

CONCERNED CITIZENS FOR SAFETY, HEALTH AND JUSTICE
Precinct 4, Brazos County Texas
9411 Twelve Oaks Lane
College Station, TX 77845

January 16, 2013

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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERK'S OFFICE

RE: Docket No. 2012-2222-MSW
Permit Application No. 2376
RN Number 105669931
Brazos Valley Disposal Facility

We received your memorandum of **December 19, 2012**, regarding the referenced application, our Request for Reconsideration and Request for Contested Case Hearing, and notice of the meeting of the Commissioners of the TCEQ Commission on **January 30, 2013**. We have subsequently this past week received copies of the formal written responses to our Request from the Applicant, the Executive Director of TCEQ and the Public Interest Counsel of TCEQ submitted **January 4, 2013**. Your memorandum stated that we have the right and opportunity to file a formal written reply to these three (3) responses on or before **January 18, 2013**. In accordance with Commission rules and your memorandum, we respectfully submit this formal written reply.

Based upon the recommendations in the **January 4, 2013**, responses of both the Executive Director and the Public Interest Counsel of TCEQ and confidence in our **October 22, 2012**, factual Request submission for "Affected Persons" of the Concerned Citizens for Safety, Health and Justice for Case Hearing, we are proceeding to properly with legal and expert counsel prepare for a Case Hearing with a hearing duration of nine (9) months. We noted that our Request for Reconsideration was not recommended by either party, but we are more than pleased that a Case Hearing has been recommended to the Commission for approval. We totally concur. The "Affected Persons" of CSHJ who live in the Brushy Community are also working with the NAACP state and national offices on the clear and evident Environmental Justice violations of this Application and how this community has been singled out for the site of this Application. They are considering potential legal action if acceptable resolutions are not achieved in the upcoming proceedings.

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Mr. Kyle Lucas of the TCEQ Alternative Dispute Resolution Section has communicated with us that mediation may be available in advance of the Case Hearing. At a called meeting of the CCSHJ on **January 15, 2013**, we agreed to consider mediation provided that a Case Hearing is approved by the Commissioners on **January 30, 2013**, and that we are provided the time to prepare for such mediation. We request that any mediation be held in our local area and in the month of late February or March, 2013. We are formulating issues for mediation, retaining legal and expert counsel and stand strong and united together on the parameters of the critical issues for any potential mediation. We may be willing to mediate in good faith with the sincere hope and intent for success provided the Applicant will do the same, respect us, his neighbors, and make concessions that will protect our health, safety, traffic issues and land use compatibility, and preclude negative visual impact and environmental justice. While we understand and appreciate that a successful mediation would save all entities considerable time and significant money, we are preparing to move forward to a Case Hearing if necessary and in our best interest. If we do go to mediation, our goal will be to work with the Applicant to achieve an acceptable **“win-win”** resolution for our citizens and his business. Most of the major health (airborne particulate matter, surface and ground water, noise pollution), safety and traffic, environmental justice and severe negative visual impact issues could be reduced through mediation by **greatly lowering** the 111 feet height of the landfill to an acceptable level on such a small footprint and by construction of a new and separate paved road entrance from Hwy. 60 to the facility. There are several other important mediation issues, but these two are the most relevant and material to the resident members of CCSHJ. These will not be compromised outside our acceptable parameters with which we hope the Applicant would agree to also be in his best interest and business future.

After reviewing the responses and recommendations for a Case Hearing from the Executive Director and the Public Interest Counsel of the TCEQ, we had minimal concerns and would have made a brief reply, mainly on a few of the responses of the Executive Director. However, the response from the Applicant could not go unchallenged and is contradictory, misleading, nonfactual and almost insulting to both the TCEQ and resident members of CCSHJ. This is not a real surprise to us, but the tactics and statements even question our integrity, citizenship rights and factual submission of Request to the TCEQ. We carefully presented a **“factual basis”** for each point in our Request. We are pleased and honored that the Executive Director and the Public Interest Counsel correctly applied the TCEQ requirements under 30 TAC 55.103 and 55.203 for **“Affected Persons”** and the

CCSHJ as was clearly stated in our Request of October 22, 2012. The Applicant contradicted this correct conclusion and attempted to discredit our responsible citizenship and rights as we do have *“personal justiciable reasons related to legal, duty, privilege, power or economic interest affected by the application”* according to TCEQ requirements. The Executive Director and Public Interest Counsel correctly stated that we have demonstrated personal justiciable interest in the Application. We fully agree, with the statement by both the ED and OPIC that an *“affected person may be adversely affected by the proposed facility or activity not common to members of the general public.”* Members of CCSHJ clearly qualify under these TCEQ rules and requirements.

The Applicant responded that seven (7) issues raised by CCSHJ failed to comply with TCEQ requirements and that the issues were not relevant and material to the Commission. Contrary to the Applicant’s response, these issues are clearly relevant and material to the Commission, the State of Texas, Brazos County, City of College Station and the hundreds of CCSHJ citizens who have resided in homes they have built and paid for with life savings and investments, gone to church and raised their families for years and years in the affected and impacted area of the proposed site for this facility. The Application site is not in a remote rural area, but in the middle of hundreds of residents in beautiful rural subdivisions as documented in our Request of October 22, 2012. We may not have a hospital or public school, but we do have hundreds of residents, three churches, two cemeteries and a day care center school which deserve full consideration; much more than has been given to this point. We have lived here for years before the landfill Application was even given thought or consideration. The Brushy Community is over **one hundred (100) years** old and a historic landmark and heritage of Brazos County, the State of Texas and the United States.

One significant point in the Applicant’s response is the statement that the application is for a municipal solid waste permit and not for an air permit. We agree and have no question about the type of permit being requested and never suggested that it was an air permit. We fully understand the Class 4 permit and that the application allows for some Class 2 and Class 3 industrial solid waste and hazardous industrial waste. Our factual submission concerned the health hazards and existing health issues among residents from the release of airborne particulate matter from these Class 2, 3 and 4 waste materials during the operations of the facility and its close location adjacent to the many residents and citizens who already suffer from airborne releases of the current recycling operations by the same

owner as the Applicant. The dust and airborne particulate matter release will be a much larger health risk both from these operations and the increase in truck traffic of up to 196 additional trucks per day carrying the potential of 200 tons of materials each day as stated in the Application. This is an issue of substance and danger which is real, relevant and material and cannot be written off as the Applicant suggests. The cumulative health hazards and impact of adding this proposed facility to the existing recycling operation and the adjacent road materials facilities would be unacceptable in any community and would exacerbate the documented existing **184% above national average** air particulate levels in our living area. If the height is allowed to reach the proposed 111 feet above grade level, the airborne particulate matter health issue would become exponentially greater to even a larger population and much wider reach to the area around the site.

As pointed out in our Request of October 22, 2013, the excessive height and slope will result in increased health, noise pollution, traffic, surface and water well contamination, soil erosion and negative visual impact issues. It is still incomprehensible that the Application calls for an 11 story or 111 feet above grade level landfill on only 32 acres of a 42 acre total site. Experts confirm to us that this is not even realistic and poses unacceptable health and water hazards and an unrestrained negative visual impact for a significant distance. The water runoff and erosion from such a steep and high landfill cannot be properly contained and the clay liner in the base will most likely be penetrated in time due to the height, soil erosion and the documented unstable soil types in the site location. We have obtained comparative data from two of our local landfills to find that the old Rock Prairie landfill in the College Station area was permitted for only 78 feet on more than 100 acres footprint. The new and exemplary Twin Oaks Landfill Facility developed with a Franchise Agreement between the cities of Bryan and College Station is permitted for a height of 186 feet on more than 200 acres footprint of a more than 600 acre site. It can and will be shielded to avoid a negative visual impact, unlike this proposed site. The Applicant's facility is only 1,300 feet from Hwy. 60, a major four-lane transportation artery into the City of College Station the Biomedical Corridor and Texas A&M University, only 1.7 miles from the current and expanding city limits of College Station and inside the College Station ETJ.

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At the permit application height of 111 feet, this facility is a health, safety, water and noise pollution hazard; cannot meet land compatibility use; and cannot be shielded or screened to prevent a horrendous negative visual impact. The Applicant stated that this is not relevant or material to the Commission. How can it not be? We strongly disagree and presented the factual basis in our Request and in this reply. Hwy. 60 carries more traffic (over 9,700 vehicles per day as per the Application in 2012 and probably more than 10,000 in 2013) than many state and federal highways and is a major transportation link between College Station and Austin/San Antonio and many other cities to the West. To say that this facility will not have a major negative visual impact has no credibility and anyone driving Hwy. 60 or living in our community would be distracted by a 111 feet landfill so close to the highway and our homes. Our total living environment would forever be changed for the worse. Furthermore, the negative visual impact was a major issue with the Brazos County Council of Governments and its Solid Waste Advisory Committee. This very important local agency unanimously voted against approval of the Application permit and for good sound and technical reasons which still exist and have not been remediated, nor can be without significant technical modifications to lower the unacceptable height.

The Applicant stated, and the Executive Director agreed, that the Transportation and Access issues submitted in the CCSHJ Request were based on incorrect assumptions and that the facility will reduce heavy truck traffic. This statement is illogical when closely evaluated and is inconsistent with original Application as filed. The Application clearly states that this facility, quote: ***“will increase the heavy truck traffic an additional 196 vehicles and 200 tons of materials each day by year seven (7).”*** If the landfill is not approved and not available for disposal of these materials, then the increased heavy truck traffic does not occur and goes away. Most of the disposal materials will probably not even be received at the adjacent recycling facility. All municipal waste material from either the City of College Station or the City of Bryan is required by law of the Franchise Ordinance signed by both cities to be disposed in their Twin Oaks Landfill. Most of this material would not see a recycling operation until the Twin Oaks Facility opens its proposed recycling operation. It would be much more economical for most contractors to take municipal solid waste directly to the Twin Oaks Facility. Is an additional facility in our area even needed?

The question has yet to be answered to the CASHJ of where the Applicant expects to receive adequate municipal waste landfill materials to even come close to justifying the costs of application and development of the facility. When the two cities of Bryan and College Station are removed as sources of this waste material due to their Franchise Ordinance, the only two entities left in the local area with any potential large scale municipal solid waste would be Brazos County and Texas A&M University. The only large potential source from these entities or even surrounding counties would be the demolition associated with the upcoming Kyle Field project. We are fully aware of the current recycling partnership between the Applicant and Texas A&M and we applaud the recycling operation. However, the call for an RFP process in the Kyle Field project, rather than the competitive bid process, for a construction project has led to many unanswered questions. If this proposed facility is to be the depository for the solid waste from this project, then several other more appropriate sites in rural and non-populated locations are readily available. These alternative sites would not pose the health, safety, traffic and environmental issues that this site will have on our beautiful and populated rural subdivisions and the Brushy Community residents.

There is only one paved major road into the Brushy Community of some 165 residents. Old Jones Road is named for the residents and citizens of this historic African American Community settled some one hundred (100) years ago. While Hwy. 60 may be able to accommodate this inordinate increase of 165 trucks per day, Old Jones Road cannot without safety risks that are unacceptable. These citizens at each meeting already express their fears and concerns about the current truck traffic, let alone any addition as proposed. This one road leads to their homes, their churches, and their cemeteries. It serves their daily travels in and out of the community. The increased traffic of 196 additional heavy trucks per day to the entrance of the recycling facility and the proposed landfill site will destroy their heritage, their way of life, and create the above mentioned unacceptable safety and health issues. This is a clear violation of their civil rights and constitutes an environmental injustice. Why should their African American minority community be singled out for the site of this facility? The reasons are obvious and constitute a serious discrimination. Neither the Applicant nor the Executive Director addressed this very important issue in their responses. However, we fully agree with the Public Interest Counsel that it is an issue that should be addressed in a Case Hearing. Or, it may best be addressed in the courts. The Applicant should have included in the Application a new and

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separate paved entrance to reduce this dangerous traffic and safety hazard of the additional 196 trucks per day and to protect the environment and integrity of the Brushy Community and its residents.

The Applicant claims that CCSHJ did not allege that the proposed facility is not consistent or not in compliance with the Regional Solid Waste Plan of the Brazos Valley Council of Governments and its Solid Waste Advisory Committee. We strongly disagree and even documented our allegation by submitting the Council's letter of January 20, 2012, to TCEQ recommending and stating its **unanimous decision** to not grant approval of the Applicant's permit because it was not in compliance with the BVCOG Regional Solid Waste Plan. We believe that the Commission will agree that this allegation was made in our submission and what more can be stated than the clear and unambiguous statements in the Council's letter? To our knowledge and communication with the Council, the Applicant never came back to the Council to present data addressing the two major objections of non-compliance raised in the Council's letter of January 20, 2012. A copy of this letter is available for the Commission as submitted in the CCSHJ's Request to TCEQ. Both the Executive Director and the Public Interest Counsel of TCEQ stated in their responses that CCSHJ raised this important issue and that it should go to Case Hearing. CCHSJ also contends that local governments should still have rights for its citizens and businesses provided they do not conflict with state or federal law. The problems in this Application should have been resolved at the local governing body level before being forwarded to TCEQ. However, the issues could not be brought into compliance as submitted; specifically the excess height and negative visual impact. The Applicant ignored the Council and went directly to TCEQ which shows a lack of good citizenship that responsible businesses should demonstrate in the community in which they operate.

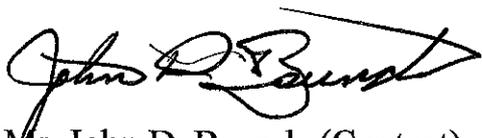
We appreciate the Executive Director's decision that CCSHJ is an "Affected Person," and we agree with the seven (7) still disputed issues identified in his written responses of January 4, 2013, to go to the Case Hearing. We believe that we fully addressed these issues in this document and in our Request of October 22, 2012, and will not comment further. We do ask that the additional issues recommended for Case Hearing by the Public Interest Counsel be included on the agenda for the Hearing.

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We will not comment further on the thirteen (13) issues recommended for Case Hearing by the Public Interest Counsel as they are clearly documented in our Request and in this reply to TCEQ. We are in agreement and firmly believe that a statement in the Public Interest Counsel's response is most pertinent: ***“Based on the factors in 30 TAC 55.203 (c), OPIC concludes CCSHJ is an affected person. CCSHJ raises issues that are protected by the Solid Waste Disposal Act, Title 5, Texas Health and Safety Code (THSC), Chapter 361 and the TCEQ’s municipal solid waste rules at 30 TAC, Chapter 330. The close proximity of property owned by the members of the association and the proposed landfill makes it likely the regulated activity could impact the health and safety of CCSHJ’s members and surrounding natural resources. There are no distance limitations for affected persons in the law applicable to this application. Accordingly, CCSHJ is an affected person.”*** This same section of the response by the Public Interest Counsel goes on to list thirteen (13) issues for the Hearing Request and we fully agree and concur with all of these and submit them to the Commission. The Public Interest Counsel further stated in support of a Case Hearing, ***“Accordingly, all the issues raised by CCHSJ are relevant and material to the Commission’s decision on the application.”***

Therefore, the affected persons and members of the Concerned Citizens for Safety, Health and Justice agree with both the Executive Director and the Public Interest Counsel to ***“respectfully recommend approval by the Commission of a Case Hearing with the duration of nine (9) months on the subject Application for Permit.”*** We will have representatives at the Commission Meeting on January 30, 2013, and await the decision of the Commissioners.

Respectfully submitted as members and “affected persons” of CCSHJ,



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