

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 8, 2007

TO: Persons on the attached mailing list.

RE: Texcom Gulf Disposal, LLC
Permit No. 87758

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Montgomery County Courthouse, 301 North Main, Conroe, Texas 77301.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

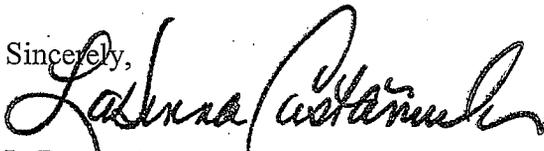
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

MAILING LIST
for
Texcom Gulf Disposal, LLC
Permit No. 87758

FOR THE APPLICANT:

Allen Blanchard, Environmental Manager
3600 South Gessner Road, Suite 200
Houston, Texas 77063

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:

Diane Goss, Staff Attorney
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Michael Graeber, Technical Staff
Texas Commission on Environmental Quality
Waste Permits Division
Industrial & Hazardous Waste Permits
Section MC-130
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FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Jodena Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
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FOR PUBLIC INTEREST COUNSEL:

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FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
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PROPOSED NEW TCEQ NONHAZARDOUS INDUSTRIAL SOLID WASTE 2007 FEB -6 PM 2:12

PERMIT NO. 87758

CHIEF CLERKS OFFICE

Application by
TexCom Gulf Disposal, LLC for
Proposed Nonhazardous Industrial Solid Waste
Permit No. 87758

Before The
Texas Commission On
Environmental Quality

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment on the application by TexCom Gulf Disposal, LLC (TexCom) for a new Nonhazardous Industrial Solid Waste Permit No. 87758 and on the Executive Director's preliminary decision. After review of the application, the Executive Director prepared a Technical Summary and Executive Director's Preliminary Decision, and determined that the application complies with state and federal law.

As required by Title 30, Texas Administrative Code, Section 55.156, the Executive Director prepares a response to all timely, relevant and material, or significant public comments. The Office of the Chief Clerk received timely comment letters on this permit application from the following persons:

The Honorable Alan B. Sadler, Montgomery County Judge.
Shirley Hoagland
Richard M. Ward
Sharon L. Ward

This Response addresses comments the Executive Director received concerning TexCom's application for a permit to construct and operate a commercial nonhazardous industrial solid waste management facility under proposed NonHazardous Industrial Solid Waste Permit No. 87758. TexCom has also applied for permits for the construction of Class I underground injection wells at this location. The Executive Director received comments on the proposed injection well Permits No. WDW410, No. WDW411, No. WDW412, and No. WDW413, the materiality and relevancy of which actually apply to proposed NonHazardous Industrial Solid Waste Permit No. 87758. These comments which are included in this response and are referred

to as comments on the proposed injection well permits were received from the following persons:

Edgar Hoagland	D. Renfro
Shirley Hoagland	Barbara Smith
Trudilee O'Neil	Leah Smith
Melvin Remley	Freeman W. Suttles

This response addresses all timely received public comments whether or not withdrawn. If you need more information about these permit applications or the permitting process, please call TCEQ Office of Public Assistance at (800) 687-4040. General information about TCEQ is available at the TCEQ website: www.tceq.state.tx.us.

BACKGROUND

Description of Facility and Application

Tex Com submitted an application to TCEQ for a new permit for the construction and operation of a proposed commercial nonhazardous industrial solid waste management facility to be located on a 26.93 acre tract of land near Conroe Texas, at 16185 Creighton Road, Montgomery County, Texas. TexCom proposes to operate a storage and treatment facility that stores and processes nonhazardous industrial wastewater on a commercial basis prior to disposal of the wastewater in the proposed injection wells. If the Executive Director issues the proposed permit, TexCom would be authorized to construct and operate one container storage area (main containment area for storage, processing, and unloading of waste/waste materials), eight waste storage and/or processing tanks, and seven miscellaneous units for the storage and processing of Class 1 and Class 2 nonhazardous industrial solid wastes. Wastes will be generated on-site and also received from off-site sources on a commercial basis. The wastes to be managed by the facility include aqueous solutions containing petroleum hydrocarbons, less than twenty-four percent (24%) alcohol, pH between 2 and 12.5, contaminants below regulatory limits set forth in the Code of Federal Regulations, Chapter 40, Section 261.24, Table I, and halogenated organic compounds in concentrations less than 1,000 milligrams per liter; pesticide wastes; caustic wastes; metallic wastes; organic wastes; filter cakes; and on-site generated contaminated groundwater, rainfall,

wash waters, cleaning solutions, and spill wastes.

Procedural History

This permit application is for a new commercial nonhazardous industrial solid waste permit. On August 2, 2005, the TCEQ received the permit application. Initially, this application was assigned proposed Industrial NonHazardous Solid Waste Permit No. 39002. On August 29, 2005, the application was declared administratively complete. On September 20, 2005, the Notice of Receipt of Application and Intent to Obtain an Industrial Solid Waste Permit for this permit application was published in *The Conroe Courier*. The Executive Director completed the technical review of the application on March 31, 2006, and prepared a draft permit. Due to conflicting information in TCEQ's permit numbering system, on June 20, 2006, TCEQ Industrial and Hazardous Waste Permits Division directed the TCEQ Office of the Chief Clerk to change the Permit number to NonHazardous Industrial Solid Waste Permit No. 87758 and to use the new number in all future permit related matters. On July 21, 2006, the Notice of Application and Preliminary Decision was published in *The Conroe Courier*. The public comment period ended on August 21, 2006.

Access to Rules, Laws, and Records

TCEQ rules are available at the Texas Secretary of State website:

[http://info.sos.state.tx.us/pub/plsql/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pub/plsql/readtac$ext.viewtac).

The Health and Safety Code and the Water Code are available at the Texas Legislature online website:

<http://tlo2.tlc.state.tx.us/statetes/statutes.html>.

Other useful information is available at the TCEQ website:

<http://www.tceq.state.tx.us>.

TCEQ records on the proposed TexCom facility and this application may be accessed at the TCEQ Office of Chief Clerk, Building F, 1st Floor, 12100 Park 35 Circle, Austin, Texas 78753,

(512) 239-6204. Additional records may be available from the TCEQ, Region 12, Houston Office, at 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3520.

Comment Organizational Outline

Comments are organized by topic under the following headings:

- I. Environmental and Human Health Issues
 - a. Proximity to Water Wells
 - b. Surface Contamination
 - c. Onsite Waste Treatment
 - d. Air Quality and Odor
 - e. Environmental Impact
- II. Concerns Relating to Siting
 - a. Traffic
 - b. Noise
- III. Administrative Procedures
- IV. Opposition

Comments and Responses

- I. Environmental and Human Health Issues
 - a. Proximity to Water Wells

Comment 1:

Freeman Suttles, Leah Smith, Mary Hartt, Melvin Remley, Barbara Smith, and Trudilee O'Neil, commenting on the injection well permits, and the Honorable Alan Sadler, Shirley Hoagland, Richard Ward, and Sharon Ward commented that the proposed facility is located too close to residences and existing water wells and that spills at the surface facility would contaminate adjacent land and adjacent water wells.

Response 1:

The proposed permit includes design and operational requirements that should prevent any contamination from the surface facility from being discharged from the site. The proposed facility design includes a secondary containment system surrounding the proposed surface units. If the Executive Director issues the proposed permit, TexCom will be required to: conduct weekly inspections of the secondary containment system to check for spills and any problems that could lead to the discharge of contaminants; prevent inundation of the permitted units; prevent discharges of waste contaminated storm water; equip the loading and unloading areas with a drainage control system designed to prevent run-on into the system from other portions of the facility; minimize rain accumulation; and collect and prevent the release of any spills, leaks, or precipitation. If the facility is operated as specified in the permit terms and conditions, the proposed commercial nonhazardous industrial solid waste management facility covered by this permit should not adversely impact people or water quality. Individuals are encouraged to report any environmental concerns at the site by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the twenty-four hour toll-free Environmental Complaints Hotline at (888) 777-3186. Citizen complaints may also be filed at the TCEQ website. TCEQ investigates all complaints it receives. If the facility is found to be out of compliance with the terms and conditions of the permit, it may be subject to enforcement action according to TCEQ Enforcement Initiation Criteria.

b. Surface Contamination

Comment 2:

Mary Hartt, Melvin Remley, Barbara Smith, Edgar Hoagland, and Shirley Hoagland, commenting on the proposed injection well permits, commented that surface facility design does not provide secondary containment capable of holding the capacity of the tanks that will be located at the facility and that the surface facility should be covered with a nonpermeable

material to prevent surface contamination in the event of spills.

Response 2:

The proposed permit application provides a reinforced concrete Main Containment Area (MCA) and an asphalt Waste Unloading and Solids Area (WUSA). The MCA and WUSA are sloped to drain into a storm water collection sump pump. A speed bump at the entrance and a two foot high retaining wall along the northern and southern edges of the WUSA are designed to retain storm water. The secondary containment in the proposed permit application is designed to accommodate the volume of the largest tank in the MCA or the volume of a tanker truck in the WUSA. Additional information responsive to these comments is included in Response No. 1 above. If the facility is operated as specified in the permit terms and conditions, the proposed commercial nonhazardous industrial solid waste management facility covered by this permit should not adversely impact people or water quality. Individuals are encouraged to report any environmental concerns at the site by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the twenty-four hour toll-free Environmental Complaints Hotline at (888) 777-3186. Citizen complaints may also be filed at the TCEQ website. TCEQ investigates all complaints it receives. If the facility is found to be out of compliance with the terms and conditions of the permit, it may be subject to enforcement action according to TCEQ Enforcement Initiation Criteria.

c. Onsite Waste Treatment

Comment 3:

D. Renfro, commenting on the proposed injection well permits, commented that TexCom is not allowed to adjust the pH of waste, combine wastes, or treat waste onsite prior to injection and he asked whether waste will be treated at the surface facility before injection.

Response 3:

TexCom would be allowed to adjust waste pH, combine wastes, and treat waste at this facility prior to injecting waste for disposal. The proposed injection well permits require that waste meet specified parameters before it is injected for disposal. Compliance with these permit parameters may necessitate pH adjustment, combining waste, and treatment of waste.

d. Air Quality and Odor

Comment 4:

Trudilee O'Neil and Melvin Remley, submitting comments for the proposed injection well permits, and Edgar Hoagland and Shirley Hoagland commented that waste containers and waste hauling trucks will cause offensive odor and air pollution, that the waste operations at the proposed facility lack air pollution control devices, and that TCEQ should require the surface facility to institute odor control measures and to obtain an emissions permit.

Response 4:

TexCom's operations under the proposed permit are designed to minimize odors during waste unloading. The proposed permit application provides that: tanker trucks will deliver waste materials to the facility; wastes will be unloaded using a flexible hose connecting a tanker truck discharge outlet pipe to an unloading pump suction pipe; and that the unloading pump will transfer the waste to one of the storage/mixing tanks or one of the shaker screen units. Emissions from this facility may require authorization from TCEQ Air Permits Division. Air emissions are outside the scope of review for this proposed nonhazardous industrial hazardous waste facility permit. TCEQ rules prohibit discharge of air contaminants in a way injurious to or adversely affecting human health, and prohibit creating or maintaining a condition of nuisance that interferes with a landowner's use and enjoyment of his property. Additionally, the scope of TCEQ's regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his

property. Any person experiencing air pollution or odor from the facility should contact the TCEQ Houston Regional Office at (713) 767-3500, or the twenty-four hour toll-free Environmental Complaints Hotline at (888) 777-3186. Citizen complaints may also be filed at the TCEQ website. TCEQ investigates all complaints it receives. If the facility is found to be out of compliance with the terms and conditions of the permit, it may be subject to enforcement action according to TCEQ Enforcement Initiation Criteria.

e. Environmental Impact

Comment 5:

The Honorable Alan Sadler commented that the proposed facility is located in an environmentally sensitive part of the county.

Response 5:

The Executive Director has reviewed this permit application in accordance with applicable law, policies and procedures, and TCEQ's mission to protect Texas' human and natural resources consistent with sustainable economic development. If the facility is operated as specified in the permit terms and conditions, the proposed commercial nonhazardous industrial solid waste management facility covered by this permit should not adversely impact people or water quality. Individuals are encouraged to report any environmental concerns at the site by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the twenty-four hour toll-free Environmental Complaints Hotline at (888) 777-3186. Citizen complaints may also be filed at the TCEQ website. TCEQ investigates all complaints it receives. If the facility is found to be out of compliance with the terms and conditions of the permit, it may be subject to enforcement action according to TCEQ Enforcement Initiation Criteria.

II. Concerns Relating to Siting

a. Traffic

Comment 6:

Bruce Burnham, Mary Hartt, Richard Chambers, Trudilee O'Neil, D. Renfro, and Leah Smith, commenting on the injection wells, and Richard Ward, Sharon Ward, and Shirley Hoagland commented that operations at this facility will generate too much truck traffic, that the roads in the vicinity of the facility are inadequate to handle the increased traffic volume, and that the increased traffic volume will create a safety hazard and increase the risk of vehicular accidents.

Response 6:

When determining whether to approve or deny a nonhazardous industrial waste permit application, the Executive Director does not have jurisdiction under the Texas Health and Safety Code or TCEQ rules to consider the adequacy of the roads serving the facility or any potential adverse effects that may result from increased traffic flow.

b. Noise

Comment 7:

Edgar Hoagland and Shirley Hoagland, commenting on the injection wells, commented that pump operation and truck traffic will generate unbearable noise. Barbara Smith commented that truck drivers congregating before and after unloading waste at the facility will make excessive noise and conduct themselves in a manner unsuitable for a residential neighborhood.

Response 7:

When determining whether to approve or deny a nonhazardous industrial waste permit application, the Executive Director does not have jurisdiction under the Texas Health and Safety Code or TCEQ rules to consider noise.

III. Administrative Procedures

Comment 8:

The Honorable Alan Sadler commented that the application was notarized in Louisiana.

Response 8:

TexCom submitted signature pages with this application that were notarized by Notaries for the State of Texas and by Notaries for the state of Louisiana. The Executive Director determined that the notarized signature pages meet the requirements of Texas Administrative Code, Title 30, Section 281.5.

IV. Opposition

Comment 9:

The Honorable Alan Sadler, Richard Ward, Sharon Ward, and Shirley Hoagland commented that they are opposed to issuance of this permit.

Response 9:

The Executive Director has reviewed the permit application in accordance with State and Federal law, TCEQ's policies and procedures, and TCEQ's mission to protect Texas' human and natural resources consistent with sustainable economic development. If operated as specified in the permit terms and conditions, the proposed commercial nonhazardous industrial solid waste management facility covered by this permit should not adversely impact people or water quality. Individuals are encouraged to report any environmental concerns at the site by contacting the TCEQ Houston Regional Office at (713) 767-3500, or by calling the twenty-four hour toll-free Environmental Complaints Hotline at (888) 777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of the permit, it may be subject to enforcement action according to TCEQ Enforcement Initiation Criteria.

Comment 10:

The Honorable Alan Sadler, Richard Ward, and Sharon Ward commented that they are opposed to waste disposal by injection in this area.

Response 10:

This application addresses only surface units (i.e. a container storage area (CSA), tanks, and miscellaneous units) that are to be used to receive and process incoming waste materials for disposal at another location. This application does not include waste disposal. The pending permit applications for waste disposal by injection at this location are proposed permits No. WDW410, No. WDW411, No. WDW412, and No. WDW413. These comments are not relevant or material to proposed Industrial Solid Waste Permit No. 87758 because this permit does not include waste disposal by injection.

The comments provide no additional technical information or a legal basis for recommending denial of TexCom Gulf application. Based upon the technical review of the application, the Executive Director has made a preliminary decision that the proposed commercial nonhazardous industrial solid waste permit application meets the statutory, technical, and regulatory requirements of Texas Administrative Code, Chapter 305.

No changes to the draft permits have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Division Director
Environmental Law Division



Diane Goss, Staff Attorney
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2007, the original of the "Executive Director's Response to Public Comment" on TexCom Gulf Disposal, LLC's application for NonHazardous Industrial Solid Waste Permit No. 87758 was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.



Diane Goss
Environmental Law Division
State Bar No. 24050678

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COMMISSION
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