

**SOAH DOCKET NO. 582-08-2186
TCEQ DOCKET NO. 2006-0612-MSW**

APPLICATION OF	§	BEFORE THE STATE OFFICE
WASTE MANAGEMENT OF TEXAS, INC.	§	
FOR A MUNICIPAL SOLID WASTE	§	OF
PERMIT AMENDMENT;	§	
PERMIT NO. MSW-249D	§	ADMINISTRATIVE HEARINGS

**APPLICANT WASTE MANAGEMENT OF TEXAS, INC.'S
BRIEF IN RESPONSE TO THE ADMINISTRATIVE LAW JUDGE'S
SUPPLEMENTAL PROPOSAL FOR DECISION**

COMES NOW Applicant Waste Management of Texas, Inc. ("*Applicant*" or "*WMTX*") and, per 30 Tex. Admin. Code § 80.257(a), files this brief in response to the Administrative Law Judge's ("*ALJ's*") Supplemental Proposal for Decision ("*Supplemental PFD*") in the above-captioned matter. With the few, limited exceptions set forth below, WMTX finds the ALJ's Supplemental PFD to be well reasoned and supported by the evidence put forth in this proceeding. Accordingly, WMTX accepts – with the following few, limited exceptions – the ALJ's PFD and revised proposed order ("*Revised Proposed Order*").

A. THE ALJ'S BASIS FOR ALLOCATING REPORTING AND TRANSCRIPTION COSTS FOR THE REMANDED PROCEEDING IS NOT SUPPORTED BY THE RECORD EVIDENCE

The ALJ proposes to allocate 100% of the reporting and transcription costs for the remanded proceeding to WMTX. The basis for this proposed allocation is the ALJ's perception that "the remanded proceedings were necessitated by the failure of Applicant to present evidence on the [operating hours] issue at the original hearing."¹ For the reasons set forth in WMTX's Closing Argument Regarding Operating Hours, Applicant respectfully disagrees with the ALJ's view of what "necessitated" this remanded proceeding. Applicant's reasons are set forth on

¹ ALJ's Supplemental PFD at 8.

pages 8 through 10 of WMTX's Closing Argument Regarding Operating Hours and, without repeating them here, are incorporated into this brief by reference.

B. MISCELLANEOUS, MINOR REVISIONS TO THE ALJ'S REVISED PROPOSED ORDER

In certain instances in the ALJ's Revised Proposed Order there are, what appear to be, minor, inadvertent, typographical and other non-substantive errors and omissions that, if left unaddressed, could be potentially misleading or otherwise confusing. Applicant detailed the following errors and omissions, and other similar ones, in its brief in response to the ALJ's original PFD following the initial contested case hearing. Thereafter, on September 8, 2009, the ALJ revised his Proposed Order to correct these errors and omissions.² However, as set forth below, certain of the Conclusions of Law in the ALJ's current Revised Proposed Order inadvertently revert back to the original wording of the ALJ's initial Proposed Order and, therefore, re-incorporate certain of the errors and omissions that the ALJ previously corrected. To address this inadvertent reversion and correct these reoccurring errors and omissions, WMTX re-proposes the following limited revisions to the ALJ's Revised Proposed Order:

PAGE NO(S).	PROVISION	PROPOSED REVISION(S)	BASIS FOR PROPOSED REVISION(S)
48	Conclusion of Law No. 2	<i>Revise 30 TAC citations to: 30 TEX. ADMIN. CODE §§ 39.405 and 39.501.</i>	Incorrect citations.
48	Conclusion of Law No. 4	The provisions of 30 TEX. ADMIN. CODE- ANN. Ch. 330 in effect as of March 22 7 , 2006 apply to the Application.	<i>See 31 TEX. REG. 2502, 2690 (Mar. 24, 2006).</i>
50	Conclusion of Law No. 15	<i>Revise 30 TAC citation to: 30 TEX. ADMIN. CODE § 330.51(b)(5)61(k)(3).</i>	Incorrect citation.

² See Letter from Hon. Roy G. Scudday, State Office of Administrative Hearings, to Les Trobman, General Counsel, Texas Commission on Environmental Quality (Sept. 8, 2009) (enclosing revised Proposed Order).

PAGE No(S).	PROVISION	PROPOSED REVISION(S)	BASIS FOR PROPOSED REVISION(S)
51	Conclusion of Law No. 22	<i>Revise 30 TAC citations to: 30 TEX. ADMIN. CODE ANN. §§ 330.45; 330.57(c)(3); and 330.63.</i>	Incorrect citation.
51	Conclusion of Law No. 23	<i>Revise 30 TAC citations to: 30 TEX. ADMIN. CODE ANN. §§ 330.57(c)(4), <u>330.65</u>, and 330.127.</i>	Incomplete citation.
51	Conclusion of Law No. 24	<i>Revise 30 TAC citations to: 30 TEX. ADMIN. CODE ANN. §§ <u>330.15</u>, <u>330.14</u>21 – <u>330.13</u>79.</i>	Incorrect citation.
51	Conclusion of Law No. 28	The Application will <u>meets</u> the requirements of 30 TEX. ADMIN. CODE ANN. §§ 330.63(b)(4) , 330.401, 330.403, 330.405, and 330.407, concerning groundwater protection.	<i>See WMTX's Brief in Response to PFD; incorrect citation.</i>
51	Conclusion of Law No. 30	<i>Revise 30 TAC citations to: 30 TEX. ADMIN. CODE ANN. §§ 330.63(c)(1)(D)(iii) and <u>330.305(a)</u>.</i>	Incorrect citations.
52	Conclusion of Law No. 33	<i>Revise 30 TAC citations to: 30 TEX. ADMIN. CODE ANN. §§ 330.3545, 330.3547, 330.553, 330.555, 330.557, and 330.559.</i>	Incorrect citations.
52	Conclusion of Law No. 35	<i>Revise 30 TAC citations to: 30 TEX. ADMIN. CODE ANN. §§ 330.63(d)(C)(3) and (4)(G), and 330.339.</i>	Incorrect citation.

PAGE No(s).	PROVISION	PROPOSED REVISION(S)	BASIS FOR PROPOSED REVISION(S)
52	Conclusion of Law No. 36	<p>Applicant is not proposing to site a new MSW landfill or lateral expansion within five miles of any <u>large general public commercial</u> airport <u>runway end</u> serving turbojet or piston-type aircraft, as confirmed in correspondence with the Federal Aviation Administration and in compliance with 30 TEX. ADMIN. CODE ANN. §§ 330.61(i)(5) and 330.545(b). <u>The existing Facility is, and the lateral expansion of the Facility will be, within a six-mile radius of a small general service airport runway end used by piston-type aircraft. Applicant notified the affected airport and the Federal Aviation Administration, in compliance with 30 TEX. ADMIN. CODE ANN. §§ 330.61(i)(5) and 330.545(b). In accordance with 30 TEX. ADMIN. CODE ANN. §§ 330.61(i)(5) and 330.545(d), the Facility and lateral expansion were critically evaluated and determined not to be incompatible with respect to aircraft operations at the affected airport.</u></p>	See 30 TAC § 330.545; Ex. APP-202 at 27-28, 398-426.
52	Conclusion of Law No. 39	<p><u>Solid waste management activities at the Facility is compatible conform</u> with the applicable regional solid waste management plan, pursuant to TEX. HEALTH & SAFETY CODE ANN. § 361.062<u>363.066</u>.</p>	Clarification; incorrect citation.
53	Conclusion of Law No. 41	<p>The buffer zones established by Applicant between the edge of fill and the Facility boundary are compliant with the MSW rules, including 30 TEX. ADMIN. CODE ANN. §§ 330.141(b) and 330.543(b).</p>	Clarification; see Ex. APP-202 at 3395-96.

PAGE NO(S).	PROVISION	PROPOSED REVISION(S)	BASIS FOR PROPOSED REVISION(S)
53	Conclusion of Law No. 47	The proposed groundwater monitoring system will adequately monitor the IWU and protect human health and the environment in compliance with 30 TEX. ADMIN. CODE ANN. §§ 330.63(bf)(4), 330.401, 330.403, 330.405, and 330.407.	Incorrect citation.
54	Conclusion of Law No. 49	The proposed groundwater monitoring system will adequately monitor the Phase I Unit area of the Facility and protect human health and the environment in compliance with 30 TEX. ADMIN. CODE ANN. §§ 330.63(bf)(4), 330.401, 330.403, 330.405, and 330.407.	Incorrect citation.

CONCLUSION

For the foregoing reasons, WMTX respectfully requests that Permit No. MSW-249D be issued as proposed by the ALJ and that the ALJ's Revised Proposed Order be amended as proposed above.

Respectfully submitted,

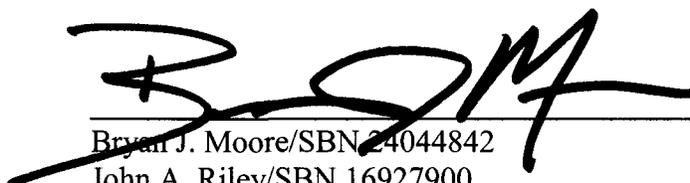
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I certify that a true and correct copy of the foregoing brief has been served on the following on this the 25th day of January, 2010:

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