

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 24, 2009

LaDonna Castañuela
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
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CHIEF CLERKS OFFICE

2009 SEP 24 PM 3:41

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**Re: IESI TX. Landfill, LP.
SOAH Docket No. 582-08-1804
TCEQ Docket No. 2007-1302-MSW
MSW Permit No. 2332
Executive Director's Reply and Exception to the Administrative Law Judge's
Amended Proposal for Decision and Order**

Dear Ms. Castañuela:

Enclosed for filing is the original and (7) copies of the Executive Director's Reply and Exception to the Administrative Law Judge's Amended Proposal for Decision and Order regarding the above referenced matter.

If you have any questions or comments, please call me at (512) 239-5778. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Tatu".

Anthony Tatu, Staff Attorney
Environmental Law Division, MC 173

SOAH DOCKET NO. 582-08-1804
TCEQ DOCKET NO. 2007-1302-MSW

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APPLICATION OF IESI TX LANDFILL
L.P. FOR A NEW MUNICIPAL SOLID
WASTE PERMIT NO. 2332

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BEFORE THE STATE OFFICE

CHIEF CLERK'S OFFICE

OF

ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S REPLY AND EXCEPTION TO THE ADMINSTRATIVE
LAW JUDGE'S AMENDED PROPOSAL FOR DECISION AND ORDER**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) respectfully submits this reply and related exceptions to the Administrative Law Judge's (ALJ's) Amended Proposed for Decision (PFD) in the above-referenced matter.

I. INTRODUCTION

On September 4, 2009, the ALJ issued a revised PFD and Proposed Order. The amended PFD recommends approval of the application by IESI (Applicant) if the following special provision is added to the draft permit:

In addition to the groundwater monitoring wells in Attachment 5 to the application that will monitor groundwater in the uppermost aquifer (Stratum II), 28 additional monitoring wells shall be installed within the Stratum I and I-A

interval as shown in the Attached Special Provisions Table No. 1. The wells will be installed in accordance with the monitoring well details described in Part III, Attachment 5, of the application and will be sampled in accordance with the Groundwater Sampling Analysis Plan in Attachment 11 and in accordance with 30 TEX. ADMIN. CODE §§ 330.401 through 330.415 and §§ 330.419 through 330.421.

The Executive Director had previously recommended that the Commission remand this matter back to the State Office of Administrative Hearings (SOAH) to take additional evidence on the issue of whether additional ground water monitoring wells should be installed. The Executive Director now agrees with the ALJ that the application should be granted with the special provision of adding additional monitoring wells as suggested by IESI in their earlier reply brief, and a remand is not required.

II. EXCEPTION TO THE AMENDED PFD

The Executive Director excepts to the following Conclusion of Law as proposed by the ALJ:

- 8. Applicant met its burden with respect to all issues except identification of groundwater wells within one mile of the proposed facility's boundaries and areas of water recharge.**

The Applicant in this case did meet its burden to identify ground water wells within one mile of the facility boundary. As previously discussed by the Executive Director, the Applicant testified that the standard of care of identifying and locating water wells is to do a search of regulatory

agency records and then to try and identify the wells on the ground. (Tr. 2 at 20 and 32). The Executive Director's witness, Mr. Gale Baker, testified that the well search was adequate, and explained that MSW staff does not independently verify the information provided by the Applicant. (Tr. 2 at 89-90). The requirement that all water wells within a mile of a facility be provided is in 30 TAC Section 330.56 (d) (4) (I). That information is part of the geology report, and the rules require that the information be "based upon published and open-file sources." The Executive Director does not believe the Applicant in this case should be held to a different or higher standard.

III. CONCLUSION

The Executive Director recommends the following change to Conclusion of Law No. 8:

- 8. Applicant met its burden with respect to all issues ~~except~~ including identification of groundwater wells within one mile of the proposed facility's boundaries and areas of water recharge.**

Ultimately, the Executive Director agrees with the ALJ that the evidence in the record is sufficient to meet the requirements of applicable law for issuance of the draft permit, and respectfully recommends that the Commissioners adopt the amended PFD and issue the draft permit, with the above change.

Respectfully Submitted,

TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Division Director
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
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CHIEF CLERKS OFFICE

CERTIFICATE OF SERVICE

I certify that on September 24, 2009, the foregoing was sent by first-class mail, agency mail, PDF, or facsimile to all persons on the attached mailing list.



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APPLICATION FOR A NEW MUNICIPAL SOLID WASTE PERMIT NO. 2332
IESI TX LANDFILL LP

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IESI TX LANDFILL LP

FOR THE SOAH JUDGE

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