

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

September 24, 2012

TO: Persons on the attached mailing list.

RE: CCAA, LLC
Permit No. 2376

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 Larry J. Ringer Public Library, 1818 Harvey Mitchell Parkway South, College Station.

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
CCAA, LLC
Permit No. 2376

FOR THE APPLICANT:

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INTERESTED PERSONS:

See attached list.

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via electronic mail:

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COLLEGE STATION TX 77845-9046

BUTLER , DOROTHY
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BRYAN TX 77802-3655

CIGAR , TAMIA
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CLARK , CATHERINE & PATRICIA
6165 BARNWOOD DR
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COLE , TRACY
7684 RAYMOND STOTZER PKWY
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CONCERNED CITIZEN ,
9940 WHITES CREEK RD
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CONCERNED CITIZEN ,
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CONCERNED CITIZEN ,
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COLLEGE STATION TX 77845-7585

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COLLEGE STATION TX 77840-6913

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1600 LIVE OAK ST
BRYAN TX 77803-5508

CONCERNED CITIZEN ,
107 SOUTHLAND ST
COLLEGE STATION TX 77840-4221

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WALLER TX 77484-5340

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CONCERNED CITIZEN ,
6939 RAYMOND STOTZER PKWY
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CONCERNED CITIZEN ,
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CONCERNED CITIZEN ,
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EGGER , MARILYN
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ELLIS , JOHNNY
7517 RAYMOND STOTZER PKWY
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ELLIS JR , JOHNNY
7430 RAYMOND STOTZER PKWY
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GREGG , GORDON & LANELL
6255 LOS ROBLES DR
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GROFF , WALLY
8202 MCALLESTER LN
COLLEGE STATION TX 77845-7570

HAJASH , ANDREW
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HAJASH , DONNA
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HALL , CHAS & DIANA
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HOLLAND , HAZEL
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PETERSON, DEBORAH
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6721 RAYMOND STOTZER PKWY
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ROGERS , LUCRETIA
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COLLEGE STATION TX 77845-7586

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COLLEGE STATION TX 77845-7586

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ROWAN , LORNA
9273 LIGHTSEY LN
COLLEGE STATION TX 77845-6701

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SCHUESSLER , ZOHREH
10292 RIVER RD
COLLEGE STATION TX 77845-6714

SCOTT , CLARA
8706 DOTT
COLLEGE STATION TX 77845-7591

SHEFFIELD , WILLIAM
10501 DOGWOOD TRL
COLLEGE STATION TX 77845-6745

SIMPSON , DAVID & DELOISE
8801 SMITH LN
COLLEGE STATION TX 77845-7553

SIMPSON , FRANK
PO BOX 9960
COLLEGE STATION TX 77842-7960

SIMPSON , RUBY L
8793 SMITH LN
COLLEGE STATION TX 77845-7551

SIMPSON , SIDNEY
6360 RAYMOND STOTZER PKWY
COLLEGE STATION TX 77845-7560

SMITH , L
1113 GROESBECK ST
BRYAN TX 77803-3821

SOCOL , KARA
300 HENSEL AVE
BRYAN TX 77801-4557

SOLYMOSEY , ED & ELLEN
10150 DOGWOOD TRL
COLLEGE STATION TX 77845-6740

SPIVEY IV , WILBON
1107 SOUTHWEST PKWY
COLLEGE STATION TX 77840-4848

SPRIGGS , JAMES
7097 RAYMOND STOTZER PKWY
COLLEGE STATION TX 77845-9064

SPRIGGS , MARILYN
7097 RAYMOND STOTZER PKWY
COLLEGE STATION TX 77845-9064

STASNY , DAVID
7932 DRUMMER CIR
COLLEGE STATION TX 77845-8087

STOVALL , JEVALEN
8735 TYREE
COLLEGE STATION TX 77845-7586

STOWELL , JANE
9159 LIGHTSEY LN
COLLEGE STATION TX 77845-9098

SUROVIK , JESSE
6030 J C LONG DR
BRYAN TX 77807-5449

TAYLOR JR , CHARLES
8531 FOSTER LN
COLLEGE STATION TX 77845-9003

TAYLOR , CHARLES
8531 FOSTER LN
COLLEGE STATION TX 77845-9003

TAYLOR , CHERYL
5420 WALNUT GROVE DR
AUSTIN TX 78744-4612

TAYLOR , DAVID & DORIS
906 HENDERSON ST
BRYAN TX 77803-6825

TAYLOR , DORIS
906 HENDERSON ST
BRYAN TX 77803-6825

TAYLOR , MARY FRANCE
8912 VINCENT RD
COLLEGE STATION TX 77845-9053

TEEL , KATHY
9724 RIVER RD
COLLEGE STATION TX 77845-6708

TERRELL , LESLIE
5597 LISTER LN
COLLEGE STATION TX 77845-6789

THORNTON , MS CASSANDRA
8551 MCALLESTER LN
COLLEGE STATION TX 77845-8527

THORNTON , DOUGLAS
117 KARTEN LN
COLLEGE STATION TX 77845-3958

TORBETT , ANN
8593 SMITH LN
COLLEGE STATION TX 77845-7549

TUSSEY , DONALD
4654 BURT RD
BRYAN TX 77807-6464

WADE II , CEDRICK
8735 TYREE
COLLEGE STATION TX 77845-7586

WADE , DUSTIN
3601 VIENNA DR
COLLEGE STATION TX 77845-4771

WADE , JAIDAH
8735 TYREE
COLLEGE STATION TX 77845-7586

WADE , JAMESHIA
8735 TYREE
COLLEGE STATION TX 77845-7586

WADE JR , RAY C
8735 TYREE
COLLEGE STATION TX 77845-7586

WALKER , ROBERT
4601 BLUEJAY LN
BRYAN TX 77803-0459

WALKUP , DAVID S
1211 NORFOLK CT
COLLEGE STATION TX 77845-8633

WARD , JAMY
8764 VINCENT RD
COLLEGE STATION TX 77845-9045

WASHINGTON , WILLIE
8751 RICKEY
COLLEGE STATION TX 77845-7594

WEICHERT , ANDREW
6267 LOS ROBLES DR
COLLEGE STATION TX 77845-6103

WEIR , VICKI
5650 RAYMOND STOTZER PKWY
COLLEGE STATION TX 77845-8057

WENDLER , KATY
6371 BARNWOOD DR
COLLEGE STATION TX 77845-9501

WENDLER , WALT
6371 BARNWOOD DR
COLLEGE STATION TX 77845-9501

WHITE , CLAUDE
10415 RIVER RD
COLLEGE STATION TX 77845-6719

WIESE , MATTHEW
801 CRENSHAW ST
BRYAN TX 77803-4968

WILE , DEAN
8622 SMITH LN
COLLEGE STATION TX 77845-4997

WILEY , OZELL
7047 RAYMOND STOTZER PKWY
COLLEGE STATION TX 77845-9064

WILKES , LAMBERT & STELLA
9552 RIVER RD
COLLEGE STATION TX 77845-6764

WILLIAMS , ETTA R
8890 VINCENT RD
COLLEGE STATION TX 77845-9047

WILLIAMS , ETTA RUTH
8990 VINCENT RD
COLLEGE STATION TX 77845-9053

WILLIAMS , MARTHA A
8693 JONES RD
COLLEGE STATION TX 77845-8072

WILSON JR , BENNIE
8150 JONES RD
COLLEGE STATION TX 77845-8067

WILSON , HUGH
10642 DOGWOOD TRL
COLLEGE STATION TX 77845-6746

WILSON , ROSLYN
3809 ELAINE DR
BRYAN TX 77808-1326

WINSHIP , TOM
7601 JONES RD
COLLEGE STATION TX 77845-8064

WOOD , ARLENE B
9500 DEW RD
COLLEGE STATION TX 77845-6754

WOOD , RANDALL
9500 DEW RD
COLLEGE STATION TX 77845-6754

YOUNG , BEVERLY
7701 JONES RD
COLLEGE STATION TX 77845-8076

ZATOPEK , DONNA
2101 PANTERA DR
BRYAN TX 77807-2604

TCEQ PERMIT APPLICATION NO. 2376

**APPLICATION BY
CCAA, LLC
FOR PERMIT NO. 2376**

§
§
§

**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 CCAA, LLC (Applicant), for Municipal Solid Waste (MSW) Permit Number 2376 and on the Executive Directors Preliminary Decision. As required by 30 Texas Administrative Code (TAC) Section (§)55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely comment letters from Ed Bounds, Robert Jones, Aaron and Patricia Price, Cassandra Thornton, and Brazos Valley Council of Governments (BVCOG) Manager of Solid Waste Planning Candilyn McLean.

The Office of the Chief Clerk received timely, oral comments from Brazos County Precinct #4 Commissioner Irma Cauley, John Bounds, Marilyn Egger, Wally Groff, Eddie Hare, Jim Jett, Robert Jones, and Cullin Mancuso at the public meeting held on July 19, 2012. The Office of the Chief Clerk received timely, written comments from Brazos County Precinct #4 Commissioner Irma Cauley, Bob Brick, John Bounds, Edward Rhodes, and Cassandra Thornton at the public meeting held on July 19, 2012.

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

2012 SEP 17 PM 3:03
CHIEF CLERK'S OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

I. Background

A. Description of Facility

The Brazos Valley Disposal Facility is proposed to be located on 42.24 acres of land of which approximately 31.88 acres will be used for waste disposal. The facility would be located in Brazos County, approximately 1,300 feet northwest of the intersection of Stewarts Meadow and FM 60 (Raymond Stotzer Parkway) within the extraterritorial jurisdiction of the City of College Station. The facility is a Type IV municipal solid waste disposal facility. The proposed permit would establish operating and waste acceptance hours from 7:00 am to 7:00 pm, Monday through Friday, and 7:00 am to 2:00 pm on Saturday. The facility would be closed on Sundays. The Applicant would be allowed to dispose of brush, construction or demolition waste, rubbish, inert material as defined in 30 TAC §330.3(67), Class 3 non-hazardous industrial solid waste, and non-regulated asbestos-containing materials. Class 2 non-hazardous industrial solid waste may be accepted to the extent that they comply with the limitations in 30 TAC §330.5(a)(2). The Applicant would not be authorized to accept hazardous waste, Class 1 non-hazardous industrial solid waste, regulated asbestos-containing materials, household waste, putrescible waste, liquid waste, special waste, or any other prohibited waste as listed in Part IV, Section 4.2.1 of the Application.

B. Procedural Background

The Application was submitted on June 3, 2011, and declared administratively complete on June 15, 2011. The Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit was published on July 8, 2011 in the *Bryan Eagle*, and in Spanish on July 8, 2011 in the *La Voz Hispana*. The ED completed the technical review of the Application on April 2, 2012, and prepared a draft permit. The Notice of Application and Preliminary Decision for Municipal Solid Waste Permit Application was published on May 11, 2012 in the *Bryan Eagle*, and in Spanish on May 11, 2012 in the *La Voz Hispana*. The Notice of Public Meeting was published on June 27, 2012; July 3,

2012; and July 10, 2012 in the *Bryan Eagle*. A public meeting was held on July 19, 2012 at the Brazos County Expo Complex, 5827 Leonard Road, Bryan, Texas. The comment period for this Application closed on July 19, 2012. This Application was administratively complete on or after September 1, 1999; therefore, this Application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

II. Comments and Responses

Comments of general support for the proposed facility were provided by Marilyn Egger, Wally Groff, Eddie Hare, Jim Jett, Robert Jones, Cullin Mancuso, and Edward Rhodes. Robert Jones and Cassandra Thornton withdrew comments opposing the Application as will be noted in detail below.

Comment 1 (Human Health and the Environment):

Ed Bounds, John Bounds, and Irma Cauley expressed general concerns that the proposed facility would adversely affect human health and the environment.

Response 1:

The Executive Director reviewed the Application for compliance with MSW rules which were developed to protect human health and the environment. If the proposed landfill is constructed and operated as shown in the Application and as required by the rules, the Executive Director expects human health and the environment to be protected.

Comment 2 (Air Emissions and Asbestos):

Ed Bounds stated concerns over air emissions from the proposed facility, particularly from asbestos-containing materials.

Response 2:

The Executive Director has received no information that shows that the proposed facility presents a threat to human health or the environment due to air emissions. With specific consideration of asbestos-containing materials, please note that as a Type IV landfill, the facility would be prohibited from accepting regulated asbestos-containing materials (RACM). The facility would be allowed to accept non-RACM. While RACM is asbestos-containing material that is friable or has a high probability of becoming friable, 30 TAC §330.3(126), and therefore airborne, non-RACM is not. Non-RACM may only be accepted if the waste is managed in a manner that will not cause the material to be crumbled into a friable state. *See* 30 TAC §330.171(c)(4). The Applicant has agreed to this condition in Part IV, Section 4.24 of the Application.

Comment 3 (Height and Proximity to Airport):

John Bounds, Irma Cauley, and Aaron and Patricia Price stated that the height of the proposed landfill is excessive and could pose a danger to Easterwood Field Airport. Bob Brick suggested that the fill material be used to fill in the current pit to pre-existing natural grades and then the property be used for some purpose other than above-grade waste. Edward Rhodes, supporting the Application, commented that Kyle Field, the Oceanography Building, and numerous construction cranes are all as close or closer to the airport than the proposed landfill and that these structures pose no threat.

Response 3:

Neither the Texas Solid Waste Disposal Act (TSWDA) nor the TCEQ's rules provide a specific limit on the height of a landfill. Height is limited indirectly by the geometry of the waste footprint and allowable side slopes of the landfill unit. If the proposed landfill is constructed and operated as shown in the Application and as required by regulation, including providing proper compaction of waste and cover and meeting allowable sideslopes, the Executive Director expects current technology to be more than adequate to operate the facility at the proposed height. Above-grade waste disposal is typical for landfills in Texas and is allowed under Chapter 330. Some above-

grade development is needed at most landfills to ensure proper drainage and to prevent water from ponding over waste.

The Federal Aviation Administration (FAA) was contacted regarding the proposed facility in accordance with 30 TAC §330.61(i)(5). The FAA responded that they had no objection to the proposed facility. This correspondence is provided in Parts I/II, Appendix A-3 of the Application. The information submitted does not support a finding that the landfill would pose a hazard to aircraft.

Comment 4 (Property Values):

Ed Bounds, John Bounds, and Cassandra Thornton commented that the proposed facility would adversely affect property values. Ms. Thornton subsequently withdrew her comment.

Response 4:

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

Comment 5 (Traffic):

Irma Cauley indicated that the roads to be used by the facility are not adequate for the traffic expected at the proposed facility. Robert Jones commented that the proposed facility should be prohibited from using Lacy Well Road, which runs adjacent to the facility. Mr. Jones subsequently withdrew his comment. Edward Rhodes,

supporting the application, stated that the only waste to be disposed at the proposed landfill would be from the adjacent recycling facility and that the landfill would actually reduce traffic, as these materials that could not be recycled would be taken to the landfill next to the recycling facility rather than to some other authorized facility that would not be adjacent to the recycling facility.

Response 5:

In Parts I/II, Section 3.2 and Parts I/II, Appendix A-4, the Applicant has provided information required by 30 TAC §330.61(i), which considers the availability and adequacy of roads that the facility will use; volumes of vehicular traffic on roads within one mile of the facility, both existing and expected; projected volumes of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility; and, documentation of coordination of all designs of proposed public roadway improvements.

The Executive Director agrees with the observations provided by Mr. Rhodes that the traffic information provided in the Application is essentially associated with the existing recycling facility located next door to the proposed landfill. The Applicant presented traffic data related to the facility to the Texas Department of Transportation (TxDOT). This coordination with TxDOT is required by 30 TAC §§ 330.23(a) and 330.61(i)(4). TxDOT responded that they did not foresee issues with facility traffic. This correspondence is provided in Parts I/II, Appendix A-4 of the Application. The information provided supports a finding that existing roads are adequate to accommodate traffic from the facility.

Comment 6 (Surface Water):

John Bounds and Irma Cauley shared concerns about the possible detrimental effect that the proposed facility could have on surface water.

Response 6:

In accordance with 30 TAC § 330.15(h), a facility may not discharge solid waste or pollutants that are in violation of Texas Water Code, § 26.121 into or adjacent to waters in the state. Rules 30 TAC §§ 330.305(g) and 330.207 require that contaminated water, including leachate, condensate and water that has contacted waste, be collected, contained, properly managed and disposed in a manner that does not cause surface or groundwater pollution. Off-site discharge of contaminated water from an MSW landfill facility is prohibited without prior authorization in accordance with 30 TAC §330.207(e). These requirements are addressed in Part III, Attachment 3, Section 6.0 of the Application.

TCEQ rules regulating surface water drainage at MSW landfills are found in 30 TAC Chapter 330, Subchapter G. The Application addresses erosion control in a drainage report provided in Part III, Attachment 2, Section 4.0. The drainage report describes proposed drainage features, including drainage channels, perimeter channels, letdown structures, containment berms, and detention ponds designed to control drainage within the facility. The Executive Director has reviewed the Application and determined that the submissions regarding facility design and operation satisfy the rule requirements regarding surface water quality protection.

Surface water issues related to the floodplain will be discussed in greater detail below.

Comment 7 (Groundwater):

John Bounds shared his concern that the proposed facility could have a detrimental effect on groundwater.

Response 7:

The landfill will be constructed with a three-foot-thick clay layer overlain by one foot of protective cover soil in accordance with 30 TAC §330.331(d) to protect groundwater. In addition to the liner, the landfill is designed to include a groundwater

monitoring system around the landfill to detect groundwater contamination from the landfill. Background groundwater sampling for the new wells will be conducted quarterly (3-month intervals) for one year for a total of four independent sampling events. After background sampling is completed, the detection monitoring program will consist of groundwater sampling on an annual basis. If the landfill were to contaminate groundwater, the Applicant would be required to take the appropriate corrective action. The proposed liner and groundwater monitoring system comply with the applicable requirements in 30 TAC Chapter 330.

Comment 8 (Land Use Compatibility):

John Bounds and Bob Brick stated concerns that the proposed facility would adversely affect community development. Irma Cauley and Bob Brick noted the proximity of the proposed facility to an area in College Station being developed as a “Biomedical Corridor.” Irma Cauley and Cassandra Thornton expressed concern that the proposed facility is not compatible with land uses in the surrounding area and that it should be located elsewhere. Ms. Thornton subsequently withdrew her comment.

Response 8:

The TCEQ does not have authority to require relocation of a proposed or existing municipal solid waste facility, but must assess any application against applicable rules. The TCEQ may deny an application based on a landfill posing an incompatible land use. *See* Tex. Health and Safety Code §§ 361.069 and 361.089(a). Rule 30 TAC §330.61(h) states that “A primary concern is that the use of any land for a municipal solid waste site not adversely impact human health or the environment.” To assist the Commission in determining potential adverse impact, the Applicant was required to submit information regarding: zoning at the site and within two miles of the proposed facility; character of surrounding land uses within one mile of the proposed facility; growth trends within five miles of the facility and directions of major development; proximity to residences and other uses, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; the

approximate number of residences and business establishments within one mile of the proposed facility and distances and directions to the nearest residences and businesses; and, a description and discussion of all known wells within 500 feet of the proposed site. The Applicant provided the required information in Parts I/II, Section 3.1. The information provided does not support a finding of incompatible land use to justify denying the Application.

Comment 9 (Regional Solid Waste Plan):

Candilyn McLean on behalf of the BVCOG indicated that the Application is not consistent with BVCOG's Regional Solid Waste Management Plan (RSWMP) because the proposed facility would be incompatible with the RSWMP's goals of "maintaining appropriate buffers and setbacks from sensitive land uses" and "minimizing the negative visual impacts."

Response 9:

The TCEQ is required to consider whether a landfill is compatible with an approved local and regional solid waste management plan. See Tex. Health and Safety Code §§361.062 and 363.066. The Applicant submitted documentation of coordination with BVCOG as required by 30 TAC §330.61(p). BVCOG submitted a letter dated January 20, 2012, which concluded that the Application is in non-conformance with BVCOG's RSWMP.

In this case, BVCOG has an approved RSWMP which includes, under Goal #2 to ensure the availability of proper and safe management of solid waste in the BVCOG region: Objective #2B to encourage the maintenance of appropriate buffers and setbacks from sensitive land uses for new MSW facilities; and, Objective #2C to encourage minimizing the negative visual impacts for new MSW facilities." The RSWMP does not define these areas that should be provided with buffers or define an appropriate distance for these buffers. Nor does it define negative visual impacts or how they should be avoided. BVCOG's determination of non-conformance is based on Objectives 2B and 2C.

Without specific criteria in the RSWMP, the Executive Director reverts to the requirements of 30 TAC Chapter 330 to evaluate these issues. In accordance with 30 TAC §330.543(b)(1), Type IV landfills must maintain a minimum separating distance of 50 feet between waste storage, processing, or disposal and the permit boundary. The Application demonstrates compliance with this requirement in Part IV, Section 4.9.2 and on site layout figures in the Application, such as Parts I/II, Figure 2-1-1. With regard to negative visual impacts, the Executive Director is authorized by 30 TAC §330.175 to require visual screening of deposited waste materials where necessary. The Executive Director has not been provided with information to justify requiring additional screening for this facility.

In addition to disagreeing with BVCOG's determination on these two specific objectives, the Executive Director determined that the Application is compatible with the RSWMP's Goal 2 to ensure the availability of proper and safe management of solid waste in the BVCOG Region. The information provided does not support a finding that the landfill would be incompatible with BVCOG's approved plan.

Comment 10 (Operating Hours):

Robert Jones commented that the proposed facility operating hours should be reduced from 24 hours per day, seven days per week to 7:00 am to 7:00 pm, Monday through Friday, and "half day (daytime) operations on one weekend day." Mr. Jones subsequently withdrew his comment.

Response 10:

The comment reflects operating hours proposed in the original Application submittal. During the review process the Applicant reduced its proposed operating (and waste acceptance) hours to 7:00 am to 7:00 pm, Monday through Friday, and 7:00 am to 2:00 pm Saturday. The facility would not be authorized to operate on Sundays. The information provided does not warrant any further restrictions on operating hours.

Comment 11 (Waste Processing):

Robert Jones expressed concern that processing of waste, such as screening, grinding and crushing, would cause loud noises and create dust. He requested that processing of waste be prohibited in the permit. Mr. Jones subsequently withdrew his comment.

Response 11:

The Application, which is part of the Draft Permit by reference, provides in Part III, Section 2.2 that waste processing will not occur within the proposed permit boundary.

Comment 12 (Class 2 and Class 3 Industrial Waste):

Robert Jones indicated his concern that some Class 2 and Class 3 waste would produce odors and requested that they be prohibited at the proposed facility. Mr. Jones subsequently withdrew his comment.

Response 12:

Rules 30 TAC §330.173(i) and (j) authorize Type IV landfills to accept Class 2 and Class 3 industrial waste. Class 3 industrial waste is essentially insoluble. As noted in 30 TAC §330.173(i), these facilities are only authorized to accept Class 2 industrial waste to the extent that it meets the restrictions for Type IV landfills under 30 TAC §330.5(a)(2), meaning that while it may come from an industrial source, it still must be brush, construction or demolition waste, or rubbish. Rubbish is defined under 30 TAC §330.3(130) to be nonputrescible solid waste.

As required under 30 TAC §330.149, an Odor Management Plan is provided in Part IV, Section 4.13 of the Application. The plan indicates that without putrescible waste or liquid waste, and with no composting operations, odor is not expected to be a significant issue. Ponded water, the only identified condition that could lead to odors at this facility, will be controlled as discussed in Part IV, Section 4.22 of the Application.

Should odors be identified, site personnel will respond by increasing weekly cover, reducing the size of the working face, or operating a misting system, as itemized in Part IV, Section 4.13.3.2. of the Application. The Executive Director does not anticipate odor issues related the types of waste that would be authorized at this facility.

Comment 13 (Combustible Waste):

Robert Jones noted that Part IV, Section 4.3.2.1 of the Application discusses how the facility will address loads of waste that are discovered to be on fire or smoldering. Mr. Jones inquired as to what wastes might catch on fire. Mr. Jones subsequently withdrew his comment.

Response 13:

Part IV, Section 4.3.2.1 of the Application is part of the Fire Protection Plan that is required of all MSW landfills. To address this requirement the Application is expected to include plans to address fires at the active face and on incoming loads. Type IV landfills are authorized to accept brush, wood, paper, and other potentially combustible materials. Should they be exposed to excessive heat or errant ignition sources, such as a lit cigarette butt in a construction rolloff box, combustion could occur. For these reasons Chapter 330 requires this information. The Fire Protection Plan submitted complies with 30 TAC §330.129 and includes adequate provisions for fire protection.

Comment 14 (Windblown Waste):

Robert Jones noted that Part IV, Section 4.8 of the Application discusses windblown waste. Mr. Jones inquired as to what wastes might blow away. Mr. Jones subsequently withdrew his comment.

Response 14:

Type IV landfills are authorized to accept rubbish, which includes paper, plastic, and other materials that may be light enough to become windblown. In accordance with

30 TAC §330.139, these materials must be controlled at the active face and where they have escaped these controls must be picked up at least once a day when the facility is operating. The Application addresses these requirements in Part IV, Section 4.8. The Application complies with the rules and is expected to provide adequate control of windblown waste.

Comment 15 (Floodplain):

Irma Cauley expressed concern that a portion of the property is located within the 100-year floodplain.

Response 15:

The Applicant provided a Federal Emergency Management Agency (FEMA) map in Parts I/II, Appendix B-2. This map was the most current when the Application was submitted. This map indicates that the floodplain does not extend into the permit boundary; however, the Executive Director noted that the illustrated floodplain is Zone A, indicating that the base flood elevations were not determined, but estimated. This estimated floodplain is illustrated about 75 feet east of the permit boundary.

The Executive Director was concerned that a small difference in the actual floodplain from the estimated floodplain could put the facility in the floodplain. The Applicant was asked to perform modeling to determine the actual floodplain in the vicinity of the proposed facility. This analysis is detailed in Part III, Appendix E of the Application. The calculated floodplain is provided as Figure 2 in Parts I/II, Appendix B-2 of the Application. The FEMA map and the Applicant's analysis adequately demonstrate that the landfill will not be located in the floodplain.

Comment 16 (Noise):

John Bounds shared concerns that the facility would create noise.

Response 16:

The TCEQ's rules do not include any specific limits on noise caused by a landfill. The reduced operating hours discussed in **Response 10** above is expected to reduce noise at night and on weekends.

Comment 17 (Dust):

John Bounds shared concerns that the facility would create dust.

Response 17:

Rule 30 TAC § 330.153(b) prohibits dust from on-site and off-site roadways that provide access to an MSW landfill from causing a nuisance to surrounding areas. It also requires a water source and necessary equipment, or other means of dust control approved by the Executive Director. Part IV, Section 4.15 of the Application indicates that all on-site access roads will be sprayed with water from a site water truck to control dust as needed, and if needed, commercial dust-control fluids may be used. The Executive Director has determined that the information submitted in the Application complies with the rules and will provide adequate dust control.

Comment 18 (Inadequate Notice):

John Bounds indicated that a second meeting should be held because many of his neighbors were not notified and should have the right to express their opinions.

Response 18:

Notice is required for MSW permit applications in accordance with 30 TAC Chapter 39, Subchapters H and I. These rules specify that notices of the receipt of an application and of a preliminary decision are made to, among others listed in 30 TAC §39.413, landowners named on the application map. Rule 30 TAC §330.59(c)(3)(A) limits this map to include land ownership within one quarter-mile of the proposed facility. While the Executive Director agrees that persons owning property beyond one

quarter-mile have the right to participate, mailed notice was provided as required by the rules. The Executive Director received a request from Mr. John Millhollon on August 21, 2012, requesting that TCEQ staff attend a community meeting on August 28, 2012. TCEQ permitting staff attended the community meeting, answered questions, confirmed that the formal comment period had closed on July 19, 2012, and provided information on how to participate in the ongoing permitting process. The Executive Director does not plan to schedule another public meeting for this Application.

Changes Made to the Draft Permit in Response to Comments

No changes were made to the Draft Permit to address these comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director

Robert Martinez, Director
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Certificate of Service

I certify that on September 19, 2012 the Executive Directors Response to Public Comments for Permit Application No. 2376 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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