

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 14, 2012

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: Salado at Walnut Creek Partners, LLC
TCEQ Docket No. 2012-1696-MIS-U; Use Determination No. 15502
Executive Director's Response to Salado at Walnut Creek Partners, LLC's Appeal
of the Executive Director's Negative Use Determination

Dear Ms. Bohac:

Enclosed for filing, please find an original and 7 copies of the "Executive Director's Response to Salado at Walnut Creek Partners, LLC's Appeal of the Executive Director's Negative Use Determination." I have also attached the following exhibits to assist the Commission in the resolution of this matter:

- Exhibit 1 Use Determination Application No. 15502 Review Summary
- Exhibit 2 Use Determination Application No. 15502
- Exhibit 3 Use Determination No. 15502
- Exhibit 4 Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document, TCEQ, RG-461, March 2011
- Exhibit 5 Use Determination Application No. 06-10158
- Exhibit 6 Use Determination No. 06-10158; and
- Exhibit 7 Letter Opinion No. 96-128, Tex. Attorney General's Office (November 15, 1996)

If you have any questions or concerns, please do not hesitate to contact me at (512) 239-0969.

Sincerely,

A handwritten signature in cursive script that reads "Tim Reidy". The signature is written in black ink and is positioned above the typed name.

Timothy J. Reidy, Staff Attorney
Environmental Law Division

**TCEQ DOCKET NO. 2012-1696-MIS-U
USE DETERMINATION NO. 15502**

APPEAL OF THE	§	BEFORE THE
EXECUTIVE DIRECTOR'S	§	
USE DETERMINATION ISSUED	§	TEXAS COMMISSION ON
TO SALADO AT WALUNT CREEK	§	
CREEK PARTNERS, LLC	§	ENVIRONMENTAL QUALITY
APPLICATION NO. 15502	§	

**EXECUTIVE DIRECTOR'S RESPONSE TO SALADO AT WALUNT
CREEK PARTNERS, LLC'S APPEAL OF THE
EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to Salado Walnut Creek Partners, LLC's (Salado at Walnut Creek or the Appellant) appeal of the Executive Director's negative use determination issued for the first floor apartment units at the Salado at Walnut Creek Apartment Complex. The appeal was submitted by Donald H. Grissom, of Grissom & Thompson, LLP, on behalf of Salado at Walnut Creek.

For the reasons described below, the Executive Director respectfully requests that the Commission deny Salado at Walnut Creek's appeal and affirm the Executive Director's negative use determination for the first floor apartment units.

PROGRAM BACKGROUND

This appeal of the Executive Director's positive use determination is filed pursuant to H.B. 3121 (77th Tex. Legislature, 2001) establishing an appeals process for use determinations and the Commission rules implementing the legislation.¹

In 1993, the citizens of Texas voted to adopt a tax measure called Proposition 2. Proposition 2 was implemented when Article VIII, § 1-l was added to the Texas Constitution on November 2, 1993. The amendment allowed the legislature to "exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution."

The Texas Legislature codified the constitutional amendment in 1993 as Tex. Tax Code § 11.31 (effective January 1, 1994). The statutory language in the codified version mirrored the language of Article VIII, § 1-l. In 2001, the legislature

¹ Tex. Tax Code § 11.31(d), (e) and 30 Tex. Admin. Code (30 TAC) § 17.25.

amended Section 11.31 when it passed H.B. 3121 (effective September 1, 2001). This bill added several new procedural requirements to § 11.31, including a provision requiring the establishment and implementation of a process to appeal use determinations.² The amendment also required the Commission to adopt new rules establishing specific standards for the Executive Director to follow in making use determinations for property that qualified for either full or partial pollution control use determinations.³ Appeals under 30 Tex. Admin Code (30 TAC) § 17.25 of the Commission rules may be filed by either the applicant seeking the determination, or by the chief appraiser of the tax appraisal district affected by the determination.⁴ The appellant is required to explain the basis for the appeal.⁵

PROCEDURAL HISTORY

On June 3, 2011, the Appellant filed an application for a Tier I 100% use determination for continuous emission monitors; 108 wells; the first floor level of onsite buildings; sloping concrete surfaces; a fugitive emission monitoring and control system consisting of four Sentry landfill gas monitoring probes, 26 soil vapor monitoring wells, and 15 gas monitoring/vapor ventilation wells.⁶ The Executive Director issued an Administrative Notice of Deficiency (NOD) on July 14, 2011. On November 8, 2011, the application was declared administratively complete, and the Executive Director issued the first Technical NOD. On December 13, 2011, the Applicant responded to the NOD by filing its first revision to the application. On January 12, 2012, the Executive Director issued the second Technical NOD. The Applicant responded by filing its second revision to the application on March 9, 2012. On May 11, 2012, the Executive Director issued a third Technical NOD.⁷ The Applicant responded by filing its third revision to the application on June 12, 2012.⁸ On July 13, 2012, the Executive Director issued a Tier I 100% positive use determination for the continuous emission monitors; 108 wells; sloping concrete surfaces (including drains, sumps, and piping); a fugitive emission and monitoring control system consisting of four Sentry landfill gas monitoring probes, 26 soil vapor monitoring wells, and 15 gas monitoring/vapor ventilation wells.⁹ The Executive Director issued a negative use determination for the first floor apartment units at the Salado at Walnut Creek Apartment Complex.¹⁰ Salado at Walnut Creek's appeal of the negative use

² Id.

³ Tex. Tax Code § 11.31(g).

⁴ Tex. Tax Code § 11.31(e) and 30 TAC § 17.25(a)(2).

⁵ 30 TAC § 17.25(b)(5).

⁶ Use Determination Application No. 15502 Review Summary (attached as **ED's Exh. #1**).

⁷ Id.

⁸ Use Determination Application No. 15502 (received June 12, 2012)(attached as **ED's Exh. #2**).

⁹ Use Determination No. 15502 (attached as **ED's Exh. #3**)

¹⁰ Id.

determination was filed with the TCEQ's Office of the Chief Clerk on August 3, 2012.¹¹

BACKGROUND AND PROPERTY DESCRIPTION

The Salado at Walnut Creek Apartment Complex is situated over an abandoned Municipal Solid Waste (MSW) landfill. In 1992, methane gas within the lower explosive limit (LEL) was discovered within some of the first floor apartments.¹² The apartment complex was evacuated and closed by state and municipal authorities due to human health and safety concerns.¹³ In 1994, the then owners of the apartment complex entered into a series of negotiations with the TCEQ's predecessor agency (the Texas Natural Resource Conservation Commission or TNRCC), the Texas Department of Health (TDH), Travis County, and the City of Austin to arrange for the remediation of the apartment complex.¹⁴ A Comprehensive Assessment/Remediation Plan (CARP) was developed, and the site was admitted to the TNRCC's Voluntary Cleanup Program (VCP) on April 19, 1995 (VCP #301).¹⁵ A Remedial Action Work Plan (RAWP) was developed and approved by the TNRCC in November of 1996, detailing the design, execution plan, and implementation schedule for remediation work at the site.¹⁶ The TNRCC MSW Permits Section assigned the site Registration No. MSW-CR 65005 in May of 1997.¹⁷ The RAWP called for the design and installation of: 1) a site wide ventilation system for venting landfill gas (LFG) generated in the soil and body of the landfill under the site; 2) a gas extraction system for removal of the LFG migrated to and accumulated in the under-slab space of all buildings; and 3) a site-wide surface drainage control system.¹⁸ A Response Action Completion Report (RACR) was received by TCEQ's VCP Program in October of 1997.¹⁹ On November 24, 1999, the TNRCC VCP Program issued a Conditional Certificate of Completion for the partial response action area at the site.²⁰

The Appellant provided the following description of the first floor apartment units in its application:

Structures used to contain, for monitoring purposes, emissions released from decomposing materials. 1st floor level of onsite buildings house

¹¹ Salado at Walnut Creek's Appeal of Use Determination No. 15502 (received August 3, 2012).

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Response Action Completion Report, p. 4, Use Determination Application No. 15502 (received June 12, 2012)(attached as **ED's Exh. #2**).

¹⁶ Id. at 5.

¹⁷ Id.

¹⁸ Id. at 8.

¹⁹ Response Action Completion Report, Use Determination Application No. 15502 (received June 12, 2012)(attached as **ED's Exh. #2**).

²⁰ Id.

pollution control equipment (continuous emission monitors) used to detect VOCs. Monitors must be in an enclosed space in [sic] to function and operate correctly, in order to protect residents within and above.²¹

APPELLANT'S CLAIM

The Appellant claims that in 2007, the then owner of the apartment complex, Wells Fargo Bank Minnesota (Wells Fargo), received a 100% positive use determination for the first floor apartment units.²² After purchasing the apartment complex in 2010, pursuant to TCEQ rules and guidance, the Appellant applied for a new use determination.²³ The Applicant argues that, as a similarly situated applicant, it is also entitled to a 100% positive use determination for the first floor apartment units.²⁴ The Appellant claims that there are no intervening factors that would account for its receipt of a negative use determination for the first floor apartment units.²⁵

LEGAL ANALYSIS

1. THE FIRST FLOOR APARTMENT UNITS ARE NOT ELIGIBLE TO RECEIVE A POSITIVE USE DETERMINATION BECAUSE THEY DO NOT CONTROL, MONITOR, OR PREVENT AIR, WATER, OR LAND POLLUTION.

The first floor apartment units do not control, monitor, or prevent air, water, or land pollution. In order to be eligible to receive a positive use determination, the subject property must be used, constructed, acquired, or installed wholly or partly to meet or exceed a federal, state, or local law, rule, or regulation for the prevention, monitoring, or control, or reduction of air, water, or land pollution.²⁶ Equipment installed to prevent the accumulation of LFG in under-slab spaces beneath apartment buildings satisfies this requirement. Equipment installed to monitor LFG concentrations in the first floor apartment units satisfies this requirement. Equipment installed to divert stormwater from the closed landfill also satisfies the requirement. However, the first floor apartment units do not provide pollution control; and, therefore, do not satisfy this requirement.

Subchapter T, 30 TAC Chapter 330, Use of Land Over Closed Municipal Solid Waste Landfills establishes the requirements for properties overlying closed

²¹ Use Determination Application No. 15502, p. 4 (received June 12, 2012)(attached as **ED's Exh. #2**).

²² Salado at Walnut Creek's Appeal of Use Determination No. 15502 (received August 3, 2012).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Tex. Tax Code § 11.31(a) & (b); 30 Tex. Admin. Code § 17.4(a); Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document, TCEQ, RG-461, p. 3 (March 2011)(attached as **ED's Exh. #4**)(definition of pollution control property/equipment).

MSW landfills. 30 TAC § 330.957(m)(1)(C) provides that, in order to prevent gas migration into buildings and other structures, a landfill gas ventilation or active collection system must be installed consistent with the structures gas monitoring plan required by 30 TAC 330.957(t). 30 TAC § 330.957(m)(1)(D) requires that perforated venting pipes or alternative venting methods approved by the Executive Director be installed within the permeable layer of the site and are designed to operate without clogging. 30 TAC § 330.957(m)(1)(E) mandates that venting gas devices be constructed to allow connection to an induced-draft exhaust system. Finally, 30 TAC § 330.957(m)(1)(F) requires that automatic methane gas sensors be installed within the venting pipe and/or permeable gas layer and inside the building or any other structure in order to trigger an audible alarm when methane gas concentrations greater than 20% of the lower explosive limit (LEL) are detected. 30 TAC § 330.961(e) requires that surface drainage in and around all enclosed structures over a closed MSW landfill be controlled to minimize surface water running onto, into, and off the closed MSW landfill.

At the Salado at Walnut Creek Apartment Complex, a site-wide Semi-Active Ventilation Subsystem (SAVS) was installed to facilitate the venting of the LFG generated in the soil at the site.²⁷ A site-wide Active Gas Extraction System (AGES) was also installed for the extraction of LFG from the under-slab spaces of all buildings on the site.²⁸ LFG (i.e., methane) detectors/alarms were installed in each first floor apartment unit.²⁹ Sloping concrete surfaces (including drains, sumps, and piping) were installed to divert stormwater from the closed MSW landfill.³⁰ This property is eligible for, and received, a Tier I 100% positive use determination.

In its application, the Appellant claims that the first floor apartment units function as enclosed spaces that house continuous emission monitors; and, thereby, provide pollution control and are eligible to receive a Tier I 100% positive use determination.³¹ The Appellant cites Item S-21, Fugitive Emission Containment Structures, as the appropriate category of pollution control equipment.³² The description of Item S-21 reads:

Structures or equipment used to contain or reduce fugitive emission or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities).³³

²⁷ Response Action Completion Report, p. 8 - 10, Use Determination Application No. 15502 (received June 12, 2012)(attached as **ED's Exh. #2**).

²⁸ *Id.* at p. 11 - 15.

²⁹ *Id.* at p. 21.

³⁰ *Id.* at p. 16 - 20.

³¹ Use Determination Application No. 15502, p. 4 (received June 12, 2012)(attached as **ED's Exh. #2**).

³² *Id.*

³³ 30 TAC § 17.14(a).

The first floor apartment units are not fugitive emission containment structures; they are residences at a commercial apartment complex. The units are not being used to contain or reduce fugitive emissions from the closed landfill. The first floor apartment units are not pollution control equipment. Rather, the LFG detectors/alarms installed in the first floor apartment units are pollution control equipment; monitoring the concentration of methane within the units, and alerting residents to potential human health and safety concerns. The first floor apartment units are used solely as residences at a commercial apartment complex. The units are not uniquely associated with the LFG detectors/alarms, the AGES System, or any other pollution control property at the site. The units are not being used, nor were they constructed, as housings for emission monitors or LFG ventilation or extraction systems. The units are not being used, nor were they constructed, to meet or exceed the requirements of Subchapter T, 30 TAC Chapter 330. The units are not being used, nor were they constructed, to control, monitor, or prevent air, water, or land pollution. As such, the first floor apartment units are not eligible to receive a positive use determination.

In its appeal, the Appellant argues that, in 2007, the Executive Director granted Wells Fargo, the then owner of the apartment complex, a 100% positive use determination for the first floor apartment units; and, as a similarly situated applicant, it is also entitled to a 100% positive use determination for the first floor apartment units.³⁴ The Appellant claims that there are no intervening factors that would account for its receipt of a negative use determination for the first floor apartment units.³⁵ First and foremost, simply establishing that two similarly situated applicants were treated differently in separate agency proceedings does not establish that agency action was improper.³⁶ To the extent that the use determination issued to Wells Fargo included the first floor apartment units, it was issued in error. An administrative agency is not bound to follow its prior decisions in the same way a court is bound to follow judicial precedent, provided that the agency gives a reasonable explanation for the apparent inconsistency in agency interpretations.³⁷ An administrative agency does not violate the Texas Constitutional mandate that all taxation be equal and uniform when it corrects a misapplication of a tax exemption.³⁸ By the same token, taxpayers do not acquire a right to pay less in taxes because a tax policy

³⁴ Salado at Walnut Creek's Appeal of Use Determination No. 15502 (received August 3, 2012).

³⁵ *Id.*

³⁶ *Reliant Energy, Inc. v. Pub. Util. Comm'n.*, 153 S.W.3d 174, 199-201 (Tex. App.-Austin 2004, pet. denied) (the Austin Court of Appeals rejected the plaintiff's argument that the agency had acted arbitrarily and capriciously by treating similarly situated companies differently than the plaintiff; holding that the issue before the court was the reasonableness of the agency's action in the case at bar, not whether the agency acted reasonably in other cases.).

³⁷ *Flores v. Employees Ret. Sys. of Tex.*, 74 S.W.3d 532, 544-545 (Tex. App.-Austin 2002, pet. denied).

³⁸ *Grocers Supply Co. v. Sharp*, 978 S.W.2d 638, 645 (Tex. App.-Austin, pet. denied).

was incorrectly implemented.³⁹ The inadvertent inclusion of the first floor apartment units in the 100% positive use determination issued to Wells Fargo for fugitive emission containment structures was either due to an oversight by Executive Director staff, or the fact that the application did not clearly indicate that the “1st floor level of onsite building structures” was actually being used for residential purposes.⁴⁰ Nevertheless, the first floor apartment units do not control, monitor, or prevent air, water, or land pollution; and, therefore, are not eligible to receive a positive use determination.

2. THE FIRST FLOOR APARTMENT UNITS ARE NOT ELIGIBLE TO RECEIVE A POSITIVE USE DETERMINATION BECAUSE THEY ARE USED FOR RESIDENTIAL PURPOSES.

Property that is used for residential purposes is not eligible to receive a positive use determination.⁴¹ The Appellant’s application indicates that the first floor apartment units are used for residential purposes.⁴² Therefore, the first floor apartment units are not eligible to receive a positive use determination.

3. THE FIRST FLOOR APARTMENT UNITS ARE NOT ELIGIBLE TO RECEIVE A POSITIVE USE DETERMINATION BECAUSE THEY ARE USED WHOLLY TO PROVIDE A SERVICE.

Property is not entitled to a positive use determination if the property is used, constructed, acquired, or installed wholly to produce a good or provide a service.⁴³ The purpose of the Tax Relief for Pollution Control Property Program is to provide tax relief to businesses compelled by law to construct, acquire, or

³⁹ First Am. Title Ins. Co. v. Strayhorn, 169 S.W.3d 298, 313 (Tex. App.-Austin 2005), *aff’d* on other grounds, sub nom. First Am. Title Ins. Co. v. Combs, 258 S.W.3d 627 (Tex. 2008).

⁴⁰ Exhibit A, Use Determination Application No. 06-10158, p. 2 (received January 29, 2007)(attached as **ED’s Exh. #5**)(Wells Fargo provided the following description of its fugitive emission containment structures: “Structures used to contain, for monitoring purposes, emissions released from decomposing materials. 1st floor level of onsite buildings house pollution control monitors (continuous emission monitors) used to detect VOCs. 1st floor level of onsite building structures.”) *Compare to* Use Determination Application No. 15502, p. 4 (received June 12, 2012)(attached as **ED’s Exh. #2**)(the Appellant provided the following description of its fugitive emission containment structures: “Structures used to contain, for monitoring purposes, emissions released from decomposing materials. 1st floor level of onsite buildings house pollution control equipment (continuous emission monitors) used to detect VOCs. Monitors must be in an enclosed space in [sic] to function and operate correctly, **in order to protect residents within and above.**”(emphasis added); *Also see* Use Determination No. 06-10158 (attached as **ED’s Exh. #6**).

⁴¹ Tex. Tax Code § 11.31(a); 30 TAC § 17.6(2); Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document, TCEQ, RG-461, p. 5 (March 2011)(attached as **ED’s Exh. #4**).

⁴² Use Determination Application No. 15502, p. 4 (received June 12, 2012)(attached as **ED’s Exh. #2**).

⁴³ 30 TAC § 17.6(1)(B).

install pollution control property that generates no revenue for such businesses.⁴⁴ The first floor apartment units are used solely as residences at a commercial apartment complex. The units are not being used, and were not constructed, to meet or exceed the requirements of Subchapter T, 30 TAC Chapter 330. The units generate revenue for the Appellant in the form of monthly rental payments.⁴⁵ As such, the first floor apartment units are used by the Appellant wholly to provide a service to its tenants in exchange for a fee; therefore, the units are not eligible to receive a positive use determination.

4. THE FIRST FLOOR APARTMENT UNITS ARE NOT ELIGIBLE TO RECEIVE A TIER I 100% POSITIVE USE DETERMINATION BECAUSE THEY ARE NOT USED WHOLLY FOR POLLUTION CONTROL PURPOSES.

By acknowledging that the first floor apartment units are used as residences at a commercial apartment complex, the Appellant concedes that the units are not used wholly for pollution control purposes; and, therefore, are not eligible to receive a Tier I 100% positive use determination. To qualify for a Tier I 100% positive use determination, the subject property must be used wholly for pollution control purposes.⁴⁶

In *Mont Belvieu Caverns, LLC v. Tex. Comm'n. on Env'tl. Quality*, the Austin Court of Appeals held that property cannot qualify as 100% pollution control property if any portion of its value is attributable to its capacity to produce goods or provide services.⁴⁷ In *Mont Belvieu*, Mont Belvieu Caverns, LLC (MBC) argued that its brine-storage pond system was entitled to a Tier I 100% positive use determination despite the fact that the pond system was used to provide gas-storage services to its customers. The TCEQ is required by statute to distinguish between property used to control, monitor, prevent, or reduce pollution from property that is used to produce goods or provide services.⁴⁸ The Court of Appeals used the text of Tex. Tax Code § 11.31 to reject MBC's assertion.

⁴⁴ Letter Opinion No. 96-128, Tex. Attorney General's Office (November 15, 1996) (attached as **ED's Exh. #7**)(an examination of the legislative history of Tex. Tax Code § 11.31(a) demonstrates that the purpose of this provision was intended to give tax relief to businesses compelled by law to install or acquire pollution control equipment which generates no revenue for such businesses).

⁴⁵ <http://www.saladoatwalnutcreek.com> (last visited on September 14, 2012)(rental fees and a hyperlink to the Texas Apartment Association Rental Application for Residents and Occupants).

⁴⁶ 30 TAC § 17.14(a).

⁴⁷ *Mont Belvieu Caverns, LLC v. Tex. Comm'n. on Env'tl. Quality*, No. 03-11-00442-CV, 2012 WL 3155763 (Tex. App.-Austin Aug. 3, 2012).

⁴⁸ Tex. Tax Code § 11.31(d)(the executive director shall make a determination of whether the facility, device, or method is used wholly or partly to control pollution, and, if applicable, the proportion of the property that is pollution control property); Tex. Tax Code § 11.31(c)(3)(if an installation includes property that is not used wholly for pollution control, the person seeking the exemption must present financial or other information that the executive director requires by rule for the determination of the proportion of the installation that is pollution control property); Tex. Tax Code § 11.31(g)(3)(TCEQ rules must allow for determinations that distinguish the proportion

By requiring that the TCEQ “distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution [i.e., pollution-control property] from the proportion of property that is used to produce goods or services,” the Legislature manifested its understanding and intent that pollution-control property—property qualifying for the tax exemption—is, by definition distinct from “property that is used to produce goods and services”...[Tex. Tax Code § 11.31(g)(3)] means that TCEQ must distinguish the proportion of the property’s value that is attributable to a pollution-control feature from that attributable to its capacity to produce goods and services, thereby reflecting legislative intent to limit the pollution-control property exemption solely to capital investment made to comply with state or federal environmental regulations that does not yield productive benefits and would thus otherwise be irrational economically...

These limitations and qualifications reflected in subsection (g)(3) in turn inform our construction of subsections (a) and (b)’s definition of pollution-control property. And it follows from these limitations and qualifications that property cannot qualify as 100% pollution-control property if any portion of its value is attributable to its capacity to produce goods and services.⁴⁹

The Austin Court of Appeals reasoned that by acknowledging that its brine-storage pond system was part of its production process, MBC conceded that at least some portion of the property was attributable to providing services, and, therefore, by definition, could not be 100% pollution-control property.⁵⁰ Similarly, by acknowledging that the first floor apartment units at the Salado at Walnut Creek Apartment Complex are being used as residences, the Appellant concedes that the units are not being used wholly for the control of air, water, or land pollution. As such, the first floor apartment units, by definition, cannot qualify for a Tier I 100% positive use determination.

CONCLUSION

After careful consideration of the Appeal filed by Salado at Walnut Creek Partners, LLC on Use Determination Application Number 15502, the Executive Director concludes that its negative use determination for the first floor apartment units was not issued in error. The Appellant has failed to provide any legal basis upon which the Commission should reverse the Executive Director’s

of the property that is used to control, monitor, prevent, or reduce pollution from the portion of property that is used to produce goods or services).

⁴⁹ Mont Belvieu Caverns, LLC v. Tex. Comm’n. on Env’tl. Quality, No. 03-11-00442-CV, 2012 WL 3155763 (Tex. App.-Austin Aug. 3, 2012).

⁵⁰ Id.

use determination in this case. The Executive Director's use determination is consistent with the terms and mandates set forth in the relevant statutes and rules. The assertions of the Appellant do not alter the findings and final negative use determination issued by the Executive Director in this case.

Accordingly, the Executive Director respectfully requests that the Commission deny the instant appeal and affirm the Executive Director's negative use determination.

Respectfully submitted,
Texas Commission on Environmental
Quality

Zak Covar
Executive Director

Robert Martinez, Director
Environmental Law Division



By _____
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REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS
COMMISSION ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I certify that on September 14, 2012 an original and seven copies of the "Executive Director's Response to Walnut Creek Partners, LLC's Appeal of the Executive Director's Negative Use Determination" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, electronic mail or hand-delivery to all persons on the attached mailing list.



Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069

Mailing List

Executive Director's Response to Salado at Walnut Creek Partners, LLC's Appeal
of the Executive Director's Negative Use Determination

TCEQ Docket No. 2012-1696-MIS-U
Use Determination Application No. 15502

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**Executive Director's Exhibit #1 –
Use Determination Application No. 15502
Review Summary**

Application Review Summary

Application Number: 15502
Company: Salado at Walnut Creek Partner, LLC
Facility: Watersbend Apartments
County: Travis
Tier: I
Estimated Cost of Property: \$1,695,000.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

Continuous emission monitors located in each apartment to alert for high methane gas levels; 108 wells used to vent methane to a safe area; first floor of the buildings; and a fugitive emission monitoring and control system consisting of four Sentry landfill gas monitoring probes; 26 soil vapor monitoring wells; and 15 vapor/gas monitoring/vapor ventilation wells.

Tier I Table Number: S21

Rule Citation(s)

30 TAC §330.961: Municipal Solid Waste, Use of Land over Closed Municipal Solid Waste Landfills, Operational Requirements for an Enclosed Structure Over a Closed Municipal Solid Waste Landfill Unit or a Municipal Solid Waste Landfill in Post-Closure Care, General, The development permit or registration, the site operating plan, any closure plan, the structures gas monitoring plan, the safety and evacuation plan, and all other documents and plans required by this subchapter shall become operational requirements and shall be considered a part of the operating record of the development or structure. This is an appropriate citation for the continuous emission monitors, vapor liquid recovery equipment, stormwater collection equipment, and fugitive emission monitoring and control system.

Final Determination

The following property is used 100% for pollution control and is installed to meet or exceed federal or state regulations:

continuous emission monitors located in each apartment to alert for high methane gas levels; vapor liquid recovery system consisting of 108 wells used to vent methane to a safe area; and a fugitive emission monitoring and control system consisting of four Sentry landfill gas monitoring probes, 26 soil vapor monitoring wells, and 15 vapor/gas monitoring/vapor ventilation wells.

A Negative Use Determination for the ineligible property in accordance with §17.4 and §17.6. The justification for the Negative Use Determination is provided below.

The first floors of the buildings do not control, monitor, or prevent air, water, or land pollution.

Administrative Review

Administrative Review Chronology

Received Date: 06/03/2011

First Administrative Notice of Deficiency (ANOD): Issue 1: Please provide a citation to the subsection level of the adopted environmental rule requiring the installation of the equipment. Citing to "VCP #310" is not sufficient.

Issue 2: The application form must be completed with an answer for each question. Please provide

answers to question 1 in section 1, questions 3 and 4 in section 2, and questions 4, 5, 7, and 8 in section 4.

Date First ANOD Was Sent: 07/13/2011

Date Applicant's Response Was Received: 08/25/2011

Second ANOD: Issue 1: Please provide a citation to the subsection level of the adopted environmental rule requiring the installation of the listed equipment. VCP #301 is not a rule citation.

Issue 2: Please explain the pollution control aspect of each of the following items: continuous emission monitors; alarms, indicators, controllers, and emergency generators; and fugitive emission containment structures. Equipment installed to protect the safety of the residents of the apartment complex does not meet the standards of being pollution control property established under §11.31 of the Texas Tax Code.

Issue 3: Please provide a signed original and copy of your revised application as required by 30 TAC §17.10(a)(1).

Date Second ANOD Was Sent: 09/12/2011

Date Applicant's Response Was Received: 11/01/2011

Date Application Was Declared Administratively Complete: 11/07/2011

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R125762

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 11/07/2011

First Technical Notice of Deficiency (TNOD): Please provide a plot plan showing the location of each fugitive emission containment structure. Provide a narrative description on each type of containment structure. Include how many of each type and list any uses other than containment of emissions.

Date First TNOD Was Sent: 11/08/2011

Date Applicant's Response Was Received: 12/16/2011

Second TNOD: Issue 1 – Please complete sections of the application which were previously omitted. The omitted areas include Section 2, Questions 3 and 4; Section 4, Questions 7 and 8; and Section 6, Question 1.

Issue 2 – Rule citations must be to the rule currently in effect. Some of the citations on the application do not exist but presumably did in previous versions of the rule. For example, 30 TAC §330.960(b)(1)(C) and 30 TAC §330.957(1)(1)(C) do not exist. Please ensure all rule citations pertain to the current version of the rules which can be found at the following link
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC).

Issue 3 – Please provide relevant excerpts from the Voluntary Clean-Up Program Agreement (VCP). While a requirement in the VCP does not substitute for a valid rule citation, the VCP may provide more insight as to the terms of the conditional certificate.

Issue 4 – The response to an earlier deficiency letter contains the following description for alarms, "Fire alarms are installed in all apartment units on all floors of all buildings. However, these are not a part of pollution control system, but are part of the residential safety system." Tier I Table Number S4 specifically excludes fire alarms; therefore, these alarms are not eligible for exemption under the Tax Relief for Pollution Control Property Program. What is the justification for including controllers

and emergency generators in the equipment requested under Tier I Table Number S4? Please revise the application to remove items claimed under Tier I Table Number S4 that do not fit under Tier I Table Number S4. Furthermore, more detail is needed describing and quantifying the items claimed under Tier I Table Number S4.

Date Second TNOD Was Sent: 01/06/2012

Date Applicant's Response Was Received: 03/13/2012

Third TNOD: Please explain the difference between the item listed as: "system of sloping concrete surfaces (including drains, sumps, and piping for the purpose of preventing leachate through collecting stormwater site-wide" on this application and on the identical listing on application 15306.

Date Third TNOD Was Sent: 05/11/2012

Date Applicant's Response Was Received: 06/12/2012

Technical Review Completion Date: 07/12/2012

Paul H. Hood 7/12/12

Project Reviewer

Date

[Signature] 7/12/12

Work Leader

Date

**Executive Director's Exhibit #2 –
Use Determination Application No. 15502**

Received

#15502

JUN 12 2012

RAVISED 3

Air Quality Division
Texas Commission on Environmental Quality
Use Determination for Pollution Control Property
Application

A person seeking a use determination must complete this application form. For assistance in completing the application form please refer to the *Instructions for Use Determination for Pollution Control Property Application Form TCEQ-00611*, as well as the rules governing the Tax Relief Program in Title 30 Texas Administrative Code Chapter 17 (30 TAC 17). Information relating to completing this application form is also available in the TCEQ regulatory guidance document, *Property-Tax Exemptions for Pollution Control Property, RG-461*. For additional assistance, please call the Tax Relief Program at 512-239-4900.

You must supply information for each field of this application form unless otherwise noted.

Section 1. Eligibility

1. Is the property/equipment subject to any lease or lease-to-own agreement? Yes No
2. Is the property/equipment used solely to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water or land pollution?
Yes No
3. Was the property/equipment acquired, constructed, installed, or replaced before January 1, 1994? Yes No

If the answer to any of these questions is 'Yes', then the property/equipment is not eligible for a tax exemption under this program.

Section 2. General Information

1. What is the type of ownership of this facility?
 Corporation Limited Partner Other: Limited Liability Company
 Sole Proprietor Utility
 Partnership
2. Size of Company: Number of Employees
 1 to 99 500 to 999 2,000 to 4,999
 100 to 499 1,000 to 1,999 5,000 or more
3. Business Description: (Briefly describe the type of business or activity at the facility)
 Apartment Complex
4. Provide the North American Industry Classification System (NAICS) six-digit code for this facility. 53110

Section 3. Type of Application and Fee

1. Select only one:

Tier I – Fee: \$150

Tier II – Fee: \$1,000

Tier III – Fee: \$2,500

2. Payment Information:

Check/Money Order/Electronic Payment Receipt Number:

Payment Type:

Payment Amount:

Name on payment:

Total Amount:

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the application to cover the required fee.

Section 4. Property/Equipment Owner Information

1. Company Name of Owner: Salado at Walnut Creek Partner, LLC

2. Mailing Address: 505 E. Huntland Drivee, Suite 530

3. City, State, Zip: Austin, Texas 78752

4. Customer Number (CN): CH603549452

5. Regulated Entity Number (RN):RN101228682

6. Is this property/equipment owned by the CN listed in Question 4? Yes No

If the answer is 'No,' please explain:

7. Is this property/equipment leased from a third party? Yes No

If the answer is 'Yes,' please explain:

8. Is this property/equipment operated by the RN listed in Question 5? Yes No

If the answer is 'No,' please explain:

Section 5. Name of Property/Equipment Operator (If different from Owner)

1. Company Name:

2. Mailing Address:

3. City, State, Zip:

4. Customer Number (CN):

5. Regulated Entity Number (RN):

Section 6. Physical Location of Property/Equipment

1. Name of Facility or Unit where the property/equipment is physically located: Salado at Walnut Creek Apartments

2. Type of Mfg. Process or Service: Closed remediated land fill

3. Street Address: 2104 E. Anderson Lane

4. City, State, Zip: Austin, Texas 78752

Section 7. Appraisal District with Taxing Authority

1. Appraisal District: Travis County
2. District Account Number(s): Property ID# 768727; Ref ID# 200007687270000

Section 8. Contact Name

1. Company Name: Grissom & Thompson, LLP
2. First Name of Contact: Donald
3. Last Name of Contact: Grissom
4. Salutation: Mr. Mrs. Ms. Dr. Other:
5. Title:
6. Mailing Address: 509 W. 12th Street
7. City, State, Zip: Austin, Texas 78701
8. Phone Number/Fax Number: 512-478-4059; 512-482-8410
9. Email Address: don@gandtlaw.com
10. Tracking Number (optional):

Section 9. Property/Equipment Description, Applicable Rule, and Environmental Benefit

For each piece, or each category, of pollution control property/equipment for which a use determination is being sought, answer the following questions.

Attach additional response sheets to the application for each piece of integrated pollution control property/equipment if a use determination is being sought for more than one (1) piece.

General Information

1. Name the property/equipment: Continuous emission monitors
2. Is the property/equipment used 100% as pollution control equipment? Yes No
If the answer is 'Yes,' explain how it was determined that the equipment is used 100% for pollution control: emission monitors, monitor emissions nothing else
3. Does the property/equipment generate a Marketable Product? Yes No
If the answer is 'Yes,' describe the marketable product:
4. What is the appropriate Tier I Table or Expedited Review List number? a-61
5. Is the property/equipment integrated pollution control equipment? Yes No
If the answer is 'No,' separate applications must be filed for each piece of property/equipment.
6. List applicable permit number(s) for the property/equipment:

Incremental Cost Difference

7. Is the Tier I Table percentage based on the incremental cost difference? Yes No

If the answer is 'Yes,' answer the following questions:

8. What is the cost of the new piece of property/equipment?
9. What is the cost of the comparable property/equipment?
10. How was the value of the comparable property/equipment calculated?

Property/Equipment Description

11. Describe the property/equipment. (What is it? Where is it? How is it used?) Continuous VOC emission monitors are hardwired into each individual apartment and constructed so that they may not be turned off

Applicable Rule

12. What adopted environmental rule or regulation is being met by the construction or installation of the property/equipment? The citation must be to the subsection level. SEE ATTACHED

Environmental Benefit

13. What is the anticipated environmental benefit related to the construction or installation of the property/equipment? alerts when methane gas levels reach a certain point

Section 10. Process Flow Diagram (Optional)

Attach documentation to the application showing a Process Flow Diagram for the property/equipment.

Section 11. Partial-Use Percentage Calculation

This section must be completed for all Tier III applications. Attach documentation to the application showing the calculations used to determine the partial-use percentage for the property/equipment.

Section 12. Property Categories and Costs

List each piece of property/equipment of integrated pollution control property/equipment for which a use determination is being sought.

Property/Equipment Name	Tier 1 Table No. or Expedited Review List No.	Use Percent	Estimated Dollar Value
Land:			
Property: Continuous emission monitors	a-61	100	\$32,000
Property:			

4. City, State, Zip: Austin, Texas 78752

Section 7. Appraisal District with Taxing Authority

1. Appraisal District: Travis County
2. District Account Number(s): Property ID# 768727; Ref ID# 200007687270000

Section 8. Contact Name

1. Company Name: Grissom & Thompson, LLP
2. First Name of Contact: Donald
3. Last Name of Contact: Grissom
4. Salutation: Mr. Mrs. Ms. Dr. Other:
5. Title:
6. Mailing Address: 509 W. 12th Street
7. City, State, Zip: Austin, Texas 78701
8. Phone Number/Fax Number: 512-478-4059; 512-482-8410
9. Email Address: don@gandtlaw.com
10. Tracking Number (optional):

Section 9. Property/Equipment Description, Applicable Rule, and Environmental Benefit

For each piece, or each category, of pollution control property/equipment for which a use determination is being sought, answer the following questions.

Attach additional response sheets to the application for each piece of integrated pollution control property/equipment if a use determination is being sought for more than one (1) piece.

General Information

1. Name the property/equipment: Vapor Liquid Recovery equipment for fugitive emissions
2. Is the property/equipment used 100% as pollution control equipment? Yes No
If the answer is 'Yes,' explain how it was determined that the equipment is used 100% for pollution control: piping, pumps and fans with removal of fugitive emissions
3. Does the property/equipment generate a Marketable Product? Yes No
If the answer is 'Yes,' describe the marketable product:
4. What is the appropriate Tier I Table or Expedited Review List number? a-184
5. Is the property/equipment integrated pollution control equipment? Yes No
If the answer is 'No,' separate applications must be filed for each piece of property/equipment.
6. List applicable permit number(s) for the property/equipment:

Incremental Cost Difference

7. Is the Tier I Table percentage based on the incremental cost difference? Yes No

If the answer is 'Yes,' answer the following questions:

8. What is the cost of the new piece of property/equipment?
9. What is the cost of the comparable property/equipment?
10. How was the value of the comparable property/equipment calculated?

Property/Equipment Description

11. Describe the property/equipment. (What is it? Where is it? How is it used?) Piping and pumps associated with the capture and removal of fugitive methane emissions, site wide, SAVS 108 wells venting methane gas to a safe area.

Applicable Rule

12. What adopted environmental rule or regulation is being met by the construction or installation of the property/equipment? The citation must be to the subsection level. SEE ATTACHED

Environmental Benefit

13. What is the anticipated environmental benefit related to the construction or installation of the property/equipment? removes emissions and transports to and for release in a safe manner.

Section 10. Process Flow Diagram (Optional)

Attach documentation to the application showing a Process Flow Diagram for the property/equipment.

Section 11. Partial-Use Percentage Calculation

This section must be completed for all Tier III applications. Attach documentation to the application showing the calculations used to determine the partial-use percentage for the property/equipment.

Section 12. Property Categories and Costs

List each piece of property/equipment of integrated pollution control property/equipment for which a use determination is being sought.

Property/Equipment Name	Tier 1 Table No. or Expedited Review List No.	Use Percent	Estimated Dollar Value
Land:			
Property: Vapor/liquid recovery equipment for fugitive emissions	a-184	100	\$276,000
Property:			

Application # 15502, Salado at Walnut Creek

Section 9:

Question Nos:

1. Name the Property/equipment: **Fugitive Emission Monitoring and control**
2. Is the property/equipment used 100% as pollution control equipment? **Yes**

This property/equipment "The fugitive Emission Monitoring and control system" consists of three sub-systems of vapor/landfill gas monitoring wells (a total of 45 wells) that monitor the landfill gas off-site migration and monitor the performance of the soil gas extraction and control system, as well as the landfill vapor/gas pressure and methane concentration under the site. This system is 100% used for the pollution control purposes.

3. Does the property/equipment generate a Marketable Product? **No.**
4. What is the appropriate Tier I Table or Expedited Review List number? **S-13**
5. Is the property/equipment integrated pollution control equipment? **Yes**

Description of the Property/equipment: **Fugitive Emission Monitoring and control**

The fugitive Emission Monitoring and control system consists of three sub-systems:

1. Sentry Point triple screen Vapor/landfill gas monitoring wells which monitor the off-site migration of the landfill gas. Four Sentry landfill gas monitoring probes (GMPs) with triple screen to the depth of trash filled zones were installed at the border of the site between the Salado and the adjacent Promitory Point Apartment Complex (PPAC). Probes were installed at an approximate distance of 100 foot spacing.
2. Soil Vapor Monitoring wells (SVW-1 to SVW 26) sub-system, consists of twenty six $\frac{3}{4}$ " Diameter wells that are installed in the open areas around and close to the SAGES vapor extraction system

to monitor the performance of the SAGES system and provide data for adjustment and control of the SAGES system.

3. In addition fifteen vapor/gas monitoring/vapor ventilation wells (VW-1 to VW-15) were installed at the locations with high soil gas concentrations, as determined by the Soil Resistivity study. These wells were used for measuring the landfill gas pressure and methane concentration under the site.

The Tier I designation of this property/equipment (system) is:

"S-13": "A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment"

4. City, State, Zip: Austin, Texas 78752

Section 7. Appraisal District with Taxing Authority

1. Appraisal District: Travis County
2. District Account Number(s): Property ID# 768727; Ref ID# 200007687270000

Section 8. Contact Name

1. Company Name: Grissom & Thompson, LLP
2. First Name of Contact: Donald
3. Last Name of Contact: Grissom
4. Salutation: Mr. Mrs. Ms. Dr. Other:
5. Title:
6. Mailing Address: 509 W. 12th Street
7. City, State, Zip: Austin, Texas 78701
8. Phone Number/Fax Number: 512-478-4059; 512-482-8410
9. Email Address: don@gandtlaw.com
10. Tracking Number (optional):

Section 9. Property/Equipment Description, Applicable Rule, and Environmental Benefit

For each piece, or each category, of pollution control property/equipment for which a use determination is being sought, answer the following questions.

Attach additional response sheets to the application for each piece of integrated pollution control property/equipment if a use determination is being sought for more than one (1) piece.

General Information

1. Name the property/equipment: Fugitive emissions containment structures
2. Is the property/equipment used 100% as pollution control equipment? Yes No
If the answer is 'Yes,' explain how it was determined that the equipment is used 100% for pollution control:
3. Does the property/equipment generate a Marketable Product? Yes No
If the answer is 'Yes,' describe the marketable product:
4. What is the appropriate Tier I Table or Expedited Review List number? s-21
5. Is the property/equipment integrated pollution control equipment? Yes No
If the answer is 'No,' separate applications must be filed for each piece of property/equipment.
6. List applicable permit number(s) for the property/equipment:

Incremental Cost Difference

7. Is the Tier I Table percentage based on the incremental cost difference? Yes No

If the answer is 'Yes,' answer the following questions:

8. What is the cost of the new piece of property/equipment?
9. What is the cost of the comparable property/equipment?
10. How was the value of the comparable property/equipment calculated?

Property/Equipment Description

11. Describe the property/equipment. (What is it? Where is it? How is it used?) Structures used to contain, for monitoring purposes, emissions released from decomposing materials. 1st floor level of onsite buildings house pollution control equipment (continuous emission monitors) used to detect VOCs. Monitors must be in an enclosed space in to function and operate correctly, in order to protect residents within and above.

Applicable Rule

12. What adopted environmental rule or regulation is being met by the construction or installation of the property/equipment? The citation must be to the subsection level. SEE ATTACHED

Environmental Benefit

13. What is the anticipated environmental benefit related to the construction or installation of the property/equipment? allows the continuous emission monitors to perform their function

Section 10. Process Flow Diagram (Optional)

Attach documentation to the application showing a Process Flow Diagram for the property/equipment.

Section 11. Partial-Use Percentage Calculation

This section must be completed for all Tier III applications. Attach documentation to the application showing the calculations used to determine the partial-use percentage for the property/equipment.

Section 12. Property Categories and Costs

List each piece of property/equipment of integrated pollution control property/equipment for which a use determination is being sought.

Property/Equipment Name	Tier 1 Table No. or Expedited Review List No.	Use Percent	Estimated Dollar Value
Land:			
Property: fugitive emissions	s-21	100	\$1,387,000

containment structures			
Property:			
Property:			
			Total: \$1,695,000.00

Attach additional response sheets to the application if more than three (3) pieces.

NOTE: Separate applications must be filed for each piece of nonintegrated pollution control property/equipment.

Section 13. Certification Signature

Must be signed by owner or designated representative.

By signing this application, I certify that I am duly authorized to submit this application form to the TCEQ and that the information supplied here is true and accurate to the best of my knowledge and belief.

Printed Name: Donald H. Grissom

Date:

Signature: _____

Donald H. Grissom

6/12/12

Title: Attorney

Company Name: Grissom & Thompson, LLP

Under Texas Penal Code 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

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

May 11, 2012

Mr. Donald Grissom
Attorney
Grissom & Thompson, LLP
509 W. 12th St.
Austin, Texas 78701

Re: Notice of Technical Deficiency
Salado at Walnut Creek Partner, LLC
Watersbend Apartments
2104 East Anderson Lane
Austin (Travis County)
Regulated Entity Number: RN101228682
Customer Reference Number: CN603549452
Application Number: 15502

Dear Mr. Grissom:

This letter responds to Salado at Walnut Creek Partner, LLC's Application for Use Determination, received June 3, 2011, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Watersbend Apartments.

The TCEQ has conducted a technical review and has determined the information required in Title 30 Texas Administrative Code (TAC) §17.10 is incomplete for application #15502. Please revise the enclosed application to include the following information and include a copy of this letter with your response.

Please explain the difference between the item listed as: "system of sloping concrete surfaces (including drains, sumps, and piping for the purpose of preventing leachate through collecting stormwater site-wide" on this application and on the identical listing on application 15306.

The TCEQ appreciates your response in this matter. The revised application must be submitted by June 13, 2012, to the TCEQ Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087. Failure to submit a complete application, including the requested information, may result in your application being voided and the associated application fee being forfeited in accordance with 30 TAC §17.20(b).

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

A handwritten signature in black ink, appearing to read "Chance Goodin".

Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 12, 2012

Mr. Donald Grissom
Attorney
Grissom & Thompson, LLP
509 W. 12th St.
Austin, Texas 78701

Re: Notice of Technical Deficiency
Salado at Walnut Creek Partner, LLC
Watersbend Apartments
2104 East Anderson Lane
Austin (Travis County)
Regulated Entity Number: RN101228682
Customer Reference Number: CN603549452
Application Number: 15502

Dear Mr. Grissom:

This letter responds to Salado at Walnut Creek Partner, LLC's Application for Use Determination, received June 3, 2011, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Watersbend Apartments.

The TCEQ has conducted a technical review and has determined the information required in Title 30 Texas Administrative Code (TAC) §17.10 is incomplete for application #15502. Please revise the enclosed application to include the following information and include a copy of this letter with your response.

- ✓ Issue 1 – Please complete sections of the application which were previously omitted. The omitted areas include Section 2, Questions 3 and 4; Section 4, Questions 7 and 8; and Section 6, Question 1.
- ✓ Issue 2 – Rule citations must be to the rule currently in effect. Some of the citations on the application do not exist but presumably did in previous versions of the rule. For example, 30 TAC §330.960(b)(1)(C) and 30 TAC §330.957(1)(1)(C) do not exist. Please ensure all rule citations pertain to the current version of the rules which can be found at the following link [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC).
- ✓ Issue 3 – Please provide relevant excerpts from the Voluntary Clean-Up Program Agreement (VCP). While a requirement in the VCP does not substitute for a valid rule citation, the VCP may provide more insight as to the terms of the conditional certificate.
- ✓ Issue 4 – The response to an earlier deficiency letter contains the following description for alarms, "Fire alarms are installed in all apartment units on all floors of all buildings. However, these are not a part of pollution control system, but are part of the residential safety system." Tier I Table Number S4 specifically excludes fire alarms; therefore, these alarms are not eligible for exemption under the Tax Relief for Pollution Control Property Program. What is the justification for including controllers

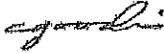
Mr. Donald Grissom
Page 2
January 12, 2012

and emergency generators in the equipment requested under Tier I Table Number S4? Please revise the application to remove items claimed under Tier I Table Number S4 that do not fit under Tier I Table Number S4. Furthermore, more detail is needed describing and quantifying the items claimed under Tier I Table Number S4.

The TCEQ appreciates your response in this matter. The revised application must be submitted by February 14, 2012, to the TCEQ Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087. Failure to submit a complete application, including the requested information, may result in your application being voided and the associated application fee being forfeited in accordance with 30 TAC §17.20(b).

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,



Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

CG/RH

Enclosure



VCP #301

**RESPONSE ACTION COMPLETION
REPORT**

FOR

**Watersbend Apartments
At Little Walnut Creek & Highway 183**

Prepared for

Rio Vista Apartments Partners

By

Technico Environmental, Inc.
2351 W. Northwest Highway
Suite 2320
Dallas, Texas 75220

Tel (214) 357-7001
Fax (214) 357-7402

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

November 24, 1999

Rio Vista Partners, Ltd.
c/o Sohrab Kourosch, P.E., Ph.D.
Senior Environmental Scientist
TECHNICO, Inc.
2351 West Highway, Suite 2320
Dallas, TX 75220

Re: Watersbend Apartment Complex Phase -IB, Located at 2104 East Anderson Lane, Austin,
Travis County; Voluntary Cleanup Program (VCP) No. 301

Dear Dr. Kourosch:

The Texas Natural Resource Conservation Commission (TNRCC) has reviewed the report entitled "Site Operation Manual" and "Request for Issuance of Conditional Certificate of Completion" as well as other requested information. The information provided in the reports demonstrate attainment of §330.5(a)(3) (General Prohibitions - endangerment to human health and the environment). Therefore, the TNRCC agrees that the partial response action area (PRAA) is suitable for use and issues the enclosed Conditional Certificate of Completion (CCOC) for the PRAA.

Please record and submit proof of filing the CCOC in the real property records of the county in which the site is located no later than 60 days from the date of this letter to my attention at the TNRCC, Voluntary Cleanup Section, mail code MC-221, at the letterhead address. You may contact me with any questions or comments you have at (512) 239-5872.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Frew".

for Mike Frew, Project Manager
Voluntary Cleanup Section
Remediation Division

MF/ts

Enclosures

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

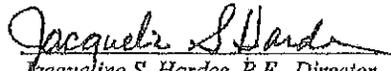


**VOLUNTARY CLEANUP PROGRAM
CONDITIONAL CERTIFICATE OF COMPLETION**

As provided for in §361.609, Subchapter S, Solid Waste Disposal Act (SWDA), Texas Health and Safety Code.

I, JACQUELINE S. HARDEE, P.E., DIRECTOR OF THE REMEDIATION DIVISION, TEXAS NATURAL RESOURCE CONSERVATION COMMISSION, CERTIFY UNDER §361.609, SWDA, TEXAS HEALTH AND SAFETY CODE, THAT NECESSARY RESPONSE ACTIONS HAVE BEEN IMPLEMENTED FOR VCP NO. 301 AS OF OCTOBER 28, 1999 FOR THE TRACT OF LAND DESCRIBED IN EXHIBIT "A", BASED ON THE AFFIDAVIT OF IMPLEMENTATION OF RESPONSE ACTION, EXHIBIT "B" AND WHICH ARE FURTHER DESCRIBED IN THE APPROVED RESPONSE ACTION WORK PLAN FOR THE SITE AND INCLUDE POST-CLOSURE CARE (e.g., MAINTENANCE OF ENGINEERING CONTROLS, REMEDIATION SYSTEMS AND/OR USE OF NON-PERMANENT INSTITUTIONAL CONTROLS). AN APPLICANT WHO ON THE DATE OF APPLICATION SUBMITTAL WAS NOT A RESPONSIBLE PARTY UNDER §361.271 OR §361.275(g), SWDA AND ALL PERSONS WHO WERE NOT RESPONSIBLE PARTIES UNDER §361.271 OR §361.275(g), SWDA (e.g., FUTURE OWNERS, FUTURE LESSEES, FUTURE OPERATORS AND LENDERS) ON THE DATE OF ISSUANCE OF THIS CERTIFICATE ARE QUALIFIED TO OBTAIN THE PROTECTION FROM LIABILITY DESCRIBED IN §361.610, SUBCHAPTER S, SWDA PROVIDED THE APPLICANT OR FUTURE OWNERS ARE SATISFACTORILY MAINTAINING THE POST-CLOSURE CARE (e.g., MAINTENANCE OF ENGINEERING CONTROLS, REMEDIATION SYSTEMS AND/OR USE OF NON-PERMANENT INSTITUTIONAL CONTROLS) AS DESCRIBED IN EXHIBIT "B".

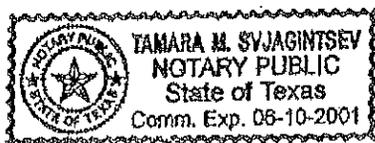
EXECUTED this 22nd day of November, 1999

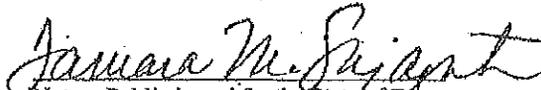

Jacqueline S. Hardee, P.E., Director
Remediation Division

STATE OF TEXAS
TRAVIS COUNTY

BEFORE ME, on this the 22nd day of November, personally appeared Jacqueline S. Hardee, P.E., Director, Remediation Division, of the Texas Natural Resource Conservation Commission, known to me to be the person and agent of said commission whose name is subscribed to the foregoing instrument and she acknowledged to me that she executed the same for the purposes and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 22nd day of November, 1999




Notary Public in and for the State of Texas

FIELD NOTES
FOR

EXHIBIT 'A'

PHASE 1B - 2.337 ACRES

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF THE WILLIS AVERY SURVEY NO. 81 IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 2, HEADWAY 8-A, A SUBDIVISION IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 83, PAGES 158C-158D OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, THE HEREIN DESCRIBED TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at a 1/2 inch iron pin found in the North r.o.w. line of U.S. Highway 183; being at the Southeast corner of said Lot 2, Headway 8-A:

THENCE along the East line of said Lot 2, Headway 8-A,
N 30°00'49" E for a distance of 386.36 feet to a 1/2 inch iron pin found and N 28°52'49" E for a distance of 113.50 feet to a 1/2 inch capped iron pin set for the Southeast corner and PLACE OF BEGINNING hereof;

THENCE along the South line of the herein described tract for the following courses:

N 59°42'00" W for a distance of 153.50 feet to a 1/2 inch capped iron pin set

S 61°00'00" W for a distance of 74.00 feet to a 1/2 inch capped iron pin set

N 81°27'00" W for a distance of 57.50 feet to a 1/2 inch capped iron pin set

N 24°44'00" W for a distance of 19.48 feet to a 1/2 inch capped iron pin set in the East line of that certain 3.820 acre tract of land described in Volume 9498, Page 632 of the Real Property Records of Travis County, Texas, for the Southwest corner hereof;

THENCE along the East line of said 3.820 acre tract for the following courses:

N 11°09'21" E for a distance of 50.57 feet to a 1/2 inch capped iron pin set

N 13°42'46" E for a distance of 50.97 feet to a 1/2 inch capped iron pin set

N 13°31'34" E for a distance of 45.02 feet to a 1/2 inch capped iron pin set

FIELD NOTES
FOR

PHASE 1B - 2.337 ACRES - Page Two

N 00°25'31" E for a distance of 51.44 feet to a 1/2 inch capped iron pin set

N 13°14'04" E for a distance of 51.15 feet to a 1/2 inch capped iron pin set

N 04°51'43" W for a distance of 57.90 feet to a 1/2 inch capped iron pin set

N 30°04'06" E for a distance of 49.39 feet to a 1/2 inch capped iron pin set

N 44°53'11" E for a distance of 32.50 feet to a 1/2 inch capped iron pin set for the Northwest corner hereof;

THENCE along the North line of the herein described tract,
S 53°10'26" E for a distance of 78.80 feet to a p.k. nail set and
S 60°33'00" E for a distance of 285.50 feet to a 1/2 inch capped
iron pin set in the East line of said Lot 2, Headway 8-A. for the
Northeast corner hereof:

THENCE along the East line of said Lot 2, Headway 8-A,
S 28°52'49" W for a distance of 283.00 feet to the PLACE OF
BEGINNING and containing 2.337 acres of land, more or less.

SURVEYED BY:
ROY D. SMITH SURVEYORS, P.C.

Roy D. Smith
ROY D. SMITH
REGISTERED PROFESSIONAL SURVEYOR NO. 4094
October 13, 1994
Job No. 2305

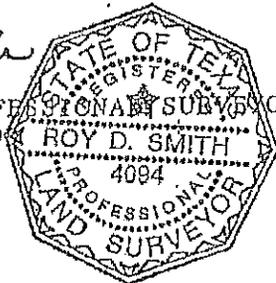


EXHIBIT "B"
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
VOLUNTARY CLEANUP PROGRAM
AFFIDAVIT OF IMPLEMENTATION OF RESPONSE ACTION

Río Vista Partners, Ltd. (the Applicant), has implemented response actions pursuant to Chapter 361, Subchapter S, SWDA, at the tract of land described in Exhibit "A" to this certificate that pertains to Salado at Walnut Creek - Phase 1B (formerly Watersbend Apartments), VCP No. 301 located at 2104 East Anderson Lane, in Austin (Travis County) Texas. The Site was owned by Río Vista Apartments Ltd. at the time the application to participate in the Voluntary Cleanup Program was filed. The Applicant has submitted and received approval from the Texas Natural Resource Conservation Commission (TNRCC) Voluntary Cleanup Section on all plans and reports required by the Voluntary Cleanup Agreement for receipt of a Conditional Certificate of Completion. The plans and reports were prepared using a prudent degree of inquiry of the partial response action area consistent with accepted industry standards to identify all hazardous substances, waste and contaminated media of regulatory concern. The response actions will include the following post-closure care activities:

1. Operate and maintain the Active Gas Extraction System and Semi-Active Gas Extraction System pursuant to the Site Operating Manual - Salado at Walnut Creek dated August 1999.
2. Inspect and maintain the drainage system pursuant to the Site Operating Manual - Salado at Walnut Creek dated August 1999.
3. Inspect and maintain the cover of the landfill pursuant to the Site Operating Manual - Salado at Walnut Creek dated August 1999.
4. Inspect and maintain the methane gas alarms in each first floor apartment pursuant to the Site Operating Manual - Salado at Walnut Creek dated August 1999.
5. Conduct methane gas monitoring, inspections and report submittals pursuant to the schedule in the Site Operating Manual - Salado at Walnut Creek dated August 1999.
6. Sample any leachate seeps that reappear on the property, including seeps along the banks of Walnut Creek that are within the site property boundary, as soon as the property owner becomes aware of the seeps, and assess any possible adverse impact that leachate may have on human health and the environment, pursuant to the Site Operating Manual - Salado at Walnut Creek dated August 1999 and take any action necessary to protect human health and the environment.
7. Comply with 30 Texas Administrative Code (TAC) §330 Subchapter T - Use of Land Over Closed Municipal Solid Waste Landfills.

The response actions for the partial response action area have achieved response action levels acceptable for Residential land use as determined by the standards of the TNRCC for a closed municipal waste landfill. Any other land use must be determined by issuance of a permit in accordance with 30 TAC §330 Subchapter T. The response action will eliminate, or reduce to the maximum extent practicable, substantial present or future risk to public health and safety, and the environment from releases and threatened releases of hazardous substances and/or contaminants at or from the partial response action area. The Applicant has not acquired this certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information. Further information concerning the response action at this Site may be found in the response action work plan at the central office of the TNRCC under VCP No. 301.

The preceding is true and correct to the best of my knowledge and belief

Applicant

By: Río Vista Partners, Ltd.

Print Name: _____

STATE OF Texas
COUNTY OF Dallas

By: Santander Management, Inc., its General Partner

By: [Signature]

This instrument was acknowledged before me on November 7, 1999 by Daniel D. Boeckma, Vice President

[Signature]
Notary Public in and for the State of Texas



Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Jacquéline S. Hardee, P.E., Director
Remediation Division **Date:** November 15, 1999

Thru: *CE* Charles Epperson, Section Manager
Voluntary Cleanup Section

JC Jay Carsten, Unit Manager
Voluntary Cleanup Section

From: *MF* Mike Frew, Project Manager
Voluntary Cleanup Section

Subject: Voluntary Cleanup Certificate of Completion (COC), Watersbend Apartments - Phase 1B, 2104 East Anderson Lane, Austin, TX; VCP No. 301

The Watersbend Apartment site is an Apartment Complex built over a closed municipal landfill in which the applicant, Rio Vista Partners, Ltd. has successfully completed voluntary cleanup activities under the terms of a voluntary cleanup agreement in accordance with §361.606 of the Solid Waste Disposal Act (SWDA), Texas Health and Safety Code. Cleanup activities included the installation of a site wide methane gas extraction system, a drainage system to prevent storm water infiltration, and maintenance of the cover of the landfill. It has been demonstrated that the cleanup activities at this site have attained the cleanup standards for §330.5(a)(3) (General Prohibitions - endangerment to human health and the environment). Therefore, the site is submitted to the Division Director with the recommendation to issue a COC for the site pursuant to §361.609 of the SWDA.

The COC is attached for your signature. Please contact me with any questions or comments regarding this site at extension 5872.

Attachments

WORK LSP/

RECEIVED
OCT 23 1997
VOLUNTARY CLEANUP SECTION



RESPONSE ACTION COMPLETION REPORT

FOR

**Watersbend Apartments
At Little Walnut Creek & Highway 183**

Prepared for

Rio Vista Apartments Partners

By

Technico Environmental, Inc.
2351 W. Northwest Highway
Suite 2320
Dallas, Texas 75220

Tel (214) 357-7001
Fax (214) 357-7402

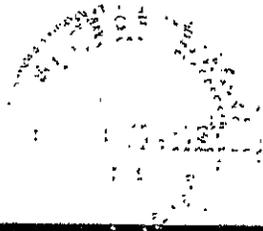


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RESPONSE ACTION COMPLETION REPORT

Executive Summary

This Response Action Completion Report (RACR) is prepared by Technico Environmental Inc. (TEI), on behalf of our clients Rio Vista Apartments, LLC., for the site of the Watersbend Apartments Complex (WAC), as final component for fulfillment of the requirements of an application to the Texas Natural Resource Conservation Commission (TNRCC), Voluntary Cleanup Program (VCP), for remedial work and closure under the joint supervision of the Municipal Solid Waste Division and the VCP.

The Watersbend Apartment Complex, 2104 East Anderson Lane, Austin, Texas, is located on the east side of Highway 183, approximately 1/4 miles west of the intersection of Highway 290 and Highway 183. It was constructed in 1984 on 14.09 acres on the east bank of the Little Walnut Creek. It consists of 25 multi-story apartment buildings with a total of 358 apartment units and other ancillary buildings and facilities. The apartment buildings are built with wood frame on concrete slab with post tension reinforcing. The exterior walls are constructed with brick and wood siding, and the roof is built with Fiberglass composite shingles. The area map, the site sketch, the legal description of the property, the site plan, and some data and statistics pertaining to this Site are presented in Appendix A.

The WAC was housing approximately 1000 people between 1985 and summer of 1992, when subsequent to the discovery of methane gas within the Lower Explosive Limit (LEL) inside some of the first floor apartments, it was evacuated and closed by the State and Municipal authorities due to health hazard and safety concerns for the residents.

Executive Summary
Response Action Completion Report

In September of 1994, the Rio Vista Apartments, L.C. purchased the Watersbend and initiated a series of negotiations with the Texas Natural Resource Conservation Commission (TNRCC), Texas Department of Health (TDH), Travis County, and the City of Austin, to arrange for remediation, rehabilitation, and rehabilitation of the Watersbend Apartment complex with approval and under the supervision of the above organizations. A milestone in this process was the agreement between the TNRCC and the RVA for the RVA to develop a site specific "Comprehensive Assessment/Remediation Plan" (CARP) for the soil and gas in the part of the Brinkley-Anderson Landfill, which is the present site of the WAC. This RVA-proposed CARP was based on, and modeled after a CARP which was developed on July 6, 1993 by the TNRCC for the site of WAC, but was modified to incorporate the remedial objectives related to the RVA scope of work. The CARP was presented to TNRCC on March 23, 1995, and was approved on April 19, 1995. The site was subsequently admitted to the TNRCC Voluntary Cleanup Program (VCP) for the remediation work to be performed under the joint supervision of the Municipal Solid Waste (MSW) and the VCP.

The approved CARP was implemented by Technico Environmental Inc., on behalf of the RVA. The implementation of the CARP and the related investigation which was aimed at characterization of the site of WAC, commenced in December 1995, and was completed in July, 1996. The Results of the investigations and site characterization of the WAC were reported to the TNRCC, Municipal Solid Waste, and Voluntary Cleanup Program, by Site Investigation Report (SIR) submitted on July 22, 1996. The SIR was approved by MSW and VCP in August, 1996, and RVA was subsequently "authorized to proceed with the preparation of the Remedial Action Work Plan (RAWP) detailing the design, execution plan, and implementation schedule for remediation work at WAC". A copy of the CARP and the TNRCC approvals are presented in Appendix G.

The site-specific RAWP was submitted to the TNRCC, Municipal Solid Waste Division, and the

Executive Summary
Response Action Completion Report

Voluntary Cleanup Program for their joint review, and was subsequently approved for implementation. The copies of the letters of approval by the MSW and the VCP dated November 15, and November 22, 1996 are presented in Appendix G. The letter of approval from the MSW, Waste Section, advised TEI "to proceed with the registration of the WAC in accordance with applicable parts of 30 Tex. Admin. Code Sections 330.951 thru 963 and the subsequent implementation of the RAWP. The letter of approval from the VCP emphasized "the importance of maintaining the cover or cap of the former landfill so as to prevent exposure of the landfill material to any future residents" and to monitor, sample, and analyze any leachate seeps that might "reappear along the banks of Walnut Creek within the site property boundary."

The implementation of the RAWP, and compilation of the Application for Registration commenced shortly after. The Application for Registration was submitted to TNRCC, Municipal Solid Waste Division, Permit Section in March 1997, and it was approved on May 28, 1997. The TNRCC assigned a Registration No. MSW-CR 65005 to this Site. A copy of the letter of approval of the Registration, and assignment of the registration number is presented in Appendix G.

The approved RAWP consists of the installation and operation of three remedial systems, these are:

1. Installation and operation of a site-wide Semi-Active Ventilation System (SAVS), consisting of 108 ventilation wells arranged in ten clusters, each complete with its piping and Venturi-tube Ejection System (VES). The wells were extended to the depth of the landfill to facilitate the venting of the landfill gas (LFG) generated in the soil under the site. The wells in each cluster are connected through a main ventilation pipe to the VES and a vertical vent equipped with a Flame Arrestor.
2. Installation and operation of a site-wide Active Gas Extraction System (AGES) for the under-slab

Executive Summary
Response Action Completion Report

spaces of all the buildings on the site. Although the under-slab methane gas survey indicated that only 10 buildings contained methane gas in their under-slab space, due to the unpredictability of methane gas migration, all the buildings were equipped with an AGES.

The buildings of the site were divided into four groups. Each AGES is powered by a gas extraction unit consisting of an exhaustor/blower with other ancillary components which is installed at a suitably located spot in each region and provides gas extraction for the under-slab spaces of the group of buildings located in that region. Buildings 1-4 are included in region 1, buildings 5-11 are in region 2, buildings 12-18 are in region 3, and buildings 19-25 are in region 4. The under-slab gas extraction system consists of a total of 506 vertical gas collection and fresh air supply tubes, the branch and main piping system, a moisture trap for each building, and the gas extraction units. The 386 extraction and 120 air supply tubes were designed and installed in such a way as to cover the whole under-slab space. The air supply necessary for operation of the VES (mentioned above) is provided by the exhaust air from the blowers of the AGES.

3. Installation and operation of a site-wide surface drainage control for elimination of leachate exposure at the site of WAC, a drain system to drain the rain water which was emerging as an spring on the north side, and a pond drainage system for draining the water, which will be collected in the north east pond after each rain or storm. Construction of a drainage channel for control of the runoff flow over the portion of adjacent property that is located between the PPAC and the WAC. Construction of a protection drain adjacent to the north drainage ditch to prevent the flow of flood water into the site.

The installation and operation of these systems will fulfill the objectives of the implementation of the RAWP, i.e., to protect the human health and the environment at the site from the adverse effects of the closed landfill. The test runs and system evaluations performed at this site indicate that the performance of the remediation system not only meets, but exceeds the design objectives of remediation project. The site is now ready for construction renovation and rehabilitation.

RESPONSE ACTION COMPLETION REPORT

INTRODUCTION

This Response Action Completion Report (RACR) is prepared by Technico Environmental, Inc., (TEI) for the site of the Watersbend Apartment Complex (WAC), as final component for fulfillment of the requirements of an application to the Texas Natural Resource Conservation Commission (TNRCC), Voluntary Cleanup Program (VCP), for remedial work and closure under the joint supervision of the VCP and the Municipal Solid Waste Division.

The Watersbend Apartment Complex, 2104 East Anderson Lane, Austin, Texas, is located on the east side of Highway 183, approximately 1/4 mile west of the intersection of Highway 290 and Highway 183. It was constructed in 1984 on 14.09 acres on the east bank of Little Walnut Creek. It consists of 25 multi-story apartment buildings with a total of 358 apartment units and other ancillary buildings and facilities. The apartment buildings are built with a wood frame on a concrete slab with post tension reinforcing. The exterior walls are constructed with brick and wood siding, and the roof is built with fiberglass composite shingles. The area map, the site sketch, the legal description of the property, and some data and statistics pertaining to this site are presented in Appendix A.

The WAC was housing approximately 1000 people between 1985 and the summer of 1992, when subsequent to the discovery of methane gas within the Lower Explosive Limit inside some of the first floor apartments, it was evacuated and closed by the State and Municipal authorities due to health hazards and safety concerns.

Response Action Completion Report

The site of the WAC has been the subject of several environmental studies, investigations, and reports, both before and after construction, and before and after the evacuation and closure. The first available study is a master thesis presented to the Faculty of the Graduate School of the University of Texas at Austin in 1972, by Thomas P. Clark, titled, "Hydrogeology, Geochemistry, and Public Health Aspects of Environmental Impairment At An Abandoned Landfill Near Austin, Texas". This thesis is a comprehensive study of a 50 acre abandoned landfill, known at that time as "Little Walnut Creek Landfill". The landfill covered both the east and west banks of Little Walnut Creek. Some excerpts and relevant parts of this thesis, and schematic map of the original landfill were presented in the Site Investigation Report (SIR) which was submitted to TNRCC in 1996.

The history of filling, and setting of this landfill as presented by Clark, indicate that the 50 acre site was originally operated as a county dump for a period of ten years before it was converted to a landfill in 1960. The site was operated by the City of Austin until 1968, when it was abandoned. Although no records were kept by the City about the method and process of filling, Clark reconstructed a generalized plan based on the extent of revegetation, degree of the observed decomposition, and other evidences such as newspapers found in different parts. According to this plan (presented in Figure 4, Appendix A) the operations were divided into three phases in three different sections of the original site. Section I, was used as a dump ground between the early 1950's to 1960. The northeast part of the area designated as Section II, was operated as a landfill between 1960 and 1966. Section III, which forms a major portion of the present site of the WAC was operated as a Municipal Landfill for two years between 1966 and 1968, when according to Clark, it was abandoned.

Clark's report indicated that Section III was filled from north to south. A thin layer of Burdit Marl, a gray to white, nodular, fine-grained clayey marl which covered the banks of Little Walnut Creek was stripped away, exposing the underlying Dessau Limestone. The refuse was placed directly over this limestone bedrock and then covered by the stripped marl or the marl excavated from quarries

Response Action Completion Report

to the north and east of Section III. The details of the geology and the impaired conditions of this landfill in 1972, as described by Clark, is presented in the above mentioned SIR.

The second report is, "Landfills In The Vicinity Of Austin, Texas", prepared by Underground Resource Management, Inc., for the City of Austin in 1984. This report covers 66 sites, with a very short description about each individual landfill. The subject site is referred to in this report as the "Brinkley-Anderson" landfill. The objectives of this report were to inspect the different active and abandoned landfill sites in the vicinity of Austin, identify the actual and potential health and safety hazards associated with each site, and recommend the necessary and proper mitigating actions or operating alternatives. This report does not provide any new information about the subject site. The only notable facts are that a leachate sample from the site was collected and analyzed, and the field visit for sample collection took place on June 1, 1984, when construction of the apartment complex had already begun. The report states that at that time a part of the site had been regarded, and waste below building slabs were removed, and replaced by compacted fill. The part of the report relevant to the subject site was presented in the SIR.

The third report is titled, "Phase I Environmental Site Assessment of Waters Bend Town Living", which was prepared by Earth Assessors of San Antonio, for Resolution Trust Corporation in 1991. This report, which is the first available site evaluation after the construction of the apartments, in addition to covering the previous studies, and performing leachate analysis, provided a site-wide soil gas measurement and investigation. The soil gas investigation showed high concentrations of methane gas in two areas under the site, and raised the health hazards and safety concerns due to the possibility of methane gas migration into the apartments, and structural safety due to the differential settlement of the under-slab soil. The section of this report on soil gas investigation is presented in the SIR.

The fourth study for the site was performed in February of 1993, after the Watersbend Apartments

Response Action Completion Report

were evacuated and closed in July 1992, by the Texas Department of Health, Texas Water Commission, and the City of Austin, due to the immanent health and safety hazards created by the migration of methane gas into the living areas. This study, performed for the Resolution Trust Corporation, by Raba-Kistner-Brytest Consultants, Inc., reported on testing the air on the first floor apartments of the buildings, and installation of 26 soil vapor monitoring probes in different areas of the site for measurement of the soil gas pressure. The report indicated that the positive gas pressure existed in the landfill mass, that could cause gas migration into the apartments. The presence of methane gas in the living area of some of the apartments (although at low concentrations), indicated that a migration pathway existed. Excerpts of this report was presented in the above mentioned SIR.

In September of 1994, the Rio Vista Apartments, L.L.C. purchased the Watersbend notes and other related security interests held by the Resolution Trust Corporation. In anticipation of this purchase and the final acquisition of the site, the Rio Vista Apartments, L.L.C. (RVA), initiated in the spring of 1994, a series of negotiations with the Texas Natural Resource Conservation Commission (TNRCC), Texas Department of Health (TDH), Travis County, and the City of Austin, to arrange for remediation, rehabilitation, and rehabilitation of the Watersbend Apartment Complex with approval and under the supervision of the above organizations.

The summary of these negotiations and the subsequent activities from the commencement in the spring of 1994, to August 1996, is presented in Appendix J, of the SIR. A milestone in this process was the agreement between the TNRCC and the RVA for the RVA to develop a Site-Specific "Comprehensive Assessment/Remediation Plan" (CARP) for the soil and gas in part of the Brinkley-Anderson Landfill, which is the present site of the WAC. This RVA-Proposed CARP was based on, and modeled after a CARP which was developed on July 6, 1993, by the TNRCC for the site of WAC, but was modified to incorporate the objectives of the CARP, as related to the RVA Scope of Work. The CARP was presented to the TNRCC on March 23, 1995, and was approved on April 19, 1995. The site was subsequently admitted to the TNRCC's Voluntary Cleanup Program (VCP) for

Response Action Completion Report

the remediation work to be performed under the joint supervision of the Municipal Solid Waste (MSW) and the VCP.

The approved CARP was implemented by Technico Environmental, Inc., on behalf of the RVA. The implementation of the CARP and the related investigation which was aimed at characterization of the site of WAC, commenced in December 1995, and was completed in July 1996. The results of the investigations and site characterization were reported to the TNRCC, Municipal Solid Waste, and Voluntary Cleanup Program, by the Site Investigation Report (SIR) submitted on July 22, 1996. The SIR was approved by MSW and VCP in August, 1996, and RVA was subsequently "authorized to proceed with the preparation of the Remedial Action Work Plan (RAWP) detailing the design, execution plan, and implementation schedule for remediation work at WAC".

The site-specific RAWP was submitted to the TNRCC, Municipal Solid Waste Division, and the Voluntary Cleanup Program for their joint review, and was subsequently approved for implementation. The copies of the letters of approval by the MSW and the VCP dated respectively, the November 15, and November 22, 1996 are presented in Appendix G. The letter of approval from the MSW, Waste Section, advised TEI "to proceed with the registration of the WAC in accordance with applicable parts of 30 Tex. Admin. Code Sections 330.951 to 330.963 and the subsequent implementation of the RAWP. The letter of approval from the VCP emphasized "the importance of maintaining the cover or cap of the former landfill so as to prevent exposure of the landfill material to any future residents" and to monitor, sample, and analyze any leachate seeps that might "reappear along the banks of Walnut Creek within the site property boundary."

The implementation of the RAWP, and compilation of the Application for Registration commenced in early 1997. The Application for Registration was submitted to TNRCC, Municipal Solid Waste Division, Permit Section in March 1997, and it was approved on May 28, 1997. The TNRCC assigned a Registration No. MSW-CR 65005 to this Site. A copy of the letter of approval of the

Response Action Completion Report

Registration, and assignment of the registration number is presented in Appendix G.

The CARP investigations provided the data and information necessary for a site characterization and development of a conceptual 3-dimensional model of the landfill. Based on the landfill gas generation characteristics, and the conceptual 3-dimensional model, and considering the architectural, and practical engineering elements, a Site-Specific Remedial Action Work Plan (SRAWP) was designed by TEI. This SRAWP consisted of the following main components.

1. Design and installation of ten Semi-Active Ventilation Systems (SAVS) in ten regions of the WAC site, each consisting of a cluster of wells, venting pipes, and a Venturi-Tube Ejection System (VES). The number of wells in clusters varied between 6-18 Wells.
2. Design and installation of an Active Gas Extraction System (AGES) for the under-slab spaces of all the buildings on the site. Although the under-slab methane gas survey indicated that only 10 buildings contained methane gas in their under-slab space, due to the unpredictability of the methane gas migration, all the buildings are equipped with an AGES.

The buildings of the site were divided into four groups. An AGES was installed at a proper location in each region and provides gas extraction for the under-slab spaces of the group of buildings located in that region. Buildings 1-4 are included in Region 1, buildings 5-11 are in Region 2, buildings 12-18 in Region 3, and buildings 19-25 in Region 4.

- 3a. Design and installation of the pond drainage system for draining the water, which was collected in the north east pond after each rain or storm.
- 3b. Design and installation of a drainage system along the northern property boundary.

Response Action Completion Report

- 3c. Design and install a retaining wall between buildings 14 and 21 on the east bank of the creek.
4. Modification of the landscaping and drainage system in the areas of leachate seepage, to eliminate the leachate exposure problem.

To Do:

The details of installation and operation of these systems are presented in the "Remedial project" section that follows.

→ also need to install methane gas detectors when construction is finished.

REMEDIAL PROJECT

The specific objectives of RAWP were:

- Design and installation of a site-wide ventilation system for venting the Landfill Gas (LFG) generated in the soil and body of the landfill under the site.
- Design and installation of a gas extraction system for removal of the LFG migrated to and accumulated in the under-slab space of all buildings.
- Design and installation of a site-wide surface drainage control systems, including the adjacent property and the northeast pond, the north flood protection system, and the east bank retaining wall.

The remedial project is designed to achieve the above remedial objectives by utilizing the following systems:

Site-Wide Ventilation System

The site-wide ventilation system consists of ten Semi-Active Ventilation Sub-Systems (SAVS) that were installed in ten regions of the WAC site. Each SAVS sub-system consists of a cluster of ventilation wells, venting pipes, and a Venturi-Tube Ejection System (VES). The number of wells in clusters vary between 8-16. The wells are extended from one foot bgl to the depth of the landfill with 9-12 feet of screen. The advantage of a VES is that it will facilitate the venting of the LFG in the soil beneath the site without promoting the infiltration of atmospheric air into the landfill, which might cause a subsurface fire.

The SAVS ventilation wells are installed in the parking areas or driveways at a well spacing distance of approximately 30 feet in the areas with a higher LFG concentration, and a well spacing distance of 45 feet in the areas of a lower LFG concentration. These well spacings were calculated based on the results of the site-wide extraction tests performed under the CARP. The ventilation wells were placed at a distance of 30 feet corresponding to a radius of influence of 15 feet (1/4 of the estimated radius of influence.)

Response Action Completion Report

The ventilation wells are installed in a trench approximately 18 inches wide and 12 inches deep (see Figure SK-V-2, Appendix B, and the photos in Appendix H). The two inch diameter wells each consisting of 9-12 feet of screen and 4-5 feet of casing are installed in an 8 inch diameter bore hole, with a silicon sand filter pack extending to two feet above the screen. The rest of the hole is filled with bentonite and concrete. The wells are connected to a main pipe installed in the trench and connected to a vertical vent pipe leading to the VES. The technical specification of the Venturi units which are used in the VES, and the air supply source are presented in Appendix F.

The pipes connecting the wells to the main pipe and the main pipe connected to the vertical vent, are sloped at a gradient of 1/4 to 1/8 inch per foot respectively, to allow the condensation formed in the pipes to return to the wells and prevent hydraulic blocks (see Figure SK-V-3, Appendix B). The vertical vent pipes and the VES are installed inside a 30 foot high decorative light post. The air flow necessary for the operation of the SAVS is supplied by the blower/extraction units (see Schematic Figure SA-V-2, Appendix B). The site-wide ventilation system consisting of ten SAVS in ten regions is presented in Figure SV-V-1, Appendix B, and photos in Appendix H.

The tests performed during the system evaluation showed that the Venturi Ejection System generates a negative pressure, equivalent to 2-3 inches column of water in the main pipe of the SAVS. This negative pressure is sufficient to effectively assist the ventilation of the methane gas generated in the soil without causing air interment. During the period of operation, the VES makes a low decibel humming noise which is not usually distinguishable from the background noise. A Flame Arrestor is installed at the end of the vertical ventilation exhaust manifold on top of the decorative light post. The VES assembly before installation in concrete foundation of the decorative light post is shown in the photos presented in Appendix H.

The Flame Arrestor is a safety device installed to prevent the reverse motion of the flame through the ventilation pipe, in case the exhaust gas is ignited by lightening during a thunder storm.

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The conceptual design of the above system is presented in Figure SA-V-2, and the construction of the trenches, the layout of the main SAVS pipes, and the area covered by the system are shown in Figure SA-V1 in Appendix B. The details of the actual system construction are presented in the photographs in Appendix H.

The system testing, evaluation, and adjustment was performed after the installation of the SAVS, AGES, and the vertical ventilation exhaust manifolds inside the decorative light posts were completed. The SAVS was adjusted to produce a negative pressure equivalent to two column inches of water (2" CW) at the far end of the main ventilation pipe. This was accomplished by adjusting the inlet flow of the Venturi Ejection System. This draft that is established in the main ventilation pipe as result of the operation of VES, will help to remove the methane gas generated in the body of the landfill, without promoting the air interment. This will eliminate the possibility of underground fire which is the result of air interment due to higher negative ventilation pressure.

The reduction of the soil methane gas level in the body of the landfill as the result of the SAVS operation was also tested. For this test the methane gas concentration in a series of gas monitoring wells that are scattered over the site were measured. The gas concentration levels in these wells in the start of testing (without any prior ventilation) varied between a maximum of 24% by volume in well SVW-20 to less than 1% in several wells. The maximum time of operation of the SAVS for reduction of gas concentration to less than LEL (approximately 5% by volume) was six hours. The subsequent testing that was performed in four weeks intervals showed that 4 hour of operation of the SAVS was more than sufficient to keep the soil gas concentration below the LEL in the region of the highest soil gas concentration. It is evident that prolonged and continuous operation of this system for 2 hours a day will keep the soil gas levels under the acceptable regulatory standards without causing air interment or over evaporation of the soil moisture, which is the cause of differential settlement in most landfill sites. The system's operational protocol will be adjusted if necessary, after the initial 90 days of system operation.

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Site-Wide Active Gas Extraction System

The site-wide gas extraction system consists of four zonal Active Gas Extraction Systems (AGES) which together they cover the under-slab spaces of all the buildings on the site. The under-slab methane gas survey indicated that only 10 buildings contained methane gas in their under-slab space (see SP-1, Appendix C). However, due to the unpredictability and dynamic nature of the methane gas migration, the health and safety concerns required that all buildings be equipped with an AGES. This will provide protection against the possibility of a change in gas migration or accumulation patterns due to a natural cause, or as a result of operation of the SAVS and AGES units.

The buildings of the site were divided into four groups in four zones of the site. An AGES was installed at a centrally located spot in each zone and will provide gas extraction for the under-slab spaces of the group of buildings located in that zone. Buildings 1-4 are included in Zone 1, buildings 5-11 are in Zone 2, buildings 12-18 are in Zone 3, and buildings 19-25 are in Zone 4 (see Site Plan SP-1, Appendix C).

The under-slab space of each building, is equipped with 12-36 vertical gas collection /fresh air supply tubes or wells. The preliminary design of the AGES called for horizontal collection tubes that would be designed and installed in such a way that they run parallel along the width of the under-slab and would cover the whole under-slab space. However, preliminary influence tests showed that the horizontal collection tubes would not perform as effectively as vertical short length collection wells. The number of wells in each building is a function of the size of the under-slab space, and the under-slab LFG concentration in that building.

An extraction well consists of a hole which is drilled through the slab concrete and the under-slab soil to the depth of 18-24 inches below the slab level. A tube 16-18 inches long, which is

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perforated for the last 10-12 inches of length and capped at the bottom is placed in the middle of the hole and the annulus space around the tube is packed with silicon sand. The top part of the hole in the slab and around the tube is sealed with concrete. The top end of the tube is connected to the gas extraction unit through the branch piping and the main collection pipe (see Figure SK-E-2, Appendix C). A Moisture Trap is also installed at the end of each main pipe that comes out of each building. The moisture trap is also equipped with a gate valve and a vacuum gauge for flow and pressure adjustment (see the sketch in Appendix C).

The operation of the gas extraction unit creates a vacuum, and therefore, applies a negative pressure on the gas collection tubes in the center of the gas extraction wells resulting in the movement of the gas from the under-slab space into the extraction wells and gas collection tubes, and through the AGES piping system to the outside space. This negative pressure will cause all the LFG collected in the under-slab space to move out. However, the reduction of the pressure in the under-slab space might have a side effect. This pressure drop will cause over-evaporation of the soil moisture, which will in turn disturb the building-soil-hydrostatic balance. This will result in differential settlement of the under-slab soil and associated structural problems.

To overcome the above mentioned problem, the AGES system was designed to reduce the magnitude of the pressure drop in the under-slab space, while providing an effective flow or active ventilation that will capture and transport out every molecule of LFG that is migrated into the under-slab space. To accomplish this task, one out of every three extraction wells is converted to a fresh air supply source by directly connecting the center tube to the outside air. The application of the negative pressure by the gas extraction unit on the collection tubes of the extraction wells, will cause the atmospheric air to enter the under-slab space from the air supply source, and flow towards the extraction wells (see Figure SK-E-4, Appendix C). The establishment of this flow pattern will prevent the LFG from accumulating in the under-slab space, while the soil moisture extraction problem will be reduced drastically. The location of gas extraction and the fresh air

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supply tubes are shown in Building Plans presented in Appendix C. The monitoring and adjustment of the under-slab moisture conditions is addressed in the "Operation and Maintenance" section of this report.

The collection tubes of the gas extraction wells are connected to branch pipes for each building, which are connected to the gas collection mains through a gate valve and a moisture trap. The four LFG extraction units in four zones, each consists of an extraction/blower unit, which together with its moisture trap and electrical and system controls are placed in an enclosure. The inlet of the extraction unit is connected to the collection main, while the blower exhaust is connected to the piping system that is apportioned to the size and number of the SAVS in each zone, to provide the air supply for the VES units (see Figure SK-E-3, Appendix C). The actual (as built) arrangement of the gas extraction system, and other details of the site-wide LFG extraction system are presented in Figure SK-E-1, in Appendix C. As presented in this Figure, the gas extraction wells shown as full circles are connected to the branch pipes, while the air supply tubes are presented as hollow circles. The photographs in Appendix H show the main gas extraction and ventilation piping. A conductive wire is running along these pipes in trenches. This wire will help to locate these piping and trenches during future construction activities.

The extraction units in Zones 1-4 each incorporate a Hoffman Seven Stage Series T Exhauster, equipped with a 7.5 HP explosion proof electric motor, and featuring gas construction. The extraction units are mounted on a steel skid frame, and are placed inside an enclosed lockable structure (see photographs in Appendix H).

The extraction system is equipped with a Flame Arrestor at the inlet to the extraction pump. The Flame Arrestor is a passive device that prevents the propagation of flame from the unprotected side (exhaust side) to the protected side of the system, e.g., the under-slab gas extraction wells and the under-slab space. However, in this system the exhaust side of the extraction units are

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connected to the VES of the SAVS, which are already protected by the Flame Arrestors that are installed above the VES on top of the decorative light posts. The technical data and specifications of the gas extraction units and flame arresters are presented in Appendix H.

The photographs of the extraction units and other components of the system are presented in Appendix I.

The system testing, evaluation, and adjustment was performed after the installation of the SAVS, AGES, and the vertical ventilation exhaust manifolds inside the decorative light posts were completed. The AGES system was adjusted to operate at a negative pressure equivalent to nine column inches of water (9" CW) at the end of each main collection pipe (the inlet of each moisture trap). This was accomplished by adjusting the inlet flow of the Gas Extraction Pumps. This negative pressure at the end of the main collection pipe is the minimum suction that can produce a negative pressure of approximately two column inches of water (2" CW) in the fresh air tubes. This magnitude of negative pressure in fresh air tubes is indicative of establishment of an air flow regime in the under-slab space, which is sufficient to carry the methane gas existing in the under-slab space without effecting the soil moisture content in the underlying strata.

The methane gas concentration under the slab of buildings were originally measured during the CARP investigation by drilling a 1/2" hole through the slab of each first floor apartment. The holes were capped by a removable rubber plug. The same holes were utilized for testing the effectiveness of the AGES. The methane gas was accumulated in the under-slab space for some times before testing. At the time of test, the rubber plug was removed and the measurement probe of a Landtech GM-500 Gas Detector was inserted in the hole. A rubber washer was sealing the probe inside the hole, preventing the outside air to enter into the hole during the measurement. The under-slab methane gas concentrations varied between 63% by volume to 0. throughout the site. The maximum was in Building 18. The holes were capped and sealed by the rubber plug

Response Action Completion Report

after the measurement was completed. The AGES for each zone was set by adjusting the inlet flow after it was started and reached normal operating condition. The AGES was stopped after each ½ hour of operation for measurement of the under-slab methane gas concentration. The tests in Building 18 indicated that the under-slab methane gas concentration dropped rapidly in the first ½ hour of operation, and it was 0. after the third ½ hour, indicating that the system operation at the rate of 2 hours per day is sufficient to keep the under-slab space free of methane gas.

However, if the duration of the system operation is divided to several intervals, it will not only achieve the main objective of the AGES operation, i.e., the extraction of the methane gas from the under-slab space, but it will provide additional advantages, such as minimizing the wear and tear in the Extraction Pump, reducing the moisture extraction, and dealing with instantaneous surge in methane gas generation due to the rain. For this purpose the AGES system is set to operate in three intervals of 45 minutes during each day (once every 8 hours).

The system's operational protocol will be adjusted if necessary, after the initial 90 days of operation. The commencement of the system operation is the approval date of this Corrective Action Completion Report. At the end of the first quarter, the results of the weekly under-slab gas concentration measurements, and the site soil gas concentration measurements, will be compiled and will be reported to TNRCC, VCP. Based on the results of this report, the operational protocol of the systems will be adjusted if necessary.

Both the daily operational interval of the system, and the site-wide test and measurement interval (presently once every week) will be extended or reduced according to the results of the above data compilation.

The total gas remediation system plan is presented in Appendix D.

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Surface Drainage Control System

The surface water drainage control has two components in WAC. The first is the control of seepage and flow of contaminated subsurface water (leachate) in the areas of the site with a level differential. One example of this was the seepage of a reddish water that was flowing out of one section of landscaping in front of Building 4 over the asphalt driveway. The metal content of this water was apparent from the reddish color. However, a sample of this water was analyzed for VOC's by EPA Method 8240, and the analysis showed that the only VOC contaminant in this water is Dichlorobenzene at a total concentration of 4.3 ppb. The lowest Action Level based on Health Protection Standards in groundwater for Dichlorobenzene (DCE) is for Dichlorobenzene (1, 4) which is at 75 ^{ppb} ppm (well above the present contamination level). The Action Level for other forms of DCE is much higher. Evidence of similar seepage was also seen in other parts of the site, e.g., in front of Buildings 5-8, and 15-18. Although, the VOC contamination of the above leachate sample was not above the Action Level for the Health Protection Standard for this compound, the seepage and flow of this leachate over the surface of the site was eliminated. This was done in compliance with the provisions of the CARP to prevent the human exposure and contact with the landfill soil or leachate.

← Correction

To eliminate the flow of the leachate in other areas of the site, the landscape of the site will be modified and a series of shallow drainage ditches will be constructed in front of Buildings 5-8, and 15-18, where the seepage of the leachate occurred in the past. These ditches will be covered by steel grids to allow the rain water to flow into these ditches before it runs through the soil. The building gutters will also be drained into the storm sewer through these ditches where possible. This part of drainage work, although a part of environmental site remediation, by its very nature should be performed during the Site renovation and reconstruction phase, and is the only part that is partially done and not fully completed at this time.

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The second component of the surface drainage is the prevention of the impingement of the surface water from the adjacent properties on the body of the landfill under the WAC. There are three up gradient properties to the north, northeast, and east of the site that can impact the landfill. These properties are: The Promontory Point Apartments (PPAC) on the east, a parcel of land containing ponds and the paved and asphalt surface along the road in front and to the east of the northeast gate called Center Plaza, and the closed landfill to the north of the site.

A large volume of surface drainage water from PPAC's north and northwest parking areas with a very large asphalt and concrete surface, flows along a rather steep gradient to a drainage channel that runs on and along the common border of WAC and PPAC. This drainage channel was designed to drain into a storage pond on the south side of the property and eventually drain into Little Walnut Creek. During the past few years the drainage channel had become inefficient in conveying the surface water runoff. The channel bed was blocked with objects, trash, debris, and vegetation growth, and as a result the storm water runoff would flow into the ground and impinge over the landfill body. During the period of the implementation of the CARP and RAWP, the owners of PPAC, the Insignia Management Group (IMG), were contacted, and they agreed to reconstruct the channel to manage the surface water runoff from PPAC. The reconstruction of the channel was completed in August 1996. However, in absence of a proper flow control mechanism, during the storm and rain showers, the fast flowing water would wash the clay liner on the side of drainage ditch opposite to the entrance point of the water flow. In order to correct this problem, the IMG were advised to put cement blocks on the bottom and side of drainage ditch opposite to the entrance of the flow. The overall work and improvements of this surface drainage channel was approved by the TNRCC.

The property located on the northeast of the site that extends from the northwest of the PPAC to the Center Plaza, contains two ponds. The smaller pond that is located adjacent to WAC is dry at present time. However, before the execution of the approved remedial plan, during the

Response Action Completion Report

rain and storm periods, a large volume of water was collected in this pond, which directly impinged upon the landfill under the north part of WAC, and after saturating the landfill, it would seep out from the west boundary of the site (the east bank of the creek) as a reddish leachate . The owners of this property were contacted during the CARP implementation period. However, they seemed unwilling/incapable of effectuating any plans to modify their property to either prevent the water from being collected in the pond, or to prevent the water impact on the landfill.

Review of the survey plans showed that a small portion of the west side of this pond is actually a part of the WAC property (the fence is installed approximately 10 feet inside the WAC property). Therefore, a drainage plan was designed and implemented from the WAC property to drain the water from this pond and prevent the impact on the landfill. This plan consisted of two parts:

1. Construction of a concrete storm water inlet structure containing a removable leaf , brush, and debris screen in the deepest part of the pond (in the WAC property). This inlet structure is shown in the photographs in Appendix H.
2. Installation of an Eight inch underground drain pipe connecting the concrete inlet structure to the site storm sewer system. The installation of this drain system will prevent the storm and rain water from collecting inside the pond and penetrating into the body of the landfill. The details of the surface and pond drainage system are presented in Figure SD-1-1, and the original "Site Grading & Detention Plan", in Appendix E, and photographs in Appendix H.

There is a wide street and a large paved circular area (Center Plaza) in front of the north entrance of the WAC. This street which extends from the north gate of the WAC to the Cross Park Drive, has a very steep gradient towards the site of the WAC. During the storm and rain periods, the

Response Action Completion Report

water that runs over this large surface enters the WAC site and part of it flows on the north side of the property behind the Buildings 25, 24, and part of Building 23. This run-off was flooding the back porch of these buildings during storm and rain shower, and would impinge on the body of the landfill along this area, causing a reddish-brown leachate to emerge from under these buildings and flow over the surface of WAC site.

Two French Drain systems were installed on the north boundary of the site behind and in front of the Buildings 25, 24, and 23. These drain systems will prevent the rain water to enter the body of the landfill to promote methane gas and leachate generation. The effect of the installation of these drainage systems is readily observed at the site of WAC, as several leachate flow points on the eastern bank of the Little Walnut Creek that were discharging reddish-brown leachate in the past, dried out, and no leachate is discharged from these points any more.

The closed landfill on the north, which has a higher surface elevation than the WAC site, is separated from the WAC by a concrete channel that runs all along the north border of WAC. This channel was constructed to prevent the surface water draining from that landfill from running over the WAC property. However, it appears that some times during the rain storm the channel will not be able to contain and drain all the water. This has occasionally resulted in the overflowing and flooding of the north part of WAC in the past. The construction of the above mentioned drain system will help to alleviate this problem in future.

However, there is a continuous flow of leachate from the north adjacent landfill into the above channel, which is discharged into the Little Walnut Creek immediately north of the WAC. The TNRCC and the City of Austin have been informed about this situation. The owners of this property were contacted by the City of Austin and were encouraged to investigate the problem. The owners of WAC are ready to cooperate with the owners of the north landfill property in controlling this leachate flow, and preventing the raw leachate to enter the Creek.

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The surface drainage control system includes seven sections of drain channels which are located in the middle section of the Site, in front of apartments 5-8, and 15-18. Although the details of the design of these sections were provided in the general Site Drainage Plan, the actual construction of these sections should take place simultaneously and in conjunction with the site and building construction and renovation work.

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Gas Detector and Alarm System

Although the installation and operation of the SAVS (as indicated above) has drastically reduced, if not totally eliminated, the possibility of the gas migration into the under-slab spaces, the installation and operation of the site-wide AGES is shown (as indicated above) to prevent the accumulation of the LFG in the under-slab space of the buildings. The combination of these two systems will ensure that no methane gas can migrate through the slabs into the apartment buildings.

However, as an extra safety measure, and in compliance with the requirements of the approved CARP, a landfill (methane) gas detector/alarm will be installed in each of the first floor apartment units of all buildings.

The gas detector/alarm selected for this purpose is a GD-21 combustible gas alarm manufactured by Macurco, Inc. This detector/alarm detects a number of combustible gases such as Natural (methane gas in the LFG), LP, Propane, Butane, and Gasoline Fumes. The detector/alarm is set for a detection limit of 25% LEL (Lower Explosive Limit) for methane gas. According to the manufacturer's recommendation, these alarm units will be installed in the living area of the first floor apartments close to the ceiling.

A technical brochure of the gas detector/alarm is presented in Appendix F. These gas detector alarms will be installed after the site construction and renovation work is completed.

Site Structural Integrity

The assessment of the structural integrity of the buildings and the site of WAC as one of the CARP objectives, has been performed by MGC structural engineering consultants, and Brown Engineers Inc. in

Response Action Completion Report

accordance with the City of Austin's ordinances. The Scope of Work recommended by the consultants include:

1. Raising and leveling of any slab whose slope exceeds three inches. This will be accomplished by a lime slurry pressure injection, pier placement, and grouting.
2. Repair of the cracks in the foundation slabs and beams. This will be accomplished by injecting epoxy grout after the leveling is completed.
3. Provide positive drainage for the foundation of the buildings, where the existing drainage is inadequate.
4. Rebuild curb/retaining wall between buildings 14 and 21.
5. Construct a new retaining wall or reinforce the existing one along walnut creek.

The above activities will be performed under supervision of the City of Austin, as part of the site construction and renovation plan required by the City for the issuance of the occupancy permit for the site of WAC.

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Operation and Maintenance

The operation and maintenance of the remedial systems installed at the site is easy and relatively trouble-free. The SAVS consists of a cluster of ventilation wells connected through the pipes to a vertical ventilation pipe and VES. The flow of air through the VES will create a relatively low vacuum which will assist the motion of the LFG through the soil and out of ventilation wells. The SAVS and VES have no machinery and contain no moving parts. The air supply necessary for the operation of the VES is the extraction air from the AGES that passes through the VES before exhausting to the atmosphere.

The AGES has an extraction/blower unit that provides the necessary vacuum for the motion of the under-slab air/LFG flow. The only machinery used at the site are the extraction/blower units. The Hoffman multi-stage centrifugal exhauster/blowers used in the AGES are dependable, quiet, and trouble-free machines. These machines are practically maintenance free, they can be maintained by the site operation manager that maintains the heating/air conditioning systems. One spare exhauster/blower will be kept at the site to replace any unit that fails in less than one hour. The failed unit will be repaired and will be kept as a spare unit.

The site-wide and pond drainage control system also has no moving parts. The pond water catch will have a bucket type leaf and debris catch that needs to be removed and cleaned periodically.

The gas detector/alarm units are also reliable maintenance free units. A power interruption protection and alternative supply system is under consideration to supplement the units, and keep them operational at the time of a power outage.

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Upon completion of the construction and renovation work, when the official commissioning of the WAC remedial systems is commenced, a Site Operations and Maintenance Manual (SOM) will be compiled. The details of operation, periodic inspection, maintenance, and repair of all systems, as well as the emergency procedures, and other environmental safety issues will be provided in the SOM.

The owners of the WAC will be responsible to train the site operation manager of WAC for proper operation and maintenance of the remedial systems, and to ensure that the operation manager has a copy of SOM and a copy is kept in an accessible place in the WAC office.

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Conclusions

The installation of the SAVS, the AGES, and the site drainage system completes the execution and implementation of the Response Action Work Plan (RAWP). The primary objectives of the remediation project, i.e., the protection of the human health and environment from the adverse effects of the closed landfill under this site are fully achieved.

The test runs and system evaluations performed at this site indicate that the performance of the remediation system not only meets, but exceeds the design objectives of remediation project. The site is now ready for construction renovation and rehabilitation.

**Executive Director's Exhibit #3 –
Use Determination No. 15502**

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

July 13, 2012

Mr. Donald Grissom
Attorney
Grissom & Thompson, LLP
509 W. 12th St.
Austin, Texas 78701

Re: Notice of Use Determinations
Salado at Walnut Creek Partner, LLC
Watersbend Apartments
2104 East Anderson Lane
Austin (Travis County)
Regulated Entity Number: RN101228682
Customer Reference Number: CN603549452
Application Number: 15502

Dear Mr. Grissom:

This letter responds to Salado at Walnut Creek Partner, LLC's Application for Use Determination, received June 3, 2011, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Watersbend Apartments.

The TCEQ has completed the review for application #15502 and has determined that certain property included in the application is not eligible for a Positive Use Determination. The TCEQ has issued a Positive Use Determination for the eligible property in the application in accordance with Title 30 Texas Administrative Code (TAC) §17.4 and a Negative Use Determination for the ineligible property in accordance with §17.4 and §17.6. The justification for the Negative Use Determination is provided below.

The first floors of the buildings do not control, monitor, or prevent air, water, or land pollution.

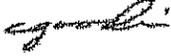
In order to request an exemption for the eligible property, the attached Use Determination Certificate and a completed Application for Pollution Control Tax Exemption, Form #50-248 (please see www.cpa.state.tx.us), must be provided to the chief appraiser of the appropriate appraisal district no later than April 30th of the applicable tax year.

Please be advised that a Use Determination may be appealed by the applicant or chief appraiser of the applicable appraisal district. The appeal must be filed with the TCEQ Chief Clerk within 20 days after the receipt of this letter in accordance with 30 TAC §17.25.

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Mr. Donald Grissom
Page 2
July 13, 2012

Sincerely,



Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

CG/RH

Enclosure

cc: Chief Appraiser, Travis County Appraisal District, P. O. Box 149012, Austin, Texas 78714

The State of Texas
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Application Number: 15502

County: Travis



USE DETERMINATION CERTIFICATE

This certifies that

Salado at Walnut Creek Partner, LLC
Salado at Walnut Creek Apartments
2104 E. Anderson Lane
Austin, Texas

installed the following property that is used 100 % for pollution control to meet or exceed federal or state regulations:

continuous emission monitors located in each apartment to alert to high methane gas levels; 108 wells used to vent methane to a safe area; sloping concrete surfaces (including drains, sumps, and piping) installed to collect stormwater, and a fugitive emission monitoring and control system consisting of four Sentry landfill gas monitoring probes; 26 soil vapor monitoring wells; and 15 ~~vapor~~ gas monitoring/vapor ventilation wells.

okay

July 13, 2012

Date

A handwritten signature in black ink, appearing to read "Zack Covar".

what happens here.
Zack Covar
Executive Director

**Executive Director's Exhibit #4 –
Property Tax Exemptions for Pollution
Control Property, Draft Guidelines
Document, TCEQ, RG-461**



Property-Tax Exemptions for Pollution Control Property

DISCLAIMER

This document is intended to assist those applying for a use determination, pursuant to Title 30, Texas Administrative Code, Chapter 17 (30 TAC 17). Conforming to these guidelines should result in applications that meet the regulatory standards required by the Texas Commission on Environmental Quality (TCEQ). However, the TCEQ will not in all cases limit its approval of applications to those that correspond with the guidelines in this document. These draft guidelines are not regulations and should not be taken as such. Exercise discretion in using this guide; also consider any other relevant information when developing an application.

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INTRODUCTION

Purpose of Guidelines

These guidelines are intended as guidance for persons seeking a property-tax exemption for capital expenditures for **pollution control property/equipment**—meaning a facility, device, or method for the control of air, water, or land pollution. Under the Texas Tax Code (TTC), a person or business may obtain an exemption from ad valorem property taxes for certain property/equipment installed to comply with environmental laws or rules. This document explains how to determine whether you have property/equipment that may qualify for a tax exemption and how to apply to the TCEQ to ultimately obtain the exemption. The document issued by the TCEQ, which authorizes the tax exemption, is referred to as a **use determination**.

Legislative Background

On November 2, 1993, Texas voters approved a constitutional amendment exempting certain pollution control property/equipment from property taxation. This amendment added Section (§) 1-1 to Article 8 of the Texas Constitution. Legislation to implement the amendment was approved in House Bill (HB) 1920, 73rd Texas Legislature, 1993. This legislation added a new **TTC, §11.31**. The intent of the constitutional amendment was to ensure that capital expenditures undertaken to comply with environmental rules did not increase a facility's property taxes.

The 77th Texas Legislature, 2001, amended TTC, §11.31 to require the TCEQ to adopt specific standards for evaluating applications and create a formal procedure to allow applicants or appraisal districts to appeal a final determination.

The 80th Legislature, 2007, amended TTC, §11.31 by adding three new subsections. The first change required the TCEQ to adopt a nonexclusive list of property/equipment that included a list of 18 different categories, i.e., the Expedited Review List that is specified in 30 TAC §17.17(b). The second change required that the list be reviewed at least once every three years and established a standard for removing property/equipment from the list. The third change established a 30-day review period for applications that contain only property/equipment listed on the Expedited Review List.

The 81st Texas Legislature, Regular Session, 2009, amended TTC, §11.31 by adding two new sections. New section (g-1) requires that applications containing property/equipment adopted under TTC, §11.31(k) be reviewed using the methods and standards adopted under TTC, §11.31(g). New section (n) requires the establishment of a permanent advisory committee that is charged with advising the commission on the implementation of TTC, §11.31. In addition, the legislation corrected the agency's name in the statute and allowed for electronic appraisal district notifications as required by TTC, §11.31(d).

On November 18, 2010, the TCEQ adopted changes to 30 TAC Chapter 17 to establish procedures and mechanisms for obtaining a use determination required to implement the amendments to TTC, §11.31 by HB 3206 and HB 3544, 81st Texas Legislature, Regular Session, 2009.

The legislation established a two-step process for securing an exemption from property taxes for pollution control property/equipment:

1. A facility must first obtain from the TCEQ a determination that the property/equipment is used for pollution control. The determination includes the percentage of property/equipment use that pertains to pollution control.
2. The applicant then submits this use determination to the local appraisal district to obtain the property tax exemption. The appraisal district will determine the value of the property/equipment.

ELIGIBILITY AND EXCLUSIONS

Effective Date

To be eligible for a positive use determination, the property/equipment must have been purchased, acquired, constructed, installed, replaced, or reconstructed after January 1, 1994, to meet or exceed an adopted federal, state, or local environmental law, rule, or regulation. Property/equipment at the facility prior to that date is not eligible.

Eligible Property/Equipment

Property/equipment that is installed (or is being installed) wholly or partly for pollution control purposes may be eligible for a positive use determination. **The applicant must show that the property/equipment was installed to meet or exceed an applicable environmental regulation.** For property/equipment used **partly** for pollution control, the applicant must perform a cost analysis using the **cost analysis procedure (CAP)** specified in 30 TAC §17.17(c) to determine the percentage of the qualifying capital.

Pollution control property/equipment that became taxable after January 1, 1994, but for which no positive use determination has been issued, may be eligible for a positive use determination.

Following is a list of potential eligible property/equipment:

- **Dedicated-Purpose Vehicles:** Vehicles that are used solely for pollution control (such as certain vacuum trucks, street sweepers, surface-watering trucks, and spill-response vehicles) may be eligible for positive use determinations.
- **Qualifying Land:** Land **may** be eligible for a positive determination, but only land acquired after January 1, 1994, that actually contains (1) only pollution control property/equipment; or (2) property/equipment that is used solely for pollution control; or (3) property/equipment that was specifically purchased solely for pollution control. An example of (1): the actual square footage of land that contains a baghouse or scrubber. An example of (2): the land used for a storm water—or wastewater—containment pond. An example of (3): the purchase of adjacent land that will be used solely for pollution control.
- **Buffer Zones:** Property/equipment used solely as a buffer zone may be eligible only if the buffer zone is specifically required by an adopted environmental rule or regulation.
- **Used Equipment:** Property/equipment purchased from another owner may be eligible for a positive use determination if it meets the following criteria.

1. It must have been acquired, constructed, or installed by the new owner after January 1, 1994.
2. It must be used wholly or partly as pollution control property/equipment.
3. It was not taxable prior to January 1, 1994, by any taxing unit in which the property/equipment is located.

Excluded Property/Equipment

A person is not entitled to an exemption from taxation under TTC, §11.31 and 30 TAC §17.6:

- Solely on the basis that the property is used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution;
- If the property is used, constructed, acquired, or installed wholly to produce a good or provide a service;
- If the property is not wholly or partly used, constructed, acquired, or installed to meet or exceed a law, rule, or regulation adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas for the prevention, monitoring, control, or reduction of air, water, or land pollution; or
- If the environmental benefit is derived from the use or characteristics of the good or service provided.

For example, a company operates a hazardous waste incinerator and contracts with other companies to dispose of their hazardous waste for a fee. The incinerator will not be eligible for a positive use determination since it is considered commercial waste disposal equipment. However, pollution control equipment, such as baghouses or scrubbers needed to comply with environmental regulations while operating the unit, would be eligible. If a company installed and operated an incinerator to dispose of its own waste and did not accept others' waste for a fee, the incinerator would be eligible for a positive use determination.

Property used for residential purposes, or for recreational, park, or scenic uses as defined by TTC, §23.81, is ineligible for an exemption under TTC, §11.31.

The exemption provided under TTC, §11.31 does not apply to a facility, device, or method for the control of air, water, or land pollution that was subject to a tax abatement agreement executed before January 1, 1994 or to a motor vehicle, except for eligible dedicated-purpose vehicles that are used solely for pollution control.

Length of Use Determination

A use determination is valid as long as the property/equipment:

- is both used for pollution control as described in the application for which the positive use determination was made; and
- the property/equipment remains under the same owner in which the use determination was issued.

TYPES OF APPLICATIONS

The applicant can submit three different tiers, or levels, of applications for a use determination. If tax relief is sought for pollution control property/equipment in different tier levels, separate applications must be submitted for each tier level.

Application fee levels were developed with the intent of recovering the costs to administer the program. Fees are higher for Tiers II and III because of the greater administrative costs involved in reviewing applications.

Tier I—Tier I Table Property/Equipment

The Tier I application is for eligible property/equipment that is listed on the Tier I Table specified in 30 TAC §17.14(a). The Tier I Table enumerates specific property/equipment that the TCEQ has determined is used for pollution control at a standard use percentage as listed in the table. Commonly, property/equipment listed on the Tier I Table is used wholly for pollution control. Tier I applications require a \$150 fee.

The applicant is responsible for demonstrating that the property/equipment is used for pollution control at the standard use percentage listed on the table and was installed to meet or exceed an applicable environmental regulation.

All items listed on a Tier I application must be located on the Tier I Table or must be necessary for the installation or operation of property/equipment located on the Tier I Table. If a piece of property/equipment listed on the Tier I Table is used for a purpose different than that listed on the table, at a different use percentage than listed on the table, or the use of the property/equipment generates a marketable product, a Tier III application must be filed.

The Tier I Table is generic and does not specify brand names. The Tier I Table is reviewed at least once every three years. The Tax Relief Advisory Committee assists in this review.

Tier II—100% Use, Non-predetermined Property/Equipment

The Tier II application is for eligible property/equipment that an applicant believes is used 100% for pollution control but it is not listed on the Tier I Table. A Tier II application may include eligible property/equipment on the Expedited Review List specified in 30 TAC §17.17(b) only if such property/equipment is used 100% for pollution control. Tier II applications require a \$1,000 fee.

The applicant is responsible for demonstrating that the property/equipment serves 100% for pollution control, has no production benefits, and was installed to meet or exceed an applicable environmental regulation.

Tier III—Partial Use Determinations

The Tier III application is for property/equipment that is used partially for pollution control and that does not correspond exactly to an item on the Tier I Table. The Tier III application is also applicable for eligible property/equipment on the Expedited Review List specified in 30 TAC §17.17(b) that is used partially for pollution control. Tier III applications require a \$2,500 fee.

The applicant is responsible for demonstrating that the property/equipment is used for pollution control and was installed to meet or exceed an applicable environmental regulation.

Tier III property/equipment may offer environmental benefits and improvements to production, safety, or other processes, including new or modified property/equipment that has both environmental and production elements. An example is the installation of a new closed vent system used to control a highly reactive volatile organic compound (HRVOC) emission from a cooling tower. The HRVOC emissions are captured by the new closed vent system and returned to the production process. Since the captured material is returned to the production process, the closed vent system is eligible for only a partial use determination and therefore requires a Tier III application.

If the property/equipment controls pollution and contributes to the manufacturing process, safety, or other purposes, the application must specify the proportion of the pollution-control aspect of the property/equipment. The applicant must use the CAP specified in 30 TAC §17.17(c) to make this partial use determination.

TIER I TABLE AND THE EXPEDITED REVIEW LIST

The Tier I Table is specified in 30 TAC §17.14(a) and is based on Part A of the former Equipment and Categories List originally adopted by the TCEQ under TTC, §11.31(g). The Expedited Review List is specified in 30 TAC §17.17(b) and is based on the categories of property/equipment listed in TTC, §11.31(k), referred to as the *nonexclusive list*.

The Tier I Table is a list of property/equipment that the executive director has determined is used either wholly or partly for pollution control purposes at a standard use percentage. The items listed are described in generic terms without brand names or trademarks. If the executive director determines a piece of property/equipment listed on the Tier I Table is used for a purpose different than that listed on the table, at a different use percentage than listed on the table, or the use of the property/equipment generates a marketable product, a Tier III application must be filed.

The commission will review and update the list at least once every three years with the assistance of the Tax Relief for Pollution Control Property Advisory Committee. An item may be added only if there is compelling evidence that the item provides pollution control benefits and a standard use percentage can be calculated. An item may be removed from the list only if there is compelling evidence that the item does not render pollution control benefits. Property/equipment used solely for product collection or for production is not eligible for a positive use determination. Property/equipment used solely for worker safety or fire protection does not qualify as pollution control.

The Expedited Review List is a modified version of the list of the categories set forth in TTC, §11.31(k). The list was formerly known as Part B of the Equipment and Categories List. Property/equipment used solely for product collection or for production is not eligible for a positive use determination.

If a piece of property/equipment is located on both the Tier I Table and the Expedited Review List, the applicant must select the listing appropriate for the use of the property/equipment.

CALCULATING A PARTIAL USE DETERMINATION

Partial use determinations must be calculated for all Tier III applications. The applicant must use the CAP specified in 30 TAC §17.17(c) to make the partial use determination. The purpose of the calculation is to determine the percentage of the property/equipment that is being used for pollution control.

TTC, §11.31 requires the applicant to supply any information requested by the TCEQ as needed to make a use determination. Therefore, if an applicant is unable or unwilling to provide the TCEQ in a timely manner with the information required by the CAP, then the TCEQ will issue a negative use determination to the applicant.

Cost Analysis Procedure

Equation 1 is specified in 30 TAC §17.17(c)(1) and is used in the CAP to determine the creditable partial percentage for property/equipment that is used only in part for pollution control and is not listed on the Tier I Table. If the CAP produces a negative number or zero, then there is no creditable partial percentage for the property/equipment and a positive use determination cannot be issued.

Equation 1

$$\frac{((\text{Production Capacity Factor} \times \text{Capital Cost New}) - \text{Capital Cost Old} - \text{Net Present Value of Marketable Product})}{(\text{Capital Cost New})} \times 100$$

The variables used in Equation 1 are defined as follows:

Production-Capacity Factor (PCF): A calculated value used to adjust the value of a partial use determination to reflect the capacity of the original property/equipment or process. The PCF is calculated as shown in Equation 2 by dividing the capacity of the existing property/equipment or process, i.e., Old Property, by the capacity of the new property/equipment or process, i.e., New Property. The PCF is only used when there is an increase in production capacity.

Equation 2

$$\text{Production Capacity Factor} = \frac{\text{Production Capacity of Old Property}}{\text{Production Capacity of New Property}}$$

Capital Cost New (CCN): The estimated total capital cost of the property/equipment or process.

Capital Cost Old (CCO): The cost of comparable property/equipment or process without the pollution control. Use the following criteria for calculating CCO –

1. If comparable property/equipment without the pollution control is on the market in the United States, then an average market price of the most recent generation of technology must be used.
2. If the conditions in criteria 1 do not apply and the owner is replacing an existing property/equipment that already has received a positive use determination, the owner shall use the CCO from the application of the previous use determination.

3. If the conditions in criteria 1 and 2 do not apply and the owner is replacing an existing property/equipment, then the owner shall convert the original cost of the property/equipment to today's dollars by using a published industry-specific standard. If the production capacity of the new property/equipment or process is lower than the production capacity of the old property/equipment or process, CCO is divided by the PCF to adjust CCO to reflect the same capacity as CCN.
4. If the conditions in criteria 1, 2, and 3 do not apply, and the owner can obtain an estimate of the cost to manufacture the alternative property/equipment without the pollution control, then an average estimated cost to manufacture the property/equipment must be used. The comparable property/equipment must be the most recent generation of technology. A copy of the estimate, including the specific source of the information, must be provided with the worksheet that is required to be attached to the Tier III application.

Net Present Value of Marketable Product (NPVMP) – The net present value of the marketable product recovered for the expected lifetime of the property is calculated using Equation 3 as specified in 30 TAC §17.17(c)(2).

Equation 3

$$NPVMP = \sum_{t=1}^n \frac{(\text{Marketable Product Value} - \text{Production Cost})_t}{(1 + \text{Interest Rate})^t}$$

The variables used in Equation 3 are defined as follows:

Marketable Product Value (MPV) – The MPV may be calculated two ways.

1. The average retail value of the product produced by the property/equipment for the current one year period. If the price varies from state to state, the applicant must calculate an average and explain how the figures were determined.

Note: The rule specifies in Figure: 30 TAC §17.17(c)(2) that “the most recent three-year average price of the material as sold on the open market should be used in the calculation.” However, this statement is no longer applicable due to the recent revisions to 30 TAC §17.17 and it will be addressed in a future rulemaking.

2. If the material is used as an intermediate material in a production process, then the value assigned to the material for internal accounting purposes may be used. It is the responsibility of the applicant to show that the assigned value is comparable to the value assigned by other similar producers of the product.

Marketable product includes, but is not limited to, anything recovered or produced using the pollution control property/equipment and sold, traded, accumulated for later use, or used in a manufacturing process (including at a different facility). Marketable product does not include any emission credits or emission allowances that result from installation of the pollution control.

Production Cost (PC) – The costs directly attributed to the production of the product, including raw materials, storage, transportation, and personnel, but excluding non-cash costs, such as overhead and depreciation.

n – The estimated useful life in years of the property/equipment that is being evaluated for a use determination.

Interest Rate – 10%

t – The sequential number for time in years 1 – *x* of *n*. The numerical value for *t* is used in Equation 3 as the value of the exponent for the denominator and only as an identifier of the calculation sequence in the numerator. For example, where *n* is 6 years, *t* =1 in year one, *t*=2 in year two, *t*=3 in year three, and so on in sequence, up to year six. The values for MPV and PC in each calculation should equate to those values estimated for year one, year two, year three and so on in sequence, up to year six. The NPVMP would be the sum of all six calculations.

Example: Cost Analysis Procedure

Type of Property/Equipment: Dust Collection System

Analysis: As a result of an increase in production capacity, a facility installs a larger dust collection system. The material collected is considered to be a co-product and is sold to another owner. The previous dust collection system received a positive use determination in 2002.

Costs related to this project are:

- Capital Cost New = \$20,000,000
- Capital Cost Old = \$5,000,000
- Production Capacity Old = 100 tons per year
- Production Capacity New = 150 tons per year
- Co-Product Value: Per Year = \$100,000
- Co-Product Production Costs Per Year = \$50,000
- Useful Life = 10 years
- Interest Rate = 10%
- Marketable Product Value = \$50,000 per year
- Production Capacity Factor = 67%
- Net Present Value of Marketable Product = \$307,228

Figure 1

$$CAP \text{ Equation} = \frac{(67 \times 20,000,000) - 5,000,000 - 307,228}{20,000,000} = 0.40 = 40\%$$

Therefore, using the equation specified in the CAP as shown in Figure 1, 40% of the capital cost of the new dust collection system would be eligible for a partial use determination.

STEPS FOR OBTAINING A USE DETERMINATION

The following steps explain how to apply for a use determination and how the TCEQ processes the application.

1. Applicant acquires, installs, replaces, or constructs property/equipment after January 1, 1994.

2. Applicant obtains a use determination application and guidance document from the TCEQ.

<http://www.tceq.state.tx.us/implementation/air/taxrelief>

3. Applicant prepares application for use determination and submits the original signed application and a complete copy to the TCEQ with the appropriate fee.
4. The TCEQ conducts an administrative review to ensure that all required items are included.

If the application is incomplete, the TCEQ will notify the applicant who then has 30 calendar days to submit a revised application.

5. The TCEQ notifies the applicant and the appropriate appraisal district that an application has been filed.

The TCEQ also sends the copy of the application to the Chief Appraiser.

6. The TCEQ conducts the technical review.

If the application is not technically complete, the TCEQ will notify the applicant who then has 30 days to submit a revised application.

7. The TCEQ issues a use determination and notifies the applicant and the appraisal district of the use determination.
8. The applicant submits a tax-exemption form and the positive use determination to the appraisal district.

COMPLETING AN APPLICATION

Confidential Material

The TCEQ recommends that the applicant **not** submit confidential information as part of the use determination application. If doing so cannot be avoided, a general description in non-confidential terms should be included on the application, along with a document containing the confidential information as an attachment. Each page of the confidential information should be conspicuously marked *CONFIDENTIAL*.

Please note that all information submitted to the TCEQ is subject to the Texas Public Information Act as codified in Chapter 552 of the Texas Government Code. The Texas Office of the Attorney General (OAG) is responsible for determining whether proprietary information, i.e., confidential business information, submitted to the TCEQ must be released upon public request. Additional information on this subject is available from the OAG's Open Records Division at <https://www.oag.state.tx.us/open/>.

Common Application Mistakes

- **Citing the Wrong Regulation or Rule**

Property/equipment must have been installed in order to meet or exceed an environmental rule or regulation adopted by a federal regulatory agency, the State of Texas, or a local political subdivision of Texas.

The citation must be to a specific subsection of the regulation that is being met by the installation of the pollution control property/equipment. Local regulations are only valid if they have been adopted as part of the political subdivision's environmental code.

Primary links to federal and state environmental rules and regulations:

- [Title 40 Code of Federal Regulations \(40 CFR\)](#)
- [30 TAC](#)

- **Inadequate Description**

The description of the property/equipment provided in the application must, at a minimum, include all of the following information:

1. The name of the property/equipment;
2. A detailed description of the location of the property/equipment; and
3. An explanation of specifically how the property/equipment is used for pollution control.

- **Timing Deadline**

If the applicant desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the same tax year.

- **Multiple Projects at One Site**

A separate application must be submitted for each unit of pollution control property/equipment or each group of integrated units installed for a common purpose at a facility.

Example 1: A facility installs a new dust collector and secondary containment around storage tanks and replaces a gas-fired internal combustion motor in gas-compression service with an electric motor. Consideration of all three pieces of pollution control property/equipment would require three applications.

Example 2: A facility installs a new scrubber and a flare. A vent stream is first sent to the scrubber where a toxic substance is removed. The vent stream is then sent to the flare. This process should be considered one project or integrated unit and could be considered with one application.

Example 3: A facility undertakes a project to eliminate fugitive emissions. The project involves replacement of pump seals, elimination of threaded pipe joints, installation of a collection system that will collect releases from pressure safety valves, and replacement of an existing flare that is unrelated to the fugitive emissions project. This project would require separate applications for the fugitive-emissions and the replacement flare.

- **Eligible Property Must Have Capital Expenditures Incurred**

Positive use determinations will not be issued prospectively. Upon request, the TCEQ will review proposed future projects or purchases and issue a letter stating which specific equipment or parts of a project may be eligible for a positive use determination at the time of construction or purchase. To receive a positive use determination, the requester will need to submit an application during or after the year that the property would first become taxable.

- **Applications Submitted Without Fee Payment**

As specified in [30 TAC §17.10\(a\)](#), the appropriate fee must be submitted with each application. An applicant, whose application is not accompanied with the proper fee payment or a receipt showing the completion of an electronic

payment, will receive a deficiency letter by mail. An application will not be considered administratively complete until the proper fee is received.

Special Conditions

Additional guidance for certain special conditions, e.g., policy decisions regarding unique property/equipment applications, is available on the following TCEQ Relief for Pollution Control Property Program Web page:

<http://www.tceq.state.tx.us/implementation/air/taxrelief/specialconditions.html>

APPLICATION FILING

Send the completed application and the appropriate fee along with a complete copy of the application to:

U.S. Mail

Cashier's Office, MC 214
Tax Relief Program
TCEQ
PO Box 13088
Austin TX 78711-3088

Physical Address

Cashier's Office, MC 214
Building A
TCEQ
12100 Park 35 Circle
Austin TX 78753

Each completed application must include a signature page with an original signature. The copy must be complete and marked *Appraisal-District Copy*.

APPLICATION REVIEW

Applications are first received by the TCEQ's Cashier's Office for fee collection and are then forwarded to the TCEQ's Tax Relief program area for processing and review.

Administrative Review

The TCEQ will determine if an application is administratively complete—that is, all of the required fields on the application form have an entry—and whether the proper fee has been paid within a reasonable time after receipt of the application. If any required fields are left blank or incomplete, if the proper fee has not been included, or if the owner of the property/equipment has an outstanding balance with the TCEQ, the agency will return the application along with a notice of deficiency (NOD) specifying the information or payment needed. The applicant then has 30 days from receipt of the NOD to submit the revised application. Failure to respond in the allotted time will result in the agency terminating its review and the applicant's forfeiture of any fee.

Once the TCEQ has declared an application administratively complete, it will mail the applicant and the appraisal district a notice that the application is under technical review and provide the copy of the application to the appropriate appraisal district.

Delinquent Fee Protocol

In accordance with the TCEQ's Delinquent Fee Protocol, the agency will not consider applications administratively complete until all delinquent fees the owner of the property/equipment owes to the TCEQ are paid.

Additional information about the Delinquent Fee Protocol is available on the following TCEQ Web page: <http://www.tceq.texas.gov/agency/delin/index.html>.

Technical Review

A detailed technical review of the application is completed. For Tier I, II, and III applications not containing property located on the Expedited Review List, the TCEQ has 60 days from the date it declares an application administratively complete to request additional technical information. The TCEQ must complete its review of applications containing property located on the Expedited Review List within 30 days of receipt of a complete application, provided that there are no technical deficiencies.

The 30-day and 60-day clocks are stopped if a technical NOD is sent. The clock restarts after an appropriate response to the technical NOD is received. If an application is deficient, it will be returned to the applicant who has 30 calendar days from receipt to address the deficiencies and provide a revised application.

Use Determination

Once the TCEQ has completed its technical review, it will furnish the applicant with a use determination letter (negative or positive) and a use determination certificate, if positive. A copy of the use determination is mailed to the Chief Appraiser of the appropriate appraisal district. If the review results in a negative determination, the reasoning is explained in the letter. By statute, the executive director may not determine that the property/equipment is pollution control unless it meets the standards of Chapter 17.

Obtaining the Tax Exemption

If the use determination is positive, the applicant must then submit the use determination, along with the appropriate exemption-request form obtained from the appraisal district, to the appraisal district to receive the tax exemption. If the use determination is negative, the applicant and the chief appraiser will be notified of the reason(s) for the denial. The appraisal districts have a filing deadline for exemption requests by April 30 for each tax year. Chief appraisers have the authority to disallow exemption requests that are not filed by this deadline. The TCEQ provides notice to the appraisal district when an application for a use determination is filed and when a final determination is issued. However, it is the responsibility of the applicant to submit the exemption request to the appraisal district to obtain the tax exemption.

APPEALS PROCESS

A use determination may be appealed by the applicant or the Chief Appraiser of the appraisal district. A written appeal request must be received by the TCEQ Chief Clerk within 20 days after receipt of the use determination letter. The use determination is presumed to have been received on the third working day after it was mailed.

The appeal request must contain the following information:

1. Name, address, and daytime phone number of the person requesting the appeal. (Fax number and e-mail addresses are requested but not required.)
2. Name and address of the applicant and the Chief Appraiser of the appraisal district.

3. Application number assigned by the TCEQ and a copy of the negative use determination letter or the positive use determination letter and certificate.
4. Description of what is being appealed.
5. Explanation of the basis for the appeal.

Upon receipt of the appeal, the TCEQ's chief clerk will forward a copy to the executive director and the TCEQ's general counsel. The general counsel will develop the briefing schedule and set the agenda date. The chief clerk will mail a copy of the appeal to whichever party did **not** request the appeal.

Tax Relief program personnel or the Office of the General Counsel will contact the applicant and the appraiser to discuss the appeal. Both parties will be offered the opportunity to participate in alternative dispute resolution.

The applicant and the chief appraiser may testify at the commission meeting. The commission may either deny the appeal or remand the matter to the executive director. If remanded, the executive director will conduct a new technical review and issue a new use determination. The new determination may then be appealed using the same procedures as for the initial appeal.

To contact the Office of the Chief Clerk:

U.S. Mail Address

Office of the Chief Clerk, MC 105
TCEQ
PO Box 13087
Austin TX 78711-3087

Fax: 512-239-3311

Physical Address

Office of the Chief Clerk, MC 105
Building F
TCEQ
12100 Park 35 Circle
Austin TX 78753

OBTAINING PROGRAM DOCUMENTS

Current copies of the *Use Determination for Pollution Control Property Application*, Form TCEQ-00611, instructions for completing the application form, and this TCEQ regulatory guidance document may be obtained from the following TCEQ Web page: <http://www.tceq.texas.gov/implementation/air/taxrelief>.

CONTACTING THE TAX RELIEF PROGRAM

Questions relating to the Tax Relief program can be sent to:

U.S. Mail Address

Tax Relief Program, MC 110
TCEQ
PO Box 13087
Austin TX 78711-3087

Physical Address

Tax Relief Program, MC 110
Building F
TCEQ
12100 Park 35 Circle
Austin TX 78753
E-mail: txrelief@tceq.state.tx.us

Telephone: 512-239-4900

**Executive Director's Exhibit #5 –
Use Determination Application No. 06-10158**

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: GEM App. No.: 06 - 10158 Review Start Date: 3/9/2007
Company Name: WELLS FARGO BANK MINN NH TRUSTEE
Facility Name: SALADO @ WALNUT CREEK APARTMENTS

TIER LEVEL

What Tier is this application? The application was filed as a Tier I application.

The property contained in this application is on the PEL and would be considered as Tier I.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

The rule listed in the application is:
30 TAC 330 SUBCHAPTER T

This rule establishes requirements for reuse of land over municipal solid waste landfills.

DESCRIPTION OF PROPERTY

Description: Is an adequate description and purpose of the property provided? Does it list the anticipated environmental benefits? Are sketches and flow diagrams provided if needed?

The property is described as:

Real Estate: 594,208 sq ft used for liners and cover system for landfill, slurry walls, and surface impoundments. Site contains 2 stormwater retention ponds size 1,244 sq. ft. and 65,586 sq. ft. Property: Continuous emission monitors; liners over landfill to restrict escape of wastes; semi-active gas extraction system for fugitive methane; methane monitoring & control equipment; two stormwater containment ponds; sloping of concrete surfaces for leachate collection and removal; landfill final cover system; groundwater monitoring wells; fugitive emissions containment structures; and building for active gas extraction system.

The description is adequate.

DECISION FLOWCHART

Mark the appropriate boxes: Box 3 Y Box 5 Y Box 6 Y Box 8 Box 10

Reason this box was chosen:

The property is required by regulation and it provides an environmental benefit. Yes answers for boxes 3 & 5. Since the property is on the predetermined equipment list it leaves the DFC at box 7.

TIER III APPLICATIONS

Did the applicant use the CAP? Recalculate the CAP. Does your calculation agree with the applicants?

Not applicable.

PROPERTY CATEGORIES AND COSTS

Is the table completed correctly? Has the applicant certified that all listed property became taxable for the first time after January 1, 1994? Is all information necessary for conducting the technical review included.

Yes.

TECHNICAL REVIEW

Is the application technically complete? If the answer is no, what is missing? Provide the language used in the NOD letter. If yes then develop the use determination language.

Technically complete when received: N

1st NOD: This application claims a property tax exemption for essentially all of the paved areas on the site. The PEL number M-8 is intended primarily for industrial facilities where dust control of plant roads is specifically required. This is an apartment project that would pave all of the roadways and parking areas for use by the tenants regardless of any environmental requirements. This paving was performed primarily for business reasons - not for dust control. Also, most parking areas in commercial developments are sloped to promote runoff, but this does not qualify it for a 100% tax exemption as environmental paving. You may wish to submit a Tier III partial determination

application, if you believe that a portion of the project can be justified. This will require an additional fee of \$2350. The other items contained in the application appear to qualify under Tier I determination.

2ndNOD:Your deficiency response removed the environmental paving from the property list. However, you have changed the land area being claimed from 393,750 sf to 594,208 sf. In checking the plot plan, it appears that the total area of the property is only in the range of 350,000 to 400,000 sf. How have you come up with a figure of nearly 600,000 sf? Furthermore, you need to justify claiming the entire property as pollution control when it is being used for commercial development? The system of liners, barriers, excavations, ponds, etc. are being claimed for the entire property area. Since this is a commercial property development, there is no way that the entire property can be claimed as being used for pollution control.

NOD RESPONSE

1st NOD: Received updated property list, but there were still several questionable items. Environmental paving was removed, but the land acreage claimed increased from 393,750 sf to 594,208 sf.

2ndNOD:The consultant provided a property tax information sheet that stated the total land area as 584,208 sf. There was no response to the issue of justifying why the entire land value is being claimed as pollution control property.

Full Property Description:

A closed landfill site has been developed as a commercial apartment complex. The property includes the land area for the entire development site and land occupied by two stormwater retention ponds. Property improvements include continuous emission monitors hardwired into each apartment; liners over landfill to restrict escape of wastes and leachate; semi-active gas extraction system to capture fugitive methane emissions from decomposing materials; methane monitoring & control equipment to warn occupants of gas leaks; two stormwater containment ponds; sloping of concrete surfaces for leachate collection and removal; landfill final cover system; groundwater monitoring wells; fugitive emissions containment structures; and building for active gas extraction system.

DETERMINATION

Provide the reason for your determination.

The original application stated the land area as 393,750 sf. The response to the first NOD increased that area to 594,208 sf. This constitutes the entire land area of the property. There was no explanation as to why the claimed land area was increased. Also, there was no response to the request to justify why the entire land area should be considered to be pollution control property when the land is being used as a commercial development. Therefore the land value will be given a negative determination. The remaining property items were dedicated to complying with TAC pollution control requirements for development of land over a closed landfill and will be given a positive determination. The individual property items are covered by various items on the PEL.

Provide the language for the final determination.

A positive use determination for 100% of the two stormwater retention ponds real estate (1,224 sf + 65,586 sf), continuous emission monitors; liners over landfill; semi-active gas extraction system; methane monitoring & control equipment; two stormwater containment ponds; sloping of concrete surfaces for leachate collection and removal; landfill final cover system; groundwater monitoring wells; fugitive emissions containment structures; and building for active gas extraction system. A negative determination for the 594,208 sq. ft. of real estate which is being used to house a commercial apartment complex.

***** ED Approval Required: N *****

Reviewed by: Gary E. McArthur

Date: 4/10/2007

Peer Reviewed By: Ronald A. Halbert

Date: 4/10/2007

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
APPLICATION FOR USE DETERMINATION
FOR POLLUTION CONTROL PROPERTY**

The Texas Commission on Environmental Quality has the responsibility to determine whether a property is a pollution control property. A person or political subdivision seeking a use determination for pollution control property must complete the attached application or use a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property*, as well as 30 TAC 17, rules governing this program. For additional assistance please contact the TCEQ Tax Relief for Pollution Control Property Program at 512/239-6348. The application should be completed and mailed, with the appropriate fee, to: TCEQ MC-214, Cashiers Office, PO Box 13088, Austin, TX, 78711-3088.

1. GENERAL INFORMATION

A. What is the type of ownership of this facility?

- | | |
|---|--|
| <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> Sole Proprietor |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Utility |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Other _____ |

B. Size of Company: Number of Employees

- 1 to 99
 100 to 499
 500 to 999
 1,000 to 1,999
 2,000 or more

C. Business Description: CLOSED & REMEDIATED LANDFILL

2. TYPE OF APPLICATION

- A. **Tier I \$150 Application Fee.**
B. **Tier II \$1,000 Application Fee.**
C. **Tier III \$2,500 Application Fee.**

NOTE: Enclose a check or money order to the TCEQ along with the application to cover the required fee.

3. NAME OF APPLICANT

- A. Company Name: WELLS FARGO BANK, MINNESOTA N H TRUSTEE,
ATTN CORPORATE TRT ADMIN CMBS
B. Mailing Address: 11000 BROKEN LAND PARKWAY
C. City, State, ZIP: COLUMBIA, MD, 21044-3541

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

- A. Name of Facility or Unit: SALADO AT WALNUT CREEK APARTMENTS
B. Type of Mfg. Process or Service: CLOSED & REMDIATED LANDFILL
C. Street Address: 2104 E ANDERSON LANE
D. City, State, ZIP: AUSTIN, TEXAS, 78752
E. Tracking Number Assigned by Applicant: 009

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OWVER PROPERTY

- A. Name of Appraisal District: TRAVIS COUNTY
B. Appraisal District Account Number: 525921

731200 #295

06-10158

6. CONTACT NAME (must be provided)

- A. Company/Organization Name: WATERLOO ENVIRONMENTAL CONSULTING
- B. Name of Individual to Contract: LAUREN E. BRECHTEL & RYAN H. GRISSOM
- C. Mailing Address: PO BOX 607
- D. City, State, ZIP: MCDADE, TEXAS, 78650
- E. Telephone number and fax number: (PHONE) 512-304-8003, (FAX) 512-273-2141
- F. E-Mail address (if available): CONSULTING@WATERLOOEC.COM

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

For each of the pollution control properties listed on this application, select the type of medium or media (air, water, waste) for which the property or device is required. Use the second column to cite the specific environmental rule, regulation, and/or law that is being met or exceeded by the installation of this property. The citation should be specific and should include the section and/or subsection of the rule, regulation, and/or law. Do not list permit numbers or registration numbers in this table. If the property or equipment was installed or constructed in response to an agreed order, do not list the order – list the rule, regulation, or the law that requires the installation or construction of the property.

MEDIUM	RULE/REGULATION/LAW
Air	REFER TO EXHIBIT A
Water	
Waste	

8. DESCRIPTION OF PROPERTY (Complete for all applications)

Provide a description and purpose of the property for which this application is being filed. This description must include the anticipated environmental benefits for the prevention, monitoring, control, or reduction of air, water, or land pollution that will be realized by the installation of the property. Do not simply repeat the description from the predetermined equipment list. Instead describe the property and how it will be used at your facility. Include sketches of the equipment and flow diagrams of the processes where appropriate.

Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question. Only that land which was purchased after January 1, 1994, and which is actually used for pollution control purposes or that houses pollution control property is eligible for a positive use determination.

9. DECISION FLOWCHART

Each piece of equipment or process change must be processed through the Decision Flow Chart. Each item of property listed on the application must result in a yes answer to boxes 3 and 5. Use the table in section 11 to document which box (7, 9 or 10) was the final destination of each piece of equipment. Instructions for completing this section are located in the instruction section of this document.

10. PARTIAL PERCENTAGE CALCULATIONS

This section is to be completed only for Tier III applications. Process changes or construction of new process equipment that results in pollution control may result in a partial determination. On one or more separate sheet of paper, explain how the partial percentage was determined using the Cost Analysis Procedure that is described in the attached *Instructions for Completing Application Form*. Include financial data that demonstrates how this percentage was calculated. Provide as detailed information as possible, since the information provided will be used by the TCEQ to

evaluate the use percentage requested in the application. Attach sketches and/or flow diagrams showing the property and its function. Examples of partial determination are shown in Appendix C of the technical guidelines document.

11. PROPERTY CATEGORIES AND COSTS

Identify the category and the estimated purchase cost of the property listed in Section 8. List each control device or system for which a use determination is being sought. If the application is for property that is listed on the predetermined equipment list, list the appropriate item number(s) in the PEL column. Place an "N" in the second column to certify that the property was not taxable on or before January 1, 1994. Failure to answer this question for each piece of property will result in the issuance of a notice of deficiency letter and the possible rejection of the application. List which box (7, 9, or 10), was the final destination of each piece of property. List the estimated or actual purchase cost of the property. If the property is not wholly used for the purpose of pollution control, list the estimated percentage of pollution control calculated using the Partial Determination Cost Analysis Procedure.

Property	Property Taxable on or before 1/01/94	Decision Flow Chart Box 7, 9, or 10	PEL Number	Estimated Purchase Cost	Partial Percentage
Land	REFER TO EXHIBIT A				
Property					
Totals					

12. EMISSION REDUCTION INCENTIVE GRANT

Will an application for an Emission Reduction Incentive Grant be filed for this property/project:

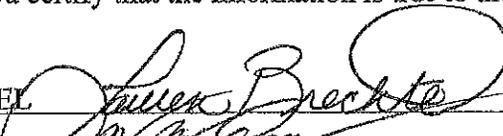
Yes No

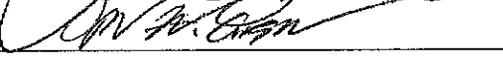
13. APPLICATION DEFICIENCIES

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

14. FORMAL REQUEST FOR SIGNATURE

By signing the application, you certify that the information is true to the best of your knowledge and belief.

NAME: LAUREN BRECHTEL  DATE: 1/24/07

NAME: RYAN GRISSOM  DATE: 1/24/07

TITLE: ENVIRONMENTAL CONSULTANTS

COMPANY: WATERLOO ENVIRONMENTAL CONSULTING

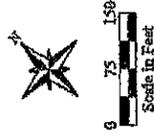
Under Texas Penal Code, Section 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

SALADO APTS
SMT. MAP
OVERVIEW

Salado @ Walnut Creek Apart. (LPST #XX)
2104 E. Anderson Lane
Austin, Texas
Figure 1 - Site Plan

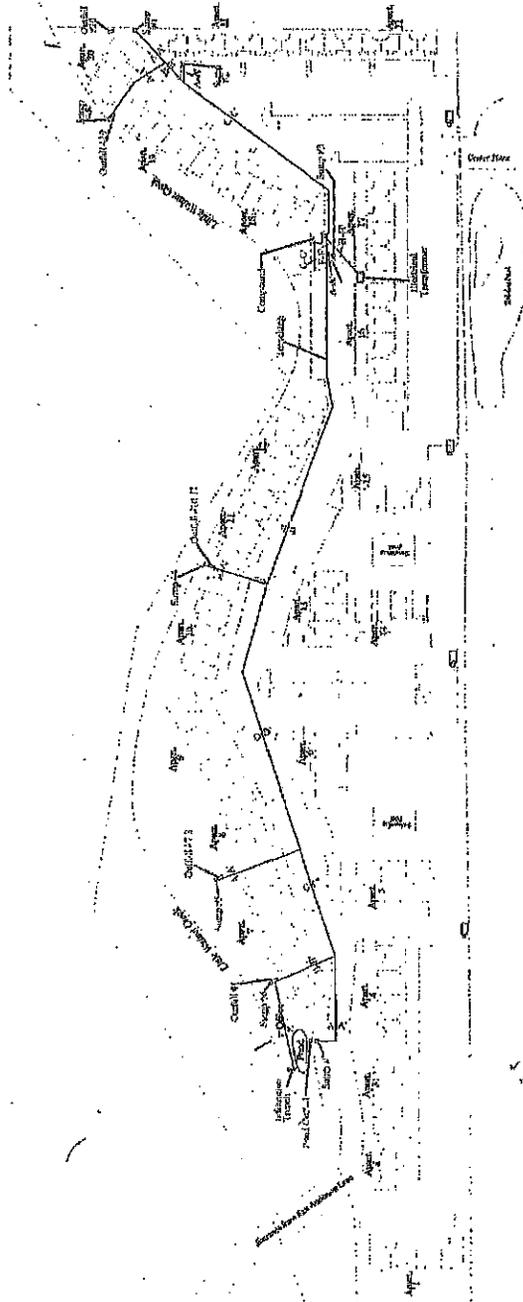
Date: 09/27/2005
Scale: 1" = 150'
Drawn By: WDR

TALON 



- Legend**
- Monitor Well
 - Proposed Monitor Well
 - Soil Boring
 - Recovery Well
 - Vapor Recovery Well
 - Domestic Well
 - Plugged & Abandoned Well
 - Observation Well
 - Metering Tap
 - Water Meter
 - Gas line
 - Overhead Powerline
 - Sanitary Sewer
 - Storm Sewer
 - Telephone Line
 - Fence line
 - City Utilities
 - Underground Cable
 - Railroad Tracks
 - Groundwater Gradient Contour Line
 - Elevation Specific Contour Elevation 67.50
 - ➔ Monitor Well Chuffin Direction

Base Map from: Tatumco Environmental INC.



LEGEND LG MAPS 1-4

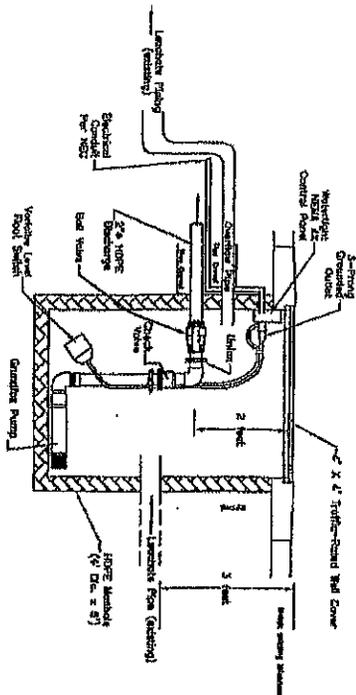
- AIR SUPPLY LINES FROM EXTRACTOR UNIT EXHAUST TO VENTURI UNIT
 - ~~STORMWATER~~ CONTROL DRAINAGE SCOPE
 - FRESH AIR SUPPLY WELL
 - EXTRACTOR WELL
 - MOISTURE TRAP
 - ◻ EXTRACTOR PUMP
 - 1" PVC LINE
 - 2" PVC LINE
- BURNED UNITS WILL BE CONNECTED TO THE SYSTEM AFTER RECONSTRUCTION



TECHNICO
Environmental, Inc.

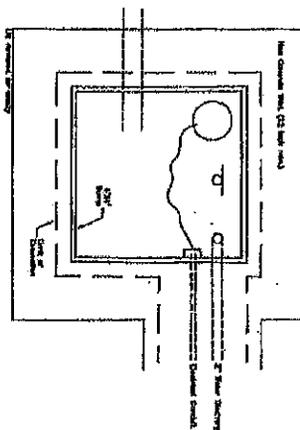
[Signature]

Title: WATERSBEND APARTMENT COMPLEX AUSTIN TX.	
Date: 10 / 12 / 96	Scale: 1" = 50'
DWG. No: SP - 5	Project No: 929



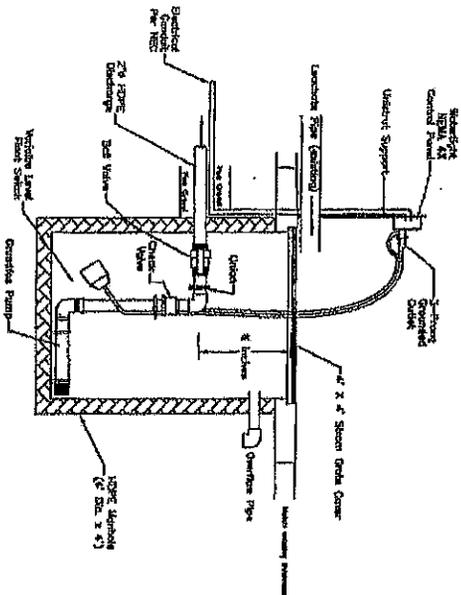
TYPICAL SUMP DETAIL
SUMPS #1, #2, #3, AND #7

SIDE VIEW - NOT TO SCALE



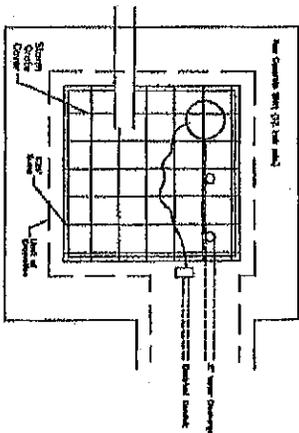
TYPICAL SUMP DETAIL
SUMPS #1, #2, #3, AND #7

PLAN VIEW - NOT TO SCALE



TYPICAL SUMP DETAIL
SUMPS #4, #5, #6 AND #8

SIDE VIEW - NOT TO SCALE



TYPICAL SUMP DETAIL
SUMPS #4, #5, #6, AND #8

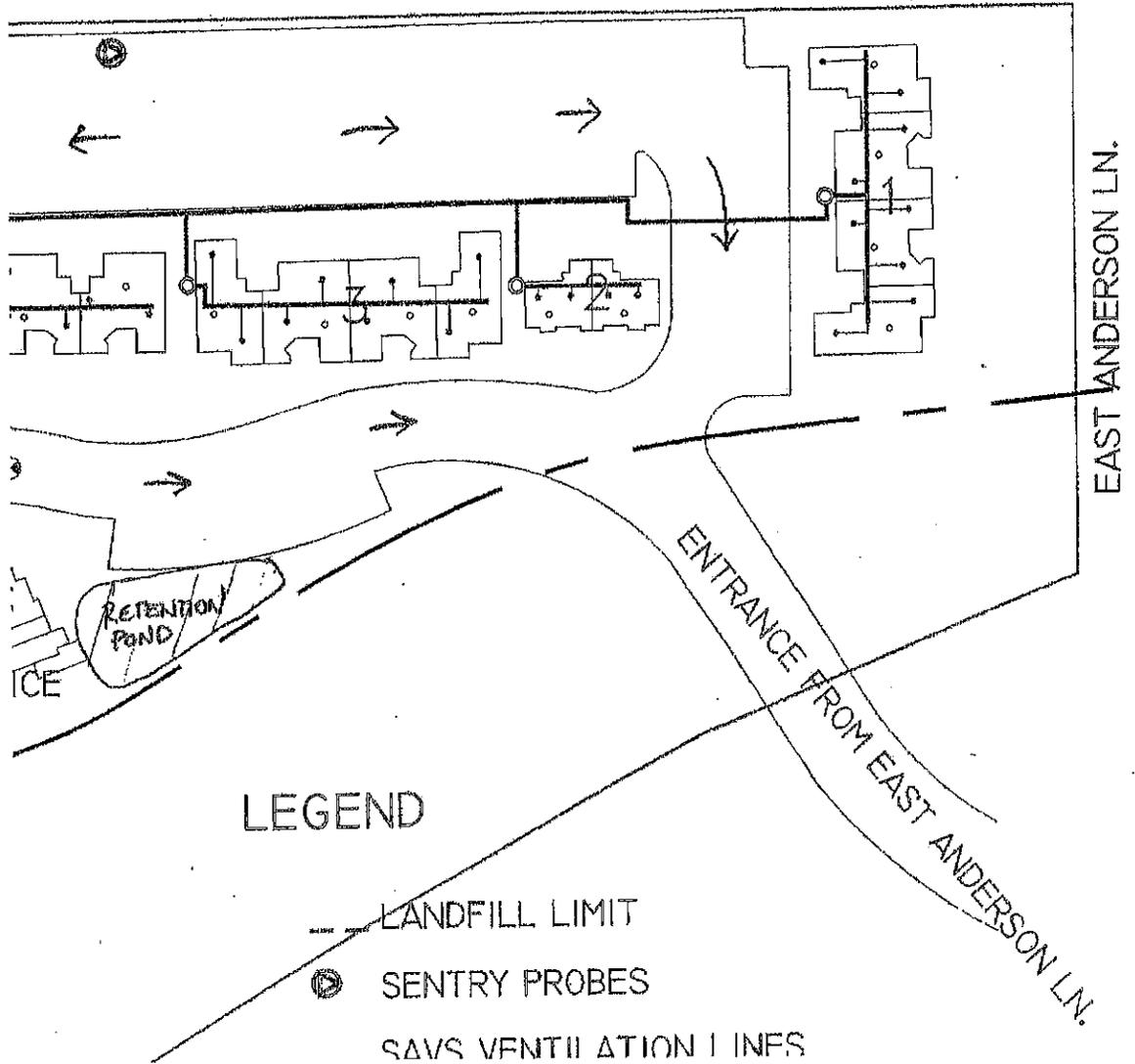
PLAN VIEW - NOT TO SCALE

- NOTES:
1. SUMP #5 WILL REQUIRE ANCHORS TO THE LIRESTONE
 2. SUMP #8 WILL NOT REQUIRE A CONCRETE SOFT
 3. SUMP #6 WILL NOT REQUIRE AN OVERFLOW PIPE
 4. SUMPS #1, 2, 3, 4, 7 AND 8 WILL BE INSTALLED BELOW GRADE

TALON			
SALADO AT VAN HUNT GREEK APARTMENTS			
2104 E ANDERSON LANE			
AUSTIN, TEXAS			
CONSTRUCTION DETAILS			
DATE: 1/15/05	REVISION: 5/23/05	POSTED BY: JN	SCALE: 1/8"

NE

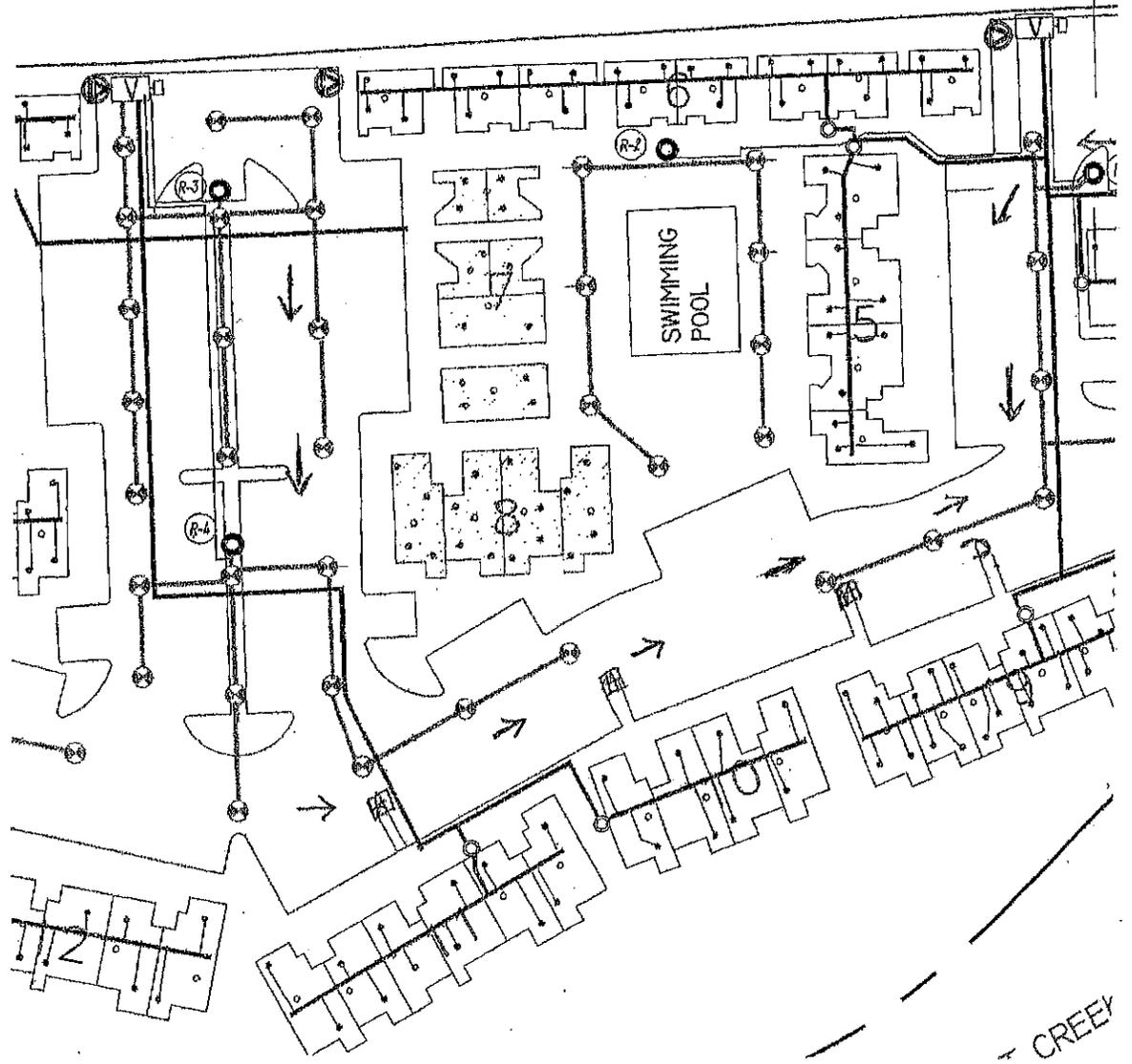
LIMIT LINE



LEGEND

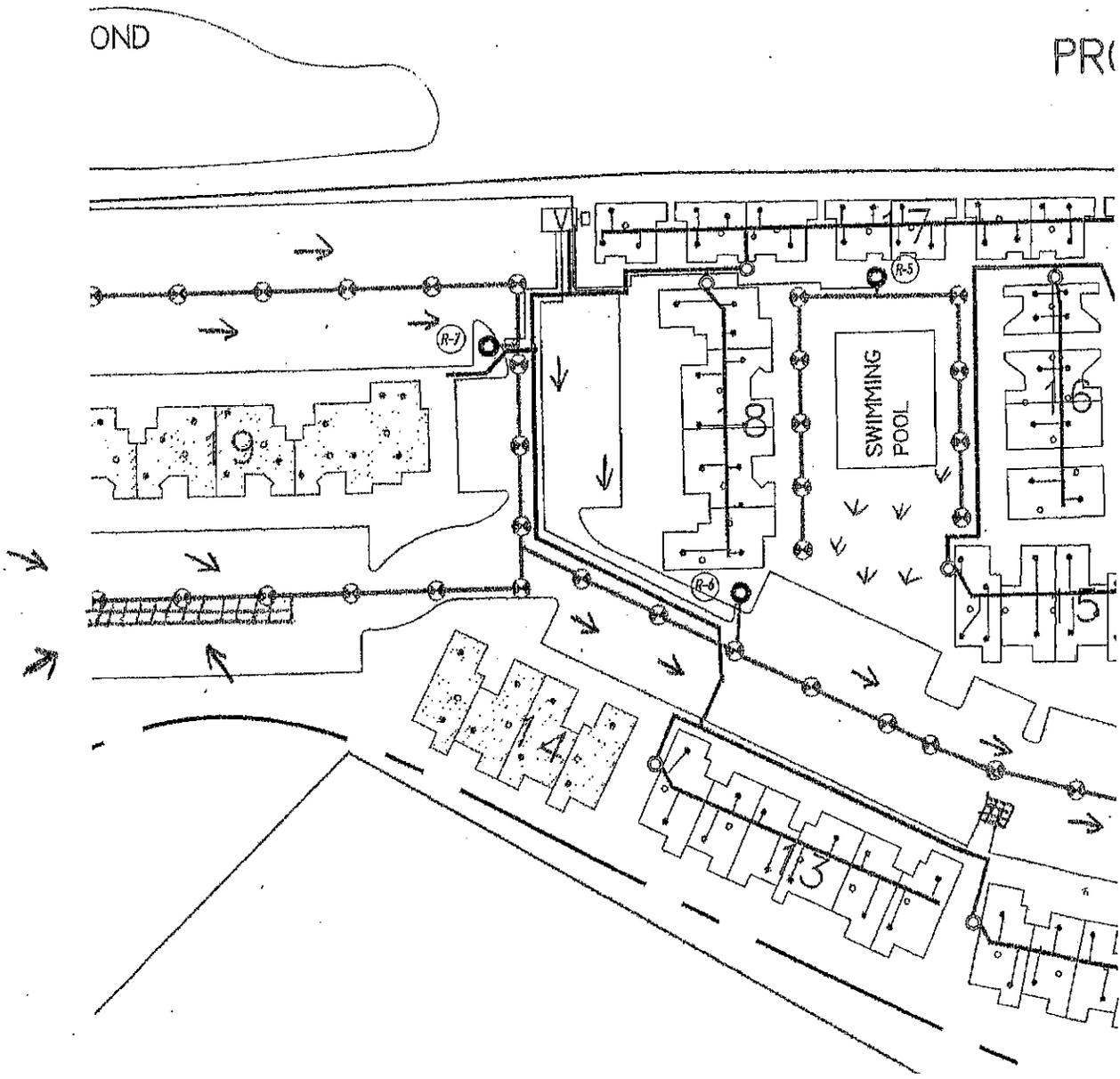
- LANDFILL LIMIT
- ⊙ SENTRY PROBES
- SAVS VENTILATION LINES

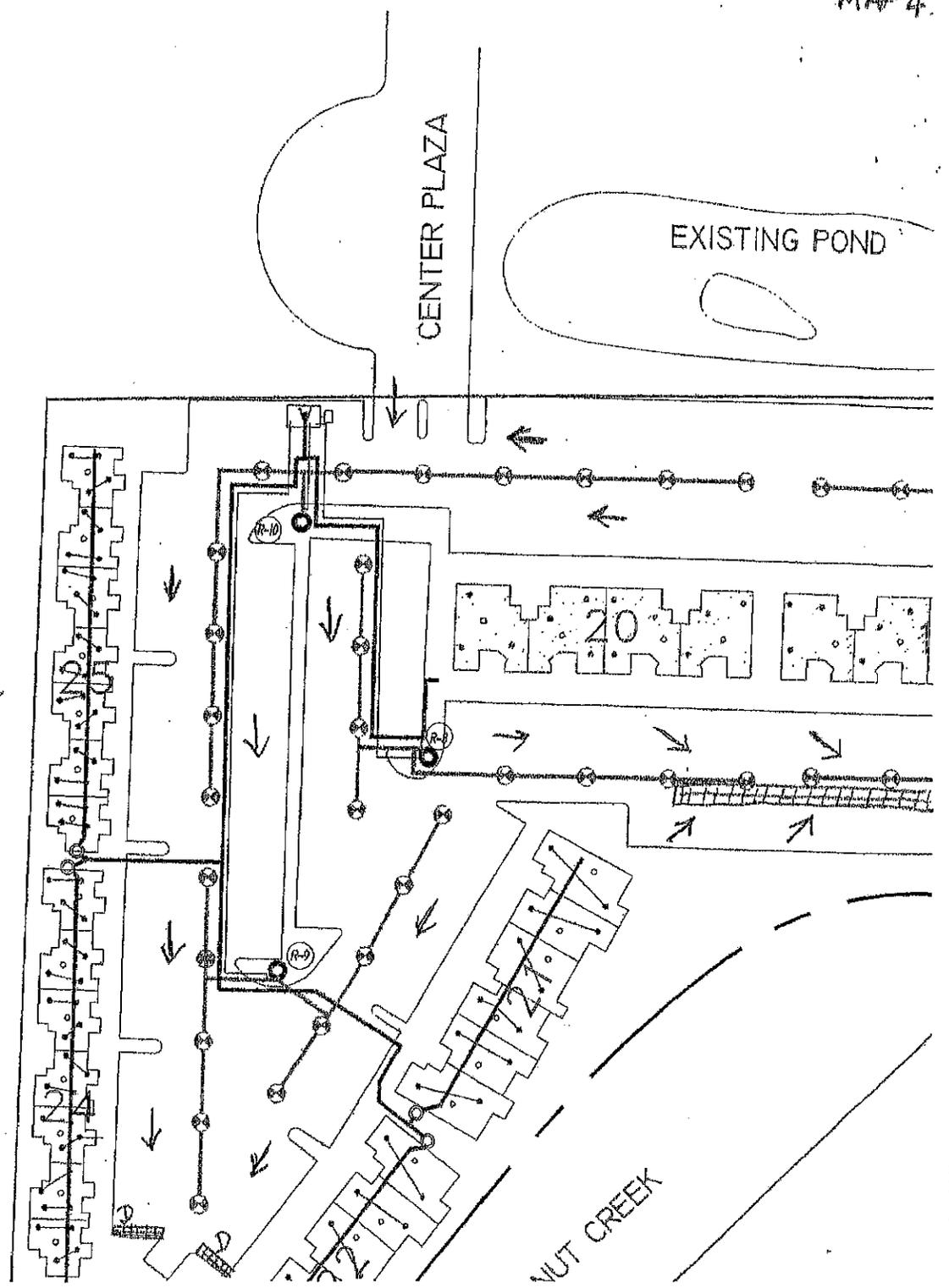
MONTMONTY POINT APARTMENTS



OND

PRC





WATERLOO ENVIRONMENTAL CONSULTING

EXHIBIT A - SITE INSPECTION FORM: 009



Date: 12/14/06
 Address: 2104 E ANDERSON LANE, AUSTIN, TEXAS, 78752
 Score Name: SALADO AT WALNUT CREEK APARTMENTS
 County: TRAVIS

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION	8. DESCRIPTION OF PROPERTY	11. PROPERTY CATEGORIES AND COSTS
Medium	Rules, Regulations or Law	Description
Purpose		Property taxable on or before 1-1-94
		Decision Flow Chart Box 7, 9 or 10
		PEL Number
		Estimated Purchase Cost
		Partial Percent -age

REAL ESTATE TO BE EXEMPT		393,750 Ft ² consists of a system of concrete paving sidewalk covering land, roadways and under structures that is sloped to control and direct stormwater runoff to onsite stormwater drains. The land is appraised at \$1,6435/Ft ² .	No	7	M-8	\$645,750	100%
Air, Land, Water	Section 26.177 of the Texas Water Code	Environmental Paving (Land Ft ²)					
Wastewater	Section 26.177 of the Texas Water Code	Stormwater Containment System (Retention Pond)	No	7	W-65	\$109,568 ✓	100%

PROPERTY IMPROVEMENTS TO BE EXEMPT		Continuous VOC emission monitors are hardwired into each individual apartment and constructed so that they may not be turned off.	No	7	A-32	\$32,000 ✓	100%
Air	TCEQ VCP 30TAC 330 Subchapter T	Continuous Emission Monitors					
Air	TCEQ VCP 30TAC 330 Subchapter T	Vapor/Liquid Recovery Equipment for Fugitive Emissions	No	7	A-92	\$276,000 ✓	100%
Air, Land, Water	Section 26.177 of the Texas Water Code	Environmental Paving (Concrete Over Site)	No	7	M-8	\$1,032,570	100%
Land/Water/Air	TCEQ VCP 30TAC 330 Subchapter T	Monitoring and Control Equipment	No	7	S-4	\$74,000 ✓	100%
Land/Water	TCEQ VCP 30TAC 330 Subchapter T	Secondary Containment	No	7	S-6	\$46,000 ✓	100%
Land/Water	TCEQ VCP 30TAC 330 Subchapter T	Leachate Collection and Removal Systems	No	7	S-8	\$47,250 ✓	100%

Land/Water	TCEQ VCP 30TAC 330 Subchapter T	Final Cover Systems for Landfill	A site-wide system of materials introduced into the ground to provide structure and prevent differential settlement due to decomposition of landfill materials in order to prevent infiltration of stormwater due to loss of integrity of the final concrete cover system.	No	7	S-10	\$650,000 ✓	100%	
Land/Water	30TAC 334.50 (d)(4)	Groundwater Monitoring Wells and Systems	A system of groundwater wells used to monitor groundwater.	No	7	S-12	\$27,000 ✓	100%	
Land/Water	TCEQ VCP 30TAC 330 Subchapter T	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and groundwater.	No	7	S-15	\$130,000	100%	
Air	TCEQ VCP 30TAC 330 Subchapter T	Fugitive Emissions Containment Structures	Structures used to contain, for monitoring purposes, emissions released from decomposing materials. 1 st floor level of onsite buildings house pollution control equipment (continuous emission monitors) used to detect VOCs. 1 st floor level of onsite building structures.	No	7	S-22	\$3,156,191 ✓	100%	
Wastewater	TCEQ VCP 30TAC 330 Subchapter T	Building	Onsite buildings house Active Gas Extraction Systems (AGES) to prevent the buildup of methane in the apartment units. Air monitors installed inside buildings are used to detect methane emissions. The units are hardwired into the property and constructed so that they may not be turned off.	No	7	W-76	\$456,000 ✓	100%	
REAL ESTATE TO BE EXEMPT \$755,318									
PROPERTY IMPROVEMENTS TO BE EXEMPT \$5,927,011									
TOTAL							\$6,682,329		

**Executive Director's Exhibit #6 –
Use Determination No. 06-10158**

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 06-10158, filed by:

WELLS FARGO BANK MINN NH TRUSTEE
SALADO @ WALNUT CREEK APARTMENTS
2104 E ANDERSON LN
AUSTIN TX 78752

The pollution control property/project listed in the Use Determination Application is:

Real Estate: 594,208 sq ft used for liners and cover system for landfill, slurry walls, and surface impoundments. Site contains 2 stormwater retention ponds size 1,244 sq. ft. and 65,586 sq. ft. Property: Continuous emission monitors; liners over landfill to restrict escape of wastes; semi-active gas extraction system for fugitive methane; methane monitoring & control equipment; two stormwater containment ponds; sloping of concrete surfaces for leachate collection and removal; landfill final cover system; groundwater monitoring wells; fugitive emissions containment structures; and building for active gas extraction system.

The outcome of the review is:

A positive use determination for 100% of the two stormwater retention ponds real estate (1,224 sf + 65,586 sf), continuous emission monitors; liners over landfill; semi-active gas extraction system; methane monitoring & control equipment; two stormwater containment ponds; sloping of concrete surfaces for leachate collection and removal; landfill final cover system; groundwater monitoring wells; fugitive emissions containment structures; and building for active gas extraction system. A negative determination for the 594,208 sq. ft. of real estate which is being used to house a commercial apartment complex.

This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A handwritten signature in black ink, appearing to read "Glenn Shankle".

Executive Director

4/10/2007
Date

**Executive Director's Exhibit #7 –
Letter Opinion No. 96-128, Tex. Attorney
General's Office (November 15, 1996)**



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1996

The Honorable Tom Craddick
Chair, House Committee on Ways and Means
House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-128

Re: Applicability of section 11.31(a), Tax Code, to a commercial injection well that is operated solely for the purpose of treating and disposing of waste generated by third parties (ID# 38908)

Dear Representative Craddick:

You have asked this office to interpret section 11.31(a) of the Tax Code. Specifically, you ask whether a commercial enterprise engaged solely in the business of treating, handling, and disposing of waste generated by third parties is entitled to the property tax exemption enacted by that section. In our view, based on the legislative history of section 11.31(a), such a commercial enterprise is not entitled to the exemption solely on the basis of the nature of its business.

Section 11.31(a) of the Tax Code provides:

A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution.

A consideration of the legislative history of this provision demonstrates that it was not intended to give tax relief to those who are primarily engaged in the commercial business of pollution control or abatement, but rather was intended to give such relief to businesses compelled by law to install or acquire pollution control equipment which generates no revenue for such businesses.

Moreover, the language of article VIII, section 1-1 of the Texas Constitution, upon the approval of which by the people the effectiveness of section 11.31(a) was contingent, is to the same effect. Article VIII, section 1-1, proposed by House Joint Resolution 86 of the Seventy-third Legislature, permits the exemption from ad valorem taxation of real or personal property "used, constructed, acquired or installed wholly or partly to meet or

exceed" environmental pollution rules "adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state."

As originally presented as part of House Bill 1920, in the Seventy-third Legislature's regular session in 1993, section 11.31(a) contained only what is now its first sentence. The hearings on H.B. 1920 and H.J.R. 86 before the House Ways and Means Committee, as well as the House Research Organization's bill analysis, make plain that the purpose of the legislation is to insure that businesses required by law to install pollution control equipment which generates no additional profit for them are not taxed on such property. H. P. Whitworth of the Texas Chemicals Council, testifying for the bill, said, "The [pollution control] equipment we are talking about today does not produce a penny of revenue. It's in there simply for the welfare as we see it of the general population. And anybody that adds it to his plant or his business cannot expect that investment to return him anything."¹ Similarly, the bill analysis, in its précis of supporting arguments for the bill, includes:

[I]t is impossible to predict what proportion of new pollution control equipment would be reflected in the tax rolls. Since this equipment does not add to the profitability of a plant, many appraisers currently do not add the cost of environmental devices to the tax value of a business. . . . It would be unfair to tax businesses on property they are required by law to purchase.² [Footnote added.]

Further evidence that it was to correct such perceived unfairness, rather than to provide relief to those engaged in the pollution control business, that the bill was introduced, is provided by the remarks of Representative Stiles, the sponsor, in response to the question of whether the section exempted automobile inspection stations:

No, sir, I think they are in the business to do, provide that service . . . but I would tell you that I would be glad to accept an amendment that somebody's in the business to make money with a service like that, that would not be applicable under this law.³ [Footnote added.]

To address such concerns as these, Representative Berlanga offered an amendment which is now substantially the second sentence of section 11.31(a), save for the clause "or provides a service." In introducing this language, Representative Berlanga said, "This

¹Hearings on H.B. 1920 & H.J.R. 86 Before the House Ways and Means Comm., 73d Leg. (March 24, 1993) (tape available from House/Video Services Office).

²House Research Organization, Bill Analysis, H.B. 1920, 73d Leg. (1993).

³Hearings on H.B. 1920 & H.J.R. 86 Before the House Ways and Means Comm., *supra* note 1.

amendment clarifies that a person cannot get the exemption just because the person manufactures a product that is used for pollution control purposes."⁴

The language "or provides a service" was added to section 11.31(a) in the senate for the same reason. Senator Whitmire, in the public hearing on the bill held by the Intergovernmental Relations Committee, asked, "What if their entire plant has to do with pollution control such as landfill or more specifically a hazardous waste incinerator . . . are they going to be exempt?"⁵ The senate sponsor, Senator Armbrister, asked Bill Allaway of the Texas Association of Taxpayers to respond. Mr. Allaway said:

I don't believe [the] entire facility would be exempt. What is exempt is land, processes or facilities which are used to meet or exceed a requirement of federal government. The business itself would not be exempt. The property that is covered by the bill is property that prevents that business from pollution--not the property that they use to conduct business.⁶ [Footnote added.]

In introducing the language "or provides a service" on the senate floor, Senator Armbrister once again underlined that the statute is not intended as tax relief for persons engaged for profit in the pollution control business:

What this device does is only if you have a pollution control device that is drafting off any emissions of the landfill, that device only, not the entire landfill or incinerator would get an exemption . . . only the device used to pull off a by-product of that device would be.⁷ [Footnote added.]

The plain language of the second sentence of section 11.31(a), as well as the legislative history of the section as a whole, demonstrates clearly that the purpose of the statute is tax relief for businesses required by law to use or possess pollution control devices or equipment. The statute was not intended to provide a tax exemption to businesses which are engaged for profit in the commercial trade of pollution control or abatement. Accordingly, while a device employed by a business to reduce environmental pollution as mandated by law is exempted from property tax by the statute, a business

⁴Debate on H.B. 1920, on the Floor of the House, 73d Leg. (April 20, 1993) (tape available from House Video/Audio Services Office).

⁵Hearings on H.B. 1920 & H.J.R. 86 Before the Senate Comm. on Intergovernmental Relations, 73d Leg., (April 28, 1993) (tape available from Senate Staff Services Office).

⁶*Id.*

⁷Debate on H.B. 1920 on the Floor of the Senate, 73d Leg. (April 30, 1993) (tape available from Senate Staff Services Office).

engaged, as you put it, in "treating, handling, and disposing of waste generated by third parties" for which such third parties are charged a fee, is not entitled on that basis to an exemption under section 11.31(a) of the Tax Code.

S U M M A R Y

A business engaged in treating, handling, and disposing of waste generated by third parties, for which it charges such third parties a fee, is not entitled on that basis to an exemption from property taxes under section 11.31(a) of the Tax Code.

Yours very truly,



James E. Tourtelott
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Opinion Committee