

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

August 2, 2012

TO: Persons on the attached mailing list.

RE: US Ecology Texas, Inc.
Permit No. 50052

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Nueces County Keach Family Library, 1000 Terry Shamsie Boulevard, Robstown, Nueces County, Texas 78380.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and

- (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.texas.gov/about/comments.html> or by mail to the following address:

Bridget C. Bohac, 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 Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Bridget C. Bohac
Chief Clerk

BCB/ms

Enclosure

MAILING LIST
for
US Ecology Texas, Inc.
Permit No. 50052

FOR THE APPLICANT:

Mark John, General Manager
US Ecology Texas, Inc.
P.O. Box 307
Robstown, Texas 78380

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Brian Christian, Director
Texas Commission on Environmental
Quality
Small Business and Environmental
Assistance
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

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

Srinath Venkat, Technical Staff
Texas Commission on Environmental
Quality
Waste Permits Division
IHW Permits Section MC-130
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

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

FOR THE CHIEF CLERK
via electronic mail:

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

AHLRICH, KENNETH
PETRO
3209 FM 892
ROBSTOWN TX 78380-4387

AHLRICH, VIRGINIA
3209 FM 892
ROBSTOWN TX 78380-4387

BOND, CINDY & SONNY
5357 RIVER TRAIL DR
ROBSTOWN TX 78380-5866

BORRER, JENNIFER
5681 SANTA CLARA DR
ROBSTOWN TX 78380-9420

BRYNESTAD, REVEREND DALE
4309 PECAN BAYOU CT
CORPUS CHRISTI TX 78410-5617

CABALLERO, GONZALO
3450 COUNTY ROAD 22B
ROBSTOWN TX 78380-5792

CALDERON, JOHN A
3777 FM 892
ROBSTOWN TX 78380-5402

CALDERON, JOHNNY & MARIA
3777 FM 892
ROBSTOWN TX 78380-5402

CALDERON JR, JOHNNY
3777 FM 892
ROBSTOWN TX 78380-5402

CALDERON, MARIA A
3777 FM 892
ROBSTOWN TX 78380-5402

CARRILLO, BENITO B
3773 FM 892
ROBSTOWN TX 78380-5402

CARRILLO, CARLOS M
3773 FM 892
ROBSTOWN TX 78380-5402

CARRILLO, TERESA
730 HARRISON ST
CORPUS CHRISTI TX 78404-2706

CASTRO, BELINDA P
2353 FM 892
ROBSTOWN TX 78380-9570

CASTRO, DANNY & MELISSA D
3581 FM 892
ROBSTOWN TX 78380-4378

CASTRO, TEODORO
3575 FM 892
ROBSTOWN TX 78380-4378

DEES, DELORES
4221 NOLFORD PL
CORPUS CHRISTI TX 78410-3828

DEES, KIM
4221 NOLFORD PL
CORPUS CHRISTI TX 78410-3828

DURAN, MARGARET
JOSE M DURAN MD
4022 CONGRESSIONAL DR
CORPUS CHRISTI TX 78413-2523

ELIZONDO, GINO
2879 FM 892
ROBSTOWN TX 78380-4389

GALVAN, BELEN V
3833 FM 892
ROBSTOWN TX 78380-5401

GARCIA, LUIS R
3736 COUNTY ROAD 69
ROBSTOWN TX 78380-5667

GAZA, ALEX
2829 FM 892
ROBSTOWN TX 78380-4389

GONZALEZ, JUAN
3757 FM 892
ROBSTOWN TX 78380-5402

GWYNN, WILLIAM M
3522 FM 892
ROBSTOWN TX 78380-4551

HINOJOSA, THE HONORABLE JUAN "CHUY"
ATTN: ZANDRA ZUNIGA
STE 291
2820 S PADRE ISLAND DR
CORPUS CHRISTI TX 78415-1800

HOPKINS, KEVIN S
FURMAN BLDG, 5TH FLOOR
3533 S ALAMEDA ST
CORPUS CHRISTI TX 78411-1721

JAYNES, ANN
4014 OGRADY DR
CORPUS CHRISTI TX 78413-3002

JONES JR, CHARLIE B
3475 COUNTY ROAD 69
ROBSTOWN TX 78380-5674

JUAREZ, RUMALDO Z
15261 PECOS RIVER DR
CORPUS CHRISTI TX 78410-5719

JUNGMANN , RUSSELL
803 N HACKBERRY ST
BISHOP TX 78343-1806

KLEIN , JAMES
3501 MONTERREY ST
CORPUS CHRISTI TX 78411-1709

KLEIN, JAMES & SANSING, GERALD A
5426 CHEVY CHASE DR
CORPUS CHRISTI TX 78412-2701

KNETIG , ELWOOD
3010 COUNTY ROAD 67
ROBSTOWN TX 78380-5760

LARSEN , DAVE & NANCY
NO 120
2009 W WHEELER AVE
ARANSAS PASS TX 78336-4739

LAWHON , DEWEY
5017 COUNTY ROAD 10
BISHOP TX 78343-5073

LEAL , ELIBARDO
3551 FM 892
ROBSTOWN TX 78380-4378

LEAL , MARIA N
3551 FM 892
ROBSTOWN TX 78380-4378

LOPEZ , LIONEL DIRECTOR
SOUTH TEXAS COLONIA INITIATIVE INC
4325 PHILIPPINE DR
CORPUS CHRISTI TX 78411-5058

LOVERDE , JUDITH A
909 DRIFTWOOD PL
CORPUS CHRISTI TX 78411-2225

MALLETT , DANNY
3091 FM 892
ROBSTOWN TX 78380-4460

MALLETT , RICK
2955 FM 892
ROBSTOWN TX 78380-4466

MARTINEZ , GRACE & JOE
3567 FM 2826
ROBSTOWN TX 78380-5673

MARTINEZ , GRACE
3567 FM 2826
ROBSTOWN TX 78380-5673

MARTINEZ JR , JOE
3567 FM 2826
ROBSTOWN TX 78380-5673

MICHALK , MORRIS
1412 COUNTY ROAD 73A
BISHOP TX 78343-9753

MOFFETT , JOHNNY
5332 N HORIZON TRL
ROBSTOWN TX 78380-5355

MOON , CAROLYN
4902 CALVIN DR
CORPUS CHRISTI TX 78411-3904

OLIVARES , EMILIE JIMENEZ
4205 DODY ST
CORPUS CHRISTI TX 78411-3001

PEREZ , MELTON
PO BOX 108
ROBSTOWN TX 78380-0108

RUBIO , ALEX C
3617 FM 892
ROBSTOWN TX 78380-5450

RUBIO , DIANE
3619 FM 892
ROBSTOWN TX 78380-5450

SANDERS , MARIE P
3192 COUNTY ROAD 73
ROBSTOWN TX 78380-4465

SANSING , GERALD ALLEN
CLEAN ECONOMY COALITION
5426 CHEVY CHASE DR
CORPUS CHRISTI TX 78412-2701

SCHNEIDER , MAROLYN
2827 FM 892
ROBSTOWN TX 78380-4389

SCHNEIDER , ROBIN EXECUTIVE DIRECTOR
TEXAS CAMPAIGN FOR THE ENVIRONMENT
STE 200
611 S CONGRESS AVE
AUSTIN TX 78704-8706

SCHNEIDER JR , WM R
2827 FM 892
ROBSTOWN TX 78380-4389

SCOTT , THE HONORABLE CONNIE STATE
REPRESENTATIVE
TEXAS HOUSE OF REPRESENTATIVES DISTRICT 34
PO BOX 2910
AUSTIN TX 78768-2910

SMITH , MIKELL
1005 MEADOWBROOK DR
CORPUS CHRISTI TX 78412-3345

STEHN , LORRAINE S
1613 S SAUNDERS ST
ARANSAS PASS TX 78336-3107

SUTER , HAL
1002 CHAMBERLAIN ST
CORPUS CHRISTI TX 78404-2607

SUTER , PAT
COASTAL BEND SIERRA CLUB
1002 CHAMBERLAIN ST
CORPUS CHRISTI TX 78404-2607

TAMEZ , CRISSY
3504 COUNTY ROAD 69
ROBSTOWN TX 78380-5686

TREYBIG , WANZA
1952 FM 892
BISHOP TX 78343-5007

WILSON , DOUG
5309 FM 624
ROBSTOWN TX 78380-5200

YBARRA , GAVINO D
3740 COUNTY ROAD 69
ROBSTOWN TX 78380-5667

YBARRA , MONICA
3740 COUNTY ROAD 69
ROBSTOWN TX 78380-5667

YEPEZ , DAVID
3470 FM 892
ROBSTOWN TX 78380-4301

APPLICATION BY
U.S. ECOLOGY TEXAS, INC. FOR
10-YEAR RENEWAL AND MAJOR
AMENDMENT OF
IHW PERMIT NO. 50052

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Executive Director's Response to Public Comment

The executive director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by U.S. Ecology Texas, Inc. (Applicant), for a 10-year renewal and major amendment of Permit No. 50052 (Application). 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 following persons submitted written comment letters to the Office of the Chief Clerk before the close of the public comment period:

Clean Economy Coalition	Teodoro Castro	Danny Mallett
Kenneth Ahlrich	Brenda Elizondo	Rick Mallett
Virginia Ahlrich	Gino Elizondo	Grace Martinez
Sonny Bond	Belen V. Galvan	Joe Martinez
Cindy Bond	Luis R. Garcia	Morris Michalk
Jennifer Borrer	Alex Gaza	Johnny Moffett
Gonzalo Caballero	Juan Gonzalez	Melton Perez
John A. Calderon	William M. Gwynn	Alex C. Rubio
Maria Calderon	Charlie B. Jones	Diane Rubio
Benito E. Carrillo	Russell Jungmann	Marie P. Sanders
Carlos M. Carrillo	Elwood Knetig	Marolyn Schneider
Belinda P. Castro	Dewey Lawhon	William R. Schneider
Danny Castro	Elibardo Leal	Representative Connie Scott
Melissa Castro	Maria N. Leal	Chrissy Tamez

Wanza Treybig
Doug Wilson

Gavino D. Ybarra
Monica Ybarra

David Yepez

The following persons submitted identical comment letters, hereinafter referred to as **Group 1**:

John A. Calderon
Maria Calderon
Benito E. Carrillo
Carlos M. Carrillo
Gino Elizondo
Belen V. Galvan
Alex Gaza

Juan Gonzalez
William M. Gwynn
Russell Jungmann
Elwood Knetig
Dewey Lawhon
Elibardo Leal
Danny Mallett

Rick Mallett
Joe Martinez
Morris Michalk
Melton Perez
Alex C. Rubio
William R. Schneider
David Yepez

The following persons submitted identical comment letters hereinafter referred to as **Group 2**:

Gonzalo Caballero
John A. Calderon
Maria Calderon

Danny Castro
Melissa Castro
Teodoro Castro

Diane Rubio
Wanza Treybig

The following persons submitted submitted identical comment letters, hereinafter referred to as **Group 3**:

Belinda P. Castro
Luis R. Garcia
Alex Gaza
William M. Gwynn
Charlie B. Jones
Russell Jungmann

Dewey Lawhon
Elibardo Leal
Maria N. Leal
Grace Martinez
Joe Martinez
Morris Michalk

Melton Perez
Marolyn Schneider
William R. Schneider
Chrissy Tamez
Gavino D. Ybarra
Monica Ybarra

The following individuals provided oral and/or written comments before the close of the public comment period at the public meeting held on the Application:

Kenneth Ahlrich	Maria N. Leal	Hal Suter
Virginia Ahlrich	Lionel Lopez	Pat Suter
Teresa Carillo	Morris Michalk	Wanza Treybig
Margaret Durant	Carolyn Moon	
James Klein	Emilie J. Olivares	

This response addresses all public comments received during the public comment period, whether or not withdrawn. If you need more information about this permit application or the industrial hazardous waste permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

I. Background

A. Description of Facility

US Ecology Texas, Inc., operates a commercial hazardous and non-hazardous industrial solid waste management facility, which is authorized to accept waste from off-site sources on a commercial basis for storage, processing and disposal. The facility is located on a 240-acre tract of land on Petronila Road, County Road 69, approximately 3.5 miles south of Robstown, Texas, in Nueces County, Texas 78380. The facility is in the drainage area of Segment 2492 of the Nueces-Rio Grande River Basin, North Latitude 27° 43' 43", West Longitude 97° 39' 28".

The Application requests a 10-year renewal of Permit No. 50052 which presently authorizes commercial acceptance, treatment, storage and disposal of hazardous industrial solid waste and Class 1, Class 2, and Class 3 non-hazardous industrial solid waste in the following regulated waste management units: container storage areas, stabilization buildings containing mixing tanks, tanks, and landfill cells. Additionally, the Application requests changes and revisions to the permit including updating and

correcting inconsistencies in the permit and application. Specifically, the Application requests changes to: the Personnel Training Plan; the Security Plan; the Inspection Plan, including the Example Inspection Forms and Schedule; the Contingency Plan; the Waste Analysis Plan and Tables; and the Construction Quality Assurance Plan. Additionally, the Application proposes to add a new facility entrance on the western side of the facility, to add a new Landfill Operations Plan, to increase the storage capacity of permitted Uncovered Waste Storage Areas, Permit Unit No. 9, to a maximum of 4,000 cubic yards and to delete Section IX.A, Special Permit Condition, which limits operation of heavy machinery and bright lights between the hours of 7:00 a.m. to 8:00 p.m.

Additionally, the Application requests a 10-year renewal of Compliance Plan No. 50057, which is issued as part of the permit document, which requires and authorizes the Applicant to monitor the concentration of hazardous constituents in groundwater and remediate groundwater quality to specified standards. Additionally, the Application requests revisions to the Compliance Plan for the purpose of updating and correcting inconsistencies in the compliance plan and application. Specifically, the Application proposes to consolidate regulated units, subject to the requirements under 30 TAC 335.166, and non-regulated units, subject to the requirements under 30 TAC 335.167, under one Landfill Waste Management Area (LWMA).

B. Procedural Background

The Application was received on June 5, 2009, and declared administratively complete on July 29, 2009. The Notice of Receipt of Application and Intent to Obtain Permit/Compliance Plan Renewal and a Major Amendment was published on August 25, 2009 in the *Corpus Christi Caller-Times*, Nueces County, Texas. TCEQ held a public meeting on August 25, 2011. The executive director completed the technical review of the Application and issued a preliminary decision and a draft permit on November 9, 2011. The Notice of Application and Preliminary Decision was published in the *Corpus Christi Caller-Times* on December 13, 2011. The Notice of Application and Preliminary Decision was published in Spanish in *Tejano Y Gruperio News* on December 15, 2011. The public comment period for the Application closed on January 30, 2012. The

Application is available for review and copying at the Nueces County Keach Family Library, 100 Terry Shamsie Boulevard, Robstown, Texas, 78380.

The Application was administratively complete on or after September 1, 1999; therefore, the Application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

C. Access to Rules, Laws, and Records

The following websites provide access to state and federal rules and regulations:

- 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.

II. Comments and Responses

A. Site Access and Traffic

Comment 1:

Kenneth and Virginia Ahlrich, Cindy Bond, Sonny Bond, Jennifer Borrer, Teresa Carrillo, Group 1, Group 2, Group 3, James Klein, and Doug Wilson expressed opposition to the addition of a new entrance on the western side of the facility.

Kenneth and Virginia Ahlrich, Group 1, Group 2, and Group 3 commented that the current facility access is adequate,

Kenneth and Virginia Ahlrich, Cindy Bond, Sonny Bond, Jennifer Borrer, Group 1, Group 2, Group 3, and Doug Wilson commented that the new entrance would create congestion on FM 892 in front of residential homes, that it would deprive residents of access to their homes, that it would increase traffic congestion and hazards, and that it would have a negative impact on the peaceful use and enjoyment of their property.

Clean Economy Coalition and Lionel Lopez expressed a concern over the danger of transporting toxic materials via truck. Lionel Lopez asked who would be responsible for cleanup if a truck spilled its contents.

Response 1:

The Application proposes a new entrance on the northwest corner on the western side of the facility across private property owned by the Applicant. The Application states that the Applicant will obtain an easement to ensure perpetual use of the private property for the proposed entrance (Application, Part B, Section I). An application to renew an existing hazardous waste permit is required to depict the legal boundaries of the facility and site access control measures, such as fences and gates on a topographical map in accordance with Title 40 Code of Federal Regulations (40 CFR), Part 270.14(b)(19)(vii)-(viii), 30 TAC 305.50 and 30 TAC 335.152. The Application includes a map depicting existing and proposed facility entrances and the facility boundary. (Application, Part A, Attachment C.1. Part A and Figure III.E.1). Additionally, the Applicant is required to provide and maintain an artificial or natural barrier surrounding the active waste management portions of the facility, control access to the facility areas through gates or other entrances 24 hours a day, post visible warning signs at all points of access to waste management portions of the facility and along the natural and/or artificial barriers to the active waste management portions of the facility in accordance with 40 CFR 264.14(a)-(b), 30 TAC §335.152(a)(1) and Final Draft Permit No. 50052, Section III.C.2. The Application describes facility perimeter control measures including a six-foot chain link fence surrounding the facility with gates locked or monitored by facility employees and posted warning signs. (Application, Attachment III.2, Security Plan, page 2). The Applicant is required to follow a written schedule of

inspections at the facility in accordance with 40 CFR, Part 264.15(c) and Draft Permit No. 50052, Section III.D. The Application includes an Inspection Schedule which describes daily inspection of perimeter fencing and access gates and quarterly inspections of signs posted around the perimeter of the facility. (Application, Part B, Attachment III.3, Table III.D, Inspection Schedule).

The Legislature established TCEQ's jurisdiction over waste management in the Texas Solid Waste Disposal Act under Texas Health and Safety Code, Chapter 361. TCEQ's jurisdiction is limited to those issues set forth in statute. The executive director's review of a 10-year renewal of a commercial hazardous waste permit is limited to those matters under TCEQ's jurisdiction that are required by the federal rules, state rules or agency orders. Adequacy of existing ingress and egress to the facility, transportation routes, traffic congestion, risks of transporting hazardous industrial solid waste and emergency response to spills of hazardous industrial solid waste during transport are outside of the scope of the executive director's review of the Application. However, Draft Permit No. 50057, if renewed, would neither authorize the Applicant to injure persons or property, to invade the property rights of others, or to infringe upon any state or local law in accordance with 30 TAC §305.122(c) nor would it limit a landowner's ability to seek relief from a court or other avenues in response to activities that interfere with the landowner's use and enjoyment of his property. Additional information about compliance history is available under Response 4 below.

The executive director has evaluated the Application and determined that the Application satisfies the regulatory requirements.

B. Nuisance Issues and Land Use Compatibility

Comment 2:

Many commenters raised a concern about noise coming from the facility, particularly at night. Specifically, some commenters indicate shrill, screeching, high-pitched noises, as well as loud, pounding noises. These commenters include Kenneth Ahlrich, Virginia Ahlrich, Cindy Bond, Sonny Bond, Clean Economy Coalition, Group 3,

Russell Jungmann, Elwood Knetig, Dewey Lawhon, Elibardo Leal, Maria Leal, and Melton Perez.

Response 2:

TCEQ jurisdiction over industrial hazardous waste management does not include regulating sound levels emanating from a facility. Consideration of noise is outside of the scope of the executive director's review of the Application. Additional information regarding TCEQ jurisdiction and the scope of the executive director's review is available under Response 1, above. The Applicant is prohibited from operating the facility in a manner that endangers public health and welfare in accordance with Tex. Health & Safety Code §361.002 and 30 TAC §335.4. Additionally, Draft Permit No. 50057, if renewed, would neither authorize the Applicant to injure persons or property, to invade the property rights of others, or to infringe upon any state or local law in accordance with 30 TAC §305.122(c) nor would it limit a landowner's ability to seek relief from a court and/or other avenues in response to activities that interfere with the landowner's use and enjoyment of his property.

Comment 3:

Kenneth and Virginia Ahlrich, Margaret Durant, and Emilie Olivares commented that the acceptance of hazardous waste is risky in an area that is becoming increasingly populated.

Response 3:

TCEQ rules impose siting restrictions on new commercial hazardous waste management facilities and on the areal expansion of existing commercial hazardous waste management facilities in accordance with 30 TAC §335.205(a)(4). EPA considered the risks associated with hazardous waste management when it promulgated the federal hazardous waste rules in accordance with the Resource Conservation and Recovery Act (RCRA) and the Administrative Procedures Act. TCEQ promulgated state hazardous waste management rules that are at least as protective as the federal rules. Additionally, the state and federal hazardous waste management rules were promulgated to protect human health and the environment and to mitigate the risks

associated with hazardous waste management. Therefore, the executive director presumes that if a hazardous industrial solid waste treatment storage and disposal facility is designed and operated in compliance with the state and federal regulations that human health and the environment will be protected. Consideration of population growth is outside of the scope of the executive director's review of an application that seeks to renew a permit authorizing an existing hazardous solid waste facility that does not seek to expand the area of the facility. Response 1 above provides additional information regarding the scope of the executive director's review.

C. Compliance History

Comment 4:

Kenneth and Virginia Ahlrich, Jennifer Borrer, Group 1, Group 2, Group 3, James Klein, and Doug Wilson raised concerns regarding USET's compliance history.

Kenneth and Virginia Ahlrich, and Group 1 commented that the company was cited for failure to comply with the Waste Analysis Plan, and that they have not implemented the Contingency Plan or the Inspection Plan.

Kenneth and Virginia Ahlrich commented that the groundwater contamination may be stopped if the Applicant would correct the situation that is causing the groundwater contamination.

Kenneth and Virginia Ahlrich, Jennifer Borrer, Group 1, Group 3, and James Klein noted that the facility has released harmful emissions and has had fires and explosions at the site.

Virginia Ahlrich requested that the facility come into compliance within 30 days before the TCEQ continues processing the application. Kenneth and Virginia Ahlrich, Jennifer Borrer, and Group 1 requested that the facility be required to demonstrate one year of exceptional compliance before renewing the permit.

Response 4:

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 in 30 TAC, Chapter 60.

Prior to issuance of a permit or compliance plan, during technical review of an application, TCEQ prepares a compliance history for the five-year period immediately preceding the date the application was received in accordance with 30 TAC §§ 60.1.(a)(1)(A), (b) and 281.21(d). The compliance history period may be extended for the permit up through completion of review of the application in accordance with 30 TAC § 60.1.(a)(1)(A), (b). The compliance history includes multimedia compliance-related components that include enforcement orders, consent decrees, court judgments, criminal violations, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution-reduction programs, and early compliance in accordance with 30 TAC § 60.1(c). A facility may receive one of the following classifications: High, for above-average compliance; Average by Default, the classification for sites that have never been investigated; Average, for general compliance; or Poor for below-average compliance. The compliance history rules do not require one year of compliance or exceptional compliance prior to issuance of a solid waste permit. (30 TAC § 60.1(a)). There is no requirement that a facility would have to demonstrate 'exceptional compliance' or 'one year of compliance' for a new or 10-year renewal of a hazardous waste permit or compliance plan.

The compliance history classification for US Ecology Texas, Inc, for the 5-year period prior to receipt of the Application, from October 19, 2006, through October 19, 2011, is "Average." The compliance history classification for US Ecology Texas, Inc, for the 5-year period prior to completion of review of the Application, from June 5, 2006, through June 5, 2011, is also "Average."

The Applicant is required to implement the facility contingency plan in response to emergencies such as fires or explosions in accordance with 40 CFR, Part 264. 50 and 30 TAC §335.152(a)(1). The Application Contingency Plan describes measures facility

personnel are required to follow when emergency situations occur at the facility including assessment of incidents and hazards, incident containment, response actions, incident reporting, facility evacuation, and remedial actions. (Application, Part B, Section III.E, and Attachment III.4, Contingency Plan). Additionally, the Applicant is required to document attempts to coordinate with local emergency responders and officials in accordance with 40 CFR Parts 264.37 and 264.52(c) and 30 TAC §335.152(a)(1). The Application includes coordination agreements and describes arrangements with local authorities. (Application Part B, Attachment III.4, and Table III.E.1).

The executive director's response to comments concerning the Waste Analysis Plan and Inspection Schedule are available under Responses 7 through 9 below.

The executive director's response to comments regarding groundwater quality, surface water quality and air quality are available under Responses 10 through 15 below.

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 361-825-3100 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.

The executive director evaluated the Applicant's compliance history and determined that the classification supports issuance of a 10-year renewal and major amendment of Permit No. 50052.

D. 1999 Settlement Agreement

Comment 5:

Kenneth and Virginia Ahlrich, Jennifer Borrer, and Wanza Treybig commented that the Applicant breached a 1999 settlement agreement by moving operations to the 80 acres west of the drainage ditch.

Group 2 inquired as to why the air emissions descriptions listed in the 1999 settlement agreement was not enforced by TCEQ.

Response 5:

TCEQ's jurisdiction is limited to that set out in statute by the Texas legislature. TCEQ's jurisdiction does not encompass third party contract disputes. Response No. 2 above provides additional information regarding TCEQ's jurisdiction over waste management activities. TCEQ's predecessor's agency, the Texas Natural Resource Conservation Commission, was not a party to the contract identified in the public comments as the 1999 settlement agreement. TCEQ's predecessor agency included the air monitoring terms of the settlement agreement in Permit, No. 50052, Provision XI.E with the following caveat: "this provision is not intended to require any action by TCEQ that is not required by law." Permit No. 50057 in no way limits a landowner's ability to pursue remedies under the law or seek relief from a court. Responses 11 through 15 below provide additional information regarding air quality and monitoring.

E. Facility Operations

1. Uncovered Waste Storage Capacity

Comment 6:

Kenneth and Virginia Ahlrich, Cindy Bond, Sonny Bond, Jennifer Borrer, Teresa Carrillo, Group 1, Group 2, Group 3, Maria P. Sanders, Wanza Treybig, and Doug Wilson expressed concern over the proposed increased capacity of uncovered waste storage areas.

Kenneth and Virginia Ahlrich, Cindy Bond, Sonny Bond, Jennifer Borrer, Maria P. Sanders, Group 1, Group 2, and Group 3 commented that the Applicant has been cited for mismanagement of outdoor containers in the past.

Kenneth and Virginia Ahlrich, Jennifer Borrer, Group 1, Group 2, Group 3, and Doug Wilson commented that there will be an increased danger of toxic material blowing off-site by the prevailing winds because of the increase in uncovered storage.

Response 6:

The term “uncovered waste storage area” refers to a permitted existing outdoor container storage area that is not under a roof. Containers stored in the uncovered container storage area are required to be covered except during sampling, processing, or consolidation of waste streams in accordance with 40 CFR 264.173 and 30 TAC §335.152(a)(7). The facility may store containers of hazardous and nonhazardous solid waste that do not contain free liquids in an uncovered storage area in accordance with 40 CFR, Part 264.175(c) and 30 TAC §335.152(a)(7). The Application requests an increase in the permitted capacity of permitted uncovered waste storage area from 1450 cubic yards to 4000 cubic yards. (Application, Part B, Section V.B and Table V.B). The Application Container Management Report states that containers stored in the uncovered waste storage area, permit unit number 9, is limited to containers containing no free liquids. (Application, Part B, Attachment V.3, Section 3.4, Container Management Report).

The executive director’s response to comments concerning groundwater quality and air quality are available under Responses 9 through 15 below. The executive director’s response to comments concerning compliance history is available under Response 4 above.

The executive director evaluated the Application and determined that the proposed increase in uncovered waste storage area capacity satisfies the regulatory requirements.

Comment 7:

Kenneth and Virginia Ahlrich commented that that the Applicant should be required to modify, replace, or remove machines that are causing noise issues before the permit is renewed and that the waste analysis plan, contingency plan and inspection plans must be updated and/or improved to reflect past operational problems and failures.

Response 7:

The Applicant is required to maintain waste management units and ancillary equipment in good working condition and to inspect and repair or replace facility components and waste management units in accordance with 40 CFR Part 264.15, 30 TAC §335.152(a)(1) and Draft Permit No. 50052, Section III.D. The Inspection Plan included in the Application particularly describes inspection requirements, frequency of inspections, and corrective measures for waste management units and components, emergency equipment, security equipment and alarms and provides a sample record-keeping inspection log for each waste management unit type. (Application, Part B, Attachment III.3, Inspection Plan).

The Applicant is required to maintain and follow a contingency plan designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous constituents to environment in accordance with the 40 CFR, Part 264.51, 30 TAC §335.152(a)(3) and Draft Permit No. 50052, Section III.E.

The executive director has reviewed the Application and determined that the Inspection Plan and Contingency Plan satisfy the regulatory requirements.

2. Waste Acceptance**Comment 8:**

Kenneth Ahlrich, Virginia Ahlrich, Group 2, Group 3, and Maria P. Sanders expressed opposition to the addition of any new wastes not previously authorized for the facility.

Virginia Ahlrich asked whether operational changes are proposed in the Application that are more protective of human health and the environment than the operations authorized in the present permit.

Response 8:

The Applicant is required to manage wastes generated on-site and received from off-site sources in accordance with 40 CFR, Part 264.13, 30 TAC §335.152(a)(1), and

Draft Permit and Compliance Plan No. 50052, Section IV. The Waste Analysis Plan includes detailed listing of wastes managed at the facility, prohibited waste streams, analytical and testing requirements, and waste management and treatment requirements. (Application, Part B, Attachment IV, Waste Analysis Plan).

The Application does not propose any new waste streams or waste codes that are not authorized by existing Permit No. 50052.

The executive director presumes that if the facility is constructed and operated in accordance with the regulations that operation of the facility will be protective of human health and the environment. The Waste Analysis Plan includes revisions to track waste movement throughout the facility and other Waste Analysis Plan requirements the Applicant is required to implement in accordance with TCEQ Agreed Order, Docket No. 2008-0355-MLM-E. (Application, Part B, Attachment IV, Section 11, Waste Analysis Plan).

The executive director has evaluated the Application and determined that the wastes proposed for acceptance in the Waste Analysis Plan satisfy the regulatory requirements.

Comment 9:

Kenneth and Virginia Ahlrich, Group 2, Group 3, and Maria P. Sanders raised a concern that the facility would be allowed to accept nuclear waste.

Response 9:

The Applicant is prohibited from accepting any exempt or non-exempt radioactive waste, radioactive materials or nuclear wastes without prior approval in accordance with Draft Permit No. 50052, Section I.C. and IV.B.3.b. The Application requests continuation of authorization to accept exempt radioactive wastes that are currently authorized in Permit No. 50052. (Application Part B, Attachment IV, Section 3, Waste Analysis Plan). The Waste Analysis Plan states that the Applicant or a waste generator is required to submit information including verification of the exempt status of radioactive wastes to the TCEQ and that the Applicant must receive approval of the

exempt status prior to accepting any exempt radioactive wastes at the facility. (Application, Part B, Attachment IV.1, Section 3.0, Waste Analysis Plan). TCEQ may issue an exemption for radioactive waste materials that meet certain exemption criteria specified in 25 TAC §§289.259(d) and 289.251(d) and (e). An exempt radioactive waste or material may be managed and disposed in accordance with municipal, industrial and hazardous waste requirements.

The executive director has evaluated the Application and determined that the wastes proposed for acceptance in the Application and the Waste Analysis Plan satisfy the regulatory requirements.

F. Groundwater and Surface water Quality

Comment 10:

Clean Economy Coalition and Group 2 expressed concern that contamination and toxic materials may be transported off site in the Nueces County drainage ditch that runs through the facility resulting in contamination of water bodies and communities downstream of the facility.

Several commenters raised concern over groundwater contamination. These commenters include Kenneth Ahlrich, Virginia Ahlrich, Clean Economy Coalition, Margaret Durant, Lionel Lopez, Pat Suter, Doug Wilson, and Alex Gaza.

Kenneth Ahlrich and Virginia Ahlrich commented that the methods used for the past 30 years have not eliminated groundwater contamination and that groundwater contamination may be stopped if the Applicant would eliminate the conditions that are causing the groundwater contamination.

Russell Jungmann inquired as to the current state of groundwater contamination.

Response 10:

Surface water quality

The Applicant is required to operate the facility in a manner that does not cause or contribute to environmental degradation or contaminate adjacent property in

accordance with 40 CFR, Part 264, Subparts C and F, 30 TAC §335.4 and Final Draft Permit No. 50052, Sections III.A. and V.A.3. The facility, landfills and waste management units are required to be designed, constructed, operated, and maintained so as to prevent contamination of drainage creeks and stormwater conveyances due to stormwater run-on and run-off, rainfall, storms, and washout of hazardous wastes from a 100-year flood event in accordance with 40 C.F.R., Part 270.14 (b)(11), 30 TAC §335.204 (e), and Draft Permit No. 50052, Sections V.A.3 and V.G.4.e. The Application Engineering Report includes information on design, construction, and operation of waste management units at the facility. (Application, Part B, Section V, Attachment V, Engineering Report). The Application indicates that perimeter berms and drainage ditches surround the active landfill to prevent stormwater run-on and run-off and to prevent washout of hazardous wastes from landfill cells. (Application, Part B, Section V, Attachment sV.2, V.9 and V.10). The Applicant is required to utilize measures to prevent stormwater from entering active area of the landfill cell in accordance with Draft Permit No. 50052, Section V.G.4.e. The Application describes 12 inch compacted clay/soil/non-hazardous soil like waste utilized as interim cover and berms designed to prevent stormwater from entering active area of the landfill. (Application, Part B, Section V, Attachments V.2, V.9, and V.10).

The Applicant is prohibited from discharging stormwater or leachate from landfills, contaminated stormwater from process areas, hazardous waste, or hazardous constituents into stormwater drains or creeks in accordance with 30 TAC § 335.4 and Draft Permit No.50052, Sections III.A., and V.A.3. A slurry wall, designed to prevent off site migration of contamination or contaminated groundwater is constructed around the perimeter of the facility. (Application, Part B, Section XI).

Additionally, TCEQ regulates the Applicant's compliance with the Texas Clean Water Act under the facility's Texas Pollutant Discharge Elimination System (TPDES) permit. TPDES permit No. WQ0002888000 authorizes discharge of uncontaminated storm water. A TPDES Permit is processed by the TCEQ Office of Water and is outside of the scope of the executive director's review of the Application.

If contamination or evidence of contamination is detected in stormwater drains or creeks, the Applicant would be subject to cleanup and corrective action requirements under the Compliance Plan and may be subject to enforcement in accordance with Final Draft Permit No. 50052, Provisions XI.A.6, and XI. E,

Groundwater quality

Groundwater contamination at the facility has been attributed to historic waste management operations, leaks from damaged evaporation pond liners operated at the facility in the 1970's, and leaks from petroleum pipelines in the vicinity of the facility. The Applicant is required to address historic contamination through corrective action and compliance monitoring in accordance with 40 CFR, Part 264, Subpart F, 30 TAC §§335.166 -167 and Draft Permit No. 50052, Section XI. The groundwater monitoring data from Semi-Annual Groundwater Monitoring Corrective Action Reports from 1990 through 2011 indicate that groundwater contamination at the facility is confined to the shallow first groundwater zone which is defined and within the slurry wall and facility boundary. The data from these reports do not indicate detection of new groundwater contamination under the facility.

The Applicant is required to conduct groundwater monitoring and submit the data to TCEQ every six months in accordance with Draft Permit No. 50052, Section XI.G.3. The Applicant monitors groundwater wells which are located inside and outside of the slurry wall in accordance with Draft Permit No. 50052, Section XI. The Draft Permit authorizes a groundwater recovery system consisting of 18 recovery wells located within the slurry wall. (Draft Permit No. 50052, Section XI.B). Operation of the recovery wells creates a cone of depression that causes shallow groundwater to flow towards the interior of the facility and prevents groundwater contamination from moving laterally towards the slurry wall that encompasses the facility boundary.

In the event of spills or discharge of waste or contamination, the Applicant is required to notify TCEQ and take any prompt response including clean up required in accordance with 30 TAC § 305.145, Draft Permit No. 50052, Sections II.B. 5. and III.E.

If off-site contamination is detected, the Applicant is required to immediately notify TCEQ, conduct additional sampling and/or monitoring and address any potential contamination through corrective action in accordance with Final Draft Permit No. 50052, Section XI.D.1 and XI.E.1.b.

The executive director has reviewed the Application and determined that the surface and ground water protection measures satisfy the regulatory requirements.

G. Air Quality

Comment 11:

Kenneth and Virginia Ahlrich, Cindy Bond, Sonny Bond, Jennifer Borrer, Margaret Durant, Group 1, Group 2, Group 3, Maria Leal, Lionel Lopez, Danny Mallett, Rick Mallett, Johnny Moffett, Maria P. Sanders, Pat Suter, Doug Wilson, and David Yopez expressed a concern for the quality of farmed products and potential negative health effects to local residents and farm workers caused by airborne toxins or emissions carried offsite by prevailing winds.

Clean Economy Coalition expressed a concern over the increase of air pollution from additional trucks.

Response 11:

The Applicant is prohibited from contributing to a condition of air pollution as that term is defined by Texas Health and Safety Code, § 382.003 and in accordance with Final Draft Permit No. 50052, Provision X.A. 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 361-825-3100 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.

The Application is required to demonstrate compliance with air emission requirements of 40 CFR Part 264 Subparts AA, BB, and CC. The Application states that the facility is not subject to the air emission requirements of 40 CFR Part 264, Subparts AA, BB, and CC. (Application, Part B, Section X).

In addition to air emission requirements in solid and hazardous waste rules, the permittee must comply with state and federal air quality rules, permits, and authorizations to protect human health and environment. The Application states that the Applicant will obtain a separate air permit to address air emissions at the facility. (Application, Part B, Section X) Air permitting requirements are outside of the scope of the executive director's review of the Application.

The executive director has reviewed the Application and determined that the air quality requirements of a hazardous waste facility permit are satisfied. The executive director's response to comments regarding concerns regarding human health and safety is available under Response 15 below.

Comment 12

Kenneth and Virginia Ahlrich, Cindy Bond, Sonny Bond, John A. Calderon, Maria Calderon, Clean Economy Coalition, Belen V. Galvan, Juan Gonzalez, Group 2, Group 3, William M Gwynn, Russell Jungmann, Elwood Knetig, Dewey Lawhon, Elibardo Leal, Maria Leal, Lionel Lopez, Rick Mallett, Joe Martinez, Morris Michalk, Melton Perez, Maria P. Sanders, and William R. Schneider, Jr. commented that from their homes, located close to the facility, they smell odors emanating from the facility characterized as terrible, nauseating, sickening and like battery acid.

Response 12:

The Applicant is prohibited from operating the facility in a manner so as to cause the creation and maintenance of a nuisance in accordance with 30 TAC §§ 335.4(2) and 335.177(2). 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 361-825-3100 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. Additional information regarding TCEQ's odor complaint investigation procedures is available on TCEQ's public web site at:

http://www.tceq.texas.gov/compliance/complaints/protocols/odor_protodef.html

Comment 13:

Group 2 and Carolyn Moon inquired as to why the kiln dust building only has three sides. These commenters express concern that the open side of the building will allow kiln dust to blow onto other properties, which could affect respiratory health.

Kenneth Ahlrich asked whether the black material that is being mixed with dumped materials is dirt?

Clean Economy Coalition expressed a general concern about dust blowing offsite.

Response 13:

The Application and Permit require all regulated units at the facility to be permitted or registered with TCEQ in accordance with 30 TAC §§335.2 and 335.6. The facility stores products that it utilizes for waste stabilization and treatment in buildings that are not regulated units. A "kiln dust building" is not described in the Application. As part of the Applicant's presentation during the public meeting for this Application, the executive director's staff observed a slide that depicted a three sided building that ostensibly contained a product. The executive director assumes that the building the commenter is referring to is not a waste management unit and that the material stored in the building is a product that is not subject to the solid waste regulations or Permit No. 50052.

The executive director is uncertain which material the commenter is referring to as "black material." However, the material might be reagents such as cement, fly ash,

etc. used to treat waste to meet applicable Land Disposal Restrictions (LDR). Prior to disposal of any wastes in the landfill, the wastes must meet LDR in accordance with 40 C.F.R. Part 268 and 30 TAC § 335.431).

The Applicant is required to control wind dispersion of particulate matter from land filling operations in accordance with 30 TAC §§ 335.173(j) and Draft Permit No. 50052, Sections V.G.4.c. and j. The Application describes measures to control wind dispersion of particulate matter. (Application, Part B, Attachment V.2, V.9, and V.10). The Applicant must utilize dust suppression measures in accordance with 40 CFR, Part 266.23(b) and 30 TAC § 335.214. The Application describes use of water, foaming agents, anti-ionic surfactant polymer emulsions, and fabric, etc. for dust suppression. (Application, Part B, Attachment V.2, V.9, and V.10).

In the event of upset air emissions, releases, or explosions, the Applicant must notify TCEQ and take any prompt response required in accordance with 30 TAC § 305.145 and Draft Permit No. 50052, Sections II.B. 5. and III.E. The Application describes the reporting procedures to be followed in the event of releases or upset air emissions. (Application, Part B, Attachment III.4).

The executive director has reviewed the Application and determined that the measures to control dispersion of particulate matter and dust suppression measures satisfy the regulatory requirements.

Comment 14:

Jennifer Borrer, Dale Brynestad, Carolyn Moon, and Johnny Moffett, asked why there is no offsite air monitoring system in place to provide residents and TCEQ with air quality data. Kenneth and Virginia Ahlrich, and Russell Jungmann commented that a new law requires Applicant to conduct recovery, treatment, and disposal under a protective, covered area with air monitoring.

Response 14:

The TCEQ, Office of Waste, Industrial and Hazardous Permitting Section conducts technical review of applications requesting authorization of industrial

hazardous waste facilities. Generally, air quality, air modeling and air monitoring are regulated by the TCEQ Office of Air in accordance with the Texas Clean Air Act and are outside of the scope of the executive director's review of the Application. The executive director's response to comments regarding suppression of dust and air dispersion of particulate matter is available under Response 13 above.

H. Human Health and Safety

Comment 15:

Margaret Durant, Brenda Elizondo, Gino Elizondo, Group 2, and Group 3 raised a general concern that the facility will have a negative impact on the health of residents that are in close proximity to the facility.

Many commenters raised concerns that the facility operations may cause particular and general health effects. Elibardo Leal commented that he experiences respiratory problems. Danny Mallett commented that his wife has experienced an irritated throat. Rick Mallett commented that he has experienced irritation in his eyes. David Yopez has commented that his daughter has experienced respiratory problems. Virginia Ahrlich commented that she has suffered from bleeding nose, sinus congestion, and burning throat and respiratory passages. Gonzalo Caballero commented that he has respiratory problems and asthma. Johnny Calderon commented that he experiences allergies, sinus problems, and asthma. Maria Calderon commented that she experiences allergies, sinus problems, and asthma. Belinda Castro commented that she experiences headaches, nausea, and allergies. Danny and Melissa Castro commented that they have experienced nose bleeds and loss of smell. Teodoro Castro commented that he experiences breathing, nose bleeds, and loss of smell. Luis Garcia commented that he experiences problems with sinuses. William Gwynn commented that he experiences burning eyes. Elibardo Leal commented that he experiences headaches and respiratory problems. Maria Leal commented that he experiences upper respiratory problems, asthma, headaches, and nose bleeds. Grace Martinez commented that she experiences sore throats. Joe Martinez commented that he experiences commented that he experiences throat irritation. Diane Rubio indicates commented that she experiences

nose bleeds, allergies, and headaches. Marolyn Schneider commented that she experiences watering eyes and allergies. William R. Schneider commented that he experiences skin irritation and breathing. Crissy Tamez indicates commented that she experiences headaches. Gavino Ybarra indicates commented that he experiences asthma, headaches, and allergies. Monica Ybarra commented that he experiences asthma and headaches. Lionel Lopez commented that he experiences asthma and is concerned that the facility operations cause cancer.

Response 15:

Title 40 of the Code of Federal Regulations and TCEQ rules under Title 30, Texas Administrative Code, Chapters 305 and 335 were promulgated by EPA and TCEQ, pursuant to each agency's respective statutory authority and in accordance with the Federal and State Administrative Procedures Acts, to protect human health and the environment. The scope of the executive director's review of the Application is limited to whether the Application Draft Permit satisfy the applicable hazardous and industrial waste rule requirements. The executive director presumes that if a hazardous industrial solid waste treatment storage and disposal facility is designed and operated in compliance with the applicable state and federal rules that the authorized waste management activities will be protective of human health and the environment. Additionally, the Applicant is prohibited from operating the facility in a manner so as to cause the creation and maintenance of a nuisance in accordance with 30 TAC §§ 335.4(2) and 335.177(2). Finally, a solid waste management permit issued by TCEQ does not authorize any injury to persons or property or an invasion of other property rights in accordance with 30 TAC § 305.122(b). Pleased see additional information about reporting any suspected noncompliance with TCEQ rules or authorizations under Response No.12 above.

I. Special Permit Condition IX.A Effectively Limiting Operating Hours

Comment 16:

Kenneth Ahlrich, Virginia Ahlrich, Cindy Bond, Sonny Bond, Jennifer Borrer, Dale Brynestad, Teresa Carrillo, Clean Economy Coalition, Group 1, Group 2, Group 3,

James Klein, Maria P. Sanders, Wanza Treybig, and Doug Wilson expressed opposition to the proposed deletion of special permit condition IX.A which limits operation of heavy machinery and bright lights between the hours of 7:00 a.m. and 8:00 p.m.

Kenneth Ahlrich, Virginia Ahlrich, Cindy Bond, Sonny Bond, Group 3, Maria P. Sanders, and Doug Wilson commented that if the facility is allowed to operate 24 hours a day their exposure to harsh noises and foul odors will increase. Melton Perez expressed concern that the use of lights at night is a nuisance.

Kenneth Ahlrich, Virginia Ahlrich, Russell Jungmann, and Dewey Lawhon raised a concern that allowing the facility to conduct operations 24 hours a day would impact farm workers and farm operations.

Kenneth Ahlrich, Virginia Ahlrich, Group 1, Group 2, Group 3, and Maria P. Sanders commented that allowing the facility to conduct operations 24 hours a day would deprive them of night hours to rest, which would have a negative effect on their health and well-being.

Finally, Kenneth Ahlrich, Virginia Ahlrich, Cindy Bond, Sonny Bond, Jennifer Borrer, Dale Brynestad, Group 1, and Doug Wilson commented that the Applicant has violated the permit in the past, and that allowing the facility to conduct operations 24 hours a day will increase the likelihood that they will violate their permit again, and decrease the likelihood that violations will be detected.

Response 16:

The Applicant is prohibited from operating the facility in a manner so as to cause the creation and maintenance of a nuisance in accordance with 30 TAC §§ 335.4(2) and 335.177(2). Additionally, a solid waste management permit issued by TCEQ does not authorize any injury to persons or property or an invasion of other property rights in accordance with 30 TAC § 305.122(b). State and federal rules do not require specific hours of operation for industrial hazardous waste treatment storage and disposal facilities.

Special Permit Provision XII.A. was added to the permit in An Order Granting a Class 3 Modification to Permit No. HW-50052-011 to Texas Ecologists, Inc, issued June 23, 1994, by the commissioners of the Texas Natural Resource Conservation Commission, TCEQ's predecessor agency. (An Order Granting a Class 3 Modification to Permit No. HW-50052-0 to Texas Ecologists, Inc, Pages 7-8, June 23, 1994). A public hearing to consider the Applicant's application for a Class 3 Modification to Permit No. HW-50052-01 was held on October 10, 1993, and January 3rd through 4th, 1994, in accordance with Texas Health and Safety Code Chapter 361 and Texas Water Code Chapter 5. (Hearings Examiner's Proposal for Decision to be Presented to the Texas Natural Resource Conservation Commission, Elizabeth Bourbon, Attorney, Hearings Examiner, February 28, 1994, Page 1). Special Provision IX. A. was recommended by the Hearings Examiner's Executive Summary and Proposal for Decision and supported by finding of fact No. 12 in the commission order which found that "[i]t is reasonable to prohibit the facility from engaging in operation or construction activities before 7:00 a.m., or after 8:00 p.m." (Hearings Examiner's Proposal for Decision to be Presented to the Texas Natural Resource Conservation Commission, Elizabeth Bourbon, Attorney, Hearings Examiner, February 28, 1994, Executive Summary, Page 3, and Item 3, Page 8)(An Order Granting a Class 3 Modification to Permit No. HW-50052-0 to Texas Ecologists, Inc, Pages 6-7, June 23, 1994). The special provision was retained in the permit reissued on December 2, 1999, pursuant to an application for a 10-year renewal by Texas Ecologists, Inc.

Special Provision IX. A. is retained in Draft Permit No. 50052.

The executive director's response to comments regarding alleged permit violations and compliance history is available under Response 4 above.

J. Environmental Justice

Comment 17:

Mr. Lionel Lopez commented that families living in Colonia nearby do not drink water from their water well and they have to go into town to get water and that the residents need help.

Response 17:

The executive director's response to comments regarding groundwater water is available under Response 10 above.

TCEQ rules do not specifically address environmental equity issues such as the location of permitted facilities in areas with minority and low-income populations, disparate exposures of pollutants to minority and low-income populations, or the disparate economic, environmental, and health effect on minority and low-income populations. However, the TCEQ has made a policy commitment to address environmental equity by creating an environmental equity program under the TCEQ Office of Chief Clerk. This program works to help citizens and neighborhood groups participate in the regulatory process, to ensure that agency programs that may affect human health or the environment operate without discrimination, and to make sure that citizens' concerns are considered thoroughly and are handled in a way that is fair to all. Individuals may contact TCEQ Public Education Program at 1-800-687-4040 or at the following address, phone or fax numbers: Environmental Equity (MC-105), Texas Commission on Environmental Quality, P.O. Box 13087 Austin, TX 78711-3087, (512) 239-2566, (512) 239-3311 (fax), chiefclk@tceq.texas.gov (e-mail), Additional information can be found at: <http://www.tceq.texas.gov/agency/hearings/envequ.html>.

K. Public Meeting**Comment 18:**

Representative Connie Scott requested that a Public meeting be held for the Application.

Response 18:

TCEQ held a public meeting on the Application on August 25, 2011, at the Johnny Calderon County Building located at 710 E. Main Avenue, Robstown, Texas.

L. Other

Comment 19:

Jennifer Borrer and Johnny Moffett inquired as to whether three treatment buildings on the west side of the facility were authorized to operate by previous permit amendments.

Response 19:

It is not entirely clear which buildings the commenter is referring to. Permitted waste storage and treatment buildings, Stabilization Building Unit Nos. 1 and 2 and Controlled Parking Building, which are located on the west side of the facility, are authorized by current Permit No. 50052. The Application requests continued authorization of these units.

Comment 20:

Russell Jungmann and Crissy Tamez inquired as to why the Applicant is requesting deeper injection wells.

Response 20:

The Permit No. 50052 does not authorize underground injection control (UIC) wells and the Application does not propose changes to the Applicant's UIC activities. A separate permitting program, The TCEQ Radioactive Materials Division, Underground Injection Control (RMD/UIC) reviews applications for Class I UIC disposal wells. TCEQ UIC Permit No. WDW-278 and UIC Permit No. WDW-279 authorize US Ecology Texas, Inc., to construct and operate two non commercial hazardous Class I Underground Injection Wells at the facility. UIC Permit No. WDW-278 has been constructed and is currently operated and Permit No. WDW-279 has not been constructed. RMD/UIC received an application for a 10-year renewal of UIC Permit Nos. WDW-278 and WDW-279 on March 19, 2012. This application does not request an amendment to change the authorized depth of the disposal wells. The operation and authorization of UIC disposal wells is outside of the scope of the executive director's review of the Application.

Comment 21:

Virginia Ahlrich noted the deteriorating condition of Tank M6, and asked whether TCEQ cited a violation for the deteriorated tank.

Response 21:

The Applicant is required to maintain tanks and its ancillary equipments in good working condition and to inspect and repair or replace tank components in accordance with 40 CFR Part 264 Subpart J, 30 TAC §335.152(a)(8). The Applicant's application for a permit modification authorizing removal and replacement of old tanks with new tanks, including Tank M6 was approved on April 7, 2011. The April 7, 2011, permit modification is outside of the scope of the executive director's review of the Application. The Application incorporates the changes authorized by this approved modification. The tank inspection including frequency of inspection, corrective measures for possible errors, malfunction, and deterioration is included in Part B Application, (Application, Part B, Attachment III.3).

TCEQ has not issued a violation regarding Tank M6.

The executive director has reviewed the application and determined that the inspection, construction, operation, and maintenance of waste management tanks satisfy regulatory requirements. The executive director's response to comments regarding alleged permit violations and compliance history is available under Response 4 above.

M. Recommend Denial**Comment 22:**

Clean Economy Coalition, Kenneth Ahlrich, Virginia Ahlrich, Sonny Bond, Cindy Bond, Jennifer Borrer, Gonzalo Caballero, John A. Calderon, Maria Calderon, Benito E. Carrillo, Carlos M. Carrillo, Teresa Carillo, Belinda P. Castro, Danny Castro, Melissa Castro, Teodoro Castro, Margaret Durant, Brenda Elizondo, Gino Elizondo, Belen V. Galva, n Luis R. Garcia, Alex Gaza, Juan Gonzalez, William M. Gwynn, Charlie B. Jones, Russell Jungmann, James Klein , Elwood Knetig, Dewey Lawhon, Elibardo Leal, Maria

N. Leal, Danny Mallett, Rick Mallett, Grace Martinez, Joe Martinez, Morris Michalk, Johnny Moffett, Maria N. Leal, Lionel Lopez, Morris Michalk, Carolyn Moon, Emilie J. Olivares, Melton Perez, Alex C. Rubio, Diane Rubio, Marie P. Sanders, Marolyn Schneider, William R. Schneider, Hal Suter, Pat Suter, Wanza Treybig, Chrissy Tamez, Wanza Treybig, Doug Wilson, Gavino D. Ybarra, and Monica Ybarra recommended denial of the Application.

Response 22:

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 or if the applicant has a poor compliance history in accordance with Texas Water Code § 5.754(i) and 30 TAC, Chapter 60. The executive director has made a preliminary decision that the application complies with TCEQ rules. However, because this application is contested the TCEQ Commissioners have the ultimate authority to determine whether the application should be granted or denied.

N. Requests for Contested Case Hearing

Comment 23:

Clean Economy Coalition, Kenneth Ahlrich, Virginia Ahlrich, Jennifer Borrer, Dale Brynestad, Gonzalo Caballero, John A. Calderon, Maria Calderon, Belinda P. Castro, Danny Castro, Melissa Castro, Teodoro Castro, Luis R. Garcia, Alex Gaza, William M. Gwynn, Charlie B. Jones, Russell Jungmann, Dewey Lawhon, Elibardo Leal, Maria N. Leal, Grace Martinez, Joe Martinez, Morris Michalk, Johnny Moffett, Melton Perez, Diane Rubio, Marie P. Sanders, Marolyn Schneider, William R. Schneider, Chrissy Tamez, Wanza Treybig, Gavino D. Ybarra, and Monica Ybarra requested that a contested case hearing be held to consider the Application. Hal Suter commented that the financial cost to individuals of participating in a contested case hearing is prohibitive.

Response 23: The commission will consider all timely filed requests for a contested case hearing in accordance with 30 TAC §§55.200 through 55.206. The requests for a contested case hearing filed by the persons listed under Comment 23 were filed prior to the filing deadline and therefore, are considered to be timely filed requests. TCEQ promulgated rules regarding public participation in the environmental permitting process in accordance with Texas Water Code §§ 5.551 through 5.557. The State Office of Administrative Hearings conducts contested case hearings on TCEQ environmental permit applications in accordance with TCEQ rules, SOAH rules, the Texas Rules of Civil Procedure and state law.

III. Changes Made to the Draft Permit in Response to Comments

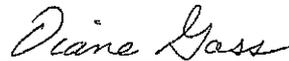
No changes were made to the Draft Permit in response to public comments received.

Respectfully submitted,

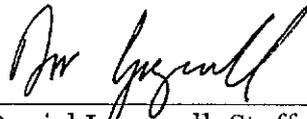
Texas Commission on Environmental Quality

Zak Covar,
Executive Director

Robert Martinez, Director
Environmental Law Division



Diane Goss, Staff Attorney
Environmental Law Division
State Bar No. 24050678
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-5731
Fax: (512) 239-0606



Daniel Ingersoll, Staff Attorney
Environmental Law Division
State Bar No. 24062794
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-3668
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

Certificate of Service

I certify that on August 31, 2012 the "Executive Director's Response to Public Comment" for Permit No. 50052 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Diane Goss

Diane Goss, Staff Attorney
Environmental Law Division
State Bar No. 24050678
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-5731
Fax: (512) 239-0606