

DOCKET NO. 2022-0977-MSW

IN RE THE APPLICATION OF	§	BEFORE THE
	§	
THE CITY OF WACO FOR	§	
	§	TEXAS COMMISSION ON
MUNICIPAL SOLID WASTE	§	
	§	
PERMIT NO. 2400	§	ENVIRONMENTAL QUALITY

APPLICANT’S RESPONSE TO REQUESTS FOR HEARING

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

COMES NOW, City of Waco (“Waco” or “Applicant”), applicant for MSW Permit No. MSW-2400, to authorize the construction and operation of a new Type I municipal solid waste (“MSW”) facility in McLennan and Limestone Counties, Texas, by and through its attorney, and submits this, its response to requests for contested case hearings and requests for reconsideration, pursuant to 30 TEX. ADMIN CODE § 55.209(d) of the rules of the Texas Commission on Environmental Quality (the “TCEQ” or the “Commission”), and Chapter 5 of the Texas Water Code, and respectfully shows the following:

I.

FACILITY DESCRIPTION AND PROCEDURAL BACKGROUND

The proposed City of Waco Landfill will be a Type I MSW Landfill located on approximately 502.5 acres of land in McLennan and Limestone Counties, approximately 0.4 miles south of the intersection of State Highway 31 and Farm-to-Market [FM] 939 (also known as TK Parkway). Waco filed the Parts I and II application on August 8, 2018, and the Executive

Director declared it administratively complete on September 14, 2018. Waco published the Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit in English and Spanish (although publication in Spanish was not required by TCEQ rules) on September 26, 2018 in the *Mexia News* and *Waco Tribune-Herald* newspapers.

The Executive Director held a public meeting on the Application on Thursday, August 15, 2019 at 7:00 p.m. at the Axtell High School Gymnasium, located at 308 Ottawa, Axtell, Texas. Waco published notice of the public meeting in English and Spanish (although publication in Spanish was not required by TCEQ rules) on July 24, 2019, July 31, 2019, and August 7, 2019 in the *Mexia News* and *Waco Tribune-Herald* newspapers.

Waco filed Parts III and IV on May 29, 2020. The Executive Director combined Parts III and IV with Parts I and II and declared the Application administratively complete on June 20, 2020. Waco published the Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit for the Application in English and Spanish (although publication in Spanish was not required by TCEQ rules), on July 11, 2020 in the *Mexia News* and *Waco Tribune-Herald* newspapers, and on July 16, 2020 in the *Groesbeck Journal* newspaper.

The Executive Director held a second public meeting on the Application on Thursday, September 23, 2021 at 7:00 p.m. via webcast. Waco published notice of the public meeting in English and Spanish (although publication in Spanish was not required by TCEQ rules) on September 1, 2021, September 8, 2021, and September 15, 2021 in the *Mexia News* and *Waco Tribune-Herald* newspapers, and on September 2, September 9, and September 16, 2021 in the *Groesbeck Journal* newspaper.

The TCEQ Executive Director completed its technical review of the application on October 18, 2021 and prepared a draft permit. Waco published the Notice of Application and

Preliminary Decision in English and Spanish (although publication in Spanish was not required by TCEQ rules) on October 27, 2021 in the *Mexia News* and *Waco Tribune-Herald* newspapers, and on October 28, 2021 in the *Groesbeck Journal* newspaper.

The comment period ended on November 29, 2021.

In response to comments, Waco submitted supplemental information on the application on October 27, 2021 and December 9, 2021. The TCEQ Executive Director approved the supplemental information on January 6, 2022, and March 11, 2022, respectively. TCEQ issued its Response to Comments on May 10, 2022.

Because the Application was received after September 1, 2015, this application is subject to the requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015).

II.

LEGAL BASIS AND ORGANIZATION OF RESPONSE

Chapter 55, Subchapter F of the TCEQ's rules provides that a request for a contested case hearing shall be granted if certain standards are met.

Affected Person

First, the request must be filed by an "affected person." 30 TEX. ADMIN. CODE § 55.201(b). 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. An interest common to members of the general public does not qualify as a personal justiciable interest." *Id.* at § 55.203(a). In determining whether an individual is an affected person, the rules require consideration of various factors, including:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Id. at § 55.203(c).

In determining whether a person is an affected person, the Commission may also consider:

- (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

Id. at § 55.203(d).

Where a group files a request for a hearing for an application filed after September 1, 2015, the group must:

- (1) identify in its hearing request, a single person, by name, responsible for receiving all official communications and documents for the group, including the person's name, address and telephone number;
- (2) have filed timely comments on the application;

- (3) identify in its hearing request, one or more members that would otherwise have standing to request a hearing in their own right, including the person's name and address;
- (4) have an interest germane to the application that the group seeks to protect; and
- (5) not require that the claim asserted or the relief requested requires the participation of the individual members in the case.

Id. at § 55.201(d)(1) and § 55.205.

Where a governmental entity files a request for a hearing for an application filed after September 1, 2015, the governmental entity must show it has statutory authority over or interest in the issues relevant to the application. *Id.* at § 55.203(b) and (c)(7).

Other Hearing Request Requirements

Even if filed by an affected person, TCEQ rules require that, for an application filed on or after September 1, 2015, a request for a contested case hearing shall be granted if it:

- (1) raises disputed issues of fact or mixed question of fact or law that were raised during the comment period by the affected person whose request is granted, that were not withdrawn, and that are relevant and material to the commission's decision on the application;
- (2) is timely filed with the chief clerk;
- (3) is pursuant to a right to hearing authorized by law; and
- (4) complies with the requirements of § 55.201.

30 TEX. ADMIN. CODE § 55.211(c)(2)(A)(ii) and (B)-(D).

Section 55.201, in turn, requires that, for applications filed on or after September 1, 2015, the hearing request substantially comply with the following:

- (1) give the name, address, [and] daytime telephone number of the person who files the request;
- (2) identify the person's personal justiciable interest;
- (3) request a contested case hearing;

- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request; and
- (5) provide any other information specified in the public notice of the application.

Id. at § 55.201(d).

Section 55.209 requires that responses to hearing requests address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

Id. at § 55.209(e).

This response is organized to address each of these requirements. Section III discusses whether each Requestor is an “affected person.” Section IV addresses the particular issues raised by each Requestor, including whether the issues are disputed, whether they involve questions of fact or law, whether they were raised during the public comment period, whether they were withdrawn, and whether they are relevant and material to the decision on the application. Section V addresses the maximum expected duration of the hearing. Section VI requests an opportunity for mediation. Section VII addresses requests for reconsideration. Finally, Section VIII, the conclusion and prayer, contains a list of all Requestors and issues that are appropriate

for referral in terminology appropriate for referral, considering the relevant TCEQ regulatory language.

III.

DETERMINATION OF AFFECTED PERSONS (§ 55.209(e)(1))

The Executive Director identified 59 hearing requests filed on the Application. Many of the hearing requests are copies of hearing requests filed by the same person or group, or are follow-up hearing requests by the same person. Therefore, in total, there are 49 hearing requestors (“Requestors”): 47 individuals (the “Individual Requestors”), one group (Save Axtell Families and Environment, “SAFE”), and one governmental entity (McLennan and Hill Counties Tehuacana Creek Water Control and Improvement District #1, “MHWCID1”). Appendix A provides a table listing all of the Requestors and information relevant to determining whether each request qualifies under TCEQ’s criteria. Many of the requestors do not meet the requirements of “affected persons” and/or the hearing requests do not substantially comply with the requirements of § 55.201(d) for hearing requests, and should therefore be denied. Specifically:

Individual Requestors

With the exception of the following thirteen (13) individuals, each of whom reside or own property within a mile of the proposed facility, none of the remaining Requestors live or own property closer than 1.5 miles from the proposed permit boundary, and are therefore not affected in any way not common to members of the general public, and therefore are not affected persons.

<u>Individual Requestors Residing or Owning Property within One Mile of the Facility</u>		
1	Porter, Darren and Melissa;	
2	Trayler, James;	
3	Ford, Brian Paul;	Request Withdrawn
4	Lee, Mike;	Request Withdrawn
5	Ford, Gina;	Request Withdrawn
6	Southern Cross Whitetail Ranch;	Request Withdrawn
7	Rigby, Steven;	
8	Rigby, Elisabeth;	
9	Alvarez, Jose;	No Timely Comments Filed
10	Guillen, Jasmin;	No Timely Comments Filed
11	Dunlap, Cynthia;	No Longer Owns Property or Resides Within One Mile
12	Dunlap, Joe; and	
13	Reed, David	

Of the individuals listed above, the following have withdrawn their requests in writing:

- 1) Ford, Brian Paul;
- 2) Lee, Mike;
- 3) Ford, Gina; and
- 4) Southern Cross Whitetail Ranch.

Jose Alvarez filed hearing requests on June 8, 2022 and June 17, 2022. Jasmin Guillen filed two hearing requests on June 7, 2022. These are the only filings by each; neither Jose Alvarez nor Jasmin Guillen filed comments prior to the close of the public comment period on November 29, 2021. For applications filed after September 1, 2015, hearing requests must be

based only on the requestor's timely comments. 30 TEX. ADMIN. CODE § 55.201(c). Therefore, Alvarez and Guillen's hearing requests should be denied.

Susan Swaner conveyed her interest in the property that was jointly owned by her and her former husband, Fred Swaner, to Fred Swaner on October 11, 2019, as shown in the McLennan County Appraisal District records (see Appendix B). Therefore, because Susan Swaner no longer owns property nor resides near the proposed landfill, she is not affected in a way not common to members of the general public, and therefore is not an affected person.

The following individual requestors did not list any specific issues for referral, and so their hearing requests should be denied:¹

- 1) Niven, Cathryn;
- 2) Rigby, Kathleen;
- 3) Howard, Stacy;
- 4) Roof, Stacy;
- 5) Tennison, Keven;
- 6) Haynes, Vickie;
- 7) Weatherby, Brent;
- 8) Graham, Denise;
- 9) Tierce, Virginia;
- 10) Nickel, Candace; and
- 11) Lynch, Katy.

Group Requestor

The only group that filed a hearing request is SAFE. However, SAFE identified James Trayler as a member. Records show that Mr. Trayler owns property within one mile of the proposed landfill, and that SAFE's interest is germane to the application. Therefore, subject to later discovery, Waco does not object to SAFE being named an affected party.

Governmental Entity

The only governmental entity that filed a hearing request is MHWCID1. MHWCID1 operates a dam downstream of the proposed landfill and has statutory authority over flood

¹ Note that none of these requestors appear to reside or own property within a mile of the proposed facility.

control, an issue relevant to the application. Therefore, subject to later discovery, Waco does not object to MHWCID1 being named an affected party.

Conclusion – Affected Persons

Subject to later discovery, Waco does not object to the following being named Affected Persons, and are the only Requestors whose requests the Commission should grant:

- 1) Porter, Darren and Melissa;
- 2) Trayler, James;
- 3) Rigby, Steven;
- 4) Rigby, Elisabeth;
- 5) Dunlap, Cynthia;
- 6) Dunlap, Joe;
- 7) Reed, David;
- 8) SAFE; and
- 9) MHWCID1.

IV.

ISSUES FOR REFERRAL (§ 55.209(e)(2-6))

The Commission must also determine which issues, raised by each affected person in a valid hearing request, should be referred to the State Office of Administrative Hearings (“SOAH”) for consideration in the contested case hearing. *See* TEX. WATER CODE ANN. § 5.556(e). The Commission is to limit both the number and scope of issues that are referred to SOAH for hearing. 30 TEX. ADMIN. CODE § 50.115(b). The Commission may not refer an issue to SOAH unless the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period, and, for applications filed on or after September 1, 2015, was raised in a comment made by an affected person whose request is granted; and
- (3) is relevant and material to the decision on the application.

Id. at § 50.115(c).

Just as commenters are requested to identify their comments with reference to the Executive Director’s Response to Comments (“RTC”), see 30 TEX. ADMIN. CODE § 55.201(d)(4), the issues identified by Waco are likewise based on the RTC. Since all referred issues must have been raised in a comment, not withdrawn, and made by an affected person, the following table identifies each comment raised by the potentially Affected Persons, and identifies any objections to each issue.

<u>No.</u>	<u>Issue</u>	<u>Potentially Affected Person(s) Raising Issue</u>	<u>Objection</u>
1	General Opposition; General Health and Environmental Concerns	Rigby, E.; Dunlap, J.	Yes
2	Endangered Species; Wildlife	SAFE; Trayler; Rigby, S.	Yes
3	Farming and Vegetation (Access Control; Scavenging)	SAFE	
4	Air Quality	Rigby, E.; Dunlap, J.*; Porter; Trayler; Rigby, S.	Yes
5	Groundwater; Liner	SAFE; Porter; Trayler; MHWCID1	
6	Surface Water Quality	Rigby, E.; Dunlap, C. Trayler; Rigby, S.; Reed, D.; MHWCID1	
7	Flooding; Floodplain; Drainage	SAFE; Porter; Trayler; MHWCID1*	
8	Geological Stability (Slope Stability)	SAFE; MHWCID1*	
9	Land Use Compatibility	SAFE; MHWCID1*; Porter; Trayler; Rigby S.	
10	Location	Trayler	Yes
11	Necessity	SAFE	Yes
15	Easements	MHWCID1	Yes
18	Traffic; Access Control	SAFE; Dunlap, C.; Dunlap, J.; Trayler; Rigby S.	
19	Visual Impact	Dunlap, C.	Yes
20	Windblown Waste	SAFE; Dunlap, C.; Dunlap, J.	
21	Vectors	SAFE; Dunlap, C.	
22	Odor / Nuisance	SAFE; Dunlap, C.; Dunlap, J.; Porter; Trayler	

<u>No.</u>	<u>Issue</u>	<u>Potentially Affected Person(s) Raising Issue</u>	<u>Objection</u>
23	Noise and Operating Hours	Dunlap, C.; Trayler; Rigby S.	Yes
25	Property Values; Taxes; Economy; use and enjoyment of property	Rigby, E.; Dunlap, J.; Trayler	Yes
31	Specific to Waco; Transparency	SAFE; Trayler; Rigby, S.	Yes
32	County Ordinance	SAFE; Trayler; MHWCID1*	Yes
	Wetlands ²	Porter	
	Helicopter Operations ³	Trayler	Yes

* Issue not raised by this Requestor during the comment period; only in hearing request.

Objection: General Opposition; General Health and Environmental Concerns

SB709 creates a presumption that an application that is deemed technically complete by the Executive Director is protective of human health and the environment. The draft permit is a *prima facie* demonstration that the permit would protect human health and safety, the environment, and physical property. *Id.* at § 80.17(c)(1). Evidence to rebut the presumption must demonstrate that the draft permit violates a specifically applicable state or federal legal or technical requirement. *Id.* at § 80.17(c)(2). Therefore, any allegation based on a general health or environmental concern must necessarily be premised on an allegation of a specific violation of another statute or rule, and a general health or environmental concern does not raise a disputed question of fact or a mixed question of law and fact.

Objection: Wildlife Impacts

Waco does not object to an issue related to compliance with endangered and threatened species regulations, but it does object to issues related to general impacts to wildlife. The Texas Legislature has not provided TCEQ with jurisdiction to consider impacts to wildlife generally

² Porter raised Wetlands in both their November 17, 2021 and June 3, 2022 hearing requests. Wetlands were not assigned a specific issue number in the TCEQ's RTC; however, Waco proposes treating wetlands as a separate issue.

³ Trayler raised an issue related to the impact of the facility on his helicopter operation in his November 22, 2021 hearing request. Waco's objection to this issue is stated below.

(i.e., displacement or behavioral changes) when determining whether to approve or deny an application. Therefore, the facility's impact on wildlife is not relevant and material to the decision on the Application.

Objection: Air Quality

Waco will be required to obtain all applicable air authorizations from the TCEQ Air Permits Division. Therefore, air quality (distinguished from landfill gas and odor) is not relevant to the solid waste permit currently at issue.

Objection: Alternative Locations

The Texas Legislature has not provided TCEQ with jurisdiction to consider whether alternative locations for a facility are available when determining whether to approve or deny an application. Therefore, whether alternative locations are available is not relevant and material to the decision on the Application.

Objection: Necessity

The Texas Legislature has not provided TCEQ with jurisdiction to consider the need for a facility when determining whether to approve or deny an application. Therefore, the need for the facility is not relevant and material to the decision on the Application.

Objection: Easement

Waco does not object to an issue related to whether the Application complies with 30 TEX. ADMIN. CODE § 330.141. However, Waco does object to an expansive issue related to other parties' potential property rights. The Texas Legislature has not provided TCEQ with jurisdiction to consider individual property rights when determining whether to approve or deny an application. Therefore, a property rights issue is not relevant and material to the decision on the Application.

Objection: Visual Impacts

No statute or regulation requires visual screening of landfills, unless screening is specifically requested by the Executive Director. See 30 TEX. ADMIN. CODE § 330.175 (“Visual screening of deposited waste materials at a municipal solid waste facility must be provided by the owner or operator for the facility where the executive director determines that screening is necessary or as required by the permit.”). This rule stands in contrast to rules for transfer stations, which require visual screening generally. See 30 TEX. ADMIN. CODE § 330.239 (“The owner or operator of a transfer station shall provide screening or other measures to minimize noise pollution and adverse visual impacts.”).

Notwithstanding that screening is not required, the application includes provisions specifically for visual screening (see Part IV, Section 4.21).

Because the Executive Director did not request screening in this application (which the Applicant provided absent a request), screening is not a basis to deny the application, and therefore this issue is not relevant and material to the decision on the Application.

Objection: Noise

No statute or regulation requires noise control at landfills. Section 30 TEX. ADMIN. CODE § 330.239 requires an applicant for a transfer station to “provide ... measures to minimize noise pollution” but there is no similar requirement for landfills. See 30 TEX. ADMIN. CODE § 330.239 (“The owner or operator of a transfer station shall provide screening or other measures to minimize noise pollution...”). TCEQ rules prohibit creating a “nuisance”; however, noise is not included in the definition of “nuisance” in 30 TEX. ADMIN. CODE § 330.3(95). Therefore, this issue is not relevant and material to the decision on the Application.

Objection: Property Values

The Texas Legislature has not provided TCEQ with jurisdiction to consider property values when determining whether to approve or deny an application. Therefore, property values are not relevant and material to the decision on the Application.

Objection: Transparency

The Texas Legislature has not provided TCEQ with jurisdiction to consider issues such as how the Applicant acquired the property when determining whether to approve or deny an application. Therefore, these issues are not relevant and material to the decision on the Application.

Objection: Helicopter Operation

TCEQ regulations related to aircraft are specific to public-use airports. See 30 TEX. ADMIN. CODE § 330.3(5). Trayler's private-use helicopter use does not trigger TCEQ's jurisdiction. Therefore Trayler has not raised a disputed issue of fact or mixed question of fact or law that is relevant and material to the decision on the Application.

Objection: County Ordinance

Waco submitted the Application for Parts I/II on August 8, 2018. The Executive Director found the Parts I/II Application administratively complete on September 14, 2018. Limestone County enacted a siting ordinance on September 20, 2018. In *TJFA, L.P. v. Tex. Comm'n on Env'tl. Quality*, the Court of Appeals held that "an application is 'filed with' and 'pending before' the Commission when the application is administratively complete and awaiting action by the Commission," and that therefore an application is not barred by a county siting ordinance enacted after Parts I/II are administratively complete. *TJFA, L.P. v. Tex. Comm'n on Env'tl. Quality*, 632 S.W.3d 660, 664 (Tex. App.—Austin 2021, pet. filed). The case is currently on

appeal at the Texas Supreme Court. The dates are part of the administrative record and not in dispute; therefore, unless and until the Texas Supreme Court reverses the Court of Appeals, the request does not raise a disputed question of fact or a mixed question of law and fact.

Issues for Referral

For the foregoing reasons, only the following issues are appropriate for referral to the State Office of Administrative Hearings (“SOAH”):

- 1) Whether the facility and the operation of a facility will 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.
- 2) Whether public access to the facility is controlled by means of artificial barriers, natural barriers, or a combination of both, and is appropriate to protect human health and safety and the environment.
- 3) Whether the liner design is protective of groundwater.
- 4) Whether the proposed groundwater monitoring system consists of a sufficient number of monitoring wells, installed at appropriate locations and depths, to yield representative groundwater samples from the uppermost aquifer.
- 5) Whether liquids resulting from the operation of the facility will be disposed of in a manner that will not cause surface water pollution.
- 6) Whether the facility will manage run-on and runoff during the peak discharge of a 25-year rainfall event and prevent the off-site discharge of waste and feedstock material, and will not adversely alter existing or permitted drainage patterns.
- 7) Whether the landfill design provides effective erosional stability to top dome surfaces and external embankment side slopes.
- 8) Whether the application contains the information required by 30 TAC § 330.61(h), related to land use.
- 9) Whether solid waste unloading, storage, disposal, or processing operations will occur within an easement that crosses the site.
- 10) Whether the Application provides the required traffic data and documentation to meet the requirements of 30 TAC § 330.61(i).
- 11) Whether the Application provides measures to control windblown waste that comply with 30 TAC § 330.139.

- 12) Whether the Application provides measures to control vectors that comply with 30 TAC § 330.151.
- 13) Whether the Application provides measures for odor control that comply with 30 TAC § 330.149.
- 14) Whether the Application's proposed operating hours comply with 30 TAC § 330.135.
- 15) Whether the Application proposes new landfill units in wetlands, in violation of 30 TAC § 330.553.

V.

MEDIATION

Waco respectfully requests that two (2) weeks be allowed for mediation between the parties, to be conducted by TCEQ mediators, prior to referral to SOAH.

VI.

DURATION OF HEARING (§ 55.209(e)(7))

Responses to hearing requests must address the maximum expected duration of the hearing from the first day of the preliminary hearing to the issuance of the proposal for decision ("PFD"). Given the number of parties and the number and potential complexity of issues, Waco requests a duration of 180 days, from the date of the preliminary hearing to the date of the PFD.

VII.

REQUESTS FOR RECONSIDERATION

In addition to requests for hearings, TCEQ also received requests for reconsideration ("RFRs"). The issues raised in the RFRs are a subset of the issues requested for referral to SOAH. Waco respectfully requests denial of these requests for reconsideration in light of its

recommendation for mediation and in anticipation of the Commission's referral of the relevant and material issues for a contested case hearing.

VIII.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Waco respectfully requests that the Commission deny the hearing requests of all Requestors EXCEPT:

- 1) Porter, Darren and Melissa;
- 2) Trayler, James;
- 3) Rigby, Steven;
- 4) Rigby, Elisabeth;
- 5) Dunlap, Cynthia;
- 6) Dunlap, Joe;
- 7) Reed, David;
- 8) SAFE; and
- 9) MHWCID1.

Certain issues raised by the Requestors are disputed fact questions, and therefore should be properly referred to SOAH. Waco respectfully requests that only the following issues be referred.

- 1) Whether the facility and the operation of a facility will 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.
- 2) Whether public access to the facility is controlled by means of artificial barriers, natural barriers, or a combination of both, and is appropriate to protect human health and safety and the environment.
- 3) Whether the liner design is protective of groundwater.
- 4) Whether the proposed groundwater monitoring system consists of a sufficient number of monitoring wells, installed at appropriate locations and depths, to yield representative groundwater samples from the uppermost aquifer.
- 5) Whether liquids resulting from the operation of the facility will be disposed of in a manner that will not cause surface water pollution.


- 6) Whether the facility will manage run-on and runoff during the peak discharge of a 25-year rainfall event and prevent the off-site discharge of waste and feedstock material, and will not adversely alter existing or permitted drainage patterns.
- 7) Whether the landfill design provides effective erosional stability to top dome surfaces and external embankment side slopes.
- 8) Whether the application contains the information required by 30 TAC § 330.61(h), related to land use.
- 9) Whether solid waste unloading, storage, disposal, or processing operations will occur within an easement that crosses the site.
- 10) Whether the Application provides the required traffic data and documentation to meet the requirements of 30 TAC § 330.61(i).
- 11) Whether the Application provides measures to control windblown waste that comply with 30 TAC § 330.139.
- 12) Whether the Application provides measures to control vectors that comply with 30 TAC § 330.151.
- 13) Whether the Application provides measures for odor control that comply with 30 TAC § 330.149.
- 14) Whether the Application's proposed operating hours comply with 30 TAC § 330.135.
- 15) Whether the Application proposes new landfill units in wetlands, in violation of 30 TAC § 330.553.

Waco also respectfully requests that the Commission deny all requests for reconsideration.

Waco further requests that two (2) weeks be allowed for mediation between the parties, to be conducted by TCEQ mediators, prior to referral to SOAH, and that the duration of the hearing be set at 180 days, from the date of the preliminary hearing to the date of the PFD.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Ph.: (512) 322-5800
Fax: (512) 472-0532

BY: 

JEFFREY S. REED
State Bar Number 24056187
jreed@lglawfirm.com
ATTORNEY FOR THE CITY OF WACO

APPENDIX A

<u>No.</u>	<u>Name</u>	<u>Address</u>	<u>Distance from Permit Boundary (Approx.) (mi.)</u>	<u>Withdrawn?</u>	<u>Requested Issues?</u>
<u>Group Requests</u>					
1	Save Axtell Families and Environment ("SAFE")	Identified Member: James Trayler	< 1		
<u>Governmental Entity Requests</u>					
2	McLennan and Hill Counties Tehuacana Creek Water Control and Improvement District #1 ("MHWCID1")	N/A Subject to Governmental Entity Requirements	< 1		
<u>Individual Requests</u>					
3	Porter, Darren and Melissa	1500 LCR 102, Mount Calm, Texas 76673	< 1		
4	Trayler, James	Four Identified	< 1		
5	McMillan, Janet Burke	6725 Hwy 84W, Coolidge, Texas 76635	14.5		
6	Ford, Brian Paul	1365 Bays Road, Axtell Texas 76624	< 1	Yes	
7	Lee, Mike	3096 Happy Swaner, Axtell Texas 76624	< 1	Yes	
8	Ford, Gina	1365 Bays Road, Axtell Texas 76624	< 1	Yes	
9	Southern Cross Whitetail Ranch	4855 T.K. Parkway, Axtell Texas 76624	< 1	Yes	
10	Nivin, Cathryn	964 LCR 120, Mount Calm Texas 76673	3.5		No

<u>No.</u>	<u>Name</u>	<u>Address</u>	<u>Distance from Permit Boundary (Approx.) (mi.)</u>	<u>Withdrawn?</u>	<u>Requested Issues?</u>
11	Johnson, Suzanne	202 N 2nd St E Mount Calm Texas 76673	4.0		
12	Klanika, Charles	176 HCR 3259, Mount Calm Texas 76673	3.5		
13	Stone, Robert	2013 Highway 31 Axtell, Texas, 76624	5.9		
14	Harris, Mary	882 LCR 116 Mount Calm Texas 76673	2.7		
15	Pierce, Ricky	9151 County Line Rd S Mount Calm Texas 76673	1.5		
16	Kaylee Engledow	9151 County Line Rd S Mount Calm Texas 76673	1.5		
17	Pierce, Vicki Michelle	9151 County Line Rd S Mount Calm Texas 76673	1.5		
18	Rigby, Kathleen	1533 Brookside Dr Manteca, California, 95336	> 100		No
19	Price, Randi	102 N. Morgan St W Mount Calm Texas 76673	3.9		
20	Lucien, Kimberly	PO Box 221 Leroy, Texas 76654	Not Provided		
21	Rigby, Steven	4418 T K Pkwy Axtell, Texas 76624	< 1		
22	Rigby, Elisabeth	4418 T K Pkwy Axtell, Texas 76624	< 1		
23	Boyett, Alton	7664 E Highway 84 Waco, Texas 76705	7.4		
24	Amy, Stephanie Marie	PO Box 452 Axtell, Texas 76624	Not Provided		
25	Howard, Stacy	PO Box 186 Axtell, Texas 76624	Not Provided		No
26	Nivin, Ernest Taylor	964 LCR 120, Mount Calm Texas 76673	3.5		No
27	Manning, Christi	1652 Hurst Rd Axtell, Texas, 76624	2.5		
28	Boyette, Cynthia Ann	7664 E Highway 84 Waco, Texas 76705	7.4		
29	Swaner, Susan	4351 T K Pkwy Axtell, Texas 76624	No longer owns property		

<u>No.</u>	<u>Name</u>	<u>Address</u>	<u>Distance from Permit Boundary (Approx.) (mi.)</u>	<u>Withdrawn?</u>	<u>Requested Issues?</u>
30	Roof, Stacy	370 W Old Axtell Rd Waco, Texas 76705	7.9		No
31	Serros, Alcario	933 Frazier Lane Axtell, Texas 76624	5.1		
32	Tennison, Keven	4081 E Old Axtell Rd Axtell, Texas 76624	4.3		No
33	Haynes, Vickie	6969 Highway 84 W Coolidge, Texas 76635	14.5		No
34	Green, Angela	462 Beaver Ln Waco, Texas 76705	6.3		
35	Brannen, Julie Michelle	595 Hurst Rd Axtell, Texas 76624	3.1		
36	Weatherby, Brent	602 HCR 3373 Hubbard, Texas 76648	9.4		No
37	Sefka, David	PO Box 43 Axtell, Texas 76624	Not Provided		
38	Stokes, Benjamin Luke	1553 Frazier Ln Axtell, Texas 76624	5.3		
39	Graham, Denise	718 N Seeley Ave W Mount Calm, Texas 76673	4.0		No
40	Souders, Leslie Gail	518 N Seeley Ave W Mount Calm, Texas 76673	3.9		
41	Tierce, Virginia	376 Wood St Axtell, Texas 76624	3.7		No
42	Nickel, Candace	PO Box 435 Axtell, Texas 76624	Not Provided		No
43	Harris, Phillip Kirk	363 Homer Young Ln Axtell, Texas, 76624	2.4		
44	Lynch, Katy	1789 LCR 120 Mount Calm, Texas 76673	2.6		No
45	Reed, David	P. O. Box 1922 Canyon Lake, Texas 78133	0.7		
46	Dunlap, Joe	211 State Highway 31 Mount Calm, Texas, 76673	< 1		
47	Dunlap, Cynthia	211 State Highway 31 Mount Calm, Texas, 76673	< 1		
48	Alvarez, Jose	2715 Torino Reale Ave Temple, Texas, 76502	< 1		
49	Guillen, Jasmin	2715 Torino Reale Ave Temple, Texas, 76502	< 1		

APPENDIX B

**McLennan County Appraisal District Records Showing Transfer from
Susan Swaner to Fred Swaner**

McLennan CAD

Property Search Results > 102237 SWANER FRED LEE JR for Year 2022

Tax Year: 2022

Property

Account

Property ID: 102237 Legal Description: VALDEZ A R Acres 5.1
 Geographic ID: 12088000006012 Zoning: R
 Type: Real Agent Code:
 Property Use Code: 125
 Property Use Description: Agric./Hort./Forest w/Dwelling

Protest

Protest Status:
 Informal Date:
 Formal Date:

Location

Address: 4351 TK PARKWAY Mapsco: 214
 AXTELL, TX 76624
 Neighborhood: M - R 3 Map ID: 17
 Neighborhood CD: 12890.3

Owner

Name: SWANER FRED LEE JR Owner ID: 76765
 Mailing Address: 4351 TK PKWY % Ownership: 100.0000000000%
 AXTELL, TX 76624
 Exemptions: HS, OTHER

Values

(+) Improvement Homesite Value: + \$362,270
 (+) Improvement Non-Homesite Value: + \$0
 (+) Land Homesite Value: + \$3,200
 (+) Land Non-Homesite Value: + \$0 Ag / Timber Use Value
 (+) Agricultural Market Valuation: + \$13,100 \$530
 (+) Timber Market Valuation: + \$0 \$0

 (=) Market Value: = \$378,570
 (-) Ag or Timber Use Value Reduction: - \$12,570

 (=) Appraised Value: = \$366,000
 (-) HS Cap: = \$203,245

 (=) Assessed Value: = \$162,755

Taxing Jurisdiction

Owner: SWANER FRED LEE JR
 % Ownership: 100.0000000000%
 Total Value: \$378,570

Entity	Description	Tax Rate	Appraised Value	Taxable Value	Estimated Tax	Tax Ceiling
00	McLENNAN COUNTY	0.000000	\$0	\$0	\$0.00	
12	AXTELL ISD	0.000000	\$0	\$0	\$0.00	\$986.04
72	McLENNAN & HILL CTY TEHUACANA CREEK W & C DIST #1	0.000000	\$0	\$0	\$0.00	
86	McLENNAN COMMUNITY COLLEGE	0.000000	\$0	\$0	\$0.00	
CAD	McLENNAN CAD	0.000000	\$0	\$0	\$0.00	
Total Tax Rate:		0.000000				
					Taxes w/Current Exemptions:	\$0.00
					Taxes w/o Exemptions:	\$0.00

DOCKET NO. 2022-0977-MSW
CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of August, 2022, a true and correct copy of the foregoing Applicant's Response to Requests for Hearing was served on the following entities and individuals by electronic mail, certified mail (return receipt requested), and/or hand delivery at the addresses listed on the attached mailing list.



JEFFREY S. REED

FOR THE APPLICANT:
(VIA ELECTRONIC MAIL)

Charles Dowdell
Director of Solid Waste
City of Waco
501 Schroeder Drive
Waco, Texas 76710
Tel: (254) 750-1601
charlesd@wacotx.gov

Ryan R. Kuntz, P.E.
Vice President, SCS Engineers
1901 Central Drive, Suite 550
Bedford, Texas 76021
Tel: (817) 571-2288
Fax: (817) 571-2188
rkuntz@scsengineers.com

FOR THE EXECUTIVE DIRECTOR:
(VIA ELECTRONIC MAIL)

Heather Haywood, Staff Attorney
Kayla Murray, Staff Attorney
Anthony Tatu, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division (MC-173)
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0600
Fax: (512) 239-0606
heather.haywood@tceq.texas.gov
kayla.murray@tceq.texas.gov
anthony.tatu@tceq.texas.gov

Eric Clegg, P.G., Technical Staff
Texas Commission on Environmental Quality
Waste Permits Division (MC-124)
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-1270
Fax: (512) 239-2007
eric.clegg@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental Quality
External Relations Division
Public Education Program (MC-108)
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-4000
Fax: (512) 239-5678
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL:
(VIA ELECTRONIC MAIL)

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental Quality
Public Interest Counsel (MC-103)
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-6363
Fax: (512) 239-6377
vic.mcwherter@tceq.texas.gov

**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

(VIA ELECTRONIC MAIL)

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution (MC-222)
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-0687
Fax: (512) 239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK:
(VIA ELECTRONIC MAIL)

Docket Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)

P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-3300
Fax: (512) 239-3311
www.tceq.texas.gov/goto/efilings

HEARING REQUESTERS

See attached list.

DOCKET NO. 2022-0977-MSW
HEARING REQUESTERS

Save Axtell Families and Environment
("SAFE")
c/o Lauren Ice
Perales Allmon & Ice PC
1206 San Antonio St
Austin, Texas 78701

James Trayler
c/o Marisa Perales
Perales Allmon & Ice PC
1206 San Antonio St
Austin, Texas 78701

Save Axtell Families and Environment
("SAFE")
c/o Marisa Perales
Perales Allmon & Ice PC
1206 San Antonio St
Austin, Texas 78701

James Trayler
20 Walkers Xing
Waco, Texas 76705

Janet Burke McMillan
6725 Hwy. 84W
Coolidge, Texas 76635

McLennan and Hill Counties
Tehuacana Creek Water Control and
Improvement District #1
c/o Lauren Ice
Perales Allmon & Ice PC
1206 San Antonio St
Austin, Texas 78701

Janet Burke McMillan
23 Jones View Dr
Huntsville, Texas 77320

Brian Paul Ford
1365 Bays Road
Axtell, Texas 76624

McLennan and Hill Counties
Tehuacana Creek Water Control and
Improvement District #1
c/o Marisa Perales
Perales Allmon & Ice PC
1206 San Antonio St
Austin, Texas 78701

Brian Paul Ford
4855 T K Parkway
Axtell, Texas 76624

Mike Lee
3096 Happy Swaner
Axtell, Texas 76624

Darren and Melissa Porter
1500 LCR 102
Mount Calm, Texas 76673

Mike Lee
4855 T K Parkway
Axtell, Texas 76624

James Trayler
c/o Lauren Ice
Perales Allmon & Ice PC
1206 San Antonio St
Austin, Texas 78701

Gina Ford
1365 Bays Road
Axtell, Texas 76624

Gina Ford
4855 T K Parkway
Axtell, Texas 76624

Southern Cross Whitetail Ranch
1365 Bays Road
Axtell, Texas 76624

Southern Cross Whitetail Ranch
4855 T.K. Parkway
Axtell, Texas 76624

Cathryne Nivin
964 LCR 120
Mount Calm, Texas 76673

Suzanne Johnson
202 N. 2nd St. E
Mount Calm, Texas 76673

Charles Klanika
176 HCR 3259
Mount Calm, Texas 76673

Robert Stone
2013 Highway 31
Axtell, Texas 76624

Mary Harris
882 LCR 116
Mount Calm, Texas 76673

Ricky Pierce
9151 County Line Rd S.
Mount Calm, Texas 76673

Kaylee Engledow
9151 County Line Rd S.
Mount Calm, Texas 76673

Vicki Michelle Pierce
9151 County Line Rd S.
Mount Calm, Texas 76673

Kathleen Rigby
1533 Brookside Dr.
Manteca, California 95336

Randi Price
102 N. Morgan St. W.
Mount Calm, Texas 76673

Kimberly Lucien
P. O. Box 221
Leroy, Texas 76654

Steven Rigby
4418 T K Pkwy.
Axtell, Texas 76624

Elisabeth Rigby
4418 T K Pkwy.
Axtell, Texas 76624

Alton Boyett
7664 E. Highway 84
Waco, Texas 76624

Stephanie Marie Amy
P. O. Box 452
Axtell, Texas 76624

Stacy Howard
P. O. Box 186
Axtell, Texas 76624

Ernest Taylor Nivin
964 LCR 120
Mount Calm, Texas 76673

Christi Manning
1652 Hurst Rd.
Axtell, Texas 76624

Cynthia Ann Boyett
7664 E. Highway 84
Waco, Texas 76705

Susan Swaner
4351 T K Pkwy.
Axtell, Texas 76624

Stacy Roof
370 W Old Axtell Rd.
Waco, Texas 76705

Alcario Serros
933 Frazier Lane
Axtell, Texas 76624

Keven Tennison
4081 E Old Axtell Rd.
Axtell, Texas 76624

Vickie Haynes
6969 Highway 84 W
Coolidge, Texas 76635

Angela Green
462 Beaver Ln.
Waco, Texas 76705

Julie Michelle Brannen
595 Hurst Rd.
Axtell, Texas 76624

Brent Weatherby
602 HCR 3373
Hubbard, Texas 76648

David Stefka
P. O. Box 43
Axtell, Texas 76624

Benjamin Luke Stokes
1553 Frazier Ln.
Axtell, Texas 76624

Denise Graham
718 N Seeley Ave W
Mount Calm, Texas 76673

Leslie Gail Souders
518 N Seeley Ave W
Mount Calm, Texas 76673

Virginia Tierce
376 Wood St
Axtell, Texas 76624

Candace Nickel
P. O. Box 435
Axtell, Texas 76624

Phillip Kirk Harris
363 Homer Young Ln
Axtell, Texas 76624

Katy Lynch
1789 LCR 120
Mount Calm, Texas 76673

David Reed
3444 T K Pkwy.
Axtell, Texas 76624

David Reed
P. O. Box 1922
Canyon Lake, Texas 78133

Joe Dunlap
211 State Highway 31
Mount Calm, Texas 76673

Cynthia Dunlap
211 State Highway 31
Mount Calm, Texas 76673

Jose Alvarez
2715 Torino Reale Ave
Temple, Texas 76502

Jasmin Guillen
2715 Torino Reale Ave
Temple, Texas 76502