EPA has primary jurisdiction over environmental justice or Title VI concerns. The EPA website www.epa.gov/compliance/environmentaljustice notes that environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. When evaluating permits, the TCEQ considers the surrounding community without regard to its socioeconomic or racial status.

The TCEQ Environmental Equity program was designed to help the community with this issue. Low-income and minority communities may feel that they are burdened with a disproportionate share of environmental risks. Hostilities can develop between these communities and the industries or facilities involved, making good-faith efforts to resolve disputes, address concerns, and seek solutions ineffective. The Environmental Equity Program was established in 1993 to help counter this trend by improving communication between government, local communities, and neighboring industries. Individuals may raise environmental equity or environmental justice concerns with TCEQ staff through a toll-free number, 1-800-687-4040, or at:

Environmental Equity (MC-108)

Texas Commission on Environmental Quality

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opa@tceq.state.tx.us

<http://www.tceq.texas.gov/agency/opa/envequ.html>

Comment 27 (Environmental Impact Study):

Congressman Al Green and Richard Rodriguez expressed concern that the Applicant has not performed an environmental impact study.

Response 27

Environmental impact studies are not specifically required by TCEQ rules. Some possible components of an environmental impact study are required, such as water well surveys under 30 TAC §330.61(h)(5), general geology and soils statement under 30 TAC §330.61(j), information about groundwater and surface water conditions at the site under 30 TAC §330.61(k), floodplains and wetlands statement under §330.61(m), and endangered or threatened species information under 30 TAC §330.61(n). The Executive Director has concluded that the submitted information meets the requirements of the cited rules.

Comment 28 (Other Local Solid Waste Facilities):

Cindy Chapman and Russell Schexnayder noted that there are other facilities in the area about which neighbors have not complained because they are well run and reasonable.

Response 28:

The Executive Director is not authorized to consider the relative level of complaints of nearby facilities in the evaluation of an application.

Comment 29 (Facility Monitoring by TCEQ):

Naomi Ostfelt asked how often the facility will be monitored by the TCEQ and for how long.

Response 29:

Municipal solid waste facilities are monitored through periodic site inspection by TCEQ Regional Office staff. In addition, the Regional Office will investigate the facility in response to formal complaints. This continues throughout the life of the facility.

Changes Made to the Draft Permit in Response to Comments

No changes were made to the draft permit, however the Applicant has been directed to do the following: correct errors regarding the watershed and basins within which the facility is located, the surface water drainage paths from the facility, and the legislative district and contact; include identified parks in the discussion on recreational areas; include a discussion of the water well that was located within the permit boundary and the well that is located on the adjacent property to the east.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

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REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

Certificate of Service

I certify that on May 23rd, 2011 the "Executive Director's Response to Public Comment" for Permit Application No. 1355A was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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