

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 25, 2021

TO: Persons on the attached mailing list.

RE: Diamond Back Recycling and Sanitary Landfill, LP
Permit No. 2404

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at 321 West 5th Street, Odessa, Texas 79761. The permit application may be viewed online at <http://www.team-psc.com/engineering-sector/solid-waste/tceq-permits/>

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

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

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so

that your request may be processed properly.

- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: “I request a contested case hearing.”
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization’s purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

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

Your request must raise disputed issues of fact that are relevant and material to the commission’s decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director’s responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director’s Decision.

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

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

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

Processing of Requests.

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

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/mo

Enclosure

MAILING LIST
for
Diamond Back Recycling and Sanitary Landfill, LP
Permit No. 2404

FOR THE APPLICANT:

Michael G. Valenzuela, Managing Partner
Diamond Back Recycling and
Sanitary Landfill, LP
P.O. Box 2283
Odessa, Texas 79760

Todd E. Stiggins, P.E., Team Leader
Parkhill, Smith and Cooper, Inc.
4222 85th Street
Lubbock, Texas 79423

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Anthony Tatu, Staff Attorney
Mattie Isturiz, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Chandra Yadav, P.E., Technical Staff
Texas Commission on Environmental
Quality
Waste Permits Division
MSW Permits Section MC-124
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Vic McWherter, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

ALLMON , ERIC
PERALES ALLMON & ICE PC
1206 SAN ANTONIO ST
AUSTIN TX 78701-1834

AMATOVARGAS , ALFREDO
440 FM 866
ODESSA TX 79764

ANGELES , ALMA
119 W 4TH ST
ODESSA TX 79761-5015

BAEZA , MARITZA
APT 147
4100 TANGLEWOOD LN
ODESSA TX 79762-7237

BAEZA , MARITZA
APT 424
8001 BROWNSTONE RD
ODESSA TX 79765-2503

BAIZA , MISS JACINDA MARIE
1813 E 52ND ST
ODESSA TX 79762-4547

CHAVEZ-VALDEZ , BRENDA YADIRA
151 S WESTCLIFF RD
ODESSA TX 79763-8126

CRUMRINE , BARRY
PO BOX 334
PENWELL TX 79776-0334

DAILY , ROY
5198 S LOOP 340
ROBINSON TX 76706-4636

DEAN , KENNETH & THOMAS L
1302 SILVER HILL DR
AUSTIN TX 78746-7425

DEAN , THOMAS
MOSS-DEAN PROPERTIES LLC
PO BOX 10728
MIDLAND TX 79702-7728

DEAN , THOMAS
1207 CASTLE ROCK CT
MIDLAND TX 79705-1915

FIERRO SR , MR RICHARD RAMON
ECTOR COUNTY HIGHWAYS & STREETS
HOME
5005 MOSS ROCK TRL
GRANBURY TX 76048-6499

FLORES , FRANCISCO
14702 KEYSTONE GREEN DR
CYPRESS TX 77429-5846

GALLIVAN , DUSTY
RM 201
300 N GRANT AVE
ODESSA TX 79761-5162

GALVAN , ROSA
10714 W 20TH ST
ODESSA TX 79763-6812

GEORGE , RICKEY
ECTOR COUNTY TEXAS
STE 116
300 N GRANT AVE
ODESSA TX 79761-5162

GILLIAM JR , FROSTY
AGHORN ENERGY INC
PO BOX 12663
ODESSA TX 79768-2663

HARRINGTON , JASON
101 N CRANE AVE
ODESSA TX 79763-4624

HERNANDEZ , BO
357 VICKSBURG
ODESSA TX 79766-9251

HERNANDEZ , JOSEPH
7600 BOLES RD
ODESSA TX 79763-8703

HERNANDEZ , JOSEPH
1528 S REDONDO AVE
ODESSA TX 79763-8726

HULL , BECA
2510 COLLEGE AVE
MIDLAND TX 79701-6839

JOHNSON , RODNEY
BIG J MOBILE HOMES
5725 ANDREWS HWY
ODESSA TX 79762-3657

LANDGRAF , THE HONORABLE BROOKS
PO BOX 2910
AUSTIN TX 78768-2910

LITHERLAND , SUSAN T
SQ ENVIRONMENTAL LLC
1302 SILVER HILL DR
AUSTIN TX 78746-7425

LOEPKY , JOHN
JNL STEEL COMPONENTS INC
430 US HIGHWAY 180 W
SEMINOLE TX 79360-5813

MANGAL , DAVENAND
470 N FM 866
ODESSA TX 79761

MARRERO , MICHAEL
PO BOX 4398
ODESSA TX 79760-4398

MCCABE , SHAUN
6211 W NORTHWEST HWY
DALLAS TX 75225-3460

MCCARTHY III , MR EDMOND R
MCCARTHY & MCCARTHY LLP
STE 2399
1122 COLORADO ST
AUSTIN TX 78701-2100

MONCLOVA , ENRIQUE
1218 N HANCOCK AVE
ODESSA TX 79761-3828

NEVAREZ , ISMENE
15610 W 16TH ST
ODESSA TX 79763

ORTEGA , CLAUDIA
KEEP ODESSA BEAUTIFUL INC
STE 203
119 W 4TH ST
ODESSA TX 79761-5015

PECK , DAVID DIRECTOR/PUBLIC WORK
ECTOR COUNTY
RM 490
1010 E 8TH ST
ODESSA TX 79761-4634

PEREZ , MICHAEL
117 COUGAR RUN
TUSCOLA TX 79562-1102

PHILLIPS , JERRY
1010 E DALLAS ST
KERMIT TX 79745-3609

PHILLIPS , JERRY L
110 S TORNILLO ST
KERMIT TX 79745-2612

QUINTELA , BRENDA
1528 S REDONDO AVE
ODESSA TX 79763-8726

RAMIREZ , KRISTOPHER
329 N FORTUNE 500
ODESSA TX 79763

RAMIREZ , MICHAEL
501 FORTUNE 500
ODESSA TX 79763-7024

ROBICHAUX , MARK
2051 COAHUILA RD
ODESSA TX 79763-2269

RODRIGUEZ , ERICA
1312 S TEXAS AVE
ODESSA TX 79761-6756

RODRIGUEZ , MS HEAVEN LEI
2501 W HILLMONT RD
ODESSA TX 79764-1736

ROSALES , JORGE
151 S WESTCLIFF RD
ODESSA TX 79763-8126

SABLAN , ELLEN
2120 S COUNTY ROAD 1060
MIDLAND TX 79706-5642

SALIM , ASHRAF
2847 CONRAD LN
GRAND PRAIRIE TX 75052-8532

SAMANIEGO , JOSE
12125 W WHIRLAWAY DR
ODESSA TX 79763-8103

SELIGER , THE HONORABLE KEL STATE
SENATOR
THE SENATE OF TEXAS DISTRICT 31
PO BOX 12068
AUSTIN TX 78711-2068

TORRES , JOE
STE 3
5000 E UNIVERSITY BLVD
ODESSA TX 79762-8170

TURNER , DAVID R
PO BOX 4398
ODESSA TX 79760-4398

URIAS , ERICA N
1485 N KNOX AVE
ODESSA TX 79763-6802

WATSON , MR JAMES EDWARD
1318 S FLETCHERS TRL
ODESSA TX 79763-8237

TCEQ Municipal Solid Waste No. 2404

**PERMIT APPLICATION BY
DIAMOND BACK RECYCLING
AND SANITARY LANDFILL LP
FOR NEW MUNICIPAL SOLID
WASTE PERMIT NO. 2404**

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**BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY**

Executive Director's Response to Public Comment

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on an application received from Diamond Back Recycling and Sanitary Landfill LP (Diamond Back) for New Municipal Solid Waste (MSW) Permit No. 2404. As required by 30 Texas Administrative Code (TAC), Section (§) 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments, whether withdrawn or not withdrawn. The Office of Chief Clerk received timely written comments from the people listed in Attachment 1.

This Response addresses all timely public comments received, whether withdrawn or not withdrawn, regarding the Application. If you need more information about this Application or the MSW permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on our website at www.tceq.texas.gov.

Procedural Background

The application was received on August 5, 2019 and declared administratively complete on October 1, 2019. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published on October 30, 2019 in *The Odessa American*. The Executive Director completed the technical review of the application on September 2, 2020 and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published on September 29, 2020 in the *The Odessa American*. The public comment period originally ended on January 14, 2021 but was later extended to April 19, 2021. A public meeting was held on January 14, 2021. This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature (1999) and Senate Bill 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

Diamond Back (Applicant), a MSW storage and disposal company, has applied to the TCEQ for a permit to authorize the proposed Diamond Back Solid Waste Facility and Recycling Center, a Type I MSW landfill, to accept and dispose of solid waste from and incidental to municipal, community, commercial, institutional, recreational, and industrial activities, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, yard waste, non-hazardous industrial solid waste, and some special waste from Ector and surrounding counties. The Diamond Back Solid Waste Facility and Recycling Center will be located at 2301 South FM 866, Odessa, Ector County, Texas 79763.

Access to Rules and Laws

Rules and Laws applicable to this application are accessible at the following URLs:

- The Texas Secretary of State hosts official versions of the Texas Administrative Code: www.sos.state.tx.us;

- TCEQ hosts rules under Title 30 Texas Administrative Code: www.sos.state.tx.us/tac/ (select “TAC Viewer” at the bottom of the page);
- The Texas Legislative Council hosts official versions of Texas statutes: www.statutes.legis.state.tx.us;
- TCEQ’s public website provides a link to TCEQ rules under Title 30 Texas Administrative Code at SOS TAC Viewer and hosts unofficial versions of Title 30 Texas Administrative Code in downloadable Adobe PDF format: www.tceq.texas.gov/; and
- The U.S. Government’s Publishing Office hosts Federal environmental laws and Federal rules including those under Title 40 Code of Federal Regulations (relating to Protection of the Environment): www.gpo.gov.

Commission records for this application and draft permit are available for viewing and copying in the Office of the Chief Clerk at the TCEQ’s main office in Austin at 12100 Park 35 Circle, Building F, 1st Floor. In light of directives to protect public health, to obtain documents located in the Office of the Chief Clerk, please leave a voicemail at (512) 239-3300 and someone will return your call within 24 hours. Some documents located in the Office of the Chief Clerk may also be located on the Commissioner’s Integrated Database at: <https://www14.tceq.texas.gov/epic/eCID/>.

Comments and Responses

A. General Comments

Comment 1: The persons listed in Attachment 2 expressed their support for the proposed facility.

Response 1: The Executive Director acknowledges the comments made in support of the proposed facility.

Comment 2: Francisco Flores, Jason Harrington, Beca Hull, Juan Lazo, Ed McCarthy, Ismene Nevarez, Ellen Sablan and Kel Seliger expressed their general opposition to the proposed facility.

Response 2: The Executive Director acknowledges the comments made in opposition to the proposed facility.

Comment 3: Eric Allmon commented that the Applicant does not possess adequate proof of property interests to protect against current and future uses. Jason Harrington commented that the Applicant has not shown proper ownership rights to the property.

Response 3: 30 TAC § 330.59(d)(2) requires that a property owner affidavit be signed by the owners which acknowledges that the State of Texas may hold the property owner jointly or severally liable for the operation and maintenance of the facility. The affidavit also must acknowledge that the State of Texas shall have access to the property during the active life and post closure care period of the facility. The property owner affidavit is provided in Part I of the Application. Part I, Section 4.0 and Appendix I.C contain the ownership information required by 30 TAC § 330.59(d), demonstrating that the applicant is the surface owner of the property.

Comment 4: Eric Allmon, Barry Crumrine, Thomas Dean, Jason Harrington, Dave and Mangal, Kristopher Ramirez, and James Watson expressed concerns about odors and gases from the proposed facility which will cause health hazards. Thomas Dean, Frosty Gilliam, and Susan Litherland expressed concerns about the fact that methane emissions from the landfill haven’t been considered.

Response 4: Pursuant to 30 TAC § 330.125, the landfill is subject to TCEQ rules concerning air pollution control. The owner or operator must ensure that the MSW facility does not violate any applicable requirements of the approved state implementation plan developed under the

Federal Clean Air Act. Furthermore, the facility's site operating plan in Part IV of the application includes an odor management plan in Section 19.0 and a landfill gas management plan in Attachment G of Part III of the application that address the control of odors and landfill gas. The TCEQ Regional Office inspects the landfill on an annual basis, as required. Complaints regarding the facility may be made by contacting the TCEQ Region 7 Office at (432) 570-1359 or the toll-free Environment Violation Hotline at 1-888-777-3186. Complaints may also be made through the Commission's Website by following the menu for "Reporting" and "Reporting Environmental Concerns to TCEQ" at <http://www.tceq.texas.gov.us>. If the facility violates a term of the permit or the TCEQ's regulations, the permittee may be subject to an enforcement action.

Comment 5: Dave and Mangal and James Watson commented that there is no need for an additional landfill in the area.

Response 5: TCEQ jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. TCEQ has not been given authority to consider the issue of need when determining whether to approve or deny a permit application.

Comment 6: Thomas Dean, Jason Harrington, Rodney Johnson, John Loepky, Kristopher Ramirez, Michael Ramirez, and James Watson, commented that the proposed facility will have a negative impact on property values.

Response 6: As noted above, TCEQ jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. TCEQ has not been given authority to consider effects on property values when determining whether to approve or deny a permit application.

Comment 7: Thomas Dean expressed concerns about the track record of the Applicant and commented that the Applicant had to submit at least seven responses to technical notices of deficiency letters (NOD's) during the TCEQ's review of the Application. Eric Allmon commented that the application was improperly submitted because the Applicant was given too many opportunities to address technical NOD's. James Watson commented that he does not trust the Applicant.

Response 7: TCEQ rules do not limit the number of NOD's that may be used in reviewing a landfill application. During technical review of an MSW application the Executive Director's staff identifies deficiencies in technical information submitted that must be corrected in accordance with 30 TAC §§ 281.19 and 330.57(d). An applicant is required to submit requested additional technical information as replacement pages to an application in accordance with 30 TAC § 330.57(g)(6). The Executive Director's technical summary, draft permit, and preliminary decision on an MSW application are based on an application that the Executive Director has determined technically complete after all identified deficiencies have been addressed in accordance with 30 TAC §§ 281.19 and 281.21.

Comment 8: Michael Ramirez expressed concerns about an increase in illegal dumping.

Response 8: 30 TAC § 330.15 specifically prohibits the operation of a solid waste facility in a manner that causes, suffers, allows, or contributes to the creation or maintenance of a nuisance or the endangerment of human health and welfare or the environment. The Executive Director expects that if the facility is constructed and operated in accordance with the TCEQ regulations and the provisions of the issued authorization, that human health and the environment will be protected, and will not create an increase of illegal dumping of waste.

Individuals are encouraged to report their concerns regarding suspected noncompliance with terms of any TCEQ authorization or environmental regulation by calling TCEQ's 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186 or by sending an e-mail to complaint@tceq.texas.gov. TCEQ investigates all complaints. If a person or facility is found to be out of compliance with the terms and conditions of an issued authorization, rule, or law, the person or facility may be subject to enforcement action.

Comment 9: Eddie McCarthy, on behalf of Aghorn Energy, commented that they were not provided notice as a holder of the dominant mineral estate on the property.

Response 9: The Applicant revised Section 3.3 and Appendix I.B in Part I of the application to include additional mineral owners as identified in Ector County records. The Office of the Chief Clerk mailed additional notice to the mineral owners and the comment period was extended for those individuals for an additional 30 days.

Comment 10: Eric Allmon and Jason Harrington commented that the Applicant has not shown adequate experience in the field of solid waste management to meet the requirements for evidence of competency as required by TCEQ rules. Thomas Dean and Frosty Gilliam asked about the compliance history of the Applicant.

Response 10: In accordance with 30 TAC § 330.59(f), the Applicant must list all Texas solid waste sites that the Applicant has owned or operated within the last ten years; list all solid waste sites in all states, territories, or countries in which the Applicant has a direct financial interest; state that a licensed solid waste facility supervisor shall be employed before commencing facility operation; list the names of the principals and supervisors of the owner's or operator's organizations together with previous affiliations with other organizations engaged in solid waste activities; show landfilling and earthmoving experience, and other pertinent experience or licenses possessed by key personnel; and list the number and size of each type of equipment to be dedicated to facility operation.

The Applicant has provided adequate information regarding the Applicant's ability to operate the proposed landfill as presented in Part I, Section 6 of the application. The applicant owns a Recycling Center, which is located on the west side of the property within the permit boundary. Consistent with 30 TAC § 330.59(f)(3), the proposed facility supervisor will have and maintain a MSW Facility Class A license in accordance with 30 TAC, Chapter 30, Subchapter F, and sufficient equipment will be provided to conduct site operations in accordance with the proposed landfill design and permit conditions. In addition, the Applicant is required to provide the name of the principals and supervisors of their organization, as required by 30 TAC § 330.59(f)(5). The equipment requirements for the proposed facility will be based on anticipated solid waste volume and field conditions and are described in Section 5 and Table IV-3 in Part IV of the application, as required by 30 TAC § 330.127(2). Section 4 and Table IV.2 provide personnel types and descriptions for the facility in Part IV of the application, as required by 30 TAC § 330.127(3).

Comment 11: Susan Litherland commented that there are environmental justice issues that have not been taken into consideration.

Response 11: Waste permits evaluated by the TCEQ are reviewed without reference to the socioeconomic or racial status of the surrounding community. The TCEQ is committed to protecting the health of the people of Texas and the environment regardless of location. Although there are no TCEQ rules addressing environmental equity issues, such as the location of permitted facilities in areas with minority and low-income populations, disparate exposures of pollutants to minority and low-income populations, or the disparate economic, environmental, and health effect on minority and low-income populations, the TCEQ has made a strong policy commitment to address environmental equity.

The TCEQ encourages participation in the permitting process. The Office of the Chief Clerk works to help the public and neighborhood groups participate in the regulatory process to ensure that agency programs that may affect human health or the environment operate without discrimination and to make sure that concerns are considered thoroughly and are handled in a way that is fair to all. You may contact the Office of the Chief Clerk at 512-239-3300 for further information. More information on Environmental Equity may be found on the TCEQ website: <https://www.tceq.texas.gov/agency/hearings/envequ.html>.

Comment 12: Alfredo Amatovargas expressed concerns about Hydrogen Sulfide and other pollutants emitted from landfills leading to deaths caused by lung cancer and deaths and hospitalizations caused by respiratory diseases.

Response 12: Subsurface gas migration and surface emissions at the proposed facility will be controlled by containment systems (liners and covers). Landfill gas will be monitored at the perimeter and in site structures. Gas migration in the subsurface will be monitored using a system of gas monitoring probes installed along the perimeter of the site to intercept potential gas migration pathways in the subsurface. The designs for the perimeter gas monitoring system are detailed in the Landfill Gas Management Plan (LFGMP) in Attachment G to Part III of the application.

The Executive Director has preliminarily determined that the provisions and procedures for landfill gas management specified in the LFGMP meet the requirements of 30 TAC §§ 330.63(g) and 330.371 and are expected to control releases of gas and odors from the landfill.

Comment 13: James Watson expressed concerns about the destruction of animal habitat.

Response 13: 30 TAC § 330.61(n) requires the Applicant to consider the impact of a proposed MSW facility on endangered and threatened species, and prohibits the destruction or adverse modification of critical habitat of endangered or threatened species, or to cause or contribute to the taking of any endangered or threatened species. MSW rules do not address other wildlife; however, the Executive Director believes that if the facility is constructed and operated in accordance with the Application and 30 TAC, Chapter 330, wildlife and livestock will be adequately protected.

B. Land Use Issues

Comment 14: Salim Ashraf, Brenda Chavez-Valdez, Rodney Johnson, and Michael Ramirez expressed concerns about the location of the property. Eric Allmon and Jason Harrington commented that the proposed landfill is incompatible with surrounding land uses, specifically the cement, oil, and gas production in the area. Thomas Dean and Frosty Gilliam commented that the operation of the landfill is not compatible with the active oil and gas activities in the area, specifically the oil and gas wells and the active pipelines with the footprint of the landfill. Eric Allmon commented that the Applicant has not provided adequate demonstration of on-site well plugging or adequate consideration of on-site production.

Response 14: In order to assist the Commission in evaluating the impact of a proposed MSW facility on the surrounding area, applicants must 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. Specifically, an applicant must provide certain information, including an available published zoning map for the facility and within two miles of the facility for the county or counties in which the facility will be located; information about the character of the surrounding land uses within one mile of the proposed facility; information about growth trends within five miles of the facility with directions of major development; information on the proximity of the facility to residences, business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; information regarding all known wells within 500 feet of the site; and any other information requested by the Executive Director.

Part II, Section 13.0 addresses oil, gas, and exploration wells at the facility. Texas Railroad Commission (RRC) data was used to identify 29 oil wells on or within 500 feet of the facility. Twelve of those wells are active and 17 are plugged. Five active oil wells are located within the permit boundary of the facility. Texas RRC reports for the 14 plugged wells are included in Part III, Attachment E7 of the application. As shown on Figures II.A.6 and II.A.12, the waste footprint is designed to maintain access to existing oil wells and oil/gas pipelines on the facility.

Documentation of plugging of inactive wells from the Texas RRC was provided for all plugged wells within the proposed waste footprint. In accordance with 30 TAC § 330.61(l)(2), producing crude oil or natural gas wells that do not affect or hamper landfill operations may remain in their current state, if identified in the permit for the facility.

Additionally, if any unknown abandoned crude oil, natural gas, other wells associated with mineral recovery, or water wells are discovered on facility, the facility must provide the Executive Director a notification of location and written certification if the well has been capped, plugged, and closed in accordance with all applicable rules and regulations of commissions and other state agency, within 30 days of discovery, per 30 TAC § 330.161.

Comment 15: Eric Allmon commented that the proposed landfill is not compatible with the residential growth trends of the City of Odessa.

Response 15: 30 TAC § 330.61(h) requires that the owner or operator provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the land use, zoning in the vicinity, community growth patterns, water wells, and other factors associated with the public interest.

In Part II, Appendices 2A and 2B of the application, the Applicant provided the following in accordance with TCEQ requirements: an available public zoning map for the landfill within two miles of the landfill for the county or counties in which the landfill is or will be; information about the character of the surrounding land uses within one mile of the proposed facility; information about growth trends within five miles of the landfill with directions of major development; proximity to residences, business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; and information regarding all known wells within 500 feet of the site. The facility is located outside of the city limits of Odessa. A number of inhabitable structures are concentrated mostly east of the landfill within the one-mile radius. Some commercial land use exists within the one-mile radius of the landfill. The surrounding land within one mile of the complex consists mostly of un-zoned areas, vacant lots, and rural agricultural lands, although some residential land uses exists within one mile of the facility. The residential land use is limited to single-family and there is no zoning nor any trend of population growth in the vicinity of the site. The area within 5 miles of the landfill site is not zoned. The area is used for agricultural, industrial, residential, vacant lot, drill site, rural, commercial, electrical company, and for other purpose. Information about any existing zoning on or surrounding the property;

- The character of the surrounding land uses within one mile of the proposed facility;
- Growth trends within five miles of the facility with directions of major development;
- Proximity of the proposed facility to residences, business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality, and;
- Any other information requested by the ED to demonstrate compatibility with surrounding land uses. The rules further specify that if the proposed facility requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval should be submitted by the Applicant.

The Executive Director has preliminary determined that the application complies with all applicable land use requirements.

Comment 16: Eric Allmon commented that area roadways have not been demonstrated to be adequate and available. Thomas Dean and Frosty Gilliam asked how many vehicles per day will

be coming and going from the landfill, if it is constructed, and what types of vehicles will be allowed to bring waste to the proposed facility.

Response 16: In accordance with 30 TAC § 330.61(i), an MSW landfill application must include data on access roads for the proposed facility, including: availability and adequacy of roads that the owner or operator will use to access the site; volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the facility; and projections on the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility.

Appendix IIC, Part II of the application contains a traffic study supplying the required traffic data, including proposed road improvements. The existing traffic at the proposed facility is discussed in Section 10, Part II of the application. When reviewing permit applications, the Executive Director defers to recommendations by the Texas Department of Transportation (TxDOT) on transportation and traffic issues regarding the traffic impacts and adequacy of state-maintained roadways and to recommendations by local authorities on transportation and traffic issues regarding the traffic impacts and adequacy of locally maintained roadways. The Applicant demonstrated coordination with TxDOT, as required by 30 TAC § 330.61(i). Coordination documents, required under 30 TAC § 330.61(i)(4), are provided in Part II, Appendix IIC of the application. The application proposes improvements to FM 866 at the entrance of the facility, in coordination with TxDOT. The Applicant will submit a driveway permit request for the reconstruction of the existing access, and an updated traffic analysis after the facility is fully operational, as requested by TxDOT.

The landfill facility is expected to contribute approximately 102 vehicles per day in the first year of operation to over 256 vehicles per day towards the end of the facility life. Vehicles accessing the landfill include solid waste haul trucks, pickup trucks, and roll-off trucks. Part II, Appendix IIC of the application includes an evaluation of the Level of Service of the access routes proposed for use by the facility. The traffic volume in the initial year is increased by less than three (3) percent. The information provided in the application indicates that the access road can sufficiently handle the current and anticipated future traffic volumes associated with the facility. The TxDOT Odessa District has reviewed the traffic study for the site and concurred with the study.

The Executive Director has preliminarily determined that the application complies with all applicable requirements regarding availability and adequacy of roads and traffic impacts and safety.

C. Permit and Application Issues

Comment 17: Eric Allmon commented that the geotechnical stability of the facility has not been demonstrated, particularly considering the unaddressed potential for seismic impacts and the inadequate geotechnical testing that is proposed.

Response 17: An application for an MSW Type I landfill is required to include a Geology Report prepared by a licensed professional in accordance with 30 TAC § 330.63(e), which includes requirements for soil testing and geotechnical analysis. The Geology Report was reviewed to determine whether representations regarding the soil testing and geotechnical testing are in accordance with the requirements of 30 TAC § 330.63(e)(5). Geology and engineering information submitted to the Commission is required to be prepared, sealed, and signed in conformance with the Texas Engineering Practice Act and the Texas Geoscience Practice Act. (30 TAC § 330.57). Because the Executive Director does not conduct an independent geologic study or independently verify every representation made in an application, the Commission and the Executive Director rely on work product prepared, signed, and sealed by accredited professionals. The review conducted by the Executive Director's staff includes a consideration of whether application materials that are required to be submitted under the seal of a professional such as data, hypotheses, and conclusions conform to the applicable professional standards and meet TCEQ rules. It has been determined that the

geological and geotechnical information meet the requirements of the rules. The potential for seismic risk has been addressed in accordance with 30 TAC § 330.557 in Part III, Attachment E, Section 2.2. The site is not located in a high seismic risk zone according the United States Geological Survey Seismic Impact Zone map in Figure III.E.4.2.

The Executive Director has preliminarily determined that the application complies with all applicable requirements regarding seismic impact and the geotechnical testing.

Comment 18: Eric Allmon and Jason Harrington commented that the use of an alternate liner and alternate final cover system have not been justified. Frosty Gilliam asked how the landfill will be lined to prevent seepage.

Response 18: MSW rules specify liner system design requirements in 30 TAC, Chapter 330, Subchapter H for the protection of groundwater. Waste disposal units that will receive household waste require a composite or an alternative liner. The application includes design details of a constructed soil liner in Part III, Attachment 3D which meets the liner requirements for Type I and Type IV landfill units as specified in 30 TAC § 330.331. The computerized design model MULTIMED (see Appendix D7-D/Part III), developed by the U.S. Environmental Protection Agency, has been used for the alternate liner demonstration. Appendix III.E of the site development plan includes the methodology of the MULTIMED model demonstration for alternate liner design. The liner system will consist of the following components (listed in order from top to bottom of the liner system):

- Geo-composite layer (geotextile on both sides of geonet will be minimum of 8-ounce);
- 60-mil High Density Polyethylene (HDPE) geomembrane liner;
- Reinforced Geosynthetic Clay Liner (GCL) with hydraulic conductivity of 5×10^{-9} cm/s or less; and
- 30-mil HDPE to avoid direct contact with the caliche subgrade to prevent ion-exchange.

An alternate final cover (Water Balance Final Cover) construction shall be subjected to an approval through a permit modification application from the TCEQ. Attachment H in Part III of the application includes the details for the final cover system designed to meet the requirements of 30 TAC, Chapter 330, Subchapter K. The final cover system will be provided to cover each cell with a composite final cover over both Type I and Type IV disposal areas consisting of the following components (listed in order from top to bottom):

- Minimum of 6 inches of erosion layer capable of sustaining native plant growth;
- Double sided geo-composite drainage layer;
- 40-mil LLDPE (Linear low-density polyethylene) geomembrane; and
- 18 inches of infiltration layer with a coefficient of permeability no greater than 1×10^{-5} cm/sec.

The Executive Director has determined that information in the application regarding liner and final cover designs are adequate to meet rule requirements.

Comment 19: Eric Allmon commented that the application includes inadequate information regarding the existence of wetlands, the location of the floodplain and the risks of flooding, and the potential for extensive erosion.

Response 19: TCEQ rules require applicants for MSW landfills to provide a wetlands determination in Part II of the application in accordance with 30 TAC § 330.61(m). In this case, the application indicates that Cox McLain Environmental Consulting performed a wetland determination (Assessment) at the facility as provided in Appendix IID to Part II of the application. The Assessment evaluated the facility for applicable federal, state, and local laws, regulations, and rules regarding wetlands. As shown in Appendix IID, Cox McLain Environmental Consulting report indicates that there will be no impacts to waters of the U.S. and no U.S. Army Core of Engineer permit is required to construct the proposed facility.

Consistent with 30 TAC §§ 330.61(m)(1) and 330.547, an evaluation of the 100-year floodplain was prepared by the Applicant for the facility. As required under 30 TAC § 330.303, TCEQ utilizes 25-year storm event parameters in the design of facility drainage structures located in areas not prone to flooding. Floodplains within and adjacent to the site are discussed in Section 14, Part II of the application, which indicates that the proposed facility is outside the 100-year floodplain. TCEQ rules under 30 TAC § 330.63(c)(2)(A) specify Federal Emergency Management Agency (FEMA) maps as prima facie evidence of floodplain locations. A FEMA Flood Insurance Rate Map (FIRM) that includes the landfill facility boundary is included in the application. The map shows that the site is located outside of the floodplain.

In accordance with 30 TAC § 330.547(a), the facility's current waste disposal operations are not located in the 100-year floodway. Additionally, 30 TAC § 330.547(b), the facility's proposed MSW disposal units are not located in the 100-year floodplain, should not restrict the flow of the 100-year flood, should not reduce the temporary water storage capacity of the floodplain, and should not result in the washout of solid waste. Further, 30 TAC § 330.547(c), the facility's processing and/or storage units are not located within the 100-year floodplain.

30 TAC § 330.305(d)(2) states "The top surfaces and external embankment slopes of municipal solid waste landfill units must be designed to minimize erosion and soil loss..." Attachment C of Part III of the application contains the Erosion Control Plan. Part III, Attachment C, Section 5.0 addresses erosion control for interim and final conditions. Appendix III.C.3 includes a demonstration of adequate thickness of both interim and final cover, using the Revised Universal Soil Loss Equation. It shows how this facility has been designed to comply with this rule and compliance will be monitored following construction and during operation through routine inspections. Specifically, the Erosion and Sedimentation Control Plan outlines the Structural and Non-Structural controls which will be used to reduce erosion during construction and operation of this facility. These controls include side slope vegetation, drainage ditch erosion protection, and design considerations intended to limit the potential for erosion conditions.

The Executive Director has preliminarily determined that the application contains sufficient information regarding the wetland, floodplain, and erosion issues.

Comment 20: Eric Allmon commented that endangered and threatened species have not been properly addressed in the application.

Response 20: Under 30 TAC § 330.53(b)(13)(B), the TCEQ must consider the impact of a solid waste disposal facility on endangered or threatened species. In addition, the facility and the operation of the facility may not result in the destruction or adverse modification of the critical habitat of an endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species. According to 30 TAC §§ 330.51(b)(8), 330.53(b)(13), and 330.302, the Applicant must demonstrate compliance with the Endangered Species Act under state and federal laws. As part of the review of this permit application, an environmental investigation was done by Cox-McLain. The Cox-McLain report in Part II, Appendix E found that no threatened or endangered species would be adversely impacted by the facility. The information submitted in the application was determined by the Executive Director to meet the requirements in the TCEQ's MSW rules.

Comment 21: Eric Allmon expressed concerns that drainage and surface water impacts of the facility have not been evaluated or addressed. Jason Harrington commented that the landfill will alter natural drainage patterns in the area which will make flooding worse.

Response 21: TCEQ rules in 30 TAC §§ 330.63(c), 330.303, 330.305, and 330.307 require the Applicant to provide a Surface Water Drainage Report that demonstrates that the owner or operator will design, construct, maintain, and operate the landfill to manage run-on and runoff during the peak discharge from at least a 25-year storm and prevent the off-site discharge of waste and contaminated stormwater; provide structures to collect and control at least the water

volume resulting from a 24-hour, 25-year storm; protect the landfill from washouts; and demonstrate that the existing drainage pattern is not adversely altered.

Attachment C (Facility Surface Water Drainage Report) to Part III of the application provides discussions and detailed designs, calculations, and operational considerations for the collection, control, and discharge of storm water from the landfill as required by the above-referenced rules. According to Attachment C to Part III of the application, stormwater runoff will be collected in swales (drainage terraces) located on the top deck and side slopes of the landfill and conveyed to letdown structures, and from there to the perimeter drainage system. The swales, letdown structures, and perimeter channels are designed to convey the peak flows from a 25-year runoff from the developed landfill consistent with TCEQ regulations. The perimeter drainage system consists of a network of perimeter channels and two detention ponds designed for a 25-year, 24-hour storm event. Runoff from Drainage Area A (north part of the landfill) is routed through perimeter channels along the north sides into the North Pond. Runoff from Drainage Area B (south part of the landfill) is routed through perimeter channels along the south sides into the South Pond. Each detention pond includes a broad-crested weir outfall structure. The weir mitigates increases in stormwater exiting the facility on the eastern permit boundary resulting from development of the landfill. Under low-flow conditions, weirs will allow stormwater to flow at rates and velocities less than those calculated for existing conditions. Under high-flow conditions expected during a 25-year, 24-hour rainfall event, each weir is sized to meter stormwater flow not to exceed existing condition flow rates. The application also indicates that the facility will pursue authorization under Texas Pollutant Discharge Elimination System (TPDES) General Permit in accordance with 30 TAC § 330.61(k)(3), as required by Section 402 of the federal Clean Water Act. The facility is designed to prevent the discharge of pollutants into waters in the state or waters of the United States, as defined by the Texas Water Code and the Federal Clean Water Act, respectively. All monitoring of stormwater discharge is done under this TPDES permit.

The Executive Director has preliminarily determined that the application complies with all applicable requirements regarding drainage controls, stormwater runoff, and discharge controls.

Comment 22: Eric Allmon commented that the easements in the application have not been adequately depicted and addressed.

Response 22: In accordance with 30 TAC § 330.61(c)(10), an application must include a general location map that illustrates all drainage, pipeline, and utility easements within or adjacent to the facility. Part II, Section 5.0 of the application indicates that this information is provided in Part II, Appendix II.A, Figure II.A.12.

In accordance with 30 TAC §§ 330.141(a) and 330.543(a), no solid waste unloading, storage, disposal, or processing operations may occur within any easement and no solid waste disposal may occur within 25 feet of the center line of any utility line or pipeline easement. TCEQ rules also require 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. All pipeline and utility easements shall be clearly marked with posts that extend at least six feet above ground level, spaced at intervals no greater than 300 feet (30 TAC § 330.543(a)). Part IV, Section 15.0 of application states that there will be no solid waste activities within any easement or within 25 feet of the center line of any utility line or pipeline easement.

The Executive Director has preliminarily determined that the application complies with all applicable requirements regarding all easements, pipelines, utility lines, and rights-of-way located within the permitted boundary of the facility.

Comment 23: Eric Allmon, Thomas Dean, and Frosty Gilliam expressed concerns that there does not appear to be adequate screening for naturally occurring radioactive material that may be present in the waste streams.

Response 23: Jurisdiction over oil and gas Naturally Occurring Radioactive Material (NORM) waste is split between the Texas Department of State Health Services (DSHS) and the Texas RRC. The DSHS regulates the possession, use, transfer, transport, and storage of NORM and the Texas RRC regulates the activities associated with disposal of oil and gas NORM waste. Materials that are classified as non-exempt NORM waste are prohibited from disposal according to Part III, Section 2.1 of the application. 30 TAC § 330.133(c) specifies that any prohibited waste must be returned immediately to the transporter or otherwise properly managed by the landfill.

Comment 24: Thomas Dean and John Loepky expressed concerns about threats to groundwater if the landfill is constructed. Eric Allmon and Thomas Dean commented that there has not been sufficient evaluation of the geology and hydrogeology beneath the proposed landfill site. Eric Allmon also commented that the presence of so many water wells makes this site risky for a landfill.

Response 24: *Surface water.* Part II, Section 12.3 of the application identifies “no lakes, streams, rivers, or other water ways near the site.” Figure II.A.15 demonstrates that there are no FEMA-identified 100-year floodplains located at the facility.

Groundwater characterization. Part III, Attachment E, Section 3.4 of the application identifies 185 water wells within a 1-mile radius of the facility and Figure III.E1.7 identifies the location of those wells. Appendix III.E6 includes copies of Texas Water Development Board well records. 12 borings were converted to piezometers to monitor for groundwater, 4 of which were completed in basal Antlers Sand saturation above the Dockum Group shale. Each piezometer was observed seasonally for groundwater. Figure III.F1 shows the groundwater contours developed from the groundwater observation study. Part III, Attachment E, Section 4.5 describes slug tests that were performed in 4 piezometers and characterizes aquifer hydraulic conductivity, as well as flow direction and rate.

Oil, gas, and exploration wells. Part II, Section 13.0 of the application addresses oil, gas, and exploration wells at the facility. The Texas RRC data was used to identify 29 oil wells on or within 500 feet of the facility. Twelve of those wells are active and 17 are plugged. Only 5 active oil wells are located within the permit boundary of the facility. Texas RRC reports for the 14 plugged wells are included in Part III, Attachment E7.

Water wells. Part III, Attachment E, Section 3.4 of the application identifies 185 water wells within a 1-mile radius of the facility and Figure III.E1.7 identifies the location of those wells. Appendix III.E6 includes copies of Texas Water Development Board well records.

Faults, fractures, caves, sinkholes, unstable areas, etc. Part III, Attachment E, Section 2.3 of the application states:

- Boring logs did not indicate poor foundation conditions in subsurface media below the site. Materials penetrated by the site possess low shrink/swell potential.
- Evidence of karst terrain was not observed at the site, in borings, or published geologic maps.
- Evidence of mass movement of natural formations or earthen material on/in the vicinity of the site was not observed at the site, in borings, or on geologic maps.

Additionally, Part II, Attachment E, Section 2.1 of the application states: “No evidence of faulting was observed at or near the surface within 200 feet of the site. The ground surface at/near the site indicated no evidence of subsidence. No lineation was noted on aerial photographs and no fault scarps, fault gouges, vertical displacement or offset of soils or build structures were observed during site reconnaissance.”

Comment 25: Eric Allmon commented that the proposed groundwater monitoring systems is inadequate.

Response 25: According to 30 TAC §§ 330.52(b)(4) and § 330.53(b)(8)(E), the Applicant is required to include a map and a description and discussion of all known wells within 500 feet of the proposed permit boundary. The Applicant has identified the results of the required water well searches in Part II of the application. Additionally, 30 TAC § 330.56(d)(4)(J) requires the owner or operator to provide the identification, location, and aquifer of all water wells within one mile of the property boundaries of the facility. The Applicant has provided this information in Part III, Attachment E – Geology Report, of the application.

The Executive Director has preliminarily determined that the proposed point of compliance (POC) and groundwater monitoring system design meet the requirements of 30 TAC § 330.63(e) and (f).

The Executive Director has also preliminarily determined that the proposed POC is consistent with the definition of POC in 30 TAC § 330.3(106), which defines POC as “a vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulatory units, and located on land owned by the owner of the facility.” There will be eleven groundwater monitor wells. The proposed groundwater monitoring system meets the default 600-foot-maximum groundwater monitoring well spacing requirement in 30 TAC § 330.403(a)(2). The proposed groundwater monitoring system is shown on the drawing labeled Figure III.F1, in Attachment III.F1 of the application.

In order to provide protection for area groundwater resources, the permit application provides the details of a constructed (alternate) Geosynthetic Clay Liner (GCL). Additionally, the application provides the details of a proposed groundwater monitoring system comprised of sufficient monitoring wells to detect the quality of groundwater passing the relevant point of compliance for this facility. The groundwater monitoring system is designed to detect the release of leachate from the facility.

In the event of contaminant migration, the permit application's Groundwater Sampling and Analysis Plan, Part III, Attachment F of the application provides details for implementing Assessment Monitoring, Corrective Action, and Remediation Plans.

The deepest excavation at the landfill will be approximately 3,020 feet Mean Sea Level (MSL). At this depth, the subsurface boring information indicates that there would be potential contact with a gravel, sand, clay, and caliche. Therefore, the design of this landfill includes an alternative liner that is constructed with Geosynthetic Clay liner (GCL) overlain by a 60-mil geomembrane. This alternative liner is designed to form a barrier between the waste and the underlying formation. The leachate collection layer is designed to slope in the direction of the leachate collection trenches which will allow any leachate that is generated while the landfill is in operation to be removed from the liner and managed as contaminated water. A leachate collection sump and a pump will be installed to be in place at the time of facility closure. The system will be monitored to remove any liquid that may collect throughout the post-closure care period. These practices are designed to limit the amount of contaminated liquid that is left in contact with the liner, which can potentially affect its performance, and to lower the chance of contaminating groundwater.

The Executive Director has determined that the information submitted complies with the requirements of 30 TAC, Chapter 330 with regards to liner construction and groundwater monitoring.

Comment 26: James Edward Watson commented that the facility accepting medical waste and animal carcasses is unacceptable.

Response 26: Section 3.0 of Part II of the application adequately addresses the waste acceptance plan (WAP) in accordance with 30 TAC § 330.61(b). The WAP must identify the sources and characteristics of waste and provide a brief description of the general sources and generation areas contributing wastes to the facility. Section 3.1 of Part II describes the wastes

that will be accepted and those that are prohibited at the facility, and characterizes wastes to be accepted at the facility as follows: Solid waste to be disposed of will consist of waste from incidental to municipal, community, commercial, institutional, recreational, and industrial activities, including garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, abandoned automobiles, construction-demolition waste, yard waste, Class 2 non-hazardous industrial solid waste, Class 3 non-hazardous industrial solid waste, and special waste. The proposed landfill will not be authorized to accept wastes other than the wastes mentioned above.

Once the medical waste is treated in accordance with the procedures specified in 30 TAC, Chapter 326 (relating to Medical Waste Management), it may be managed as routine MSW at the facility. Section 29, Part IV of the application indicates that medical wastes that have not been treated in accordance with the procedures specified in 30 TAC Chapter 326 will not be accepted at a landfill unless authorized in writing by the Executive Director in accordance with 30 TAC § 330.171(c)(1). The Executive Director may provide this authorization when a situation exists that requires disposal of untreated medical wastes in order to protect human health and the environment from the effects of a natural or man-made disaster. Section 29, Part IV of the application also indicates that dead animals and/or slaughterhouse waste will be accepted and immediately covered by either 3 feet of waste or 2 feet of soil in accordance with 30 TAC § 330.171(c)(2).

The Executive Director has preliminarily determined that the application contains sufficient information regarding the Waste Acceptance Plan.

D. Site Operating Plan Issues

Comment 27: Eric Allmon commented that the Applicant has not provided an adequate Site Operating Plan (SOP) because the SOP does not prevent or assure proper identification and response to fires and other safety or health hazards. Rodney Johnson expressed concerns about an increase in rodents as a result of the proposed facility. Eric Allmon commented that the site operating plan does not prevent or minimize access by rats, insects, birds, and other carriers of disease or the spread of such disease vectors off-site.

Response 27: *Specificity.* Part IV of the application individually addresses each of the rule citations found in 30 TAC, Chapter 330, Subchapter D.

Waste screening procedures. Part IV, Section 8.0 of the application establishes procedures for the detection and prevention of the disposal of prohibited wastes including sign posting, providing customers with lists of prohibited waste, prohibited waste training, and random inspections of vehicles. The site operating plan contains measures for controlling prohibited wastes in accordance with 30 TAC §§ 330.65 and 330.127.

Fires and other safety or health hazards. In accordance with 30 TAC § 330.129, an application must include calculations demonstrating that the operator can cover any waste received for disposal that has not been covered with six inches of earthen material within one hour of detecting a fire. This requires sufficient on-site equipment and an adequate supply of soil located near the active waste disposal area. Part IV of the application must contain a Fire Protection Plan that identifies the fire protection standards to be used at the facility and how personnel are trained. This Fire Protection Plan, including the required demonstration that the active face may be covered within one hour, is included in Part IV, Section 9.0 of the application. The application satisfies the rule requirements regarding fire protection.

Access by rats, insects, birds. The landfill operator is required to control on-site populations of disease vectors using proper compaction and daily covering of waste and other approved methods when needed in accordance with 30 TAC § 330.151. The application describes procedures for control of on-site populations of disease vectors including minimizing the size of the working face and application of daily, intermediate, and final cover, daily site operations,

and application of pesticides as needed by a licensed professional exterminator. Part IV, Section 20.0 of the application addresses disease vector control in accordance with 30 TAC § 330.151.

Windblown waste; dust and soil runoff; ponding of water on landfill; odors; emergency response and contingency plan; fire and emergency response; access control. Part IV, Section 14.0 of the application addresses windblown solid waste and litter in accordance with 30 TAC § 330.139. Part IV, Section 21.0 addresses dust and soil runoff in accordance with 30 TAC § 330.153. Part IV, Section 28.0 addresses ponded water in accordance with 30 TAC § 330.167. Part IV, Section 19.0 provides an odor management plan in accordance with 30 TAC § 330.149. Part IV, Section 9.0 provides a fire protection plan in accordance with 30 TAC § 330.129. Part IV, Section 10.0 addresses access control in accordance with 30 TAC § 330.131. Many sections of Part IV address emergency response and contingency plans to mitigate common issues that arise during landfill operations.

Comment 28: Eric Allmon commented that the Applicant has not provided an adequate SOP because the SOP does not prevent or minimize litter or windblown waste or provide for timely and adequate clean-up on site or on nearby private property.

Response 28: Sections 14.0 and 17.0 of the SOP provide procedures for control of windblown solid waste and litter and for control and cleanup of materials along the route to the site. The Applicant is responsible for picking up litter scattered throughout the site, along fences and access roads, at the gate, and along and within the right-of-way public access roads serving the facility for a distance of two miles from the entrance (including any waste illegally dumped within the right-of-way). That clean up must occur at least once a day on the days that the facility is in operation.

The Executive Director has preliminarily determined that the application complies with the requirements of 30 TAC §§ 330.139 and 330.145. If the landfill is operated in accordance with the SOP, the Executive Director expects that windblown waste and materials along the route to the site will be adequately controlled and picked up.

Comment 29: Eric Allmon commented that the Applicant has not provided an adequate SOP because the SOP does not prevent or minimize windblown dusts, run-off of soils, and wastes from the site.

Response 29: TCEQ rules prohibit dust from on-site and off-site roadways that provide access to an MSW landfill from causing a nuisance to surrounding areas. 30 TAC § 330.153(b) also requires a water source and necessary equipment or other means of dust control approved by the Executive Director. Part IV, Section 21 of the application indicates that a street sweeper, water truck, or other methods will be used to control dust, if needed. Mud tracked onto public roads and near the entrance gate will be picked up at least once daily.

The Executive Director has preliminarily determined that the information submitted in the application complies with the TCEQ rules and will provide adequate dust control

Comment 30: Eric Allmon commented that the Applicant has not provided an adequate SOP because the SOP does not prevent or minimize the ponding of water on the landfill.

Response 30: 30 TAC § 330.167 requires that the ponding of water over waste on a landfill must be prevented. Ponded water must be eliminated and the area in which the ponding occurred must be filled in and regraded within seven days of the occurrence. A ponding prevention plan must be provided in the SOP that identifies techniques to be used at a landfill to prevent the ponding of water over waste; an inspection schedule to identify potential ponding sites; corrective actions to remove ponded water; and general instructions to manage water that has come into contact with waste. Part IV, Section 28.0 of the application addresses ponded water. This section indicates that ponded water will be prevented by proper grading and that ponded water over waste will be removed and the depression filled in and graded within seven days of the occurrence. Inspection frequencies for daily, intermediate, and final cover are provided in Part IV, Section 27.0. Daily cover will be inspected daily while

intermediate and final cover will be inspected after placement, weekly, and within 72 hours of a 0.5-inch or greater rainfall event. Inspections specifically for ponded water will occur within 72 hours of a 0.5-inch or greater rainfall event.

The Executive Director has preliminarily determined that the information submitted in the application to address prevention of ponded water meets TCEQ rule requirements.

Comment 31: Eric Allmon commented that the Applicant has not provided an adequate SOP because the SOP does not provide adequate emergency response and contingency plans for fires, accidents, injuries, spills, and other such conditions.

Response 31: 30 TAC § 330.129 requires that the operator maintain a source of earthen material in such a manner that it is always available to extinguish any fires. The source must be sized to cover any waste received for disposal not covered with six inches of earthen material. Sufficient on-site equipment must be provided to place a six-inch layer of earthen material to cover any waste not already covered with six inches of earthen material within one hour of detecting a fire. An SOP must contain calculations demonstrating the adequacy of the earthen material and to demonstrate that the type and number of equipment listed in the site operating plan will be able to transport the volume of earth required. The SOP must contain a fire protection plan that identifies the fire protection standards to be used at the facility and how personnel are trained. The Landfill's Fire Protection Plan is included in Part IV of the application. The Executive Director has reviewed the application and determined that it satisfies the rule requirements regarding fire protection.

Cleanup of wastes, including special wastes, spilled from transportation vehicles and, when necessary, decontamination of the area where these wastes were spilled, are the responsibility of the transporter of the spilled waste. In the event of a spill within two miles of the entrance, the facility would also have some involvement, as they would be responsible for daily cleanup of waste materials spilled along and within the right-of-way on these roads on days the facility operates.

Comment 32: Eric Allmon commented that the Applicant has not provided an adequate SOP because the SOP does not assure adequate coordination with local fire and emergency response services or provide for adequate on site equipment, water, soil, and personal equipment for on-site responses.

Response 32: 30 TAC § 330.114(2) requires the Applicant to describe the minimum number, size, type, and function of the equipment to be used. The Applicant provided an equipment list in Table IV.3 of the SOP, which shows the types and number of pieces of equipment that will be used. The SOP includes information in Section 9 regarding the working face size and calculations to show that six inches of soil cover can be applied to the working face within one hour.

Comment 33: Eric Allmon commented that the Applicant has not provided an adequate SOP because the SOP does not assure that the landfill site will have adequate controls to prevent access by unauthorized persons or address scavenging.

Response 33: Scavenging is prohibited by 30 TAC § 330.155, and requirements for access control are provided by 30 TAC § 330.131. Public access to all MSW facilities must be controlled by means of artificial barriers, natural barriers, or a combination of the two. Uncontrolled access must be prevented. Provisions for access control must be provided in the SOP, which must also include an inspection and maintenance schedule and notification requirements as specified in the rule. The rule indicates that fences and gates are the preferred method of landfill access and control but does not provide specifications for these features. Part IV, Section 10.0 of the application indicates that access will be controlled by a barbed wire fence at the permit boundary. Access from FM 866 is limited to the entrance road through the gatehouse area where a gate attendant controls access and monitors all vehicles entering and

exiting the site. Part IV, Section 22.0 notes that scavenging is prohibited. The information provided meets the requirements for site access control and scavenging.

Changes Made to the Draft Permit in Response to Comments

The Application and Draft Permit comply with all applicable regulatory and statutory permitting requirements. No changes were made to the Draft Permit in response to comments received.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker
Executive Director

Erin Chancellor, Director
Office of Legal Services

Robert Martinez, Deputy Director
Environmental Law



Anthony Tatu, Staff Attorney
State Bar No. 00792869
P.O. Box 13087, MC 173
Austin, TX 78711-3087
512-239-1939



Mattie Isturiz, Staff Attorney
State Bar No. 24120918
P.O. Box 13087, MC 173
Austin, TX 78711-3087
512-239-1939

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Attachment 1

Persons Who Commented on the Diamond Back Landfill Facility Application

Allmon, Eric	Hernandez, Joseph	Perez, Michael
Amatovargas, Alfredo	Hull, Beca	Phillips, Jerry
Angeles, Alma		
Ashraf, Salim	Johnson, Rodney	Ramirez, Kristopher
		Rodriguez, Erica
Baeza, Marita	Landraff, Brooks	Rodriguez, Heaven Lei
Baiza, Jacinda Marie	Lazo, Juan	Rickey, George
	Litherland, Susan	
Chavez-Valdez, Brenda	Loepky, John	Sablan, Ellen
Crumrine, Barry		Seliger, Kel
	Mangal, Dave	
Dean, Thomas	Marrero, Michael	Turner, David
	McCabe, Shaun	
Fierro, Richard Ramon	McCarthy, Edmond	Quintela, Brenda
Flores, Francisco	Molinar, Javier	
	Monclova, Enrique	Urias, Erica
Gilliam, Frosty		
	Nevarez, Ismene	Watson, James
Harrington, Jason		
Hernandez, Bo	Ortega, Claudia	
Hernandez, John		

Attachment 2
RTC Comment 1
Persons in Support of the Proposed Facility

Angeles, Alma	Landraff, Brooks	Phillips, Jerry
Baeza, Marita	Marrero, Michael	Rodriguez, Erica
Baiza, Jacinda Marie	McCabe, Shaun	Rodriguez, Heaven Lei
Fierro, Richard Ramon	Molinar, Javier	Rickey, George
Hernandez, Bo	Monclova, Enrique	Turner, David
Hernandez, John	Ortega, Claudia	Urias, Erica
Hernandez, Joseph	Perez, Michael	Quintela, Brenda