State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

September 22, 2009

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

Re: **SOAH Docket No. 582-09-1971; TCEQ Docket No. 2008-1599-IHW; In Re: Application of U.S. Ecology Texas, Inc. for a Class 3 Modification to its Permit and Compliance Plan for a Commercial Hazardous and Non-Hazardous Industrial Solid Waste Management Facility in Nueces County, Texas**

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 Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than October 12, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than Oc October 22, 2009.

This matter has been designated **TCEQ Docket No. 2008-1599-IHW; SOAH Docket No. 582-09-1971**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at http://www10.tceq.state.tx.us/epic/efilings/ or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Thomas H. Walston
Administrative Law Judge

THW:nl
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STYLE/CASE: **US ECOLOGY TEXAS, INC**

SOAH DOCKET NUMBER: **582-09-1971**

REFERRING AGENCY CASE: **2008-1599-IHW**

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SOAH DOCKET NO. 582-09-1971
TCEQ DOCKET NO. 2008-1599-IHW

APPLICATION OF U.S. ECOLOGY TEXAS, INC. FOR A CLASS 3 MODIFICATION TO ITS PERMIT AND COMPLIANCE PLAN FOR A COMMERICAL HAZARDOUS AND NON-HAZARDOUS INDUSTRIAL SOLID WASTE MANAGEMENT FACILITY IN NUECES COUNTY, TEXAS	§ § § § § § § § §	**BEFORE THE STATE OFFICE** **OF** **ADMINISTRATIVE HEARINGS**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PARTIES 2

III. JURISDICTION 2

IV. PROCEDURAL HISTORY 2

V. BACKGROUND / OVERVIEW 3

- **A. The Existing Facility** 3
- **B. The Class 3 Modification** 4
- **C. Scope of Issues** 5

VI. DISCUSSION 6

- **A. The Addition of New Landfill Cell 50** 6
  - **1. General Design** 6
  - **2. The Liner System** 7
  - **3. Slurry Wall** 10
  - **4. Drainage and Stormwater Management** 11
  - **5. Final Cover** 13
  - **6. Landfill Operations** 15
- **B. The Interim and Final Closure Requirements for Cells 43, 44, 45, and 46** 19

C. The Modification of the Facility Compliance Plan 21

D. USET's Compliance History 23

E. Additional Monitoring 25

F. Allocation of Transcript Costs 28

VII. CONCLUSION 29

PROPOSED ORDER

SOAH DOCKET NO. 582-09-1971
TCEQ DOCKET NO. 2008-1599-IHW

APPLICATION OF U.S. ECOLOGY TEXAS, INC. FOR A CLASS 3 MODIFICATION TO ITS PERMIT AND COMPLIANCE PLAN FOR A COMMERICAL HAZARDOUS AND NON-HAZARDOUS INDUSTRIAL SOLID WASTE MANAGEMENT FACILITY IN NUECES COUNTY, TEXAS	§ § § § § § § § §	**BEFORE THE STATE OFFICE** **OF** **ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

I. INTRODUCTION

This case involves an application to expand the capacity of an existing commercial hazardous and non-hazardous industrial solid waste landfill and to make corresponding modifications to the facility's compliance plan. Specifically, U.S. Ecology Texas, Inc. (USET or Applicant) has applied to the Texas Commission on Environmental Quality (TCEQ) for: (1) a Class 3 modification to TCEQ IHW Permit No. 50052 (Permit) to expand the capacity of USET's hazardous and non-hazardous industrial solid waste management facility in Nueces County, Texas, and (2) for a corresponding modification of Compliance Plan No. CP 50052. The requested modifications would authorize USET to add landfill Cell 50; to extend the aerial component of Cell 50 over the currently permitted Cells 43, 44, 45, and 46; to modify the compliance plan by plugging and abandoning certain monitoring wells and replacing them with new wells; and to modify the facility closure plan to clarify the closure requirements for Cells 43, 44, 45, and 46. The expansion would occur entirely within the boundaries of the existing permitted facility.

The Executive Director (ED) supports the Application, but Intervenors Kenneth and Virginia Ahlrich oppose it. The Office of Public Interest Counsel (OPIC) acknowledges that USET met its burden of proof for the proposed Class 3 Modification; however, it recommends additional air and water monitoring near the Ahlrich property. The Administrative Law Judge (ALJ) recommends that the Commission approve the Class 3 modifications requested by USET

without the additional monitoring requirements proposed by OPIC. The ALJ also recommends that the Commission allocate the transcript costs to USET.

II. PARTIES

The following Parties participated in the contested case hearing:

PARTY	REPRESENTATIVES
US Ecology Texas, Inc.	Mary Reagan, attorney
Executive Director (ED) of the TCEQ	Diane Goss, attorney, TCEQ
Kenneth and Virginia Ahlrich, Protestants	Selves
Office of Public Interest Counsel (OPIC)	Eli Martinez, OPIC

Mr. Marciano De La Torre was granted party status, but he withdrew prior to the hearing. Mr. David Yepez was also designated as a party, but sanctions were imposed against him for discovery abuse that precluded his participation in the evidentiary hearing.

III. JURISDICTION

No party disputes the jurisdiction of either the Commission or the State Office of Administrative Hearings (SOAH). The attached Proposed Order contains the necessary finding and conclusions concerning jurisdiction.

IV. PROCEDURAL HISTORY

September 20, 2007	USET filed its application for a Class 3 Modification to its permit and compliance plan.
November 13, 2007	USET's application declared administratively complete.
November 16, 2007	The Notice of Receipt and Intent to Obtain a Class 3 Modification was published in Spanish in the *Corpus Christi Hispanic News.*

November 21, 2007	The Notice of Receipt and Intent to Obtain a Class 3 Modification was published in the *Corpus Christi Caller-Times.*
December 11, 2007	Applicant held a public meeting in Corpus Christi.
October 2, 2008	USET requested direct referral of this matter to SOAH.
November 13, 2008	The ED completed the technical review of the application and issued a preliminary decision with a draft permit and compliance plan.
November 17, 2008	Notice of Application and Preliminary Decision mailed to adjacent landowners, public officials, and other persons entitled to receive mailed notice under TCEQ rules or who requested notice.
November 19, 2008	USET amended its request for direct referral to SOAH.
December 30, 2008	The Notice of Application and Preliminary Decision was published in the *Corpus Christi Caller-Times.*
January 12, 2009	The TCEQ Chief Clerk referred this matter to SOAH.
January 17 & 27 and February 3, 2009	Notice of Hearing and Notice of Public Meeting published in the *Corpus Christi Caller-Times.*
February 17, 2009	TCEQ held a public meeting in Robstown and the public comment period ended.
February 18, 2009	SOAH held a preliminary hearing in Robstown.
April 6, 2009	The ED filed its Response to Public Comment.
June 22, 2009	Hearing on the merits held in Corpus Christi.
July 15, 2009	Parties filed written closing arguments.
July 24, 2009	Parties filed replies to closing arguments and the record closed.

V. BACKGROUND / OVERVIEW

A. The Existing Facility

The USET facility is located on a 240-acre tract on Petronila Road (County Road 69), approximately one mile south of the intersection of FM Road 2826 and County Road 69. Due to growth of the City of Robstown, the parties dispute the exact distance of the facility from the

city, but the evidence showed it is about 3.5 miles south of Robstown, in Nueces County. The original permit for the facility was issued on December 5, 1988, for a term of ten years, and it was renewed on December 2, 1999, for an additional ten years.[1]

This commercial hazardous and non-hazardous industrial solid waste management facility receives, stores, processes, and disposes of hazardous and non-hazardous wastes. Wastes are both received from off-site and generated on-site. Waste management units currently authorized by the permit include a secure landfill, four covered container storage areas, a containment building, a stabilization building, a tank farm incorporating a pretreatment system and surface facilities for a deep injection well, and physical and chemical processing operations. Under the permit at issue, disposal functions are limited to landfill burial of authorized wastes. The facility manages a wide variety of hazardous, Class 1, Class 2, and Class 3 industrial solid wastes, including solvents and other organic liquids, waste oil, various aqueous wastes, spent acid and spent caustic waste, ash, slag, sludge, metal waste, pesticides, paint, lab packs, containers, and plant trash and production refuse.[2]

B. The Class 3 Modification

USET has applied for a Class 3 modification of Permit No. HW-50052-001 for a capacity expansion. It proposes to add landfill Cell 50; to extend the aerial component of the proposed Cell 50 over the currently permitted Cells 43, 44, 45, and 46; and to modify the closure plan to clarify interim and final closure requirements for Cells 43, 44, 45, and 46. Landfill Cell 50 would total 22.7 acres, comprised of five subcells, below and above grade.[3]

USET has also applied to modify compliance plan CP-50052-001, which requires USET to monitor hazardous constituents in groundwater and to remediate groundwater quality to specified standards. The proposed modification would authorize USET to:

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[1] ED Ex. 6, Technical Summary at 1.

[2] *Id.*

[3] *Id.* at 1, 2.

- plug and abandon monitoring wells 6, 13, 14, W-15, and W-16;
- plug and abandon piezometer P-1;
- reinstall monitoring well W-15B south of the former location;
- install new monitoring wells 6A and W-15A southeast of the new landfill expansion and near the county ditch that abuts the facility; and
- after closing MW-13 and MW-14, relocate and reinstall those wells as MW-13A and MW-14A at or near the county ditch.[4]

C. Scope of Issues

USET's application for a Class 3 permit modification is governed by 30 TEX. ADMIN. CODE (TAC) § 305.69(d), which limits the scope of this proceeding to the specific permit conditions proposed for change. Therefore, USET filed a motion to limit the scope of the hearing, because the Ahlrich intervenors had prefiled testimony about a prior settlement agreement, the location of the facility, pending enforcement actions, and other matters.[5] The ED agreed with USET that the issues should be limited to the specific Class 3 modifications proposed by USET, except that the ED stated compliance history is also an issue in all permit applications.

The ALJ granted USET's motion and limited the evidence at the hearing to USET's compliance history and whether the specific changes proposed in USET's Class 3 permit modification satisfy the applicable statutory and regulatory criteria. Therefore, the issues considered at the hearing were:

A. The addition of the new landfill Cell 50 within the existing permit boundary;

B. The proposed updating of the interim and final closure requirements;

C. The modification to the facility Compliance Plan; and

D. USET's compliance history.

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[4] *Id.* at 1.

[5] Applicant's Motion to Limit Evidence at Hearing to Issues Relevant Under Section 305.69(d) (June 12, 2009).

VI. DISCUSSION

A. The Addition of New Landfill Cell 50

USET introduced extensive evidence to support its Application. The ED and OPIC agree that USET's Application and supporting evidence for Landfill Cell 50 satisfy all statutory and regulatory requirements. The Ahlriches did not expressly agree that USET met these requirements, but they offered no evidence to contest the issue.[6] Although not contested, the ALJ provides the following summary of USET's evidence concerning the design, construction, operation, and closure of proposed Landfill Cell, in order to fully inform the Commission about the Application and the proposed addition of Landfill Cell 50.

1. General Design

Landfill Cell 50 will consist of five individual subcells designated as Cells 50-1, 50-2, 50-3, 50-4, and 50-5. These subcells will be adjacent to and above Continuous Cells 43, 44, 45, and 46, and they will be separated by a five- to ten-foot high intercell berm aligned along the floor of the landfill.[7] Cell 50 will operate using the area fill method, as the excavation progresses from south to north across the landfill area. Waste placement will occur below-grade and above-grade using a perimeter berm and stability dikes around the above-grade portions to provide structural containment and support.[8] The total waste capacity of Cell 50 is approximately 2,436,602 cubic yards (yds^3).[9]

The perimeter berm will be constructed of compacted clay-rich soil material and have an exterior slope of 4:1, a ten-foot crest width, and 2:1 interior slopes. The above-grade portion of

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[6] The Ahlriches did offer evidence criticizing USET's compliance history.

[7] Ex. AA-1, Skurow direct at 17; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at Fig. V.G-2 and Fig. V.G-3.

[8] Ex. AA-1, Skurow direct at 17-18, Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 2.

[9] Ex. AA-1, Skurow direct at 18; Ex. A-13, Application, Appendix B (Landfill Geometry and Waste Capacity).

the landfill above the perimeter berm will be contained by twelve stability dikes, each six feet tall with 4:1 exterior slopes and an interior slope of 1:1. Waste will be placed against the base of the dike and filled to within three feet of the top of the dike. Once filled, the next stability dike will be constructed to raise the above-grade portion to a height of six feet.[10]

2. The Liner System

Beginning at the bottom, the liner system for Landfill Cell 50 will consist of:

(1) a secondary composite liner system;

(2) a leak detection system;

(3) a primary geomembrane liner system;

(4) a leachate collection and removal system; and

(5) a liner protective cover.[11]

Secondary Composite Liner System: The secondary liner system is designed to prevent the migration of wastes to the subsurface soils, to groundwater, or to surface water during the active life of the landfill and after closure. It will consist of a minimum of a three-foot compacted clay soil liner, with a permeability of 1×10^{-7} cm/sec or less, constructed on the floor and sidewalls of the landfill; and a 60-mil High-Density Polyethylene (HDPE) geomembrane liner installed directly above and in contact with the compacted clay soil liner.[12]

The Draft Permit requires the installation of extraction wells or other effective control measures to maintain at least a two-foot separation between the bottom of the liner system and groundwater. These control measures may be staged, beginning in the area of existing cells, and added as new cells are constructed, to maintain the required separation distance.[13] To ensure that an adequate separation between the liner system and groundwater is maintained as Landfill Cell

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[10] Ex. AA-1, Skurow direct at 18; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 3 and Figs. V.G.-5, V.G.-6, and V.G.-11.

[11] Ex. AA-1, Skurow direct at 19; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 3.

[12] Ex. AA-1, Skurow direct at 22; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 5.

[13] Ex. AA-2, Oneacre direct at 6; Ex. ED-7, Final Draft, Class 3 Permit Modifications.

50 is developed, the Draft Permit requires USET to perform an Upper Transmissive Zone Pump Test. Historical pumping data and data yielded from this evaluation will be used to determine the appropriate location of groundwater extraction wells to maintain the required two-foot separation distance.[14]

The liner system for Landfill Cell 50 is designed to prevent any migration of wastes from the landfill to the adjacent subsurface soil, groundwater, and surface water.[15] The liner design for Landfill Cell 50 uses materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation.[16] The liner will be placed on a foundation capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift.[17]

Leak Detection System: The leak detection system is installed on the floors and along the sidewalls of the disposal units directly above the secondary liner system. The leak detection system permits the rapid detection, collection, and removal of any liquid between the primary and secondary membrane liners.[18] It will consist of:

- A drainage layer to collect leakage through the primary geomembrane liner system;
- Perforated collection pipes to collect liquids from the geonet drainage layer;
- A leak detection sump;

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[14] Ex. AA-2, Oneacre direct at 5; Ex. ED-1, Venkat direct at 20.

[15] Ex. AA-1, Skurow direct at 36, Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 14.

[16] Ex. AA-1, Skurow direct at 36; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 15; Ex. A-16 (Appendices E-8 and E-9); Ex. A-17.

[17] Ex. AA-1, Skurow direct at 37; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 15; Ex. A-16, Application, Appendix E (Engineering Evaluations).

[18] Ex. AA-1, Skurow direct at 22; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 5.

- A pump and HDPE[19] riser pipe extending from the leak detection sump to the surface for collection and management; and
- A 16-oz nonwoven geotextile protective blanket installed between the sump and the geomembrane to prevent the geomembrane's puncture.[20]

Primary Geomembrane Liner System: The primary geomembrane liner is designed to prevent the migration of waste to the underlying leak detection system. It consists of a smooth 60-mil HDPE geomembrane on the cell floor and a textured 60-mil geomembrane on cell sidewalls.[21]

Leachate Collection and Removal System: The leachate collection and removal system is installed on the cell floor and sidewalls directly above the primary geomembrane liner. It consists of:

(1) a drainage layer to collect the leachate;

(2) leachate collection piping to convey the collected leachate to the sump;

(3) a leachate collection sump to store the collected leachate prior to removal;

(4) an HDPE-sidewall riser pipe for leachate removal; and

(5) a geotextile protective blanket to prevent puncture of the geomembrane.[22]

The leachate collection and removal system for Landfill Cell 50 is designed so that the leachate depth over the liner will not exceed approximately one foot and to function without clogging.[23] The leachate collection and removal system is designed of materials that are chemically and physically resistant to the expected waste and leachate. The materials are of

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[19] HDPE stands for high density polyethylene.

[20] Ex. AA-1, Skurow direct at 23-24; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 5-7.

[21] Ex. AA-1, Skurow direct at 25; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 7.

[22] Ex. AA-1, Skurow direct at 25-26; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 7-8.

[23] Ex. AA-1, Skurow direct at 37; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 15.

sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment.[24]

Protection of the Liner System: Landfill Cell 50 is also designed to protect the liner system against hydrostatic uplift. Prior to constructing each subcell within Cell 50, groundwater elevations will be measured, and historic high water table contours across the landfill will be adjusted, as necessary. After waste placement commences, the weight of the waste will provide additional resistance against uplift.[25]

3. Slurry Wall

A slurry wall has been built at the facility to contain groundwater contamination below the waste disposal units. Landfill Cell 50 is located entirely within the slurry wall that surrounds the entire landfill footprint at the Facility.[26] The slurry wall is a minimum of three feet thick and extends at least three feet into Stratum III, a clay unit directly beneath the upper transmissive zone (UTZ), the first groundwater zone beneath the Facility. The slurry wall functions to cut off the UTZ so that it is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.[27] The performance and integrity of the slurry wall is evaluated by monitoring the groundwater quality, using background/slurry wall wells located outside the slurry wall.[28] Thus, waste management units at the Facility, including proposed Landfill Cell 50,

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[24] Ex. AA-1, Skurow direct at 37; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 15; Ex. A-16, Application, Appendix E (Engineering Evaluations).

[25] Ex. AA-1, Skurow direct at 35; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 13.

[26] Ex. AA-1, Skurow direct at 33; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 12.

[27] Ex. AA-1, Skurow direct at 33-34; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 12.

[28] Ex. AA-1, Skurow direct at 34; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 13.

are surrounded by the slurry wall, which provides effective and significant reduction in hydraulic transport in the UTZ.[29]

The Facility also has a Corrective Action System which includes (1) a groundwater monitoring system consisting of background wells and point of compliance wells, and (2) corrective action system wells consisting of observation wells, recovery wells, and slurry wall monitoring wells.[30] Sampling results indicate that groundwater contamination at the Facility is well-defined and contained within the Facility boundary by the slurry wall. Contamination is confined to the UTZ, and the monitoring wells completed in the STZ do not show any contamination in this zone.[31] In short, groundwater contamination has not been detected outside the slurry wall in either the UTZ or STZ.[32]

4. Drainage and Stormwater Management

A site-specific floodplain study shows that Landfill Cell 50 would be located in a 100-year floodplain.[33] Therefore, Landfill Cell 50 is designed and will be constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event.[34] The Facility is characterized by very flat slopes which generally drain toward Drainage Ditch No. 1.[35] A perimeter berm will be constructed with compacted clay-rich soil to prevent surface water run-on from the 100-year, 24-hour storm event, which would produce stormwater up to an elevation of 65.52 to 66.77 mean sea level (MSL). The perimeter berm will be constructed to an

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[29] Ex. A-33, Application, Attachment 7 (Section VI for Landfill Cell 50) at 4; Ex. ED-6, Technical Summary and ED's Preliminary Decision.

[30] Ex. ED-12, Compliance Plan; Ex. A-32, Application, Attachment 10 (Compliance Plan Modification).

[31] Ex. ED-3, Response to Public Comment at 11-12; Tr. 57.

[32] Tr. 57.

[33] Ex. AA-1, Skurow direct at 76-77; Ex. A-20, Application, Appendix I (Stormwater Management).

[34] Ex. AA-1, Skurow direct at 78.

[35] Ex. AA-1, Skurow direct at 38; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 15; Ex. A-20, Application, Appendix I (Stormwater Management) at 1.

elevation of 70 MSL and will divert stormwater from the surrounding drainage area, preventing run-on into Landfill Cell 50 or washout of landfill waste.[36]

Drainage controls inside Landfill Cell 50 will consist of:

(1) controls on rain falling on closed areas with final cover;

(2) controls on rain falling on completed cells with interim cover;

(3) controls on rain contacting waste within the cell; and

(4) controls on rain in cells that have not received waste or contaminated stormwater and in portions of the excavation between the last constructed intercell berm and the rough-cut side slope of the excavation.[37]

Uncontaminated stormwater will be used for dust suppression; transferred into a holding tank for later use for dust suppression; or discharged at the permitted Texas Pollution Discharge Elimination System (TPDES) outfall.[38]

Stormwater that contacts waste is controlled by either the intercell berm or the perimeter berm. The intercell berm and the perimeter berm are adequate to control the stormwater volume associated with the 100-year, 24-hour storm.[39]

The stormwater runoff management system has been designed to collect and control run-off from the 100-year, 24-hour storm.[40] The components of the stormwater run-off management system are:

(1) a grassed top surface of the landfill which is sloped to promote sheet flow to landfill side slopes;

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[36] Ex. AA-1, Skurow direct at 38; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 15; Ex. A-20, Application, Appendix I (Stormwater Management) at 5-6.

[37] Ex. AA-1, Skurow direct at 38-39; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 15-17.

[38] Ex. AA-1, Skurow direct at 40 Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 16-17.

[39] Ex. AA-1, Skurow direct at 38, 75; Ex. A-20, Application, Appendix I (Stormwater Management).

[40] Ex. AA-1, Skurow direct at 74; Ex. A-20, Application, Appendix I (Stormwater Management).

(2) side slope terraces spaced at 20-foot intervals to collect runoff and convey it laterally to lined rundown channels;

(3) rundown channels to convey stormwater to the perimeter ditches at natural ground level surrounding the landfill; and

(4) perimeter ditches to convey runoff to Drainage Ditch No. 1.[41]

The proposed drainage control structures have been sized and graded to handle the design run-off.[42] Drainage calculations performed using the Rational Method specified in the Texas Department of Transportation Hydraulic Design Manual confirm the adequacy of the design of the stormwater run-off management system.[43]

5. Final Cover

The final cover system for Landfill Cell 50 is comprised of the following:

a. A compacted clay soil subgrade between the waste and the overlying composite final cover.

b. A reinforced geocomposite liner (GCL) with maximum hydraulic conductivity of 1×10^{-8} cm/sec. The reinforcement provides resistance to final cover slippage on the landfill slopes.

c. A 40-mil LLDPE[44] geomembrane placed directly above and in intimate contact with the GCL, which minimizes the potential for infiltration of precipitation into the landfill waste.

d. A geocomposite drainage layer to remove precipitation that infiltrates the top cover soil. Stormwater that percolates through the surface soil layer and collects in the drainage layer will discharge at the perimeter of the landfill at the drainage aggregate.

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[41] Ex. AA-1, Skurow direct at 40-41; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 17; Ex. A-20, Application, Appendix I (Stormwater Management).

[42] Ex. AA-1, Skurow direct at 74; Ex. A-20, Application, Appendix I (Stormwater Management).

[43] Ex. AA-1, Skurow direct at 74; Ex. A-20, Application, Appendix I (Stormwater Management).

[44] LLDPE stands for linear low-density polyethylene.

e. A final, vegetated two-foot topsoil layer acting as an erosion protection layer and a root zone for native vegetation.[45]

The final cover system provides a barrier to infiltration of precipitation and isolates landfill waste from the environment.[46] The GCL and overlying 40-mil LLDPE proposed for Landfill Cell 50's final cover system will have hydraulic conductivity equal to or less than 1.0×10^{-8} cm/sec and is equivalent or superior to a 36-inch compacted clay liner with a hydraulic conductivity of 1.0×10^{-7} cm/sec.[47] The transmissivity of the drainage layer will be adequate to allow any water percolating through the final cover to drain off the landfill's side slopes and top slope and to reduce hydraulic mounding infiltrating precipitation.[48]

The drainage layer terminates at a four-inch perforated pipe which conveys any infiltrating precipitation from the top cap to lined letdown channels. The final cover system is designed to minimize erosion and will have a final cover top slope of five percent, 4:1 side slopes, and 3:1 side slope drainage terrace slopes. Drainage control terraces will intercept runoff at 20-foot vertical intervals on the landfill side slopes and convey it to lined letdown channels.[49]

Consolidation of the underlying soil foundation is expected to be minimal and will occur primarily during filling operations and prior to final cover installation. Settlement of landfill waste will primarily occur as operations progress in each subcell, with little consolidation after the subcell is filled. Differential settlement between subcells is expected to be minimal and will

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[45] Ex. AA-1, Skurow direct at 96-97; Ex. A-25, Application, Attachment 8 (Closure Plan and Cost Estimate).

[46] Ex. AA-1, Skurow direct at 29; 64-65; Ex. A-11, Application, Attachment 6 (Landfill Engineering Report) at 9.

[47] Ex. AA-1, Skurow direct at 69; Ex. A-19, Application, Appendix H (Final Cover System).

[48] Ex. AA-1, Skurow direct at 65-67; Ex. A-19, Application, Appendix H (Final Cover System).

[49] Ex. AA-1, Skurow direct at 70; Ex. A-19, Application, Appendix H (Final Cover System) at 2.

not have an adverse impact on the final cover system.[50] The final cover system will be stable as designed.[51]

6. Landfill Operations

Although the Ahlriches and OPIC criticized the past operation of the Facility in connection with the evaluation of USET's compliance history, no party contested the proposed plans for operating Landfill Cell 50. The Landfill Operations Plan sets forth the planned operation and development of Landfill Cell 50.[52] Waste is typically delivered to the Facility by trucks in bulk transports, such as dump trucks, or in containers such as roll-offs, drums, super sacks, sea-land type containers, and other containers of various sizes.[53] Waste delivered to the Facility in dump trucks is generally routed to the landfill cell if suitable for direct disposal, or to the stabilization building for treatment prior to landfill disposal. All other waste transport containers may be placed in storage, taken to the stabilization building, or transported directly to the landfill if suitable for direct disposal.[54]

The waste unloading area may be located on any of the waste tiers, adjacent to the working face. Waste will typically be unloaded from trucks parked on an area adjacent to the working face.[55] The waste will be moved by bulldozer or other suitable equipment to the edge of the waste face and may be successively moved to other levels, depending on the location and operating level which is selected for waste placement. The waste will be spread in lifts of six to 24 inches in thickness and compacted using a dozer or soil compactor. Water or other suitable materials may be used to aid in compaction and to suppress dust generation. Foaming agents,

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[50] Ex. AA-1, Skurow direct at 70-71; Ex. A-19, Application, Appendix H (Final Cover System).

[51] Ex. AA-1, Skurow direct at 71; Ex. A-19, Application, Appendix H (Final Cover System) at 4-5 and Appendix H-5.

[52] Ex. AA-1, Skurow direct at 79; Ex. A-21, Application, Appendix J (Landfill Operation Plan).

[53] Ex. AA-1, Skurow direct at 79; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 1.

[54] Ex. AA-1, Skurow direct at 79; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 1.

[55] Ex. AA-1, Skurow direct at 81; Ex. A-21, Application, Appendix J (Landfill Operation Plan)at 2.

anti-ionic surfactant polymer emulsions, or fabrics may also be used in covering exposed waste to prevent wind dispersal.[56]

Landfill development will occur in stages based on the progress of waste placement in portions of the landfill. New cells will be excavated and lined, generally progressing from south to north, as the previously constructed cells are filled. As the elevation of landfill waste increases in each cell, perimeter stability dikes will be constructed to contain wastes up to the designed top of waste elevations.[57]

Installation of interim cover will begin near the operational face of the active area and extend behind waste operations. A small berm will be maintained at the edge of the interim cover, as necessary, to prevent rain falling on the interim cover from entering the active landfill area.[58]

Internal roadways and materials stockpiles (soils and reagents) will be watered as necessary to control dust. During summer months and periods of high wind, watering will occur frequently during the day.[59]

All 55-gallon drum containers will be taken to the drum containment building. All drums to be landfilled will be delivered to the landfill via articulating dump trucks. Other containers may be unloaded from transport vehicles directly at the landfill unloading area. Once unloaded, containers will then be moved to the selected location for container disposal using loaders, or other appropriate equipment or vehicles. Oversized or bulky items that are delivered to the landfill will be managed in much the same manner as containers.[60]

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[56] Ex. AA-1, Skurow direct at 81; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 2.

[57] Ex. AA-1, Skurow direct at 80; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 1-2.

[58] Ex. AA-1, Skurow direct at 80-81; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 2.

[59] Ex. AA-1, Skurow direct at 81.

[60] Ex. AA-1, Skurow direct at 82; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 2-3.

Containers will be managed to minimize settlement in the landfill. Select waste will be carefully placed and compacted around containers and bulky items to fill voids and to continue to provide a suitable working surface for waste placement.[61]

The Landfill Operations Plan provides for the decontamination of trucks and equipment. Any trucks coming in contact with hazardous waste or landfill equipment from the landfill active area will be decontaminated at the wash station. The wash station is portable, so that it can be relocated as the waste face progresses.[62]

Development of the new cells, stability berms, and interim/final cover will be timed to ensure adequate disposal capacity is available for incoming wastes and to allow proper control of stormwater. Construction of Landfill Cell 50 may begin prior to Continuous Cells 43, 44, 45, and 46 reaching final permitted waste elevations. Waste placement in Landfill Cell 50, including the aerial component above Continuous Cells 43, 44, 45, and 46, will begin after these cells have reached final permitted waste elevations and an interim cover has been placed on them.[63]

The Landfill Operations Plan establishes requirements for temporary berm installation, removal of geotextile overlying the sidewall liner system, stability dike construction, aerial waste placement, and final elevation.[64] The Landfill Operations Plan specifies operational procedures for the leachate collection and removal system and the leak detection systems. Liquids removed from the leachate collection and leak detection systems will be transferred to the on-site injection well for disposal.[65]

Special procedures are contained in the Landfill Operations Plan for management of liquid waste. Bulk or non-containerized liquid hazardous wastes or hazardous wastes containing

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[61] Ex. AA-1, Skurow direct at 82; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 3.

[62] Ex. AA-1, Skurow direct at 83; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 3.

[63] Ex. AA-1, Skurow direct at 83; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 3.

[64] Ex. AA-1, Skurow direct at 84-86; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 4-5.

[65] Ex. AA-1, Skurow direct at 86-87; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 5.

free liquids will not be disposed in the landfill in accordance with 40 CFR § 264.314(b). Waste containers holding free liquids may be disposed in the land disposal units only as provided under 40 CFR §§ 264.314–264.316. Solidification and stabilization reagents will include lime, fly ash, Portland cement, and proprietary pozzolonic mixtures. Wastes that are restricted from land disposal under 40 CFR Part 268 and that contain free liquids may be treated using processes other than solidification. Such wastes are subject to post-treatment testing to verify that treatment standards have been met.[66]

The Landfill Operations Plan also provides for liquids management procedures for leachate and stormwater. Contact stormwater or water that infiltrates through the waste will be collected and removed in the leachate collection system and transferred to the on-site injection well for disposal. Stormwater collected from the interim cover and from open landfill excavation areas that have not yet received waste may be used as process water for dust control within the disposal units or discharged through the TPDES-permitted outfalls.[67]

The Response Action Plan and Calculations for Landfill Cell 50 (Response Action Plan) establishes actions to be taken in the event that the Action Leakage Rate (ALR) is exceeded. The ALR is defined in 40 CFR § 264.302(a) as the maximum design flow rate that the leak detection system can remove without the fluid on the liner exceeding one foot. An analysis was performed for Cells 50-1 through 50-5 based on the specifications for the leachate collection and removal system and the leak detection system in the largest cell (Cell 50-2) to determine the ALR for Landfill Cell 50.[68]

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[66] Ex. AA-1, Skurow direct at 87-88; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 5.

[67] Ex. AA-1, Skurow direct at 88; Ex. A-21, Application, Appendix J (Landfill Operation Plan) at 5-6.

[68] Ex. AA-1, Skurow direct at 89; Ex. A-16, Application, Appendix E-5 (Engineering Evaluations); Ex. A-22, Application, Appendix K (Response Action Plan and Calculations).

In the event of an ALR exceedance, the Response Action Plan provides for notification to the TCEQ and preliminary assessment of the likely source of the release. After this initial notification and preliminary assessment, a leak and remediation assessment will be performed.[69]

B. The Interim and Final Closure Requirements for Cells 43, 44, 45, and 46

The Closure Plan describes requirements for closure of Landfill Cell 50, including the final cover system design and estimated closure costs. It also includes an updated closure plan for Continuous Cells 43, 44, 45, and 46.[70] Closure of Landfill Cell 50 will occur when all subcells within the landfill have reached their maximum design capacity. Any equipment present in the landfill at closure will be decontaminated and relocated outside the landfill area, or flushed, dismantled, and landfilled. Interim cover consisting of at least one foot of clayey soil may be installed as wastes reach final grade elevations. As the landfill development progresses, a composite final cover system will be installed over the waste.[71]

The Closure Plan provides that leachate collection will continue throughout the closure period.[72] It also provides for routine inspections and maintenance, and security systems and drainage controls will be maintained in good, functional condition. Recordkeeping and reporting activities will be in accordance with applicable regulations and permit conditions.[73] Closure of Landfill Cell 50 is subject to the review and approval by the TCEQ.[74]

Closure of Landfill Cell 50 accommodates Continuous Cells 43, 44, 45, and 46, which will receive interim cover. Once the aerial component of Landfill Cell 50 over Continuous Cells

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[69] Ex. AA-1, Skurow direct at 91-92; Ex. A-22, Application, Appendix K (Response Action Plan and Calculations).

[70] Ex. AA-1, Skurow direct at 95; Ex. A-25, Application, Attachment 8 (Closure Plan and Cost Estimate).

[71] Ex. AA-1, Skurow direct at 95-96; Ex. A-25, Application, Attachment 8 (Closure Plan and Cost Estimate).

[72] Ex. AA-1, Skurow direct at 98; Ex. A-25, Application, Attachment 8 (Closure Plan and Cost Estimate).

[73] Ex. AA-1, Skurow direct at 98; Ex. A-25, Application, Attachment 8 (Closure Plan and Cost Estimate).

[74] Ex. AA-1, Skurow direct at 98; Ex. A-25, Application, Attachment 8 (Closure Plan and Cost Estimate).

43, 44, 45, and 46 commences, the interim cover will be removed in accordance with the Landfill Operations Plan. Final closure of Landfill Cell 50 incorporates Continuous Cells 43, 44, 45, and 46.[75]

The Closure Plan contains a detailed estimate of $2,898,777.00 for the cost for closing Landfill Cell 50 in accordance with the applicable closure requirements. This estimate is based on the worst-case closure condition, which is assumed to occur when the maximum amount of fill material would be required to complete the landfill unit.[76]

The post-closure care activities required for Landfill Cell 50 include post-closure notices; site inspections and maintenance; site security; operation of leachate collection and leak detection systems, and certification of post-closure care.[77] The Post-Closure Plan establishes inspection requirements during post-closure care period for the final cap, landfill perimeter dike, stormwater runoff system, leachate collection and leak detection systems, site perimeter fence, and benchmarks.[78]

Site security will be maintained throughout the post-closure period. The fence that surrounds the site will be maintained, and gates will be kept locked to prevent tampering. Monitoring well caps will also be locked.[79] At the end of the post-closure care period, a certification will be submitted to the TCEQ Executive Director by registered mail. The certification will state that the post-closure care period for the landfill has been performed in

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[75] Ex. AA-1, Skurow direct at 99; Ex. A-25, Application, Attachment 8 (Closure Plan and Cost Estimate).

[76] Ex. AA-1, Skurow direct at 99-101; Ex. A-25, Application, Attachment 8 (Closure Plan and Cost Estimate).

[77] Ex. AA-1, Skurow direct at 102; Ex. A-26, Application, Attachment 9 (Post-Closure Plan and Cost Estimate).

[78] Ex. AA-1, Skurow direct at 104-106; Ex. A-26, Application, Attachment 9 (Post-Closure Plan and Cost Estimate).

[79] Ex. AA-1, Skurow direct at 106; Ex. A-26, Application, Attachment 9 (Post-Closure Plan and Cost Estimate).

accordance with the specifications of the approved post-closure care plan and will be signed by USET and an independent engineer registered in the State of Texas.[80]

The Post-Closure Plan contains a cost estimate for completion of the post-closure care requirements for Landfill Cell 50 based on hiring a third party to conduct the post-closure care activities. The estimated 30-year post-closure care cost is $692,340, which is based on an annual cost of $20,980 plus a 10% contingency for each year (total $23,078) over a 30-year period.[81]

No party challenged the Closure Plan or the Post-Closure Plan.

C. The Modification of the Facility Compliance Plan

Groundwater in the UTZ and the STZ[82] is currently monitored under the Compliance Plan.[83] Construction of Landfill Cell 50 will affect the location of five existing groundwater monitoring wells and one piezometer at the Facility.[84] Wells 13, 14, and W16 are corrective action observation wells that are currently used to monitor the western perimeter of the Facility. Wells 13 and 14 will be plugged and abandoned. Replacement wells 13A and 14A will be installed east of, and in close proximity to, the current locations of wells 13 and 14. Well W16 will be plugged and abandoned.[85]

Piezometer P1 will be plugged and abandoned as construction of Landfill Cell 50 progresses. This piezometer is only used to provide supplemental groundwater elevation data in the northwest interior of the Facility where Landfill Cell 50 will be constructed. Monitoring

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[80] Ex. AA-1, Skurow direct at 106-107; Ex. A-26, Application, Attachment 9 (Post-Closure Plan and Cost Estimate).

[81] Ex. AA-1, Skurow direct at 107; Ex. A-26, Application, Attachment 9 (Post-Closure Plan and Cost Estimate).

[82] STZ stands for the second transmissive zone, a groundwater zone directly beneath the Stratum III clay.

[83] Ex. A-33, Application, Attachment 7 (Section VI for Landfill Cell 50); Ex. ED-9, Rayos direct at 6.

[84] Ex. AA-2, Oneacre direct at 7; Ex. A-32, Application, Attachment 10 (Compliance Plan Modification).

[85] Ex. AA-2, Oneacre direct at 8; Ex. A-32, Application, Attachment 10 (Compliance Plan Modification).

wells in the vicinity of Landfill Cell 50 provide adequate groundwater elevation data without the use of this piezometer.[86]

Well 6 is a point of compliance well inside the southern portion of the slurry wall and within the footprint of Landfill Cell 50. Well 6 will be plugged and abandoned to accommodate construction of Landfill Cell 50. Because Well 6 cannot be retained at its current location, a new well pair consisting of Well 6A and W15A will be installed approximately 750 feet southeast of the current location of Well 6. Well 6A will function as a point of compliance well like Well 6, and Well 15A will function as a background/slurry wall well.[87]

Well W15 is a background/slurry wall well, which is located in the vicinity of the perimeter berm and Drainage Ditch No. 1. USET may plug and abandon this well to facilitate construction and/or maintenance of this berm and Drainage Ditch No. 1. In the event that Well W15 must be plugged and abandoned, USET will replace it by Well W15B, which will be located approximately 50 feet south of Well W15's current location.[88]

The proposed changes to the groundwater monitoring system to accommodate the construction of Landfill Cell 50 will not reduce any groundwater monitoring wells at the Facility.[89] A construction certification report prepared by a qualified geologist or geotechnical engineer will be submitted to the TCEQ to document completion of the well plugging and replacement well installation activities in accordance with the requirements of the existing Compliance Plan.[90]

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[86] Ex. AA-2, Oneacre direct at 8; Ex. A-32, Application, Attachment 10 (Compliance Plan Modification), Ex. ED-9, Rayos direct at 7.

[87] Ex. AA-2, Oneacre direct at 8-9; Ex. A-32, Application, Attachment 10 (Compliance Plan Modification); Ex. ED-9, Rayos direct at 6.

[88] Ex. AA-2, Oneacre direct at 8-10; Ex. A-32, Application, Attachment 10 (Compliance Plan Modification), Ex. ED-9, Rayos direct at 6.

[89] Ex. AA-2, Oneacre direct at 7; Ex. A-32, Application, Attachment 10 (Compliance Plan Modification); Ex. ED-9, Rayos direct at 6.

[90] Ex. AA-2, Oneacre direct at 10; Ex. A-32, Application, Attachment 10 (Compliance Plan Modification).

The proposed modification of USET's Facility Compliance Plan to accommodate the construction of Cell 50 was not challenged by any party.

D. USET's Compliance History

The ED determined that USET's compliance history classification score is Average.[91] Nevertheless, the Ahlriches and OPIC point out that USET's compliance history for the five years before the Application was filed includes, among other things, enforcement orders for failing to maintain waste containers in good condition, accepting unauthorized waste, and failing to operate the facility properly.[92] In addition, USET received notices of violations (NOVs) for failing to operate the leachate collection/detention systems properly, failing to remove rainwater from active landfill cells and manage it as contaminated water, failing to sample wells in accordance with the Sampling Analysis Plan, and failing to perform field determinations in accordance with the Compliance Plan.[93]

Based on these and other problems with the facility, the Ahlriches question whether USET can guarantee that nearby residents will be protected, and they urge the Commission to deny USET's requested permit modifications in this proceeding. They believe it would be better for the Commission to consider all issues related to the facility more thoroughly when USET applies for a full renewal of its permit, which is scheduled to expire later this year.[94]

USET agrees that the Commission must consider compliance history when deciding whether to allow a permit modification. However, it stresses that Chapter 60 of the Commission's rules provide a uniform methodology for the classification and use of compliance history in Commission proceedings. USET points out that the ED assessed USET's compliance

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[91] Exs. ED-4 and ED-5, Compliance Histories.

[92] *Id.*

[93] *Id.*; *See* Ahlrich Closing Statement at 2-5.

[94] Ahlrich Closing Statement at 1.

history in accordance with the applicable rules, and the ED determined that USET's compliance record over the applicable five-year period is "average," which means that USET is in general compliance.[95] It states that review of the compliance history pursuant to the rules provides an objective evaluation, and it argues that the Ahlriches have opposed and complained about the facility for many years and thus do not have an objective perspective.

USET also argues that many of the Ahlriches concerns are unfounded. It reiterates that the slurry wall surrounds that waste management units, including the entire area where Landfill Cell 50 will be constructed. Also, the TCEQ sampled the Ahlriches well in 2005 for volatile and semi-volatile organic compounds and concluded that no constituents of concern were found in the Ahlriches well water.[96] Likewise, although Mr. Ahlrich has expressed concern for his safety, he has continued to farm over 200 acres near the landfill and maintains a garden at his home, yet he has never tested his soil for contamination.[97] Further, USET argues that consideration of its compliance history should not be based on the numerous unconfirmed complaints made by the Ahlriches to the TCEQ over the years, which would contradict the compliance history evaluation guidelines contained in the Commission's rules.[98]

The Commission's rule at 30 TAC § 60.2 prescribes a detailed methodology for evaluating compliance history. Using this methodology, the ED determined that USET's compliance history for this facility is "Average." As noted by USET, the methodology contained in the rule provides for a consistent, objective evaluation of a party's compliance history. The ALJ appreciates the Ahlriches' concerns about living next to the USET hazardous solid waste management facility. However, the evidence they offered primarily concerned unsubstantiated complaints, news clippings, and the like. These items are not appropriately part of the evaluation of USET's compliance history under the Commission's rules. There was no evidence presented that the ED incorrectly evaluated USET's compliance history as Average. Therefore, the ALJ

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[95] Ex. ED-1, Venkat direct at 18; ED-4 and ED-5, Compliance Histories

[96] Ex. R-1, Ahlrich direct (redacted) at 2.

[97] Tr. 124.

[98] USET Closing Argument at 8-12.

finds there is no basis to deny USET's proposed Class 3 modifications based on its compliance history, as evaluated pursuant to 30 TAC Chapter 60.

E. Additional Monitoring

OPIC accepts that USET met the statutory and regulatory requirements for the proposed Class 3 modifications.[99] However, based on the complaints made by the Ahlriches, and because USET has had some operational failures and compliance issues during the past five years, OPIC recommends that the Commission require additional air and water monitoring near the Ahlrich property. Specifically, OPIC points to Mr. Ahlrich's testimony that during the past five years he has frequently been subjected to obnoxious odors, dust clouds, and airborne chemicals inside his home as a result of USET's facility, as well as water blowing onto his land from the facility after heavy rains. OPIC stresses that with the Class 3 Amendment, the facility will use a larger area for more hazardous waste; therefore, it contends that a site-specific analysis should pay particular attention to previous failures in order to protect nearby residents. In OPIC's view, measures taken by USET in the past have failed to prevent nuisance conditions experienced by the Ahlriches.[100]

OPIC also points out that, with adoption of the proposed Class 3 modifications, USET will use the same number of wells to monitor a larger area receiving waste, which results in a net decrease in monitoring wells per acre of landfill waste. Therefore, OPIC suggests, requiring additional monitoring wells around the Ahlriches' adjoining property would help offset this decrease, it would cause little interruption of the facility, and it would rectify OPIC's alleged absence of site-specific criteria in USET's engineering plans.[101]

USET opposes OPIC's request for additional monitoring, pointing out that it lacks any evidentiary support. Further, USET complains, the scope of OPIC's recommendation is not

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[99] OPIC Closing Argument, 2.

[100] *Id.*, 2-4.

[101] *Id.*, 4-5.

clear, as OPIC's brief initially suggests both additional air and water monitoring, but the brief's concluding prayer only recommends additional monitoring wells. USET also notes that OPIC's proposal is unclear about the location of any such additional monitoring, other than a general suggestion of additional monitoring on or around the Ahlriches' property. In USET's view, the uncertainty about OPIC's proposals results from the absence of any evidence in the record to support any additional monitoring at any location. And it stresses that expert testimony is necessary to prove the need for additional monitoring beyond the requirements of the Commission's rules, as well as for the type and location of any such monitoring. In this case, however, no such expert testimony was offered. Instead, USET states, OPIC has merely relied on complaints made by the Ahlriches, most of which were contradicted by TCEQ investigative findings.[102]

USET also rejects OPIC's argument that USET's compliance history justifies additional monitoring. It complains that OPIC mischaracterizes USET's compliance history and disregards the ED's compliance history report prepared under Chapter 60 of the Commission's rules. That report established that USET and the facility have an average compliance record, indicating that the facility is in general compliance.[103]

Likewise, USET dismisses OPIC's contention that USET's engineering plans lack site-specific criteria. OPIC contends that site-specific criteria were not considered because, in preparing the Application, USET did not consider the Ahlriches unconfirmed complaints. USET states that it has no control of third-party complaints made to TCEQ, which can be made by anyone simply calling the TCEQ. In USET's opinion, it is not feasible to design a facility and prepare an application based on unsubstantiated complaints made with the TCEQ by third parties. Instead, USET states, the engineering principles used in the application must be based on scientific principles and the applicable law and regulations.[104]

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[102] USET Reply to Closing Arguments, 8-10.

[103] Exs. ED-4 and ED-5, Compliance Histories.

[104] USET Reply to Closing Arguments, 11-12.

Finally, USET reiterates that the entire waste management area, including the proposed location of Landfill Cell 50, is surrounded by a slurry wall that is 40 feet deep and three feet thick and extends into the uppermost clay unit (Stratum III) beneath the facility.[105] Thus, USET states, groundwater contamination beneath the facility is confined to the UTZ, which is located above Stratum III, and is totally encased by the slurry wall around the facility's waste management units and the Stratum III clays beneath them. The slurry wall's performance is evaluated using monitoring wells, which have shown the slurry wall is effective. Therefore, USET concludes, Landfill Cell 50 will be constructed in accordance with applicable regulations and will be located within the slurry wall, further isolating any potential releases into the surrounding environment and eliminating the potential for off-site waste migration. Under these circumstances, USET contends that OPIC's request for additional monitoring is without merit.[106]

The ED also disagrees with OPIC's recommendation for additional monitoring. Like USET, the ED notes that OPIC's suggestion is unclear and non-specific concerning the location or type of proposed monitoring. The ED also states that air issues are beyond the scope of this proceeding. In short, the ED argues that there is no evidentiary, scientific, or regulatory basis to require the additional monitoring proposed by OPIC.[107]

The ALJ finds that evidence does not support a basis for the Commission to require additional monitoring as proposed by OPIC. First, as noted by USET and the ED, the precise nature of additional monitoring proposed by OPIC is unclear. More important, however, there was no evidence introduced at hearing to support OPIC's request. Rather, the essence of OPIC's argument is that some type of additional monitoring should be considered based on the numerous complaints made by the Ahlriches about the USET facility. However, bare complaints by a nearby landowner are not a sufficient basis to require more monitoring. Due to the complete lack of expert testimony or any other substantive evidence indicating a need for additional monitoring, the ALJ recommends that the Commission deny OPIC's request.

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[105] Ex. A-33, Application, Attachment 7 (Section VI for Landfill Cell 50) at 4.

[106] USET Reply to Closing Arguments at 12-13.

[107] ED Reply to Closing Arguments at 2.

F. Allocation of Transcript Costs

The ALJ required a transcript be prepared because the hearing was scheduled to last longer than one day. The ALJ also directed USET to arrange for the court reporter and to pay the cost of the transcript, subject to an allocation of those costs at the conclusion of the case.[108] USET has not provided information concerning these costs, and no party briefed the issue of allocation of the costs in their post-hearing arguments. Nevertheless, the ALJ will briefly discuss the allocation of transcript costs.

The Commission's rules at 30 TAC § 80.23(d) list the factors to be considered in assessing reporting and transcription costs. The factors relevant to this case include the following:

(A) The party who requested the transcript. The ALJ ordered the transcript.

(B) The financial ability of the party to pay costs. The Ahlriches are senior citizens who live and operate a farm near the USET facility. USET is a corporate entity that appears to have greater financial ability to pay costs.

(C) The extent to which the party participated in the hearing. The Ahlriches were the only protestants that participated in the hearing. Although some minor straying from the limited scope of issues occurred, the questioning of witnesses by the parties was generally to the point and directed toward relevant issues. USET presented two witnesses in its direct case and recalled one of these witnesses for its rebuttal case. Mr. Ahlrich testified and called two other witness for brief testimony. The ED called two witnesses. The ALJ finds that the extent of participation by all parties was appropriate and that none of the parties unduly burdened the transcript with unnecessary questioning of witnesses. Indeed, although originally scheduled for three days, the parties completed the hearing in one day.

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[108] Order No. 1 (Feb. 23, 2009); 30 TAC § 80.23(b)(4).

(D) The relative benefits to the various parties of having a transcript. All parties benefited from having a transcript, but as the party bearing the burden of proof, USET had the greatest potential benefit from an ability to cite and reassemble the information within the record.

(E) The budgetary constraints of a state or federal administrative agency participating in the proceeding. The broad responsibilities and limited budgets of the agency parties in this case make it unreasonable to assess costs against them. The rules also preclude the Commission from assessing costs against parties that cannot appeal a Commission decision (the ED and OPIC).[109]

(F) This factor is inapplicable.

(G) Any other factor which is relevant to a just and reasonable assessment of costs. None.

After considering these factors, and particularly the financial ability of USET and the benefit it received from having a transcript, the ALJ finds it appropriate to assess all transcript costs to USET.

VII. CONCLUSION

In conclusion, USET established that its proposed Class 3 modifications to its landfill permit complies with all applicable statutes and regulations and that its compliance history does not justify denying the Application. Also, OPIC did not establish that additional air or groundwater monitoring is justified. Therefore, the ALJ recommends that the Commission approve the Class 3 modifications requested by USET without the additional monitoring

[109] 30 TAC § 80.23(d)(2).

requirements proposed by OPIC. The ALJ also recommends that the Commission allocate the transcript costs to USET.

Signed September 22, 2009.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Granting the Application of U.S. Ecology Texas, Inc. for Class 3 Modifications to Permit No. HW-50052-001 and Compliance Plan No. CP-50052-001 for a Commercial Hazardous and Non-Hazardous Industrial Solid Waste Management Facility in Nueces County, Texas; SOAH Docket No. 582-09-1971, TCEQ Docket No. 2008-1599-IHW

On _____, 2009, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the application of U.S. Ecology Texas, Inc. (USET or Applicant) for Class 3 Modifications to Permit No. HW-50052-001 (the Permit) and to Compliance Plan No. CP-50052-001 (the Compliance Plan) for a Commercial Hazardous and Industrial Solid Waste Management Facility located in Nueces County, Texas. Thomas H. Walston, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), presented a Proposal for Decision (PFD) recommending that the Class 3 Modifications be granted. After considering the ALJ's PFD and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

A. General Findings and Procedural Issues

1. On September 20, 2007, USET submitted an application (the Application) to the TCEQ for Class 3 modifications of Permit No. HW 50052-001 and Compliance Plan No. CP 50052-001.

2. The Application requests modification of the Permit to add new Landfill Cell 50 to the existing industrial and hazardous waste landfill, designated in the Permit as Permit Unit No. 1, and to clarify interim and final closure requirements for Continuous Cells 43, 44, 45, and 46. In addition, the Application requests modification of the Compliance Plan to remove and/or relocate five monitoring wells and to remove one piezometer to allow for the construction of Landfill Cell 50.

3. USET owns and operates an existing commercial solid waste facility (the Facility) for the storage, processing, and disposal of hazardous waste and Class 1, Class 2, and Class 3 industrial solid waste. The Facility is situated on a 240-acre tract of land located at 3277 County Road 69 near the City of Robstown in Nueces County, Texas.

4. The Facility is bisected by Drainage Ditch No. 1 operated by the Nueces County Drainage District No. 2, with approximately 160 acres of the Facility located east of Drainage Ditch No. 1 and approximately 80 acres located west of the drainage ditch. Landfill Cell 50 is proposed to be located on the 80-acre tract west of Drainage Ditch No. 1 within the existing permit boundary. Continuous Cell 43, 44, 45, and 46 are already constructed on this 80-acre tract. Landfill Cell 50 will be constructed adjacent to and above these cells and will add an additional 22.7-acre area of landfill space west of Drainage Ditch No. 1 within the existing permit boundary.

5. The Facility includes active and closed landfill cells that consist of existing secure below- and above-grade landfill units (Permit Unit No. 1); container storage areas; and buildings associated with waste processing.

6. The Permit authorizes activities and components associated with the storage, processing, and disposal of hazardous waste and industrial solid waste at the Facility. The Compliance Plan requires USET to conduct corrective action and groundwater monitoring programs at the Facility.

7. USET paid the required application fee.

8. USET made a copy of the Application available for inspection and copying in a public place in Robstown, Texas.

9. The Executive Director of the TCEQ declared the Application to be administratively complete on November 13, 2007.

10. On November 15, 2007, the Chief Clerk of the TCEQ mailed the Notice of Receipt of Application and Intent to Obtain Class 3 Modifications to the Permit and Compliance Plan (NORI) to adjacent landowners, public officials, and other persons entitled to receive notice under TCEQ rules or who requested notice.

11. On November 21, 2007, the NORI was published in the *Corpus Christi Caller-Times*. On November 16, 2007, the NORI was also published in the *Corpus Christi Hispanic News*, a newspaper generally circulated in Nueces County and published primarily in Spanish. The NORI included a notice of public meeting to be held by the Applicant on December 11, 2007, in Corpus Christi, Texas.

12. USET held a public meeting on the Application on December 11, 2007, in Corpus Christi, Texas.

13. The Executive Director's technical review of the Application was performed in accordance with standard TCEQ procedures and policies.

14. The Executive Director reviewed the Application for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the rules of the Coastal Coordination Council and determined that the Application meets all applicable requirements.

15. The Executive Director issued a Technical Summary and Executive Director's Preliminary Decision dated October 15, 2008, stating that the Application meets the requirements of 30 TEX. ADMIN. CODE § 305.69 (k), Appendix I, J (1), and C (7) for a Class 3 Modification and that a draft permit and compliance plan modification has been prepared in accordance with applicable requirements of 30 TEX. ADMIN. CODE Chapters 305 and 335.

16. By letter dated October 1, 2008, USET requested that the Application be directly referred to SOAH for a contested case hearing under 30 TEX. ADMIN. CODE § 55.210.

17. The Executive Director declared the Application to be technically complete on November 13, 2008.

18. On November 17, 2008, the Chief Clerk mailed the Notice of Application and Preliminary Decision (NAPD) to adjacent landowners, public officials, and other persons entitled to receive notice under TCEQ rules or who requested notice.

19. The NAPD was published on December 30, 2008, in the *Corpus Christi Caller-Times*.

20. A combined Notice of Hearing and Notice of Public Meeting was mailed by first-class mail on January 12, 2009, by the Chief Clerk to all persons on the mailing list, as required by law.

21. The combined Notice of Hearing and Notice of Public Meeting was published once a week for three weeks on January 17, 2009, January 27, 2009, and February 3, 2009, in the *Corpus Christi Caller-Times*.

22. The TCEQ Office of Public Assistance (OPA) held a public meeting on the Application on February 17, 2009, in Robstown, Texas.

23. SOAH held a preliminary hearing on February 18, 2009, in Robstown, Texas.

24. At the preliminary hearing, SOAH ALJ Thomas H. Walston named the following as Parties to the proceeding: USET; the Executive Director of TCEQ; the Office of Public Interest Counsel (OPIC); and Kenneth and Virginia Ahlrich. Requests for party status by the South Texas Colonia Initiative (STCI) and Marciano De La Torre were taken under advisement by the ALJ. Order No. 1 granted party status to Marciano De La Torre and denied the request of STCI, the later on grounds that STCI failed to meet the definition of "affected person" under 30 TEX. ADMIN. CODE § 80.109(5).

25. After the preliminary hearing, David Yepez submitted a letter to the ALJ requesting party status. Order No. 4 granted David Yepez's request. Mr. Yepez failed to appear for his deposition on April 20, 2009, and failed to respond to USET's written discovery request which were due no later than May 11, 2009. He also failed to file a witness list as required by the procedural schedule. USET filed a motion requesting sanctions against Mr. Yepez. Order No. 8 granted this motion in part and ordered that Mr. Yepez was not allowed to oppose the Application, offer evidence, request discovery from USET, or file briefs or closing statements.

26. On April 6, 2009, the Executive Director filed a Response to Public Comment and stated that no changes were made in response to public comment.

27. Prior to the hearing on the merits, Marciano De La Torre withdrew as a party from the proceedings.

28. The hearing on the merits was held on June 22, 2009. The hearing was conducted at SOAH offices, 5155 Flynn Parkway, Suite 200, Corpus Christi, TX 78411.

29. USET, the Executive Director, and Kenneth and Virginia Ahlrich pre-filed direct case testimony and exhibits. USET, the Executive Director, Kenneth and Virginia Ahlrich, and OPIC participated in the hearing on the merits through their designated representatives. Mr. Yepez did not appear at the hearing.

30. USET, the Executive Director, OPIC, and Kenneth and Virginia Ahlrich filed closing briefs on July 15, 2009, and responses to closing briefs on July 24, 2009.

Landfill Design

31. Landfill Cell 50 will consist of five individual subcells designated as Cells 50-1, 50-2, 50-3, 50-4, and 50-5 and will be adjacent to and above Continuous Cells 43, 44, 45, and 46. These subcells will be separated by a five- to ten-foot high intercell berm aligned along the floor of the landfill.

32. Landfill Cell 50 will operate using the area fill method where the excavation is planned to extend progressively from south to north across the landfill area. Waste placement will occur below-grade and above-grade using a perimeter berm and stability dikes around the above-grade portions to provide structural containment and support.

33. The perimeter berm will be constructed of compacted clay-rich soil material and have an exterior slope of 4-horizonal:1-vertical, a ten-foot crest width, and 2:1 interior slopes. The above-grade portion of the landfill above the perimeter berm will be contained by

twelve stability dikes, each six feet tall with 4-horizonal:1-vertical exterior slopes and an interior slope of 1-horizonal:1-vertical. Waste will be placed against the base of the dike and filled to within three feet of the top of the dike. Once filled, the next stability dike will be constructed to raise the above-grade portion to a height of six feet.

34. The total waste capacity of Landfill Cell 50 is approximately 2,436,602 cubic yards.

35. The liner system (beginning from the bottom of the landfill) for Landfill Cell 50 will consist of: (1) a secondary composite liner system; (2) a leak detection system; (3) a primary geomembrane liner system; (4) a leachate collection and removal system; and (5) a liner protective cover.

36. The secondary liner system is designed to prevent the migration of wastes to the subsurface soils, groundwater or surface water during the active life of the landfill and after closure and will consist of: (1) a minimum of three feet of compacted clay soil liner with a permeability of 1×10^{-7} cm/sec or less constructed on the floor and sidewalls of the landfill; and (2) a 60-mil High-Density Polyethylene (HPDE) geomembrane liner installed directly above and in contact with the compacted clay soil liner.

37. The leak detection system is installed on the floors and along the sidewalls of the disposal units directly above the 60-mil HDPE geomembrane secondary liner system and permits the rapid detection, collection, and removal of any liquid between the primary and secondary membrane liners.

38. The leak detection system for Landfill Cell 50 will consist of:

    a. A drainage layer to collect leakage through the primary geomembrane liner system and consisting of a geonet installed on the floor and a geocomposite

drainage material installed on the sideslopes of the cell walls and the intercell berms;

b. Perforated collection pipes to collect liquids from the geonet drainage layer placed along the length of the cell floor and enclosed in gravel bedding and 16-oz geotextile;

c. A leak detection sump located at the end of each cell and filled with gravel exhibiting a 0.3 minimum porosity;

d. A HDPE riser pipe extending from the leak detection sump to the surface with a pump to convey the liquid to the top perimeter of the cell for collection and management; and

e. A 16-oz nonwoven geotextile protective blanket installed between the sump and the geomembrane to prevent the geomembrane's puncture.

39. The primary geomembrane liner is designed to prevent the migration of waste to the underlying leak detection system and consists of a smooth 60-mil HDPE geomembrane on the cell floor and a textured 60-mil geomembrane on cell sidewalls.

40. The leachate collection and removal system is installed on the cell floor and sidewalls directly above the primary geomembrane liner and consists of: (1) a drainage layer to collect the leachate; (2) leachate collection piping to convey the collected leachate to the sump; (3) a leachate collection sump to store the collected leachate prior to removal; (4) a HPDE-sidewall riser pipe for leachate removal; and (5) a geotextile protective blanket to prevent puncture of the geomembrane.

41. Landfill Cell 50 is located entirely within a slurry wall that is constructed around the entire landfill footprint at the Facility.

42. The slurry wall is a minimum of three feet thick and extends at least three feet into Stratum III, a clay unit directly beneath the upper transmissive zone (UTZ), the first groundwater zone beneath the Facility. The slurry wall functions to cut off the UTZ so that it is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

43. The performance and integrity of the slurry wall is evaluated by monitoring the groundwater quality using background/slurry wall wells located on the outside of the slurry wall.

44. The Application specifies procedures for repair and/or replacement of the slurry wall section located under the perimeter berm on the south side of Landfill Cell 50 in the event such repairs and/or replacement become necessary.

45. Landfill Cell 50 is designed to protect the liner system against hydrostatic uplift. Prior to constructing each subcell within Landfill Cell 50, groundwater elevations will be measured and historic high water table contours across the landfill adjusted, as necessary. After waste placement commences, the weight of the waste will provide additional resistance against uplift.

46. The Draft Permit requires the installation of extraction wells or other effective control measures to maintain at least a two-foot separation between the bottom of the liner system in Landfill Cell 50 and groundwater. These control measures may be staged, beginning in the area of existing cells, and added as new cells are constructed to maintain the required separation distance.

47. To ensure that as Landfill Cell 50 is developed over time, an adequate separation between its liner system and groundwater is maintained, the Draft Permit requires USET to

perform an Upper Transmissive Zone Pump Test. Along with historical pumping data, data yielded from this hydraulic evaluation will be used to determine the appropriate location of groundwater extraction wells to maintain the required two-foot separation distance.

48. Landfill Cell 50's embankment and excavation slopes will be stable if constructed as designed in the Application.

49. The liner system for Landfill Cell 50 is designed to prevent any migration of wastes from the landfill to the adjacent subsurface soil, groundwater, and surface water.

50. The liner design for Landfill Cell 50 uses materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradiants (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation.

51. The liner for Landfill Cell 50 will be placed on a foundation capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift.

52. The leachate collection and removal system for Landfill Cell 50 is designed so that the leachate depth over the liner will not exceed approximately one foot and to function without clogging.

53. The leachate collection and removal system is designed of materials that are chemically and physically resistant to the waste managed in the landfill and the leachate expected to be generated. The materials are of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment.

54. Landfill Cell 50 uses a combination of below-grade and above-grade construction. Above-grade construction has two primary benefits. It provides for the efficient use of available disposal capacity within the presently permitted Facility boundary, obviating the need to increase the existing boundary to landfill the design waste volume entirely below-grade and minimizing the amount of final cover system that is exposed to the elements during the active life and post-closure care period. In addition, containment berms associated with Landfill Cell 50's above-grade construction simplify the drainage system by reducing the volume of stormwater and the corresponding capacity of the drainage system.

Drainage and Stormwater Management

55. Natural drainage at the Facility is characterized by very flat slopes which generally drain toward Drainage Ditch No. 1.

56. A perimeter berm will be constructed with compacted clay-rich soil to prevent surface water run-on from the 100-year, 24-hour storm event, which produces stormwater up to an elevation of 65.52 to 66.77 mean sea level (MSL). The perimeter berm will be constructed to elevation 70 MSL and divert stormwater from the surrounding drainage area, preventing run-on into Landfill Cell 50 or washout of landfilled waste.

57. Drainage controls inside Landfill Cell 50 will consist of: (1) controls on rainfall falling on closed areas with final cover; (2) controls on rainfall falling on completed cells with interim cover; (3) controls on rainfall contacting waste within the cell; and (4) controls on rainfall in cells that have not received waste or contaminated stormwater and in portions

of the excavation between the last constructed intercell berm and the rough-cut sideslope of the excavation.

58. Stormwater runoff from cells that have not received waste or contaminated stormwater will be managed as uncontaminated stormwater and used for dust suppression, transferred into a holding tank for later use for dust suppression; or discharged at the permitted Texas Pollution Discharge Elimination System (TPDES) outfall.

59. Stormwater that contacts waste is controlled by either the intercell berm or the perimeter berm. The intercell berm and the perimeter berm are adequate to control the stormwater volume associated with the 100-year, 24-hour storm.

60. The stormwater runoff management system has been designed to collect and control run-off from the 100-year, 24-hour storm.

61. The components of the stormwater run-off management system are: (1) a grassed top surface of the landfill which is sloped to promote sheet flow to landfill sideslopes; (2) sideslope terraces spaced at 20-foot intervals to collect runoff and convey it laterally to lined rundown channels; (3) rundown channels to convey stormwater to the perimeter ditches at natural groundlevel surrounding the landfill; and (4) perimeter ditches to convey runoff to Drainage Ditch No. 1.

62. The proposed drainage control structures have been sized and graded to handle the design run-off.

63. Drainage calculations performed using the Rational Method specified in the *Texas Department of Transportation Hydraulic Design Manual* confirm the adequacy of the design of the stormwater run-off management system.

Floodplain

64. A site-specific floodplain study shows that Landfill Cell 50 is proposed to be located in the 100-year floodplain.

65. Landfill Cell 50 is designed, constructed, operated, and maintained to prevent physical transport of any hazardous waste by a 100-year flood event.

66. The elevation of the 100-year, 24-hour water surface in the area associated with Landfill Cell 50 ranges from 65.52 feet MSL to 66.77 feet MSL. The top of the perimeter berm at Landfill Cell 50 is at elevation 70 feet MSL. This perimeter berm is designed, constructed, operated and maintained to prevent physical transport of any hazardous waste by a 100-year flood event and to protect waste from any inundation by floodwater associated with the 100-year storm.

Final Cover

67. The final cover system for Landfill Cell 50 is a composite system consisting of: (1) a one-foot compacted clay soil subgrade; (2) a reinforced geocomposite liner (GCL) with a maximum hydraulic conductivity of 1×10^{-8} cm/sec; (3) a 40-mil linear low-density polyethylene (LLDPE) geomembrane placed directly above and in contact with the GCL; (4) a geocomposite drainage layer to remove precipitation that infiltrates the top soil cover; and (5) a final vegetated two-foot topsoil layer to minimize erosion.

68. The final cover system provides a barrier to infiltration of precipitation and isolates landfilled wastes from the environment.

69. The GCL and overlying 40-mil LLDPE proposed for Landfill Cell 50's final cover system, which have an hydraulic conductivity equal to or less than 1.0×10^{-8} cm/sec, are

equivalent or superior to a 36-inch compacted clay liner with a hydraulic conductivity of 1.0×10^{-7} cm/sec.

70. The transmissivity of drainage layer will be adequate to allow any water percolating through the final cover to drain off the landfill's side slopes and top slope and to reduce hydraulic mounding infiltrating precipitation.

71. The drainage layer terminates at a four-inch perforated pipe which conveys any infiltrating precipitation from the top cap to lined letdown channels. The pipe will be structurally stable against wall flattening and buckling and will perform within allowable limits for pipe flow.

72. The final cover system is designed to minimize erosion. Landfill Cell 50 will have a final cover top slope of five percent, 4:1 sideslopes, and 3:1 sideslope drainage terrace slopes. Drainage control terraces will intercept runoff at 20-foot vertical intervals on the landfill sideslopes and convey it to lined letdown channels.

73. The annual rate of soil loss is within allowable limits.

74. Long-term maintenance of Landfill Cell 50 will not be adversely affected by settlement or strain of the landfill. Consolidation of the underlying soil foundation is expected to be minimal and will occur primarily during filling operations and prior to final cover installation. Settlement of landfilled wastes will primarily occur as operations progress in each subcell, with little consolidation after the subcell is filled. Differential settlement between subcells is expected to be minimal and will not have an adverse impact on the final cover system.

75. The final cover system will be stable as designed.

Landfill Operations

76. The Landfill Operations Plan sets forth the planned operation and development of Landfill Cell 50.

77. Waste is typically delivered to the Facility by trucks in bulk transports, such as dump trucks, or in containers such as roll-offs, drums, super sacks, sea-land type containers and other containers of various sizes.

78. Waste delivered to the Facility in dump trucks is generally routed to the landfill cell if suitable for direct disposal, or to the stabilization building for treatment prior to landfill disposal. All other waste transport containers may be placed in storage, taken to the stabilization building, or transported directly to the landfill if suitable for direct disposal.

79. Waste is transported to the working face on the landfill in dump trucks, roll-off boxes, sea-land type containers, and other sizes of containers to be emptied for waste placement. Containers and bulky items are disposed directly into the landfill. The types of containers that are typically disposed in the landfill include drums, totes, super sacks, and small steel containers.

80. Landfill development will occur in stages based on the progress of waste placement in portions of the landfill. New cells will be excavated and lined, generally progressing from south to north, as the previously constructed cells are filled. As the elevation of landfilled waste increases in each cell, perimeter stability dikes are constructed to contain wastes up to the designed top of waste elevations. Drainage run-on and run-off control is used to minimize stormwater contact with waste and to contain water that has come in contact with waste for proper disposal.

81. Trucks will enter the landfill cell and approach the unloading area. The unloading area will generally consist of 12 inches of compacted caliche, 12 inches of compacted clay (interim cover) over the hazardous waste surface or 12 inches of non-hazardous, soil-like waste. The caliche/compacted clay/non-hazardous soil-like waste will provide a stable driving surface and prevent contamination of the truck tires with hazardous waste, thereby mitigating the need to wash the trucks each time that they unload. Installation of interim cover will begin near the operational face of the active area and extend behind waste operations. A small berm will be maintained at the edge of the interim cover, as necessary, to prevent rain falling on the interim cover from entering the active landfill area.

82. The waste unloading area may be located on any of the waste tiers, adjacent to the working face. Waste will typically be unloaded from trucks parked on an area adjacent to the working face.

83. The waste will be moved by bulldozer or other suitable equipment to the edge of the waste face and may be successively moved to other levels, depending on the location and operating level which is selected for waste placement. The waste will be spread in lifts of six to 24 inches in thickness and compacted using a dozer or soil compactor such as a Cat 815 or equivalent. Water or other suitable materials may be used to aid in compaction and to suppress dust generation during waste placement, moving, spreading, and compacting. Foaming agents, anti-ionic surfactant polymer emulsions, or fabrics may also be used in covering exposed waste to prevent wind dispersal.

84. Internal roadways and materials stockpiles (soils and reagents) are watered as necessary to control dust. During summer months and periods of high wind, watering occurs frequently during the day.

85. All 55-gallon drum containers will be taken to the drum containment building. All drums to be landfilled will be delivered to the landfill via articulating dump trucks. Other containers may be unloaded from the transport vehicles directly at the landfill unloading area. Once unloaded, containers will then be moved to the selected location for container disposal using loaders, or other appropriate equipment or vehicles. Oversized or bulky items that are delivered to the landfill will be managed in much the same manner as containers.

86. Containers are managed to minimize settlement in the landfill. Select waste will be carefully placed and compacted around containers and bulky items to fill voids and to continue to provide a suitable working surface for waste placement.

87. Equipment used in landfill operations will generally be kept in the landfill operating area in order to minimize the amount of decontamination that is required to be performed to remove the equipment from the active area. A small area may be maintained without interim cover near the operational face of the landfill near the landfill access point to park and maintain the landfill equipment. This area will be separated from the interim cover by a small berm to prevent runoff on the interim cover from entering the area.

88. The Landfill Operations Plan provides for the decontamination of trucks and equipment. Any trucks coming in contact with hazardous waste or landfill equipment from the landfill active area will be decontaminated at the wash station. The wash station is portable, so that it can be relocated as the waste face progresses. The wash station will be

located near the truck unloading area. Contaminated equipment and trucks that require washing will move onto the wash station. A portable high pressure washer will be used to perform the wash activities. The wash water will be contained and will be periodically removed and transported to the on-site deepwell disposal facility.

89. Development of the new cells, stability berms and interim/final cover is timed to ensure adequate disposal capacity is available for incoming wastes and to allow proper control of stormwater. Construction of Landfill Cell 50 may begin prior to Continuous Cells 43, 44, 45, and 46 reaching final permitted waste elevations. Waste placement in Landfill Cell 50, including the aerial component above Continuous Cells 43, 44, 45, and 46, will begin after Continuous Cells 43, 44, 45, and 46 have reached final permitted waste elevations and an interim cover has been placed on Continuous Cells 43, 44, 45, and 46.

90. The development of Landfill Cell 50 will require modification of perimeter berms and slopes. As construction of Landfill Cell 50 progresses, the perimeter berms on the south, north and west sides of Continuous Cells 43, 44, 45, and 46 will be modified from 4-horizontal:1-vertical on the south and north sides and from 6-horizontal:1-vertical on the west side to 2-horizontal:1-vertical. The modified slopes will be lined within one year of being modified to 2-horizontal:1-vertical slopes.

91. The Landfill Operations Plan establishes requirements for the phases of development for Landfill Cell 50 consisting of temporary berm installation, removal of sacrificial geotextile overlying the sidewall liner system, stability dike construction, aerial waste placement, and final elevation.

92. The Landfill Operations Plan requires leachate removal and management and specifies operational procedures for the leachate collection and removal system and the leak

detection systems. Electric or pneumantic pumps will be installed in each leachate collection and leak detection riser sump. The levels of liquids in each leachate collection and leak detection riser will be measured with a bubbler or equivalent system. Leachate is pumped from the leachate risers after each rainfall event, and the leachate risers will be checked weekly for leachate levels when it has not rained. Leachate will be removed to minimize the potential for greater than one foot of head on the bottom liner system. The leak detection system will be checked weekly during the active life and closure period and monthly during post-closure care. Accumulated liquids will be removed. Liquids that are removed from the leachate collection and leak detection systems will be transferred to the on-site injection well for disposal.

93. The Landfill Operations Plan contains special procedures for management of liquid waste. Bulk or non-containerized liquid hazardous wastes or hazardous wastes containing free liquids will not be disposed in the landfill in accordance with 40 CFR § 264.314(b). All bulk wastes containing free liquids are solidified using a non-biodegradable sorbent material or chemically stabilized prior to being placed in the disposal units. Waste containers holding free liquids may be disposed in the land disposal units only as provided under 40 CFR §§ 264.314–264.316. Solidification and stabilization reagents include, but are not limited to, lime, fly ash, Portland cement, and proprietary pozzolonic mixtures. Wastes that are restricted from land disposal under 40 CFR Part 268 and that contain free liquids may be treated using processes other than solidification. Such wastes are subject to post-treatment testing to verify that treatment standards have been met.

94. The Landfill Operations Plan provides for liquids management procedures to address management of leachate and stormwater. Contact stormwater or water that infiltrates through the waste is collected and removed in the leachate collection system. This water will be removed from the collection system and transferred to the on-site injection well for disposal. Stormwater collected from the interim cover and from open landfill excavation areas that have not yet receive waste may be used as process water, for dust control within the disposal units, or discharged through the TPDES-permitted outfalls.

95. The Response Action Plan and Calculations for Landfill Cell 50 (Response Action Plan) establishes actions to be taken in the event that the Action Leakage Rate (ALR) is exceeded. The ALR is defined in 40 CFR § 264.302(a) as the maximum design flow rate that the leak detection system can remove without the fluid on the liner exceeding one foot. An analysis was performed for Cells 50-1 through 50-5 based on the specifications for the leachate collection and removal system and the leak detection system in the largest cell (Cell 50-2) to determine the ALR for Landfill Cell 50.

96. The Response Action Plan contains procedures to evaluate the ALR. The amount of liquids removed from the leak detection sumps will be regularly measured and recorded during the active life and closure period of Landfill Cell 50. The recorded volumes of liquids removed from the leak detection sumps will be converted to average daily flow rates, which are calculated and compared to the ALR to determine if an exceedance has occurred. Alternatively, to facilitate rapid identification of potential ALR exceedances, the quantity of liquids removed from a sump can also be compared to a calculated critical volume derived from the ALR for each sump.

97. In the event of an ALR exceedance, the Response Action Plan provides for notification to the TCEQ and preliminary assessment of the likely source of the release. After this initial notification and preliminary assessment, a leak and remediation assessment will be performed to address the source of the leak detection liquids and amounts of liquids by source, more detailed analytical characterization of the liquids, and the potential for any leakage to penetrate the secondary liner system and enter the environment. The information obtained through the potential leak evaluation and the potential release assessment will be used to determine what operational changes should be made, if any, as a result of the ALR exceedance. The Response Action Plan provides a range of potential operational changes based on these findings. Further reporting is also required to describe the actions taken to evaluate the ALR exceedance, the results of the leak and remediation assessment, and all response actions.

Closure and Post-Closure

98. The Closure Plan describes requirements applicable to closure of Landfill Cell 50, including the final cover system design and estimated closure costs. It also includes an updated closure plan for Continuous Cells 43, 44, 45, and 46.

99. Expected closure of Landfill Cell 50 will occur when all subcells within the landfill have reached their maximum design capacity. Contaminated stormwater that accumulates in stormwater retention areas from the active subcells will be transferred to the on-site injection well for disposal. Uncontaminated stormwater that accumulates in portions of the landfill with interim and/or final cover will be pumped to the perimeter ditches or otherwise managed in accordance with the Facility's TPDES permit. Any equipment

present in the landfill at closure will be decontaminated and relocated outside the landfill area, or flushed, dismantled, and landfilled. Interim cover consisting of at least one foot of clayey soil may be installed as wastes reach final grade elevations. As the landfill development progresses, a composite final cover system will be installed over the waste.

100. The final cover system for Landfill Cell 50 is comprised of the following:

a. A compacted clay soil subgrade between the waste and the overlying composite final cover. On 5% top slope areas, this layer is installed one-foot thick, and on sideslopes, this subgrade is formed by the clay stability dikes that are constructed in stages as the waste surface rises.

b. A reinforced geocomposite liner (GCL) with maximum hydraulic conductivity of 1×10^{-8} cm/sec. The reinforcement provides resistance to final cover slippage on the landfill slopes. Reinforcement may be provided by needlepunched fibers that interlock the geotextiles containing bentonite clay.

c. A 40-mil LLDPE geomembrane placed directly above and in intimate contact with the GCL, which minimizes the potential for infiltration of precipitation into the landfilled waste.

d. A geocomposite drainage layer to remove precipitation that infiltrates the top cover soil. The drainage layer consists of an HDPE geonet with 6 oz nonwoven geotextiles bonded to both sides with specified transmissivity characteristics. The geocomposite is sloped at 5% on the top of the landfill and 25% on the sideslopes to the perimeter of the landfill where it terminates within a band of drainage aggregate at the surface of the perimeter berm. Stormwater which percolates

through the surface soil layer and collects in the drainage layer discharges at the perimeter of the landfill at the drainage aggregate.

e. A final, vegetated two-foot topsoil layer acting as an erosion protection layer and a root zone for native vegetation.

101. The final cover system is designed to minimize infiltration and maintenance. The synthetic liner components of the final cover system will be placed in an anchor trench such that the cover system forms an umbrella over the disposal cells. Each component of the landfill cover will function to minimize the migration of liquids through the closed landfill and promote drainage of the cover. The materials of cover construction, the cover grades, and the stormwater handling structures will serve to minimize maintenance and erosion of the cover, and to accommodate settling so that the integrity of the cover will be maintained. The permeability of the synthetic liner and compacted soil components of the cover will be equal to or less than the permeability of the side and bottom liners of the landfill.

102. The Closure Plan provides that leachate collection will continue throughout the closure period, and may be accomplished with automated pumping controllers and conveyance systems or by manual operation of pumps. Inspection of leachate collection sumps will be conducted in accordance with the Facility's Inspection Schedule. Leachate will be pumped out of the landfill to maintain a level of less than one foot on the bottom primary liner.

103. The Closure Plan provides for routine inspections and maintenance. Security systems and drainage controls will be maintained in good, functional condition. Recordkeeping

and reporting activities will be in accordance with applicable regulations and permit conditions.

104. Closure of Landfill Cell 50 is subject to the review and approval by the TCEQ.

105. Closure of Landfill Cell 50 accommodates Continuous Cells 43, 44, 45, and 46, which will receive interim cover. Once the aerial component of Landfill Cell 50 over Continuous Cells 43, 44, 45, and 46 commences, the interim cover will be removed in accordance with the Landfill Operations Plan. Final closure of Landfill Cell 50 incorporates Continuous Cells 43, 44, 45, and 46.

106. The Closure Plan contains a detailed written estimate of the cost for closing Landfill Cell 50 in accordance with the applicable closure requirements. The estimated closure cost of Landfill Cell 50 is $2,898,777.00. This closure cost estimate is based on the "worst-case" closure condition, which is assumed to occur when the maximum amount of fill material would be required to complete the landfill unit. The worst-case closure condition would occur after Subcell 50-1, 50-2, and the southern halves of Continuous Cells 43, 44, 45, and 46 have received final cover. At that time, the active disposal area would consist of Subcell 50-3 and the northern halves of Continuous Cells 43, 44, 45, and 46. The area of this active part of the landfill is approximately 606,000 square feet. Subcells 50-4 and 50-5 would be lined and empty, and would not have received contact stormwater runoff.

107. The Post-Closure Plan presents a post-closure plan and cost estimate for Landfill Cell 50.

108. The post-closure care activities required for Landfill Cell 50 include post-closure notices, site inspections and maintenance, site security, operation of leachate collection and leak detection systems, and certification of post-closure care.

109. The Post-Closure Plan establishes inspection requirements during post-closure care period for the final cap, landfill perimeter dike, stormwater runoff system, leachate collection and leak detection systems, site perimeter fence, and benchmarks.

110. Site security will be maintained throughout the post-closure period. The fence that surrounds the site will be maintained, and gates will be kept locked to prevent tampering. Monitoring well caps will also be locked.

111. At the end of the post-closure care period, a certification will be submitted to the TCEQ Executive Director by registered mail. The certification will state that the post-closure care period for the landfill has been performed in accordance with the specifications of the approved post-closure care plan and will be signed by USET and an independent engineer registered in the State of Texas. To facilitate this certification, USET will contract with one or more independent registered engineers to review the post-closure care activities and maintain documentation of those activities. Documentation supporting the independent engineer's certification will be maintained and provided upon request to the TCEQ Executive Director until such time as USET is released by the TCEQ from financial assurance requirements of post-closure care.

112. The Post-Closure Plan contains a cost estimate for completion of the post-closure care requirements for Landfill Cell 50 based on hiring a third party to conduct the post-closure care activities. The estimated 30-year post-closure care cost is $692,340, which is based on an annual cost of $20,980 with a 10% contingency for each ($23,078) over a 30-year period.

Compliance Plan

113. Groundwater in the UTZ and the second transmissive zone (STZ), a groundwater zone directly beneath the Stratum III clay, is currently monitored under the Compliance Plan.

114. Waste management units at the Facility, including proposed Landfill Cell 50, are surrounded and/or enclosed by a slurry wall.

115. The slurry wall provides effective and significant reduction in hydraulic transport in the UTZ.

116. The Facility has a Corrective Action System which includes: (1) a groundwater monitoring system consisting of background wells and point of compliance wells, and (2) corrective action system wells consisting of observation wells, recovery wells, and slurry wall monitoring wells.

117. Sampling results indicate that groundwater contamination at the Facility is well-defined and contained within the Facility boundary. Contamination is confined to the UTZ which is totally enclosed by the slurry wall. The monitoring wells completed in the STZ do not show any contamination in this zone.

118. Groundwater contamination has not been detected outside the slurry wall in either the UTZ or STZ.

119. Construction of Landfill Cell 50 will affect the location of five existing groundwater monitoring wells and one piezometer at the Facility.

120. Wells 13, 14, and W16 are corrective action observation wells that are currently used to monitor the western perimeter of the Facility. Wells 13 and 14 will be plugged and abandoned. Replacement wells 13A and 14A will be installed east of, and in close

proximity to, the current locations of wells 13 and 14. Well W16 will be plugged and abandoned.

121. Piezometer P1 will be plugged and abandoned as construction of Landfill Cell 50 progresses. This piezometer is only used to provide supplemental groundwater elevation data in the interior of the northwest area of the Facility where Landfill Cell 50 will be constructed. Monitoring wells in the vicinity of Landfill Cell 50 provide adequate groundwater elevation data without the use of this piezometer.

122. Well 6 is a point of compliance well inside the southern portion of the slurry wall and within the footprint of Landfill Cell 50. Well 6 will be plugged and abandoned to accommodate construction of Landfill Cell 50. Because Well 6 cannot be retained at its current location, a new well pair consisting of Well 6A and W15A will be installed approximately 750 feet southeast of the current location of Well 6. Well 6A will function as a point of compliance well like Well 6, and Well 15A will function as a background/slurry wall well.

123. Well W15 is a background/slurry wall well, which is located in the vicinity of the perimeter berm and Drainage Ditch No. 1. This well may require plugging and abandonment to facilitate construction and/or maintenance of this berm and Drainage Ditch No. 1. In the event that Well W15 must be plugged and abandoned, it will be replaced by Well W15B, which will be located approximately 50 feet south of Well W15's current location.

124. The proposed changes to the groundwater monitoring system to accommodate the construction of Landfill Cell 50 will not result in any reduction of groundwater monitoring wells at the Facility.

125. A construction certification report prepared by a qualified geologist or geotechnical engineer will be submitted to the TCEQ to document completion of the well plugging and replacement well installation activities in accordance with the requirements of the existing Compliance Plan.

126. The Application contains information provided by a licensed professional geoscientist delineating all faults within 3,000 feet of the Facility. There are no faults within 3,000 feet of the Facility.

Compliance History

127. USET's compliance history classification score is Average under Chapter 60 of the Commission's rules.

Allocation of Transcript Costs

128. Because the evidentiary hearing was scheduled to last more than one day, the ALJ ordered a transcript and required USET to pay the transcript costs, subject to allocation among the parties at the conclusion of the case.

129. The Ahlriches are senior citizens who live and operate a farm near the USET facility. USET is a corporate entity that has greater financial ability to pay costs.

130. The Ahlriches were the only protestants that participated in the hearing. Although some minor straying from the limited scope of issues occurred, the questioning of witnesses by the parties was generally to the point and directed toward relevant issues.

131. USET presented two witnesses in its direct case and recalled one of these witnesses for its rebuttal case. Mr. Ahlrich testified and called two other witnesses for brief testimony. The ED called two witnesses.

132. The extent of participation by all parties was appropriate and none of the parties unduly burdened the transcript with unnecessary questioning of witnesses. Although originally scheduled for three days, the parties completed the evidentiary hearing in one day.

133. All parties benefited from having a transcript, but as the party bearing the burden of proof, USET had the greatest potential benefit from an ability to cite and reassemble the information within the record.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the storage, processing, and disposal of industrial solid waste and hazardous waste and the authority to issue these Class 3 modifications to the Permit and Compliance Plan under TEX. HEALTH & SAFETY CODE ANN. § 361.061.

2. Notice was provided in accordance with TEX. HEALTH & SAFETY CODE ANN. §§ 361.079, 361.0791, 361.082, and 361.083 and 30 TEX. ADMIN. CODE Chapter 39, and affected persons were provided an opportunity to request a hearing on USET's application in the manner required by law. Proper notice of the hearing and the prehearing conference was given to affected persons pursuant to TEX. GOV'T CODE §§ 2001.051 AND 2001.052.

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

4. The Application was processed and the proceedings herein described were conducted in accordance with applicable law and regulations of the TCEQ and SOAH, and all applicable procedural requirements relating to notice, hearing, and due process of law were met.

5. The evidence in the record in support of the Application is sufficient to meet the requirements set forth in applicable law and regulations of the TCEQ for issuance of the Class 3 modifications to the Permit and Compliance Plan.

6. The Findings of Fact set forth herein are based on a preponderance of the evidence.

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

8. In accordance with 30 TEX. ADMIN. CODE § 305.44(a)(1), the Application was signed by a responsible corporate officer.

9. The evidence in the record is sufficient to meet the requirements of applicable law for issuance of the Class 3 modifications to the Permit and Compliance Plan, including the TEX. HEALTH & SAFETY CODE ANN. Chapter 361 and 30 TEX. ADMIN. CODE Chapters 305 and 335.

10. The contents of the Draft Permit and the Compliance Plan modification prepared by the Executive Director include all matters required by law.

11. The Draft Permit and Compliance Plan contain appropriate conditions to assure compliance with all applicable requirements of Chapter 361 of the TEX. HEALTH & SAFETY CODE and 30 TEX. ADMIN. Code Chapters 305 and 335.

12. In accordance with TEX. WATER CODE § 5.557, the Application satisfies all statutory and regulatory requirements applicable to the Class 3 modifications of the Permit and Compliance Plan.

13. The contents of the Draft Permit and Compliance Plan modification meet the requirements of TEX. HEALTH & SAFETY CODE ANN. § 361.087.

14. Pursuant to the authority of, and in accordance with applicable laws and regulations, the requested Class 3 modifications to the Permit and Compliance Plan should be granted.

15. Transcript costs should be allocated in full to USET.

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. The attached Class 3 Modifications to Permit No. HW-50052-001 and Compliance Plan No. CP-50052-001 are granted to U.S. Ecology Texas, Inc.

2. The Commission adopts the Executive Director's Response to Public Comment in accordance with 30 TEX. ADMIN. CODE § 50.117. Also in accordance with Section 50.117, the Commission issues this Order and the attached permit and compliance plan modifications as its single decision on USET's application. Information in the agency record of this matter, which includes evidence admitted at the hearing and part of the evidentiary record, documents the Executive Director's review of the permit amendment application, including that part not subject to a contested case hearing, and establishes that the terms of the attached Class 3 Modifications are appropriate and satisfy all applicable federal and state requirements.

3. USET shall pay 100% of the court reporting and transcript costs.

4. The Chief Clerk of the Commission shall forward a copy of this Order to all parties and issue the attached permit as changed to conform to this Order.

5. 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, are denied for want of merit.

6. 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.

7. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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