

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

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

**NORTHEAST NEIGHBORS COALITION'S REPLY TO EXCEPTIONS
TO SUPPLEMENTAL PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW Northeast Neighbors Coalition and aligned Parties (collectively "NNC") and file their Reply to Exceptions to the Administrative Law Judge's Supplemental Proposal for Decision issued in the above referenced matter on January 5, 2010. NNC respectfully maintains that Commission should order that the operating hours of Waste Management of Texas, Inc.'s ("WMTX" or "Applicant"), Austin Community Landfill ("ACL") facility be 7:00 a.m. to 7:00 p.m., Monday through Friday, only.

EXCEPTIONS FILED BY CERTAIN PROTESTANTS

NNC agrees with and hereby incorporates the Exceptions to the Supplemental Proposal for Decision ("PFD") filed by the City of Austin and Travis County.

EXCEPTIONS BY OPIC AND TJFA, L.P.

NNC is in agreement with the Exceptions filed by OPIC and TJFA, L.P. ("TJFA"). to the extent that all parties concur that the Applicant did not meet its burden of proof to show the appropriateness of allowing the facility to operate on the current "24-6" schedule. Alternatively, OPIC and TJFA propose that the ACL waste acceptance be between 5:00 a.m. to 5:00 p.m., Monday through Friday. Although NNC has maintained the position that operating hours should be limited to those defined by rule, NNC acknowledges that limiting operation during 5:00 a.m.

and 5:00 p.m. would offer relief to the surrounding community and accommodate virtually all current Waste Management operations. Accordingly, NNC incorporates the Exceptions to the Supplemental Proposal for Decision filed by OPIC and TJFA.

EXCEPTIONS BY WMTX

Applicant offers no new argument regarding appropriateness of operating hours, but rather focuses on clerical corrections and transcript costs.

CONCLUSION

ALJ Scudday determined that while limiting the operating hours on weekdays would not have a tremendous impact on Applicant's current operations, it is clear that when the economy recovers and as growth continues, expanded hours will be needed.¹ However, as explained by all protesting parties, the evidence offered by Applicant clearly demonstrates that only a mere fraction of business operations will be impacted by limiting operating hours to the default hours defined by rule. An approximate 92 percent of the waste loads accepted by Applicant would remain unaffected if operating hours were between 5:00 a.m. and 5:00 p.m.

Further, TJFA explained in its Exceptions to the Supplemental PFD that Applicant included data of waste acceptance in 2007 in order to reflect business operations during better economic times.² In other words, 92 percent of unaffected business operations already accounts for a recovering economy. It should also be noted, as explained in greater detail in NNC's Exceptions to the Supplemental Proposal for Decision and its Response to Closing Arguments, the TCEQ has extensive commentary establishing that, when determining appropriateness of operating hours, the Commission is to consider incompatibility with surrounding land use.

¹ Remand PFD at 8.

² TJFA, L.P.'s Exceptions to the Supplemental Proposal for Decision and Supplemental Proposed Order at 9.

NNC respectfully requests that the Commission order that the operating hours of the ACL facility be 7:00 a.m. to 7:00 p.m., Monday through Friday, only. In the alternative, NNC respectfully requests that the Commission order that the operating hours of the ACL facility be 5:00 a.m. to 5:00 p.m., Monday through Friday, only.

Respectfully submitted,

BLACKBURN CARTER, P.C.

by Adam Friedman

JAMES B. BLACKBURN, JR.

TBN 02388500

MARY W. CARTER

TBN 03926300

ADAM M. FRIEDMAN

TBN 24059783

4709 Austin Street

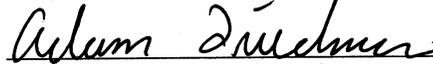
Houston, Texas 77004

713/524-1012 (Tel.)

713/524-5165 (Fax)

CERTIFICATE OF SERVICE

On this 4th day of February, 2010, a true and correct copy of the foregoing instrument was served on all attorneys of record by the undersigned via regular U.S. Mail, and/or facsimile transmission, and/or Federal Express Overnight Mail, and/or electronic mail (e-mail).


Adam M. Friedman

The Honorable Roy Scudday
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Ste. 502
Austin, Texas 78701
Via Facsimile & Federal Express

FOR THE CHIEF CLERK:

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

FOR THE EXECUTIVE DIRECTOR:

Amie Dutta Richardson, Staff Attorney
Timothy Reidy, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Via E-Mail

FOR THE PUBLIC INTEREST COUNSEL:

Amy Swanholm
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Via E-Mail

FOR THE APPLICANT:

John A. Riley
Bryan J. Moore
M. Nicole Adame Winningham
Vinson & Elkins, L.L.P.
2801 Via Fortuna, Ste. 100
Austin, Texas 78746-7568
Via E-Mail

FOR TRAVIS COUNTY:

Annalynn Cox, Assistant County Attorney
Sharon Talley, Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767
Via E-Mail

FOR CITY OF AUSTIN, TEXAS:

Meitra Farhadi, Assistant City Attorney
Holly Noelke
City of Austin Law Department
301 W. 2nd Street
P.O. Box 1546
Austin, Texas 78767-1546
Via E-Mail

FOR GILES HOLDING:

Paul Terrill
The Terrill Firm, P.C.
810 W. 10th St.
Austin, Texas 78701
Via E-Mail

FOR TJFA, L.P.:

Erich M. Birch
Angela K. Moorman
Birch, Becker & Moorman, LLP
Plaza 7000, 2nd Floor
7000 North Mopac Expressway
Austin, Texas 78731
Via E-Mail