

**TCEQ DOCKET NO. 2012-1401-MSW**

<b>APPLICATION OF AFFORDABLE</b>	<b>§</b>	<b>BEFORE THE</b>
<b>DEWATERING SERVICE, LLC</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
<b>FOR MUNICIPAL SOLID WASTE</b>	<b>§</b>	<b>ON</b>
<b>PERMIT NO. 2373</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

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**Executive Director's Response to Hearing Requests**

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**I. Introduction**

The Executive Director of the Texas Commission on Environmental Quality (the TCEQ or Commission) files this Response to Hearing Requests (Response) on the application by Affordable Dewatering Service, LLC (Application) for a new Municipal Solid Waste (MSW) Permit No. 2373. Attorney, Robert Wilson, submitted hearing requests on behalf of Alpha Equipment and FenceCo.

As explained below, the Executive Director recommends granting the hearing requests of both Alpha Equipment and FenceCo, and recommends the referral of four disputed issues to the State Office of Administrative Hearings.

Attached for Commission consideration are the following:

Attachment A – GIS Map

Attachment B – Landownership Map and Landownership List

Attachment C – Compliance History

Attachment D – Technical Summary and Draft Permit

Attachment E – Executive Director's Response to Public Comment

**II. Description of the Facility**

Affordable Dewatering Service, LLC, located at 4404 Mockingbird Lane, Midland, Texas 79707, applied to the TCEQ for a permit authorizing construction and operation of a new municipal solid waste Type V liquid waste processing facility. The proposed facility area would include approximately 1.57 acres and would be located at 2201 S. Midkiff Road, Midland, Texas in Midland County. If granted the permit would

authorize commercial acceptance, storage and processing of grease trap waste, grit trap waste, septage, and port-a-potty waste.

### **III. Procedural Background**

The Application was received on April 11, 2011, and declared administratively complete on April 19, 2011. The TCEQ Office of the Chief Clerk (OCC) mailed Notice of Receipt of Application and Intent to Obtain an MSW Permit (NORI) on April 21, 2011. The Applicant published the NORI in the *Midland-Reporter Telegram* on April 28, 2011. The Executive Director completed the technical review of the Application on February 10, 2012, and prepared a draft permit. The Notice of Application and Preliminary Decision for an MSW Permit (NAPD) was mailed to the applicant by the OCC on February 29, 2012. The Applicant published the NAPD in the *Midland-Reporter Telegram* on March 7, 2012. The comment period for the Application ended on April 9, 2012. The Executive Director's Response to Public Comments (RTC) was issued on June 7, 2012. The Executive Director's Final Decision letter was mailed on June 11, 2012, and the period for filing a Request for Reconsideration or Contested Case Hearing ended on July 11, 2012. This application was declared administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76<sup>th</sup> Legislature, 1999.

### **IV. The Evaluation Process for Hearing Requests**

#### ***A. Response to Request***

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request in accordance with Title 30 Texas Administrative Code (TAC), Section 55.209(d).

Responses to hearing requests must specifically address:

- a) whether the requestor is an affected person;
- b) whether issues raised in the hearing request are disputed;
- c) whether the dispute involves questions of fact or of law;

- d) whether the issues were raised during the public comment period;
- e) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- f) whether the issues are relevant and material to the decision on the application; and
- g) a maximum expected duration for the contested case hearing in accordance with 30 TAC § 55.209(e).

### ***B. Hearing Request Requirements***

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements. A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided, and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment. See 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

a) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible fax number, who shall be responsible for receiving all official communications and documents for the group;

b) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a matter not common to members of the general public;

- c) request a contested case hearing;
  - d) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's response to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
  - e) provide any other information specified in the public notice of application.
- See 30 TAC § 55.201(d).*

### ***C. "Affected Person" Status***

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person." Section 55.203 sets out who may be considered an affected person.

a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.

b) Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.

c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

1) whether the interest claimed is one protected by the law under which the application will be considered;

2) distance restrictions or other limitations imposed by law on the affected interest;

3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

- 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- 5) likely impact of the regulated activity on the use of the impacted natural resource by the person; and
- 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application. *See* 30 TAC § 50.203.

A group or association may also request a contested case hearing. In order for a group or association to request a contested case hearing, the group or association must show that it meets the following requirements in accordance with 30 TAC § 55.205(a):

- a) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- b) the interests the group or association seeks to protect are germane to the organization's purpose; and
- c) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

In addition the Executive Director, Public Interest Counsel, or the Applicant may request that a group or association provide an explanation of how the group or association meets the above requirements. *See* 30 TAC § 55.205(b).

#### ***D. Referral to the State Office of Administrative Hearings (SOAH)***

When the Commission grants a request for a contested case hearing, it issues an order specifying the number and scope of the issues to be referred to SOAH for a hearing. 30 TAC § 50.115(b). Subsection 50.115(c) sets out the test for determining whether an issue may be referred to SOAH. "The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: 1) involves a disputed question of fact; 2) was raised during the public comment period; and 3) is relevant and material to the decision on the application." 30 TAC § 50.115(c).

## **V. Analysis of the Requests**

### ***A. Analysis of the Hearing Requests***

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, who qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

#### **1. Whether the Requestors Complied with 30 TAC §§ 52.201(c) and (d)**

##### ***a. Alpha Equipment***

Robert Wilson, as attorney for Alpha Equipment, submitted a request for hearing on their behalf that substantially complies with 30 TAC §§ 55.201(c) and (d). The public comment period for this permit application ended on April 9, 2012. The deadline for filing a request for a contested case hearing on the Application ended on July 11, 2012. The Office of the Chief Clerk received Alpha Equipment's request for a contested case hearing on April 5, 2012. The request provided: 1) the requestor's names, addresses, daytime, phone number, 2) requested a contested case hearing, 3) identified its personal justicable interest, as discussed below, and 4) included relevant and material disputed issues of fact that were raised during the public comment period as discussed below.

*The Executive Director recommends that the Commission find that **Alpha Equipment's** hearing request substantially complied with requirements of 30 TAC §§ 55.201(c) and (d).*

##### ***b. FenceCo***

Robert Wilson, as attorney representing FenceCo, submitted a request for hearing on its behalf that substantially complies with 30 TAC §§ 55.201(c) and (d). The public comment period for this permit ended on April 9, 2012. The deadline for filing a request for a contested case hearing on the Application ended on July 11, 2012. The Office of the Chief Clerk received FenceCo's request for a contested case hearing on

April 5, 2012. The request provided: 1) the requestor's names, daytime, phone number, 2) requested a contested case hearing, 3) identified its personal justiciable interest, as discussed below, and 4) listed relevant and material disputed issues of fact that were raised during the public comment period, as discussed below. The request failed to particularly identify FenceCo's location but did provide FenceCo's mailing address and the requesting attorney's mailing address. However, the request states that the FenceCo is located approximately 1,000 feet from the proposed facility and the owner of FenceCo submitted a timely e-comment that identified FenceCo's physical address.

*The Executive Director recommends that the Commission find that FenceCo's hearing request substantially complied with requirements of 30 TAC §§ 55.201(c) and (d).*

## **2. Whether the Requestors are Affected Persons**

### ***a. Alpha Equipment***

Alpha Equipment's request for a contested case hearing states that Alpha Equipment is located adjacent to and north of the proposed facility. The GIS map developed by the Executive Director's staff supports this assertion. *See Attachment A.* Furthermore, the address provided by Alpha Equipment (1823 South Mitkiff Road, Midland, Texas) appears directly adjacent to the proposed facility on the Landownership Map and List provided in the Application. *See Attachment B.* The request raises issues of nuisance odor, air pollution, endangerment of human health and welfare, the Applicant's compliance history, and surrounding land use. Alpha Equipment claims that its interest in business operations is potentially affected by the issues listed above. These issues are addressed by the law under which the Application is considered, under Title 30, Texas Administrative Code, Chapter 330. Additionally, a reasonable relationship exists between the interest claimed and the activity regulated due to Alpha Equipment's close proximity to the facility. The close proximity of Alpha Equipment to the proposed facility increases the likelihood that employee and customer health and welfare could potentially be affected by nuisance odor emitted by the

proposed facility. Accordingly, the Executive Director has concluded that Alpha Equipment has an interest in the application that is not common to members of the general public.

*The Executive Director recommends that the Commission find that **Alpha Equipment is an affected person** in accordance with 30 TAC § 55.203.*

***b. FenceCo***

FenceCo's request for a contested case hearing states that FenceCo is located approximately 1,000 feet from the proposed facility. The GIS map developed by the Executive Director's staff supports this assertion. See **Attachment A**. The request raises issues of nuisance odor, air pollution, endangerment of human health and welfare, the Applicant's compliance history, and surrounding land use. FenceCo claims that its interest in business operations is potentially affected by the issues listed above. These issues are addressed by the law under which the Application is considered, under Title 30, Texas Administrative Code, Chapter 330. Additionally, a reasonable relationship exists between the interest claimed and the activity regulated due to FenceCo's close proximity to the facility. The close proximity of FenceCo to the proposed facility increases the likelihood that employee and customer health and welfare could potentially be affected by nuisance odor emitted by the proposed facility. Accordingly, the Executive Director has concluded that FenceCo has an interest in the application that is not common to members of the general public.

*The Executive Director recommends that the Commission find that **FenceCo is an affected person** in accordance with Title 30 TAC § 55.203.*

**3. Whether the Issues Raised may be Referred to SOAH for a Contested Case Hearing**

The ED has analyzed issues in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. All identified issues in this response are considered disputed, unless otherwise noted.

*1. Whether operation of the proposed facility in accordance with the Application and Draft Permit will prevent the creation of a nuisance in accordance with 30 TAC § 330.15 (a)(2) and prevent nuisance odors from leaving the boundary of the facility in accordance with 30 TAC § 330.245.*

This issue was raised during the public comment period, it involves a question of fact, and it is relevant and material to the decision of this application. The Executive Director concludes that this issue is appropriate for referral to SOAH.

*2. Whether operation of the proposed facility in accordance with the Application and Draft Permit will prevent the endangerment of human health and welfare in accordance with 30 TAC § 330.15 (a)(3).*

This issue was raised during the public comment period, it involves a question of fact, and it is relevant and material to the decision of this application. The Executive Director concludes that this issue is appropriate for referral to SOAH.

*3. Whether the Applicant's Compliance History Supports Issuance of a Permit in accordance with 30 TAC § 60.1(a)(1).*

This issue was raised during the public comment period, it involves a question of fact, and it is relevant and material to the decision of this application. The Executive Director concludes that this issue is appropriate for referral to SOAH.

*4. Whether the land use surrounding the proposed Facility Supports Issuance of the Permit in accordance with in accordance with 30 TAC §§ 330.61(g) and (h).*

This issue was raised during the public comment period, it involves a question of fact, and it is relevant and material to the decision of this application. The Executive Director concludes that this issue is appropriate for referral to SOAH.

## **VI. Duration of the Contested Case Hearing**

If the Commission refers this case to SOAH, the Executive Director recommends a nine-month duration for a contested case hearing from the date of the preliminary hearing to the presentation of a proposal for decision.

## **VII. Executive Director's Recommendation**

The Executive Director recommends the following actions by the Commission:

a) Find that the following groups or individuals are affected and grant their hearing requests:

1. Alpha Equipment
2. FenceCo

b) If the Commission finds that any of the requestors are affected persons, the Executive Director recommends following issues should be referred to SOAH for a Contested Case Hearing for a nine month duration:

1. Whether operation of the proposed facility in accordance with the Application and Draft Permit will prevent the creation of a nuisance in accordance with 30 TAC § 330.15 (a)(2) and prevent nuisance odors from leaving the boundary of the facility in accordance with 30 TAC § 330.245.

2. Whether operation of the proposed facility in accordance with the Application and Draft Permit will prevent the endangerment of human health and welfare in accordance with 30 TAC § 330.15 (a)(3).

3. Whether the Applicant's Compliance History Supports Issuance of a Permit in accordance with 30 TAC § 60.1(a)(1).

4. Whether the land use surrounding the proposed Facility Supports Issuance of the Permit in accordance with in accordance with 30 TAC §§ 330.61(g) and (h).

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar,  
Executive Director

Robert Martinez, Director  
Environmental Law Division



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REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY

## CERTIFICATE OF SERVICE

I certify that on August 27, 2012, the original and seven copies of the "Executive Director's Response to Hearing Requests and Request for Reconsideration" for Affordable Dewatering Service, LLC, MSW Permit No.2373, were filed with the TCEQ's Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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Daniel Ingersoll, Staff Attorney  
Environmental Law Division

MAILING LIST  
AFFORDABLE DEWATERING SERVICE, LLC  
DOCKET NO. 2012-1401-MSW; PERMIT NO. 2373

FOR THE APPLICANT:

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FOR THE PUBLIC INTEREST  
COUNSEL:

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FOR ALTERNATIVE DISPUTE  
RESOLUTION:

Via electronic mail:

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Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution, MC 222  
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Austin, Texas 78711-3087  
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MAILING LIST  
AFFORDABLE DEWATERING SERVICE, LLC  
DOCKET NO. 2012-1401-MSW; PERMIT NO. 2373

FOR THE CHIEF CLERK:

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Texas Commission on Environmental  
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Office of the Chief Clerk, MC 105  
P.O. Box 13087  
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Fax: (512) 239-3311

REQUESTORS:

Robert Wilson  
Jackson, Sjoberg, McCarthy & Townsend,  
LLP  
711 West 7<sup>th</sup> Street  
Austin, Texas 78701-2711

INTERESTED PERSONS:

Rod Prichard  
Alpha Equipment  
1823 South Midkiff Road  
Midland, Texas 79701-8848

Fred Squire  
FenceCo  
1809 South Midkiff Road  
Midland, Texas 79701-8848

# Attachment A

## GIS Map

Affordable Dewatering Service, LLC  
MSW Permit No. 2373

**Application by Affordable Dewatering Service, LLC  
 For MSW Permit 2373, TCEQ Docket No. 2012-1401-MSW  
 Map Requested by TCEQ Office of Legal Services  
 for Commissioners' Agenda September 19, 2012**



Texas Commission on Environmental Quality  
 GIS Team (Mail Code 197)  
 P.O. Box 13087  
 Austin, Texas 78711-3087  
 August 20, 2012



Projection: Texas Statewide Mapping System  
 (TSM5)  
 Scale 1:17,749

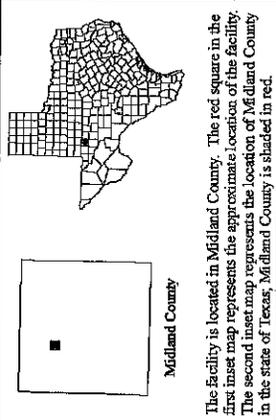
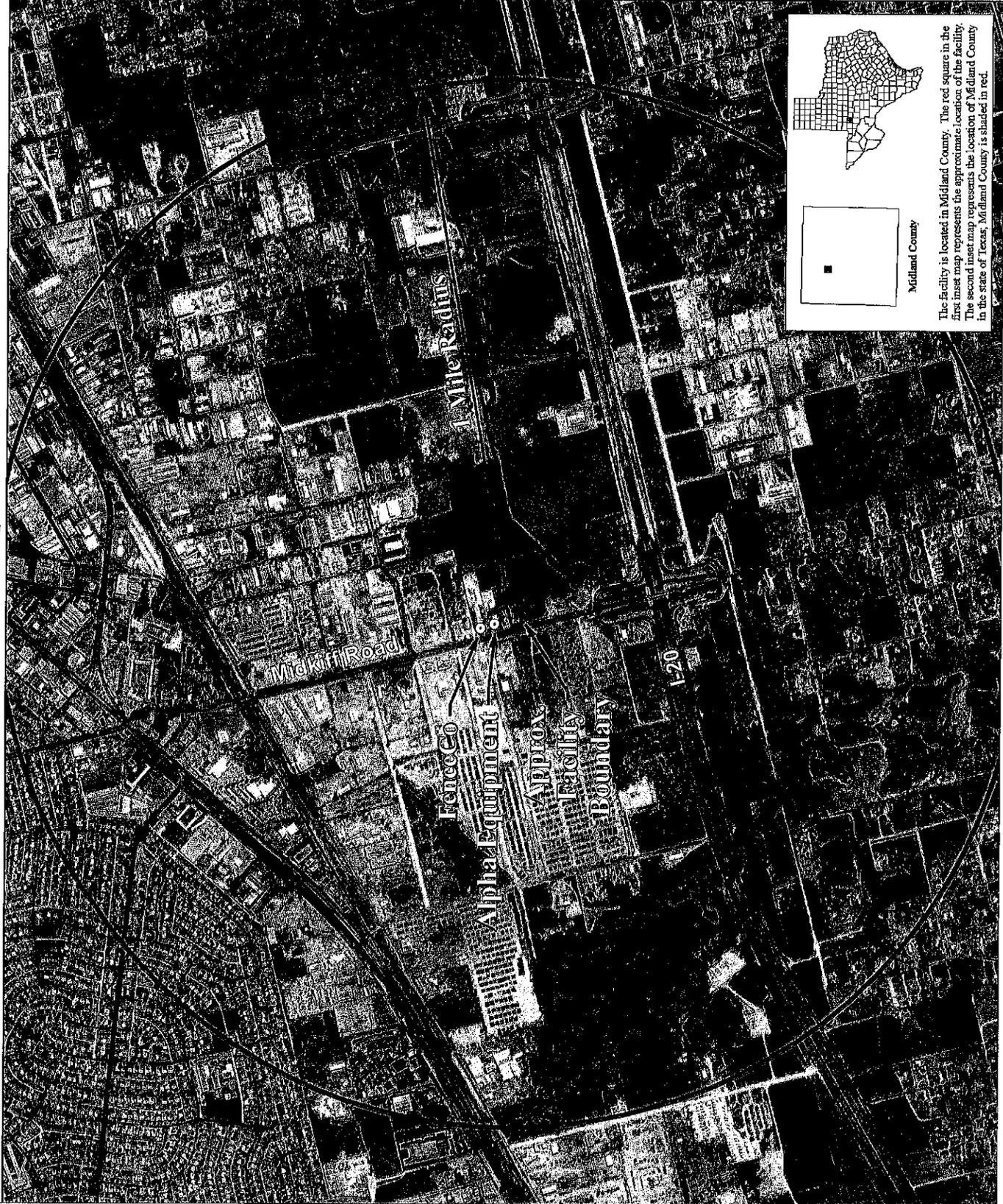
**Legend**

- Proposed Facility Boundary
- Approx. Locations of Requesters

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The vector data are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a one-half meter photograph from the 2008 Texas Orthoregistry Project.

**This map depicts the following:**

- (1) The approximate location of the property boundary. This is labeled "Approx. Facility Boundary".
- (2) Polygon and arrow depicting 1-mile radius. This is labeled "1-Mile Radius".
- (3) Approximate location of the requesters.



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resources Division at (512) 235-0800.

# Attachment B

## Landownership Map and Landownership List

Affordable Dewatering Service, LLC  
MSW Permit No. 2373



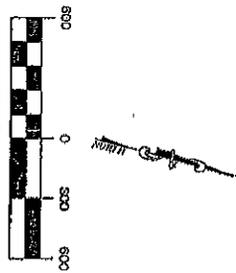
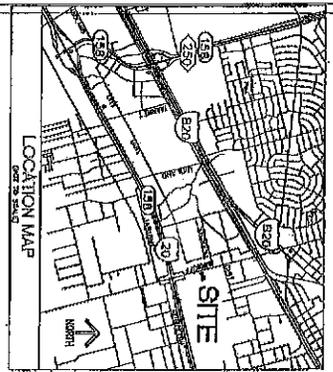
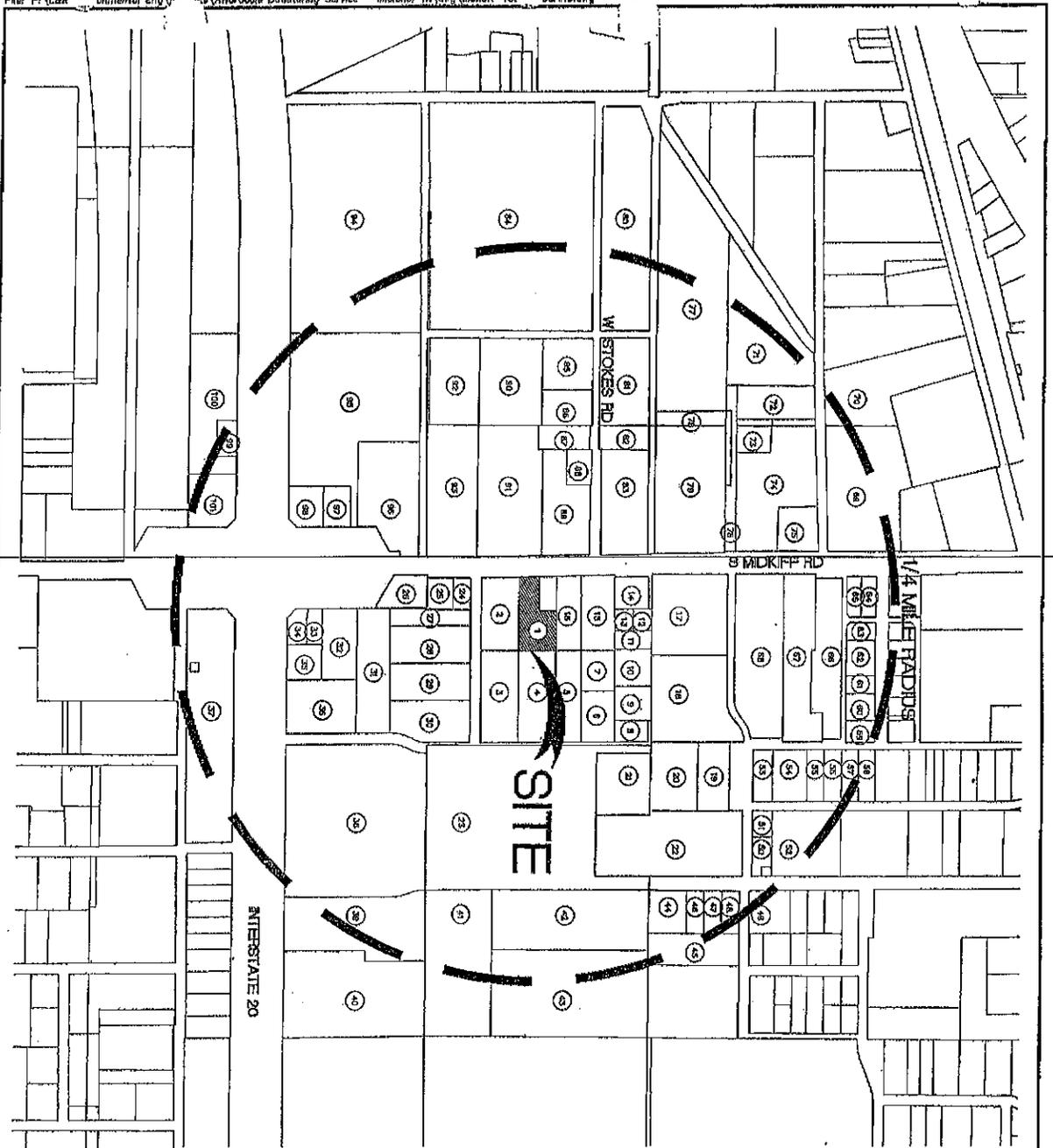


FIGURE 5 SATISFIES §350.59(c)(3)

MAP SOURCE:  
 LUBBOCK CENTRAL APPRAISAL DISTRICT  
<http://www.lubbockcentralappraisal.gov/gisdata/arcswt/land.dwg>

THIS DOCUMENT IS RELEASED FOR "FACTS OF THE MATTER" AND IS NOT AN ENGINEERING OPINION.

NO.	DATE	REVISIONS	BY
1	07/13/11	1ST NBD COMMENTS, TITLE BLOCK, ESP	ESP
2	09/15/11	2ND NBD COMMENTS, LEGEND	ESP

SHEET 1 OF 2

JOB NO.: 10001.00  
 DATE: FEBRUARY 28, 2011  
 DRAWN: ESP  
 CHECKED: KIK  
**FIGURE 5**  
 PAGE FS.1



AFFORDABLE DEWATERING SERVICE, LLC  
 TYPE V GG PROCESSING FACILITY  
 MIDLAND, TEXAS  
 LAND OWNERSHIP MAP

**CKE**  
**COURSEN-KOEHLER**  
 ENGINEERING & ASSOCIATES  
 11010 Coachlight Street, Suite 101  
 San Antonio, Texas 78216  
 Tele: 210.807.9030  
 Firm Registration No. F-10747

# Attachment C

## Compliance History

Affordable Dewatering Service, LLC  
MSW Permit No. 2373

# Compliance History

**PENDING**

Customer/Respondent/Owner-Operator:	CN603835323	Affordable Dewatering Service, L.L.C.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN106119399	AFFORDABLE DEWATERING SERVICE	Classification: AVERAGE	Site Rating: 3.01
ID Number(s):	MUNICIPAL SOLID WASTE PROCESSING PERMIT		2373	
Location:	2201 S MIDKIFF RD, MIDLAND, TX, 79701			
TCEQ Region:	REGION 07 - MIDLAND			
Date Compliance History Prepared:	August 21, 2012			
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.			
Compliance Period:	January 20, 2006 to August 21, 2012			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: MR. CHANDRA YADAV Phone: (512) 239-6727

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator?  
N/A
4. If Yes, who was/were the prior owner(s)/operator(s)?  
N/A
5. When did the change(s) in owner or operator occur?  
N/A
6. Rating Date: 9/1/2011 Repeat Violator: **NO**

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# Attachment D

## Technical Summary and Draft Permit

Affordable Dewatering Service, LLC  
MSW Permit No. 2373

# **Technical Summary**

## **Affordable Dewatering Service, LLC Municipal Solid Waste (MSW) Permit Application Number 2373 Midland County, Texas**

February 2012

Prepared by

Chandra S. Yadav

Municipal Solid Waste Permits Section

Waste Permits Division

Texas Commission on Environmental Quality

**1. General Information**

Applicant: Affordable Dewatering Service, LLC  
Applicant Address: 2201 S. Midkiff Road, Midland TX 79701  
Facility: Affordable Dewatering Service, LLC  
Facility Type: MSW Type V - Liquid Waste Processing Facility

**1.1 Purpose of Permit Application**

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for an authorization for a liquid waste processing facility, the Affordable Dewatering Service, LLC which is a Type V municipal solid waste facility to be located in Midland County, Texas. This application was submitted on April 11, 2011 in accordance with Title 30 of the Texas Administrative Code (30 TAC) Chapter 330. The proposed facility boundary area is approximately 1.57 acres.

**1.2 Wastes**

**1.2.1 Wastes Authorized to be Accepted:**

This facility will accept grease trap, grit trap, septage and portapotty waste.

**1.2.2 Wastes Not Authorized to be Accepted:**

Any other waste which is not listed in Section 1.2.1 (above) may not be accepted.

**2. Application Review**

This application has been reviewed for compliance with the applicable requirements of 30 TAC Chapters 281, 305, and 330. On April 19, 2011, the application was determined to be administratively complete. The application has been technically reviewed by the Municipal Solid Waste Permits Section to determine its compliance with the applicable requirements in 30 TAC Chapters 305 and 330. 30 TAC Chapter 330 contains the minimum regulatory criteria for municipal solid waste facilities. Information contained in the permit application has demonstrated compliance with the regulatory requirements and the application has been declared technically complete. A Notice of Application and Preliminary Decision will be issued following this determination of technical completeness.

**3. Location and Size**

**3.1 Location**

The Affordable Dewatering Service, LLC is located in Midland County, approximately 0.3 miles north of the intersection of I-20 W and S. Midkiff Road. The location is illustrated in Attachment 1 (General Location Map) of this Technical Summary.

Elevation and Coordinates of Current Permanent Benchmark:

Latitude: 31° 58' 07" N

Longitude: 102° 06' 30" W

Elevation: 2807.4 feet above mean sea level (msl)

3.2 Size

The total area within the permit boundary is approximately 1.57 acres. The site layout is illustrated in Attachment 2 (Site Layout Plan) of this Technical Summary.

4. **Facility and Operations Authorized**

The facility consists of a site entrance with appropriate security fencing, a paved entrance road to the site, all-weather access roads, surface drainage and stormwater run-on/runoff control structures. The operational design of the facility for the waste to be processed is based on an average daily volume of 63,000 gallons with a maximum daily volume of 126,000 gallons. The maximum daily volume may include grease trap waste of 36,000 gallons, grit trap waste of 10,000 gallons, septage of 60,000 gallons and portapotty waste of 20,000 gallons.

The washout pit for dewatering grit trap waste will be an integral part of the concrete slab. The grit trap waste will be unloaded into the washout pit and the liquid from the waste will flow under gravity into a sump. A covered concrete containment area for grit removed from the washout pit will be located outside the proposed building.

Six (16,800 gallon) holding tanks and four (30-cubic yd) dewatering boxes will be installed. Total available liquid waste storage capacity of this facility will be 100,800 gallons with a maximum storage limit of 72 hours for untreated waste materials and processed waste materials. The building will have an air filtering system, where a fan will extract the air within the building through a charcoal filter.

5. **Facility Design and Construction**

All processing and unloading operations will be performed within a metal building, and the building will sit on a reinforced concrete slab. The facility consists of a site entrance with appropriate security fencing, all-weather access roads, surface drainage, and stormwater run-on/runoff control structures. The facility will have a processing area containing six 16,800 gallon holding tanks, four 30-cubic yd dewatering boxes, a 12,600 gallon wastewater storage tank, two collection pits and a washout pit. The building will be constructed with a secondary containment area volume of 3,280 cubic feet to contain the worse-case spill or release.

The collection pits and washout pit to be constructed with concrete will be provided with a clear Plexiglas cover to allow the waste appearance to be observed during unloading. The grease trap, septage, and portapotty waste will be unloaded into the collection pits, and later will be transferred to a dewatering box or, alternatively may be pumped directly into the dewatering box. The liquid from the dewatering box(es) will be discharged to the City of Midland's wastewater collection system directly or alternatively it may be collected in the wastewater storage tank for reuse in washing down the unloaded trucks before discharging to the City's wastewater collection system.

The Plexiglas cover on the collection pits and the holding tank roofs will be piped to a free-standing charcoal filter canister. The filtered air may be vented to the outside or discharged back into the building.

6. **Land Use**

Land use in the vicinity of the site was evaluated in accordance with applicable subsections of 30 TAC §330.61.

6.1 Zoning

The facility is located within the Commercial District of the zoned area within the city limits of the City of Midland.

6.2 Surrounding Area Land Use

Land use within a one-mile radius of the site is primarily commercial and industrial. The nearest business, E. L. Farmer and Co. Trucking Company is located approximately 160 feet from the proposed building on the northwest corner of the 2-acre tract owned by the applicant.

6.3 Growth Trends

The area south of the facility is developing with some residential areas and some commercial/industrial areas. The City of Midland in its Master plan 2025 document rated a 0.75% growth, which projects a Midland population of 110,000 in 2020.

6.4 Residences and Businesses

The closest residences are located south of the facility with the nearest distance being approximately 0.56 miles. The approximate range of number of businesses within one mile radius of the proposed facility is 75-100, and the approximate range of number of houses is 400-450.

6.5 Schools and Churches

There is one school and one licensed day-care facility just outside the one mile of the proposed facility boundary.

There are four churches located within one mile of the proposed facility boundary and two churches are located just outside the radius.

6.6 Cemeteries

There are no known cemeteries within one mile of the site.

6.7 Historical Sites

There are no known archaeological sites, historical sites, or sites with exceptional aesthetic qualities adjacent to the facility.

7. **Location Restrictions**

Location restrictions for municipal solid waste landfills are set forth in 30 TAC Chapter 330 Subchapter M.

7.1 Airport Safety

There are no airports within six miles of the facility.

7.2 Floodplains

The proposed facility is not located within the 100-year flood plain, as indicated in the Federal Emergency Management Agency Flood Insurance Rate Map Number 48329C0201F and 48329C0203F, revised September 16, 2005.

7.3 Wetlands

The application indicates that there were no wetlands observed on the facility property.

7.4 Water Well

There is no water well located within 500 feet of the location of the facility.

7.5 Easements and Buffer Zone

The application indicates that there are no easement; buffer zones, other than the 50-foot buffers proposed in the design; or rights-of-way that cross the facility.

**8. Site Development and Operation**

The Site Development Plan (SDP) is Part III of the permit application and sets forth the engineering design and other technical aspects of the facility. The Site Operating Plan (SOP) is Part IV of the permit application. The SOP provides operating procedures for the site management and the site operating personnel for the daily operation of the facility. The SOP also provides guidance to maintain the facility in compliance with the engineering design and applicable regulatory requirements. These documents become part of the permit.

**9. Protection of Endangered Species**

Based on correspondence from the Texas Parks and Wildlife Department (TPWD), no significant impacts to endangered or threatened species are expected due to proposed facility. Therefore, the facility is considered in compliance with 30 TAC §§330.61(n) and 330.551 which states, in part, that the facility shall not result in the destruction or adverse modification of critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

**10. Financial Assurance**

Financial assurance will be maintained for the closure of the facility in accordance with 30 TAC Chapter 37 (Financial Assurance) and 30 TAC §§330.63(h) and (j), §330.459, and §330.505.

**11. Attachments**

Three attachments from the permit application are included with this application summary. These attachments are as follows:

Attachment 1 - General Location Map

Attachment 2 - Site Layout Plan

Attachment 3 - Land Use Map

**12. Public Participation Process**

The process through which the public is allowed to participate in the final decision on the issuance of a municipal solid waste permit is outlined as follows.

- a. The TCEQ will hold a public meeting if the Executive Director determines that there is substantial public interest in the application or if requested by a local legislator. During this meeting the Commission accepts formal comments on the application. There is also an informal question and answer period.
- b. After technical review of the application is completed, the application is declared technically complete and a draft permit is prepared. The draft permit, the public notice language, and the technical summary are sent to the Chief Clerk's office for processing.

- c. The "Notice of Application and Preliminary Decision" is sent to the applicant and published in the newspaper. This notice provides a 30-day period from the date of publication for the public to make comments about the application or draft permit. The notice also allows the public to request a public meeting for the proposed facility.
- d. After the 30-day comment period has ended, a "Response to Comments" (RTC) is prepared for all comments received through the mail and at a public meeting. The RTC is sent to all persons who commented on the application. Persons who receive the comments have a 30-day period after the RTC is mailed in which to request a public hearing.
- e. After the 30-day period to request a hearing is complete, the matter is placed on an agenda meeting for the TCEQ Commissioners to make a determination to grant any of the hearing requests and refer the matter to the State Office of Administrative Hearings for a public hearing.
- f. A public hearing is a formal process in front of an Administrative Law Judge (ALJ) who conducts the hearing. The applicant and protestant(s) present witnesses and testimony to support or dispute information contained in the application. When the evidentiary portion of the hearing is completed, the ALJ will issue a Proposal for Decision (PFD). The PFD is placed on an agenda meeting of the TCEQ Commissioners for consideration of issuance or denial of a permit.
- g. After the approval or denial of an application has been made, a request to overturn the decision may be made by a party that does not agree with the decision. The request to overturn must be made within a 20-day period after the decision is sent to the applicant. These requests are considered within a 25-day period after the end of the 20-day request period. The matter could be set on another agenda meeting for reconsideration, or allowed to remain in effect without any action after the 25-day period is complete.
- h. Applications for which no comments are received or no one requests a public hearing are considered uncontested matters after the initial 30-day comment period. The matter is placed on the Executive Director's signature docket and a permit is issued. The motion to overturn or reconsider is also applicable in this situation.

**13. Additional Information**

For information regarding this application, contact the MSW Permits Section:

Mr. Chandra S. Yadav  
MSW Permits Section (MC 124)  
Waste Permits Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711  
(512) 239-6727

To request a copy of the Site Development Plan, contact the consulting engineer:

Ms. Lesley S. Pedde, P. E.  
L&R Environmental Engineering, Inc.  
PO Box 34745  
San Antonio, Texas 78265  
(210) 325-7837

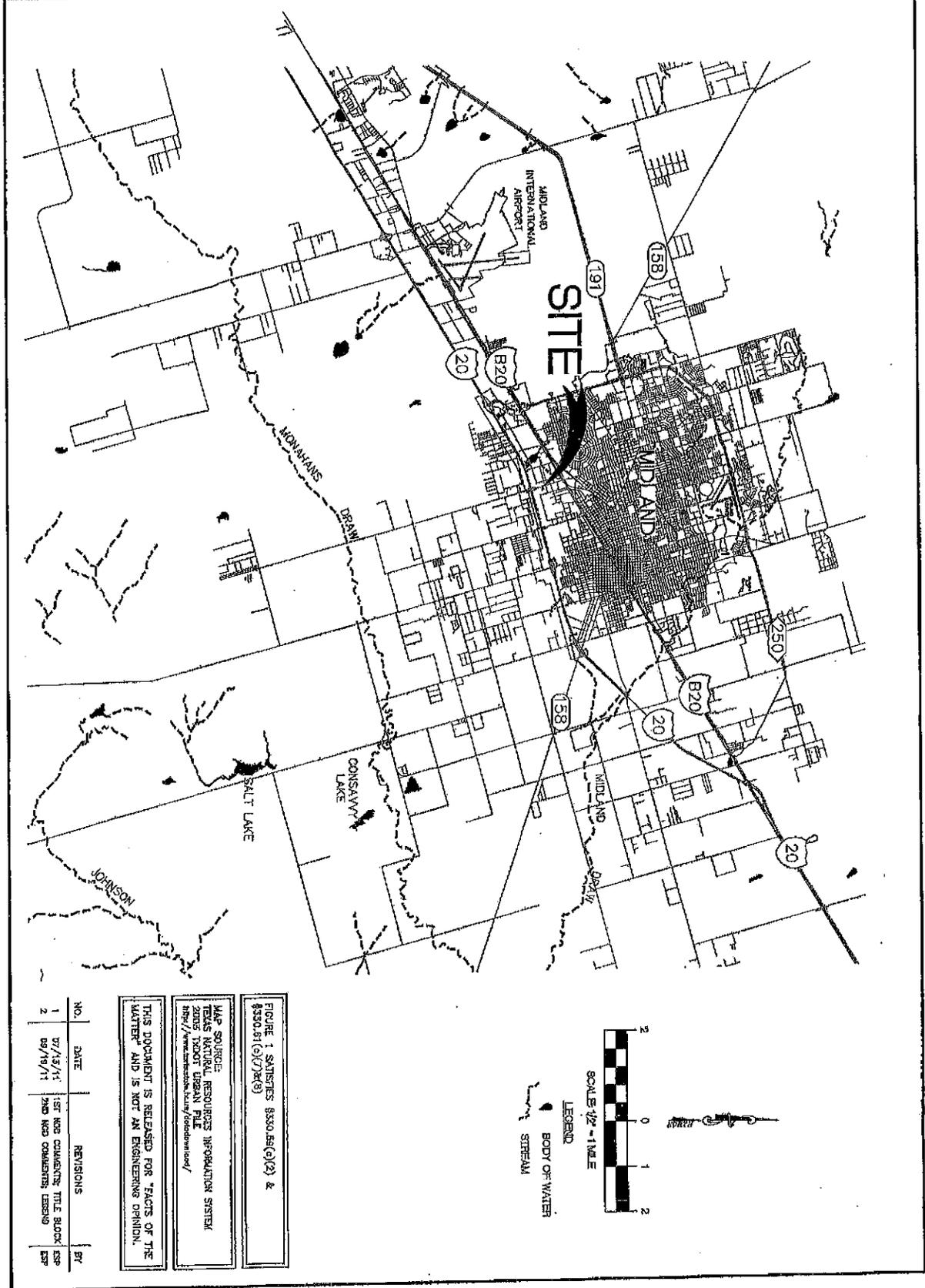
Information concerning public participation in the public hearing process, contact the TCEQ's Office of the Public Interest Counsel:

Office of Public Interest Counsel (MC 103)  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-6363

For information concerning public hearing procedures for municipal solid waste permits may be obtained by contacting Mr. Bill Newchurch, Director, at:

State Office of Administrative Hearings  
Natural Resource Division  
300 W. 15th Street, Room 504  
Austin, TX 78701  
(512) 475-3445

**Attachment 1 - General Location Map**



NO.	DATE	REVISIONS	BY
1	07/13/11	1ST RCD COMMENTS TITLE BLOCK	ESP
2	09/19/11	2ND RCD COMMENTS LEGEND	ESP

FIGURE 1 SATELITES \$330.00 (x12) & \$330.01 (x17) (K9)

MAP SOURCE:  
 TEXAS NATURAL RESOURCES INFORMATION SYSTEM  
 ZONE 10001 URBAN FILE  
<http://www.tnris.state.tx.us/arcsworld/>

THIS DOCUMENT IS RELEASED FOR "FACTS OF THE MATTER" AND IS NOT AN ENGINEERING OPINION.

JOB NO.: 10001.00  
 DATE: JULY 1, 2010  
 DRAWN: ESP  
 CHECKED: KJK  
**FIGURE 1**  
 PAGE F1



AFFORDABLE DEWATERING SERVICE, LLC  
 TYPE V GG PROCESSING FACILITY  
 MIDLAND, TEXAS  
 GENERAL SITE LOCATION

**CKE**  
**COURSEN-KOEHLER**  
 ENGINEERING & ASSOCIATES  
 11010 Coachlight Street, Suite 101  
 San Antonio, Texas 78216  
 Tele: 210.807.9030  
 Firm Registration No. F-10747

Technical Summary  
MSW Permit Application No. 2373  
Midland County  
Page 9

## Attachment 2 - Site Layout Plan

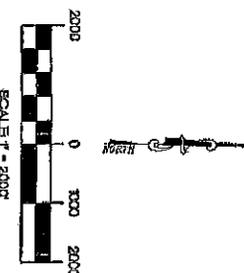
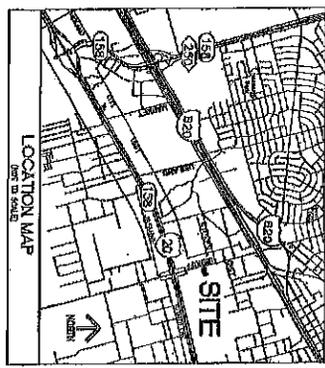


Attachment 3 - Land Use Map

- NOTES:
1. LAND USES DERIVED FROM ZONING MAP, AERIAL PHOTOGRAPHY, AND VISUAL INSPECTION.
  2. REFER TO ZONING MAP FOR LAND USES WITHIN THE CITY OF MIDLAND CORPORATE LIMITS.
  3. THE NEAREST BUSINESS, E.L. FARMER AND CO. TRUCKING COMPANY, IS LOCATED IN THE APPROXIMATE 0.5 ACRE IN THE NORTHWEST CORNER OF THE SITE.
  4. THERE ARE NO KNOWN HAZARDOUS STRUCTURES WITHIN 500 FEET OF THE FACILITY.
  5. THERE ARE NO KNOWN WATER WELLS WITHIN 500 FEET OF THE FACILITY. THE NEAREST KNOWN WELL, STATE WELL NO. 4508101, IS LOCATED APPROXIMATELY 950 FEET SOUTH.
  6. THERE ARE NO KNOWN ARCHAEOLOGICAL SITES, HISTORICAL SITES, AND SITES WITH EXCEPTIONAL AESTHETIC QUALITIES ADJACENT TO THE FACILITY.
  7. NO EASEMENT OF RECORD WAS RECORDED.
  8. THERE ARE NO CEMETERIES LOCATED WITHIN ONE MILE OF THE FACILITY.

- SCHOOLS/DAY CARES:  
 A\* BURDET ELEMENTARY SCHOOL  
 B\* YMCA
- CHURCHES:  
 C\* JESUS NAME UNITED PENTACOSTAL  
 D\* COMPANERISMO VIVENTE  
 E\* RANGLAND HEIGHTS BAPTIST CHURCH  
 F\* TOWER CHURCH  
 G\* TALL CITY BAPTIST CHURCH  
 H\* SECOND BAPTIST CHURCH

- LAND USE LEGEND
- C COMMERCIAL
  - R RESIDENTIAL
  - D INDUSTRIAL
  - BP BUSINESS PARK
  - PD PLANNED DISTRICT



- FACILITY BOUNDARY
- PROPERTY BOUNDARY
- BODY OF WATER

MAP SOURCE:  
 TEXAS NATURAL RESOURCES INFORMATION SYSTEM  
 2005 MIDLAND COUNTY AERIAL PHOTO  
 http://www.tnris.com

THIS DOCUMENT IS RELEASED FOR THE FACTS OF THE MATTER AND IS NOT AN ENGINEERING OPINION.

NO.	DATE	REVISIONS	BY
1	7/15/11	ISSUED COMMENTS JOB USE	ESP
2	09/18/11	2ND RCD COMMENTS LEGEND	ESP
3	11/16/11	ADDED NOTE NO. 8	ESP

**CKE**  
**COURSEN-KOEHLER**  
 ENGINEERING & ASSOCIATES  
 11010 Coachlight Street, Suite 101  
 San Antonio, Texas 78216  
 Tele: 210.807.9030  
 Firm Registration No. F-10747

AFFORDABLE DEWATERING SERVICE, LLC  
 TYPE Y GG PROCESSING FACILITY  
 MIDLAND, TEXAS  
**LAND USE MAP**



JOB NO.: 10001.00  
 DATE: FEBRUARY 28, 2011  
 DRAWN: ESP  
 CHECKED: KJK  
**FIGURE 9**  
 PAGE 19

# Texas Commission on Environmental Quality



Permit for Municipal  
Solid Waste (MSW) Management Site  
Issued under provisions of Texas  
Health & Safety Code  
Chapter 361

MSW Permit No.: 2373  
Name of Site Operator/Permittee: Affordable Dewatering Service, LLC  
Property Owner: Leslie R. Greenlee  
Facility Name: Affordable Dewatering Service, LLC  
Facility Address: 2201 S. Midkiff Road, Midland, Texas 79701  
Classification of Site: MSW Type V - Liquid Waste Processing Facility

The permittee is authorized to store and process wastes in accordance with the limitations, requirements, and other conditions set forth herein. This permit is granted subject to the rules and Orders of the Commission and laws of the State of Texas. Nothing in this permit exempts the permittee from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality. This permit will be valid until canceled, amended, or revoked by the Commission.

*Approved, Issued and Effective* in accordance with Title 30 Texas Administrative Code (30 TAC) Chapter 330.

Issued Date:

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For the Commission

**Affordable Dewatering Service, LLC**  
**MSW Permit No. 2373**

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**I. Size and Location of Facility**

A. This is located at 2201 S. Midkiff Road, Midland, Midland County, Texas 79701. The facility contains 1.57 acres.

B. The legal description is contained on Page B-3 of the application.

C. Coordinates and Elevation of Site Permanent Benchmark:

Latitude: 31° 58' 07" N

Longitude: 102° 06' 30" W

Benchmark Elevation: 2807.4 feet above Mean Sea Level

**II. Facilities and Operations Authorized**

A. Days and Hours of Operation

The operating hours of this municipal solid waste facility will be 12 hours per day (7:00 A. M. to 7:00 P. M.) on Monday through Friday, and 7 hours per day (7:00 A. M. to 2:00 P.M.) on Saturday and Sunday. The business hours of the facility shall be anytime between the hours of 7:30 A. M. and 5:30 P. M. on Monday through Friday, and 7:30 A. M. to 12:30 P. M. on Saturday and Sunday. The business hours correspond to the hours that the facility is open to the public for the receipt of waste. The operator shall post the actual operating hours on the site sign.

B. Wastes Authorized at this Facility

The permittee is authorized to store and process grease trap, grit trap, septage and portapotty waste.

C. Wastes Prohibited at This Facility

Any other liquid waste or solid waste which is not listed in Section II.B of this permit shall not be accepted at this facility.

D. Waste Acceptance Rate

The operational design of the facility for the waste to be processed is based on an average daily volume of 63,000 gallons with a maximum daily volume of 126,000 gallons. The maximum daily volume may include grease trap waste of 36,000 gallons, grit trap waste of 10,000 gallons, septage of 60,000 gallons and portapotty waste of 20,000 gallons.

E. Maximum Volume Available for Storage

A total of six (16,800 gallon each) aboveground collection tanks will be installed. Total available liquid waste storage capacity of this facility will be 100,800 gallons with a maximum storage limit of 72 hours for untreated waste materials and processed waste materials.

F. Facilities Authorized

The facility consists of a site entrance with appropriate security fencing, a paved entrance road to the site, all-weather access roads, surface drainage and stormwater run-on/ runoff control structures.

The permittee is authorized to operate the facilities related to the processing and storage of the wastes authorized, which shall include units, structures, appurtenances, or improvements as described in the permit application.

G. Changes, Additions, or Expansions

Any proposed facility changes must be authorized in accordance with TCEQ rules in 30 TAC Chapter 330 (Municipal Solid Waste) and 30 TAC Chapter 305 (Consolidated Permits).

**III. Facility Design, Construction, and Operation**

- A. Facility design, construction, and operation must comply with this permit, Commission Rules, including 30 TAC §§330 and Special Provisions contained in this permit; and Parts I through IV of the permit application incorporated by reference in Attachment A of this permit; amendments, corrections, and modifications incorporated by reference in Attachment B.
- B. The entire waste management facility shall be designed, constructed, operated, and maintained to prevent the release and migration of any waste, contaminant, or pollutant, and to prevent inundation or discharge from the areas surrounding the facility components. This site must be designed, constructed and maintained to collect spills and incidental precipitation in such a manner as to:
1. preclude the release of any contaminated runoff or spills; and
  2. prevent washout of any waste by a 100-year storm.
- C. The site shall be designed and operated so as not to cause a violation of:
1. the requirements of the Texas Water Code, §26.121;
  2. any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, §402 as amended; and/or the Texas Pollutant Discharge Elimination System (TPDES), as amended;

3. the requirements under the Federal Clean Water Act, §404, as amended; and
  4. any requirement of an area wide or statewide water quality management plan that has been approved under the Federal Clean Water Act, §208 or §319, as amended.
- D. All facility employees and other persons involved in facility operations shall be qualified, trained, and experienced to perform their duties so as to achieve compliance with this permit. The permittee shall further ensure that personnel are familiar with safety procedures, contingency plans, the requirements of the Commission's rules, and this permit, commensurate with their levels and positions of authority.

#### **IV. Financial Assurance**

- A. General. Authorization to operate the facility is contingent upon compliance with provisions contained in this permit and maintenance of financial assurance in accordance with 30 TAC Chapter 330 Subchapter K and 30 TAC Chapter 37.
- B. Closure Financial Assurance. The amount of financial assurance posted for closure shall be provided annually in current dollars in an amount equal to closing the entire facility pursuant to 30 TAC §330.505(a). The permittee/site operator shall annually adjust the closure cost estimate and the dollar amount of the financial assurance for inflation within 60 days prior to the anniversary date of the permit pursuant to 30 TAC §330.505.
- C. Closure Financial Assurance Amount. Within 60 days after the date of permit issuance or prior to the initial receipt of waste, the permittee shall provide financial assurance instrument(s) for demonstration of closure in an amount equal to but not less than \$38,110 for closure in 2011 dollars. The amount of financial assurance to be posted annually shall be determined as described in Section IV.B of this permit.
- D. Closure Plan Modifications. If the facility's closure plan is modified, the permittee shall provide new cost estimates in current dollars, which meet the requirements 30 TAC Chapter 37 and 30 TAC §330.505. Modifications shall be made pursuant to 30 TAC §305.70. The amount of the financial assurance mechanism shall be adjusted within 20 days after the modification is approved. Adjustments to the cost estimates and/or financial assurance instrument to comply with any financial assurance regulation that is adopted by the TCEQ subsequent to the issuance of this permit shall be initiated as a modification within 30 days after the effective date of the new regulation.

#### **V. Facility Closure**

Closure shall commence:

- A. Upon direction by the Executive Director of the TCEQ for failure to comply with the terms and conditions of this permit or violation of state or federal regulations.

The Executive Director is authorized to issue emergency orders to the permittee in accordance with §§5.501 and 5.512 of the Texas Water Code regarding this matter after considering whether an emergency requiring immediate action to protect the public health and safety exists;

- B. Upon abandonment of the site;
- C. Upon direction of the Executive Director for failure to secure and maintain adequate financial assurance as required; or
- D. Upon permittee's notification to the TCEQ that the facility will no longer operate.

## **VI. Standard Permit Conditions**

- A. This permit is based on and the permittee/site operator shall follow the permit application submittals dated April 7, 2011 and revised on July 28, 2011, September 23, 2011, October 1 and 17, 2011, and January 13, 2012. These application submittals are hereby approved subject to the terms of this permit, the rules and regulations, and any orders of the TCEQ. These application materials are incorporated into this permit by reference in Attachment A as if fully set out herein. Any and all revisions to these elements shall become conditions of this permit upon the date of approval by the Commission. The permittee shall maintain the application and all supporting documentation at the facility and make them available for inspection by TCEQ personnel.
- B. Attachment B, consisting of minor amendments, modifications, and corrections to this permit, is hereby made a part of this permit.
- C. The permittee shall comply with all conditions of this permit. Failure to comply with any condition may constitute a violation of the permit, the rules of the Commission, and the Texas Solid Waste Disposal Act and is grounds for an enforcement action, revocation, or suspension.
- D. Inspection and entry onto the site by authorized personnel shall be allowed during the site operating life.
- E. The provisions of this permit are severable. If any permit provision or the application of any permit provision to any circumstance is held invalid, the remainder of this permit shall not be affected.
- F. Regardless of the specific designs contained in the permit application, the permittee shall be required to meet all performance standards in the permit, the application, or as required by local, state, and federal laws.
- G. If differences arise between the rules, regulations, and permit provisions and the incorporated application materials, then the rules, regulations, and permit provisions shall prevail.

- H. The permittee shall comply with the requirements of the air permit exemption in 30 TAC §106.534, if applicable, and the applicable requirements of 30 TAC Chapters 106 and 116, and Chapter 330, Subchapter U.

**VII. Incorporated Regulatory Requirements**

- A. The permittee shall comply with all applicable federal, state, and local regulations and shall obtain any and all other required permits prior to the beginning of any operation authorized by this permit.
- B. To the extent applicable to the activities authorized by this permit, the requirements of 30 TAC Chapters 37, 281, 305, and 330, and future revisions are adopted by reference and are hereby made provisions and conditions of this permit.

**VIII. Special Permit Provisions**

None.

**IX. Attachment A**

The Permit Application.

**X. Attachment B**

Minor Amendments, Modifications, and Corrections to MSW Permit No. 2373.

Attachment E  
Executive Director's Response to Public  
Comment

Affordable Dewatering Service, LLC  
MSW Permit No. 2373

APPLICATION OF AFFORDABLE §  
DEWATERING SERVICE, LLC FOR §  
MUNICIPAL SOLID WASTE §  
PERMIT NO. 2373 §  
§

BEFORE THE  
TEXAS COMMISSION: 42  
ON  
ENVIRONMENTAL  
QUALITY

## EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (Executive Director) of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment on the application (Application) by Affordable Dewatering Service, LLC (Affordable Dewatering or Applicant) for a new Municipal Solid Waste (MSW) Permit Number 2373 and on the Executive Director's Preliminary Decision. As required by Title 30, Texas Administrative Code (30 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 TCEQ Office of the Chief Clerk received timely comments from Fred Squire as the owner of FenceCo, Rod Prichard as the president of Alpha Equipment and Robert C. Wilson, attorney, on behalf of FenceCo and Alpha Equipment.

This Response to Public Comment addresses all timely public comments received, whether or not withdrawn. If you require additional information about this permit application or the MSW permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ Web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

### I. BACKGROUND

#### A. Description of Facility

Affordable Dewatering Service, LLC, 4404 Mockingbird Lane, Midland, Texas 79707, has applied to the TCEQ for a permit that would authorize construction and operation of a new municipal solid waste Type V liquid waste processing facility. The facility is proposed to be located at 2201 S. Midkiff Road, Midland Texas in Midland County. The proposed permitted facility area would include approximately 1.57 acres. If approved, the permit would authorize acceptance, storage and processing of grease trap waste, grit trap waste, septage and portapotty waste on a commercial basis. Waste unloading and processing would be conducted inside of an enclosed building equipped with a charcoal air filtration system designed to control odor. If approved, the facility would be authorized to accept a maximum of 126,000 gallons of liquid waste per day. The proposed available liquid waste storage capacity of the facility is 100,800 gallons. The maximum length of time unprocessed or processed solid waste would be authorized to be stored at the facility is 72 hours.

#### Procedural History

TCEQ received the application on April 11, 2011. The Executive Director declared the application administratively complete on April 19, 2011. The TCEQ Office of the Chief Clerk (OCC) mailed Notice of Receipt of Application and Intent to Obtain an MSW Permit (NORI) on April 21, 2011. Affordable Dewatering published the NORI in the Midland-Reporter Telegram on April 28, 2011. The Executive Director declared the application technically complete on February 10, 2012, and prepared a draft permit. The OCC mailed the Notice of Application and Preliminary Decision (NAPD) on February 29, 2012. Affordable Dewatering published the NAPD in the Midland-Reporter Telegram on March 7, 2012. The comment period for the Application ended on April 9, 2012.

### Rules, Law, and Records

The following websites provide access to state and federal laws and rules applicable to an application for a new MSW facility:

Texas statutes	<a href="http://www.statutes.legis.state.tx.us/">http://www.statutes.legis.state.tx.us/</a>
TCEQ rules under Title 30 Texas Administrative Code	<a href="http://info.sos.state.tx.us/pls/pub/readtac\$ext.ViewTAC">http://info.sos.state.tx.us/pls/pub/readtac\$ext.ViewTAC</a>
Secretary of State	<a href="http://www.sos.state.tx.us">www.sos.state.tx.us</a>
Federal statutes and rules	<a href="http://www.epa.gov/lawsregs">http://www.epa.gov/lawsregs</a>

The technically complete application is available for review and copying at Midland County Public Library, 301 W Missouri Avenue, Midland, Texas 79701-5108.

## **II. COMMENTS AND RESPONSES:**

### **Siting - Surrounding Land Use**

#### **Comment 1:**

Fred Squire, as owner of FenceCo, commented that the proposed facility is located on a major road close to FenceCo, that FenceCo is located on property he owns and that the area consists of mixed commercial and residential use. Fred Squire also expressed concern that operation of the proposed facility will negatively affect the area. Rod Prichard, as president of Alpha Equipment, commented that the area is located within the city limits, consists of single family homes and businesses and is inappropriate for a Type V MSW facility. Rod Prichard also raised concern that the proposed facility will negatively affect on the area.

#### **Response 1:**

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. (Texas Health and Safety Code §361.011). The Executive Director's review of an application for a MSW Type V facility is confined to whether the application, proposed facility design, proposed operation of the facility and draft permit satisfy the requirements of the applicable TCEQ rules. The MSW rules are promulgated under 30 TAC, Chapter 330. The Application is required to include a general location map depicting: structures and inhabitable buildings within 500 feet of the facility; schools, licensed day-care facilities, churches, hospitals, cemeteries, ponds, lakes, and residential commercial and recreational areas within one mile of the facility; and archeological sites, historical sites, and sites with exceptional aesthetic qualities adjacent to the facility in accordance with 30 TAC § 330.61(c). The Application includes maps depicting the required information at Part II, Figures 1 through 5, pages F-1 through F-5.2. The Application is required to include a Land-use map depicting zoning and actual uses of land within one-mile of the proposed facility in accordance with 30 TAC § 330.61(g). The Application includes land-use maps and keys depicting the required information at Part II, Figures 9 through 11, pages F-10.1 through F-11. The Application is required to include information regarding the likely impacts of the facility on cities, communities, groups of property owners and individuals, analyze the compatibility of land use, zoning in the vicinity, community growth patterns and other factors in accordance with 30 TAC § 330.61(h). The Application includes a narrative discussion of the required information which states that the immediate area of the proposed facility is zoned for commercial or industrial use and that the nearest residences are located 3000 feet or .56 miles from the facility boundary at Part II, Section 2.8, pages 2-7. The Executive Director has reviewed the Application and determined that the maps and information regarding the general location and adjacent land use satisfy the rule requirements.

## **Siting - Impacts to Adjacent Businesses**

### **Comment 2:**

Fred Squire, as owner of FenceCo, commented that he operates a storefront regularly frequented by customers, that his customers have been subjected to odor from operations at the proposed facility and expressed concern that if odor from the facility continues or worsens that it will negatively impact his customers and his business activity. Rod Prichard, as president of Alpha Equipment, commented that he operates a business adjacent to the proposed facility, that operations at the proposed facility have made his employees physically ill and sick to their stomachs, that customers have complained about the odor and that odor from the proposed facility has made it hard to conduct business and can have a negative financial impact on his business.

### **Response 2:**

Odor is discussed under response No. 5 below. As discussed under Response No. 1 above, the executive director's review of an application for a MSW Type V facility is confined to whether the application, proposed facility design, proposed operation of the facility and draft permit satisfy the requirements of the applicable TCEQ rules. However, the issuance of an MSW permit expressly 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). Additionally, TCEQ rules specifically prohibit the operation of a solid waste facility in a manner that causes, suffers, allows or contributes to the creation or maintenance of a nuisance or the endangerment of human health and welfare or the environment in accordance with 30 TAC §330.15(a)(2). Information about reporting a suspected violation of TCEQ rules or issued authorization is available under Response No. 5 above. The Executive Director has reviewed the Application and determined that the Application satisfies the facility siting requirements.

## **Flooding / Surface and Groundwater Quality**

### **Comment 3:**

Rod Prichard, as president of Alpha Equipment, commented that the proposed facility and Alpha Equipment are located in a flood plain and that flooding engulfs both the building at the proposed facility location, 2201 S. Midkiff Rd., and Alpha Equipment's building at 1823 S. Midkiff Rd. Rod Prichard also commented that Alpha Equipment uses well water and expressed concern that the potential of flooding at the proposed facility raises health concerns and concerns about contamination of well water.

### **Response 3:**

Discharge of solid waste or pollutants into or adjacent to waters in the state is prohibited by Texas Water Code, § 26.121. All liquids resulting from the operation of solid waste facilities are required to be disposed of in a manner that will not cause surface water or groundwater pollution in accordance with 30 TAC § 330.207. The Application is required to include a description of how all liquids resulting from operation of solid waste facilities will be disposed of in a manner that will not cause surface water or groundwater pollution in accordance with 30 TAC § 330.63(b)(4). The Application states that Affordable Dewatering has obtained a license from the City of Midland to discharge liquid waste from the entire facility to the public sanitary sewer and includes a copy of the license. (Application Part II, Section 2.11, Page 2-10 and Attachment A, pages A-1 through A-20). The Application includes diagrams and narrative descriptions of management of waste and liquid resulting from operation of the facility prior to discharge. (Application, Supplemental Technical Report, pages STR-1 through STR-2; Part II Section 2.1, page 2-1 through 2-2, Section 2.13, pages 2-10 through 2-11; Part III, Section 3.1,

page 3-1, Section 3.2.2, pages 3-2 through 3-3, Section 3.2.4, pages 3-5 through 3-6, Section 3.2.6, page 3.6; Part IV Section 4.1, pages 4-1 through 4-2, Section 4.1.4, pages 4-6 through 4-7, Section 4.1.9, page 4-10, Section 4.1.10, page 4-10; and Figure 6, page F-1 through F-7). The Application is required to demonstrate how the proposed facility will comply with Texas Pollutant Discharge Elimination System (TPDES) storm water permitting requirements in accordance with 30 TAC § 330.61(k). The Application indicates that the Applicant will obtain coverage under the TPDES General Permit for storm water discharges associated with industrial activities. (Application, Part IV, Section 4.4; page 4-14).

The Application Site Development Plan is required to include a statement that the proposed facility design complies with MSW facility surface water drainage requirements under 30 TAC § 330.303 in accordance with 30 TAC § 330.63(c). The Application Site Development Plan includes a statement that the facility complies with the requirements of 30 TAC § 330.63(c) at Part III, Section 3, page 3-6. The Application is required to include an existing conditions summary that provides data about site specific groundwater and surface water conditions at and near the site in accordance with 30 TAC § 330.61(k). The Application includes an existing conditions summary which states that surface water sheet flows across the site in a southeasterly direction and no defined channels or concentrated flows enter the site. (Application, Part II, Section 2.11. Page 2-10).

An MSW facility is required to be designed, constructed, maintained and operated to manage run-on and runoff during the peak discharge of a 25-year rainfall event, prevent the discharge of waste, and control surface water drainage in and around the facility to minimize run-on and runoff into and off of the treatment area in accordance with 30 TAC § 330.303. The Application states that the facility will be constructed on fill material with a swale constructed at the entry gate to prevent storm water from running onto, into, and off the facility. (Application, Part II, Section 11. Page 2-10). The Application also states that run-on and runoff from the processing area, feedstock transfer process holding tanks and processing equipment will be controlled by locating all waste unloading, processing units and liquid waste storage units within an enclosed building. (Application, Part III, Sections 3.2.2 through 3.2.2, at pages 3-2 through 3-4 and 3.2.6 at page 3-6). Additionally, the Application states the enclosed building will sit on a reinforced concrete slab equipped with secondary containment area to contain the worst-case spill or release. (Application, Part III, Sections 3.2.6 at page 3-6, 3.4 at page 3-7 and Figure 6 at page F6-2.

The Application is required to include a floodplains and wetlands statement in the existing conditions summary in accordance with 30 TAC § 330.61(m). The Application is required to identify whether the proposed facility is located within a 100-year flood plain and any other special flooding factors and the facility is required to be designed to prevent washout from a 100-year flood in accordance with 30 TAC § 330.63.(c). The Application Site Development Plan indicates that the proposed facility is not located within a floodplain at Part II, Section 2.13, page 2-10. Additionally, the Application includes an excerpt from a Federal Emergency Management Agency Flood Insurance Rate Map, revised September 16, 2005, which indicates that the proposed facility location is not located within a 100-year floodplain at Part II, Figure 11, page F-11. The Executive Director has reviewed the Application and determined that the rule requirements regarding flooding and groundwater quality are met.

## **Secondary Containment**

### **Comment 4:**

Rod Prichard, as president of Alpha Equipment, commented that he has not seen evidence that

operations at the proposed facility utilize secondary containment.

**Response 4:**

Information about proposed secondary containment is available under Response No. 3 above. Operations conducted prior to permit issuance at a proposed facility may become a part of an applicant's Compliance History. However, apart from the Compliance History, any facility design, construction or operations prior to permit issuance are outside of the scope of the Executive Director's technical review of the Application. The Executive Director has reviewed the Application and determined that the rule requirements regarding secondary containment are met.

**Odor**

**Comment 5:**

Fred Squire, as owner of FenceCo, commented that his customers have been subjected to odor from operations at the proposed facility. Rod Prichard, as president of Alpha Equipment, commented that odor from operations at the proposed facility are made worse by strong south winds, have sickened his employees, and made it hard to conduct business, caused disruption in the parking lot of his business and that his customers have complained about the odor. Robert C. Wilson on behalf of FenceCo and Alpha Equipment commented that operations at the proposed facility have caused odor sufficient to make employees of FenceCo and Alpha Equipment sick, that Alpha Equipment investigated the source of the odor and confirmed that the odor emanated from the operations at the proposed facility and that customers of FenceCo and Alpha Equipment have complained about odor.

**Response 5:**

Air emissions from MSW facilities may not cause or contribute to a condition of air pollution in accordance with 30 TAC § 330.245(a). Facilities and constructed air pollution abatement devices are required to obtain authorization under 30 TAC § 116 or 30 TAC Chapter 330 in accordance with 30 TAC § 330.245(b). The draft permit requires the owner or operator to comply with the requirements of the air permit exemption in 30 TAC § 106.534, if applicable, and the applicable requirements of 30 TAC Chapters 106 (Permits By Rule) and 116 (Control of Air Pollution By permits for New Construction or Modification) and the requirements of Chapter 330, Subchapter U (relating to Standard Air Permit for Municipal Solid Waste Landfill Facilities and Transfer Stations). (Draft MSW Permit No. 2373, Part VI, Standard Permit Conditions, H, page 7).

Liquid waste and solid waste at the proposed facility are required to be stored in odor-retaining containers and vessels in accordance with 30 TAC § 330.245(c). The Application states that collection tanks and holding tanks will be covered with Plexiglas lids and piped to free-standing charcoal filter canister for air purification at Part III, Section 3.2.2 at page 3-3. The facility is required to be designed and operated to provide adequate ventilation for odor control and employee safety, in accordance with 30 TAC § 330.245(d). The Application states that the building will be equipped with charcoal air filtration and a ventilation system at Part III, Section 3.2.2, page 3-3, 3.2.3, pages 3-4 through 3-5, and Appendix F pages F-18 through F-20.

The facility is required to employ air scrubber units, on-site buffer zones, waste handling procedures, storage clean-up procedures or alternative ventilation and odor control procedures in accordance with 30 TAC § 330.245(f). The Application includes additional measures to control potential odor that could be generated from the washout pit where waste is unloaded from trucks at Part IV, Section 4.1.18, page 4-13. These additional measures include washing the

washout pit daily, treating the washout pit with a bleach solution bimonthly and stocking suitable biological deodorant to treat accidental spills of untreated waste. (Application Part IV, Section 4.1.18, page 4-13).

Process areas that recover material from solid waste that contains putrescibles are required to be located totally within an enclosed building and the openings of the process building controlled to prevent nuisance odors from leaving the facility boundary in accordance with 30 TAC § 330.245(g). The Application states that all processing units including washout pit, holding tanks, collection tanks, and dewatering boxes and all liquid waste storage units will be located within a contained building at Part III, Sections 3.2.2 and 3.2.3 at page 3-3. Additionally, the Application states that no processed septage, grease trap waste, or portapotty waste will be stored outside at Part III, 3.2.2, page 3-3.

The facility design is required to allow a minimal time of exposure of liquid waste to the air minimizing waste contact with the air and controlling openings to process buildings to prevent nuisance odors from leaving the facility boundary and to prevent release of nuisance odors to the atmosphere in accordance with 30 TAC § 330.245(d) and (h). Additionally, the proposed facility is prohibited from operating 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). The Application states that dewatered solids, dry grit, will be stored outside under a shed roof, that odor is not anticipated to be a problem and that if odor occurs dry lime will be incorporated with the solids to minimize particulate matter emissions. (Application Part III, Section 3.2.2 at page 3-3.) Additionally, the Application describes operation and facility design features that will prevent the creation or maintenance of a nuisance, unloading with gravity instead of by pump, rapid processing with a maximum of 72 hour storage time, and charcoal filtration for individual units and the building. (Application, Part III, Section 3.4 page 3-7).

The Application is required 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). The Application Site Development Plan includes site specific odor control measures for each storage, processing, and disposal unit as discussed above. (Application, Part III, Sections 3.2.2 and 3.2.4). The Executive Director reviewed the Application and determined that the odor control measures satisfy the rule requirements.

Individuals are encouraged to report concerns regarding air quality, nuisance odor or suspected noncompliance with terms of any TCEQ permit or environmental regulation by calling TCEQ's 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186, TCEQ Region 7 Office at 432-570-1359 or by sending an e-mail to [complaint@tceq.texas.gov](mailto:complaint@tceq.texas.gov). Citizen complaints may be filed on-line at [www.tceq.state.tx.us/compliance/complaints](http://www.tceq.state.tx.us/compliance/complaints). Information on TCEQ procedures for investigating odor complaints is available on the TCEQ Internet site at [www.tceq.state.tx.us/compliance/complaints/protocols/odor\\_protodef.html](http://www.tceq.state.tx.us/compliance/complaints/protocols/odor_protodef.html) 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.

## **Air Quality**

### **Comment 6:**

Robert C. Wilson, on behalf of FenceCo and Alpha Equipment, commented that based on past experiences of Alpha Equipment and FenceCo that operations at the proposed facility will cause a condition of air pollution.

**Response 6:**

Please refer to the air quality discussion under Response No. 5 above. The Executive Director has reviewed the Application and determined that it satisfies the requirements regarding air quality.

**Present/Former Operations at Proposed Facility Location****Comment 7:**

Fred Squire as owner of FenceCo and Rod Prichard as president of Alpha Equipment commented that they have observed disposal trucks operating near the rear of the building in the vicinity of in-ground and above-ground tanks located at the proposed facility and have observed disposal trucks emptying contents into a holding tank located at the proposed facility. Fred Squire, as owner of FenceCo, commented in mid June, 2011, that his customers have been subjected to odor from operations at the proposed facility for two to three months. Rod Prichard, as president of Alpha Equipment, commented in mid June, 2011, that odor from operations at the proposed facility have filled his building for several months. Robert C. Wilson on behalf Alpha Equipment and on behalf of FenceCo commented that operations at the proposed facility commenced in the summer of 2011, that the operations at the proposed facility were conducted in an open building and that these operations ceased after complaints about the operations were made.

**Response 7:**

Odor is discussed under Response No. 5 above. Compliance History is discussed under Response No. 8 below. As discussed under Response No. 1 above, the Executive Director's technical review of an application is confined to whether an application, proposed facility design, proposed facility operations, and draft permit satisfy the regulatory requirements.

The Application is required to include an Existing Conditions Summary discussing site specific conditions that require special design considerations and possible mitigation of enumerated conditions in accordance with 30 TAC § 330.61(a). The Existing Conditions Summary in the Application identifies a 3,000 gallon poly tank that has previously been used to discharge industrial waste water to the City of Midland's collection system and a two-chamber septic tank located on the proposed facility property. (Application Part II, Section 2.1, page 2-1). The Application states that the poly tank will be removed from the property and properly disposed prior to construction of the proposed facility and that the septic tank will be repositioned and utilized as an oil water separator. (Application Part II, Section 2.1, page 2-1).

**Compliance History****Comment 8:**

Rod Prichard, president of Alpha Equipment, commented that on multiple dates in during June of 2011, he experienced severe odor when winds were from the south. Rod Prichard also commented that he hired a professional plumber to investigate the source of the odor, that improvements were made to plumbing in his building and it was conclusively determined that the odor was not emanating from his plumbing or his building. Robert C. Wilson, on behalf FenceCo, commented that the TCEQ enforcement history part of the application file fails to include complaints and comments made by FenceCo about the initial operations conducted by Affordable Dewatering at the proposed facility.

**Response 8:**

TCEQ has promulgated rules and developed standards for evaluating and using the Compliance

History of regulated persons and facilities in accordance with Texas Water Code, Chapter 5, Subchapter Q. The Compliance History rules are located at 30 TAC, Chapter 60. During technical review of an application, TCEQ prepares a Compliance History for the five-year period immediately preceding the date the application was received for the Executive Director's and/or the TCEQ Commissioners' consideration prior to permit issuance in accordance with 30 TAC 60.1(a)(1). A Compliance History includes compliance information, a Compliance History classification and a calculated compliance history score of High, Average or Poor. A Compliance History classification and score do not include compliance investigations where no notices of violation were issued in accordance with 30 TAC, Chapter 60. The compliance history classification for Affordable Dewatering, for the 5-year period from January 20, 2007, though January 20, 2012, is Average by Default.

The Executive Director has reviewed the Compliance History of Affordable Dewatering and determined that the Compliance History score supports permit issuance.

### **Nuisance**

#### **Comment 9:**

Robert C. Wilson, on behalf of FenceCo and Alpha Equipment, commented that Affordable Dewatering's initial operations at the proposed facility do and will adversely affect human health or welfare and normal use and enjoyment of property of Alpha Equipment and FenceCo.

#### **Response 9:**

The TCEQ MSW rules were promulgated to protect human health and safety, and the environment. The Executive Director presumes that if a facility is designed, constructed and operated in accordance with the MSW rules and the provisions of an issued permit that human health and the environment will be protected. TCEQ rules specifically prohibit the operation of a solid waste facility in a manner that causes, suffers, allows or contributes to the creation or maintenance of a nuisance or the endangerment of human health and welfare or the environment in accordance with 30 TAC §330.15(a)(2). Additionally, the issuance of an MSW 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). Information about reporting a suspected violation of TCEQ rules or issued authorization is available under Response No. 5 above.

### **Property Values**

#### **Comment 10:**

Fred Squire, as owner of FenceCo, and Rod Prichard, as president of Alpha Equipment, commented that operation of the proposed facility will negatively impact the value of their property.

#### **Response 10:**

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. (Texas 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. As discussed under Response No. 1 above, the Executive Director's review of a permit application is limited to whether the application, proposed facility design and operation and draft permit satisfy the requirements of the applicable TCEQ rules. 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).

## **Requests for a Contested Case Hearing**

### **Comment 11:**

Robert C. Wilson requested a contested case hearing on behalf of FenceCo and Alpha Equipment.

### **Response 11:**

The cover letter transmitting this Response to Public Comment provides a deadline for filing any additional requests for a contested case hearing. All requests for a contested case hearing that are timely filed with OCC, including those of Alpha Equipment and FenceCo, 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.

## **Recommend Denial**

### **Comment 12:**

Rod Prichard as president of Alpha Equipment and Robert C. Wilson on behalf of FenceCo and Alpha Equipment recommend denial of the application.

### **Response 12:**

TCEQ's decision to approve or deny a permit application is made in accordance with state and federal administrative and technical requirements including consideration of the applicant's Compliance History. An application may be denied if the application fails to meet the administrative or technical requirements and/or if the applicant has a poor Compliance History score in accordance with Texas Water Code § 5.754(i) and 30 TAC, Chapter 60.

Changes Made to the Draft Permit in Response to Comments.

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

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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CHIEF CLERKS OFFICE

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar  
Executive Director

Robert Martinez, Director  
Environmental Law Division

*Diane Goss*

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REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

### Certificate of Service

I certify that on June 7, 2012, the "Executive Director's Response to Public Comment" for MSW Permit No. 2373 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

*Diane Goss*

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