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January 25, 2010

Via Hand Delivery

LaDonna Castañuela
Office of the Chief Clerk, MC-105
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F
Austin, Texas 78753

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 JAN 25 PM 3:59
CHIEF CLERKS OFFICE

**Re: SOAH Docket No. 582-08-2186
TCEQ Docket Number 2006-0612-MSW
Waste Management of Texas, Inc. Permit Amendment Application**

Dear Ms. Castañuela:

Enclosed please find the original and seven copies of Travis County's Exceptions to the Supplemental Proposal for Decision, in the above-referenced matter pursuant to the January 12, 2010 notice in the above-referenced proceeding. All parties have been served with copies pursuant to the attached Certificate of Service. If you have any questions, please call our office at (512) 854-9513.

Sincerely,

Annalynn Cox
Assistant Travis County Attorney

cc: Service List

SOAH Docket No. 582-08-2186
TCEQ Docket Number 2006-0612-MSW

2010 JAN 25 PM 3: 59

CHIEF CLERKS OFFICE

IN THE MATTER OF THE	§	
APPLICATION OF WASTE	§	BEFORE THE STATE
MANAGEMENT OF TEXAS, INC.	§	OFFICE OF ADMINISTRATIVE
PROPOSED SOLID WASTE PERMIT	§	HEARINGS
AMENDMENT No. 249D	§	

**TRAVIS COUNTY'S EXCEPTIONS
TO SUPPLEMENTAL PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW Travis County and files this, its Exceptions to the Administrative Law Judge's Proposal for Decision issued in the above-referenced case on January 5, 2010.

Travis County strongly disagrees with Administrative Law Judge (ALJ) Roy Scudday's Supplemental Proposal for Decision in which he recommends that a permit be issued with the existing operating hours. Particularly, Travis County disagrees with the ALJ's findings that the current operating hours are appropriate to provide safe, efficient, and cost-effective waste disposal services to the community. Travis County further disagrees with the ALJ's finding that the expanded hours will be needed once the economy recovers and as growth continues.

In addition to the Findings and Fact and Conclusion of Law previously specified in its August 22, 2009 *Exceptions to the Proposal for Decision*, Travis County specifically excepts to Findings of Fact Nos. 208 and 211; and Conclusions of Law No. 45.

Analysis

The sole issue before the ALJ on remand was whether the landfill's operational hours were appropriate. Travis County incorporates the Closing Arguments and Replies to Closing Arguments filed by Travis County, the City of Austin, the Office of Public Interest Counsel, the Northeast Neighbors Coalition and T.J.F.A. into its Exceptions. Travis County maintains its position that the Applicant should not be authorized to operate outside the default operating hours prescribed by 30 TAC §330.135, 7:00 a.m. to 7:00 p.m., Monday- Friday.

In his decision that the Applicant had met its burden of proof that its operational hours were appropriate, the ALJ cited three factors he believed had been proved by Applicant.

1. The current operating hours are appropriate to provide safe, efficient, and cost-effective waste disposal services to the community;
2. Applicant is contractually obligated to service Downtown Austin and other customers in the early morning hours; and
3. Weekend operations are necessary to meet the community's waste disposal demands and safely accommodate the general public's access to the landfill.

1. Whether the current operating hours are appropriate to provide safe, efficient and cost-effective waste disposal services to the community.

As demonstrated by the evidence admitted by WMTX during this proceeding, the current operating hours are not needed to provide safe, efficient and cost-effective

waste disposal services to the community. Not a single truckload of waste was received at the Facility between the hours of 6:00 p.m. and 1:00 a.m. between August 1, 2007 and October 17, 2009.¹ Over 99% of all waste received at the ACRD over the past two years was delivered in only twelve hours of each day, between the hours of 4:00 a.m. and 4:00 p.m.² Nearly 95% of all waste was delivered between the hours of 5:00 a.m. and 3:00 p.m.³ And 92.5% of all waste loads was delivered between the hours of 5:00 a.m. and 5:00 p.m.⁴

Travis County respectfully disagrees with ALJ Scudday's statement in his PFD that "it is clear that when the economy recovers and as growth continues, expanded hours will be needed."⁵ The numbers provided by the Applicant were over a twenty-six month time frame, a period of time selected by the witness James Smith to include both recessed *and* booming economic times. Thus, these numbers reflect the fact that *even at its height of waste acceptance, the ACRD Facility was still receiving 92.5% of all waste in a twelve-hour time period.*

James Smith testified that currently, the ACRD Facility is open to receive waste between 5:00 a.m. and 5:00 p.m., Monday through Friday and from 6:00 a.m. through 1:00 p.m., Saturdays.⁶ Travis County, the City of Austin, OPIC and TJFA all proposed in their Replies to Closing Arguments that an acceptable alternative to the default hours would be to move the default hours of operation forward by two hours, i.e., allowing

¹ Exhibit APP-1201 and Exhibit APP-1202.

² Exhibit APP-1201, p. 20.

³ Exhibit APP-1201, p. 20.

⁴ Exhibit APP-1201, p. 1.

⁵ PFD at 8.

⁶ TR, p. 2828, ll. 21 – 25.

WMTX to operate the ACRD Facility from 5:00 a.m. to 5:00 p.m. Monday – Friday. These are the hours the ACRD Facility currently receives waste Monday – Friday.⁷ Thus, there would be no additional traffic or nuisances for the neighbors caused by these limited hours of operation Monday – Friday. And as previously stated, even during high economic times, the ACRD Facility has rarely been open for longer than twelve hours per day, and when it was, the amount of waste received during those times was negligible, only 5% of the total waste received for the Facility.

Based on this evidence, and given the community’s concerns that this facility is in the middle of over 50,000 residential homes and that its continued operation is an incompatible land use, there can be no possible justification to allow WMTX to operate its ACRD Facility twenty-four hours a day, and Travis County urges the ALJ and the Commission to limit the waste acceptance hours for the ACRD Facility accordingly.

2. Applicant is contractually obligated to service Downtown Austin and other customers in the early morning hours.

Whether or not WMTX is contractually obligated to service Downtown Austin and other customers in the early morning hours should have absolutely no import on this decision. Nowhere in the Texas Administrative Code is the TCEQ granted authority to grant extended hours of operation to a landfill to ensure its operators retain an edge over its competitors. The ability of WMTX to sign future contracts with clients should not be a

⁷TR, p. 2828, ll. 21 – 25.

consideration for the ALJ and the Commission, and as Travis County discussed fully in its Closing Argument, the rules concerning the administration of waste disposal facilities in Texas were not designed to protect the business interests of large companies – they were designed to protect the people and the environment of Texas.

3. Weekend operations are necessary to meet the community's waste disposal demands and safely accommodate the general public's access to the landfill.

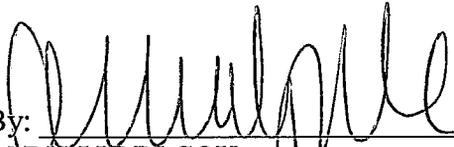
Travis County disagrees that weekend operations are necessary to meet the community's waste disposal demands and safely accommodate the general public's access to the landfill. Operating the landfill according to the default hours of operation, or in the alternative, from 5:00 a.m. to 5:00 p.m. Monday-Friday, will still provide the general public with sixty hours of each week to access the landfill. If the general public does not find those hours to be convenient, other landfills in Travis County are available on Saturdays for disposal and can help meet their needs.

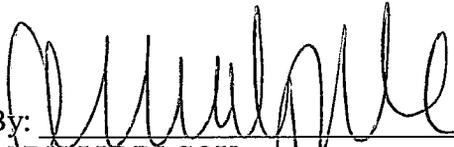
Conclusion

Travis County maintains its original position that the entirety of the WMTX application to expand its ACRD facility should be denied. In the event the Commission decides to approve the expansion application, Travis County urges the restriction of the hours of operation of the Facility to the default operating hours prescribed by 30 TAC §330.135, or in the alternative, to 5:00 a.m. – 5:00 p.m., Monday – Friday only.

Respectfully submitted,

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By: 

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ATTORNEYS FOR TRAVIS COUNTY

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2010 a true and correct copy of Travis County's Exceptions to the Supplemental Proposal for Decision was served via facsimile, Electronic Delivery, First-Class Mail and/or Hand Delivery to the persons listed below.

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CHIEF CLERKS OFFICE

2010 JAN 25 PM 3: 59

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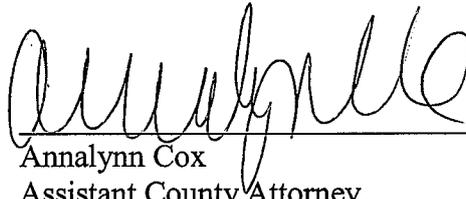
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Via Facsimile



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