

Jon Niermann, *Chairman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

06/20/2024

### **Via Electronic Filing**

The Honorable Shelly M. Doggett  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

Re: STL Developer, LLC  
SOAH Docket No. 582-23-12834  
TCEQ Docket No. 2022-0376-MSW-E  
ED's Responses to STL Developer LLC's Exceptions

Dear Judge Doggett:

Enclosed are the Executive Director's Responses to STL Developer LLC's Exceptions to the ALJ's Proposal for Decision, for the above referenced case. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn G. M.", written in black ink.

Marilyn Norrod, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality  
[Marilyn.Norrod@tceq.texas.gov](mailto:Marilyn.Norrod@tceq.texas.gov)

Enclosure

cc: Eddie Lewis, Attorney for Respondent  
Eli Martinez, Office of Public Interest Counsel

SOAH DOCKET NO. 582-23-12834  
TCEQ DOCKET NO. 2022-0376-MSW-E

EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
PETITIONER

VS.

STL DEVELOPER, LLC,  
RESPONDENT

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BEFORE THE  
  
STATE OFFICE OF  
  
ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S RESPONSES TO STL DEVELOPER, LLC'S EXCEPTIONS TO  
THE ADMINISTRATIVE LAW JUDGE'S MAY 22, 2024 PROPOSAL FOR DECISION**

TO THE HONORABLE JUDGE DOGGETT:

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality, by and through Marilyn Norrod, a representative of TCEQ's Litigation Division, and respectfully files these responses to STL Developer, LLC's exceptions to the Administrative Law Judge's (ALJ's) Proposal for Decision issued on May 22, 2024.

I. **Response to Exception No. 1:** Respondent asks that Mr. Lara's cost estimates for the cost of removing the MSW be considered as the correct estimate for the costs of cleaning up the MSW and taking it to a licensed facility. Mr. Lara's opinions about the costs of cleanup were not supported by any corroborating estimates or receipts. Mr. Lara grossly overestimated the costs. TCEQ Enforcement Coordinator, Mr. Moller, testified that the estimated cleanup costs of \$134,964 stated in the PCW attached to the Executive Director's First Amended Report and Petition were based on average costs to transport MSW and take it to a licensed facility in Respondent's community. Further, pursuant to TEXAS WATER CODE § 7.073, the Commission has the authority to order a person to take corrective action for violations of any statute or rule within its jurisdiction. The statute does not consider inability or unwillingness to pay as a limiting factor on this authority.<sup>1</sup>

II. **Response to Exception No. 2:**

2.a. Respondent states that historically TCEQ has interpreted Subchapter T to allow reburial of much larger debris than the 10,000 cubic yards of MSW that has been left out in football field sized piles at Respondent's site. This statement is incorrect. The TCEQ has never interpreted Subchapter T to allow reburial of more than a small amount of debris pursuant to

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<sup>1</sup> Tex. Water Code § 7.073 CORRECTIVE ACTION. If a person violates any statute or rule within the commission's jurisdiction, the commission may: (1) assess against the person an administrative penalty under this subchapter; and (2) order the person to take corrective action.

30 TEX. ADMIN CODE § 330.955(c).<sup>2</sup> Further, the ED has the responsibility and right to review each case of environmental violation and to develop a compliance plan based on the circumstances of each case.

- 2.b.** The Deepwood/Loop 12 infrastructure and landfill project (Deepwood Project) that Respondent refers to is nothing like the present case and has been dealt with at length in the ED's Written Response to Respondent's Closing Argument.<sup>3</sup> Even if the Deepwood Project was similar to Respondent's case, it is irrelevant to the current matter and the ED has the right to review each case according to its parameters and design Technical Requirements that fit that case.
- 2.c.** Respondent recommends that it be allowed to simply rebury 10,610 cubic yards of waste at the Site. There is no precedent that allows for simply reburying MSW that has been dug out of a landfill and left exposed to the elements and to more illegal dumps of MSW from other parties for six years.
- 2.d.** Respondent argues that it is not capable of cleaning up the waste at the site and taking it to a licensed facility. It asks that it be ordered to "engage with the TCEQ" and resubmit its "Application to Disturb Final Cover". Ordering Provisions must be enforceable. As TCEQ expert Mr. Avakian testified, the standard technical requirement in a situation where MSW has been disturbed and dug up is to require the responsible party to clean up the MSW and take it to a licensed facility. In testimony, Respondent's expert witness, Joseph Lambert, indicated that Respondent

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<sup>2</sup> "The executive director may allow small amounts of solid waste removed from a closed MSW landfill (including residuals from a soil test) to be redeposited in the closed MSW landfill on a case-by-case basis. The workplan for developing land over a closed MSW landfill should describe the steps taken to ensure that removed waste will be appropriately covered or removed to an authorized waste management facility."

<sup>3</sup> The City of Dallas did not then simply "rebury" the two million cubic yards of waste, as STL Developer claims. The City worked with TCEQ to create a landfill that met environmental standards, including removing benzene contaminated soils, sorting through the waste to remove the most hazardous materials before consolidating waste under two caps, and implementing a landfill gas collection system. Turning this property into a safe and legal landfill was an extensive and expensive process. In addition to carrying out the actions described in the attached Response Action Completion Report,<sup>3</sup> the City of Dallas hired a professional landscape architect to create hills and greenspace over the area to form a parklike environment. After the property was landscaped, the Trinity River Audubon Society created a nature center that allowed access to the green space created. Public websites confirm that the cost of this project was thirty-seven million dollars.<sup>3</sup> By restrictive covenant the City of Dallas has agreed that the land is to be used for park land and park uses only, and this restrictive covenant cannot be modified or removed without prior approval of TCEQ.<sup>3</sup> At no point in time was Deepwood ever a simple matter of "reburying debris" and forgetting about it, as STL Developer seems to be arguing. (From Page 8 of Executive Director's Written Response to Respondent's Closing Argument.)

did not wish to do this, which is why Respondent withdrew the Application to Disturb Final Cover. This request is disingenuous at best.

**III. Response to Exception No. 3.:**

- 3.a.** Respondent does not want to be ordered to clean up the MSW on its property and take it to a licensed facility, although it is willing to pay the \$4,724 administrative penalty. Even in cases where respondents are unable to pay an administrative penalty and apply for a Financial Inability to Pay review, they are still required to carry out Technical Requirements.. The respondent has no legal grounds for avoiding the Technical Requirement of cleaning up the MSW on its Site.
- 3.b.** Respondent requests not to be required to clean up the MSW on its property because it does not have the financial ability to do so. As stated in response to Pursuant to TEXAS WATER CODE § 7.073, the Commission has the authority to order a person to take corrective action for violations of any statute or rule within its jurisdiction. The statute does not consider inability or unwillingness to pay as a limiting factor on this authority.<sup>4</sup>
- 3.c.** Respondent asks to be “ordered to engage” with TCEQ and resubmit an Application to Disturb Final Cover that it previously withdrew. Respondent withdrew this application due to its unwillingness to answer questions about where the MSW was located and to clarify errors in its application. In testimony, Respondent indicated that it did not want to clean up MSW that had already been dug up, and it did not want to take it to a licensed facility as the permitting department indicated would be required. TCEQ’s expert Mr. Avakian testified that this was indeed the usual procedure in cases like this. There is no reason to believe that Respondent will actually be willing to clean up the MSW already dug up on its land and take it to a licensed facility. Respondent has been given many opportunities to engage and offer alternative technical requirements that it is willing to carry out. It has consistently refused to do so. The ED has offered Technical Requirements that are normal, usual, efficient, and effective in bringing Respondent into compliance.

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<sup>4</sup> See Footnote 1 above.

**PRAYER**

The ED prays that STL Developer's Exceptions should be denied and that the ALJ's May 22, 2024 Proposal for Decision should be granted, with the Exceptions submitted by the ED on June 10, 2024.

Respectfully submitted,

Texas Commission on Environmental  
Quality

Kelly Keel  
Executive Director

Erin E. Chancellor, Director  
Office of Legal Services

Gitanjali Yadav, Deputy Director  
Litigation Division



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Marilyn Norrod, Staff Attorney  
State Bar of Texas No. 24126017  
Texas Commission on Environmental Quality  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone:(512) 239-3400  
[Marilyn.Norrod@tceq.texas.gov](mailto:Marilyn.Norrod@tceq.texas.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of June, 2024, the foregoing Executive Director's Responses to STL Developer LLC's Exceptions to Administrative Law Judge's Proposed Order ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day, true and correct copies of the foregoing Exceptions were sent to the following persons via the methods indicated below:

Eddie Lewis, Attorney at Law  
Norton Rose Fulbright US LLP  
1301 McKinney, Suite 5100  
Houston, Texas 77010-3095  
[Eddie.Lewis@nortonrosefulbright.com](mailto:Eddie.Lewis@nortonrosefulbright.com)


Via Electronic Mail

The Honorable Judge Shelly Doggett  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

Via Electronic Filing

Eli Martinez  
Office of Public Interest Counsel, MC 103  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
[Eli.Martinez@tceq.texas.gov](mailto:Eli.Martinez@tceq.texas.gov)

Via Electronic Mail



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Marilyn Norrod, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality