State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

September 26, 2011

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

Re: SOAH Docket No. 582-10-2069; TCEQ Docket No. 2009-2058-MSW; In Re: In the Matter of the Application of Republic Waste Services of Texas, LTD., For a Municipal Solid Waste Permit No. MSW-2356

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 Monday, October 17, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than Thursday, October 27, 2011.

This matter has been designated **TCEQ Docket No. 2009-2058-MSW; SOAH Docket No. 582-10-2069**. 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,

Richard R. Wilfong
Administrative Law Judge

RRW/cm
Enclosures
cc: Mailing List

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STYLE/CASE: **REPUBLIC WASTE SERVICES OF TEXAS**

SOAH DOCKET NUMBER: **582-10-2069**

REFERRING AGENCY CASE: **2009-2058-MSW**

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SOAH DOCKET NO. 582-10-2069
TCEQ DOCKET NO. 2009-2058-MSW

IN THE MATTER OF THE APPLICATION OF REPUBLIC WASTE SERVICES OF TEXAS, LTD., FOR A MUNICIPAL SOLID WASTE PERMIT NO. MSW-2356	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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SOAH DOCKET NO. 582-10-2069
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IN THE MATTER OF THE APPLICATION OF REPUBLIC WASTE SERVICES OF TEXAS, LTD., FOR A MUNICIPAL SOLID WASTE PERMIT NO. MSW-2356	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

I. INTRODUCTION

Republic Waste Services of Texas, Ltd. (Republic or Applicant) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for Permit No. MSW-2356 to construct and operate the Brazos Transfer Station, a Type V municipal solid waste transfer station approximately 1.5 miles west of the western edge of Fort Worth, in an unincorporated area of Parker County, near the cities of Aledo, Annetta, and Willow Park, Texas.

The Administrative Law Judge (ALJ) recommends that the Commission approve Republic's application and issue the permit.

II. PARTIES

At the March 10, 2010, preliminary hearing the following were granted party status:

Republic, Office of Public Interest Counsel (OPIC), Aledo Independent School District (Aledo ISD); Walsh Ranches, L.P., and ATH-1187, Ltd. (Walsh Aligned Parties); and Hal R. Ray, Jr., Willow Park Village Home Owners' Association, Paula and Robert Cox, Terry Cockerham, Wynne Clark, Russ Wood, John Menzies, and Michael Holland (Homeowner Protestants). Walsh Aligned Parties and Homeowner Protestants were each aligned for purposes of the hearing. Out of the group of Homeowner Protestants, only Hal R. Ray, Jr. and Robert Cox presented testimony at the hearing. TCEQ's Executive Director (ED) did not participate.

Republic appeared through Brent W. Ryan and Paul Tough, attorneys. Walsh Aligned Parties appeared through Eric Allmon and Mary K. Sahs, attorneys. Office of Public Interest Counsel (OPIC) appeared through Amy Swanholm, attorney. Hal R. Ray, Jr. and Robert Cox appeared *pro se*.

For convenience the parties opposed to Republic's application are sometimes referred to collectively as "Protestants."

III. JURISDICTION

No party contested either the Commission's or the State Office of Administrative Hearings' (SOAH) jurisdiction. Uncontested findings of fact and conclusions of law relating to jurisdiction are included in the attached Proposed Order without further discussion here.

IV. PROCEDURAL HISTORY

Republic's application to construct and operate the Brazos Transfer Station was filed on April 7, 2008. The TCEQ Executive Director (ED) determined the application to be administratively complete on May 29, 2008. The ED completed the technical review of the permit application on September 6, 2009, and issued the Notice of Application and Preliminary Decision for a New Municipal Solid Waste Permit (NAPD) on September 21, 2009. The NAPD was published on September 28, 2009, in the *Weatherford Democrat.* The public comment period ended on October 28, 2009.

On December 16, 2009, Republic requested that the matter be directly referred to SOAH for a contested case hearing. The ED's preliminary decision that the permit, if issued, meets all statutory and regulatory requirements and the ED's Response to Comments were issued on December 28, 2009. On January 6, 2010, the Commission referred the case to SOAH for a contested case hearing.

A preliminary hearing was convened on March 10, 2010, at the Aledo Community Center in Aledo, Texas. Parties were designated and a prehearing schedule was adopted. The hearing on the merits was convened by ALJ Richard R. Wilfong at the SOAH hearing facility in the William P. Clements State Office Building in Austin, Texas, on February 28 – March 4, 2011. The record closed on July 11, 2011, following receipt of the transcript, the parties' post-hearing briefs, and supplemental post-hearing briefs. On August 30, 2011, the record was reopened to allow Walsh Aligned Parties until September 16, 2011, to file objections to Republic's late-filed proposed findings of fact and conclusions of law, and to allow Republic to file any response within five business days thereafter.

V. BACKGROUND FACTS

The Brazos Transfer Station is proposed to be constructed within the L.B. Industrial Addition, an industrial subdivision located approximately 1.5 miles west of the western edge of the City of Fort Worth in the unincorporated area of Parker County near the cities of Aledo, Annetta, and Willow Park, Texas, approximately 0.3 mile southwest of the intersection of Nu Energy Drive and the eastbound frontage road of Interstate Highway 20 (IH-20).[1] The total area within the transfer station permit boundary is approximately 7.545 acres. The footprint of the transfer station building is approximately 9,360 square feet. The site will also contain a scale house, a platform scale, a citizen's recycling drop-off area, a water supply tank, a contaminated water holding tank, paved driveways and parking areas, drainage structures, landscaping and perimeter fencing and gates. All waste transfer will take place within the building.

The waste materials to be received for transfer to an authorized landfill will consist of residential and commercial municipal solid waste, wood and yard waste, construction and demolition waste, and Class 2 and Class 3 non-hazardous industrial waste. The facility will initially accept and transfer approximately 170 tons of waste per day. The volume of waste is expected to increase to a maximum of 1,000 tons of waste per day by 2030.[2]

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[1] Republic Ex. A-56; Republic Ex. A-74; Tr. at 98-99.

[2] Republic Ex. A-82, Sloan Direct Testimony at 4 and 6; Republic Ex. A-83.

Two overarching contested issues dominated the evidence and arguments in this proceeding: (1) whether the transfer station is compatible with existing and future land uses in the surrounding area, and (2) the impact of the transfer station on traffic and the adequacy of roadways and highways in the surrounding area.

VI. ISSUES

A. Whether the Proposed Brazos Transfer Station is Compatible with Existing and Future Land Uses.

The ALJ finds that the facts in evidence demonstrated that the proposed Brazos Transfer Station will be compatible with existing and future land uses in the surrounding area. In reaching that conclusion, the ALJ examined the criteria under 30 TEX. ADMIN. CODE (TAC) § 330.61(g) and (h), each the subject of evidence and argument presented by the parties.

> The Commission's rule at 30 TAC § 330.61(g) requires the operator to submit aconstructed map of the facility showing the boundary of the facility and any existing zoning on or surrounding the property and actual uses (*e.g.*, agricultural, industrial, residential, etc.) both within the facility and within one mile of the facility. The owner or operator shall make every effort to show the location of residences, commercial establishments, schools, licensed day-care facilities, churches, cemeteries, ponds or lakes, and recreational areas within one mile of the facility boundary. Drainage, pipeline, and utility easements within the facility shall be shown. Access roads serving the facility shall also be shown.

Subsection (h) of the rule establishes as a primary concern "that the use of any land for a municipal solid waste facility not adversely impact human health or the environment," and requires that the

> owner or operator shall provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest.

To evaluate the impact of the proposed facility on the surrounding area, the Applicant is required to provide:

- if available, a zoning map for the area within two miles;
- information concerning the character of surrounding land uses within one mile;
- information concerning growth trends within five miles;
- proximity to residences, schools, churches, and sites having exceptional aesthetic quality within one mile, including distances and directions to the nearest residences and commercial establishments; and
- all known wells within 500 feet.

The TCEQ rules do not specifically state that the TCEQ shall determine if the land use of a municipal waste facility is compatible with surrounding areas. However, TEX. HEALTH AND SAFETY CODE § 361.069 provides that the Commission "may, in processing a permit application, make a separate determination on the question of land use compatibility." Thus, it appears that TCEQ rules regarding the requirements of the land use analysis are meant to provide the Commission with the information needed to make a determination of land use compatibility.

1. Summary of the Parties' Positions

a. Republic

John Worrall, Republic's land use compatibility expert, holds a Bachelor of Science degree in Urban Studies from the University of Minnesota and an M.B.A. from the College of St. Thomas. He has more than 30 years of experience, including preparation of land use analyses for solid waste facilities throughout Texas, and he is a frequent expert witness in Municipal Solid Waste facility permitting cases. He evaluated the land use compatibility of the proposed Brazos Transfer Station and prepared a Land Use Analysis that contains his findings, including:

- The area within one mile of the transfer station site is bisected by IH-20 which runs east and west creating two separate identities. About 25 percent of the land area within one mile is north of IH-20 and it is mostly open, undeveloped land. The 75 percent of the land south of IH-20 is much more developed with residential, commercial, industrial, and other uses.

- 62% (1407 acres) of the total 2280.5 acres within one mile is open land and most of this is located on the north side of IH-20. Open land includes ranch land, agricultural property, vacant land, right-of-way, and floodplains.

- Slightly over 20% of the area within one mile of the site is residential, containing approximately 489 residences (the nearest is located on Shadow Creek Lane south of East Bankhead Highway, 650 feet south of the permit boundary and 1100 feet south of the transfer station building).

- Land uses categorized as "other" account for 159 acres (6.9 percent of the land within one mile) and includes the Aledo ISD school complex.

- There are estimated to be 112 commercial or industrial establishments, three schools (the nearest being 2700 feet south of the permit boundary), and one day care center within one mile of the site.

- The third largest land use category is industrial, encompassing 169 acres (7.4 percent of the land within one mile) located near the south side of IH-20.

- The transfer station site is located within the 169 acre industrial area.

- The industrial establishments bordering three sides of the transfer station site include, Duncan Disposal (owned by Republic) which provides parking and maintenance for waste collection trucks; two oil-field service companies; a pipeline terminal; a concrete plant; and a fuels/lubricants business. The property south of the transfer station site is vacant.[3]

- There are no historical sites or sites of exceptional aesthetic quality within one mile of the site.

- The site is in eastern unincorporated Parker County, approximately 1.5 miles west of the municipal limits of the City of Fort Worth; 0.4 miles north of the municipal limits of the City of Aledo; and 0.25 miles east of the municipal limits, but within the extraterritorial jurisdiction, of the City of Willow Park. Accordingly, the site is not zoned or subject to zoning,

[3] The land use in the industrial area surrounding the proposed transfer station site is characterized by outdoor storage of materials and equipment, large above-ground storage tanks containing petroleum products and acids used to frac wells, metal buildings, chain-link fences topped with barbed-wire, and heavy truck and equipment movement. Very few driveways or parking areas are paved, and there are no sidewalks or landscaping. Republic Exs. A-28 through A-32, A-89, A-102, A-103 and A-107.

> and no nonconforming use or special permit is required from any local government.[4]

Mr. Worrall testified that from a land use standpoint, the site of the proposed transfer station is good because it is (1) relatively distant from schools, (2) in the midst of an existing industrial area encompassing approximately 170 acres, and (3) has excellent access to IH-20 that will be used by the transfer trucks to move the municipal solid waste to an authorized landfill.[5]

Mr. Worrall's report included, among other things, an aerial photograph showing the area within one mile of the proposed site and a growth trends map showing the projected growth in the number of households in the area within five miles of the transfer station site.[6] According to Mr. Worrall, growth trends within the five-mile radius around the transfer station site are dominated by the proximity, size, and employment opportunities of Fort Worth. From 2000 to 2008, the population of Fort Worth increased from 534,694 to 702,850. By contrast, the nearby Cities of Aledo, Annetta and Willow Park combined grew by only 1,867 persons during the same time period. He further testified that the most significant growth will occur in western Tarrant County south of IH-30, and north of IH-20, then extending westward into Parker County along the north side of IH-20, also, within and immediately around Aledo. According to Mr. Worrall, much less growth is expected in the area around the transfer station site and extending to the west and southwest.[7]

Mr. Worrall further testified that traffic flow in the vicinity of the proposed transfer station was recently significantly enhanced by improvements made to FM 1187 north of Aledo, and by changing the IH-20 access roads from two-way traffic to one-way traffic. He also said there are additional plans to widen FM 1187 to four lanes, and in some places five and six lanes, and to make the East Bankhead Highway into a 4-lane divided highway.[8]

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[4] Republic Ex. A-20.

[5] Republic Exs. A-17, Worrall Direct Testimony at 11, and A-28 through A-32.

[6] Republic Exs. A-12, A-22, and A-27.

[7] Republic Ex. A-17, Worrall Direct Testimony at 4; Republic Ex. A-22.

[8] Republic Ex. A-17, Worrall Direct Testimony at 6; Republic Ex. A-25.

In Mr. Worrall's opinion the proposed Brazos Transfer Station's land use will be compatible with surrounding land uses in accordance with the criteria for such determination set forth in TCEQ rules.

b. Walsh Aligned Parties

Walsh Aligned Parties vigorously challenged the land use compatibility of Republic's proposed Brazos Transfer Station. In major part they relied on the opinions of two expert witnesses, Barry L. Hudson and James F. Neyens, and fact witness, Donald R. Daniel, superintendent of the Aledo ISD.

Mr. Hudson, Walsh Aligned Parties' expert on planning and land use compatibility, holds a Bachelor of Science degree in Architecture and a Master of City and Regional Planning, both from the University of Texas at Arlington, and has been certified for more than 24 years as a national planner by the American Institute of Certified Planners. Mr. Neyens was Walsh Aligned Parties' expert on a wide range of issues relating to the proposed transfer station, including land use compatibility and traffic impacts; however, he deferred to Walsh Aligned Parties' witness Mark Goode as having addressed traffic concerns in greater detail. Mr. Neyens holds a Bachelor of Science degree in Civil Engineering from the University of Iowa and is a licensed professional engineer in Texas. He is employed with TRC Solutions in Austin, Texas.

In support of their positions that the proposed site of the Brazos Transfer Station is an incompatible land use, Walsh Aligned Parties' witnesses contended that:

- Compatible land uses are similar industrial uses that also generate a large volume of truck traffic;
- Non-compatible land uses are single family residential, schools, churches, and public recreational open space areas such as athletic fields;[9]

[9] Walsh Ex. 53, Hudson Direct Testimony at 7.

- Within one mile of the transfer station site only 7.23 percent of the property is industrial, and only 2.38 percent is industrial within two miles;[10]

- School traffic involves children and they would be better off if significant truck traffic was not added to the roadways used to access the schools;

- The Aledo ISD main campus includes an elementary school, a ninth grade center, a special needs learning center, a high school, a stadium and other athletic fields;

- At its nearest point, the Aledo ISD campus is one-half mile from the transfer station site;[11]

- Approximately 2,000 teachers, staff, and students commute to the Aledo ISD campus on an average school day;[12]

- The school campus is only accessible from East Bankhead Highway and Bailey Ranch Road;

- The transfer station and its associated truck traffic is incompatible with the schools and with the residential land use in the area;

- The anticipated volume of truck traffic near the school campus constitutes an incompatible use;

- Concept plans for Walsh Ranch, Dean Ranch, and other planned residential developments north of IH-20 indicate that the dominant growth trend is low-density, single-family residential and commercial uses to serve the residents;[13]

- Future industrial uses will remain limited to primarily light industrial uses and will be limited to the industrial area around the proposed transfer station on the south side of IH-20;[14] and

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[10] *Id.*

[11] Walsh Ex. 22, Daniel Direct Testimony at 5.

[12] *Id.* at 11 and 16; Walsh Ex. 45 at 1.

[13] Walsh Exs. 55-58; Walsh Ex. 5, Neyens Direct Testimony at 22-25.

[14] Walsh Ex. 53, Hudson Direct Testimony at 11, 16.

- The majority of the open land in the immediate vicinity of the transfer station site is likely to develop for residential use.[15]

2. ALJ's Analysis

Based on the entirety of the evidence, the ALJ finds that Republic has adequately analyzed existing land uses within one mile and future land uses based on growth trends within five miles of the proposed transfer station site in accordance with TCEQ rule requirements. The ALJ also finds that a preponderance of the evidence demonstrates that the proposed Brazos Transfer Station constitutes a land use that is compatible with both existing and future land uses in the area.

a. Compatibility with existing land uses.

Based on the preponderance of the evidence the ALJ finds it beyond serious question that the proposed transfer station is compatible with existing land uses. In reaching this conclusion the ALJ considered:

- The transfer station site is in the heart of an industrial area that includes a concrete plant; heavy equipment operations and storage; the Duncan solid waste collection truck maintenance and storage facility; equipment manufacturing; a pipeline terminal and petroleum products tank farm; several oil-field service companies, including Frac Tech, which has large tanks for storage and dispensing acids, and operates dozens of trucks and heavy equipment used to frac gas wells; and a facility that disposes of hazardous oil-field wastes by underground injection.

- These industrial land uses predated the residential development and the expansions of the school campus that are now located the closest to the transfer station site and are the focus of Protestants' claims of incompatible land use.[16]

- The ED stated in response to comments that "while TCEQ rules require applicants to supply information regarding the location of schools, residences, and other local land uses as part of the application, there is no

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[15] Walsh Ex. 5, Neyens Direct Testimony at 20.

[16] Protestant Homeowners Ex. 1, Ray Direct Testimony at 3; Ex.2, Cox Direct Testimony at 3.

specific rule that establishes a minimum distance that a municipal solid waste facility must be from these land uses."[17]

- Although factually distinguishable in several respects, it is nonetheless notable that at least a dozen Texas transfer stations are located in closer proximity to schools than the proposed Brazos Transfer Station site.[18]

- Mr. Neyens admitted that locating a transfer station within one-half mile of a school and within 1,000 feet of a residential area, would be a compatible land use.[19]

- The design of the proposed transfer station, including extensive landscaping, is aesthetically pleasing.[20]

- All waste transfer will occur inside the building. No municipal solid waste will be disposed of on site, and none will remain there for more than several hours. Water used for cleaning the floor of the building will be transported off-site for disposal at an authorized facility.

- Enclosed transfer operations and state-of-the-art technology will be used to prevent the release of any pollutants or offensive odors.

- None of the property owners located closer to the transfer station than either the Aledo ISD campus, or the Protestant Homeowners, opposed the transfer station.

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[17] Republic Ex. A-112 at 15. The parties requested and were granted the opportunity to submit supplemental briefing regarding the June 17, 2011 opinion of the Austin Court of Appeals in *City of Waco v. Texas Commission on Environmental Quality*, No. 03-09-00005-CV, 2011 WL 2437669 (Tex. App – Austin, no pet.). Walsh Aligned Parties argued that the *City of Waco* opinion confirms that a document such as the ED's Response to Comments does not constitute competent evidence. Republic argued that the Court of Appeals made no ruling concerning the ED's Response to Comments concerning the application in that case. Rather, the Court ruled that specific statements in the ED's response to a hearing request regarding the distance from the Dairy to the City's drinking water intake could not, without further explanation, support an inference that assimilation and dilution of pollutants from the dairy would occur before water reached the drinking water intake. It was significant that the evidence relied on to deny the hearing request was not admitted during a contested case hearing. In the instant case, the ED's Response to Comments, Republic Ex. A-112, was admitted during the contested case hearing, and there was opportunity to admit contra evidence. Additionally, the ED's Responses to Comments concerned TCEQ rule requirements and whether the application included information required by TCEQ rules. Here we do not have a situation where facts are sought to be established solely from unsupported conclusions in a TCEQ document not in evidence. Thus, the ALJ affirms the bench rulings that Republic Ex. A-112 contains competent evidence in this proceeding.

[18] Republic Ex. A-36; Walsh Ex. 5, Neyens Direct Testimony at 22-25.

[19] Tr. at 835-836.

[20] Republic Exs. A-37 through A-40.

- Even in 2030, when the transfer station is projected to operate at its full 1,000 tons per day capacity, vehicles traveling to and from the transfer station will not exceed five percent of the traffic on any highway, and it will account for less than three out of 1,000 (less than 0.3 percent) of the vehicles using East Bankhead Highway.[21]

- Traveling to and from the transfer station, transfer trucks will only use Nu Energy Drive north of the transfer station site, the IH-20 access roads, and IH-20. Transfer trucks will never use Nu Energy Drive south of the transfer station, East Bankhead Highway, or Ranch House Road. Collection trucks will use Nu Energy Drive south of the transfer station and East Bankhead Highway only when working a collection route in that immediate area.[22]

- TCEQ's rules require the evaluation of various land uses to determine *compatibility*, they do not require, or even contemplate, *uniformity* of land uses in the area.

Considering the totality of the evidence the ALJ is persuaded by the preponderance of the credible evidence in the record that the proposed Brazos Transfer Station presents a land use that is compatible with existing land uses within one mile of the proposed transfer station site.

b. Compatibility with future land uses.

The ALJ concludes from the preponderance of the evidence that the proposed Brazos Transfer Station presents a land use that is compatible with future land uses considering prevailing growth trends within five miles. To reach this conclusion the ALJ considered:

- Notwithstanding Protestants' assertions to the contrary, it is apparent from the growth trends map presented by Mr. Worrall, and his discussion of the map, that he fully accounted for projected growth in the areas about which Protestants complain that growth trends were not presented or considered.[23] The ED likewise determined that the required information regarding growth trends was included in Republic's permit application.[24]

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[21] Republic Ex. A-47 at 17.

[22] Republic Ex. A-82, Sloan Direct Testimony at 5.

[23] Republic Ex. A-22; Tr. at 99-102.

[24] Republic Ex. A-112 item 18 at 16.

- The residential development projects, including the Ranch at Mary's Creek (now known as Morningstar Ranch) and Walsh Ranch, located more than a mile to the east of the proposed transfer station and north of IH-20, and Dean Ranch also located a mile to the east, but south of IH-20, have not commenced development.[25] Moreover, if the proposed residential development does occur, it is not likely to happen soon. Actual growth in the area has lagged projections considerably. Mr. Daniel testified that even in 2008-2009, development on the Beggs Ranch far north of IH-20 was not expected to occur before 2020, and that was before projections for slower growth throughout the area led the Aledo ISD to decrease its 2020 enrollment projections by 65%, from 20,000 students to 7,000 students.[26]

- As with all projections, it is speculative as to whether and when residential development will occur on the open land north of IH-20, and, even if it does happen, it will be separated from the Brazos Transfer Station by at least the current 8 lanes and 3 medians of IH-20 and by the other industrial land uses between the south side of IH-20 and the transfer station.[27]

- The future land use calculations prepared by the Walsh Aligned Parties' own expert, Barry Hudson, show that industrial uses will expand by more than 69 percent, enlarging the existing industrial area by nearly 100 acres, to cover more than 263 total acres of industrial land use.[28]

- When asked if some of his many opinions were better than others, Mr. Neyens admitted that some were better than others.[29] The ALJ concurs and finds as chief among his opinions that are not as good as others, his opinions concerning various parcels of vacant property in the industrial area near the transfer station site, claiming there is up to a 50 percent probability that they will be developed for residential use. When those properties were shown in Republic's virtual tour video of the area it was patently obvious that, contrary to Mr. Neyens' opinions, the probability of residential development on those properties is remote.[30]

- Further, Mr. Hudson acknowledged that the proposed transfer station site represents a compatible land use:

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[25] Walsh Ex. 57.

[26] Tr. at 654, 658-659.

[27] Walsh Ex. 57.

[28] Walsh Exs. 56 and 58.

[29] Tr. at 788.

[30] Republic Exs. A-102 and A-103.

Q: Do you consider a municipal solid waste transfer station to be an industrial use?
A: Yes.[31]
Q: If you were asked by a client to identify appropriate locations for an industrial use within the area shown on this map [Exhibit Walsh-57], what are the areas that you would identify for a new industrial use?
A: Within the areas that are purple.
Q: If the proposed Brazos transfer station site were not shaded with the dark diagonal lines, would you have colored that purple?
A: Yes, I would have.[32]

The ALJ concludes that from both a current land use and a growth trends perspective, the site selected for the proposed Brazos Transfer Station is excellent: (1) it is in a growing industrial area within reasonable proximity to areas where there will be significant demand for solid waste collection services; (2) the site is surrounded by uses with which it is clearly compatible (industrial activities); and (3) the transfer station can operate efficiently at the proposed site immediately off IH-20. Thus, based on the entirety of the record evidence, the ALJ finds that the Brazos Transfer Station is compatible with both existing land uses within one mile and future land uses based on growth trends within five miles.

B. Whether area roadways used to access the proposed transfer station are adequate for existing and expected volumes of traffic.

Based on the record evidence, the ALJ concludes that roadways in the vicinity of the proposed Brazos Transfer Station are adequate for existing and expected traffic volumes.

The rule at 30 TAC § 330.61(i) specifies the data and documentation an application must include regarding the status of the roads near the facility, including:

- The availability and adequacy of roads that will be used to access the site.
- The volume of vehicular traffic on access roads within one mile of the site, both existing and expected.

[31] Tr. at 1172.

[32] Tr. at 1169.

- The volume of traffic expected to be generated by the proposed facility on the access roads within one mile of the site.

Republic's evidence regarding the availability and adequacy of roads that will be used to access the Brazos Transfer Station, and the existing and expected traffic volumes on those roads, was presented by its witnesses, Robert Sloan and Brian Jahn.

Mr. Sloan is Republic's Operations Manager in Arlington, Texas, and was previously Republic's Operations Manager at its Duncan Brazos hauling company operation located immediately north of the proposed Brazos Transfer Station on Nu Energy Drive.[33] He testified that he became involved in the planning and permitting for the Brazos Transfer Station while he was the Operations Manager at Duncan Brazos.[34] During the four years that Mr. Sloan worked at the Duncan Brazos hauling company, he travelled on Nu Energy Drive, East Bankhead Drive, and the access road of Interstate 20 nearly every day. He observed truck traffic on those roadways, including Republic's trucks and trucks associated with the Frac Tech operation located immediately across Nu Energy Drive. He explained that Frac Tech is a business that supports well drilling and production for natural gas wells in the Barnett Shale area of North Texas in Parker and surrounding counties. They have eight or ten large metal buildings on their site; an office, shop, and warehouse building more than twice the size of the Duncan Brazos building, sheds, and other storage buildings. They also have a large tank and pipe rack where they store chemicals used in their well business. Most of their site is paved parking used for their fleet of service trucks, large, 18-wheeler tractor-trailer rigs with trailer mounted heavy equipment. Mr. Sloan testified that he often observed well over 100 large trucks working out of Frac Tech's facility and in total they would make dozens of trips per day coming and going from Frac Tech's yard.[35] During the time Mr. Sloan worked at Duncan Brazos, no problems were ever encountered relating to the capacity or condition of Nu Energy Drive, East Bankhead Highway, Ranch House Road, or the access roads of IH-20.[36] Accordingly, in Mr. Sloan's

[33] Republic Ex. A-82, Sloan Direct Testimony at 1; Tr. at 286.

[34] *Id.* at 3.

[35] *Id.;* Tr. at 287.

[36] *Id.* at 5-6.

opinion, the roadways near the Duncan Brazos facility were adequate for the use made of them by Duncan Brazos' and Frac Tech's vehicles.[37]

Mr. Sloan stated that the proposed Brazos Transfer Station will initially transfer about 200 tons of municipal solid waste per day, but as additional growth occurs, it is anticipated that the volume will increase to approximately 1,000 tons per day by 2030.[38]

Mr. Sloan explained that the collection trucks will use Nu Energy Drive, East Bankhead Highway, Ranch House Road, and the main lanes and access roads of IH-20. However, the collection trucks will not use Nu Energy Drive or East Bankhead Highway south of the transfer station unless they are working a collection route in that immediate area. Also, the transfer trucks will only use the main lanes and access roads of IH-20, and the northern end of Nu Energy Drive. They will not travel on Nu Energy Drive south of the transfer station, East Bankhead Highway, or Ranch House Road.[39]

Mr. Sloan also provided three tables, one each for 2010, 2020, and 2030, showing the number of vehicles that are expected to use the roadways in the area to access the transfer station.

Brian Jahn testified as Republic's traffic expert. He is with DeShazo, Tang & Associates, Inc., in Dallas, Texas. Mr. Jahn holds a Bachelor of Science degree in Civil Engineering from the University of Texas at Austin and is a registered professional engineer with over 24 years of experience conducting traffic studies and working as a traffic engineer. He is a member of the Texas section of the Institute of Transportation Engineers and has served as the Secretary-Treasurer, Vice-President, and President, of that organization. Mr. Jahn prepared the traffic study for the proposed Brazos Transfer Station and presented testimony with respect to that study.[40] He also testified that since he prepared the traffic study, plans have been finalized

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[37] *Id.*

[38] *Id.* at 4.

[39] *Id.* at 5.

[40] Republic Ex. A-45, Jahn Direct Testimony at 1; Republic Exs. A-46 and. A-47.

to improve FM 1187, making it a multi-lane divided highway, plus major intersection improvements at the FM 1187/East Bankhead Highway intersection and the FM 1187/Bailey Ranch Road intersection. He found that these changes will significantly improve and increase the capacity to move traffic along FM 1187 and the roadways that connect to it. He also explained that in contrast to most of the transportation planning projects that he has been involved with, the traffic volumes associated with the proposed transfer station, at an estimated 641 trips per day, are relatively insignificant. In comparison, one of the projects (Princeton 860) that he worked on will generate almost 51,000 trips per day, and even a single fast-food restaurant generates more than 1,000 trips per day. The following table illustrates his comparison of the traffic generated by various uses:

Land Use	Traffic Volume Generated (in trips per day)
Transfer Station	641
Fast-Food Restaurant	1,000
Restaurant	1,200
Retail Establishment	5,200
Supermarket	5,600

All of these other uses generate significantly greater volumes of traffic than the estimated 641 trips per day for the transfer station. Thus, Mr. Jahn opined that operation of the transfer station would not significantly impact area roadways, and the roadways that will be used to access the transfer station are adequate for the proposed use by waste hauling vehicles.[41]

Walsh Aligned Parties presented the testimony of Yetkin Yilditim concerning the adequacy of roadways, and the testimony of Mark Goode III concerning traffic impacts.

Yetkin Yilditim, Walsh Aligned Parties' expert on roadway adequacy, holds a Ph.D. in civil engineering from the University of Texas at Austin. He is a licensed professional engineer

[41] Republic Ex. A-45, Jahn Direct Testimony at 2-3.

and is the director of the Texas Pavement Preservation Center, and program manager for the Superpave and Asphalt Research Program at the University of Texas at Austin. Dr. Yilditim's testimony was limited to the adequacy of Nu Energy Drive. He did not address the adequacy of any other roadways in the vicinity of the proposed transfer station. He explained the distress survey that he prepared concerning Nu Energy Drive. He also described what is shown on a number of photographs of the Nu Energy Drive pavement and other exhibits to his prefiled testimony.[42] In his opinion, Nu Energy Drive was not designed to carry a significant amount of heavy vehicle traffic. The north portion of the road shows high level distress and any additional heavy load on this section will accelerate the deterioration of the road significantly.[43]

Based on this testimony, Walsh Aligned Parties, and OPIC urge that Republic's permit should be denied. However, the ALJ finds that Dr. Yilditim's pavement condition testimony ignores the reality that today, as they have for many years, Duncan's entire fleet of solid waste collection trucks, and Frac Tech's fleet of oil field service trucks and heavy frac equipment trucks, among others, use Nu Energy Drive for hundreds of trips every day. Additionally, Republic's photographs and video show the condition of Nu Energy Drive in actual use, and it appears to be serving its intended purpose in a satisfactory manner.[44] But more importantly, whatever the current condition of the Nu Energy Drive pavement, the ALJ agrees with Republic that the law does not support Walsh Aligned Parties' position. As the ED stated in response to comments:

> The TCEQ does not have jurisdiction in the permitting process to limit routes taken by commercial trucks, nor is the TCEQ the agency charged with regulating and enforcing traffic safety. The Applicant must comply with any generally applicable local city or county regulations or ordinances that are related to transportation. *See, e.g.,* 30 TAC § 305.122(c). If commercial trucks or other vehicles are observed operating in an unsafe manner, or if trucks are traveling on roads in violation of restrictions, this information may be reported to local law enforcement agencies. If roads need repair, this information should be reported to the appropriate city, county or state road maintenance department.[45]

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[42] Walsh Exs. 32, Yildirim Direct Testimony, and 34 through 45.

[43] Walsh Ex. 32, Yildirim Direct Testimony at 2 and 14-15.

[44] Republic Exs. A-31, A-102, A-103, A-106, and A-107.

[45] Republic Ex. A-112 item 15 at 13.

Evidence presented by Walsh Aligned Parties shows that Nu Energy Drive is a Parker County road.[46] The Texas Supreme Court has made it clear that once a county accepts a road, the Commissioner's Court has the duty maintain the road safe for public travel.[47] Thus, the ALJ believes it is reasonable to assume that Parker County will fulfill its lawful duty to maintain Nu Energy Drive suitable for safe public use, including vehicles traveling to and from the Brazos Transfer Station.

Mark Goode III is a traffic engineer and manager of the Dallas office of Dunnaway Associates, L.P. He holds a Bachelor of Science degree in Civil Engineering and a Master of Science degree in Engineering (Transportation), both from the University of Texas at Austin, and he is a registered professional engineer. His testimony criticized Mr. Jahn's traffic study in many ways:

- Mr. Jahn's traffic study estimated traffic volumes for 2010, 2020, and 2030, reflecting gradual increase in waste acceptance until acceptance of full capacity at 1,000 tons per day in 2030. According to Mr. Goode, the study should have assumed operation at full 1,000 ton per day capacity from day one.

- Mr. Jahn's only analysis of traffic impacts while operating at full capacity also assumes that improvements will be made to the affected roadways and intersections. According to Mr. Goode, the improvements do not exist today, and there is no basis to assume they will exist when the facility begins operating.

- The 1,000 tons per day maximum capacity is based on an annual average, thus over 1,000 tons could be accepted on a given day. According to Mr. Goode, Republic did not consider the effects of accepting volumes in excess of 1,000 tons per day.

- Mr. Jahn's traffic study assumes, based on the testimony of Mr. Sloan, that all fully loaded transfer trucks will head to a landfill located to the east. According to Mr. Goode, nothing in the draft permit limits the transfer trucks to landfill destinations to the east. Thus, it is possible that some of the transfer trucks could head west, and this possibility was not studied.

[46] Walsh Ex. 45.

[47] *City of San Antonio v. City of Boerne*, 111 S.W.3d 22 (Tex. 2003).

- Republic has promised that collection trucks will not be allowed to use Nu Energy Drive and East Bankhead Highway south of the transfer station unless working a collection route in that immediate area. According to Mr. Goode, this restriction is not contained in the draft permit.

- Mr. Jahn's traffic study presented 24-hour traffic volumes. According to Mr. Goode, the industry standard is to use peak hour or design hour volumes for interrupted intersections (intersections having stop or signal controls).

- Mr. Jahn has presented traffic information related to "links" (stretches of road between two intersections) in the area of the transfer station and failed to analyze impacted intersections. According to Mr. Goode, Mr. Jahn should have analyzed the impact on the intersection of the IH-20 east-bound frontage road and FM 1187 even though it is a little more than a mile from the transfer station site.

- Mr. Jahn failed to account for grades on the links he studied. According to Mr. Goode, much of the traffic associated with the transfer station will consist of heavy vehicles and the grades impact heavy vehicles more than normal passenger vehicles. Heavy vehicles have poorer operating capabilities with respect to acceleration, deceleration, and ability to maintain speed on upgrades.

- Mr. Jahn failed to account for an eight percent grade on the eastbound IH-20 frontage road. According to Mr. Goode, the eight percent grade will have a significant negative effect on the operational capabilities of the heavy vehicles associated with the transfer station.

- Mr. Jahn place unjustified reliance on future roadway improvements. According to Mr. Goode, some of the improvements may actually cause greater congestion on the roadways used by trucks exiting the transfer station, and it is unknown whether the improvements will ever be built.

- Mr. Jahn failed to adequately consider school traffic. According to Mr. Goode, many of the drivers traveling to and from school will be inexperienced teen-age drivers.

- Mr. Jahn erroneously assumed an 80,000 pound vehicle weight limit applied to all access roadways. According to Mr. Goode, his photograph shows the weight limit for the eastbound IH-20 frontage road at the intersection of FM 1187 is only 58,420 pounds.[48]

[48] Walsh Ex. 71.

Republic attacked the credibility of Mr. Goode. When Mr. Goode took the witness stand at the hearing for the admission of his prefiled direct testimony and exhibits, and for cross-examination, his prefiled testimony contained an error. The modeling of traffic impacts that he sponsored and relied upon for his testimony erroneously assumed that the eastbound IH-20 access road from the Ranch House Road intersection to Nu Energy Drive had a ten percent (up hill) grade when the actual grade of the roadway was a negative one percent (down hill).[49] When asked if he had any corrections or changes to make to his prefiled testimony before it was offered into evidence, Mr. Goode answered "no," and the testimony was admitted containing the error.[50] Republic claimed that Mr. Goode was made aware of the error when he was deposed several months earlier.[51] Thus, Republic further claimed that by not correcting the known error, Mr. Goode knowingly provided false sworn testimony that should be disregarded. Walsh Aligned Parties responded to Republic's perjury contention by asserting that the error was at most an inadvertent oversight having no significant consequence because the ten percent grade assumption did not change the modeling results.[52] To put the significance of a ten percent grade in perspective, parking garages are designed so that the ramps between floors are usually not more a five percent grade and never more than six percent.[53] Mr. Goode also testified that a grade of only eight percent "is significant enough to affect the operational capabilities of the heavy vehicles associated with the proposed transfer station."[54]

Giving Mr. Goode the benefit of the doubt, the ALJ assumes that the ten percent grade error in the model assumptions, and the failure to correct the error, were unintentional. However, it does appear that Mr. Goode was put on sufficient notice of a problem with his modeling assumptions during his deposition such that a reasonably prudent expert witness would have done further checking to confirm whether there was an error, and would have immediately

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[49] Walsh Ex. 64.

[50] Tr. at 1328.

[51] Republic Ex. A-111; Tr. at 1326.

[52] The Synchro 7 Model defaults to zero. Therefore, the ten percent grade had to be manually entered by the operator when the program was run. *See* Tr. at 1324.

[53] Tr. at 1049.

[54] Walsh Ex. 59, Goode Direct Testimony at 28.

corrected the error if it was found to exist.[55] The ALJ also finds that such errors and inattention to the accuracy of sworn testimony are uncommon and irregular for an expert witness having the level of experience and credentials of Mr. Goode.

Walsh Aligned Parties attempted to defuse the significance of the error claiming the ten percent grade assumption had no effect on the results of the modeling. Assuming this is true, if the Synchro 7 Model produces the same traffic impact whether the waste hauling trucks have to climb a ten percent up hill grade, or are traveling slightly down hill, the ALJ finds the model, and any results it produced, to be badly flawed and unreliable. Moreover, Mr. Goode's model is a direct contradiction of his testimony concerning significantly reduced truck performance caused by an 8 percent grade.

Republic further challenged Mr. Goode's credibility claiming economic bias based on his testimony that Walsh Ranch paid the Dunnaway Associates' Dallas office, managed by Mr. Goode, nearly $1 million for work performed in 2010, and has probably been Dunnaway Associates' largest client over the last ten years.[56] Although the ALJ finds apparent economic bias, the more important question is whether the bias was manifest in unreliable evidence. Thus, the ALJ considered the potential influence of the bias in judging the overall credibility and weight to be given Mr. Goode's testimony.

Additionally, Mr. Goode's prefiled testimony included a photograph of a 58,420 pound weight limit sign posted on FM 1187 near the intersection of IH-20, and his testimony suggested that notwithstanding the 80,000 pound weight limit on the IH-20 access road, the weight limit reduces to 58,420 pounds at the intersection where the IH-20 access road crosses FM 1187.[57] Based on close examination of the photograph of the sign, and the cross-examination of Mr. Goode with respect to the sign, it is apparent that the sign has no application to traffic

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[55] Republic Ex. A-111.

[56] Tr. at 1019 and 1022.

[57] Walsh Ex. 71. *See also* Walsh Ex. 5, Neyens Direct Testimony at 38. Mr. Neyens also mentioned the 58,420 pound weight restriction signs, but not being a traffic engineer like Mr. Goode, it is reasonable to assume he did not know that the restriction would not apply to waste hauling trucks passing through the intersection weighing approximately 80,000 pounds.

traveling on the IH-20 frontage road. Thus, the ALJ finds that Mr. Goode's insinuation that transfer trucks weighing up to 80,000 pounds when proceeding east on the IH-20 access road intending to merge onto IH-20, would suddenly encounter a 58,420 pound weight limit when they attempted to cross the intersection at FM 1187, lacked credibility and was disingenuous.[58] The ALJ also found reason to question Mr. Goode's credibility when in spite of his extensive experience and qualifications as a traffic engineer, he claimed to not know whether the Texas Department of Transportation had the authority to impose a weight restriction on a roadway that is part of the federal interstate highway system.[59]

Based on the preponderance of the credible evidence, the ALJ concludes that area roadways are adequate and traffic on the area roadways will not be significantly impacted by the operation of the Brazos Transfer Station.

C. Other Issues

1. Known wells within 500 feet of Proposed Transfer Station.

The rule at 30 TAC § 330.61(h)(5) requires the operator to provide a description and discussion of all known wells within 500 feet of the proposed facility, and well density may be considered for assessment of compatibility.

James Lawrence, a hydrogeologist with SCS Engineers, who has 25 years of experience in all aspects of Texas geology and hydrogeology, appeared for Republic and testified that he utilized water well information from state records obtained through searches conducted by GeoSearch and Atlas Environmental to determine known wells within 500 feet of the site of the proposed transfer station. He credited the search firms as having excellent reputations. However, he was not so complimentary of the accuracy of well location information, claiming it is often too vague to be useful and, in some cases, just wrong. He explained that based on his analysis of the information obtained from the two search providers it initially appeared that there

[58] Tr. at 1006-1010.

[59] Tr. at 1010.

may be as many as 18 wells. However, upon further evaluation he determined that only two known wells could be reasonably confirmed to be within 500 feet, the Frac Tech well located across Nu Energy Drive from the proposed transfer station, and the Duncan Brazos well located on property owned by Republic immediately north of the transfer station site.

Judy A. Reeves, a hydogeologist with Cirrus Associates, LLC, holds a Ph.D in Geosciences from Texas Tech. She testified on behalf of Walsh Aligned Parties. According to Dr. Reeves, Mr. Lawrence should have provided more comprehensive information. She also analyzed the GeoSearch data and concluded that as many as 137 wells existed within one mile of the transfer station site. She further faulted Republic for not providing a well report with well logs for wells within 500 feet or a well report without well logs for the area within one mile.

Republic argued that considering the number of wells within one mile is simply not envisioned by the TCEQ rule. Republic further responded that even if more wells were present within 500 feet of the proposed transfer station that would not change Mr. Lawrence's opinion that, from a geologic standpoint, the site is well suited for a transfer station. Kevin Yard, Republic's project engineer, similarly testified that if there were as many as 18 water wells within 500 feet it would not change his design work for the transfer station.

The ALJ finds, based on the preponderance of the evidence, that well density is simply not a factor adversely affecting the land use compatibility of the proposed transfer station site.

2. Groundwater and Surface Water

The rule at 30 TAC § 330.61(k) requires the operator to submit data about: (1) site-specific groundwater conditions at and near the site; (2) surface water at and near the site; and (3) compliance with Texas Pollutant Discharge Elimination System storm water permitting requirements.

Walsh Aligned Parties and OPIC rely on the testimony of Dr. Reeves and Mr. Neyens that operation of the transfer station will present risks of surface water contamination as a result

of leaks and spills outside the transfer station building when waste liquids are tracked outside by foot or by vehicle tires, or by spills, ruptures, or overfills from the contaminated liquids storage tank.[60] Dr. Reeves also criticized Republic for failing to adequately consider potential pathways by which surface contaminants could travel into groundwater.[61]

Republic's project engineer was Kevin Yard with SCS Engineers. He holds a Bachelor of Science degree in Civil Engineering and a Master of Environmental Engineering degree and has 27 years of experience working with TCEQ rules applicable to municipal solid waste facilities. He testified that the Brazos Transfer Station meets or exceeds all applicable permitting requirements for a Type V municipal solid waste transfer station.[62] According to Mr. Yard, none of the claimed risks of contamination of surface water pose a reasonable likelihood of contaminating surface water as each will be controlled by various aspects of the design or operation of the facility, including several site specific plans: the Surface Water Drainage Plan, the Contaminated Water Management Plan, the Water Pollution Control Plan, and the Erosion and Sediment Control Plan. Republic argued that these control plans are sufficient evidence of proper and effective pollution control measures.[63] Republic further explained that the spill containment design of the contaminated liquids holding tank will prevent any release of contaminants.[64] Additionally, Republic referred to TCEQ rule 30 TAC § 330.105, which requires compliance measures to prevent leakage of liquid waste, oil, or coolant from waste hauling vehicles. Republic also explained that it has prepared and submitted a TCEQ Storm Water Pollution Prevention Plan that comprehensively addresses facility design and operation to prevent surface water contamination.[65] Regarding potential pathways for contaminants to migrate to groundwater, Mr. Lawrence testified that TCEQ rules do not require such an analysis and there is no record of transfer stations impacting groundwater.[66]

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[60] Walsh Exs. 5, Neyens Direct Testimony at 48; and 46, Reeves Direct Testimony at 18.

[61] Walsh Ex. 46, Reeves Direct Testimony at 19-20.

[62] Republic Ex. A-60, Yard Direct Testimony at 4..

[63] *Id.* at 12; Republic Ex. A-75

[64] Republic Ex. A-78.

[65] Republic Ex. A-105.

[66] Tr. at 254-255.

Based on the record evidence, the ALJ finds that Republic has satisfied the requirements of 30 TAC § 330.61(k).

3. Sanitation (water supply and wastewater disposal)

Walsh Aligned Parties argued that Republic failed to provide sufficient information in the Site Development Plan and the Site Operating Plan showing that water supply and means of sanitary wastewater disposal are available at the proposed transfer station site. They claimed that TCEQ rules require evidence of sufficient water supply to wash parts of the facility that come into contact with waste, for sanitary facilities such as restrooms for employees and visitors, and for fire protection. They contended that TCEQ rules also require information regarding the specific means that will be used for disposal of sewage from employee restroom facilities, which Republic failed to provide and simply addressed by stating that until such time as public sanitation services are provided by a local utility, domestic wastewater will be disposed of at the existing aerobic treatment system on the adjacent Duncan Brazos property.

Republic responded that there is no requirement that water supply for the transfer station be addressed as part of this proceeding before the permit is issued. Kevin Yard, the project engineer for the Brazos Transfer Station, testified that it is common for a proposed new municipal waste facility to obtain additional permits and approvals beyond the TCEQ municipal solid waste permit before construction or operation of the facility. He mentioned, by way of example, that approvals or permits required for storm water pollution prevention, air emissions, building permits, water well permits, and On-Site Sewage Facility (OSSF) permits are typically obtained after issuance of the TCEQ MSW permit.[67]

The TCEQ Executive Director addressed other potentially required approvals by stating:

> If the permit is issued, the Applicant will be required to obtain all necessary permits as required by 30 TAC § 330.67(d) [regarding permits or approvals

[67] Tr. at 1284-1285.

required by local agencies], however, the Applicant is not required to obtain these permits prior to a permit being issued.[68]

Subsequent to the hearing, Republic entered into an Amended Water Service Agreement with the City of Willow Park for water service to the Brazos Transfer Station, and it obtained an OSSF permit from Parker County for the Brazos Transfer Station restroom facilities provided for employees and visitors. The record was reopened to include these documents.[69]

The ALJ finds no deficiency in Republic's MSW permit application for the Brazos Transfer Station relating to water supply or wastewater disposal.

4. Easements and Buffer Zones

The rule at 30 TAC § 330.543 states that "no solid waste unloading, storage, disposal, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the facility." The rule also provides that no solid waste disposal may occur within 25 feet of the centerline of any easement. The easements located on the Brazos Transfer Station site are shown on Drawings 1A and 1B in the Site Development Plan.[70] They include perimeter utility easements and three pipeline easements shown as the Diamond Shamrock, Carswell Pipeline Company, and Gulf Refining easements.[71] According to Republic, all municipal solid waste transfer will occur within the transfer station building that will not be located within any easements. Therefore, no solid waste unloading, storage, disposal, or processing will occur within any of the easements.

With regard to buffer zones, Republic explained that buffer zones will range from approximately 95 feet (to the west) to more than 400 feet (to the south), which is far greater than the required 50 feet.[72]

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[68] Republic Ex. A-112 item 52 at 36.

[69] Republic Exs. A-115 and A-116.

[70] Republic Ex. A-74.

[71] The Diamond Shamrock easement is now owned by Conoco Phillips.

[72] *Id.*; Republic A-73 and A-79.

Walsh Aligned Parties argued that Republic has failed to provide sufficient detailed information concerning the easements to satisfy the rule requirements. Specifically,

- The drawings do not show the transfer station building;
- The width and centerline of the easements are not shown;
- Some of the maps showing the easements were not prepared by a licensed surveyor; and
- None clearly show the required 25-foot buffer for solid waste disposal.

Thus, Walsh Aligned Parties contended that Republic failed to meet it burden of proof.

Republic responded that Walsh Aligned Parties' contentions are based on a misapplication of TCEQ rules and a failure to consider all the relevant record evidence. For example:

- the 25-foot buffer required for solid waste disposal does not apply to the Brazos Transfer Station because no solid waste disposal will occur there;
- Republic Ex. A-56 is the final plat for the entire L.B. Industrial Addition; Republic Ex. A-81 is the survey of the entire transfer station site, and both were prepared by a licensed surveyor;
- The width of the Gulf Refining and Diamond Shamrock easements are shown on Drawing 1B;
- When shown Drawing 1B, Conoco Phillips (successor in interest to Diamond Shamrock) indicated they had no concerns regarding the proposed transfer station being built on the site.

Based on the evidence, and the arguments of the parties, the ALJ concludes that Republic has sustained its burden to show that solid waste will not be unloaded, stored, or processed within an easement.

5. Air and Odor

Martha O'Brien, Republic's expert on air and odor issues works with Odor Science & Engineering, Inc. She holds a Bachelor of Arts degree in Biology and a Master of Science degree in Public Health—Environmental Health. She has over 20 years of experience had has served several terms as Chairman of the Air & Waste Management Association's Odor Committee.[73] Ms. O'Brien prepared Republic's Odor Management Plan.[74] The Odor Management Plan addresses the prevention of nuisance odors from leaving the boundary of the transfer station, surrounding land uses, wind, the adequacy of on-site buffer zones, airflow in the transfer station building, training and awareness of the transfer station personnel concerning odor issues, routine odor management practices, routine cleaning, measures for dealing with occasional higher level odors, and the proposed neutralizing spray system.[75] She testified that because the potential for nuisance odor conditions is generally lower for a municipal solid waste transfer station than for many other types of facilities, and because of the location and site characteristics and operational plans for the Brazos Transfer Station, it was her opinion that the facility likely would not need to use any add-on control, including the planned spray neutralizing system, to control odors and prevent the occurrence of nuisance odor conditions.[76]

Walsh Aligned Parties presented only minimal evidence lacking adequate scientific support to contradict the sufficiency of Republic's Odor Management Plan.[77] Rather, they made broad sweeping arguments, unsubstantiated by persuasive scientific evidence, contending that Republic failed to satisfy applicable regulatory requirements.

The ALJ finds that Republic has satisfied all rule requirements relating to air and odor control and further demonstrated that its Site Operating Plan and Odor Management Plan are adequate to control odors and prevent nuisance odor conditions.

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[73] Republic Ex. A-58.

[74] Republic Ex. A-59.

[75] *Id.*

[76] Republic Ex. A-57, O'Brien Direct Testimony at 2.

[77] Walsh Ex. 5, Neyens Direct Testimony at 54-57.

6. Internal Roads and Access

The rule at 30 TAC § 330.237 addresses internal (facility access) roads:

§330.237. Facility Access Roads.

(a) All-weather roads shall be provided within the facility to the unloading area(s) designated for wet-weather operation. The tracking of mud and debris onto public roadways from the facility shall be minimized.

(b) Dust from on-site and other access roadways shall not become a nuisance to surrounding areas. A water source and necessary equipment or other means of dust control shall be provided.

(c) All on-site and other access roadways shall be maintained on a regular basis. Access roadways shall be re-graded as necessary to minimize depressions, ruts, and potholes.

Republic's project engineer, Kevin Yard, testified that Exhibit A-79 is the Site Operating Plan for the proposed Brazos Transfer and that it was prepared under his supervision and control.[78] Section 14 of the Site Operating Plan provides that:

-All roads used within the site by incoming vehicles will be paved with reinforced concrete or asphalt to minimize the tracking of mud and trash onto public roadways. However, in the event mud and debris are being tracked onto the public roadway, it will be removed.

-During periods of dry weather, on-site roads will be swept using a mechanical sweeper to control dust.

-On-site roads will be inspected monthly and maintained on a regular basis.

-Litter and other debris will be picked up and taken into the transfer station for loading onto trailers at least once per day on days the facility is in operation.[79]

Rule 30 TAC § 330.223 addresses access control:

§330.223. Access Control.

(a) Public access to all municipal solid waste facilities shall be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate

[78] Republic Ex. A-60, Yard Direct Testimony at 1 and 14.

[79] Republic Ex. A-79 at IV-14.

to protect human health and safety and the environment. Uncontrolled access to other operations located at a municipal solid waste facility shall be prevented.

(b) The facility access road from a publicly owned roadway must be at least two-lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for commercial collection vehicles and for residents must be provided. The access road design must include adequate turning radii according to the vehicles that will utilize the facility and avoid disruption of normal traffic patterns. Vehicle parking must be provided for equipment, employees, and visitors. Safety bumpers at hoppers must be provided for vehicles. A positive means to control dust and mud must be provided.

(c) Access to the facility must be controlled by a perimeter fence, consisting of a four-foot barbed wire fence or a six-foot chain-link fence or equivalent, and have lockable gates. An attendant shall be on-site during operating hours. The operating area and transport unit storage area shall be enclosed by walls or fencing.

Section 14 of the Site Operating Plan states:

As indicated on Part III, Drawing No. 1B, access to the entire perimeter of the transfer station property will be controlled by perimeter fences, lockable gates and other structures. At a minimum, the perimeter fence will be comprised of a four-foot barbed wire fence or a six-foot chain-link fence or equivalent.

Vehicle access to the transfer station will be controlled by gates at the site entrance. Personnel on duty will control access to the site during operating hours. Outside operating hours, the gates will be locked to prevent unauthorized vehicle access. The perimeter fence and gates will be inspected daily for damage. In the event the fence and/or gates have been damaged, they will be repaired as soon as practicable.

The on-site road from Nu Energy Drive to the transfer station will be a paved, all-weather road. Pavement options for the entrance road include asphalt and concrete. The on-site entrance road will be designed with adequate turning radii according to the vehicles that will utilize the facility. Vehicle parking will be provided for transfer trailers, employees, and visitors. Safety bumpers within the loading tunnel will be provided for vehicles, as appropriate.

It is Republic's policy to restrict entry to the site only to Republic personnel, solid waste haulers authorized to use the facility, TCEQ personnel, and properly identified persons whose entry is authorized by the facility/transfer station manager. Republic reserves the right to restrict access to the site to persons not demonstrating a legitimate purpose for visiting. Unless otherwise authorized by

> Republic management, visitors are allowed only when accompanied by a Republic representative.[80]

Walsh Aligned Parties claimed the pipeline easements that bisect the Brazos Transfer Station site limit the useable space for on-site roads to only about one-half the area, resulting in over-crowded conditions and conflicting traffic flows and making the facility dangerous and especially not user-friendly for citizens wishing to use the recycling drop-off, because they will have to compete with large trucks on roads having tight turns.[81] Additionally, they claimed that the Site Operating Plan fails to assign any personnel responsible for the recycling area. Mr. Neyens testified that the transfer station would be a safer facility if the citizens recycling center was located elsewhere.[82] However, he did not concede that relocating the recycling drop-off would eliminate the safety issues attributable to the over-crowded site. Walsh Aligned Parties also contended that Republic should be required to "wet" sweep the roadways during dry weather to further prevent particulate pollution and to prevent dust from becoming a nuisance.[83]

Republic responded to the criticism of conflicting on-site traffic patterns between types of trucks and with the traffic of the general public by noting that the waste collection and transfer trucks only share one thing – the entrance to the facility.[84] Otherwise, the collection and transfer trucks will follow different paths on separate on-site roads.[85] Republic further acknowledged that Walsh Aligned Parties' greatest concern focused on Republic's voluntary incorporation of a citizens recycling center at the proposed facility.[86] Republic disagreed that the recycling center presents any traffic safety issue. It pointed out that the location was dictated by the TCEQ rule that requires access control, resulting in very few location options.[87] Although Republic

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[80] Republic Ex. A-79 at IV-9. The Part III, Drawing No. 1B referenced in the Site Operating Plan is the Site Layout Plan.

[81] Walsh Ex. 5, Neyens Direct Testimony at 45-47.

[82] Tr. at 842.

[83] Tr. at 59

[84] Republic Ex. A-74 at 1B.

[85] *Id.*

[86] Locating the citizens recycling center within the transfer station permit area is not required by any TCEQ municipal solid waste rule.

[87] Tr. at 519-520.

indicated willingness to employ every reasonable means to assure safe access to the citizen's recycling center, it was also apparent that it viewed the recycling center more as a public accommodation than a transfer station benefit.[88]

The ALJ finds the evidence persuasive that Republic's Site Operating Plan satisfies TCEQ rule requirements for internal roads and access control, except for dust control during roadway sweeping and the hazards to citizens desiring to use the recycling center. Thus, the ALJ recommends that Republic be required to utilize "wet" sweeping or other effective means to control particulate pollution during the sweeping of internal roadways. Considering that:

- Locating the citizen's recycling center at the transfer station is not a rule requirement;
- Protestants believe the transfer station would be safer if the recycling center was located elsewhere; and
- Republic is indifferent as to where the recycling center is located;

The ALJ recommends that the citizen recycling center be removed from the Brazos Transfer Station site plan. Notwithstanding this recommendation, it appears that locating the citizen's recycling center at the transfer station could be subsequently addressed by the ED through a minor permit amendment, if that was deemed the best alternative consistent with the public's safety and convenience.

7. Site Operating Plan

Much has already been said regarding Republic's Site Operating Plan, but Walsh Aligned Parties further contended that because the Site Operating Plan will constitute enforceable provisions of the permit, it must be clear and sufficiently specific to allow enforcement by TCEQ if the need arises. Walsh Aligned Parties cited a 2002 decision of the Austin Court of Appeals holding that simply parroting rules and plans to develop plans is not adequate.[89] Walsh Aligned Parties illustrated the criticality of having a specifically enforceable Site Operating Plan by using

[88] *Id*; Tr. at 842-843.

[89] *BFI Waste Systems of North America, Inc. v. Martinez Environmental Group, et al*, 93 S.W.3d 570 (Tex. App. Austin 2002, pet denied).

windblown waste as an example: Windblown waste off site is not a violation of TCEQ rules; however, it is a violation if the operator fails to comply with its plan for minimizing windblown wastes and the result is windblown wastes off site. Walsh Aligned Parties also claimed that Republic's Site Operating Plan lacks adequate specificity concerning fire protection, facility screening, and staffing levels.

Republic, on the other hand, claimed its Site Operating Plan more than meets all applicable requirements. With respect to the highlighted concern with windblown wastes, Republic enumerated the specific operating procedures that address the prevention, control, and collection of windblown material and litter:

- Collection vehicles will be completely enclosed or covered as they enter and exit the site. Vehicles will also be completely enclosed or covered before leaving the facility (this would include transfer vehicles, which arrive at the site empty). The adequacy of the covers or containment for incoming wastes will be checked at the scale-house.

- Republic will display signage at the facility's entrance to ensure that all loads are properly covered. Vehicles without adequate cover will be applied a surcharge. Both of these operating procedures are intended to discourage uncovered or uncontained collection vehicles from entering the facility.

- All municipal solid waste transfer operations will occur inside the transfer station building, which is protected from the wind.

- On-site litter will be collected from the transfer station property, including perimeter fences, at least once per day on days when the facility is in operation.

- On a daily basis when the facility is in operation, facility personnel will inspect Nu Energy Drive and the frontage road to IH-20 for a distance of two miles in either direction from the site entrance. If materials are found that have been spilled on these roads, the materials will be cleaned up and delivered to the transfer station, assuming they are suitable for disposal at the site. In addition, the manager of the transfer station will confer with Parker County and the Texas Department of Transportation concerning cleanup of Nu Energy Drive and the IH-20 frontage road (within two miles of the transfer station).

- The entire perimeter of the transfer station property will also be controlled by perimeter fences, lockable gates and other structures.[90]

According to Republic, these detailed and extensive operating procedures more than adequately demonstrate compliance with 30 TAC 330.233 requirements for controlling windblown material and litter.

Regarding fire protection, Republic noted that 30 TAC 330.221 has three requirements and each is specifically addressed in the Fire Protection Plan in the Site Operating Plan.[91] An adequate supply of water under pressure for firefighting purpose will be available. Specifically, firefighting water will be supplied to a water supply tank on the transfer station site, and the tank will be connected to a pump system that will convey water under pressure to a standpipe and hose reel located within the transfer station building. The tank and pump system will have a minimum capacity of 15,000-gallons and a 500 gallon per minute flow rate, consistent with a Class III system as specified under National Fire Protection Association fire codes. In addition to the standpipe and hose reel, the major machinery at the transfer station will be equipped with fire extinguishers and at least four additional fire extinguishers will be mounted inside the transfer station at visible and readily available locations. Each fire extinguisher will be fully charged and ready for use at all times. A qualified service company will inspect the extinguishers on an annual basis. Additional inspections and recharging will be performed following each use. The Fire Protection Plan also addresses fire prevention procedures and specific fire fighting methods. It also specifically describes the sources of fire protection (water tank, hose, and fire extinguishers) and procedures for using the fire protection sources, and it requires employee training and safety procedures, including specific local fire department contact information. Thus, according to Republic, its Fire Protection Plan fully complies with the three general fire protection requirements found in 30 TAC 330.221.

Regarding facility screening, Republic argued that 30 TAC 330.239 only requires that Republic "provide screening or other measures to minimize noise pollution and adverse visual impacts." In this case, where all waste management activities will occur inside a building, no

[90] Republic Ex. A-79.

[91] Id. at IV-8.

additional measures would be required by the rule. With regard to any concerns associated with the landscaping plan for the transfer station. Republic responded that landscaping is not specifically required by rule, and Republic's land use expert, John Worrall, testified that screening or visual enhancement was not necessary to ensure that the proposed transfer station will be compatible with nearby land uses.[92] However, Republic pointed out that it nonetheless required that a landscaping plan be prepared and incorporated into its Site Operating Plan.[93]

Regarding the transfer station staffing levels, Republic argued there are no applicable site operating rules, but the Site Operating Plan specifically states that the facility will have: a transfer station manager, an assistant manager/lead operator, equipment operators, gate attendant, and laborers. Republic also assured that the level of staffing will be maintained as necessary for actual business volumes.[94]

Based on the preponderance of the evidence the ALJ finds that the Brazos Transfer Station Site Operating Plan fully satisfies all rule requirements.

8. Waste Acceptance Plan

Walsh Aligned Parties contended that Republic failed to provide a waste acceptance plan as required by 30 TAC §§ 330.61(b) and 330.203.[95] Republic argued that Walsh Aligned Parties assertions are simply wrong. It referred to Section 4 of its Site Operating Plan entitled "Waste Acceptance," which it claimed includes the very information that Walsh Aligned Parties said was missing. Republic stated that its Waste Acceptance Plan is fully compliant with TCEQ rule requirements, as confirmed by the ED.[96]

The ALJ agrees with Republic that it has provided an acceptable Waste Acceptance Plan in accordance with TCEQ rules.

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[92] Republic Ex. A-17 at 12.

[93] Republic Ex. A-79 at IV-15; A-37.

[94] *Id.* at IV-2.

[95] Walsh Ex. 5, Neyens Direct Testimony at 44.

[96] Republic Ex. A-112, item 20 at 17.

9. Endangered and Threatened Species

The rule at 30 TAC § 330.551(a) provides that the Brazos Transfer Station must not be located or operated so as to result in the destruction or adverse modification of critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. Walsh Aligned Parties argued that Republic failed to meet its burden to prove compliance with this rule.

C. Keith Bradley with KBA EnviroScience, Inc. was Republic's expert witness concerning endangered species. He holds a Bachelor of Science degree in Biology from the University of South Florida and a Master of Science degree in Environmental Science from the University of Texas at Dallas, and he has over 34 years experience as an environmental scientist.[97]

Walsh Aligned Parties acknowledged that Mr. Bradley was capable of performing an adequate investigation for endangered species, but inexplicably failed to do one in this case. Republic asserted, on the contrary, that the threatened and endangered species habitat evaluation report prepared by KBA EnviroScience, Inc., satisfies all applicable rule requirements.[98] Mr. Bradley testified to his opinion that neither the construction of the Brazos Transfer Station nor its operation will cause or contribute to the destruction or modification of critical habitat or the taking of any endangered or threatened species because no critical habitat exists on the proposed transfer station site. He based his opinion on his review of the Texas Parks and Wildlife Department's list of threatened or endangered species for Parker County and his failure to find any of these on his visit to the site. Further, because of the nature of the site and surrounding area and the lack of suitable habitat, none of the threatened or endangered species would use the site or be impacted by the proposed Brazos Transfer Station.[99] Consequently,

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[97] Republic Ex. A-41 Bradley Direct Testimony, through A-44.

[98] Republic Ex. A-43,

[99] Republic Ex. A-41 Bradley Direct Testimony at 5.

Mr. Bradley was of the opinion that the Site Operating Plan for the transfer station did not need to include any criteria to protect any endangered species.[100]

Based on the evidence the ALJ concludes that the endangered species investigation and report prepared by KBA EnviroScience, Inc., adequately supports the conclusion that due to the absence of critical habitant or any threatened or endangered species, no species protection plan is needed for the Brazos Transfer Station.

10. Apportionment of Transcript Costs

The factors to be considered to determine the appropriate allocation of reporting and transcription costs are set forth in 30 TAC § 80.23(d)(1):

(A) the party who requested the transcript;

(B) the financial ability of the party to pay the costs;

(C) the extent to which the party participated in the hearing;

(D) the relative benefits to the various parties of having a transcript;

(E) the budgetary constraints of a state or federal administrative agency participating in the proceeding;

(F) in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and

(G) any other factor which is relevant to a just and reasonable assessment of costs.

Republic argued that when these specifically enumerated factors, and others relevant to a just and reasonable assessment of costs are considered, all of the $7,465.00 reporting and transcription costs, should be assessed to the Walsh Aligned Parties because they have the financial ability to pay the costs and their actions and evidence were largely unhelpful in assisting the ALJ and the Commission in deciding this matter. Republic stated that the actions of

[100] *Id.*

Walsh Aligned Parties resulted in the hearing lasting longer than it otherwise would have, thereby increasing the cost of the transcript.[101]

Conversely, the Walsh Aligned Parties asserted that Republic should be assessed all of the transcription costs because Republic is part of a national company with multiple facilities across the State of Texas and with the financial ability to pay all transcript costs. According to Walsh Aligned Parties, they did not unreasonably burden the transcript with inefficient cross-examination. Rather, their level of participation in the hearing was appropriate in light of their interests in protecting the status quo that is impacted by the decisions at issue. Walsh Aligned Parties cross-examined Applicant's witnesses for only two days out of the five-day hearing; Republic cross-examined other parties' witnesses for three days, and also presented a rebuttal case.

Walsh Aligned Parties further contended the equities in this matter also weigh in favor of assessing transcript costs against Republic. Historically, the Commission has assessed transcript costs against the permittee in order to avoid punishing the public for simply exercising their rights to participate in TCEQ's decision process. Moreover, Republic has substantially more to gain by having a transcript than other parties. If approved, Republic's permit would provide them a revenue stream for decades. Comparatively, if the application is not approved, Walsh Aligned Parties will have simply maintained the status quo.

Walsh Aligned Parties further argued that aside from financial reasons, applicants have more need for a transcript than other parties because they have the burden of proof in contested case hearings pursuant to 30 TAC § 80.17(a).

After considering the parties' arguments in light of the factors in 30 TAC § 80.23(d)(1), and the ALJ's Order No. 25 recommending sanctions concerning Republic's late-filed proposed

[101] Republic Ex. A-114.

findings of fact and conclusions of law, the ALJ recommends that the Commission allocate 100 percent of the $7,465.00 transcription costs to Republic.[102]

VII. RECOMMENDATION

In conclusion, the ALJ finds that Republic established that its proposed Type V municipal solid waste transfer station complies with all applicable statutes and TCEQ rules. Therefore, the ALJ recommends that the Commission adopt the attached Proposed Order and issue the permit for the Brazos Transfer Station with the additional conditions that: (1) to the greatest extent reasonably feasible, Republic must require collection trucks travelling to and from the Brazos Transfer Station to avoid using Nu Energy Drive and Bankhead Highway south of the transfer station unless they are working a collection route in that immediate area, and it must require transfer trucks travelling to and from the Brazos Transfer Station to avoid using Nu Energy Drive south of the transfer station, East Bankhead Highway, and Ranch House Road;[103] (2) wet sweeping, or other effective means, must be used to control particulate pollution during the sweeping of internal roadways; and (3) the citizens recycling center be removed from the transfer station site.

SIGNED September 26, 2011.

RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

[102] The ALJ's Order No. 25 dated August 24, 2011, found that Republic's filing was late and further found that an appropriate sanction was a recommendation that the Commission allocate 100 percent of the hearing transcription costs to Republic.

[103] This condition was voluntarily proposed by Republic.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER
GRANTING THE APPLICATION OF REPUBLIC WASTE SERVICES OF TEXAS, LTD.,
FOR TYPE V PERMIT NO. MSW-2356
SOAH DOCKET NO. 582-10-2069
TCEQ DOCKET NO. 2009-2058-MSW

On _____, the Texas Commission on Environmental Quality (TCEQ of Commission) considered the application (Application) of Republic Waste Services of Texas, Ltd. (Republic or Applicant) for Type V Municipal Solid Waste Permit No. MSW-2356. A Proposal for Decision (PFD) was presented by Richard R. Wilfong, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing in this case from February 28 through March 4, 2011, in Austin, Texas.

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

I. FINDINGS OF FACT

General Findings

1. On April 7, 2008, Republic Waste Services of Texas, Ltd. (Republic or Applicant) filed Permit Application No. MSW-2356 (Applidcation) seeking a permit from TCEQ to construct and operate the Brazos Transfer Station (or Facility).

2. On May 29, 2008, the Executive Director of the TCEQ determined that the Application was administratively complete.

3. On May 29, 2008, TCEQ issued a Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit regarding the Application (Notice of Receipt). TCEQ mailed copies of the Notice of Receipt, and on January 9, 2009, the Notice of Receipt was published in the *Weatherford Democrat*, the newspaper of largest general circulation that is published in Parker County.

4. In August 2009, the TCEQ Executive Director determined that the Application demonstrated compliance with the applicable regulatory requirements in TCEQ's rules at 30 TAC Chapter 305 (Consolidated Permits) and Chapter 330 (Municipal Solid Waste) and declared the Application to be technically complete.

5. In August 2009, the TCEQ Executive Director prepared a draft permit admitted (Draft Permit), and on August 31, 2009, the Executive Director issued his preliminary decision that the Draft Permit satisfied all statutory and regulatory requirements.

6. On September 21, 2009, TCEQ issued a Notice of Application and Preliminary Decision regarding the Application. TCEQ mailed copies of this notice, and on September 28, 2009, the notice was published in the *Weatherford Democrat*.

7. On February 12, 2009, and May 21, 2009, TCEQ held public meetings regarding the Application. The notice of each public meeting was mailed by TCEQ as required and was published in the *Weatherford Democrat*.

8. On January 27, 2010, TCEQ issued an Amended Notice of Hearing regarding the Application. On February 8, 2010, the Amended Notice of Hearing was mailed as required, and on February 4, 2010, the Amended Notice of Hearing was published in the *Weatherford Democrat*.

9. On March 10, 2010, SOAH Administrative Law Judge (ALJ) Richard R. Wilfong held a preliminary hearing at the Aledo Community Center in Aledo, Parker County, Texas.

10. The following persons and entities were designated as parties to this proceeding: Republic Waste Services of Texas, Ltd., TCEQ's Office of Public Interest Counsel, Aledo Independent School District, Walsh Ranches, L.P., ATH-1187, Ltd., Hal R Ray, Jr., Willow Park Village Home Owners Assoc., Paula and Robert Cox, Terry Cockerham, Wynne Clark and Russ Wood, John Menzies, and Michael Holland.

11. The hearing on the merits was held on February 28 through March 4, 2011.

Background

12. The Application pertains to a new Type V municipal solid waste transfer station located in Parker County and serving residences and businesses in Parker and surrounding counties (Brazos Transfer Station or Facility).

13. The site on which the Brazos Transfer Station will be constructed and operated consists of approximately 7.545 acres adjacent to and on the west side of Nu Energy Drive, approximately 0.3 mile southwest of the intersection of Nu Energy Drive and the eastbound frontage road of Interstate Highway 20 (IH 20) (the Site).

14. All waste transfer activities at the Brazos Transfer Station will take place inside the transfer station building, approximately 9,360 square feet in size (less than 3% of the Site area) and located in the northwestern portion of the Site.

15. The transfer station building will have a rectangular, reinforced concrete slab foundation with a partially submerged, drive-through loading ramp (tunnel) that will accommodate one road trailer. The superstructure of the building will be metal with three roll-up doors on the northeast side for waste collection vehicle access and two roll-up doors on the drive-through tunnel to allow ingress and egress for the transfer trucks and trailers.

16. Waste will be discharged from the waste collection vehicles onto the tipping floor in the transfer station building and then loaded with front-loaders into a transfer trailer located in the loading tunnel. Road tractors will be used to move the loaded transfer trailers to a

landfill for disposal of the transferred waste, and they will return empty trailers to the transfer station building for loading.

17. The Application describes how the Brazos Transfer Station is designed for the rapid processing and minimum detention of solid waste.

18. Waste transported from the Brazos Transfer Station will be taken to the Arlington Landfill, located between Fort Worth and Dallas, for disposal.

19. The Brazos Transfer Station will accept municipal solid waste and certain special wastes, including household and commercial waste, construction and demolition waste, yard waste, and various Class 2 and Class 3 non-hazardous industrial wastes. The Brazos Transfer Station will not accept regulated hazardous wastes, PCBs, Class 1 industrial waste, untreated medical wastes, or slaughterhouse waste.

20. When the Brazos Transfer Station begins operations, it will accept and manage approximately 170 tons of waste per day.

21. The volume of waste managed at the Brazos Transfer Station is expected to increase to approximately 1,000 tons per day by 2030.

22. The Brazos Transfer Station is designed to transfer a maximum of 1,000 tons of solid waste per day.

Compatibility of Land Use

23. The Site is located in the L.B. Industrial Addition, an industrial subdivision in Parker County.

24. The Site is not within the limits of any city but is within the extraterritorial jurisdiction of the City of Willow Park.

25. The Site is not zoned and there are no zoning requirements that apply to the Site. The Facility does not require approval as a nonconforming use or a special permit.

26. The predominant land use within one mile of the Site is characterized as "open", which includes ranch land and floodplains. Open land makes up approximately 62% of the area within one mile of the Site.

27. The property immediately south of the Site is a large, vacant commercial tract of land.

28. More than 155 acres of land within one mile of the Site are currently used for industrial purposes.

29. The area near the proposed Brazos Transfer Station site is an industrial zone with outdoor storage of materials and equipment, storage tanks, metal buildings, fabrication, and truck and heavy equipment movement. There are no sidewalks, there is no landscaping, and, in many cases, there is no paving of parking or storage areas.

30. The area immediately around the proposed Brazos Transfer Station site is dominated by industrial activities, most of which are associated with the oil and gas industry.

31. There are approximately 112 commercial or industrial establishments within one mile of the proposed permit boundary for the Brazos Transfer Station.

32. The nearest business establishment, located immediately north of the Site, is Republic's Duncan Brazos solid waste hauling facility, which includes offices and truck parking and maintenance areas.

33. Businesses near the Site include an oil-field services business (Frac Tech) immediately across Nu Energy Drive to the east; and a pipeline terminal complex, a concrete plant, a fuels/lubricants business, and another oil-field services business to the west.

34. From its facility on Nu Energy Drive, Frac Tech operates a fleet of large, 18-wheeler tractor-trailer rigs with trailer mounted heavy equipment.

35. A commercial oil and gas waste storage and injection well operation is located on Bear Cat Road, approximately 2,000 feet northeast of the Site.

36. There are at least 36 buildings in the area within four-tenths of a mile of the Site that are essentially indistinguishable from the metal building that is proposed for the Brazos Transfer Station.

37. There are approximately 489 residences located within one mile of the Site.

38. The nearest residence to the Brazos Transfer Station is located approximately 650 feet south of the permit boundary and approximately 1,100 feet south of the location of the transfer station building.

39. Within one mile of the Site there are three schools (the nearest being approximately 2,700 feet south of the permit boundary and approximately 3,100 feet south of the location of the transfer station building) and one day care center, located in a commercial/industrial district approximately 1,800 feet southeast of the permit boundary.

40. At least 12 large solid waste transfer stations operating in Texas pursuant to TCEQ authorization are located within one mile of a school.

41. At least 15 schools in Texas are located within 3,100 feet of a large solid waste transfer station.

42. There are no historical or archaeological sites that will be affected by the Facility.

43. There are no sites of exceptional aesthetic quality within one mile of the Site.

44. Growth trends within five miles of the site show that the most significant growth will occur east of the Site in areas of western Tarrant County and in areas of eastern Parker County along the north side of IH 20, within and immediately around the City of Aledo, and southeast of Aledo. Much less growth is expected in the area around the transfer station Site.

45. In the future, the land area within one mile of the Brazos Transfer Station that will be used for industrial purposes will increase by approximately 70 percent.

46. The Application includes a constructed land-use map showing the boundary of the Facility and actual uses within one mile of the Site, including residences, commercial establishments, schools, day care facilities, churches, cemeteries, ponds or lakes, and recreational areas.

47. The Application includes published zoning maps for the area within two miles of the Site.

48. The Application includes information about growth trends within five miles of the Site.

49. The Application includes information regarding the proximity of the Facility to residences and other uses within one mile, the number of residences and commercial establishments within one mile, and distances and directions to the nearest residence and commercial establishment.

50. The Application includes information on all known wells within 500 feet of the Site.

51. From a land use standpoint, the Site proposed for the Brazos Transfer Station is appropriate.

52. The Brazos Transfer Station will be compatible with surrounding land uses.

Traffic

53. Large-truck traffic is associated with various businesses located in the industrial area around the Brazos Transfer Station Site, including the Duncan Brazos waste hauling operation immediately north of the Site, the Frac Tech oil field services operation immediately across Nu Energy Drive to the east, the pipeline terminal and the concrete plant to the west, the commercial oil and gas waste storage and injection well operation to the northeast, the storage area for tanker trucks and the heavy truck operation to the east, and the septic tank manufacturing operation to the southeast. Up to 100 trucks per day transport waste to the commercial oil and gas waste storage and injection well operation located on Bear Cat Road.

54. Prior to February 2010, there were often well over 100 large trucks making dozens of trips per day working out of Frac Tech's facility on Nu Energy Drive. Those numbers have since decreased.

55. Rear load, front load, and roll off waste collection trucks from the Duncan Brazos facility travel daily on Nu Energy Drive, East Bankhead Highway, Ranch House Road, and the access road of IH 20 near the Duncan Brazos facility.

56. Nu Energy Drive, East Bankhead Highway, Ranch House Road, and the access roads of IH20 near the Duncan Brazos facility are adequate for the use made of those roadways by Duncan Brazos vehicles and Frac Tech vehicles.

57. Three types of vehicles will travel to and from the Brazos Transfer Station: standard waste collection vehicles, waste transfer trucks, and small vehicles (vehicles used by Republic's employees, visitors, vendors, and suppliers, and vehicles carrying small waste loads).

58. The number of waste collection vehicles per day traveling to and from the Brazos Transfer Station will be approximately 22 when the facility begins operations and approximately 131 when it operates at maximum capacity.

59. The number of transfer trucks per day traveling to and from the Brazos Transfer Station will be approximately eight when the facility begins operations and approximately 46 when it operates at maximum capacity.

60. The number of small vehicles per day traveling to and from the Brazos Transfer Station will be approximately 109 when the facility begins operations and approximately 143 when it operates at maximum capacity.

61. All vehicles will access the Site using Nu Energy Drive.

62. The roadways within one mile of the Site that will be used by waste collection vehicles and small vehicles traveling to and from the Brazos Transfer Station are Nu Energy Drive, East Bankhead Highway, Ranch House Road, and the eastbound and westbound main lanes and frontage roads of IH 20.

63. The roadways within one mile of the Site that will be used by waste transfer vehicles traveling to and from the Brazos Transfer Station are Nu Energy Drive north of the Site, the westbound main lanes of IH 20, and the eastbound and westbound frontage roads of IH 20.

64. Nu Energy Drive is two-lane asphalt surfaced road maintained by Parker County with an un-posted speed limit of 30 mph.

65. East Bankhead Highway is a two-lane asphalt surfaced road maintained by Parker County with a posted speed limit of 45 mph.

66. Ranch House Road is a three-lane concrete roadway maintained by Parker County with a posted speed limit of 35 mph.

67. The frontage roads of IH 20 are two-lane asphalt surfaced roads maintained by the Texas Department of Transportation with a posted speed limit of 40 mph.

68. The westbound main lanes of IH 20 are two lanes of controlled access freeway maintained by the Texas Department of Transportation with a posted speed limit of 70 mph.

69. When the Brazos Transfer Station is operating at its maximum capacity of 1,000 tons per day, the number of vehicles traveling to and from the Facility on any roadway within one mile will be a small percentage of the total daily traffic on that roadway: 3.7% to 10.8% on Nu Energy Drive, 0.4% to 0.6% on East Bankhead Highway, 0.04% to 0.24% on Ranch House Road, 0.74% to 3.15% on the IH 20 frontage roads, and 0.18% to 0.41% on the westbound main lanes of IH 20.

70. When the Brazos Transfer Station is operating at its maximum capacity of 1,000 tons per day, the number of vehicles traveling to and from the Facility on any roadway within one mile will be a small percentage of the capacity of that roadway: 1.5% to 4.6% on Nu Energy Drive, 0.18% to 0.27% on East Bankhead Highway, 0.06% to 0.33% on Ranch House Road, 0.22% to 1.46% on the IH 20 frontage roads, and 0.13% to 0.35% on the westbound main lanes of IH 20.

71. Various types of pavement distresses are currently present on portions of Nu Energy Drive.

72. All of the pavement distress conditions on Nu Energy Drive can be corrected with standard maintenance practices.

73. Parker County has accepted Nu Energy Drive as a county road.

74. Parker County is responsible for and will maintain Nu Energy Drive in a safe condition for use by the public, including vehicles traveling to and from the Brazos Transfer Station.

75. Nu Energy Drive will be adequate for the types and numbers of vehicles that will travel to and from the Brazos Transfer Station.

76. The vehicles using the Brazos Transfer Station will not create any significant increase in traffic congestion or delay.

77. The operation of the Brazos Transfer Station will not result in any significant traffic impacts to area roadways.

78. The Application includes information on the location and surface type of all roads within one mile of the Facility that will normally be used by vehicles entering or leaving the Facility.

79. The Application includes data on the availability and adequacy of roads that vehicles will use to access the Site.

80. The Application includes data on the volume of vehicular traffic on access roads within one mile of the Facility, both existing and expected, during the expected life of the Facility.

81. The Application includes projections of the volume of traffic expected to be generated by the Facility on the access roads within one mile of the Site.

82. The roadways used to access the Brazos Transfer Station will be adequate for the traffic associated with the Facility.

Surface Water

83. The Site is located in the drainage basin of the Clear Fork of the Trinity River.

84. No part of the Site is located in a 100-year floodplain.

85. The Application includes a copy of the relevant Federal Emergency Management Agency (FEMA) flood map with the boundaries of the Facility shown on it.

86. Storm water from the Site currently flows as overland flow from the southwest corner of the Site to a drainage ditch along East Bankhead Highway, then west to a small tributary of the Clear Fork of the Trinity River.

87. After development of the Brazos Transfer Station, uncontaminated storm water on the Site will be conveyed through concrete swales, culverts, and/or trench drains and then discharged as overland flow at the southwest corner of the Site, then to a drainage ditch along East Bankhead Highway, then west to a small tributary of the Clear Fork of the Trinity River.

88. Existing drainage patterns will not be adversely altered by construction and operation of the Brazos Transfer Station.

89. The Surface Water Drainage Plan for the Brazos Transfer Station includes measures that will control onsite erosion and offsite sedimentation.

90. As required by TCEQ rule, all vehicles and equipment used to transport solid waste to the Brazos Transfer Station will be constructed, operated, and maintained to prevent loss of liquid or solid waste material.

91. The Site will be graded to prevent water run-on into the transfer station building and load-out tunnel.

92. The Brazos Transfer Station will operate pursuant to a Storm Water Pollution Prevention Plan. This plan provides for the prevention of contamination of surface water and includes provisions that identify potential pollutant sources and control measures, as well as provisions for spill prevention and response.

93. Republic has submitted to TCEQ a Notice of Intent (NOI) for Storm Water Discharges Associated with Industrial Activity under a TPDES General Permit.

94. Liquids inside the transfer station building will be routed across the sloped concrete floor into concrete floor sumps, and then pumped into the contaminated-water holding tank.

95. The maximum volume of contaminated water generated at the Brazos Transfer Station will be approximately 900 gallons per day.

96. A 5,000 gallon contaminated-water storage tank will be located on the Site. It will be an enclosed double-walled tank, or a single-walled tank with secondary containment sufficient to detain the entire capacity of the tank plus freeboard for precipitation.

97. The design and construction of the contaminated-water storage tank will prevent any potential leakage or rupture from the tank from being released to surface water.

98. Material collected in the contaminated water holding tank will be transported off-site for management at a TCEQ-approved facility.

99. The Application includes drawings showing the drainage areas and drainage calculations.

100. The Application includes designs of all drainage facilities within the Facility area.

101. The Application includes sample calculations provided to verify that existing drainage patterns will not be adversely altered.

102. The Application includes a description of the hydrologic method and calculations used to estimate peak flow rates and runoff volumes including justification of necessary assumptions.

103. The construction, maintenance, and operation of the Brazos Transfer Station will adequately manage run-on and runoff during the peak discharge of a 25-year rainfall event.

104. The construction, maintenance, and operation of the Brazos Transfer Station will prevent the off-site discharge of waste and feedstock material, including, but not limited to, in-process and/or processed materials.

105. The construction, maintenance, and operation of the Brazos Transfer Station provides for controlling surface water drainage to minimize surface water running onto, into, and off the waste handling area.

106. The design and operation of the Brazos Transfer Station will prevent surface water pollution.

Groundwater and Geology

107. The surface soil at the Site is clayey residuum, weathered from limestone.

108. Depth to bedrock at the Site is approximately 22 to 40 inches.

109. The Goodland Limestone Formation outcrops at the Site, where it is between 12 and 45 feet thick.

110. The Goodland Limestone consists of a light to medium gray coarsely nodular limestone with predominantly massive resistant beds and occasional clay beds.

111. Beneath the Goodland Limestone is the Walnut Clay Formation, which is about 30 feet thick at the Site.

112. The Walnut Clay is predominantly calcareous clay, with limestone.

113. The Walnut Clay is a resistant formation that impedes the vertical movement of groundwater.

114. Beneath the Walnut Clay is the Paluxy Formation. The Paluxy is approximately 100 feet thick at the Site and is part of the Trinity Aquifer.

115. The Trinity Aquifer is the defined major aquifer beneath the Site. It is approximately 900 feet thick and consists of the overlying Paluxy Formation, the middle Glen Rose Formation, and the basal Twin Mountains Formation.

116. There are no defined minor aquifers beneath the Site.

117. The Goodland Limestone is not a major source of groundwater, but in some locations it may be used for shallow domestic and livestock wells.

118. There are no wells producing water from the Goodland Limestone within one mile of the Site.

119. There are only two known water wells within 500 feet of the Site, the Frac Tech well (located east across Nu Energy Drive from the Site), and the Duncan Brazos hauling company well (located immediately north of the Site).

120. Water wells in the vicinity of the Site are completed to depths of approximately 260 to 280 feet below ground surface.

121. Static groundwater levels in the vicinity of the site are approximately 125 to 145 feet below ground surface.

122. The design, construction, and operational features of the Brazos Transfer Station that will prevent surface water pollution will also prevent contaminants associated with the Facility from reaching groundwater.

123. The design and operation of the Brazos Transfer Station will prevent groundwater pollution.

124. From a geology and groundwater hydrology standpoint, the Site is well-suited for use as a municipal solid waste transfer station.

125. The Application includes discussion, in general terms the geology and soils of the Site.

Sanitation

126. Inside the transfer station building, the tipping floor and push walls that come in contact with waste will be washed down at least on a weekly basis at the completion of waste processing.

127. During times when the Brazos Transfer Station is operating on a continuous basis, the tipping floor will be swept daily and washed down at least twice weekly.

128. Wash water from the tipping floor will be routed across the sloped concrete floor into concrete floor sumps, and then pumped into the contaminated water holding tank.

129. The contaminated water holding tank will be equipped with a carbon filter connected to a tank to minimize the creation of odors or attraction of birds, rodents, or other disease vectors.

130. The Site Operating Plan and Contaminated Water Management Plan for the Brazos Transfer Station, both prepared in July 2009, provide that water from an existing water well on Republic's property north of the Site will be used for facility wash water and employee/visitor use.

131. Republic recently entered into a water supply agreement with the City of Willow Park, effective May 23, 2011, pursuant to which the City of Willow Park agreed to install a water line to provide water service to the Site.

132. Republic will provide potable water at the Brazos Transfer Station for Facility cleaning and sanitary purposes.

133. The Contaminated Water Management Plan for the Brazos Transfer Station provides that an existing aerobic treatment system located on Republic's property north of the Site will be used to process domestic wastewater generated at the transfer station.

134. On June 30, 2011, Parker County issued Republic a permit for an on-site sewage facility to be located on the Site and used for the management of domestic wastewater from sanitary facilities for Facility employees and visitors at the Facility.

135. Republic will provide sanitary facilities for Facility employees and visitors to the Brazos Transfer Station.

136. The June 30, 2011 permit issued Republic by Parker County provides that the Facility will not include kitchen or shower facilities.

Easements and Buffer Zones

137. Easements located on the Brazos Transfer Station Site consist of 10-foot wide lot perimeter utility easements and three pipeline easements that cross the Site from northwest to southeast. The pipeline easements are located to the west and south of the

transfer station building, on-site access roads, and other facilities that will be constructed as part of the Brazos Transfer Station.

138. The transfer station building will not be located within any easement.

139. No solid waste unloading, storage, disposal, or processing operations will occur within any easement at the Brazos Transfer Station.

140. Buffer zones (areas free of municipal solid waste processing and disposal activities within and adjacent to the facility boundary on property owned or controlled by the owner or operator) at the Site will range from approximately 95 feet (adjacent to the western Site boundary) to more than 400 feet (adjacent to the southern Site boundary).

141. No solid waste unloading, storage, disposal, or processing operations at the Brazos Transfer Station will occur within any buffer zone.

Air and Odor

142. The potential for nuisance odor conditions are generally lower for a municipal solid waste transfer station than for many other types of facilities.

143. The prevailing wind direction at the Site is toward Republic's own adjacent property (the Duncan Brazos hauling facility located immediately north of the Site) and other industrial and light commercial establishments.

144. The nearest residential area to the Brazos Transfer Station is to the south, which is upwind during the prevailing winds.

145. The transfer station building will have a ventilation system sufficient to provide four air changes per hour.

146. Because of the proposed location of the Facility, the site characteristics, and the proposed operational plans, the Brazos Transfer Station will not likely need to use any add-on odor control to control odors and prevent the occurrence of nuisance odor conditions.

147. The surface area of the waste exposed to the atmosphere will be kept to a minimum and contained within the transfer station building.

148. Waste at the Facility will be processed on a "first in first out" basis to avoid aging of the waste, thereby minimizing the potential for odor emissions.

149. All waste will be removed from the tipping floor by the end of each day of operation.

150. Operations at the Facility will be conducted so as to minimize water "pooling", and any water pools which may form on the tipping floor will be promptly removed.

151. If necessary, the washing of the transfer station interior will include use of an odor counteractant solution.

152. In the event of increased odor levels inside the Facility, special odor mitigation measures include accelerated removal of the odorous material from the tipping floor, application of odor neutralizer directly onto the odorous waste using a mobile applicator, prompt cleaning of the portion of the tipping floor which was exposed to the odorous waste, start of odor neutralizing sprays into the ventilation fan exhausts and at the entrance doors, and temporarily increasing the ventilation rate.

153. The Brazos Transfer Station will be equipped with an odor neutralizing spray system, which will apply, on an as-needed basis, a chemical-based odor neutralizing solution through a series of atomizing spray nozzles positioned at selected areas within the transfer station, including just inside the entrance/exit doors and at an elevated level directed up, into the roof exhaust fans.

154. The odor neutralizing spray system will be cleaned and maintained as recommended by the equipment manufacturer and as necessary to maintain the efficiency of the system.

155. The design and operating procedures as set out in the Site Development Plan, the Site Operating Plan, and the Odor Management Plan for the Brazos Transfer Station should be sufficient to prevent nuisance odors from leaving the boundary of the Facility.

156. Dust and particulates that occur inside the transfer station building will be controlled using water sprays, mist systems, or similar methods.

157. Republic will obtain authorization under 30 TAC Chapter 116 or 30 TAC Chapter 330, Subchapter U, as applicable, prior to commencing construction of the Facility.

Internal Roads and Access Control

158. All internal access roads on the Site will be paved with reinforced concrete or asphalt.

159. Paving of the internal roads on the Site will minimize the tracking of mud and trash onto public roadways. However, in the event mud and debris are being tracked onto the public roadway, it will be removed.

160. The roads on the Site are designed with turning radii to accommodate the vehicles that will utilize the Facility.

161. During periods of dry weather, roads on the Site will be swept using a mechanical sweeper to control dust.

162. Roads on the Site will be inspected monthly and maintained on a regular basis.

163. Litter and other debris will be picked up and taken into the transfer station building for loading onto trailers at least once per day on days the Facility is in operation.

164. Access to the entire perimeter of the Site will be controlled by perimeter fences, lockable gates, and other structures. At a minimum, the perimeter fencing will be a four-foot barbed wire fence or a six-foot chain-link fence or equivalent.

165. Vehicle access to the Brazos Transfer Station will be controlled by gates at the entrance to the Site. Personnel on duty will control access to the Site during operating hours. Outside operating hours, the gates will be locked to prevent unauthorized vehicle access.

166. The perimeter fence and gates will be inspected daily for damage. In the event the fence and/or gates have been damaged, they will be repaired as soon as practicable.

Site Operating Plan

167. The Site Operating Plan for the Brazos Transfer Station provides the basic guidelines for the operation of the Facility by the site operating personnel. It contains sufficient instructions for conducting the day-to-day operations of the Facility.

168. The Site Operating Plan for the Brazos Transfer Station includes sections that address general information, transfer station personnel (including personnel training), transfer station equipment, waste acceptance (including handling of special waste, industrial waste, and large items), detection and prevention of acceptance of prohibited waste, Facility generated waste, contaminated water management, fire protection (including general rules for fires, fire equipment, fire prevention procedures, and specific fire fighting methods), access control, unloading and storage of waste, operating hours, Facility signage, control of windblown material and litter and materials along the route to the Facility, Facility access roads, noise pollution and visual screening, overloading and breakdown, sanitation, employee sanitation facilities, ventilation and air pollution control, health and safety, disease vector control, recordkeeping and reporting requirements, and a maintenance and inspection schedule.

169. The Site Operating Plan for the Brazos Transfer Station includes a Landscaping Plan.

170. The Site Operating Plan for the Brazos Transfer Station includes an Odor Management Plan.

171. The Site Operating Plan for the Brazos Transfer Station explains how Republic will conduct daily operations at the Facility.

172. The Application includes evidence of Republic's competency to operate the Facility.

173. A licensed solid waste facility supervisor will be employed by Republic before operation of the Brazos Transfer Station commences.

174. The Site Operating Plan for the Brazos Transfer Station provides general instruction to facility management and operating personnel throughout the operating life of the Facility in a manner consistent with the engineer's design and the Commission's regulations to protect human health and the environment and to prevent nuisances.

175. The Site Operating Plan for the Brazos Transfer Station includes a description of how the items in Subchapter E of 30 TAC Chapter 330 will be implemented.

Waste Acceptance Plan

176. The Waste Acceptance Plan for the Brazos Transfer Station is set out in Sections 4 and 5 of the Site Operating Plan.

177. The Waste Acceptance Plan addresses the sources and types of waste to be accepted at the Brazos Transfer Station.

178. The Brazos Transfer Station will serve residences and businesses in Parker County and the surrounding counties.

179. The Brazos Transfer Station will accept the following types of waste: residential and commercial municipal solid waste, wood and yard waste, construction and demolition waste, Class 2 and Class 3 non-hazardous industrial waste, non-regulated asbestos containing materials, special wastes (other than slaughterhouse waste) that do not interfere with the operation of the facility, and other waste authorized by the TCEQ.

180. The Waste Acceptance Plan includes provisions for handling of special wastes, handling of industrial wastes, and handling of large items.

181. The Waste Acceptance Plan includes provisions for the detection and prevention of acceptance of prohibited wastes at the Brazos Transfer Station.

182. Required information concerning general facility design, as required in 30 TAC § 330.61(b) regarding the Waste Acceptance Plan is addressed in the Application.

Endangered and Threatened Species

183. Qualified biologists performed field studies and observations of the Site and prepared a Threatened and Endangered Species Habitat Evaluation Report ("the Report") for the Brazos Transfer Station that is included in the Application.

184. The Report includes a list, developed from a Texas Parks & Wildlife Department database, of plant and animal species listed under federal and/or state law as either threatened or endangered that may occur in Parker County.

185. The chance of a listed species being present at a given location is very small, even if the species is included in the Texas Parks & Wildlife Department database.

186. The actual presence of a species at a particular location is dependent on many factors, including whether that location provides suitable habitat for the species and the availability of other suitable habitat.

187. No critical habitat for any threatened or endangered species exists on the Site.

188. No threatened or endangered species were observed on the Site during field studies and observations.

189. Because of the nature of the Site and the surrounding area and the lack of suitable habitat, none of the listed endangered or threatened species will use the site or be impacted by the proposed transfer station operation.

190. The Site Operating Plan for the Brazos Transfer Station does not need to include any specific criteria in order to provide for the protection of any endangered or threatened species.

191. There is no need for a species protection plan for the Brazos Transfer Station in order to prevent it from causing or contributing to the taking of any endangered or threatened species.

192. There are no additional design features that are necessary in order for the Brazos Transfer Station to protect endangered species.

193. The required information concerning endangered and threatened species was submitted with the Application.

194. The Brazos Transfer Station and its operation will not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

Draft Permit

195. The technical information supplied in the Application was sufficient to draft a permit that is protective of human health, safety, and the environment.

196. The Draft Permit meets all applicable statutory and regulatory requirements.

197. The Permit issued to Republic should include the following revisions to the Draft Permit:

A. Part No. 1, Section II.D. of the Permit should read as follows:

Authorized solid waste may be accepted for processing at this facility at a rate not to exceed 1,000 tons per day.

B. The Permit should include the following special provision related to the water supply agreement between Republic and the City of Willow Park:

Potable water for the facility shall be obtained from the City of Willow Park. Prior to the beginning of construction of the facility, the permittee shall submit to the Executive Director of the TCEQ a copy of the May 23, 2011 water supply agreement between the permittee and the City of Willow Park and any revisions to Part No. 2, Attachment A of this permit that may be necessary to reflect that water will be supplied to the facility pursuant to such agreement.

C. The Permit should include the following special provision related to the on-site sewage facility permit issued to Republic by Parker County:

Domestic wastewater from restrooms in the transfer station building and the gatehouse providing sanitary facilities for employees and visitors at the facility will be managed pursuant to the June 30, 2011 on-site sewage

facility permit issued by Parker County. Prior to the beginning of construction of the facility, the permittee shall submit to the Executive Director of the TCEQ a copy of such on-site sewage facility permit and any revisions to Part No. 2, Attachment A of this permit that may be necessary to reflect that domestic wastewater at the facility will be managed pursuant to it.

D. The Permit should include the following special provision related to the on-site sewage facility permit issued to Republic by Parker County:

No kitchen or shower facilities shall be included at the Brazos Transfer Station. Prior to the beginning of construction of the municipal solid waste facility authorized by this permit, the permittee shall submit to the Executive Director of the TCEQ any revisions to Part No. 2, Attachment A of this permit that may be necessary to reflect this restriction.

E. The Permit should include the following provision related to sweeping on-site roads during dry conditions:

During dry conditions, on-site roads will be swept with a wet sweeper, or other effective means, to control particulate pollution. Prior to beginning construction of the municipal solid waste facility authorized by this permit, the permittee shall submit to the Executive Director of the TCEQ any revisions to Part No. 2, Attachment A of this permit that may be necessary to reflect this restriction.

Apportionment of Transcript Costs

198. As required by the ALJ's Order No. 1, Republic arranged for and paid a court reporter to record and transcribe the hearing on the merits and to provide the original and two copies of the hearing transcript.

199. Republic should be apportioned 100 percent of the $7,465 paid for the hearing transcript.

Other Findings

200. The Application includes the longitudinal and latitudinal geographic coordinates of the Facility.

201. The Application includes general location maps.

202. The Application includes a landownership map with accompanying landowners list showing property ownership within 1/4 mile of the facility derived from the real property appraisal records as listed on the date that the application was filed.

203. The Application includes the legal description of the Site and a drawing of the boundary metes and bounds description of the Site.

204. The current ownership record for the Site is filed in the Parker County records at Volume 2192, Page 548.

205. The final plat for the L.B. Industrial Addition is filed in the Official Public Records of Parker County at Volume 2170, Page 1284.

206. The Application includes a property owner affidavit in accordance with 30 TAC 330.59(d)(2).

207. The Application includes verification of the legal status of Republic.

208. No person other than Republic has over a 20% interest in the proposed facility.

209. The Application is signed on behalf of Republic by Nicholas Stefkovich, Vice President of Republic Waste Services of Texas, GP, Inc., the general partner of Republic.

210. The application fee for the Application was paid to TCEQ.

211. There are no site-specific conditions at the Site that require special design considerations or mitigation of conditions.

212. The maximum amount of solid waste to be received at the Facility is 1,000 tons per day.

213. The maximum length of time solid waste is to be detained at the Facility is 72 hours.

214. The average length of time solid waste is to be detained at the Facility is 2 hours.

215. The Application includes the prevailing wind direction and a wind rose for the Site.

216. The Parker County Airport is located approximately 4.1 miles northwest of the Site.

217. The Application includes facility layout maps that show the location of the transfer station building, locations of on-site roadways, fencing, plans for screening the Facility from public view and site entrance roads.

218. The Application includes a United States Geological Survey general topographic map for the Facility.

219. The Application includes an aerial photograph of the area within at least a one-mile radius of the Site that shows the Site boundaries.

220. There are no wetlands on the Site.

221. The Application includes a review statement from the State historic Preservation Officer at the Texas Historical Commission.

222. Parts I and II of the Application were submitted to the North Central Texas Council of Governments, the applicable council of governments, for compliance with the regional solid waste plan.

223. The Brazos Transfer Station will conform to the regional solid waste plan for the North Central Texas Council of Governments.

224. The Application includes a generalized process diagram and working plan of the Brazos Transfer Station.

225. The Application includes generalized construction details of the Brazos Transfer Station and ancillary equipment.

226. The Application includes designs for noise control.

227. A facility closure plan has been prepared for the Brazos Transfer Station in accordance with 30 TAC Chapter 30 Subchapter K and included in the Application.

228. The Application includes a closure cost estimate prepared in accordance with 30 TAC Chapter 30 Subchapter L.

229. The proposed Brazos Transfer Station meets or exceeds all of the applicable permitting requirements in TCEQ rules for a Type V municipal solid waste transfer station.

230. The Application satisfies, and the proposed operation of the Brazos Transfer Station will satisfy, all applicable requirements in TCEQ's rules.

231. If the Brazos Transfer Station is constructed and operated as shown in the Application and as required by TCEQ rules, human health and the environment will be protected.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the processing of municipal solid waste and the authority to issue the Draft Permit with the changes described in this Order ("the Permit") to Republic under TEX. HEALTH & SAFETY CODE ANN. § 361.061.

2. Proper notice was provided in accordance with TEX. HEALTH & SAFETY CODE ANN. §§ 361.0665 and 361.081, 30 TEX. ADMIN. CODE (TAC) §§ 39.5 and 39.501, and TEX, GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. SOAH has jurisdiction to conduct a hearing and to prepare a proposal for decision. TEX. GOV'T CODE ANN. § 2003.047.

4. The provisions of 30 TAC Chapter 330 in effect as of March 27, 2006, with amendments to 30 TAC Sections 330.57 and 330.59 adopted effective May 29, 2008, apply to the Application

5. Republic submitted an administratively and technically complete permit application, as required by TEX. HEALTH & SAFETY CODE ANN. §§ 361.066 and 361.068, that demonstrates that it will comply with all relevant aspects of the Application and requirements as provided in 30 TAC § 330.57.

6. The Application was processed and the proceedings described in this Order were conducted in accordance with applicable law and rules of the TCEQ, specifically 30 TAC § 80.1 *et seq.*, and of SOAH, specifically 1 TAC § 155.1 *et seq.*, and of Subchapter C of TEX. HEALTH & SAFETY CODE ANN, Chapter 361.

7. The burden of proof was on the Applicant, in accordance with 30 TAC § 80.17(a). Republic met its burden with respect to all issues.

8. The evidence in the record is sufficient to meet the requirements of applicable law for issuance of the Permit, including TEX. HEALTH & SAFETY CODE ANN. Chapter 361 and 30 TAC Chapter 330.

9. The Brazos Transfer Station will not adversely affect public health or welfare or the environment if constructed and operated in accordance with TEX. HEALTH & SAFETY CODE ANN. Chapter 361, 30 TAC Chapter 330, and the Permit.

10. The Draft Permit and the Permit include all matters required by law.

11. The approval of the Application and issuance of the Permit, will not violate the policies of the State of Texas, as set forth in § 361.002(a) of the Solid Waste Disposal Act, to safeguard the health, welfare, and physical property of the people of Texas, and to protect the environment by controlling the management of solid waste.

12. The contents of the Permit meet the requirements of the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE ANN. Chapter 361, including §§ 361.086(b) and 361.087.

13. Part I of the Application meets the requirements of 30 TAC §§ 305.45, 330.57(c)(1), and 330.59.

14. Part II of the Application meets the requirements of 30 TAC §§ 305.45, 330.57(c)(2), and 330.61.

15. Part III of the Application, the Site Development Plan, meets the requirements of 30 TAC §§ 330.45, 330.57(c)(3), and 330.63.

16. Part IV of the Application, the Site Operating Plan, meets the requirements of 30 TAC §§ 330.57(c)(4) and 330.201 through 249.

17. Pursuant to the authority of, and in accordance with applicable laws and regulations, the Draft Permit, with the following changes, should be issued:

A. Part No. 1, Section II.D. should read as follows:

Authorized solid waste may be accepted for processing at this facility at a rate not to exceed 1,000 tons per day.

B. The following special provision should be added as Part No. 1, Section XIII.A:

Potable water for the Facility shall be obtained from the City of Willow Park. Prior to the beginning of construction of the Facility, the permittee shall submit to the Executive Director of the TCEQ a copy of the May 23, 2011 water supply agreement between the permittee and the City of Willow Park and any revisions to Part No. 2, Attachment A of this permit that may be necessary to reflect that water will be supplied to the Facility pursuant to such agreement.

C. The following special provision should be added as Part No. 1, Section XIII.B:

Domestic wastewater from restrooms in the transfer station building and the scale house used to provide sanitary facilities for employees and visitors at the Facility will be managed pursuant to the June 30, 2011 on-site sewage facility permit issued by Parker County. Prior to the beginning of construction of the Facility, the permittee shall submit to the Executive Director of the TCEQ a copy of such on-site sewage facility permit and any revisions to Part No. 2, Attachment A of this permit that

may be necessary to reflect that domestic wastewater at the Facility will be managed pursuant to it.

D. The following special provision should be added as Part No. 1, Section XIII.C:

No kitchen or shower facilities shall be included at the Brazos Transfer Station. Prior to the beginning of construction of the municipal solid waste facility authorized by this permit, the permittee shall submit to the Executive Director of the TCEQ any revisions to Part No. 2, Attachment A of this permit that may be necessary to reflect this restriction.

E. The following special provision should be added as Part No.1, Section XIII. D:

During dry conditions, on-site roads will be swept with a wet sweeper, or other effective means, to control particulate pollution. Prior to beginning construction of the municipal solid waste facility authorized by this permit, the permittee shall submit to the Executive Director of the TCEQ any revisions to Part No. 2, Attachment A of this permit that may be necessary to reflect this restriction.

18. In accordance with 30 TAC § 50.117, the Commission issues this Order and the Permit as its single decision on the Application.

19. All of the transcript costs in the amount of $7,465.00 should be apportioned to Republic.

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 Type V Municipal Solid Waste Permit no. MSW-2356 is granted to Republic Waste Services of Texas, Ltd. with the following changes:

Section II.A on page 3:

A. Days and Hours of Operation

~~The operating hours for receipt of waste and for all landfill related operations at the municipal solid waste facility shall be from 9 p.m. Sunday through 7 p.m. Saturday, and if necessary, from 7a.m. to 4 p.m. Sunday~~. The waste acceptance hours of the Facility may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday. Waste acceptance hours within the 7:00 a.m. to 7:00 p.m. weekday span do not require other specific approval. Transportation of materials and heavy equipment operation must not be conducted between the hours of 9:00 p.m. to 5:00 a.m. Operating hours for other activities do not require specific approval. The Commission's regional offices may allow additional temporary waste acceptance or operating hours to address disasters, other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area. The Facility must record in the site operating record the dates, times, and duration when any alternative operating hours are utilized.

Attachment A

Groundwater Characterization and Monitoring Report

The groundwater monitoring system should be revised to incorporate the wells MW-29A, MW-32, PZ-26, and PZ-31 and to reconfigure the point of compliance to include those four wells.

Final Cover Quality Control Plan

The specification for the soils to be used in the final cover should be revised to specify SCS Hydrologic Soil Group D for that soil.

2. The Applicant shall pay 100 percent of the court reporting and transcript costs.

3. 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.

4. 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.

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

6. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV. CODE ANN. § 2001.144.

ISSUED:_____

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

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