

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 16, 2013

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

**RE: NORTH TEXAS MUNICIPAL WATER DISTRICT
TCEQ DOCKET NO. 2013-1406-MSW**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

DOCKET NO. 2013-1406-MSW

NORTH TEXAS MUNICIPAL	§	BEFORE THE
WATER DISTRICT	§	
LOOKOUT DRIVE TRANSFER	§	
STATION	§	TEXAS COMMISSION ON
MUNICIPAL SOLID WASTE	§	
PERMIT NO. 53A	§	
PROPOSED AMENDMENT	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to the hearing requests in the above-referenced matter.

I. Background

On October 26, 2011, North Texas Municipal Water District (Applicant) applied to the TCEQ to amend the permit for the Lookout Drive Transfer Station. The proposed amendment would authorize the construction of a new transfer station building to replace the existing building. The facility is located at 1601 E. Lookout Drive in Richardson, Collin County.

The application was declared administratively complete on November 15, 2011, and the first notice was published December 3, 2011 in the *Dallas Morning News*. Spanish language notice was published December 4, 2011 in *Al Dia*. On October 9, 2012, TCEQ held a public meeting in Plano.

The second notice was published January 12, 2013 in the same newspapers, and the public comment period closed February 11, 2013. The Executive Director's (ED) response to comments (RTC) was mailed June 18, 2013, and the deadline to request a hearing was July 18, 2013.

For the reasons stated herein, OPIC respectfully recommends the Commission grant the hearing requests received from the following people: Angie Baldwin, Jocelyn Bartz, Sherrill Bodie, Katherine Cargile, Megan Davis, John Demattia, Mike Frizzell, Connie Gibbons, Sue Gordon, John Harris, Mary Keene, Chris Klein, Gerald Long, Darren Mann, Amy Marcy, Jane Merz, Kurt Middelkoop, John Moisuk, Gay Riley, Carla Scalf, Curt Vanlandingham, and Joseph Wilaon.

II. Applicable Law

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under Title 30, Texas Administrative Code (TAC) § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely

affected by the proposed facility or activity in a manner not common to members of the general public;

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

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

III. Analysis of Hearing Requests

A. Whether the requestor is an affected person

Affected

The following people reside within a mile of the facility and have all raised personal justiciable interests: Angie Baldwin, Jocelyn Bartz, Sherrill Bodie, Katherine Cargile, Megan Davis, John Demattia, Mike Frizzell, Connie Gibbons, Sue Gordon, John Harris, Mary Keene, Chris Klein, Gerald Long, Darren Mann, Amy Marcy, Jane Merz, Kurt Middelkoop, John Moisuk, Gay Riley, Carla Scalf, Curt Vanlandingham, and Joseph Wilaon. In addition to residing within a mile of the facility, each of these hearing requestors has raised at least one concern which qualifies as a personal justiciable interest, and given their proximity to the facility, these requestors could be impacted

in a manner not common to members of the general public. Their concerns include: noise, health effects, land use compatibility, odor, adequacy of surrounding roads, vectors, windblown trash, and surface water quality.

Consideration of the § 55.203(c) affected person determination factors further indicates that the requestors listed above qualify as affected persons. First, the interests claimed are protected by the law under which this application will be considered. Second, a reasonable relationship exists between the interests claimed and the regulation of a municipal solid waste transfer station. Finally, the proximity of these requestors increases the likelihood of impacts on their health, safety, and use of property. OPIC finds that under § 55.203, each of the hearing requestors listed in this section qualifies as an affected person.

Not Affected

Certain requestors reside within a mile of the facility but have stated no personal justiciable interest. These requestors are Judy Baca, Robert Davis, Martin Parker, Sam and Sharon Ricks, and Phillip Rochelle. They all ask that a public hearing be held in Richardson but provide no information regarding their individual concerns. As required by § 55.201(d)(2), a hearing request must "identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining ... how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to

members of the general public” Without further information, OPIC must find that Judy Baca, Robert Davis, Martin Parker, Sam and Sharon Ricks, and Phillip Rochelle do not qualify as affected persons.

Withdrawn

Barbara Fullerton, Betty Groover, and Laurie Moore all submitted hearing requests in December 2011. All three requests were subsequently withdrawn by letters received by TCEQ at the October 9, 2012 public meeting. The letters state that these requestors intended to request a public meeting, not a hearing. Therefore, OPIC considers these three hearing requests to be withdrawn.

B. Which issues raised in the hearing requests are disputed

All of the issues raised in the hearing requests are disputed.

C. Whether the dispute involves questions of fact or of law

All of the disputed issues involve questions of fact.

D. Whether the issues were raised during the public comment period

All of the issues were raised during the public comment period.

E. Whether the hearing request is based on issues raised solely in a public comment which has been withdrawn

None of the hearing requests are based on issues raised solely in a public comment which has been withdrawn.

F. Whether the issues are relevant and material to the decision on the application

Noise

The hearing requestors have raised the issue of noise. TCEQ regulates noise from a transfer station under 30 TAC § 330.239. This issue is therefore relevant and material to the Commission's decision on the application.

Health Effects

The hearing requestors have raised the issue of impacts to human health. Under Texas Health and Safety Code § 361.002(a), the state safeguards health, welfare, and physical property, and protects the environment by controlling the management of solid waste. This issue is therefore relevant and material to the Commission's decision on the application.

Land Use

The hearing requestors question whether the transfer station is compatible with surrounding land uses. Under 30 TAC § 330.61(h), the Applicant must analyze the compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest. This issue is therefore relevant and material to the Commission's decision on the application.

Odor

The hearing requestors have raised the issue of odor. TCEQ regulates nuisance odors under § 330.245(d). This issue is therefore relevant and material to the Commission's decision on the application.

Adequacy of Surrounding Roads

The hearing requestors are concerned that roads surrounding the facility are not adequate to handle the volume of traffic, including trucks, associated with the facility. Under 30 TAC § 330.61(i), the Applicant must: (1) provide data on the availability and adequacy of roads that Applicant will use to access the site; (2) provide data on the volume of traffic on access roads within one mile of the facility; and (3) project the volume of traffic expected to be generated by the facility on the access roads within one mile of the facility. This issue is therefore relevant and material to the Commission's decision on the application.

Vectors

The hearing requestors have raised the issue of vectors. A vector is an insect, snake, rodent, bird, or animal capable of transferring a pathogen from one organism to another. TCEQ regulates attraction of vectors under 30 TAC § 330.209(a). This issue is therefore relevant and material to the Commission's decision on the application.

Windblown Trash

The hearing requestors have raised the issue of windblown trash and litter. TCEQ regulates this issue under 30 TAC §§ 330.233 and 330.235. The issue is therefore relevant and material to the Commission's decision on the application.

Water Quality

The hearing requestors have raised the issue of impacts to surface water quality. TCEQ regulates the management of contaminated water under 30 TAC § 330.207. This issue is therefore relevant and material to the Commission's decision on the application.

IV. Conclusion

OPIC finds that Angie Baldwin, Jocelyn Bartz, Sherrill Bodie, Katherine Cargile, Megan Davis, John Demattia, Mike Frizzell, Connie Gibbons, Sue Gordon, John Harris, Mary Keene, Chris Klein, Gerald Long, Darren Mann, Amy Marcy, Jane Merz, Kurt Middelkoop, John Moisuk, Gay Riley, Carla Scalf, Curt Vanlandingham, and Joseph Wilaon all qualify as affected persons. Also, each of these affected persons has raised at least one issue which is relevant and material to the Commission's decision on this application. Therefore, we respectfully recommend the Commission grant each of these hearing requests.

We further recommend the Commission refer the following issues to the State Office of Administrative Hearings for a contested case hearing:

1. Whether the proposed facility and the draft permit comply with TCEQ regulations concerning minimization of noise?
2. Whether the proposed facility and the draft permit will protect public health, welfare, and physical property?
3. Whether the proposed facility is compatible with surrounding land uses?
4. Whether the proposed facility and the draft permit will control nuisance odors?
5. Whether the proposed facility and the draft permit have considered and accounted for the adequacy and availability of surrounding roads and the current and projected volume of traffic?
6. Whether the proposed facility and the draft permit will control vectors?
7. Whether the proposed facility and the draft permit will control windblown trash at the facility and on surrounding roads?
8. Whether the proposed facility and the draft permit will protect surface water quality?

For the contested case hearing, OPIC recommends a duration of twelve months from the first day of the preliminary hearing to issuance of the proposal for decision.

Respectfully submitted,

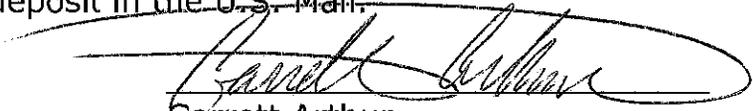
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By 
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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2013, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.



Garrett Arthur

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TCEQ DOCKET NO. 2013-1406-MSW

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