

**DIETZ & JARRARD, P.C.**

ATTORNEYS AND COUNSELORS AT LAW

106 Fannin Avenue East  
Round Rock, Texas 78664-5219

Telephone (512) 244-9314  
Facsimile (512) 244-3766  
[www.lawdietz.com](http://www.lawdietz.com)

R. Mark Dietz  
Melissa G. Dietz  
J. Lee Jarrard, Jr.

Douglas G. Cornwell  
V. Blayre Campbell

TEXAS  
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ON ENVIRONMENTAL  
QUALITY  
2008 MAR -7 PM 2:41  
CHIEF CLERKS OFFICE

March 7, 2008

Ms. La Donna Castañuela  
Chief Clerk (MC-105)  
ATTN: Agenda Docket Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Bldg. F  
Austin, Texas 78753

*Via Hand Delivery*

Re: TCEQ Docket No. 2005-0337-MSW; SOAH Docket No. 582-06-3321  
Application of Williamson County for a Permit Amendment to Expand a Type I  
Municipal Solid Waste Landfill Facility; (Permit No. MSW-1405B)

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced docket, please find one original and twelve copies of Applicant's Brief in Response to the Administrative Law Judge's Proposal for Decision. Please return one file-stamped copy to the courier. Thank you.

Respectfully submitted,



R. Mark Dietz  
Counsel for Applicant Williamson County

Enclosures

cc: Service List (via electronic mail and/or facsimile)

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 MAR -7 PM 2:41  
CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-06-3321  
TCEQ DOCKET NO. 2005-0337-MSW

APPLICATION OF WILLIAMSON COUNTY FOR A PERMIT AMENDMENT TO EXPAND A TYPE I MUNICIPAL SOLID WASTE LANDFILL FACILITY; PERMIT NO. MSW-1405B § § § § § § BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICANT WILLIAMSON COUNTY'S BRIEF IN RESPONSE TO THE ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION

COMES NOW Applicant Williamson County ("*Applicant*" or "*Williamson County*") and, per 30 TEX. ADMIN. CODE § 80.257(a), files this brief in response to the Administrative Law Judges' ("*ALJs*") Proposal for Decision ("*PFD*") in the above-captioned matter. Williamson County finds the ALJs' PFD to be thorough, well reasoned, and supported by the evidence put forth in this proceeding. Accordingly, Williamson County accepts – with few, limited exceptions – the ALJs' proposed Findings of Facts and Conclusions of Law. These few, limited exceptions are set forth below.

I.  
ARGUMENT

**A. IF LIMITATIONS ARE TO BE PLACED ON OPERATING HOURS, PER THE APPLICABLE REGULATORY REQUIREMENTS, THE PERMIT SHOULD DISTINGUISH BETWEEN WASTE ACCEPTANCE HOURS AND ALL OTHER HOURS OF OPERATION**

As discussed in the ALJs' PFD, in its application, Williamson County requested the flexibility to operate the Williamson County Recycling and Disposal Facility, as necessary, without limitations on the facility's operating hours.<sup>1</sup> In the PFD, the ALJs reasoned that, "[w]hile the evidence supports round-the-clock operations in emergency situations and for equipment repair, . . . normal operating activities outside normal business hours might become

<sup>1</sup> See PFD at 82-83.

incompatible with anticipated residential and commercial development in the area.”<sup>2</sup> In light of the possibility of a future incompatibility, the ALJs proposed to limit the facility’s “operating hours” to specific hours and days of operation.

While Williamson County maintains that allowing the facility the flexibility to operate without limitations on its operating hours would not be incompatible with future, anticipated development in the area of the facility, Williamson County nevertheless accepts – and does not take exception to – the ALJs’ proposal to limit “normal operating activities” to specified and limited hours. However, Williamson County respectfully submits that the ALJs’ proposal regarding “normal operating hours” should be clarified to recognize the regulatory distinction between waste acceptance hours and other hours of operation. Specifically, the regulation applicable to facility operating hours expressly distinguishes between (1) waste acceptance hours, (2) hours for transportation of materials on- or off-site and operation of heavy equipment, and (3) operating hours for other activities.<sup>3</sup> The third category of operating hours – hours for “other activities” – does not require specific approval from the Texas Commission on Environmental Quality (“TCEQ” or the “Commission”), thus the relevant distinction is between waste acceptance hours and hours for transportation of materials on- or off-site and operation of heavy equipment.<sup>4</sup>

To give effect to this regulatory distinction, Williamson County respectfully requests that the ALJs’ proposed limitation on the facility’s operating hours be clarified to provide that the

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<sup>2</sup> *Id.* at 83.

<sup>3</sup> *See* 30 TEX. ADMIN. CODE § 330.118(a) (distinguishing between “waste acceptance hours and the hours when materials will be transported on or off site, and the hours when heavy equipment may operate,” as well as “[o]perating hours for other activities”).

<sup>4</sup> *See id.* (“Operating hours for other activities do not require other specific approval.”).

limitation applies only to the hours during which the facility may accept waste – i.e., that the facility’s authorized hours of waste acceptance are limited to Monday through Friday, 5:00 a.m. to 8:00 p.m., and Saturday 6:00 a.m. to 4:00 p.m., and that such limitation does not apply to any other facility activities, such as transportation of materials on- or off-site and operation of heavy equipment, which may be conducted, as necessary, at any time. This clarifying proposal would (1) honor and effectuate the ALJs’ proposal to restrict the hours of “normal operating activities;”<sup>5</sup> (2) properly distinguish between waste acceptance hours and other hours of operation, in accordance with the regulatory distinction in TCEQ’s rules;<sup>6</sup> (3) allow for round-the-clock operations – other than waste acceptance – in emergency situations and for equipment repair, which the ALJs expressly found to be supported by the evidence;<sup>7</sup> (4) avoid a debate and premature decision in the context of this proceeding concerning what constitutes an “emergency” situation sufficient to allow for extended hours of waste acceptance;<sup>8</sup> and (5) effectuate, at least in part, Williamson County’s stated intentions regarding operation of the facility.<sup>9</sup>

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<sup>5</sup> PFD at 83. It cannot be reasonably disputed that waste acceptance activities constitute the “normal operating activities” of a municipal solid waste disposal facility.

<sup>6</sup> See 30 TEX. ADMIN. CODE § 330.118(a).

<sup>7</sup> See PFD at 83.

<sup>8</sup> TCEQ’s rules specifically provide that TCEQ “may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste receipt at the facility.” 30 TEX. ADMIN. CODE § 330.118(c). TCEQ’s rules also provide that a facility may seek a temporary authorization to extend its waste acceptance hours “to accommodate special occasions, special purpose events, holidays, or other special occurrences.” *Id.* § 330.118(b); see also *id.* at § 305.70(m)(2)-(4).

<sup>9</sup> See Trial Tr. at 12:13-21 (Gattis) (explaining that Williamson County’s request to operate the facility without limitations on its operating hours would allow the facility operator to conduct “the necessary work they need to do even if we’re not accepting waste there at that time”); see also *id.* at 57:12-22 (Gattis) (noting that Williamson County does not intend to “receive waste” at the facility 24 hours per day); *id.* at 57:23 to 58:6, 81:3-25 (Gattis) (discussing the need to have the flexibility to conduct equipment repairs whenever necessary).

For the foregoing reasons, Williamson County respectfully requests that proposed Findings of Fact 161 through 163 in the order proposed by the ALJs (the "**Proposed Order**")<sup>10</sup> be clarified as follows:

161. The Applicant is authorized to operate accept waste at the Facility Monday through Friday, 5:00 a.m. to 8:00 p.m. and Saturday 6:00 a.m. to 4:00 p.m. Activities other than waste acceptance, including, but not limited to, transportation of materials on- or off-site and operation of heavy equipment, are not limited to specified hours and may be conducted by the Facility, as necessary, at any time. Facility operating waste acceptance hours will be posted at the entrance to the Facility.
162. In the event of an emergency or other unforeseen circumstance or special occasion, as determined by the ED, the Applicant may seek authorization for additional temporary waste acceptance hours per applicable TCEQ rules ~~is authorized to operate the Facility 24 hours per day, seven days per week for the duration of the emergency.~~
163. The ~~operation~~ routine acceptance of waste at the Facility 24 hours per day, seven days per week in non-emergency conditions or outside of special occasions may be incompatible with future surrounding land uses.

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<sup>10</sup> See Proposed Order at 24.

On the same grounds, Williamson County also respectfully requests that proposed Ordering Provision 3<sup>11</sup> be modified as follows:

3. The Draft Permit No. MSW-1405B, shall state the Facility's operating waste acceptance hours as Monday through Friday, 5:00 a.m. to 8:00 p.m. and Saturday 6:00 a.m. to 4:00 p.m. The Draft Permit No. MSW-1405B shall further state that the Facility is authorized to conduct activities other than waste acceptance, including, but not limited to, transportation of materials on- or off-site and operation of heavy equipment, as necessary, at any time.

**B. PROPOSED MODIFICATIONS TO CORRECT INADVERTENT TYPOGRAPHICAL ERRORS**

In a few instances in the Proposed Order there are, what appear to be, simple, inadvertent, typographical errors that, if left uncorrected, could be potentially misleading or otherwise confusing. To address these inadvertent typographical errors, Williamson County proposes the following modifications to the ALJs' Proposed Order:

| PAGE NO.<br>(Proposed Order) | PARAGRAPH NO. | PROPOSED MODIFICATION   | BASIS FOR MODIFICATION   |
|------------------------------|---------------|---|--|
| 4                            | 18            | Delete "Suite 502."   | "Suite 502" refers to the ALJs' offices rather than the actual hearing room. |
| 11                           | 69            | Insert "feet" before "above" in the second and third lines; move "feet" in the fourth line to be immediately adjacent to "above." | Clarification  |

<sup>11</sup> See *id.* at 37.

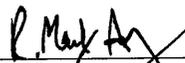
| PAGE NO.<br>(Proposed<br>Order) | PARAGRAPH<br>NO. | PROPOSED MODIFICATION  | BASIS FOR<br>MODIFICATION   |
|---------------------------------|------------------|--|---|
| 11                              | 70               | The first sentence should be revised to read " <u>A total of 44 borings have been drilled at the Facility.</u> Williamson County drilled 17 soil borings within . . . ." | Clarification   |
| 12                              | 71               | The word "sampled" should be "samples."  | Typo  |
| 13                              | 80               | The end of the sentence should read " <u>along the perimeter of the combined footprints of the existing and proposed Landfill.</u> "                                     | Clarification   |
| 15                              | 96               | The word "application" should be capitalized (i.e., "Application").  | Consistency   |
| 15                              | 104              | The word "application" should be capitalized (i.e., "Application").  | Consistency   |
| 19                              | 134              | Replace "TAC" with "TEX. ADMIN. CODE."   | Consistency. The acronym "TAC" is not defined in the Proposed Order, and "TEX. ADMIN. CODE." is otherwise used throughout the Proposed Order. |
| 21                              | 147.b            | The end of the sentence should read "slope stability."   | Typo  |
| 27                              | 180              | Delete the phrase "will be allowed" in the second line.  | Clarification   |
| 30                              | 12               | Insert "CODE" after "ADMIN."   | Typo  |
| 34                              | 41               | Insert an additional parenthesis after "(A)" (i.e., to read "(A),").   | Typo  |

| PAGE NO.<br>(Proposed<br>Order) | PARAGRAPH<br>NO. | PROPOSED MODIFICATION                     | BASIS FOR<br>MODIFICATION  |
|---------------------------------|------------------|---|--|
| 34                              | 42               | Replace "TAC" with "TEX.<br>ADMIN. CODE." | Consistency. The<br>acronym "TAC" is not<br>defined in the Proposed<br>Order, and "TEX.<br>ADMIN. CODE." is<br>otherwise used<br>throughout the Proposed<br>Order. |

**II.**  
**CONCLUSION**

For the foregoing reasons, Applicant Williamson County respectfully requests that the ALJs' Proposed Order be modified as proposed above and issued by the Commission with those modifications.

Respectfully submitted,




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R. Mark Dietz/State Bar No. 05857200  
Dietz & Jarrard, P.C.  
106 Fannin Avenue  
Round Rock, Texas 78664-5219  
(512) 244-9314

COUNSEL FOR WILLIAMSON COUNTY

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing brief has been served on the following on this the 7th day of March, 2008:

Anthony C. Tatu  
Staff Attorney  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-173  
Austin, Texas 78711-3087  
Fax (512) 239-0606  
Email [atatu@tceq.state.tx.us](mailto:atatu@tceq.state.tx.us)

*Representing the Executive Director of the  
Texas Commission on Environmental Quality*

Scott Humphrey  
Office of the Public Interest Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-103  
Austin, Texas 78711-3087  
Fax (512) 239-6377  
Email [shumphre@tceq.state.tx.us](mailto:shumphre@tceq.state.tx.us)

*Representing the Texas Commission on  
Environmental Quality Office of the Public  
Interest Counsel*

Lawrence G. Dunbar  
Dunbar Harder PLLC  
One Riverway, Suite 1850  
Houston, Texas 77056  
Fax (713) 782-5544  
Email [ldunbar@dunbarharder.com](mailto:ldunbar@dunbarharder.com)

*Representing TJFA, L.P.*

John J. Carlton  
Armbrust & Brown, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701-2744  
Fax (512) 435-2360  
Email [jcarlton@abaustin.com](mailto:jcarlton@abaustin.com)

*Representing Jonah Water Special Utility  
District*

Marisa Perales  
Lowerre & Frederick  
44 East Avenue, Suite 100  
Austin, Texas 78701  
Fax (512) 482-9346  
Email [marisa@lf-lawfirm.com](mailto:marisa@lf-lawfirm.com)

*Representing The Heritage on the San Gabriel  
Homeowners Association*

Steven Salfelder  
Hutto Citizens Group  
P.O. Box 715  
303 Taylor Street  
Hutto, Texas 78634  
Email [bearfix@sbcglobal.net](mailto:bearfix@sbcglobal.net)

*Representative for Hutto Citizens Group*

Orlynn Evans  
Mount Hutto Aware Citizens  
112 Guadalupe Dr.  
Hutto, Texas 78634  
Email [battleofhuttohill@yahoo.com](mailto:battleofhuttohill@yahoo.com)

*Representative for Mount Hutto Aware  
Citizens*

Hon. Travis Vickery  
Hon. Henry D. Card  
State Office of Administrative Hearings  
300 West 15th St., Suite 502  
Austin, Texas 78701

*Administrative Law Judges, State Office of  
Administrative Hearings*

LaDonna Castañuela, TCEQ Chief Clerk  
Office of the Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

*Chief Clerk, Texas Commission on  
Environmental Quality*

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087 (MC-101)  
Austin, Texas 78711-3087  
Fax (512) 239-5533

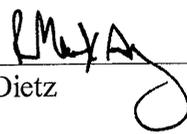
*General Counsel, Texas Commission on  
Environmental Quality*

Bridget C. Bohac  
Office of Public Assistance  
Texas Commission on Environmental Quality  
P.O. Box 13087 (MC-108)  
Austin, Texas 78711-3087  
Fax (512) 239-4007

*Director, Texas Commission on Environmental  
Quality Office of Public Assistance*

Kyle Lucas  
Alternative Dispute Resolution Program  
Texas Commission on Environmental Quality  
P.O. Box 13087 (MC-222)  
Austin, Texas 78711-3087  
Fax (512) 239-4015

*Texas Commission on Environmental Quality  
Alternative Dispute Resolution Program*

  
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R. Mark Dietz