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September 29, 2008

VIA HAND DELIVERY

ATTN: Agenda Docket Clerk
Office of the Chief Clerk
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P.O. Box 13087
Austin, Texas 78711

2008 SEP 29 PM 4: 39
CHIEF CLERKS OFFICE
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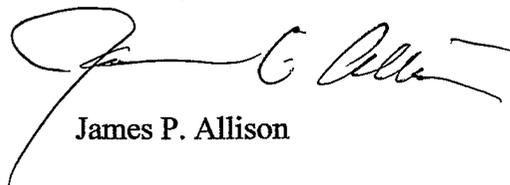
Re: Application by Regional Land Management Services, Ltd. for Type I MSW Permit (No. 2286); TCEQ Docket No. 2003-0729-MSW; SOAH Docket No. 582-04-0975

Dear Sir/Madam:

Pursuant to TCEQ letter dated September 22, 2008, enclosed please find the original and 12 copies of Webb County's Exceptions to the Proposal for Decision. Please file stamp the extra copy and return it for our records.

Thank you for your assistance in this matter. Please call me if you have any questions.

Sincerely,



James P. Allison

JPA/afb
Enclosure

cc: Service List

ORIGINAL

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

SOAH DOCKET NO. 582-04-0975
TCEQ DOCKET NO. 2003-0729-MSW

2008 SEP 29 PM 4:39

IN THE MATTER OF THE
APPLICATION OF REGIONAL LAND
MANAGEMENT SERVICES, LTD.,
FOR A NEW TYPE I MUNICIPAL
SOLID WASTE LANDFILL (PERMIT
NO. 2286)

§ BEFORE THE STATE OFFICE CHIEF CLERKS OFFICE
§
§ OF
§
§ ADMINISTRATIVE HEARINGS
§

WEBB COUNTY'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

Protestant Webb County (Webb County) files its Exceptions to the Proposal for Decision dated September 2, 2008, and would show the following:

**I.
Summary**

Webb County submits that the RLMS application should be denied because the applicant failed to meet the requirements established by the Texas Commission on Environmental Quality (TCEQ). The applicant failed to demonstrate that the proposed landfill site is compatible with area land uses. Additionally, the application does not include a groundwater monitoring system or a groundwater sampling and analysis plan, as required by the TCEQ rules. Finally, the application does not adequately address surface water drainage nor does it include the information and analyses required to determine if the natural drainage pattern will be significantly altered by the development of the landfill.

**II.
Issues**

A. Major Issues

- 1. Applicant failed to meet its burden that the proposed facility is compatible with area land uses.**

The TCEQ rules state that "a primary concern is that the use of any land for an MSW site not adversely impact human health or the environment" and that "the impact of the site upon a

city, community, group of property owners, or individuals must be considered in terms of compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest.”¹ The applicant is required to provide the following to assist the executive director in evaluating the impact: “(A) zoning at the site and in the vicinity. If the site requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted; (B) character of surrounding land uses within one mile of the proposed facility; (C) growth trends of the nearest community with directions of major development; (D) proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.). Give the approximate number of residences and business establishments within one mile of the proposed facility including the distances and directions to the nearest residences and businesses; and (E) description and discussion of all known wells within 500 feet of the proposed site.”²

The record shows that Webb County has experienced considerable growth in the past two decades. From 1990 until 2000, “the population growth rate for the Webb County area increased by approximately 31% as compared to the national growth rate of approximately 13% for the same period.”³ Additionally, “population estimates established by the Texas State Data Center for the Webb County area has estimated the 2006 population at 231,643 which equates to a 19.9% increase compared to the 2000 US Census figures at 193,117.”⁴

¹ 30 Tex. Admin Code (TAC) § 330.53(b)(8); Exhibit A-248.

² *Id.*

³ Exhibit Webb 14, page 5 lines 21-23.

⁴ *Id.* at page 5 lines 24 – 27.

The evidence establishes that the proposed landfill site is located within the extraterritorial jurisdiction of the City of Laredo.⁵ The residential growth along State Highway 359 is made up of: (1) new subdivisions and (2) “substantial growth in existing, formerly rural residential areas known as colonias.”⁶ Due to the expected growth along State Highway 359, the City of Laredo has plans for a network of new roadways that will cross and connect with State Highway 359.⁷ The application and its land use report limited its discussions concerning growth along State Highway 359 to the area along a new water line under construction, which ends approximately 2.5 miles east of the proposed landfill site.⁸ By limiting its discussion, the applicant failed to take into consideration the continued projected growth for Webb County, other sources of water for such new growth, and the availability of ground water that could potentially contribute to additional rural growth near the proposed landfill site. Therefore, the applicant failed to demonstrate that the proposed landfill site is compatible with area land uses.

2. Applicant failed to adequately address proposed groundwater monitoring.

The TCEQ rules require that “a groundwater monitoring system must be installed that consists of a sufficient number of monitoring wells, installed at appropriate locations and depths to yield representative groundwater samples from the uppermost aquifer as defined in 330.2 of this title.”⁹ The TCEQ defines an aquifer as “a geological formation, group of formations, or portion of formation capable of yielding significant quantities of groundwater to wells or springs.”¹⁰ Further, the TCEQ defines the uppermost aquifer as “the geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically

⁵ Exhibit A-4 page 2; also figures 1 and 3; Testimony of Applicant’s Expert John Worrall, Transcript page 15 line 22 through page 16 line 6.

⁶ Exhibit Webb 14 page 4 lines 16 – 19.

⁷ Testimony of Applicant’s Expert Worrall, Transcript page 10 lines 6 - 20.

⁸ Id. at page 13 line 6 through page 15 line 19; Exhibit A-4, page 4.

⁹ 30 TAC § 330.231(a).

¹⁰ 30 TAC § 330.2 (6); Exhibit A-83.

interconnected with this aquifer within the facility's property boundary."¹¹ Additionally, the TCEQ rules require that "the groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells, or other monitoring system..."¹² The applicant must "submit a groundwater sampling and analysis plan to the executive director for review and approval prior to commencement of sampling and shall maintain a current copy in the operating record."¹³ Finally, the groundwater sampling and analysis plan "shall be a part of the site development plan."¹⁴

a. Uppermost Aquifer

The record demonstrates that the Yegua in Webb County is designated as an aquifer by both the Texas Water Development Board and the USGS.¹⁵ The Texas Water Development Board identified and listed groundwater wells in the Yegua aquifer in Webb County.¹⁶ The outcrop of the Yegua aquifer covers about 690 mi² and dips to the southeast at about 64 ft/mi.¹⁷ The recharge zone of the Yegua aquifer "most likely occurs through direct infiltration of precipitation on the outcrop" and "the Yegua receives about 36,900 acre-ft/yr of recharge in Webb County of the outcrop."¹⁸

Further, the evidence showed that the Yegua has been and continues to be considered an aquifer in Webb County. As noted by the Administrative Law Judges (ALJs), the TCEQ rules require that the applicant meet its burden by using site-specific field-collected measurements, sampling, and analysis to show that "no potential exists for migration of hazardous constituents

¹¹ 30 TAC § 330.2 (158); Exhibit A-83.

¹² 30 TAC § 330.233(a).

¹³ 30 TAC § 330.233(b).

¹⁴ *Id.*

¹⁵ See generally Exhibits Webb 9 through Webb 12; Exhibit A-85; & Exhibit A -86.

¹⁶ Testimony of Webb County's Expert George Rice, Exhibit Webb 5, page 18 lines 21 – 25; Exhibit Webb 12.

¹⁷ Exhibit Webb 10 page 10.

¹⁸ *Id.*

from the landfill to the uppermost aquifer beneath the site.” The record established that the applicant (1) failed to demonstrate that the site-specific data was adequate; (2) underestimated the rate of movement of water in the Yegua and (3) underestimated the hydraulic conductivity of the Yegua.¹⁹ Contrary to Applicant’s conclusions, the site-specific data actually demonstrates that all borings contained numerous fractured areas and that many contained areas described as “crushed” zones.²⁰ The evidence demonstrated that the applicant conducted hydraulic conductivity from only seven samples and none of the samples were larger than 2.45 inches in length.²¹ Further, the record shows that all of the tested samples were from claystone layers, none from the sandstone.²² Although the testing performed by the applicant was inadequate, it still demonstrated that waste migration may occur to the area groundwater.

The record clearly demonstrates that the “cross sections prepared by the Applicant showed interconnections between sandstone layers at the site.”²³ As confirmed by testimony “water will generally move through the sandstone layers of the Yegua more quickly than it will move through the claystone layers,” absent fractures.²⁴ Thus, fractures “provide a pathway where there is essentially an opening in the formation for water to travel through.”²⁵

The record shows that the application did not contain a groundwater monitoring system or a groundwater sampling and analysis plan. The evidence establishes that the applicant believes that “due to the inherent inability of the hydrogeology beneath the Site to transmit groundwater (impacted or not) in any realistic time frame, either horizontally or vertically, groundwater monitoring and the associated groundwater monitoring/detection network and

¹⁹ Testimony of Webb County’s Expert George Rice, Exhibit Webb 5.

²⁰ Exhibit A-69; See examples of such discussion in Testimony of Applicant’s Expert Vince Barlock, Transcript, pages 494 through 501.

²¹ Exhibits A-35 and A-72; Testimony of Applicant’s Expert Vince Barlock, Transcript, pages 494 through 501.

²² *Id.*

²³ Testimony of Webb County’s Expert George Rice, Exhibit Webb 5, page 7 lines 14 -15.

²⁴ *Id.* at lines 23 – 25.

²⁵ *Id.* at page 8 lines 2 – 3.

ancillary Sampling and Analysis Plan (SAP) are not required nor reasonable for this proposed facility.”²⁶ Further, the applicant argues that the “groundwater monitoring requirements in 330.231 and 330.233 – 330.235 of this title may be suspended by the executive director for an MSWLF unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that MSWLF unit to the uppermost aquifer as defined in §330.2 of this title during the active life and the closure and post-closure care period of the unit.”²⁷ Such a demonstration must be based on: “(1) site-specific field-collected measurements, sampling and analysis of physical, chemical, and biological processes affecting contaminate fate and transport; and (2) contaminant fate and transport predictions that maximize contaminant migration and consider impact on human health and the environment.”²⁸

As shown above, the expert testimony and evidence demonstrates that there is groundwater beneath the proposed site, the groundwater is used and usable, and there is a potential for migration of hazardous constituents to that groundwater which establishes that a groundwater monitoring system and a groundwater sampling and analysis plan are required in order for the applicant to meet TCEQ requirements.²⁹ In essence, the ALJs are recommending that the Commission disregard its definition of an aquifer and the undisputed evidence that establishes that the Yegua is designated aquifer by the Texas Water Development Board and the USGS. The applicant failed to meet the requirements to establish that a groundwater monitoring system or a groundwater sampling and analysis plan was not needed and failed to provide a groundwater monitoring system or a groundwater sampling and analysis plan.

²⁶ Exhibit A-30, page III-A4-37.

²⁷ 30 TAC § 330.230(b); Exhibit A-30, page III-A4-37.

²⁸ 30 TAC § 330.230(b).

²⁹ *See generally*, Webb Exhibits 5 & 7.

b. Groundwater Monitoring System

Webb County agrees, if the application is granted, that the Commission should require the applicant to install a groundwater monitoring system and implementation of a groundwater sampling and analysis plan. However, the current application is deficient of the information required by the TCEQ's rules concerning groundwater monitoring.

The record shows that late in the hearing process, the applicant submitted the draft Williamson County Recycling & Disposal Facility Permit Amendment Application MSW 1405B's Groundwater Sampling & Analysis Plan and discussed its contents with Protestants Groundwater Expert George Rice.³⁰ Webb County objected³¹ at the beginning of the questioning of Mr. Rice concerning the Williamson County Groundwater Sampling & Analysis Plan and was given a running objection³² for all testimony relating to the exhibit.³³ Any such testimony concerning the Williamson County Groundwater Sampling & Analysis Plan was not relevant nor site-specific to the proposed site. Such testimony constituted merely a hypothetical analysis based upon unsupported conjecture and should have been given no consideration in this proceeding. The applicant failed to provide a groundwater sampling plan and a groundwater monitoring plan as part of its application.³⁴

Further, the record demonstrates that during rebuttal, the applicant attempted to cure its fatal defect by improperly submitting a Groundwater Sampling and Analysis Plan for the

³⁰ Transcript of Webb County's Expert George Rice, Transcript pages 783 – 896 and pages 915 – 1078; Exhibit A-271 and Exhibit A-275.

³¹ Transcript page 789 line 21 through page 790 line 8: Specifically, counsel for Webb County stated "that he (Mr. Rice) hasn't had the opportunity to read any of the supporting data from this permit application that developed this groundwater sampling and analysis plan. So what I'm trying to understand what Mr. Rice is going to do, is if he's going to go through and read word for word or paragraph for paragraph and just say what he agrees or disagrees with in general, I mean, that's fine, if we want to spend that time, but I don't want there to be an analogy drawn here that he's had the opportunity to review all of the supporting data and technical information that went into this permit application, then make a comparison to how that would affect Webb County and its permit application."

³² Transcript page 784 lines 21 - 25.

³³ *Id.*

³⁴ Transcript of Webb County's Expert George Rice, Transcript page 1086 line 21 through page 1087 line 6.

Ponderosa Regional Landfill which included a Groundwater Monitoring Well Layout.³⁵ During the hearing, the protestants objected to the admission of this exhibit as an improper supplementation of Applicant's prefiled case and improper rebuttal testimony.³⁶ Additionally, the admission of the Groundwater Sampling and Analysis Plan Further demonstrated that the application continued to fail to provide the TCEQ with the required information to support a groundwater monitoring system.³⁷

By admitting this exhibit, the ALJs denied Webb County its due process and a full and fair opportunity to participate in the contested case hearing. As stated by the TCEQ rules, "the applicant shall present evidence to meet its burden of proof on the application, followed by the protesting parties, the public interest counsel, and if named as a party, the executive director."³⁸ "A party has the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all pleadings, motions, replies, and other filed document, receive copies of all notices issued by the commissioner concerning the proceeding to which the person is a party, and, as directed by the judge, otherwise fully participate as a party in the proceeding."³⁹ Additionally, the applicant should have reasonably anticipated that this evidence should be included in its application, since it is required by the TCEQ rules. Therefore, the admission of this exhibit was improper rebuttal testimony.⁴⁰

The record shows that the applicant was allowed to supplement its prefiled testimony with a document that was not reviewed and evaluated by any protestant. Nor did any protestant have an opportunity to analyze the document and have it reviewed by any potential expert

³⁵ Exhibit A-287

³⁶ Transcript page 1282 line 25 through page 1283 line 51; page 1286 lines 6 – 11.

³⁷ 30 TAC 330.56.

³⁸ 30 TAC § 80.117(b).

³⁹ 30 TAC § 80.115(a).

⁴⁰ 30 TAC § 117(b).

witnesses. Further, as noted by the ALJs, “the ED’s staff has not had an opportunity to review Exhibit A-287,” therefore; they “decline to recommend that the Commission adopt Applicant’s request special provision.”

The sketchy, last-minute, unspecific plan introduced by the applicant is insufficient to meet the TCEQ requirements. Since this issue can only be properly determined on the basis of the Application, Pre-Filed Testimony and proper Rebuttal Testimony, the applicant failed to adequately address the need for Groundwater Monitoring. Therefore, the application should be denied.

3. Applicant failed to adequately address drainage and did not demonstrate that stormwater controls are adequate.

During the reconvened hearing, additional evidence was provided concerning drainage and the possibility of oil and gas development on the landfill footprint. Webb County will address its exceptions to the Proposal for Decision and applicant’s failure to adequately address drainage in this section. Specifically, Webb County files these exceptions concerning drainage to Sections IV(A)(3) and IV(C) of the Proposal of Decision.⁴¹

The TCEQ rules require that the site development plan of the application contain sufficient information to document that natural drainage patterns will not be significantly altered.⁴² Additionally, the TCEQ rules require that the site development have attached to it a groundwater and surface water protection plan and drainage plan.⁴³ As part of the attachment, drainage and run-off control analyses must be submitted with the application, which include

⁴¹ See Proposal for Decision, pages 31 – 44 and pages 52-67.

⁴² 30 TAC § 330.55(b)(5)(D) (West 2003).

⁴³ 30 TAC § 330.56(f) (West 2003).

"discussion and analyses to demonstrate that the natural drainage patterns will not be significantly altered as a result of the proposed landfill development."⁴⁴

The TCEQ Guidelines state that one "can evaluate the significance of changes to drainage patterns based on the impacts of changes on the following: (1) receiving streams or channels, (2) downstream flooding potential, (3) adjacent and downstream properties, and (4) downstream water rights and uses."⁴⁵ Further, "there is no clear-cut number or percentage of change that can be set to indicate a 'significant' change."⁴⁶ The applicant "should demonstrate that drainage patterns will not be significantly altered because of the effect of the site development on (1) peak flows, (2) volumes, and (3) velocities from each permit boundary discharge point."⁴⁷

"In order to properly evaluate the effects of changes in the magnitude of peak flows, you should consider the timing of peak flows from the site and their contribution to peak-flow rates in receiving streams or channels."⁴⁸ The TCEQ Guidelines state that whether the drainage pattern is significantly altered "is best determined on a case-by-case basis."⁴⁹ As pointed out in the TCEQ Guidelines, even "a 1 percent deviation of 1,000 cubic feet per second (cfs) ... may be considered 'significant' if the area of the study is sensitive."⁵⁰

It is the applicant's "responsibility to demonstrate that any volume increase (or decrease) is not 'significant.'"⁵¹ The TCEQ Guidelines state that "typical methods for addressing this issue are [by]...(1)demonstrat[ing] that there is no increase in volume at a discharge point, (2) demonstrate[ing] that the additional volume will be released at a rate that will not significantly

⁴⁴ 30 TAC § 330.56(f)(4)(A)(iv) (West 2003).

⁴⁵ TCEQ Regulatory Guidance, Waste Permits Division, RG-417, June 2004, "Guidelines for Preparing a Surface Water Drainage Plan for a Municipal Solid Waste Facility," Exhibit A-317A at page 3.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at page 4.

affect the downstream receiving water body, (3)us[ing] storm water retention ponds, [and] (4)demonstrat[ing] that any change in the volumes of water discharged from the permit boundary discharge points will not have a significant adverse effect on downstream water rights and uses."⁵²

a. Proposed Landfill Site

"The landfill is located at a topographic high point and as such, stormwater typically exits the site to both Highway 359 (and ultimately Lobo Creek) to the north and to a series of un-named Lobo Creek tributaries to the south."⁵³ "The Northern Drainage includes those areas of the permit property that discharge to the north at Discharge Study Point A, B, I and Sheet Flow Discharge Study Point Sf a and Off-Site Drainage Areas 1 and 2."⁵⁴ The natural drainage pattern for discharge points A, B, and I consist of draining 38 acres, 19 acres, and 19 acres, respectively.⁵⁵

"The Southern Drainage includes those areas of the permit property that discharge to the south at Discharge study Point C, D, and E, and Sheet Flow Discharge Study Points SF b, c, d, e, f, g, and h, as well as 4 off-site drainage basins to the un-named tributary to Lobo Creek."⁵⁶ The remaining areas naturally drain to the southeast through discharge points C, D, or E.⁵⁷

The proposed drainage condition of the site consists of five detention ponds which "are located along the perimeter of the proposed site and their discharge points are located at pre-development discharge points"⁵⁸

⁵² *Id.*

⁵³ Exhibit A-313, page 2.

⁵⁴ *Id.* at pages 5-6; *See also* Figures No. III-6.1(Natural Drainage Plan) and No. 4 (Off-Site Drainage North) to Exhibit A-313.

⁵⁵ *Id.*

⁵⁶ *Id.* at page 7. *See also* Figures No. III-6.1(Natural Drainage Plan) and No. 5 (Off-Site Drainage Plan South) to Exhibit A-313.

⁵⁷ *Id.*

⁵⁸ Exhibit A-106, page III-11. *See also*, Exhibit A-128.

b. Northern Drainage

The record establishes that during the initial hearing "there was no off-site analysis to show how the discharges from... areas I, B and A ...combined and may have impacted flooding off-site."⁵⁹ Mr. James Roy Murray, Applicant's expert, testified that the floodplain at its closest lies approximately 250 feet from the proposed permit boundary.⁶⁰ Specifically, discharge points A, B, and I, which exit the property along State Highway 359 flow through two culverts and along the ditch into this floodplain.⁶¹ Also, Mr. Murray testified that "there's nothing in the application" concerning how the increased volume of water may affect this flood plain area from the three discharge points.⁶² Additionally, the application does not contain any calculation concerning the effect the increased volume of water may have on culverts under State Highway 359.⁶³

Mr. Larry Dunbar, Webb County's expert, testified that "the design of the landfill and its Stormwater Management System that provides for such a diversion of the natural flow of surface water fails to comply with the TCEQ rules and regulations, and would be a violation of Section 11.086 of the Texas Water Code."⁶⁴ The permit application fails to meet the requirements found in TCEQ rules 30 TAC 330.55(b)(5)(D) and 30 TAC 330.56(f)(4)(a)(iv) which "require that the application contain sufficient information to document that the design and construction of the landfill will not significantly alter natural drainage patterns."⁶⁵ Additionally, Mr. Dunbar testified that the four hydrographs contained in Webb 3 show that "there are significant changes in the flow rates, runoff volumes and timing of flows between existing and proposed conditions

⁵⁹ Testimony of Larry Dunbar, Transcript page 2105 lines 23-24.

⁶⁰ Exhibit A-106, page III-13; Testimony of Applicant's Expert Murray, Transcript page 211 lines 4 – 8.

⁶¹ Testimony of Applicant's Expert Murray, Transcript page 211 lines 14 – 21.

⁶² *Id.* at Transcript page 212 lines 4-8.

⁶³ *Id.* at Transcript page 213 lines 17 – 20.

⁶⁴ Exhibit Webb 1, page 5 lines 1 – 4.

⁶⁵ *Id.* at lines 8 – 11.

at Discharge Points A, B and I, all along the northern permit boundary of the proposed landfill.”⁶⁶ Further, “these hydrograph comparisons clearly indicate that there will be a significant alteration of natural drainage patterns as a result of the propose landfill.”⁶⁷

During the reconvened hearing, the record shows that the applicant attempted to include evidence concerning drainage to the North. The evidence shows that the applicant only used the HEC-1 model rather than the Rational method, as required by the TCEQ, for Discharge Points A, B and I. As demonstrated by the chart below, the total amount of acreage draining to the three discharge points along State Highway 359 to the North significantly increases with the landfill as proposed or the landfill with the well pads.⁶⁸

	Natural Condition	Natural Condition with Well Pad	Landfill Condition	Landfill Condition with Well Pad
Discharge Point	Acres	Acres	Acres	Acres
A	38 (see footnote ⁶⁹)	38 (see footnote ⁷⁰)	81 (see footnote ⁷¹)	83 (see footnote ⁷²)
B	19 (see footnote ⁷³)	19 (see footnote ⁷⁴)	23 (see footnote ⁷⁵)	12 (see footnote ⁷⁶)
I	19 (see footnote ⁷⁷)	19 (see footnote ⁷⁸)	71 (see footnote ⁷⁹)	47 (see footnote ⁸⁰)

(see footnote⁸¹)

As shown by the evidence, individually each of the areas draining to these three discharge points are less than 200 acres and even collectively, they still are also less than 200 acres.⁸² The scientifically undisputed evidence shows that the peak flow at these discharge points increase.

⁶⁶ *Id.* at page 11 lines 24 – 31.

⁶⁷ *Id.*

⁶⁸ Exhibits A-314 and A-315.

⁶⁹ Exhibit A-315, page 12.9.

⁷⁰ Exhibit A-314, page 11.5; Exhibit A-315, page 12.17.

⁷¹ Exhibit A-121, page III-6.3-1; Testimony of Applicant’s Expert Murray, Transcript page 203 lines 15-19.

⁷² Exhibit A-315, page 12.26.

⁷³ Exhibit A-315, page 12.9.

⁷⁴ Exhibit A-314, page 11.5; Exhibit A-315, page 12.17.

⁷⁵ Exhibit A-121, page III-6.3-1; Testimony of Applicant’s Expert Murray, Transcript page 204 lines 17-22.

⁷⁶ Exhibit A-315, page 12.26.

⁷⁷ Exhibit A-315, page 12.9.

⁷⁸ Exhibit A-314, page 11.5; Exhibit A-315, page 12.17.

⁷⁹ Exhibit A-121, page III-6.3-1; Testimony of Applicant’s Expert Murray, Transcript page 205 lines 1-5.

⁸⁰ Exhibit A-315, page 12.26.

⁸¹ Exhibit A-315, page 12.9.

⁸² Testimony Larry Dunbar, Transcript page 2108, lines 4-6.

Further, the record establishes the applicant failed to accurately calculate the peak flow rates by using the HEC-1 rather than the TCEQ required Rational method.⁸³ This clear deviation from the TCEQ rules invalidates the subsequent opinions of Applicant's expert on this issue.

Applicant provided conflicting data which showed that there would be an increase in peak flow in Lobo Creek but there would be no increase in peak flow at the permit boundary at Discharge Points A, B and I.⁸⁴ Applicant failed to explain how such an increase is physically possible in Lobo Creek and not at the permit boundary.⁸⁵ Mr. Dunbar opined that one possible reason for the increase in peak flow could be from the increase in runoff volume.⁸⁶

The evidence shows that there will be a significant increase in runoff volume leaving the landfill site along State Highway 359. As demonstrated by the chart below, the runoff volume leaving these discharge points increases with the landfill with the well pads and the landfill's final condition.

⁸³ *Id.* at lines 6-9.

⁸⁴ *Id.* at lines 10-16.

⁸⁵ *Id.*

⁸⁶ *Id.* at lines 18-24.

Discharge Points	Natural Condition	Landfill Condition with Well Pad	Landfill Condition Final
A	<u>13 acre feet</u> 4,238,000 gallons	<u>38 acre feet</u> 12,388,000 gallons (8,150,000 gallons)	<u>34 acre feet</u> 11,084,000 gallons (6,846,000 gallons)
B	<u>6 acre feet</u> 1,956,000 gallons	<u>8 acre feet</u> 2,608,000 gallons (625,000 gallons)	<u>9 acre feet</u> 2,934,000 gallons (978,000 gallons)
I	<u>6 acre feet</u> 1,956,000 gallons	<u>18 acre feet</u> 5,868,000 gallons (3,912,000 gallons)	<u>23 acre feet</u> 7,498,000 gallons (5,542,000 gallons)
Total	25 acre feet 8,150,000 gallons	64 acre feet 20,864,000 gallons (12,714,000 gallons)	66 acre feet 54,516,000 gallons (13,366,000 gallons)
Increase Percentage from Natural Condition		256%	264%

(see footnote⁸⁷)(see footnote⁸⁸)

The applicant failed to adequately address the effects of the increased volume of runoff. The record establishes that Mr. Murray did not know the size of the culverts near Discharge Points B and I that are under State Highway 359 and did not know whether there is a culvert at Discharge Point A or if the water flows down a bar ditch towards Lobo Creek.⁸⁹

Further, the record shows that the applicant acknowledges that there would be a slight increase in flooding in Lobo Creek.⁹⁰ Mr. Murray testified that one "could have increases in fairly small percentages in critical drainage areas that could be significant."⁹¹ As shown by Protestant 359 Coalition during the initial hearing, the area near the proposed landfill site and along Highway 359 has flooded in the recent past.⁹² Additionally, these off-site areas impacted

⁸⁷ Exhibit A-314, page 11.3; Exhibit Webb 22; Testimony of Applicant's Expert Murray, Transcript pages 2003-2007

⁸⁸ One acre foot is equal to 325,872.36 gallons of water; for the table, one acre foot was approximated to 326,000 gallons. See Webb 22; Testimony of Applicant's Expert Murray, Transcript page 2003, lines 10-20.

⁸⁹ Testimony of Applicant's Expert Murray, Transcript page 2008 line 19 through page 2012 line 14.

⁹⁰ Exhibit A-313.

⁹¹ Testimony of Applicant's Expert Murray, Transcript page 2013, lines 18-24.

⁹² See Exhibit P 1A- 1D.

by the increased runoff volume are within the 100 year flood plain.⁹³ Therefore, by not properly calculating the peak flow rates using the Rational Method, the applicant failed demonstrate that this significant increase in runoff volume will not significantly alter the natural drainage pattern.⁹⁴

Although Applicant was aware of these deficiencies from the initial hearing, the evidence and testimony by the applicant's expert failed to meet the requirements of the TCEQ. The evidence clearly demonstrates that the applicant: (1) failed to use the Rational method in calculating the peak flow rates for the areas that drain to Discharge Points A, B and I; (2) shows an increase in run off volume exiting the proposed landfill site; (3) demonstrates an increase in flooding in Lobo Creek; (4) provides no analysis and has no knowledge of the ability of the culverts and ditches along and under State Highway 359 to handle the increase volume of runoff; and (5) provides no analysis of the impact this increase amount of runoff will have in the flood prone area near the landfill site.

c. Southern Drainage

The evidence demonstrates that the applicant used four study points to analyze the drainage to the south in the un-named tributary of Lobo Creek: "Discharge Study Point 3 located south east of Discharge Study Points C, Sf c, and Sf d; Discharge Study Point 4 located south east of Discharge Study Point D, E, Sf e, Sf d, Sf f, Sf g and Sf h; Discharge Study Point 5 located downstream of Discharge Study Points 3 and 4; and Discharge Study Point 6 located downstream of Discharge Study Points 5 and Sfb."⁹⁵ These Discharge Points include areas smaller than 200 acres:

⁹³ See Exhibit A-313, Figure No. 5; 100 year Flood Plain not depicted on Figure No. 4.

⁹⁴ 30 TAC § 330.56(f)(4)(A)(iv)(West 2003).

⁹⁵ Exhibit A-313, page 7.

Discharge Study Point	Acreage
3	34 acres
4	168 acres
5	191 acres
6	195 acres

(see footnote⁹⁶)

Again, the applicant failed to accurately calculate the peak flow rates by using the HEC-1 rather than the TCEQ required Rational method. The evidence shows that Mr. Murray only provided HEC-1 model runs for the peak flow rates at these study points. This failure to provide an accurate analysis is a violation of TCEQ requirements.

In the *Blue Flats* hearing, the expert witness, "calibrated his HEC-1 model to correspond to the peak flow rates under the Rational method by adjusting the SCS curve numbers."⁹⁷ "Although the precise impact of these adjustments is unclear, the ALJs were persuaded by the evidence that adjusting the SCS curve numbers was likely to produce a more reliable result."⁹⁸ Similarly, the record shows that Mr. Dunbar attempted to calibrate the HEC-1 model runs "to produce a number similar to the rational method peak flow number ... at Discharge Points 3, 4, 5, and 6."⁹⁹ In order to calibrate the HEC-1 model, Mr. Dunbar testified that he changed the CN value from 69 to a CN value of 60 and 55 in two separate HEC-1 runs to obtain a result closer to the rational method peak flow number.¹⁰⁰ Further, Mr. Dunbar testified that he reviewed

⁹⁶ Testimony of Applicant's Expert Murray, Transcript page 2025; Exhibit A-316, page 13.8; and Exhibit Webb 23.

⁹⁷ *In the matter of the Application of Blue Flats Disposal, L.L.C. for Proposed Permit No. MSW 2262*, TNRCC Docket No. 98-0415-MSW; SOAH Docket No. 582-98-1390, PFD Executive Summary, page 32.

⁹⁸ *Id.*

⁹⁹ Testimony of Larry Dunbar, Transcript page 2069, lines 2-6.

¹⁰⁰ *Id.* at page 2074 line 17 through page 2075 line 22.

Discharge Points C and D which are both under the 200-acre limit set by the TCEQ rules.¹⁰¹ In reviewing those two areas, the peak flow rates change significantly between the rational method and HEC-1.¹⁰²

Discharge Point	Size (Acres)	Flow 25-Yr (cfs)	
		Rational	HEC-1
C	198	175	255
D	103	82	145

(see footnote¹⁰³)

The record shows that Mr. Dunbar "focused [his] attention on [these] two primary subareas because [he] had rational method numbers for them"¹⁰⁴ to help explain changing the CN values to 60 and 55. For Discharge Point C, "neither run by itself gave exactly 175 cfs as the peak discharge" for either CN value 60 or 55.¹⁰⁵ For the run including the CN value of 55, the cfs number for Discharge Point C was closer 175 cfs.¹⁰⁶ "But at Discharge Point D, they were both [60 CN and 55 CN] higher than 82 cfs."¹⁰⁷

The evidence demonstrates that by changing the CN value, these models establish that the peak flow rates increase at the four Discharge Study Points and reflect what should be anticipated if the Applicant had used and calculated the required rational method peak flow numbers, as demonstrated in the charts below:

¹⁰¹ *Id.* at page 2076.

¹⁰² Exhibit A-313, Figure 5; Exhibit Webb 23.

¹⁰³ *Id.*

¹⁰⁴ Testimony of Larry Dunbar, Transcript page 2077, lines 1-3.

¹⁰⁵ *Id.* at lines 4-14.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

CN = 60			
Discharge Point	Natural Condition	Landfill Condition	Landfill Condition with Wells
C	189 cfs	246 cfs	213 cfs
D	108 cfs	113 cfs	139 cfs
3	227 cfs	272 cfs	239 cfs
4	1148 cfs	1181 cfs	1211 cfs
5	1559 cfs	1634 cfs	1634 cfs
6	1717 cfs	1777 cfs	1776 cfs

(see footnote¹⁰⁸)

CN = 55			
Discharge Point	Natural Condition	Landfill Condition	Landfill Condition with Wells
C	152 cfs	246 cfs	213 cfs
D	87 cfs	113 cfs	139 cfs
3	183 cfs	266 cfs	233 cfs
4	925 cfs	991 cfs	1021 cfs
5	1255 cfs	1402 cfs	1400 cfs
6	1383 cfs	1514 cfs	1513 cfs

(see footnote¹⁰⁹)

In comparing the two tables above, it is clear that the peak flow rates increase at each of the Discharge Study Points under both the landfill condition as originally proposed and the landfill condition with the wells. By using only the HEC-1 model, the applicant relied on inaccurate numerical data that showed a decrease in peak flow rates at all four of the Discharge Study

¹⁰⁸ See Exhibit Webb 21; Exhibit Webb 15; Exhibit Webb 16; Exhibit Webb 17; and Testimony of Larry Dunbar, Transcript pages 2085-2096.

¹⁰⁹ See Exhibit Webb 21; Exhibit Webb 18; Exhibit Webb 19; Exhibit Webb 20; and Testimony of Larry Dunbar, Transcript pages 2085-2096.

Points.¹¹⁰ The record shows that the applicant failed to use the Rational method as required by the TCEQ for these four Discharge Study Points since they were under 200 acres and failed to attempt to calibrate the HEC-1 runs to produce a more reliable result similar to the rational method.

The record establishes that Mr. Dunbar's calibration, as described in *Blue Flats*, demonstrates that the peak discharges at the permit boundary are above the natural conditions as well as the peak discharges at the off-site Study Points.¹¹¹ Specifically, there are increases of 19.8%, 2.9%, 4.8% and 3.5% from the natural condition to the landfill condition as originally proposed and increases of 5.3%, 5.5%, 4.8% and 3.4% from the natural condition to the landfill condition with the well pads at Discharge Study Points 3, 4, 5, and 6, respectively, when the CN value is changed to 60.¹¹² Additionally, there are increases of 45.4%, 7.1 %, 11.7% and 9.5% from the natural condition to the landfill condition as originally proposed and increases of 27.3%, 10.4%, 11.6% and 9.4% from the natural condition to the landfill condition with the well pads at Discharge Study Points 3, 4, 5, and 6, respectively, when the CN value is changed to 55.¹¹³

As shown above, the Applicant failed to demonstrate that the proposed landfill will not significantly alter drainage patterns as required by 30 TAC Chapter 330. Indeed, under the evidence admitted in the hearing, it is apparent that the natural drainage patterns will be altered, creating a significant risk of flooding to the state highway and adjacent flood-prone areas. Therefore, the application should be denied.

¹¹⁰ Exhibit A-313, page 8.

¹¹¹ Testimony of Larry Dunbar, Transcript page 2099 lines 1-5.

¹¹² Exhibit Webb 21.

¹¹³ *Id.*

**III.
Conclusion**

For these reasons, Webb County requests that the application of Regional Land Management Services, Ltd. for a New Type I Municipal Solid Waste Landfill, Permit No. 2286, be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, James P. Allison, do hereby certify that on this the 29th day of September, 2008, a true and correct copy of the foregoing **Webb County's Exceptions to the Proposal for Decision** has been forwarded to the following:

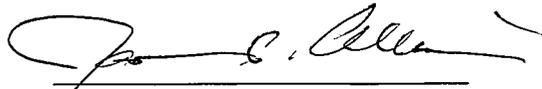
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