State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge
November 8, 2010

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-07-2674; TCEQ Docket No. 2007-0362-IHW; In Re: Application of Texcom Gulf Disposal, L.L.C. for Texas Commission Environmental Quality Commission Industrial Solid Waste Permit No. 87758**

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Supplemental Proposal for Decision Following the Remand Hearing and Proposed Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **November 29, 2010**. Any replies to exceptions or briefs must be filed in the same manner no later than **December 8, 2010**.

This matter has been designated **TCEQ Docket No. 2007-0362-IHW; SOAH Docket No. 582-07-2674**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Thomas H. Walston
Administrative Law Judge

Catherine C. Egan
Administrative Law Judge

/nl
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

SERVICE LIST

AGENCY: **Environmental Quality, Texas Commission on (TCEQ)**

STYLE/CASE: **TEXCOM GULF DISPOSAL LLC**

SOAH DOCKET NUMBER: **582-07-2673**

REFERRING AGENCY CASE: **2007-0204-WDW**

STATE OFFICE OF ADMINISTRATIVE HEARINGS	**ADMINISTRATIVE LAW JUDGE ALJ THOMAS H. WALSTON**
REPRESENTATIVE / ADDRESS	**PARTIES**
SCOTT HUMPHREY ATTORNEY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY OFFICE OF PUBLIC INTEREST COUNSEL P. O. BOX 13087, MC-103 AUSTIN, TX 78711-3087 (512) 239-0574 (PH) (512) 239-6377 (FAX) shumphre@tceq.state.tx.us	OFFICE OF PUBLIC INTEREST COUNSEL
DOCKET CLERK TEXAS COMMISSION ON ENVIRONMENTAL QUALITY OFFICE OF THE CHIEF CLERK PO BOX 13087 AUSTIN, TX 78711 (512) 239-3300 (PH) (512) 239-3311 (FAX)	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
JOHN E WILLIAMS STAFF ATTORNEY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY LITIGATION DIVISION MC-173 PO BOX 13087 AUSTIN, TX 78711 (512) 239-0455 (PH) (512) 239-0606 (FAX)	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PATRICK LEE
VINSON & ELKINS
THE TERRACE 7, 2801 VIA FORTUNA, STE. 100
AUSTIN, TX 78746-7568
(512) 542-8629 (PH)
(512) 236-3265 (FAX)

TEXCOM GULF DISPOSAL, LLC

MICHAEL A. GERSHON
LLOYD GOSSELINK BLEVINS ROCHELLE &
TOWNSEND, P.C.
816 CONGRESS AVENUE, SUITE 1900
AUSTIN, TX 78701
(512) 322-5800 (PH)
(512) 472-0532 (FAX)

LONE STAR GROUNDWATER CONSERVATION DISTRICT

JOHN A. RILEY
VINSON & ELKINS
2801 VIA FORTUNA, STE. 100
AUSTIN, TX 78746
(512) 542-8520 (PH)
(512) 236-3329 (FAX)

TEXCOM GULF DISPOSAL, LLC

J. DIANE GOSS
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENVIRONMENTAL LAW DIVISION
PO BOX 13087
AUSTIN, TX 78711
(512) 239-5731 (PH)
(512) 239-0606 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RICHARD WARD
16015 CREIGHTON
CONROE, TX 77302
(936) 520-5314 (PH)
(936) 756-8102 (FAX)

JAMES LANGSTON

RICHARD WARD

FLORA HARRELL

PATTY MOUTON

JAMES A. LANGSTON III

LOIS NELSON

BRIAN RODEL

AL & JERRY ZARUBA

EDGAR AND SHIRLEY HOAGLAND

DAVID WALKER
ASST. COUNTY ATTORNEY
207 W. PHILLIPS, FIRST FLOOR
CONROE, TX 77301
(936) 539-7957 (PH)
(936) 760-6920 (FAX)

CITY OF CONROE

MONTGOMERY COUNTY

KEVIN A. FORSBERG
15949 HWY. 105 W, SUITE 59
MONTGOMERY, TX 77316
(936) 588-6226 (PH)
(936) 588-6229 (FAX)
kevin@forsberglaw.net

NICKY E. DYER

EDWIN A. (ART) WILSON

MARY SIMMONS MENDOZA
ATTORNEY
HAYNES & BOONE, LLP
600 CONGRESS AVENUE, SUITE 1300
AUSTIN, TX 78701
(512) 867-8418 (PH)
(512) 867-8690 (FAX)

DENBURY ONSHORE, LLC

SARA M. FORLANO
MONTGOMER COUNTY ATTORNEYS OFFICE
207 WEST PHILLIPS, SUITE 100
CONROE, TX 77301
(936) 539-7828 (PH)
(936) 760-6920 (FAX)
sara.forlano@mctx.org

MONTGOMERY COUNTY

CITY OF CONROE

Note: PLEASE NOTE: THIS CASE IS CONSOLIDATED WITH 582-07-2674.

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-07-2674
TCEQ DOCKET NO. 2007-0362-IHW

APPLICATION OF TEXCOM GULF DISPOSAL, L.L.C. FOR TEXAS COMMISSION ON ENVIRONMENTAL QUALITY INDUSTRIAL SOLID WASTE PERMIT NO. 87758	§	BEFORE THE STATE OFFICE
	§	OF
	§	ADMINISTRATIVE HEARINGS

TABLE OF CONTENTS

I. SUPPLEMENTAL INTRODUCTION 1

II. REMAND PARTIES AND SUPPLEMENTAL PROCEDURAL HISTORY 2

III. APPLICABLE LAW 4

IV. SUPPLEMENTAL DISCUSSION 4

A. Proposed Design and Operation of the Surface Facility 6
B. Other Issues Concerning the Surface Facility 8

V. SUPPLEMENTAL ASSESSMENT OF REPORTING AND TRANSCRIPTION COSTS 15

VI. CONCLUSION AND RECOMMENDATION 15

APPENDICES

SOAH DOCKET NO. 582-07-2674
TCEQ DOCKET NO. 2007-0362-IHW

APPLICATION OF TEXCOM GULF DISPOSAL, L.L.C. FOR TEXAS COMMISSION ENVIRONMENTAL QUALITY COMMISSION INDUSTRIAL SOLID WASTE PERMIT NO. 87758	§	**BEFORE THE STATE OFFICE**
	§	**OF**
	§	**ADMINISTRATIVE HEARINGS**

SUPPLEMENTAL PROPOSAL FOR DECISION FOLLOWING THE REMAND HEARING

I. SUPPLEMENTAL INTRODUCTION

On November 19, 2008, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Administrative Law Judges' (ALJs') Proposal for Decision (PFD) issued on April 25, 2008 (the original PFD).[1] In the original PFD, the ALJs recommended that the Commission approve TexCom Gulf Disposal, L.L.C.'s (TexCom's) application for a nonhazardous industrial solid waste (ISW) permit that was filed in conjunction with its application for four Underground Injection Control (UIC) permits: permit nos. WDW-410, WDW-411, WDW-412, and WDW-413. If granted, TexCom will be permitted to construct and operate a commercial nonhazardous industrial solid waste management facility that stores and processes nonhazardous industrial solid waste (the surface facility) for disposal into four underground injection wells.

On December 12, 2008, the Commission entered an Interim Order remanding the matter to the State Office of Administrative Hearings (SOAH) for additional consideration. The Commission ordered that the ALJs take "any additional evidence needed to determine if the surface facility permit satisfies applicable standards," utilizing 30 TEX. ADMIN. CODE (TAC) chs. 305, 331, and 335, and to issue a supplemental PFD on the ALJs' findings.[2] Because this is a

---

[1] The Original Proposal for Decision is attached hereto as Appendix A.

[2] The Commission also remanded the matter regarding TexCom's application for the UIC permits in Docket No. 582-07-2673, TCEQ Docket No. 2007-0204-WDW, but in that case the Commission requested an amended PFD rather than a supplemental PFD.

supplemental PFD, the ALJs will discuss only those issues where additional evidence or arguments were presented at the remand proceeding.

II. REMAND PARTIES AND SUPPLEMENTAL PROCEDURAL HISTORY

The following were designated as parties in the remand case:

Party	Representative
TexCom Gulf Disposal, L.L.C. (TexCom)	John Riley, Patrick Lee, and Bryan Moore Attorneys, Austin, Texas
Montgomery County and City of Conroe (Aligned Protestants)	David K. Walker, Montgomery County Attorney; Sara Forlano, Assistant Montgomery County Attorney, Conroe, Texas
Lone Star Groundwater Conservation District (Lone Star)	Jason Hill, Attorney, Austin, Texas
Aligned Individual Protestants[3] (Individual Protestants)	Kevin A. Forsberg, Attorney, Montgomery, Texas
Denbury Onshore, LLC (Denbury)[4]	Mary Mendoza and Adam Sencenbaugh, Attorneys, Austin, Texas
ED	J. Diane Goss and Don Redmond, Staff Attorneys, Environmental Law Division, TCEQ
OPIC	Scott Humphrey, Attorney, Public Interest Counsel

[3] The Individual Protestants are: Nickey E. Dyer, Flora Harrell, Edgar Hoagland, Shirley Hoagland, Patty Mouton, James Langston, James A. Langston III, Lois Nelson, James Nolan, George Phillips, Brian Rodel, Richard Ward, Edwin (Art) Wilson, Al Zaruba, and Jerry Zaruba.

[4] Denbury was added as a party after the remand of this matter to SOAH.

The procedural history following the date the original PFD was issued is summarized as follows:

April 25, 2008	Issuance of the original PFD
December 12, 2008	The Commission issued an Interim Order to remand this case to SOAH.
February 23, 2009	A procedural schedule was established setting the hearing on the merits on July 20, 2009.
May 20, 2009	The hearing was canceled and proceedings were abated to allow time for TexCom to re-perforate existing well WDW-315 and to conduct a new pressure fall-off test.
December 15, 2009	A new procedural schedule was established and the hearing on the merits was set for April 20, 2010.
March 31, 2010	Denbury filed a motion to intervene. TexCom objected to Denbury's motion; the other Intervenors did not object; and the ED neither supported nor opposed the request.
April 12, 2010	Denbury's motion to intervene was granted, and the hearing on the merits rescheduled to June 15, 2010.
June 15-24, 2010	Remand hearing on the merits held. [5]
August 20, 2010	Written closing arguments filed.
September 7, 2010	Replies to closing arguments filed and the record closed.

[5] Separate PFDs were written in the original proceeding, and separate PFDs are being written in this remand proceeding in accordance with the Commission's remand orders. The remand hearing was consolidated with the remand hearing for the UIC permits under SOAH No. 582-07-2673.

III. APPLICABLE LAW

The applicable law has not changed.[6] Although the provisions governing the issuance of a solid waste facility permit are few, none of the parties argued that the ALJs overlooked an applicable statute or rule. Instead, Lone Star, Aligned Protestants, Individual Protestants, and OPIC continue to argue that because TCEQ has no rules, or inadequate rules, that govern the treatment, storage, and processing of nonhazardous industrial solid waste, the Commission must deny TexCom's surface facility application. Denbury echoes this argument. TexCom disagrees that the rules are inadequate to support the granting of a surface facility application and insists that the Commission must grant its application because it has complied with these rules.

The ALJs considered the applicable standards in the original PFD. However, the Commission remanded the matter to the ALJs with instructions to take any additional information to determine whether the surface facility permit satisfies applicable standards using 30 TEX. ADMIN. CODE (TAC) chs. 305, 331 and 335.

IV. SUPPLEMENTAL DISCUSSION

The Commission requested a supplemental PFD, not an amended PFD. Therefore, as mentioned above, only the evidence, issues, and legal arguments presented in the remand hearing will be discussed. Little evidence or argument regarding the surface facility was presented at the remand hearing. If necessary to clarify issues or recommendations, the ALJs may discuss evidence from the original hearing.

TexCom disagrees with the Protestants'[7] position that the Commission must adopt new

---

[6] TEX. HEALTH & SAFETY CODE § 361.061 allows the Commission to issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of industrial solid waste. Section 361.064 requires the Commission to prescribe the form and reasonable requirements for the permit application and the procedures for processing the application. TEX. WATER CODE §§ 5.551 and 5.557 provide that the Commission can make a direct referral to SOAH for a contested case hearing on whether an application for a permit under TEX. HEALTH & SAFETY CODE Chapter 361, complies with "all applicable statutory and regulatory requirements."

[7] As reflected in the original PFD, the term "Intervenors" refers to OPIC, Lone Star, Aligned Protestants, Individual Protestants, and now Denbury. The term "the Protestants" does not include OPIC.

rules before it can grant TexCom's application, and insists that the rules followed by the ALJs in the original PFD, and cited by the Commission in the Remand Order, are the applicable rules. Consequently, TexCom contends that it was unnecessary to consider any new evidence to determine its compliance with these applicable standards, and therefore the remand testimony of both Melvin Remley[8] and Edwin Wilson[9] was irrelevant and repetitious. Additionally, TexCom asserted that neither witness is credible.[10] The ALJs admitted this evidence and discuss it below.

In the remand proceeding, Lone Star argued that neither TexCom nor the ED offered any additional evidence on the applicable standards for a surface facility, and Lone Star renewed its original argument that the rules are inadequate and therefore TexCom's application must be denied.[11] Denbury simply relied on the Intervenors' previous legal arguments, asserting "that there appears to be no clear standards governing this portion of the application."[12] The Aligned Protestants and Individual Protestants offered little new evidence regarding the surface facility and no argument other than that presented in the original proceeding.

Although the ED recommended the adoption of the application following the original hearing, the ED took no position following the remand proceeding. The ED wrote that it "has no comment on whether the surface facility satisfies the regulatory requirements."[13]

Only three issues regarding the surface facility were addressed in the remand proceeding: (1) whether the surface facility plans are deficient; (2) whether TexCom's facility creates a nuisance; and, (3) whether TexCom's operation will create traffic safety issues that endanger the public health and welfare.

---

[8] Individual Protestants Remand Ex. C.

[9] Individual Protestants Remand Ex. B.

[10] TexCom's Remand Closing Arguments at 43-44.

[11] Lone Star's Remand Closing Arguments at 16.

[12] Denbury's Remand Closing Arguments at 51 and Denbury's Remand Reply to Closing Arguments at 35.

[13] ED's Remand Closing Arguments at 10.

A. Proposed Design and Operation of the Surface Facility

Individual Protestants witness Melvin Remley retired in 1992 from Texaco Chemical Company (Texaco) as Senior Environmental Chemist of the Conroe facility. He was responsible for complying with environmental affairs, and at the time he retired, this facility had more than 200 storage tanks. In Mr. Remley's opinion, TexCom's surface facility plans were deficient in the following ways:

- The permit application does not have a description of a tank gauging system that accurately measures and permanently records waste received but not weighed before disposal.
- The system lacks an automatic tank overflow alarm system and cut-off overflow device.
- The system fails to properly segregate waste to prevent possible chemical reactions between separate wastes.
- TexCom does not have sufficient containment barriers to hold the contents of the largest tank. The storage tank containment barrier height is calculated for a 12-inch 24-hour rainstorm, but in the past there have been three rain storms exceeding 20 inches in a 24 hour period. Mr. Remley recommended that either the barrier height be recalculated and raised, or a pumping device be installed to prevent off-site drainage.
- The surface facility plans do not include an 80,000-pound-capacity certified scale. Mr. Remley maintains that this scale is necessary to determine how much waste is actually received and disposed of as required on the Waste Manifest.[14]

Additionally, Mr. Remley took issue with Carl Brassow's testimony that a tank will be made out of steel because steel is corrosion resistant, stating that he knows of no commonly used metal that is more susceptible to corrosion in services containing water than steel. Mr. Remley opined that all operating tanks should have an interior lining, be elevated with a cone bottom, and be equipped with an internal rising system to prevent waste mixing.[15]

---

[14] Individual Protestants Remand Ex. C, Remley direct at 6.

[15] Individual Protestants Remand Ex. C, Remley direct at 5.

As discussed more fully in the original PFD, Mr. Brassow testified that Station #1 piping and valves would be made of steel and used for offloading waste streams incompatible with fiberglass, PVC, and/or epoxy materials. The other three tanks will be made of PVC.[16] While Mr. Relmey's concern about the use of steel is well taken, it does not appear that Dr. Brassow intended to use steel for waste streams that will corrode this material. Recognizing that fiberglass will be predominately used for tanks, Mr. Brassow emphasized that TexCom will also use various anti-corrosion materials for construction, such as carbon steel, fiberglass reinforced with epoxy resin, PVC, and other polymers, to mitigate corrosion and degradation based on the range of wastewater types TexCom requested for permit approval.[17] Once TexCom's permitted waste list is finalized, specific epoxy resin blends will be selected in consultation with the tank manufacturers.[18]

Additionally, Mr. Brassow stressed that TexCom will ensure that the injectate meets a pH range of 3 to 9, and will adopt corrosion/degradation monitoring protocols. These protocols include daily inspections of all processing equipment and tanks for leaks, deposits, cracks, bulges, and discoloration; daily inspection of all piping for illegible labels, loose supports, leaks, and deposits; and annual inspections of pump internals, impellers, and seat wear for corresion and pitting.[19]

Based on the evidence presented in the original hearing and remand hearing, the ALJs continue to find that TexCom's surface facility design and operational requirements, including the Waste Acceptance Plan, adequately protect the public health and welfare and the waters of the State.

---

[16] TexCom Ex. 59, Brassow direct at 15 and 16.

[17] TexCom Ex. 59, Brassow direct at 18.

[18] TexCom Ex. 59, Brassow direct at 18.

[19] TexCom Ex. 59, Brassow direct at 18.

B. Other Issues Concerning the Surface Facility

Supplemental Discussion Regarding Nuisance Claims:

Individual Protestants and Aligned Protestants remain fervent in their claims that TexCom's facility will create and perpetuate a nuisance prohibited by 30 TAC § 335.4(2). Individual Protestant witness Edwin Wilson testified that TexCom's operation will subject the residents in the areas to offensive odors. He noted that TexCom's expert Mr. Brassow acknowledged that odors could be present at the shaker screen and reasoned if odors are present at the shaker screen then there must be an odorous waste stream.[20] This is reasonable to assume, he submits, because many of the waste streams TexCom listed as waste it is willing to receive are odorous.

According to Mr. Wilson, the primary source of the odors would come from the on-site storage tanks. Mr. Remley agreed with Mr. Wilson's opinion and, because the tanks are not pressure vessels, questioned TexCom's representation that its tanks would be vent free. He explained that to be vent free, a tank must be a pressure vessel, otherwise the tank will rupture. Mr. Remley disagreed with TexCom's expert Mr. Brassow's proposed solution. Mr. Brassow recommended equipping the tanks with pressure relief valves set at one pound per square inch of pressure. Mr. Remley opined that this proposal will not be effective in reducing the amount of odorous vapors released from the tank.

Moreover, Mr. Remley believes that even with Mr. Brassow's proposed solution, the tanks will rupture. Mr. Remley explained that most storage tanks are designed for a maximum pressure of four pounds per square inch. If a tanker truck unloads 5,000 gallons of waste into a 10,000 gallon capacity storage tank, the resulting pressure will be 15 pounds per square inch, not four. Consequently, the tank will rupture.[21]

---

[20] Individual Protestants Remand Ex. B, Wilson direct at 11, referring to Mr. Brassow's testimony offered at the original hearing. Tr. at 493-495.

[21] Individual Protestants Remand Ex. C, Remley direct at 4.

Irrespective of whether the tanks will rupture, Mr. Wilson explained that when pressure is relieved through a pressure relief valve, as Mr. Brassow's proposed, the vapor released goes directly into the atmosphere. This process is repeated every time the tank is filled. According to Mr. Wilson, the amount of vapor released is directly proportional to the amount of waste pumped into the tank and the number of tanks filled.[22]

Turning to the tanks that TexCom will use to neutralize wastes, Mr. Remley asserts that they will also require venting because neutralization creates an exothermic reaction that generates heat. This heat, in turn, causes the contents of the tank to expand.[23] Both Mr. Wilson and Mr. Remley believe that the "obnoxious" vapors and chemicals displaced from TexCom's tanks will adversely affect the quality of life for the residents of the community, depending on atmospheric conditions.[24]

As for odors, Mr. Brassow opined that the wastewater will be contained in airtight pipes, hoses, or tanks until it is injected into the well. Moreover, he contends that the industrial wastewater that TexCom will be disposing is generally odor free.[25] Contrary to Mr. Remley's claim that Mr. Brassow's design called for the use of steel tanks, Mr. Brassow explained that only one steel tank would be used and that would be for waste that is incompatible with fiberglass and plastic material, such as organic compounds.[26] Mr. Brassow clarified that specific epoxy blends would be selected in consultation with the tank manufacturer once the permit list is finalized. Also, TexCom will follow the permit requirement that the injectate meet a pH range of 3 to 9. Finally, to reduce the possibility of any problems with the tanks or pipes, Mr. Brassow testified that TexCom will conduct daily inspections of the processing equipment and tanks for leaks, deposits, creaks, bulges, and discoloration, and daily inspections of the pipes for illegible

---

[22] Individual Protestants Remand Ex. B, Wilson direct at 11.

[23] Individual Protestants Remand Ex. C, Remley direct at 4.

[24] Individual Protestants Remand Ex. B, Wilson direct at 11.

[25] TexCom Ex. 59, Brassow direct at 15.

[26] TexCom Ex. 59, Brassow direct at 18.

labels, loose supports, leaks, and deposits. Each year, TexCom will inspect the pumps for corrosion, impeller seat wear and pitting.[27]

Mr. Brassow agreed that the storage tanks are fixed-roofed, vented to the atmosphere.[28] However, he explained that TexCom could put a pressure release valve on the tanks so that vapors would only be released into the atmosphere if the pressure built up inside that tank to a certain level. In this way, if the pressure did not build up in the tank, there would be no vapor released into the atmosphere, and consequently no corresponding odor. But, he emphasized, most of the wastewater TexCom will be receiving will not have an odor.[29]

The evidence presented at the remand hearing did not change the ALJs finding that TexCom's IHW permit should not be denied based on arguments that a nuisance may be created by TexCom's operation so long as the Commission adopt a special condition requiring TexCom to move the entrance from Creighton Road to FM 3083, as TexCom has agreed.

Traffic Safety:

TexCom's application identified the entrance to its surface facility as the existing driveway on Creighton Road.[30] This road is a two-lane black-top road that intersects with Albert Moorhead Road approximately 700 feet east. Albert Moorehead Road then intersects with FM 3083 about 100 feet to the North. Although the drawing of this area suggests that Creighton Road intersects FM 3083, it does not. A turn onto Albert Moorehead is required off Creighton Road to get to FM 3083.[31] However, on the other end of TexCom's property, TexCom owns frontage property along FM 3083 that the ALJs previously recommended be used for the entrance.

---

[27] TexCom Ex. 59, Brassow direct at 18.

[28] Tr. at 527.

[29] Tr. at 528.

[30] Appendix B is a schematic of TexCom's facility. TexCom Ex. 39 at 97, and Aligned Protestants Ex. 10.

[31] Appendix C is a map of the area. TexCom Ex. 82.

TexCom was and continues to be amenable to relocating the entrance to its frontage road along FM 3083. However, it is undisputed that to do so TexCom will have to file an application with the Texas Department of Transportation (TxDOT) to obtain a permit to access FM 3083. The Intervenors maintain that both entrances create safety hazards for the public.

Karen Baker, one of nine area engineers working for TxDOT in the Houston District, has worked for TxDOT for over 26 years, the past 11 years in Conroe. She testified that she is familiar with the roads surrounding TexCom's property and TxDOT's access management manual that sets out the distance required between access point along a roadway (TxDOT's manual).[32] She explained that in the City of Conroe and Montgomery County, TxDOT has sole access management authority over the state roadways, including the roadways at issue in this case.[33] As a TxDOT's area engineer, Ms. Baker is responsible for the design, construction and maintenance of state roadways in Montgomery County, including FM 3083.[34]

Access management is necessary to ensure the smooth flow of traffic while providing the safest access to these roadways. Ms. Baker stressed that various engineering studies have confirmed that limiting the number of access points on a roadway reduces the likelihood of traffic accidents. Speed is a factor in setting the distance requirements between access points.[35] The speed limit on FM 3083 is 55 miles per hour (mph) and consequently the distance requirement between two access points is 425 feet.[36]

Ms. Baker verified that TexCom owns 72 feet of frontage road along FM 3083 and that a dozen driveways exist on FM 3083 between TexCom's frontage property and the intersection of

---

[32] Aligned Protestants Remand Ex. 2.

[33] The office where Ms. Baker currently works resolves all access issues in Conroe.

[34] Ms. Baker has a degree in microbiology and civil engineering from Texas A&M University. Aligned Protestants Remand Ex. 1, Baker direct at 3. Ms. Baker emphasized that she was not appearing as TxDOT's representative.

[35] TexCom Ex. 104, Baker's oral deposition at 15-16.

[36] *Id.*; Aligned Protestants Ex. 2, TxDOT Manual at 2-13, Table 2-2.

FM 3083 and Albert Moorehead Road,[37] a distance of approximately 1400 feet. Ms. Baker recognized that the driveways already providing access to FM 3083 violate TxDOT's distance requirement, but she explained that these driveways were "grandfathered in under the previous policy."[38]

The distance between adjacent driveways on either side of TexCom's property is only 280 feet. In Ms. Baker's opinion, insufficient space exists between TexCom's frontage property and the adjacent driveways for TxDOT to safely allow access to FM 3083. She emphasized that the situation is further exacerbated by the type of vehicles that would be coming to TexCom. A high volume of industrial truck traffic was not contemplated on FM 3083, she explained, and could increase the required distance figures between access points to maintain roadway safety.

Denbury points out that the amount of waste TexCom may dispose of in a day will create severe traffic problem for the area irrespective of which entrance is used. Denbury projects that up to 90 large trucks and/or 200 smaller trucks will go in and out of TexCom per day. As a result, traffic congestion will necessitate additional traffic lights and other traffic signs, and improved pavements. The county will have to deal with these additional expenses if this permit is granted.

Aligned Protestants and Individual Protestants argue that both proposed entrances create safety issues that must be considered in light of the decision in *Texas Citizens for a Safe Future and Clean Water v. Railroad Commission of Texas*.[39] They contend that the proposed entrance on FM 3083 is not a viable option. Both stress that it is unlikely TxDOT will grant any request by TexCom for access to FM 3083 due to safety issues. The number of driveways already accessing FM 3083 on that stretch of road coupled with the speed limit is not allowed under TxDOT's Access Management Manual. They emphasize that the speed limit on that road, the lack of space between the existing access points, coupled with the increase in truck traffic would

---

[37] Albert Moorehead becomes Jefferson Chemical Road on the other side of the intersection with FM 3083.

[38] Aligned Protestants Remand Ex. 1, Baker direct at 16.

[39] 254 S.W.3rd 492 (Tex. App-Austin 2007, pet. granted). This case is currently pending before the Texas Supreme Court. Oral arguments were presented in June 2010.

create a serious safety hazard for the public. Additionally, they submit that Creighton Road and the roads around TexCom's property are structurally inadequate to handle the trucking activity that would result from TexCom's business.

TexCom argues that the TxDOT manual is a guideline and not a binding regulation, and, as such, TxDOT may approve an application allowing less space between access points than that set out in the TxDOT manual.[40] While Ms. Baker agreed that TexCom could apply for a variance from TxDOT to allow it access to FM 3083, she was doubtful TxDOT would do so.

The ALJs recognize that TxDOT's manual does not have the force and effect of a statute or rule, but it does set out TxDOT's policies regarding access management of the state highway system. According to the manual, proper access management contributes to preserving roadway efficiency, reducing traffic delays and congestion, and enhancing traffic safety.[41] TxDOT represented that decades of research conducted in the United States has shown that proper access management improves roadway safety.[42] When access density increases, crash rates increase.

In the remand proceeding, TexCom offered little evidence to address this concern. It insists that TxDOT, not TCEQ, will determine whether to allow TexCom access to FM 3083 as the ALJs previously recommended. However, while TxDOT has authority to grant or deny access to FM 3083, TCEQ must determine whether granting TexCom's permit with the entrance relocated off of FM 3083 will endanger the public health and welfare.[43]

The evidence continues to support a finding that Creighton Road is not a suitable road to handle TexCom's projected daily truck traffic. Although, Samson Ukaegbu,[44] Individual

---

[40] The manual describes the application process, which includes filing with TxDOT a *Permit to Construct Access Driveway Facilities on Highway Right of Way,* and the requirements that must be met. The right to request a variance is described in Section 5 of Chapter 2 in the TxDOT manual. If the application for a permit or for a variance is denied, the party may appeal the decision in accordance with 43 TAC § 11.55.

[41] Aligned Protestants Remand Ex. 2, TxDOT Manual at 1-2 and 1-4.

[42] *Id.* at 1-4.

[43] 30 TAC § 335.4(3).

[44] Mr. Ukaegbu agreed with Ms. Baker that it is unlikely TxDOT will approve TexCom's application for access to FM 3083 due to safety concerns.

Protestants' traffic expert, recommended TexCom consider making improvements to the Creighton Road unilaterally, and to use this road rather than FM 3083 as its entrance, the ALJs disagree. The ALJs are not persuaded that TexCom is authorized to make changes to Creighton Road without Montgomery County's prior approval. For the reasons set out in the original PFD, the ALJs recommend that Creighton Road not be used as the entrance to TexCom's facility.

The issue of whether changing the entrance to FM 3083 will solve the problem is less clear. While the Protestants do not believe TxDOT will grant an access variance to TexCom, if the access is granted, the issue is whether approving the permit will endanger public health and welfare, Mr. Brassow testified in the original hearing that TexCom will accept waste eight to ten hours per day. He estimated that this would mean 12 trucks per hour per day would be arriving at TexCom's facility.[45] While it is not customary to schedule deliveries, Mr. Brassow agreed that TexCom could schedule the arrival times for the delivery of waste.[46]

To address the concerns raised by the Intervenors and considering the testimony regarding TexCom's operation, the ALJs recommend the following special conditions so that granting a permit with the entrance on FM 3083 will neither endanger the public health and welfare nor interfere with TexCom's operation:

- Deliveries should be scheduled so that no more than nine deliveries occur within a one hour period.
- Deliveries should be restricted to certain times on certain days of the week.
- TexCom may only accept scheduled deliveries.
- Trucks carrying waste may not idle for more than 30 minutes on or near TexCom's facility.

---

[45] Tr. at 499 and 501.

[46] Tr. at 505.

V. SUPPLEMENTAL ASSESSMENT OF REPORTING AND TRANSCRIPTION COSTS

The remand hearing of this case was consolidated with the remand hearing of TexCom's application for four UIC permits in SOAH Docket No. 582-07-2673, TCEQ Docket No. 2007-0204-WDW. The assessment of reporting and transcription costs is addressed in the Amended PFD issued in that proceeding; therefore, the assessment of reporting and transcription costs is not addressed in this Supplemental PFD.

VI. CONCLUSION AND RECOMMENDATION

After considering the remand evidence and the parties' supplemental arguments, the ALJs recommend that the Commission approve TexCom's application and grant ISW Permit No. 87758, subject to appropriate restrictions on operating hours and delivery schedules and the relocation of the entrance to FM 3083.

SIGNED November 8, 2010.

Catherine C. Egan

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Thomas H Walston

THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 582-07-2674
TCEQ DOCKET NO. 2007-0362-IHW

APPLICATION OF TEXCOM GULF, DISPOSAL, L.L.C. FOR TEXAS COMMISSION ON ENVIRONMENTAL QUALITY INDUSTRIAL SOLID WASTE PERMIT NO. 87758	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PARTIES AND PROCEDURAL HISTORY 2

III. BACKGROUND 3

IV. APPLICABLE LAW 5

V. DISCUSSION 8

A. Adequacy of Application 8
B. Proposed Design and Operation of the Surface Facility 14
C. Stormwater Runoff 19
D. Other Issues Concerning the Surface Facility 24

VI. ASSESSMENT OF REPORTING AND TRANSCRIPTION COSTS 27

VII. CONCLUSION AND RECOMMENDATION 27

APPENDIX A

SOAH DOCKET NO. 582-07-2674
TCEQ DOCKET NO. 2007-0362-IHW

APPLICATION OF TEXCOM GULF, DISPOSAL, L.L.C. FOR TEXAS COMMISSION ON ENVIRONMENTAL QUALITY INDUSTRIAL SOLID WASTE PERMIT NO. 87758	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

TexCom Gulf Disposal, L.L.C. (TexCom) has applied for an Industrial Solid Waste (ISW) permit in conjunction with its applications for four Underground Injection Control (UIC) permits, which would authorize four underground injection wells to dispose of nonhazardous industrial wastewater at a facility located near the City of Conroe in Montgomery County, Texas. The ISW permit is needed for the surface facilities that would be used at the injection well site. The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) approved the application and prepared a draft permit which, if approved, would authorize TexCom to operate the surface facility at the wastewater injection site in accordance with the terms, requirements, and conditions set forth in the permit. Montgomery County and the City of Conroe (Aligned Protestants), the Lone Star Groundwater Conservation District (Lone Star), and several aligned individual protestants (Individual Protestants) oppose TexCom's application. They contend that the Commission has inadequate rules governing the surface facility, that the application is deficient, that TexCom did not meet its burden of proof, and that operation of the proposed facility would pose an unacceptable risk to the surface waters and the underground drinking water for the area. The TCEQ Office of Public Interest Counsel (PIC) also opposes the application or, alternatively, requests that a special condition be added to the permit to relocate the entrance to the facility.

TexCom requested a direct referral of this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing without limitation on the issues to be considered. In addition, TexCom requested a direct referral of TexCom's separate application for its UIC permits. The UIC application was designated as TCEQ Docket No. 2007-0204-WDW and SOAH Docket No. 582-07-2673. TexCom's application for the UIC permits and this application for the ISW permit

The procedural history of this case is summarized as follows:

August 2, 2005	TexCom filed an application with TCEQ for an Industrial Solid Waste Permit.
August 29, 2005	ED declared TexCom's application administratively complete.
March 9, 2006	ED held public meeting in Conroe to receive public comment.
June 28, 2006	TCEQ Staff issued a Technical Summary and Executive Director's Preliminary Decision approving the application.
February 6, 2007	ED issued written responses to public comment.
April 13, 2007	TexCom requested direct referral of the proceeding to SOAH.
April 19, 2007	Case referred to SOAH for a contested case hearing.
May 9, 2007	TCEQ Chief Clerk issued a notice of hearing for July 18, 2007.
July 18, 2007	Preliminary hearing held by SOAH in Conroe.
July 24, 2007	SOAH Order No. 1 established a procedural schedule leading to a hearing on the merits on December 12, 2007.
December 12-18, 2007	Hearing on the Merits held in Conroe and Austin.
February 4, 2008	Parties filed Closing Arguments.
February 25, 2008	Parties filed Replies to Closing Arguments and the record closed.

III. BACKGROUND

TexCom has applied for an ISW permit for the surface facility and equipment of its proposed nonhazardous wastewater UIC site. TexCom seeks a permit to construct and operate the surface facility for up to four Class I UIC wells on approximately 27 acres of land located at 16185 Creighton Road in Montgomery County. The proposed Class I UIC wells would inject nonhazardous industrial wastewater into a geological formation more than 5,000 feet below the surface. Mr. Carl Brassow, P.E., J.D., prepared the engineering design work for the surface facility.

The design of the surface facility currently calls for a truck entrance at an existing driveway off Creighton Road, which is a two-lane black-top road, that intersects with Albert Morehead Road approximately 700 feet east. Albert Morehead Road, in turn, intersects with FM 3083 about 100 feet to the North. However, the opposite end of TexCom's 27-acre tract connects directly to FM 3083, a significant roadway in the area. If allowed by the Texas Department of Transportation, TexCom has stated that it would relocate the entrance to its surface facility to FM 3083.

IV. APPLICABLE LAW

TEX. HEALTH & SAFETY CODE § 361.061[5] allows the Commission to issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of industrial solid waste. Further, § 361.064 requires the Commission to prescribe the form and reasonable requirements for the permit application and the procedures for processing the application. In addition, TEX. WATER CODE §§ 5.551 and 5.557 provide that, for an application for a permit under TEX. HEALTH & SAFETY CODE Chapter 361, the Commission can make a direct referral to SOAH for a contested case hearing on whether the application complies with "all applicable statutory and regulatory requirements."

A major disputed issue in this case is what statutes and regulations, if any, are applicable to this ISW permit application. Before the hearing on the merits, Lone Star and Aligned Protestants filed a Joint Motion to Certify Questions and Abate Proceeding and an Alternative Motion for Summary Disposition, in which they argued that TexCom's application should be denied because the TCEQ has no rules or inadequate rules governing the treatment, storage, and processing of nonhazardous industrial solid waste at TexCom's proposed surface facility. The Individual Protestants and the PIC also supported the motion for summary disposition. TexCom and the ED

[5] Section 361.061 of the Water Code is entitled "PERMITS; SOLID WASTE FACILITY" and states that "except as provided by Section 361.090 with respect to certain industrial solid waste, the commission may require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under this chapter."

- Standard provisions to assure compliance with the permit and applicable laws and regulations: 30 TAC Chapter 305, Subchapters F and G (§§ 305.121 through 305.125; 305.127 through 305.129; 305.141 through 305.145);
- Compliance with standards for closure of the facility: 30 TAC Chapter 335, Subchapter A (§ 335.8) and Chapter 350.

The rules cited by the ED relate to TexCom's application, but most address non-substantive issue such as definitions, contents of applications, and similar matters. However, 30 TAC § 335.4 is a substantive rule that states that following prohibitions:

> In addition to the requirements of § 335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste . . . in such a manner as to cause:
> (1) the discharge or imminent threat of discharge of industrial solid waste . . . into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas [Commission on Environmental Quality];
> (2) the creation and maintenance of a nuisance; or
> (3) the endangerment of the public health and welfare.

In response to the Lone Star and Aligned Protestants' pre-hearing motions, TexCom cited some of the same rules as the ED, and it also cited 30 TAC § 281.5[7] (listing required items to be included in permit applications); 30 TAC §§ 331.63 (requiring quarterly calibration and testing of gauges, pressure sensing, and recording devices) and 331.66 (requiring signs, an all-weather road, painting, and maintenance).

---

[7] 30 TAC § 281.5 states that "except as provided by § 305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), applications for wastewater discharge including subsurface area drip dispersal systems, underground injection, municipal solid waste, radioactive material, hazardous waste and industrial solid waste management permits must include: (1) complete application form(s), signed and notarized, and appropriate copies provided; (2) the payment of fees, if applicable; (3) the verified legal status of the applicant; (4) the signature of the applicant, checked against agency requirements; (5) the attachment of technical reports and supporting data required by the application; (6) a list of adjacent and potentially affected landowners and their addresses along with a map locating the property owned by these persons; and (7) any other information as the executive director or the commission may reasonably require.

Lone Star championed the majority of the objections to TexCom's application for the Protestants. Lone Star contends that TexCom's application is deficient in the following respects:

- Failing to comply with standards set out in 30 TAC § 335.4, by (1) posing an imminent threat of discharging industrial waste into, or adjacent to, state waters; (2) creating a nuisance, and (3) endangering the environment and public health, welfare, and physical property
- Failing to provide information about a required air permit under 30 TAC § 305.45(a)(5).[8]
- Failing to adequately address air emission and stormwater controls in its technical report as required by 30 TAC §§ 305.45(a)(8)(A) and 305.50(a)(2).[9]

---

[8] 30 TAC § 305.45(a)(5) and (8)(A) provide:

(a) Forms for permit applications will be made available by the executive director. Each application for permit must include the following:

. . .

(5) the activities conducted by the applicant which require a permit;

. . .

(8) a supplementary technical report submitted in connection with an application. The report shall be prepared either by a Texas licensed professional engineer, a licensed professional geoscientist, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report must include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

[9] 30 TAC § 305.50(a)(2) and (7) provide:

(a) Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste must meet the following requirements.

. . .

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided must be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with

The ED declared TexCom's application administratively complete on August 29, 2005.[13] The TCEQ engineer charged with conducting the technical review of TexCom's application, Mr. Michael Graeber, P.E., explained that during his review of permit applications, if he discovers an omission or error in an application he issues a "Notice of Deficiency" to the applicant so the problem can be corrected. Mr. Graeber issued two "Notice of Deficiency" to TexCom. According to Mr. Graeber, TexCom provided satisfactory responses.[14] Mr. Graeber also explained that he did not require TexCom to provide information for a subsurface monitoring plan or a post-closure plan because these plans do not apply to TexCom's facility. These type of plans apply to facilities that use "land-based storage or treatment facilities such as surface impoundment, land treatment unit, and waste piles." TexCom's facility will not engage in any of these types of disposal.[15]

In reviewing the application, Mr. Graeber applied the state regulations under 30 TAC Chapter 305.[16] During his deposition, Mr. Graeber clarified that TexCom's application includes all the information required by 30 TAC §§ 281.5, 305.45, and 305.50. At the hearing, Mr. Graeber adopted his Technical Summary and Preliminary Decision without change. Therefore, the ED concludes that the administrative completeness of the surface facility application is not at issue.[17]

In response to the Protestant's complaints, TexCom maintains that its surface facility application is complete and provided the ED with the necessary information required by the applicable rules, 30 TAC §§ 281.5, 305.45, and 305.50. The engineer who designed the surface facility, Mr. Brassow, represented that the Application contained all the information required by

---

[13] ED's Closing Argument at 4.

[14] TexCom Ex. 63, Graeber's deposition at 3-4; ED Ex. 14, Graeber's prefiled at 8.

[15] Ex. Ex. 14, Graeber's direct at 11.

[16] ED Ex. 14, Graeber's direct at 4.

[17] ED's Closing Arguments at 5-6.

schedule depicting waste management unit information. Mr. Brassow filed a Engineer Report Certification to address Lone Star's concerns, but Lone Star argues that this is insufficient because it does not comply with the Texas Engineering Practices Act.

The ALJs find that the purpose of this proceeding is to determine whether the substance of TexCom's application and other evidence fulfill the statutory requirements of the Solid Waste Disposal Act. The ED has already determined that the application was administratively and technically complete prior to the hearing. As PIC referenced, *Citizens Against Landfill Location v. Texas Commission on Environmental Quality,*[22] involved a solid waste facility and the court, relying on TEX. HEALTH & SAFETY CODE § 361.068, held that an applicant is not required to establish at a contested case hearing that its application is technically and administratively complete, because the applicant will have already done so prior to the hearing.[23]

Therefore, the decisive issue for this case is whether the substance of the information TexCom provided in its application and the evidence received at the hearing satisfy the requirements of the applicable statutes and rules. Protestants' complaints about the completeness of TexCom's application relate to disputes about the substantive issues discussed later in this Proposal for Decision (Proposed Design and Operation of Surface, V.B.; Stormwater Runoff, V.C.; and Other Issues Raised Concerning Surface Facility Application, V.D.). Because the ED has already found that TexCom's application is administratively and technically complete and that the information within the application that required an engineer's seal was properly sealed by an engineer, the ALJs conclude that the issues raised by Protestants are properly addressed as substantive issues on whether TexCom's proposed surface facility complies with the relevant legal and regulatory requirements. These substantive issues raised by the Protestant are considered in the appropriate section of this Proposal for Decision.

---

[22] 169 S.W.3d 258, 272 (Tex. App. – Austin 2005, pet. denied).

[23] *Id.*

corrosion and degradation potential.[28] TexCom's application, which would be incorporated into its permit, also requires TexCom to perform daily inspections of all processing equipment and tanks for leaks, deposits, cracks, bulges, and discoloration, and daily inspections of all piping for illegible labels, loose supports, leaks, and deposits, all for early signs of failure; and annual inspections of pump internals for corrosion.[29]

TexCom maintains that if a leak or spill ever occurred, it would be contained within the MCA or WUSA. The concrete MCA is designed with concrete walls two feet high and eight inches thick with a capacity to retain a simultaneous rupture of the largest tank (30,000 gallons) and a 100-year, 24-hour storm event (a 12-inch rain).[30] The WUSA, constructed of asphalt, is designed to retain the liquid from the largest potential tank rupture (one 5,000 gallon tanker truck).[31] TexCom did not design the WUSA to include stormwater accumulations because operations would cease during storms, and the sump pump capacity would accommodate the flow rate from a major storm.[32]

According to its Waste Acceptance Plan, TexCom would analyze each client's proposed waste stream before agreeing to accept it for disposal. This would include:

- gathering client waste information;
- obtaining and analyzing waste samples;
- comparing client waste information with analysis results;
- evaluating waste analysis results with permit conditions and reservoir formation protection;

---

[28] TexCom Ex. 59, Brassow direct at 18.

[29] TexCom Ex. 59, Brassow direct at 18.

[30] TexCom Ex. 59, Brassow direct at 23.

[31] TexCom Ex. 59, Brassow direct at 24.

[32] TexCom Ex. 59, Brassow direct at 24.

for at least five years.[36] TexCom considers its proposed waste evaluation and acceptance procedures to be comprehensive and effective. In its view, these safeguards would ensure that it would accept only appropriate wastewaters and that it would properly contain and dispose of them.[37]

Lone Star complains that TexCom failed to adequately design its facility to account for all possible types of chemicals that might be delivered to the site. Because actual customers for the facility are unknown, Lone Star states that TexCom can only speculate about the nature of wastes it would receive; consequently, TexCom has listed several hundred chemicals that it could possibly receive. And although TexCom has planned for one storage tank and pipes to be made of steel in order to handle wastes incompatible with the fiberglass tanks, Lone Star suggests that TexCom's acceptance plan fails to require a demonstration that chemicals incompatible with fiberglass would be compatible with steel. Likewise, it contends that TexCom has failed to require screening to determine if chemicals to be received would be compatible with the proposed PVC piping. Therefore, Lone Star argues that it is possible that a reaction could occur, causing a failure of tanks or pipes and a release of waste materials into the environment. Lone Star also criticizes TexCom's planned use of asphalt paving material in the WUSA because asphalt is susceptible to degradation by some of the solvents identified by TexCom as waste it might receive.[38] Thus, Lone Star argues that general plan to use a variety of materials in order to handle a variety of chemical waste streams is not an adequate infrastructure design.[39]

Aligned Protestants criticize TexCom's plans in several respects, including: no plans for scheduling trucks; no cleaning schedule for the mixing and storage tanks; uncertainty whether the shaker screen unit would be open to the atmosphere or closed (release of odors); no landfill selected

---

[36] TexCom Ex. 59, Brassow direct at 30.

[37] TexCom closing brief at 51-56.

[38] Lone Star Ex. 5, Shull direct at 21.

[39] Lone Star reply to closing arguments at 63-64.

Protestants also criticize TexCom's proposed operational procedures, based primarily on the uncertainty of the wastes that may be received and reliance on clients to properly identify their wastewater constituents. Although TexCom's specific clients and the content of their wastewater is unknown at the present time, TexCom would not be accepting wastewater from random trucks that come to its facilities. Rather, it would accept wastewater only from clients who have previously provided waste information and waste samples for analysis. Clients must also notify TexCom whenever any changes may occur to their previously accepted waste. Further, TexCom's plan requires it to inspect individual loads, review the Client Waste Report, and obtain a representative sample of the wastewater and forward it to the TexCom on-site laboratory for analysis. TexCom's laboratory would then test for fingerprint parameters and compare the results to the waste acceptance criteria, re-sample and retest if necessary, and reject the waste if it is unsatisfactory. The ALJs believe that these safeguards would adequately ensure that inappropriate wastewaters are excluded from injection at the facility.

Therefore, the ALJs find that TexCom's surface facility design and operational requirements, including its Waste Acceptance Plan, adequately protect the public health and welfare and the waters of the State.

C. Stormwater Runoff

The surface facility is situated on 0.33 acres of TexCom's 27-acre tract of land, and consists of the MCA and WUSA. The Ground and Surface Water Protection Plan of TexCom's application includes a plan that shows surface drainage features, provisions for safe passage of internal and adjacent external floodwaters, and the drainage plan for the facility.[42] The issue raised by Lone Star and the Aligned Protestants is whether TexCom's proposed project poses an imminent threat of discharge of industrial solid wastes into or adjacent to state waters in violation of 30 TAC

[42] ED Ex 14, Graeber at 11.

the Creighton drainage ditch during an accidental discharge, a drainage ditch that runs by residential homes.[45]

In addition, Mr. Shull questioned TexCom's ability to pump storm water out of the WUSA and into the stormwater tank, salt water tank, and injection tank, because the saltwater tank and injection tank would need to be emptied first. Mr. Shull opined that it would be difficult for TexCom to anticipate a significant storm in order to empty the two tanks. He also challenged the accuracy of TexCom's plan showing that the rain water would flow in straight lines. Mr. Shull concluded that TexCom's plan provides no meaningful information.[46]

ED's expert, Mr. Graeber, included in his technical summary and the ED's Preliminary Decision issued on June 5, 2006, that TexCom's site is within the drainage area of Segment 1010 of the San Jacinto River Basin.[47] He testified that the Surface Water Protection Plan submitted by TexCom was filed in response to a notice of deficiency he sent. Mr. Graeber verified that he reviewed the plan and found it acceptable.[48] According to the ED, Section VI of TexCom's application includes plans that (1) show surface drainage features; (2) provide for safe passage of internal or adjacent external flood waters; and, (3) show the drainage plan for the facility.[49]

In addition, Mr. Graeber noted that the MCA satisfied the requirements of the rules as they apply to preventing waste runoff to soil, groundwater, or surface water, and for collecting storm water.[50] He went on to clarify that TCEQ only required the containment area be designed to hold

---

[45] Lone Star Closing Argument at 51-52.

[46] Lone Star Ex.5 at 14-20.

[47] TexCom Ex. 63, Graeber at 23.

[48] TexCom Closing Argument at 57; TexCom Ex. 63, Graeber's deposition at 4.

[49] ED's Closing Argument at 22.

[50] TexCom Ex. 63, Graeber deposition at 11-12.

empty the tanks. But, even if the tanks could not be emptied, TexCom maintains it could pump stormwater directly from the WUSA and into the MCA, with its two-foot retaining wall.[53]

Mr. Brassow explained that in the event of a 100-year, 24-hour storm event, the WUSA is designed to hold the contents of a tanker truck. The WUSA is where the trucks stop and transfers the waste from the truck tank into TexCom's facility. That process is described in detail above. According to Mr. Brassow, the WUSA has retaining walls, a containment berm, and is sloped toward a sump pump capable of removing any spilled fluids.[54]

The ALJs find that TexCom's Ground and Surface Water Protection Plan for the surface facility (the MCA and WUSA) adequately addressed the disposition of storm water. The MCA is two feet high, and can contain more fluid than TCEQ requires even if a tank raptured and the facility was simultaneous hit with a 100-year 24-hour storm event. Although Mr. Shull raised concerns about TexCom's ability to empty the two tanks, the ALJs find that TexCom can ensure that the storm water is contained. Finally, the area outside the surface facility has limited potential exposure to nonhazardous waste from TexCom's business. The detention pond is adequate to contain the water from the site drain, which would usually be rainwater. In the unlikely event of an accidental discharge occurring outside the surface facility, the detention pond would serve to contain this discharge particularly if the discharge did not occur during a severe 100 year, 24-hour storm event. Therefore, the ALJs find that TexCom's plans for the surface facility to protect ground and surface waters satisfy the applicable statutory and regulatory requirements.

---

[53] TexCom's Reply at 35-37.

[54] TexCom Ex. 59, Brassow direct at 14 and 22.

Section 305.50(a)(2) requires, among other things, that the information provided by an applicant must be sufficient to allow the ED to determine whether the facility would be constructed and operated in compliance with all pertinent state and local air statutes. As discussed previously concerning the completeness of the application, the ED determined that TexCom's Application was administratively and technically complete, which would include TexCom providing sufficient information under § 305.50(a)(2). Further, even Lone Star has agreed that air permitting is a regulatory process separate and independent from the current proceeding,[57] so it is beyond the scope of this case to determine whether TexCom's facility is subject to any air permitting requirements. In short, because TexCom complied with the requirements applicable to the permit it is requesting in this case and because air permitting issues are beyond the scope of this proceeding, the ALJs are not persuaded by Lone Star's arguments.

Qualifications of Employees / Financial Ability: Individual Protestants complain that TexCom provided no information about specific individuals who would operate the surface facility and who would test incoming wastewater at TexCom's on-site laboratory, despite TexCom's representation that it would staff the facility with highly trained and qualified personnel. They further contend that failing to operate the facility with properly trained personnel "suggests a high likelihood of disaster in the future."[58] Likewise Lone Star criticizes TexCom because it has no experience operating a Class I UIC well and has not yet hired any employees to operate the facility. It also questions whether TexCom has the financial ability to operate the facility, noting that TexCom is seeking additional financial support from Foxborough Energy Company.[59]

The ALJs find that these objections are not well founded. Although TexCom does not have prior experience operating a Class I UIC well, its Application, which is incorporated into its permit,

---

[57] Lone Star closing argument at 54.

[58] Individual Protestants closing statement at 22.

[59] Lone Star closing arguments at 52-53.

entrance is moved as recommended, it should further reduce the noise to which residences on Crieghton Road might be exposed. Therefore, the ALJs do not find that TexCom's IHW permit should be denied based on arguments that a nuisance may be created by the facility.

VI. ASSESSMENT OF REPORTING AND TRANSCRIPTION COSTS

The hearing of this case was consolidated with the hearing of TexCom's application for four UIC permits in SOAH Docket No. 582-07-2673, TCEQ Docket No. 2007-0204-WDW. The assessment of reporting and transcription costs is addressed in the PFD issued in that proceeding; therefore, the assessment of reporting and transcription costs is not addressed in this PFD.

VII. CONCLUSION AND RECOMMENDATION

After considering the evidence and the parties' arguments, the ALJs recommend that the Commission approve TexCom's application and grant ISW Permit No. 87758.

SIGNED April 25, 2008.

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

UPDATED TOPOGRAPHICAL
SURVEY OF

A 21.208 ACRE TRACT OUT OF A 148.627 ACRE TRACT AS RECORDED UNDER MCCF# 8251855, AND A 5.89 ACRE TRACT OUT OF A 9.46 ACRE TRACT AS RECORDED UNDER Vol. 300, Pg 778, OF THE DEED RECORDS OF MONTGOMERY COUNTY, TEXAS.

FOUND TO BE 26.93 ACRES OF LAND IN THE T.C. HOWELL SURVEY, ABSTRACT NO. 272

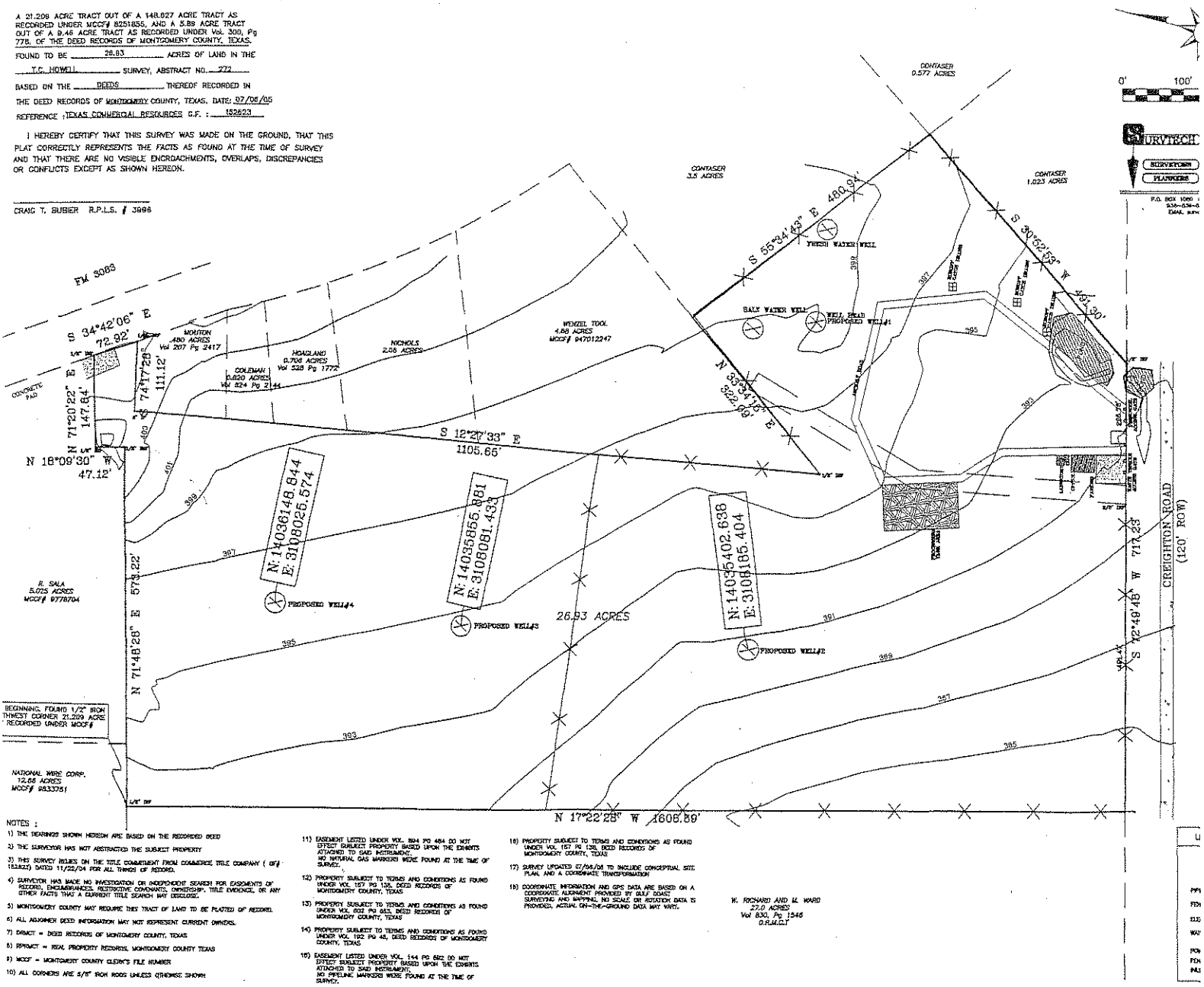
BASED ON THE DEEDS THEREOF RECORDED IN THE DEED RECORDS OF MONTGOMERY COUNTY, TEXAS. DATE: 07/06/05

REFERENCE : TEXAS COMMERCIAL RESOURCES G.F. : 152623

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND, THAT THIS PLAT CORRECTLY REPRESENTS THE FACTS AS FOUND AT THE TIME OF SURVEY AND THAT THERE ARE NO VISIBLE ENCROACHMENTS, OVERLAPS, DISCREPANCIES OR CONFLICTS EXCEPT AS SHOWN HEREON.

CRAIG T. BUSBIER R.P.L.S. # 3998

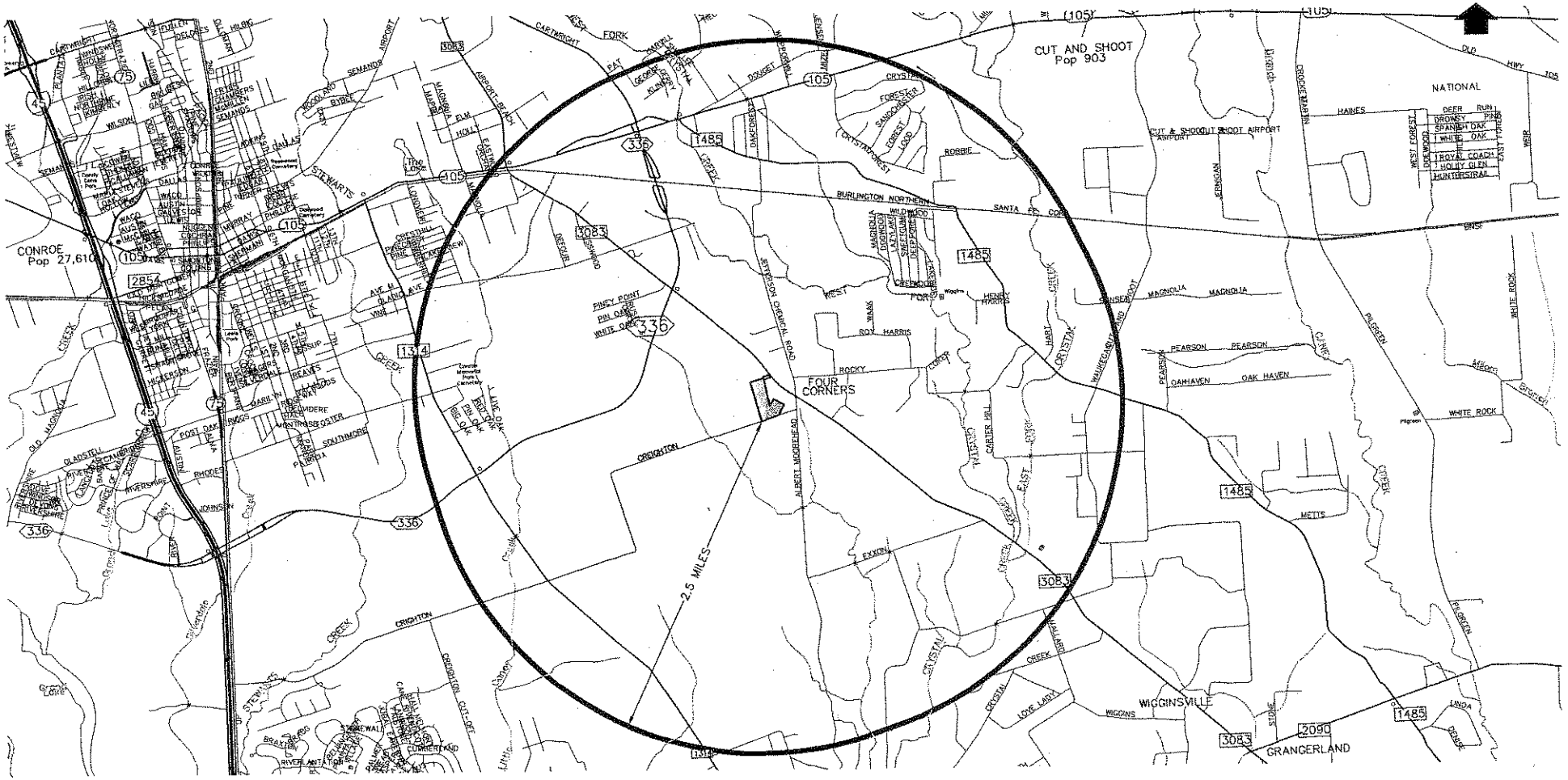
SURVTECH
SURVEYORS
PLANNERS
P.O. BOX 1060
BAM, TEXAS



NOTES :

1) THE BEARINGS SHOWN HEREON ARE BASED ON THE RECORDED DEED
2) THE SURVEYOR HAS NOT ABSTRACTED THE SUBJECT PROPERTY
3) THIS SURVEY RELIES ON THE TITLE COMMITMENT FROM COMMERCIAL TITLE COMPANY (GF# 152623) DATED 11/22/04 FOR ALL THINGS OF RECORD.
4) SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP, TITLE EVIDENCE, OR ANY OTHER FACTS THAT A CURRENT TITLE SEARCH MAY DISCLOSE.
5) MONTGOMERY COUNTY MAY REQUIRE THIS TRACT OF LAND TO BE PLATTED OF RECORD.
6) ALL ADJOINER DEED INFORMATION MAY NOT REPRESENT CURRENT OWNERS.
7) DRMCT = DEED RECORDS OF MONTGOMERY COUNTY, TEXAS
8) RPMCT = REAL PROPERTY RECORDS, MONTGOMERY COUNTY TEXAS
9) MCCF = MONTGOMERY COUNTY CLERK'S FILE NUMBER
10) ALL CORNERS ARE 5/8" IRON RODS UNLESS OTHERWISE SHOWN
11) EASEMENT LISTED UNDER VOL. 894 PG 484 DO NOT EFFECT SUBJECT PROPERTY BASED UPON THE EXHIBITS ATTACHED TO SAID INSTRUMENT. NO NATURAL GAS MARKERS WERE FOUND AT THE TIME OF SURVEY.
12) PROPERTY SUBJECT TO TERMS AND CONDITIONS AS FOUND UNDER VOL 187 PG 136, DEED RECORDS OF MONTGOMERY COUNTY, TEXAS
13) PROPERTY SUBJECT TO TERMS AND CONDITIONS AS FOUND UNDER VOL. 602 PG 643, DEED RECORDS OF MONTGOMERY COUNTY, TEXAS
14) PROPERTY SUBJECT TO TERMS AND CONDITIONS AS FOUND UNDER VOL. 192 PG 48, DEED RECORDS OF MONTGOMERY COUNTY, TEXAS
15) EASEMENT LISTED UNDER VOL. 144 PG 582 DO NOT EFFECT SUBJECT PROPERTY BASED UPON THE EXHIBITS ATTACHED TO SAID INSTRUMENT. NO PIPELINE MARKERS WERE FOUND AT THE TIME OF SURVEY.
16) PROPERTY SUBJECT TO TERMS AND CONDITIONS AS FOUND UNDER VOL 157 PG 139, DEED RECORDS OF MONTGOMERY COUNTY, TEXAS
17) SURVEY UPDATED 07/06/05 TO INCLUDE CONCEPTUAL SITE PLAN, AND A COORDINATE TRANSFORMATION
18) COORDINATE INFORMATION AND GPS DATA ARE BASED ON A COORDINATE ALIGNMENT PROVIDED BY GULF COAST SURVEYING AND MAPPING, INC SCALE OR ROTATION DATA IS PROVIDED, ACTUAL ON-THE-GROUND DATA MAY VARY.

APPENDIX B



NOTE:

1. BASEMAP SOURCE:
   http://www.tnris.state.tx.us/datadownload/county.jsp?Name=Montgomery
   MONTGOMERY COUNTY

HIGHWAY MAP
TEXCOM GULF DISPOSAL, LLC
MONTGOMERY COUNTY, TEXAS

Geosyntec consultants

TexCom Ex. 82
Page 1 of 1

AUSTIN, TX

DATE:	DECEMBER 2007	SCALE:	1" = 1/2 MIL
PROJECT NO.	FL1422-01	FILE NO.	142201F001
DOCUMENT NO.	--	FIGURE NO.	1

DRAWING: P:\CADD\Texcom Gulf Disposal\FL1422-01-Traffic Study\Figures\142201F001.dwg PLOTTED: Dec 16, 2007 - 6:15pm

APPENDIX C

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Granting the Application for Industrial Solid Waste Permit No. 87758 to TexCom Gulf Disposal, LLC; TCEQ Docket No. 2007-0362-IHW; SOAH Docket No. 582-07-2674

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the application of TexCom Gulf Disposal, LLC (TexCom or Applicant) for Permit No. 87758, authorizing TexCom to construct, operate, and maintain a facility to store and process nonhazardous industrial wastewater in Montgomery County, Texas. Catherine C. Egan and Thomas H. Walston, Administrative Law Judges (ALJs) with the State Office of Administrative Hearings (SOAH), presented a Proposal for Decision (PFD) and a Supplemental PFD recommending that the Commission grant TexCom's Application for Permit No. 87758.

After considering the ALJs' PFD and Supplemental PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

General Findings and Procedural Issues

1. The Applicant is TexCom Gulf Disposal, LLC (TexCom), 3600 South Gessner Road, Suite 200, Houston, Texas 77063.

2. TexCom was formed as a Texas C Corporation to own, manage and operate certain disposal businesses.

3. In February 2005, TexCom acquired an approximately 27-acre site for the purpose of developing a commercial nonhazardous industrial wastewater disposal facility (the Facility).

4. The site of the proposed Facility is located near the corner of Creighton Road and FM 3083 on the southeast side of the City of Conroe in Montgomery County (the Site).

5. There already exists one Class I Underground Injection Control (UIC) well at the Site, Well WDW315, which was drilled and constructed in 1999.

6. Surface facilities were never constructed, and no wastewater was ever injected into the existing Well WDW315.

7. TexCom has applied for an industrial nonhazardous waste permit from the Texas Commission of Environmental Quality (TCEQ or Commission) to authorize the surface facility that will be used to receive, store, and process nonhazardous industrial wastewaters prior to disposal by underground injection at the Site.

8. In a separate Application, TexCom has requested four Class I Underground Injection Control (UIC) permits to re-perforate and put into operation the existing well WDW315, and to construct and operate up to three additional Class I UIC wells at the Site.

9. TexCom has applied for authorization to accept and dispose of industrial wastewater defined as nonhazardous by EPA and TCEQ. This excludes any wastewater with the characteristics of ignitability, corrosivity, reactivity, or toxicity, as well as a list of specific types of wastewaters generated from various industrial operations that EPA has determined to be hazardous.

10. All wastewater received by TexCom must meet the definition of nonhazardous when it is received.

11. In its Application, TexCom provided a list of eighteen waste stream categories it proposes to accept, such as "aqueous waste with low solvents," "aqueous waste with reactive sulfides," and "acid aqueous waste."

12. The effluent streams proposed for injection are mostly water and may or may not contain low concentrations of certain organic and inorganic substances. Final composition of the various waste streams cannot be determined until the Facility is built and clients for disposal are put under contract.

13. TexCom submitted its Surface Facility Application to TCEQ in August 2005.

14. TexCom paid the application fee.

15. TexCom made a copy of the application available for inspection and copying in a public place in Conroe, Texas.

16. By letter dated August 29, 2005, TCEQ declared the Application to be administratively complete.

17. On September 1, 2005, TCEQ mailed the Notice of Receipt of Application and Intent to Obtain a Nonhazardous Industrial Solid Waste Permit to adjacent landowners, public officials, and other persons entitled to receive notice under TCEQ rules or who requested notice.

18. On September 20, 2005, TexCom published the Notice of Receipt of Application and Intent to Obtain Underground Injection Control Permits in *The Courier*, a newspaper regularly published in Montgomery County with the largest circulation of newspapers published in that county.

19. TCEQ Staff's technical review of the Application was performed in accordance with standard TCEQ procedures and policies.

20. Early in its review, TCEQ changed the permit number assigned to this project from 39002 to 87758 to resolve a conflict in its permit numbering system.

21. TCEQ Staff issued Notices of Deficiency to TexCom during its technical review, and, in response, TexCom provided updated Application materials on October 15, 2005; November 30, 2005; and April 26, 2006.

22. The updated Application materials submitted by TexCom satisfactorily addressed all issues raised in the Notices of Deficiency issued by TCEQ Staff.

23. TCEQ Staff summarized its technical review in the "Technical Summary and Executive Director's Preliminary Decision" dated June 5, 2006.

24. By letter dated June 28, 2006, the TCEQ's Executive Director indicated that technical review of the Application was complete and that he had made a preliminary decision to issue the Draft Permit.

25. On June 28, 2006, TCEQ mailed the Notice of Application and Preliminary Decision to adjacent landowners, public officials, and other persons entitled to receive notice under TCEQ rules or who requested notice.

26. On July 21, 2006, TexCom published the Notice of Application and Preliminary Decision in *The Courier*.

27. On February 8, 2007, the TCEQ's Office of Chief Clerk mailed the Executive Director's Responses to Public Comments and indicated that no changes to the Draft Permit were made in response to public comment.

28. By letter dated April 13, 2007, TexCom requested that its UIC and Surface Facility Applications be directly referred to SOAH for a contested case hearing under TEX. WATER CODE § 5.557 and 30 TEX. ADMIN. CODE § 55.210.

29. SOAH scheduled the preliminary hearing for July 18, 2007, in the Montgomery County Commissioner's Courtroom.

30. On June 5, 2007, TCEQ mailed notice of the hearing to interested persons, public officials, and other persons entitled to receive notice under TCEQ rules or who requested notice.

31. TexCom arranged for notice of the hearing to be mailed on June 14, 2007, to 1,077 separate addresses, comprising all residential or business addresses and all owners of real property within one-half mile of the Site.

32. Notice of the hearing was published in *The Courier* and *The Houston Chronicle* on June 14, 2007.

33. TexCom's UIC and Surface Facility Applications were consolidated by SOAH for purposes of convenience and were considered during the same SOAH hearing.

34. At the preliminary hearing, SOAH Administrative Law Judges (ALJs) Thomas H. Walston and Catherine C. Egan named the following as Parties to the proceeding: TexCom; the Executive Director of TCEQ; the Office of Public Interest Counsel (OPIC); Montgomery County; the City of Conroe; the Lone Star Groundwater Conservation District; Nicky E. Dyer; Flora Harrell; Edgar and Shirley Hoagland; Patty Mouton; James Langston; James A. Langston, III; Lois Nelson; James Nolan; George Phillips; Brian Rodel; Richard Ward; Edwin A. (Art) Wilson; and Al and Jerry Zaruba.

35. All of the individuals were aligned together as the "Aligned Individual Protestants;" Montgomery County and the City of Conroe were aligned as the "Aligned Protestants."

36. Prior to the hearing on the merits, James Nolan and George Phillips withdrew from the proceedings.

37. The hearing on the merits was held from December 12-18, 2007. The first three days of the hearing were conducted at the Montgomery County Commissioner's Court in Conroe, Texas, and the last two days were conducted at the State Office of Administrative (SOAH) in Austin, Texas.

38. All Parties except for OPIC prefiled direct case testimony and exhibits. All Parties participated in the hearing on the merits through their designated representatives.

39. All Parties filed closing briefs on February 4, 2008, and responses to closing briefs on February 25, 2008.

40. **On April 25, 2008, the ALJs issued a PFD recommending that TexCom's application be granted with certain special conditions.**

41. **On November 19, 2008, the Commission considered the PFD issued on April 25, 2008, and elected to remand the matter to SOAH.**

42. **On December 12, 2008, the Commission entered an Interim Order remanding the matter to SOAH "for additional consideration and taking any additional evidence**

needed to determine if the surface facility permit satisfied applicable standards, utilizing 30 Texas Administrative Code Chapters 305, 331, and 335."

43. **On February 25, 2009, a procedural schedule was issued setting the remand hearing on the merits on July 20, 2009.**

44. **At the request of TexCom, Lone Star, the Aligned Protestants, and the Individual Protestants, the hearing on the merits was cancelled on May 20, 2009, and the proceeding abated to allow TexCom Time to reperforate existing well WDW 315 and to conduct a new pressure full-off test.**

45. **On December 15, 2009, a new procedural schedule was issued resetting the hearing on the merits for April 20, 2010.**

46. **On March 20, 2010, Denbury Onshore, LLC (Denbury) filed a motion to intervene to which TexCom objected. The ED took no position and the remaining parties did not oppose.**

47. **Denbury's motion to intervene was granted on April 12, 2010, and the hearing on the merits rescheduled to June 15, 2010.**

48. **The remand hearing on the merits was held from June 15-24, 2010, at SOAH in Austin, Texas. All parties participated in the remand HOM through their designated representatives.**

49. **The parties filed remand closing arguments on August 20, 2010, and remand replies to closing arguments on September 7, 2010, at which time the record closed.**

Compliance History

50. TexCom's compliance history rating is 3.1 and its compliance history classification score is Average.

Overview of Surface Facility

51. The surface facility will be an approximately 143-foot by 100-foot rectangular area with equipment used to offload, temporarily store, and process wastewaters prior to injection by UIC well.

52. The surface facility will be comprised of two separate areas, the Waste Unloading and Solids Area (WUSA), and the Main Containment Area (MCA).

53. All waste handling activities, besides injection, will take place within either the MCA or the WUSA.

54. No nuisance-level odors are expected to result from TexCom's operation of the Facility in accordance with the terms of the Draft Permit.

55. The Facility entrance will be located on TexCom's frontage property off FM 3083.

Waste Unloading and Solids Area (WUSA)

56. The WUSA is the contained area within which trucks will unload client wastewater and where solids removed from client wastewater will be temporarily stored before disposal at an off-site landfill.

57. The WUSA will be designed to accommodate vehicle traffic, support tanker truck and solids bin weight, and collect accumulated stormwater and leaks/spills.

58. Unloaded wastewater will be pumped directly to one of four Waste Storage/Mixing tanks, or to one of two shaker screen units used for coarse particle removal, all of which are located in the MCA.

Main Containment Area (MCA)

59. The MCA is the contained area within which all waste processing and storage activities will take place.

60. Within the MCA, wastewater will be treated to remove suspended solids, separate oil or grease, or adjust pH, as needed.

61. Wastewater mixing will be performed in one of the four Waste Storage/Mixing Tanks, or one of the two Reaction Tanks.

62. One of the Waste Storage/Mixing Tanks and one of the Reaction Tanks will be made of steel, and used for waste streams that are potentially incompatible with fiberglass construction materials. The other tanks will be made of fiberglass, and used for waste streams that are not incompatible with fiberglass materials. Steel and PVC piping will be used for steel and fiberglass tanks, respectively.

63. Once any needed adjustments are made to pH, specific gravity, and other parameters to comply with permit specifications, the wastewater will be considered injectate and transferred to one of two Injection Tanks for downhole injection.

64. The pipes used to carry the treated wastewater to the wellheads will be constructed of corrosion-resistant materials that are compatible with the injected wastewater.

65. The wastewater will be contained in airtight pipes, hoses, or tanks virtually the entire time from when it arrives at the Site, to when it is injected into the well.

Corrosion Prevention

66. TexCom will be required to use non-corrosive materials such as carbon steel, fiberglass reinforced with epoxy resins, PVC, and other polymers in order to mitigate corrosion and degradation potential.

67. TexCom will be required to perform daily inspections of all processing equipment and tanks for leaks, deposits, cracks, bulges, and discoloration as early indications of failure; daily inspections of all piping for illegible labels, loose supports, leaks, and deposits as early indications of failure; and annual inspections of pump internals for corrosion.

68. The proposed design and operational parameters are adequate and appropriate to protect against corrosion, leaks, and spills.

Spill Prevention

69. Offloading will be continually manned in order to provide visual and manual spill control; spills will be mitigated through daily, weekly, monthly, and annual inspections of components for indication of wear and leaks, and the WUSA will have retaining walls and a containment berm and be sloped toward a sump and associated sump pump for removal of any fluids that, despite these controls, should spill.

70. A high-level visual and audible alarm will be installed on all Waste Storage/Mixing and Reaction Tanks and fill-level indicators will also be attached to tanks.

71. If operators observe levels above those anticipated or if an audible and/or visual alarm is observed, all operations will cease, pumps will be stopped, valves shut, and systems placed in a safe, standby condition.

72. The injection pump will be automatically stopped and visual and audible alarms sounded with (1) injection high levels, (2) low salinity concentrations, and (3) high particle concentrations as evidenced by an elevated differential pressure across the polishing filter.

Leak, Spill, and Stormwater Containment

73. The MCA, where the tanks are located, will be constructed of reinforced concrete, and surrounded by a concrete retaining wall that is two feet high and eight inches thick.

74. The pad of the MCA will be constructed with a three percent incline to the south and west to direct stormwater and spills toward the stormwater sump and pump.

75. Sump accumulations will be pumped to the Stormwater Tank, and its liquids emptied downhole in one of the UIC wells. Any accumulated solids will be disposed off-site.

76. All joints within the MCA will include chemical resistant water stops.

77. Interior surfaces will be provided with an impermeable interior coating to prevent migration of waste into the concrete.

78. The MCA has been properly designed to retain the simultaneous accumulation of the largest tank rupture and a 100-year, 24-hour storm event (12 inches, based on data from the U.S. Department of Commerce Weather Bureau).

79. The WUSA will be constructed of asphalt and will have a 2-foot by 8-inch retaining wall along the northern and southern edges. It will also have a 3-foot by 9-inch speed bump near the entry edge to help retain stormwater.

80. The WUSA's foundation will be sloped to the rear to direct stormwater and spills toward a stormwater sump pump. The sump pump will direct accumulated fluids to the Stormwater Tank, which will be emptied downhole in one of the UIC wells.

81. The WUSA has been properly designed to retain the accumulation of the largest tank rupture (one tanker truck).

82. The MCA and WUSA are designed to adequately contain leaks and spills.

83. All of the stormwater that accumulates at the surface Facility will be captured in either the MCA or the WUSA, and disposed of using one of the injection wells.

Waste Acceptance

84. TexCom's potential clients will be required to provide a "Constituent Certification," certifying that the waste stream is not hazardous waste and is appropriate in its composition for disposal at TexCom's Site.

85. TexCom will be required to analyze each waste stream before it agrees to accept it for disposal using a process consisting of:

a. gathering client waste information,

b. obtaining and analyzing client waste samples,

c. comparing client information with waste analysis results for agreement,

d. evaluating waste analysis results with respect to permit conditions and formation reservoir protection,

e. determining the need for additional chemical analysis,

f. evaluating waste for incompatibility potential, and

g. specifying operational requirements (e.g., processing and monitoring) as appropriate.

86. TexCom's clients will be required to notify TexCom before the next delivery of waste if any upstream changes to their facility or operations occur that may alter the characteristics of the previously accepted waste stream.

87. Re-analysis and re-evaluation of a waste stream will be performed whenever any of the following occurs:

a. the client has informed TexCom of any potential or known changes to the physical, chemical, or biological processes;

b. TexCom has indications by physical inspections, chemical analysis, and/or process phenomenon that waste characteristics have changed; or

c. pre-determined as necessary based on changing client batch characteristics.

88. In addition to evaluating waste streams, TexCom will be required to follow a procedure for accepting individual wastewater shipments.

89. When a wastewater shipment arrives at the Facility by tanker truck, TexCom will first perform an administrative review to verify that the waste manifest or other transportation-required documentation is complete and also that the Client Waste Report and all other information maintained by TexCom for that particular waste stream is on-file at the Facility.

90. If documentation is complete, TexCom will conduct a visual inspection of the load for consistency with waste description, unacceptable odors, unanticipated debris or foreign material, container integrity and waste volume agreement with documentation.

91. If the physical inspection is satisfactory, TexCom will (1) review the Client Waste Report for waste compatibility, waste handling requirements and sampling and analytical requirements and (2) obtain a representative sample of the waste shipment and forward it to the TexCom laboratory for analysis and/or verification.

92. The TexCom laboratory will test the sample for a number of "fingerprint" parameters, such as pH, temperature, chlorides, total dissolved solids, total suspended solids, odor, appearance, color, specific gravity, and other parameters specified by TexCom qualified personnel or the Client Waste Report.

93. TexCom will compare the laboratory results to the waste acceptance criteria, and if they are not within the acceptance criteria for that waste stream, the waste will be re-sampled and tested, and if still unsatisfactory, the waste will be rejected and a thorough investigation will be undertaken to ascertain the cause of the discrepancy.

94. TexCom will maintain onsite, for a minimum of five years, all waste-related records, including all Client Waste Profiles, Client Waste Reports, Constituent Certifications, Laboratory Analyses, Fingerprint Analyses, Waste Stream Statements, Trip Tickets, and offsite waste shipments.

Facility Management

95. Working portions of the Facility will be fenced using, at a minimum, a six-foot hurricane fence.

96. Access to the Facility will be through two gates only: a personnel vehicle and separate waste vehicle gate.

97. The Facility will be manned 24 hours per day, 365 days per year; and all non-company personnel visiting the Site will be required to undergo orientation.

98. All trucks entering the Site must pass through security.

99. TexCom's Application, incorporated into its permit, sets forth appropriate staffing guidelines, including hiring qualifications for the Operations Manager, the Operations Supervisor, the Chemist, and the Operations Technicians.

100. Prior to beginning operations, TexCom will visit local emergency response facilities and communicate key information and initiate a dialog for emergency planning and coordination. The results of this dialog will be implemented into TexCom's Emergency and Evacuation Plan.

Closure Plan

101. TexCom's Closure Plan, requires that, before the Facility is permanently closed, the assigned engineer or independent consultant/firm will:

a. evaluate the Facility's environmental conditions,

b. evaluate closure issues,

c. confer with TCEQ on closure procedures,

d. review regulatory requirements,

e. assist in preparing the specifics of the closure plan, and

f. identify any treatment or cleaning chemicals of concern, and potentially affected Site areas, if necessary.

102. The Closure Plan includes on-site waste disposal, including transportation and container cleaning; equipment cleaning, removal and/or salvage/disposal; and cleaning and teardown of the containment areas, process piping and equipment.

103. Once the Closure Plan has been implemented, a post-closure assessment will be performed by a Professional Engineer to ensure that Facility Site conditions are considered environmentally safe in accordance with TCEQ requirements. The post-closure assessment will include visual inspection, Site walkthrough and survey, sampling, laboratory analysis, and records review as necessary.

104. The estimated total cost of closing all permitted units covered by the Draft Permit is $190,218.24.

105. The Draft Permit requires TexCom to provide financial assurance in the amount of $190,218.24, which must be secured before TexCom begins storage, processing or disposal of industrial waste.

Draft Permit

106. Although specifically tailored by TCEQ Staff for TexCom's Facility, Draft Permit No. 87758 is based on a standard TCEQ template.

Protection of Soils and Water Resources

107. Operation of the surface Facility in accordance with the representations in the Application and the Terms and Conditions of the Draft Permit will not result in contamination or the imminent threat of contamination of soils or water resources.

Reporting and Transcription Costs

108. The costs for recording and transcribing the prehearing conference and the consolidated hearing on the merits held on both this Application and TexCom's UIC Application is addressed in the Order issued in the other proceeding for TexCom's UIC permit applications, SOAH Docket No. 582-07-2673, TCEQ Docket No. 2007-0204-WDW.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the storage and processing of nonhazardous industrial waste and the authority to issue this permit under TEX. HEALTH & SAFETY CODE ANN. § 361.061.

2. Notice was provided in accordance with TEX. HEALTH & SAFETY CODE ANN. § 361.081 and 30 TEX. ADMIN. CODE Chapter 39, and affected persons were provided an opportunity to request a hearing on TexCom's application in the manner required by law. Proper notice of the hearing, the prehearing conference, and the remand hearing was given to affected persons pursuant to TEX. GOV'T CODE §§ 2001.051 and 2001.052.

3. SOAH ALJs have jurisdiction to conduct a hearing and to prepare a Proposal for Decision and Supplemental Proposal for Decision on contested cases referred by TCEQ. TEX. GOV.'T CODE § 2003.47.

4. As required by TEX. HEALTH & SAFETY CODE ANN. §§ 361.066 and 361.068, TexCom submitted a complete permit application that included all information required by 30 TEX. ADMIN. CODE §§ 281.5, 305.45, and 305.50.

5. The Application was processed and the proceedings described in this Order were conducted in accordance with applicable law and rules of the TCEQ, specifically 30 TEX. ADMIN. CODE § 80.1 et seq., and the State Office of Administrative Hearings, specifically 1 Tex. Admin. Code § 155.1 et seq., and Subchapter C of the TEX. HEALTH & SAFETY CODE ANN. Chapter 361.

6. The evidence in the record is sufficient to meet the requirements of applicable law for issuance of such permit, including the TEX. HEALTH & SAFETY CODE ANN. Chapter 361 (the Solid Waste Disposal Act) and 30 TEX. ADMIN. CODE Chapter 335.

7. The Draft Permit No. 87758, as prepared by the TCEQ staff, includes all matters required by law.

8. The Surface Facility, if constructed and operated in accordance with the Solid Waste Disposal Act, 30 TEX. ADMIN. CODE Chapter 335, and the Draft Permit, will not adversely affect public health or the environment.

9. In accordance with 30 TEX. ADMIN. CODE § 305.44(a)(1), TexCom's Surface Facility Application was signed by a responsible corporate officer.

10. The Draft Permit requires TexCom to follow the plans and specifications contained in the Surface Facility Application.

11. In accordance with 30 TEX. ADMIN. CODE § 305.45(a)(8)(A), TexCom's Surface Facility Application specifies that external surfaces of steel components be painted as recommended by manufacturers.

12. In accordance with 30 TEX. ADMIN. CODE § 37.31(a), TexCom must secure financial assurance 60 days prior to acceptance of industrial waste.

13. The Draft Permit incorporates all terms and conditions required by 30 TEX. ADMIN. CODE Chapter 305, including Subchapter G.

14. In accordance with 30 TEX. ADMIN. CODE § 331.63(f), all gauges, pressure sensing, and recording devices are required to be tested and calibrated quarterly.

15. The Draft Permit contains appropriate conditions to assure compliance with all applicable requirements of Chapter 361 of the TEXAS HEALTH AND SAFETY CODE and Chapter 335 of TCEQ's regulations.

16. In accordance with 30 TEX. ADMIN. CODE § 335.4(1), operation of the surface Facility in accordance with the representations in the Application and the Terms and Conditions of the Draft Permit will not result in the discharge or imminent threat of discharge of industrial solid waste into or adjacent to waters in the state.

17. In accordance with 30 TEX. ADMIN. CODE § 335.4(2), operation of the surface Facility in accordance with the representations in the Application and the Terms and Conditions of the Draft Permit will not result in the creation and maintenance of a nuisance.

18. **In accordance with 30 TEX. ADMIN. CODE § 335.4(3), operation of the surface Facility in accordance with the representations in the Application and the Terms and Conditions of the Draft Permit will not result in the endangerment of the public health and welfare if the following special conditions are added to Permit No. 87758:**

- **Relocate the truck entrance of the Facility from Creighton Road to FM3083.**
- **No more than nine deliveries per hour may be made to the Facility**
- **Deliveries must be scheduled and delivered between ___ a.m. to ___ p.m. Monday through Friday and ___a.m. to ____ p.m. on Saturday. No deliveries may be made on Sundays.**
- **Trucks will not be permitted to idle in or near Facility for more than 30 minutes.**

19. In accordance with TEX. WATER CODE § 5.557, TexCom's Surface Facility Application satisfies all applicable statutory and regulatory requirements.

20. Pursuant to the authority of, and in accordance with, applicable laws and regulations, the requested permit should be granted as written in the Draft Permit.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. Permit No. 87758 for a nonhazardous industrial solid waste treatment facility in Montgomery County, Texas, is hereby issued to TexCom Gulf Disposal LLC.

2. All other motions, requests for specific Findings of Fact or Conclusions of Law, and other requests for general and specific relief, if not expressly granted herein, are hereby denied for want of merit.

3. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and § 2001.144 of the Texas Administrative Procedure Act, TEX. GOV'T CODE ANN.

4. The Chief Clerk of the Commission shall forward a copy of this Order to all parties.

5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Bryan W. Shaw, Ph.D., Chairman
For the Commission