

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

July 13, 2011

TO: Persons on the attached mailing list.

RE: City of Levelland
Permit No. 2369

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 Levelland City Hall, 1709 Avenue H, Levelland, Texas, 79336.

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

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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

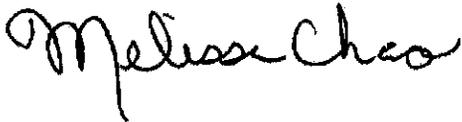
Processing of Requests.

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
City of Levelland
Permit No. 2369

FOR THE APPLICANT:

Rick Osburn, City Manager
City of Levelland
P.O. Box 1010
Levelland, Texas 79336

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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

Matthew Harold, P.E., Technical Staff
Texas Commission on Environmental
Quality
Waste Permits Division MC-124
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

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
via electronic mail:

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

FOR THE CHIEF CLERK
via electronic mail:

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

AGUILERA , SERGIO
224 PAT ST
LEVELLAND TX 79336

AYER , COREY
4090 W STATE ROAD 114
WHITEFACE TX 79379

BAKER , LOU
839 N HIGHWAY 385
LEVELLAND TX 79336

BLAIR , ASHLEY
117 5TH ST
LEVELLAND TX 79336

BLAIR , EDDIE & KATHY
1301 E STATE RD 1585
LEVELLAND TX 79336

BLAIR , EDDIE
1301 E STATE RD 1585
LEVELLAND TX 79336-9358

BLAIR , PAIGE
1301 E STATE RD 1585
LEVELLAND TX 79336-9358

BRACEY , PATTY
108 TANGLEWOOD LN
LEVELLAND TX 79336

BURELSMITH , EMMITT & SHIRLEY
1295 E STATE RD 1585
LEVELLAND TX 79336

BURELSMITH , EMMITT
1295 E STATE RD 1585
LEVELLAND TX 79336-9326

BURELSMITH , SHIRLEY
1295 E STATE RD 1585
LEVELLAND TX 79336-9326

CAMACHO , MARIA ODILIA
671 KOALA RD
LEVELLAND TX 79336

CAMACHO , ROSARIO
671 KOALA RD
LEVELLAND TX 79336

CARTER , DAVID
3385 S HIGHWAY 385
LEVELLAND TX 79336

CASTLEBERRY , DON G
104 PAT ST
LEVELLAND TX 79336

CASTLEBERRY , DONNA
104 PAT ST
LEVELLAND TX 79336

COGDELL , GENE
401 AVENUE L
LEVELLAND TX 79336

COOPER , MARK
STE I
3417 73RD ST
LUBBOCK TX 79423-1138

COUCH , LYNDALE
PO BOX 1625
LEVELLAND TX 79336

CURRINGTON , DON
681 KOALA RD
LEVELLAND TX 79336

CURRINGTON , REBECCA
681 KOALA RD
LEVELLAND TX 79336

DURRETT , KAREN ROSE
2376 KANSAS RD
LEVELLAND TX 79336

DURRETT , MIKE
2376 KANSAS RD
LEVELLAND TX 79336

ELLIOTT , BOBBY JO
1205 KOALA RD
LEVELLAND TX 79336

ELLIOTT , ERIC
1205 KOALA RD
LEVELLAND TX 79336

FERGUSON , BONNIE
3971 HAWK RD
ROPESVILLE TX 79358

FERGUSON , DUANE
3971 HAWK RD
ROPESVILLE TX 79358

FERGUSON , LAWANA
145 S BARTON LN
LEVELLAND TX 79336

FERGUSON , RANDY
145 S BARTON LN
LEVELLAND TX 79336

FERGUSON , RAYMOND
101 BOBBY ST
LEVELLAND TX 79336

FERGUSON, SHAUNA
101 BOBBY ST
LEVELLAND TX 79336

FORD, DEDE
2036 RICE DR
LEVELLAND TX 79336

FOSTER, MARK
11 CROCKETT CIR
LEVELLAND TX 79336

GARCIA, JOSE LUIS
112 11TH ST
LEVELLAND TX 79336

GIBSON, ZANA
3122 ATLANTA RD
LEVELLAND TX 79336

GONZALES, DAVID
5003 LEOPARD RD
LEVELLAND TX 79336

GRESHAM, DARRELL
3310 S STATE RD 3261
LEVELLAND TX 79336

GRESHAM, DON
2327 GOAT CREEK RD
KERRVILLE TX 78028

GRESHAM, HEATH
1106 POPLAR ST
LEVELLAND TX 79336

GRESHAM, MIKE
32 CROCKETT CIR
LEVELLAND TX 79336-8005

HARGRAVE II, GERALD JOE
6906 GROVER AVE
LUBBOCK TX 79424

HARGRAVE, SHANNA
6906 GROVER AVE
LUBBOCK TX 79424

HICKS, BLAKE
2118 TECH DR
LEVELLAND TX 79336

HUSEN, RICHARD
PO BOX 1089
LEVELLAND TX 79336

ISAACKS, HOWARD
4 CROCKETT CIR
LEVELLAND TX 79336

ISAACKS, PAUL
5 CROCKETT CIR
LEVELLAND TX 79336

JACKSON, RAYMON
111 SANDALWOOD LN
LEVELLAND TX 79336

JEFFCOAT, JERRY L
6011 E FM 41
ROPESVILLE TX 79358

JEFFCOAT, TAMI
6011 E FM 41
ROPESVILLE TX 79358

JOHNSON, GAY
3221 21ST ST
LUBBOCK TX 79410

JOHNSON, JIMMIE
301 SANDALWOOD LN
LEVELLAND TX 79336

JOHNSON, LINDA
301 SANDALWOOD LN
LEVELLAND TX 79336

KITTEN, DARRELL
7303 94TH ST
LUBBOCK TX 79424

MACHA, DEE
302 PARKWOOD LN
LEVELLAND TX 79336

MCDONALD, CARL
3445 W STATE ROAD 114
LEVELLAND TX 79336

METHUIN, GREG
108 DUVAL DR
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MYATT, GREGG
3640 FOSTER RD
LEVELLAND TX 79336

PAULK, HAROLD
MARKWEST POWER TEX
STE I
3417 73RD ST
LUBBOCK TX 79423-1138

PENCE, RUSTY
850 BARTON LN
LEVELLAND TX 79336

PENCE, SHIRANDA
850 BARTON LN
LEVELLAND TX 79336

PHILLIPS , BECK Y
7602 WOODROW RD
WOLFFORTH TX 79382-4900

PHILLIPS , DANNY
3798 S US HIGHWAY 385
LEVELLAND TX 79336

PHILLIPS , RODNEY
7602 WOODROW RD
WOLFFORTH TX 79382-4900

PHILLIPS , TREVA
3798 S US HIGHWAY 385
LEVELLAND TX 79336

PHILLIPS , TUCKER
7602 WOODROW RD
WOLFFORTH TX 79382-4900

REAVES , R H
1862 N US HIGHWAY 385
LEVELLAND TX 79336

REAVES , ZACH
121 CEDAR AVE
LEVELLAND TX 79336

REBP , CODY
6750 E FM 1585
ROPESVILLE TX 79358

REEVES , CLYDE
PO BOX 225
LEVELLAND TX 79336

REYNOLDS , HEATH
STE I
3417 73RD ST
LUBBOCK TX 79423-1138

ROSE , JODY
PO BOX 967
LEVELLAND TX 79336-0967

SANDS , DORIS
104 GARY AVE
LEVELLAND TX 79336

SANDS , WADE
104 GARY AVE
LEVELLAND TX 79336

SAPIA , MIKE
103 PEGGY DR
LEVELLAND TX 79336

SCARLETT , AMBER
112 TANGLEWOOD LN
LEVELLAND TX 79336

SCARLETT , MISTY
112 TANGLEWOOD LN
LEVELLAND TX 79336

SCARLETT , STEVE
112 TANGLEWOOD LN
LEVELLAND TX 79336

SCHARTZ , H JOE
PO BOX 97
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SNOW , JAMES
3770 NORWAY RD
LEVELLAND TX 79336

STEPHENS , HARVEY B
320 PECAN ST
LEVELLAND TX 79336

SULLIVAN , MONTE
821 CHICKADEE RD
LEVELLAND TX 79336

THETFORD , BILLY W
517 E JACKSON ST
LEVELLAND TX 79336

THRASH , BLAKE
3833 FM 3261
ROPESVILLE TX 79358

THRASH , CURTIS
3833 FM 3261
ROPESVILLE TX 79358

TURNIPSEED , BRUCE
3424 CHICKADEE RD
LEVELLAND TX 79336

TURNIPSEED , TY
3441 CHICKADEE RD
LEVELLAND TX 79336

VARGAS , JESUS
531 W STATE RD 1294
LEVELLAND TX 79336

VARGAS , ROY
305 AVENUE M
LEVELLAND TX 79336

W , CHARLES
PO BOX 181
LEVELLAND TX 79336

WADE , LARRY
3631 N BARTON LN
LITTLEFIELD TX 79339

WILSON, PAUL
3969 E STATE ROAD 1585
LEVELLAND TX 79336-9363

WOOD, EVELYN
111 COUGAR LN
LEVELLAND TX 79336

TCEQ PERMIT NO. 2369

2011 JUL 11 PM 1:23

<p>APPLICATION BY CITY OF LEVELLAND FOR MUNICIPAL SOLID WASTE PERMIT NO. 2369</p>	<p>§ § § §</p>	<p>BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</p>
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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) received on the application (Application) by City of Levelland (Applicant), for a new Municipal Solid Waste (MSW) Permit Number 2369 and on the Executive Director's preliminary decision. As required by Title 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 received timely written comments from Eddie Blair, Kathy Blair, Emmitt Burelsmith, Shirley Burelsmith, Harold Paulk and the following persons, hereinafter referred to as **Group 1**, signed a petition raising issues with the Application:

Sergio Aguilera	Gene Cogdell	Raymond Ferguson
Corey Ayers	Mark Cooper	Shauna Ferguson
Lou Baker	Lyndall Couch	Dede Ford
Ashley Blair	Don Currington	Mark Foster
Eddie Blair	Rebecca Currington	Jose Luis Garcia
Max Blair	John D.	Zana Gibson
Paige Blair	James Deaver	Daniel Gonzales
Patty Bracey	Karen Durrett	David Gonzales
Emmitt Burelsmith	Mike Durrett	Felix Granado
Shirley Burelsmith	Bobby Jo Elliott	Darrell Gresham
Bosano Comacho	Eric Elliott	Don Gresham
Maria Camacho	Bonnie Ferguson	Heath Gresham
David Carter	Duane Ferguson	Mike Gresham
Don G. Castleberry	Lawana Ferguson	Gerald Joe Hargrave II
Donna Castleberry	Randy Ferguson	Shanna Hargrave

Blake Hicks	Becky Phillips	Steve Scarlett
Howard Isaacks	Danny Phillips	H. Joe Schartz
Paul Isaacks	Rodney Phillips	James Snow
Jerry Jeffcoat	Treva Phillips	Harvey B. Stephens
Tami Jeffcoat	Tucker Phillips	Monte Sullivan
Gay Johnson	Rocky Q.	Billy W. Thetford
Jimmie Johnson	R.H. Reaves	Blaise Thrash
Linda Johnson	Zach Reaves	Curtis Thrash
Darrell Kitten	Cody Reep	Bruce Turnipseed
Daniel Lee	Clyde Reeves	Ty Turnipseed,
Dee Macha	Heath Reynolds	Jesus Vargas
Carl McDonald	Doris Sands	Roy Vargas
Greg Methuin	Wade Sands	Larry Wade
Gregg Myatt	Mike Sapia	Paul Wilson
Shironda Pence	Amber Scarlett	Evelyn Wood
Rusty Pence	Misty Scarlett	

Additionally, the Office of Public Assistance received timely, oral comments at the public meeting, held on May 10, 2011, from Shirley Burelsmith and Kathy Blair.

This response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the municipal solid waste 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 City of Levelland, 1709 Avenue H, Levelland, Texas 79336, has applied to the TCEQ for an MSW permit to authorize the construction and operation of a new Type I & IV Arid Exempt (AE) MSW landfill in Hockley County, Texas. The facility is proposed to be located on Bobwhite Road, 2.5 miles east of US 385, 0.5 miles south of FM 1585 in

Hockley County, Texas. The total permitted facility would include 171.5 acres of land of which approximately 90 acres would be used for waste disposal. The final elevation of the waste fill and final cover material will be 3535 feet above mean sea level. The site would be authorized to accept municipal solid waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational, and industrial activities. This includes garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, yard waste, special waste, and other waste as approved by the Executive Director. Waste acceptance would be limited to a maximum rate of approximately 14,600 tons per year, approximately 20 tons per day of Type I waste and 20 tons per day of Type IV waste, based on a sum of the previous four quarters of waste acceptance.

B. Procedural Background

The Application was received by the TCEQ on July 8, 2010, and declared administratively complete on August 19, 2010. The Notice of Receipt of Application and Intent to Obtain a Permit was published in the *Levelland & Hockley County News-Press* on September 5, 2010. The Executive Director completed the technical review of the Application on January 10, 2011, and prepared a draft permit. The Notice of Application and Preliminary Decision was published in the *Levelland & Hockley County News-Press* on February 6 and 13, 2011. The Notice of Public Meeting was published in the *Levelland & Hockley County News-Press* on April 20, 2011, April 27, 2011, and May 4, 2011. A public meeting was held on May 10, 2011, at the Levelland Middle School auditorium, 1401 East Ellis Street, Levelland, Texas 79336. The comment period for this Application ended on May 10, 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.texas.gov (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 Application and associated Commission records are available for viewing and copying and at Levelland City Hall, 1709 Avenue H, Levelland, Texas 79336.

II. Comments and Responses

Comments and responses are organized by topic under the following headings:

- A. *Procedural Issues***
- B. *Environmental and Human Health Issues***
- C. *Existing Conditions Site Development***
- D. *Quality Assurance & Enforcement***

A. Procedural Issues

Comment 1 (Availability of Application):

Emmitt Burelsmith and Shirley Burelsmith noted that they were unable to view the public copy of the Application, the Executive Director’s preliminary decision, or the draft permit at the Levelland City Hall, which was the location stated in the notice documents for public viewing and copying of the Application.

Response 1:

TCEQ rules require an applicant to provide a copy of the application for the public to review and copy at a public place in the county in which the facility is located or proposed to be located in accordance with 30 TAC § 39.405(g). The Applicant submitted to the TCEQ Office of the Chief Clerk a Public Notice Verification Form, dated March 11, 2011, that states a copy of the Application was available at the Levelland City Hall, 1709 Ave. H, Levelland, Texas 78336. In response to comments received, the Executive Director's staff from the Region 2 Lubbock office visited Levelland City Hall on April 25, 2011, to determine whether the Application was publicly available. Regional staff was able to view a copy of the Application on April 25, 2011. The Executive Director has reviewed the Public Notice Verification Form submitted and determined that the Applicant's representation satisfies the requirements for providing a public copy of the Application.

Comment 2 (Signs):

Emmitt Burelsmith and Shirley Burelsmith expressed a concern that the Applicant did not place notice signs in the proper location on Bobwhite Road.

Response 2:

TCEQ rules require a minimum of one sign, but no more than three signs providing notice of an Application for a new MSW landfill to be posted, along property lines parallel to public highways, streets, or roads at the site within 30 days of the Executive Director's receipt of an application in accordance with 30 TAC § 330.57(i)(3). Additionally, the signs are required to be visible from the street, located within ten feet of every property line bordering a public highway, street, or road, spaced at not more than 1,500-foot intervals. 30 TAC § 330.57(i)(3). In response to comments received, the Executive Director's staff from the Region 2 Lubbock office visited the site of the proposed facility on April 25, 2011 to determine whether notice signs were posted. On April 25, 2011, Region 2 staff observed two signs posted at the proposed facility site, one on Bob White Road and one on Impala Road. The Executive Director has reviewed the information provided by Region 2 staff and determined that the signs providing notice of the proposed facility at the site satisfied the rule requirements.

Comment 3 (Public Meeting):

Eddy Blair, Kathy Blair, Emmitt Burelsmith, and Shirley Burelsmith requested that TCEQ hold a public meeting.

Response 3:

The TCEQ Office of Public Assistance held a public meeting on May 10, 2011 at the Levelland Middle School auditorium, 1401 East Ellis Street, Levelland, Texas, 79336.

Comment 4 (Contested Case Hearing):

Eddy Blair, Kathy Blair, Emmitt Burelsmith, and Shirley Burelsmith requested a contested case hearing.

Response 4:

The cover letter transmitting this Response provides a deadline before which requests for a contested case hearing must be filed. The requests for a contested case hearing already received by the TCEQ Office of the Chief Clerk and any other requests for a contested case hearing that are timely filed with the TCEQ Office of the Chief Clerk, including those requests listed above, will be processed in accordance with the requirements of 30 TAC , Chapter 50, Subchapter F. All requests for a contested case hearing must comply with the requirements of 30 TAC § 55.201.

B. Environmental and Human Health Issues

Comment 5 (Wells on Site):

Shirley Burelsmith commented that there is an open well casing on the property of the proposed facility and asked what measures would be taken for this well.

Response 5:

An application for an MSW Landfill permit must include a general location map or maps that identify the location of any and all existing or abandoned water wells situated within the property boundaries of the proposed facility in accordance with 30

TAC § 330.61(l)(1). The Application identifies one well, water well number 3482, within the proposed facility boundary. (Application, Part II, Section 13.0, Abandoned Oil and Water Wells and Part II, Appendix B, Figure 1). Unless a water well will be used for supplying the facility with water, within 30 days prior to construction the operator must provide the Executive Director written certification that all such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the TCEQ or other state agency in accordance with 30 TAC § 330.61(l)(1). The Application states that the Applicant will provide notice to the Executive Director that water well number 3482 has been capped, plugged and closed within 30 days prior to construction of the facility in accordance with 30 TAC § 330.61(l)(1). (Application, Part II, Section 13.1, Water Wells). The Executive Director has reviewed the Application and determined that the identification and disposition of water wells inside the facility boundary satisfy the rule requirements.

Comment 6 (Wells off Site):

Kathy Blair requested that her domestic well be added to the map provided in the Application. Emmitt Burelsmith and Shirley Burelsmith commented that there is an active water well in close proximity to the proposed site, that irrigation wells in the area lack caps or have faulty casings, and raised concerns that contaminated water would infiltrate several abandoned irrigation wells located near the facility.

Response 6:

An application for an MSW Landfill permit must include a general location map or maps that identify the location of all known water wells within 500 feet of the proposed permit boundary in accordance with 30 TAC § 330.61(c)(2). This rule instructs applicants to include water wells “with the state well numbering system designation for the Water Development Board ‘located wells’.” 30 TAC §330.61(c)(2). Furthermore, applicants must submit general location maps that depict the land owned or to be used by the applicant, as well as land surrounding the proposed site extending at least one mile beyond the tract boundaries. 30 TAC § 330.59(c)(1); 30 TAC §

305.45(a)(6)(A). The general location map must be sufficient to show wells within the area of the map. 30 TAC § 305.45(a)(6)(A).

The Application includes maps that indicate the locations of known water wells located within one mile and within 500 feet of the proposed facility, identifying the located wells by the state well numbering system. (Application Part I, Section 1.2, Figure I.1.4, and Part II, Section 13.0, Figure II.4.1). The Application also includes a chart and narrative description of located water wells within 500 feet of the facility. (Application, Part II, Section 9.5, Nearby Wells). The Executive Director has reviewed the Application and determined that the information provided regarding water well location satisfies the rule requirements. Please see Response No. 7 below for more information regarding protection of groundwater and surface water.

Individuals are encouraged to report their concerns regarding suspected noncompliance with terms of any TCEQ permit or environmental regulation by contacting the TCEQ Regional Office at 806-796-7092 or by calling TCEQ's 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186 or by sending an e-mail to complaint@tceq.texas.gov. TCEQ investigates all complaints. If a person or facility is found to be out of compliance with the terms and conditions of a permit or other authorization, rule or law, the person or facility may be subject to enforcement action.

Comment 7 (Contaminated Water Management):

Emmitt Burelsmith and Shirley Burelsmith commented that the proposed facility will have an adverse impact on groundwater and drinking water quality. Eddie Blair and Kathy Blair asked what TCEQ and the Applicant will do to protect them from contaminated groundwater. Eddie Blair and Kathy Blair, Emmitt Burelsmith, Shirley Burelsmith and Group 1 raised a concern that contaminated water would contaminate the playa lake through leaching or run-off.

Response 7:

TCEQ rules prohibit the discharge of solid waste or pollutants into or adjacent to waters in the state in violation of Texas Water Code, Section 26.121 and in accordance with 30 TAC 330.15(h). TCEQ rules regulating surface water drainage at MSW landfills

are found at 30 TAC § 330, Subchapter G. TCEQ rules require liquids resulting from the operation of solid waste facilities to be collected, contained, properly managed and disposed in a manner that does not cause surface or groundwater pollution in accordance with 30 TAC §§ 330.207 (a) and (b). Off-site discharge of contaminated water from an MSW landfill facility is prohibited without prior authorization in accordance with 30 TAC §§ 330.207(a), (b) and (e). Additionally, an MSW landfill facility is required to be constructed, maintained, and operated in a way that does not adversely alter existing drainage patterns in accordance with 30 TAC § 330.305(a). Specifically, the design and management must be capable of managing run-on and run-off during the peak discharge of a 25-year rainfall event in a manner that prevents the off-site discharge of waste in accordance with 30 TAC §§ 330.303(a). Finally, surface water drainage must be controlled to minimize water running onto and off of deposited waste in accordance with 30 TAC §§ 330.303(b) and 330.305(b).

The Application includes surface water drainage, erosion prevention and slope design features, discussed in Response No. 10 below, that are intended to limit the potential for erosion conditions and surface water run-off during construction and operation of this facility. (Application, Part III, Attachment 6, Appendix A, Erosion and Sedimentation Control Plan). The Application includes a Drainage Plan that describes existing and developed conditions including drainage channels, perimeter channels, letdown structures and containment berms designed, in conjunction with the measures described in the Erosion and Sedimentation Control Plan discussed above, to control drainage within the facility. (Application, Part III, Attachment 6, Appendix A, Sections 3.1 through 4). Specifically, the Site Development Plan proposes diversionary and perimeter earth berms to divert run-on from active landfilling areas that have not received intermediate cover and states that any surface or groundwater that has come in contact with waste will be allowed to evaporate in place. (Application, Part III, Sections 2.5 – 2.6). The Executive Director has reviewed the Application and determined that the submissions regarding facility design and operation satisfy the rule requirements regarding surface water and groundwater quality and protection. Additionally, the Executive Director has determined that if the facility is constructed and operated in accordance with the Application, Draft permit, and TCEQ rules that the facility should

not cause any adverse impact to groundwater or drinking water quality, and should not cause off-site discharge of contaminated water.

Comment 8 (Air Pollution):

Emmitt Burelsmith and Shirley Burelsmith raised a concern that the proposed facility will contribute to air pollution or that the facility will lower air quality.

Response 8:

Air emissions from MSW landfills are authorized and regulated under 30 TAC, Section 330, Subchapter U. TCEQ rules prohibit operation of an MSW landfill in a manner that causes, suffers, allows or contributes to the creation or maintenance of a nuisance in accordance with 30 TAC § 330.15(a)(2). TCEQ rules require an application to include a site-specific Site Development Plan that includes proposed odor control measures for each storage, processing, and disposal unit in accordance with 30 TAC § 330.63(b)(2)(C). TCEQ rules require an Odor Management Plan that addresses the sources of odors and includes general instructions to control odors or sources of odors in accordance with 30 TAC § 330.149. The Application includes an Odor Management Plan, which states that the Applicant will ensure that the facility does not violate any applicable air quality requirement. (Application, Part IV, Section 19, Odor Management Plan). The Application describes operating procedures designed to minimize odor including daily application of a layer of six inches of soil or an approved alternate daily cover on top of deposited waste, immediate burial or cover of dead animals and waste identified as particularly odorous, control of ponded water, and landfill gas control. (Application, Part IV, Sections 19.1, Odor Management Plan, and 30.0, Disposal of Special Wastes). The Executive Director has reviewed the Application and determined that it satisfies the requirements regarding air quality.

Individuals are encouraged to report any concerns regarding air quality or odor to the TCEQ Region 2, Lubbock office by calling 806-796-7092. More information about making an environmental complaint is available under Response No. 6 above.

Comment 9 (Windblown Waste and Dust):

Emmitt Burelsmith and Shirley Burelsmith raised a concern that the facility would produce a large amount of dust from the increased truck traffic and that the proposed facility would contaminate cotton production on nearby farms. Persons who spoke during the question and answer portion of the public meeting clarified that the latter comment refers to introduction of windblown litter into bales during cotton harvesting.

Response 9:

The rules prohibit dust from on-site and off-site roadways that provide access to an MSW landfill from causing a nuisance to surrounding areas. The rules also require a water source and necessary equipment, or other means of dust control approved by the Executive Director in accordance with 30 TAC § 330.153(b). Additionally, the rules require measures to minimize windblown material and litter at the facility including maintenance and operation of the working face of the landfill in a manner to control windblown waste by temporary fencing or other engineering measures and daily collection of windblown litter when the facility is in operation in accordance with 30 TAC §§ 330.139 and 330.233. Finally, the rules require measures to minimize the occurrence of discarded materials along the route to the facility, including requiring the operator to encourage delivery vehicle drivers to cover waste while in transit. TCEQ rules also require the operator of the facility to collect waste along all roadways that provide access to the facility, within two miles of the facility, at a minimum of once a day when the facility is operating, in accordance with 30 TAC §§330.139 and 330.235.

The Application proposes that access roads will be maintained in a reasonable dust-free condition by periodic spraying from a water truck. (Application, Part IV, Site Operating Plan, Section 21). Additionally, the Application states that the operator will collect waste spilled along and within the right-of-way of public access roads serving the facility within two miles of the facility. (Application, Part IV, Site Operating Plan, Section 14). The Executive Director has reviewed the Application and determined that the information provided and proposed measures for dust suppression and prevention of windblown litter at the facility and along the access roads to the facility satisfy the rule requirements.

Individuals are encouraged to report any concerns regarding wind-blown litter at the facility or along the access roads to the site to the TCEQ Region 2, Lubbock office by calling 806-796-7092. More information about making an environmental complaint is available under Response No. 6 above.

Comment 10 (Erosion):

Emmitt Burelsmith, Shirley Burelsmith and the Group 1 raised a concern that the facility will contribute to soil erosion.

Response 10:

The design of an MSW landfill is required to provide effective erosional stability to the top surfaces and embankment slopes of MSW landfill units and to minimize erosion and soil loss in accordance with 30 TAC § 330.305(d). The Application proposes design considerations, structural and non-structural controls intended to limit the potential for erosion conditions during construction and operation of this facility. The structural controls proposed include silt fences, straw bales, rock filter berms, diversion berms, silt traps ditch checks, sediment logs and vegetative cover to provide side slope and drainage ditch erosion protection. (Application, Part III, Attachment 6, Appendix A, Erosion and Sedimentation Control Plan, Sections 1 through 5.1.2). Non-structural controls proposed include minimizing disruption of the natural drainage, topography and vegetative cover features, disturbing the smallest area of ground necessary for performance of facility operations, stabilization of exposed surfaces in a timely manner, and routine inspection, monitoring and maintenance of structural erosion and sedimentation controls. (Application, Part III, Attachment 6, Appendix A, Erosion and Sedimentation Control Plan, Section 5.3). Additionally, the draft permit requires best management practices for temporary erosion and sediment control to be utilized until sufficient vegetative cover is established and requires monitoring and maintenance of a vegetative cover throughout the post-closure care period. (Draft MSW Permit No. 2369 Section III.E). The Executive Director has reviewed the Application and determined that the measures proposed in the Application to control soil erosion satisfy the rule requirements.

Comment 11 (Impact on Health and the Environment):

Emmitt Burelsmith and Shirley Burelsmith raised a general concern that the facility would have a negative impact on health, welfare, the environment, or quality of life. Eddie Blair and Kathy Blair inquired as to whom would be liable for their safety and welfare.

Response 11:

The TCEQ promulgated rules for the management of MSW pursuant to statutory mandates, general authority, and jurisdiction over solid waste granted to TCEQ by the Texas Legislature in accordance with the TCEQ's mission statement: The TCEQ strives to protect our state's human and natural resources consistent with sustainable economic development. TCEQ's goal is clean air, clean water, and the safe management of waste. TCEQ's rules are designed to be protective of human health and the environment.

The jurisdiction of the TCEQ is limited to enforcing violations of TCEQ rules, orders, or permit conditions. *See Texas Water Code § 7.002.* However, a permit issued by the TCEQ does not convey any property rights, nor any exclusive privilege and does not become a vested right in the permittee in accordance with 30 TAC § 305.122(b). Finally, 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 regulations. 30 TAC § 305.122(c).

TCEQ Field Operations Division, Regional Offices conduct compliance inspections and investigations of facilities under TCEQ's jurisdiction. The Region Office Environmental Investigators conduct routine investigations and conduct investigations in response to environmental complaints received. These investigations review facility operations and operating records to determine compliance with issued authorizations, TCEQ rules, state statutes, and federal statutes. If granted, the permittee will be required to comply with the conditions of the issued permit, which incorporates the rules, statutes, and the Application by reference. (Draft MSW Permit No. 2369 Section VII. A - C). Failure to comply with a permit condition may constitute a violation of the

permit, the Rules of the Commission, and/or the Texas Solid Waste Disposal Act, and may be grounds for enforcement action. See 30 TAC § 330.125(1).

The Executive Director has reviewed the Application and determined that if the facility is constructed and operated in accordance with the rules and the terms and conditions of the draft permit and Application that the facility should not adversely impact human health or the environment.

C. Existing Conditions Site Development

Comment 12 (Access Roads and Traffic):

Emmitt Burelsmith and Shirley Burelsmith raised a concern regarding the adequacy of the roads for the facility. Specifically, they raised a concern that the truck traffic would damage the dirt roads that provide access to the proposed facility.

Response 12:

TCEQ rules require an application to include data on the availability and adequacy of site access roads and on the volume of existing and expected traffic on access roads within one mile of the proposed facility during the expected life of the proposed facility in accordance with 30 TAC § 330.61(i). The Application includes traffic data and predicts traffic volume to increase by a maximum of 15 vehicles per day. (Application, Part II, Section 10.1, Transportation). TCEQ rules require an applicant to submit documentation of coordination with the Texas Department of Transportation (TXDOT) in accordance with 30 TAC § 330.61(i)(4). The Application includes a letter from TXDOT concluding that U.S. 385 and F.M. 1585 are sufficient to support an increase in traffic volume of 15 vehicles a day. On-site and other access roads are required to be maintained in a clean and safe condition, including grading to minimize ruts, depressions, and potholes in accordance with 30 TAC § 330.153(c). The Application states that access roads will be graded and maintained on a regular basis. (Application, Part IV, Site Operating Plan, Section 21). The Executive Director has reviewed the Application and determined that the information provided and the proposed operating measures for site access roads satisfy the rule requirements.

Comment 13 (Property Values):

Emmitt Burelsmith, Shirley Burelsmith and Group 1 raised a concern that the proposed facility will lower the property values of the surrounding area.

Response 13:

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. See Tex. Health and Safety Code § 361.011. Accordingly, the TCEQ does not have jurisdiction to consider property values when determining whether to approve or deny an application for an MSW permit. However, the issuance of a permit does not authorize injury to persons or property or invasion of other property rights, or infringement of state or local law or regulation in accordance with 30 TAC § 305.122(c). The Executive Director's review of a permit application is limited to whether the application and proposed facility design and operation meet the requirements of the applicable TCEQ rules. The MSW rules are promulgated under 30 TAC, Chapter 330.

Comment 14 (Wildlife):

Emmitt Burelsmith and Shirley Burelsmith raised a concern that the facility will have a negative impact on wildlife or wildlife habitat.

Response 14:

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. See Tex. Health and Safety Code §361.011. Accordingly, the TCEQ does not have jurisdiction to consider the impact of an MSW landfill facility on wildlife or wildlife habitat that is not protected by state or federal statute. TCEQ rules prohibit the facility or operation of the facility from resulting in destruction or adverse modification of the critical habitat of endangered species and the causing or contributing to the taking of any endangered or threatened species in accordance with 30 TAC § 330.61(n). This rule requires the Applicant to "submit Endangered Species Act compliance demonstrations . . . and determine whether the [proposed] facility is in the range of endangered or threatened species." *Id.* "If the [proposed] facility is located

in the range of endangered or threatened species the [applicant must] have a biological assessment prepared by a qualified biologist in accordance with standard procedures of the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department to determine the effect of the facility on the endangered or threatened species." *Id.* The Application includes a Threatened and Endangered Species Technical Report which concludes that no habitat of state-listed or federally-listed species was observed within the project area and that no impacts to state-listed or federally-listed species are anticipated as a result of the proposed project. (Application, Part II, Attachment 1). The Application states that a qualified biologist visited the site "and assessed the potential for the occurrence of listed species based on presence of suitable habitat." *Id.* The Executive Director has reviewed the Application and determined that the information provided satisfies the rule requirements regarding habitat for endangered or threatened species.

Comment 15 (Test Wells):

Emmitt Burelsmith and Shirley Burelsmith raised a general concern about test well requirements.

Response 15:

If this comment intends "test well requirements" to mean borings conducted at the site, the rules require investigation of the subsurface to be conducted in accordance with 30 TAC § 330.63(e)(4). Prior to submission of the Application, the Applicant drilled ten soil borings, four of which were to a depth of greater than 200 feet (ft) below ground surface (bgs). (Application, Part III, Attachment 4, Appendix B, Subsurface Investigation, Section 3.3 Soil Borings). The remaining six borings were to depths between 45 ft and 75 ft, bgs. *Id.* This investigation found groundwater at an average depth of approximately 186 ft bgs. (Application, Part III, Section 7.0, Groundwater Investigation). Six of these borings were plugged upon completion and four of these borings were converted to groundwater piezometers. (Application, Part III, Attachment 4, Appendix B, Subsurface Investigation, Sections 3.3 Soil Borings, and 3.4 Description of Well Installation and Completion). The four piezometers were completed to the

surface and the piezometer heads extend approximately three feet above ground level. *Id.* The Executive Director has reviewed the Application and determined that the subsurface investigation and the condition of the piezometers satisfy the rule requirements.

Comment 16 (Utility Lines):

Emmitt Burelsmith, Shirley Burelsmith and Harold Paulk identified a gas pipeline that traverses the proposed facility and expressed concerns regarding this pipeline. Harold Paulk commented that the pipeline serves Lubbock Power, Xcel Energy, West Texas Gas, Atmos Energy and residential end users. Harold Paulk raised the following issues: the location of the route to be used for ingress and egress to the facility; whether the Applicant has completed load studies to determine whether external loading forces of heavy equipment will damage the pipeline; whether structures are planned to be built over the pipeline or right-of-way; whether excavation will occur close the pipeline; whether there will be blasting at the facility; and whether proposed fencing will inhibit maintenance and safe operation of the pipeline.

Response 16:

The application is required to include a facility layout map or set of maps that indicates the proposed facility entrance and the general locations of main interior facility roadways in accordance with 30 TAC §§ 330.61(d)(2) and (8). The Application includes a map that identifies the location of the entrance gate for the proposed facility at the North East corner on the East side of the facility on Bobwhite Road and indicates the proposed interior roadways for the facility. (Application, Part II, Section 5.1, Figure II.5.1). The application is required to include a map that identifies drainage, pipeline and utility easements within or adjacent to the facility in accordance with 30 TAC § 330.61(c)(10). The Application includes a map that identifies a pipeline easement traversing the North East corner of the facility. (Application, Part II, Section 8.1, Figure II.8.1). TCEQ rules require owners and operators of MSW landfills to mark the location of pipelines and utility easements within or adjacent to the facility in accordance with 30 TAC 330.141(a). The Application states that markers will be placed to clearly indicate

easements. (Application Part III, Section 2.9, Landfill Markers). TCEQ rules prohibit solid waste unloading, storage, disposal or processing operations within 25 feet of the center line of any utility line or pipeline easement, unless otherwise authorized by the Executive Director, in accordance with 30 TAC § 330.141(a). The Application does not request the Executive Director's approval of solid waste unloading, storage, disposal or processing operations or propose excavation within 25 feet of the center line of any utility line or pipeline easement. The Application does not propose or provide any load studies. The Application does not propose blasting. The Application proposes facility access control measures including perimeter fencing to discourage unauthorized entry to the facility in accordance with 30 TAC § 330.223, Access Control. (Application, Part III, Section 3.1, Facility Access). TCEQ rules place the responsibility of possessing or acquiring a sufficient interest in the right to use the surface estate of the property for which a permit is issued on the MSW landfill owner or operator in accordance with 30 TAC § 330.67(a). Additionally, TCEQ's granting of an MSW permit conveys no property rights or interest in real property "nor does it authorize any injury to private property, invasions of personal rights, or impairment of previous contract rights." *Id.* The Executive Director has reviewed the Application and determined that the proposed facility entrance location, the identification of pipeline easements in the Application, the planned markers for the pipeline easement and the proposed facility construction and operations satisfy the rule requirements for facility entrance and pipeline easements.

Comment 17 (Construction):

Eddie Blair and Kathy Blair inquired as to whether there would be some person or entity that would oversee the construction of the facility to ensure that it complies with TCEQ rules.

Response 17:

The TCEQ rules require a preconstruction conference, attended by the Executive Director's staff, and Applicant's representatives, including the engineer, contractor, and facility manager, to be held within 90 days of commencement of construction of the facility in accordance with 30 TAC § 330.73(c). Additionally, the owner or operator is

required to submit, prior to commencement of waste acceptance, certification by a Texas-licensed professional engineer that the facility has been constructed in accordance with the issued permit and in compliance with regulations in accordance with 30 TAC § 330.73(e). Following completion of initial construction activities and prior to commencement of waste acceptance, the owner or operator is required to request a pre-opening inspection in accordance with 30 TAC § 330.73(e). The Executive Director's staff is required to conduct the pre-opening inspection within 14 days of receiving a request in accordance with 30 TAC § 330.73(e). Finally, an MSW facility may not accept solid waste until after the Executive Director confirms, in writing, that construction of the facility complies with the permit and the approved site development plan in accordance with 30 TAC § 330.73(f). The Application identifies a consulting and designing engineer that will supervise construction of the facility. (Application, Part I, Section 7.0, Appointments). The Executive Director has reviewed the Application and determined that the Application satisfies the rule requirements for professional oversight of construction of the facility prior to waste acceptance.

Changes Made to the Draft Permit in Response to Comments

No changes were made to the draft permit in response to comments received.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

Certificate of Service

I certify that on July 11, 2011, the Executive Director's Response to Public Comment for Permit No. 2369 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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