

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 17, 2023

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

RE: **USA Waste of Texas Landfills, Inc.**
Docket No. 2023-0265-MSW

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Eli Martinez".

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

DOCKET NO. 2023-0265-MSW

APPLICATION BY USA	§	BEFORE THE
WASTE OF TEXAS	§	
LANDFILLS, INC.	§	TEXAS COMMISSION ON
FOR MUNICIPAL SOLID	§	
WASTE PERMIT NO. 2185A	§	ENVIRONMENTAL QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Requests for Hearing and Requests for Reconsideration in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by USA Waste of Texas Landfills, Inc. (USA Waste or Applicant) for a major amendment to Municipal Solid Waste Permit No. 2185A. The Commission received requests for a contested case hearing from forty-five requestors. In addition, the Commission received five requests for reconsideration of the Executive Director’s (ED) decision under Title 30, Texas Administrative Code (TAC) § 55.201(e). For the reasons stated below, OPIC respectfully recommends the Commission grant the hearing requests from the following requestors: Carverdale Civic Club; Revitalize America; Myra Ann Wrenn Jefferson; Gregory Hudson; Victor Herbert; Damien Lawson; Hope, Healing and Hooves; Westwind Industries; and Harris County.

OPIC respectfully recommends denial of all remaining requests for a contested case hearing. Finally, OPIC recommends denial of all pending requests for reconsideration.

B. Background of Facility

USA Waste applied to the TCEQ for a permit major amendment authorizing the name change of the facility to Hawthorn Park Recycling and Disposal Facility and the lateral and vertical expansion of the facility. If issued, the major amendment would authorize the expanded operation of a Type IV municipal solid waste landfill facility. The facility is located at 10550 Tanner Road, Houston, Harris County.

The application, if granted, would include 210.2 acres of which approximately 179.9 acres would be used for waste disposal. The final elevation of the waste fill and final cover material would be 227.2 feet above mean sea level (msl). The permit would allow authorized waste to be accepted at an initial rate of approximately 150,000 tons per year and increasing over time to a maximum acceptance rate of approximately 340,000 tons per year. Accepted solid waste would consist of: municipal solid waste resulting from, or incidental to municipal, community, commercial, institutional, and recreational activities, including rubbish, brush, construction demolition waste, and yard waste; Class 2 non-hazardous industrial solid waste; Class 3 non-hazardous industrial solid waste; and special waste, including non-regulated asbestos-containing material and other waste as approved by the ED.

C. Procedural Background

TCEQ received the application for a permit amendment on February 23, 2021, and declared it administratively complete on April 2, 2021. Applicant published the Notice of Receipt and Intent to Obtain a Municipal Solid Waste Permit (NORI) in English on April

21, 2021, in *The Houston Chronicle* and in Spanish on April 25, 2021 in *La Voz de Houston*. The TCEQ held a public meeting on the application on January 18, 2022, virtually through webinar. The Executive Director (ED) completed the technical review of the application on February 10, 2022, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published in English and Spanish on March 9, 2022, in *The Houston Chronicle* and *La Voz de Houston*, respectively. The public comment period originally ended on April 8, 2022, but was later extended to June 28, 2022. The ED held a second public meeting on the application on June 28, 2022 in Houston, and the comment period ended at the close of the meeting. The ED's Response to Comments (RTC) was mailed on January 23, 2023, and the deadline to request a contested case hearing or reconsideration of the ED's decision was February 23, 2023.

II. APPLICABLE LAW

A. Requests for Hearing

The Application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;

- (2) identify the requestor's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (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. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), 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. Relevant factors to be considered in determining whether a person is affected include:

- (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) for a hearing request on an application filed on or after September 1, 2015, 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.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the 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.

For applications filed on or after September 1, 2015, § 55.205(b) states that a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

B. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. ANALYSIS OF HEARING REQUESTS

A. Whether Requestors are Affected Persons

Carverdale Civic Club

The Commission received numerous timely requests for hearing on behalf of Carverdale Civic Club (Carverdale), as well as timely comments. In its requests, Carverdale states that it is a 501 (C)(3) Charitable Organization located within one mile of the relevant facility.¹ Carverdale names Dr. Pamela Roberson, the organization's

¹ Carverdale Civic Club's website lists its purpose as, "to promote the safety, welfare, spirit, and the unique lifestyle of the Carverdale community." See <https://www.carverdalecivicclub.org/>

president, as a member with standing in her own right, and lists her home address as 10267 Morocco Rd., Houston, TX 77041. The requests cite concerns for the environmental impact of the expansion, as well as concerns regarding air quality, the health and safety of nearby residents, increased traffic, and the risk of flooding. Issues pertaining to impacts on the environment as well as the health and safety of residents are within TCEQ's jurisdiction for this application, and as such, are relevant and material to the Commission's decision.

Upon evaluating the request, OPIC finds that Carverdale Civic Club meets the requirements set forth in 30 TAC § 55.205(b) for associational standing. The hearing request was based on the group's timely comments submitted by Mark Harding concerning health and the environment, and these concerns were echoed in the hearing request submitted on February 23, 2023; the interests Carverdale Civic Club seeks to protect are germane to its stated charitable purpose; and none of the concerns raised require the participation of individual members. Finally, Dr. Pamela Roberson qualifies as an individual affected person, satisfying 30 TAC § 55.205(b)(2). Therefore, OPIC finds that Carverdale Civic Club meets the requirements for group standing and recommends the Commission find that the group is affected.

Revitalize America Partnership

Myra Ann Wrenn Jefferson submitted numerous timely comments and a timely hearing request on behalf of Revitalize America Partnership, Inc. The hearing request states that Revitalize America Partnership is a 501 (C)(3) Organization, and describes its members as “conveners, strategists, communications agents, liaisons, and facilitators that bring together business and community to promote economic opportunity and diversity

in education and employment while combating poverty and developing a network.” The request further states that Revitalize America Partnership conducts its activities in Ms. Jefferson’s home, which is located within one mile of the facility.

Revitalize America Partnership raises many relevant and material concerns, including those about land use compatibility, accuracy and completeness of the application, effects on human health and the environment, and nuisance conditions. Further, the request names Myra Jefferson as a group member who would qualify for standing in her own right due to the proximity of her home to the relevant facility and her concerns regarding nuisance and effects on human health and the environment.

Upon evaluating the request, OPIC finds that Revitalize America Partnership, Inc. meets the requirements set forth in 30 TAC § 55.205(b) for associational standing. The hearing request was based on the group’s timely comments that were included in the timely hearing request submitted on February 23, 2023; the interests Revitalize America Partnership seeks to protect are germane to its stated purpose; and none of the concerns raised require the participation of individual members. Finally, Myra Ann Wrenn Jefferson qualifies as an individual affected person, satisfying 30 TAC § 55.205(b)(2). Therefore, OPIC finds that Revitalize America Partnership Inc. meets the requirements for group standing and recommends the Commission find that the group is affected.

Myra Wrenn Jefferson and Gregory Hudson

The Commission received timely comments and requests for a contested case hearing from Myra Wrenn Jefferson and Gregory Hudson, by attorney Natasha Bahri. The requests state that Ms. Jefferson and Mr. Hudson live within one mile of the facility site. The map prepared by ED staff confirms that both properties lie within a mile of the

facility. The requests raise a suite of issues related to expansion, potential nuisance conditions, air quality and emissions concerns, sufficiency of protective testing, potential ground and surface water contamination, adequacy of flood control and drainage measures, environmental justice concerns, suitability of the facility's location, Applicant's compliance history, illegal conveyance of rights-of-way, acceptance of prohibited wastes, presence of on-site concrete crushing and recycling operations, Applicant's circumvention of the Commission's permitting process, and adequacy of the Applicant's Site Operating Plan to address emergencies. While some of these interests are protected by the law under which this application will be considered, others fall outside of TCEQ's jurisdiction.

Given the proximity of Myra Wrenn Jefferson and Gregory Hudson's properties to the facility, and the fact that many of their stated concerns are protected by law under which this application will be considered, OPIC finds these requestors are likely to be affected in a manner not common to the general public. Therefore, Myra Wrenn Jefferson and Gregory Hudson qualify as affected persons.

Victor Herbert

The Commission received numerous timely comments and requests for a contested case hearing from Victor Herbert. The requests state that Mr. Herbert lives within several hundred feet from the facility site. The map prepared by ED staff confirms that Mr. Herbert's property lies within a half mile of the facility. Mr. Herbert's requests raise concerns regarding impacts on human health, use and enjoyment of property, vectors, noise, odors, dust, and other nuisance conditions, increased traffic and sufficiency of roads, negative impacts to surface and groundwater, property values, improper facility

drainage, impacts to air quality, negative impacts on the community at large, and environmental justice. While some of these interests are protected by the law under which this application will be considered, others fall outside of TCEQ's jurisdiction.

Given Mr. Herbert's proximity to the facility, and the fact that many of his stated concerns are protected by the law under which this application will be considered, OPIC finds that Victor Herbert is likely to be affected in a manner not common to the general public. Therefore, Victor Herbert qualifies as an affected person.

Damien Lawson

The Commission received timely comments and requests for a contested case hearing from Damien Lawson. The map prepared by ED staff shows that Mr. Lawson's property lies within a half mile of the facility. Mr. Lawson's requests raise concerns regarding impacts on human health, negative impacts on air quality, flooding, traffic, negative impacts to surface and groundwater, windblown waste, and dust. While some of these interests are protected by the law under which this application will be considered, others fall outside of TCEQ's jurisdiction.

Given Mr. Lawson's proximity to the facility, and the fact that many of his stated concerns are protected by the law under which this application will be considered, OPIC finds that Damien Lawson is likely to be affected in a manner not common to the general public. Therefore, Damien Lawson qualifies as an affected person.

DA Rambo

The Commission received timely comments and requests for a contested case hearing from DA Rambo. DA Rambo raises concerns related to noise, traffic, odors, and property values. Some of these concerns are protected by the law under which this

application will be considered. However, the map prepared by ED staff shows that DA Rambo's property lies over a mile and a half from the facility. Given the intervening distance between this property and the facility, OPIC cannot find that DA Rambo is likely to be affected in a manner not common to the general public.

Robert Rigdon

The Commission received timely comments and requests for a contested case hearing from Robert Rigdon. Mr. Rigdon raises concerns related to odors and use and enjoyment of property. These concerns are protected by the law under which this application will be considered. However, the map prepared by ED staff shows that Mr. Rigdon's property lies over a mile and a half from the facility. Given the intervening distance between Mr. Rigdon's property and the facility, OPIC cannot find that Robert Rigdon is likely to be affected in a manner not common to the general public.

Hope, Healing and Hooves

The Commission received timely comments and a request for a contested case hearing from attorney Kathleen Cynthia Pickett on behalf of Hope, Healing and Hooves. The request states that the organization is dedicated to enriching the lives of children through an equestrian program that provides access to horses, equine-related education, and nature and encourages the exploration and enjoyment of respectful and positive relationships with others and the environment. The map prepared by ED staff shows that Hope, Healing and Hooves is located within a half mile of the relevant facility. Further, the request asserts that Hope, Healing and Hooves has secured the rights to a 12-acre site at 5610 Crawford Road, which is less than half a mile directly south of the facility. Hope, Healing and Hooves' planned expansion includes more horses, stables, a larger riding

arena, and increased access and exposure to nature for all program participants. The request lists concerns regarding landfill expansion, the increased risk of unsafe emissions, potential contamination of the air, water, and soil, as well as increased nuisance conditions. While some of these interests are protected by the law under which this application will be considered, others fall outside of TCEQ's jurisdiction.

Given Hope, Healing and Hooves' proximity to the facility, and the fact that its stated concerns regarding water contamination, effects on human health, and nuisance conditions are protected by the law under which this application will be considered, OPIC finds that Hope, Healing and Hooves will be affected in a manner not common to the general public. Therefore, the organization qualifies as an affected person.

Westwind Industries

The Commission received numerous timely comments and a request for a contested case hearing from attorney Michael Woodward on behalf of Westwind Industries (Westwind). The request states that Westwind is an adjacent property owner, and specifically, that it owns approximately 23 acres of land adjacent to the landfill facility, 18 acres across Tanner Road, and 5 acres across Crawford Road. The map prepared by ED staff confirms that Westwind's property is located roughly half a mile from the facility at issue. Westwind's request includes concerns regarding the potential for nuisance conditions resulting from the proposed expansion, as well as economic injury, impact on land use, lack of proper notice, and soil and ground water contamination. While some of these interests are protected by the law under which this application will be considered, others fall outside of TCEQ's jurisdiction.

Given Westwind's proximity to the facility, and the fact that many of its stated concerns are protected by the law under which this application will be considered, OPIC finds that Westwind Industries is more likely to be affected in a manner not common to the general public. Therefore, Westwind qualifies as an affected person.

Lester Whiteing

The Commission received timely comments and requests for a contested case hearing from Lester Whiteing. Mr. Whiteing raises concerns related to potential negative impacts to human health, traffic, and incompatibility of the facility site alongside local schools and churches. These concerns are protected by the law under which this application will be considered. However, the map prepared by ED staff shows that Mr. Whiteing's property lies several miles from the facility. Given the intervening distance between Mr. Whiteing's property and the facility, OPIC cannot find that Lester Whiteing is likely to be affected in a manner not common to the general public.

Harris County

The Commission received timely comments and requests for a contested case hearing from Harris County, through its attorney Sarah J. Utley. The request indicates that Harris County is a local government² with the authority to inspect Hawthorn Landfill for compliance with various state environmental statutes, and TCEQ rules and orders issued thereunder.³ In addition to these investigatory powers, Harris County has the authority to file civil suit in the same manner as the TCEQ for injunctive relief, civil penalties, or both.⁴ Harris County Pollution Control Services (Pollution Control) is the

² Tex. Health Safety Code §§ 361.003(17) and 382.003(8); and Tex. Water Code § 26.001(18).

³ 1 Tex. Health Safety Code §§ 361.032 and 382.111; and Tex. Water Code § 26.173.

⁴ Tex. Water Code § 7.351.

Harris County department designated to inspect facilities in Harris County for compliance with environmental quality laws and regulations (air, water, and waste), review permit applications, and submit comments to the TCEQ on permitting actions. Pollution Control works closely with the TCEQ's Houston regional office, and as a matter of course, the TCEQ's Houston regional office refers a substantial portion of environmental complaints from Harris County citizens to Pollution Control (including nuisance complaints). As a part of its mission, Pollution Control conducts investigations, both routine and complaint initiated, and, when appropriate, issues Violation Notices, and refers cases to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement. Harris County therefore has authority under state law over the issues raised in the application and is active in its role as a regulator and enforcer of environmental statutes, and TCEQ rules and orders.

The concerns raised in the request include potential negative impacts on human health and the environment, nuisance conditions, traffic, adequacy of roads, sufficiency of Transportation Study, management of landfill gas, sufficiency of the draft permit to prevent acceptance of prohibited waste, odors, sufficiency of recordkeeping requirements, vectors, and environmental justice. These concerns are protected by the law under which this application will be considered. Further, Harris County has demonstrated that it has authority under state law over the issues it has raised. OPIC therefore finds that Harris County is an affected entity.

All Remaining Requestors

Each of the remaining requestors did not appear on the map prepared by the ED's staff. This map shows locations of all addresses within an approximate 20-mile radius of

the facility. Because the addresses provided by these requestors were too distant to appear within this radius, OPIC cannot find that these requestors are likely to be affected in a manner that is not common to the general public. Accordingly, OPIC none of these remaining requestors qualify as affected persons.

B. Issues Raised in the Hearing Requests of Affected Persons

Affected persons raised the following issues:

1. Whether the proposed expansion of the facility will adversely affect human health and safety, animal life, or the environment;
2. Whether the proposed expansion of the facility will adversely impact water quality, including groundwater;
3. Whether the proposed Landfill Gas Management Plan is adequate and consistent with the requirements of 30 TAC § 330.371;
4. Whether the application is complete and accurate;
5. Whether Applicant complied with all relevant notice requirements;
6. Whether the Applicant's compliance history or technical capabilities raise any issues regarding Applicant's ability to comply with the draft permit;
7. Whether the location of the proposed expansion is an unstable area pursuant to 30 TAC § 330.559;
8. Whether the proposed expansion will improperly interfere with land use;
9. Whether the draft permit is adequately protective of nuisance conditions, including noise, dust, odors, and vermin;
10. Whether the draft permit protects against occurrences of windblown waste;
11. Whether the buffer zone proposed in the application is compliant with the requirements of 30 TAC §330.543(b);
12. Whether the proposed expansion will result in increased traffic and damage roads;
13. Whether the draft permit contains adequate provisions to ensure proper drainage;

14. Whether the draft permit adequately sets forth procedures to prevent the acceptance of prohibited wastes, including hazardous wastes, and how such waste will be handled if illegally accepted;
15. Whether the proposed expansion will adversely affect air quality;
16. Whether the proposed facility will negatively impact property values and economic development;
17. Whether the proposed facility will result in flooding; and
18. Whether the proposed expansion would exacerbate environmental justice issues in violation of Executive Order 12898.

C. Issues Raised in the Hearing Requests Remain Disputed

There is no agreement between the affected persons and the ED on the issues raised in the hearing requests. Thus, they remain disputed.

D. The Disputed Issues Are Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. All issues raised by the affected persons are issues of fact.

E. Issues Were Raised by the Requestor During the Comment Period

Issues 1-18 in Section III. B. were specifically raised by affected persons during the public comment period.

F. The Hearing Requests are Based on Issues Raised in Public Comments Which Have Not Been Withdrawn

The hearing requests are based on timely comments that have not been withdrawn.

G. Issues That are Relevant and Material to the Decision on the Application

The hearing requests raise some issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and

55.211(c)(2)(A)(ii), and some that are not. To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Water Quality, Environment, Human Health and Safety, Animal Life, and Gas Management

Requestors raised concerns about the potential for groundwater contamination, and the consequential impacts on human health, animal life, aquatic life, and the environment. The Texas Solid Waste Disposal Act and 30 TAC Chapter 330 were promulgated to protect human health and the environment in the context of landfills. Further, TCEQ rules require an applicant to provide a landfill gas monitoring plan, a groundwater monitoring plan, and compliant liner to protect the soil, surface water, groundwater, and air in accordance with 30 TAC Chapter 330, Subchapters H, I, and J. In addition, TCEQ rules prohibit the discharge of solid waste or pollutants into or adjacent to waters of the State in violation of Texas Water Code, Section 26.121 and in accordance with 30 TAC § 330.15(h). Finally, the TCEQ rules regulating surface water drainage at MSW landfills are found in 30 TAC Chapter 330, Subchapter G are relevant to requestors' concerns regarding impacts to the environment. Specifically, liquids resulting from the operation of solid waste facilities are required to be collected, contained, properly managed, and disposed in a manner that does not cause surface or groundwater pollution in accordance with 30 TAC § 330.305(g), and 30 TAC § 330.207 (a) and (b). As the above-referenced rules and statutes designate criteria for the regulation of groundwater

protection, the protection of human health and safety, the environment, and animal life, Issues No. 1-3 are relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

Accuracy and Completeness of Application, Notice, and Compliance History

Requestors raised several concerns regarding the accuracy of the Application, noting potential deficiencies regarding notice and various representations made by Applicant. The Commission's Chapter 330 and Chapter 281 rules address the required contents of applications and approved application forms. Moreover, TCEQ rules require that if an applicant becomes aware that it failed to submit relevant facts or submitted incorrect information in a permit application, the applicant is required to promptly submit such facts and information. Further, a variety of notice requirements found in Chapter 39 of the Commission's rules apply to this application. Finally, evidence of competency is required by 30 TAC §330.593(f), thus rendering requestor's concerns regarding compliance history relevant and material to the Commission's decision on this application. Accordingly, Issues No. 4-6 are appropriate for referral to SOAH.

Land Use and Site Suitability

Land use compatibility requirements and the location restrictions relevant to this application are found in 30 TAC Chapter 330. The Applicant is required to provide land use information, including growth trends within five miles of the facility in accordance with 30 TAC § 330.61(h)(3). Further, 30 TAC §330.559 requires owners or operators of new municipal solid waste landfill units, existing landfill units, and lateral expansions located in an unstable area to demonstrate that engineering measures have been incorporated into the landfill unit's design to ensure that the integrity of the structural

components of the landfill unit will not be disrupted. Accordingly, requestors' concerns outlined in Issues No. 7-8 are relevant and material to the Commission's decision on this application.

Nuisance Conditions

In accordance with 30 TAC § 330.7 and 30 TAC § 330.149, an MSW facility must be operated in a way that prevents the occurrence of nuisance odor conditions. Further, the issue of noise is indirectly addressed by buffer zone requirements. Specifically, 30 TAC § 330.141(b) requires the establishment and maintenance of buffer zones between waste management activities and the site permit boundary. As such, requestors' concerns pertaining to nuisance and buffer zones as described in Issues No. 9-10 are relevant and material to the Commission's decision on this application.

Windblown Waste

TCEQ rules require that all on-site and other access roadways be maintained by the Applicant in a clean and safe condition. Litter and any other debris must be picked up at least daily and taken to the working face, and access roadways must be re-graded to minimize depressions, ruts, and potholes per 30 TAC § 330.153(c). Accordingly, Issue No. 11 is relevant and material to the Commission's decision on this application.

Traffic, Sufficiency of Roads, and Transportation Study

Pursuant to 30 TAC § 330.61(i), an owner or operator applying for a new permit or permit amendment for an MSW landfill facility is required to provide data, including the availability and adequacy of roads that the owner or operator will use to access the site; the volume of vehicular traffic on access roads within one mile of the facility, both existing and expected, during the expected life of the facility; and project the volume of

traffic expected to be generated by the facility on the access roads within one mile of the facility. Accordingly, Issue No. 12 is relevant and material to the Commission's decision on this application.

Drainage

Pursuant to 30 TAC § 330.305, landfill facilities are prohibited from adversely altering the natural drainage pattern that existed on the site before development of a facility. In accordance with 30 TAC §§ 330.63(c), 330.303, 330.305, and 330.307, an applicant must provide a Surface Water Drainage Report regarding the management of run-on and runoff at the landfill. Accordingly, Issue 13 is relevant and material to the Commission's decision on this application.

Acceptance of Prohibited Wastes

TCEQ rules prohibit the illegal disposal of any waste at a landfill in accordance with 30 TAC § 330.133(f). The application provides lists for all disposable and prohibited wastes in Part IV, Section 5.0. Accordingly, Issue 14 is relevant and material to the Commission's decision on this application.

Air Quality

Several requestors expressed concerns about degradation of air quality resulting from the proposed expansion. Emissions from the facility and any vehicle emissions related to traffic to and from the facility are subject to applicable air quality requirements, separate and apart from this MSW permit. As such, TCEQ does not consider the effects on air quality from increased numbers of diesel trucks, alone or in combination with any other factors, in deciding whether to issue a landfill permit. Accordingly, Issue No. 15 is not relevant and material to the Commission's decision on this application.

Property Values, Economic Development, and Flooding

Some requestors raised concerns regarding the proposed facility's impact on property values and economic development of the community resulting from the facility's presence, as well as concerns about possible flooding. TCEQ does not have jurisdiction to consider property values or other economic impacts when determining whether to approve or deny an MSW permit application. Likewise, the TCEQ's jurisdiction is established by statute and does not include authority to address flooding. Accordingly, Issues No. 16-17 are not relevant and material to the Commission's decision on this application.

Environmental Justice

Because the TCEQ receives federal funding, it must comply with a suite of federal guidance and laws ensuring its actions are not intentionally discriminatory and will not have discriminatory effects.⁵ For instance, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin.⁶ Executive Order 12898 addresses the environmental and human health conditions of minority communities and low-income communities and calls on agencies to make achieving environmental justice part of their mission.⁷ Executive Order 13166 requires federal agencies—and recipients of federal financial assistance—to examine the services they provide, identify any need for services to those with limited English proficiency, and develop and implement a system

⁵ See 40 CFR §7.35(b). <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-7>

⁶ <https://www.justice.gov/crt/fcs/TitleVI>

⁷ <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>

to provide those services so limited English proficiency persons can have meaningful access to them.⁸

TCEQ has made a commitment to preventing discriminatory actions or effects through its Title VI Compliance efforts, which are intended to ensure reasonable access to its decision-making processes. Towards this end, efforts have been made to develop and implement a Disability Nondiscrimination Plan, Public Participation Plan, and Language Access Plan.⁹ Together, these efforts are intended to provide equal access to Commission programs and activities.

However, the specific environmental justice concerns raised by the requestors involving the location of permitted facilities in areas with minority and low-income populations, disparate exposure to pollutants of minority and low-income populations, and disparate economic, environmental, and health effects on minority and low-income populations are not currently addressed by concrete guidance or permitting rules. Without specific requirements relating to these concerns, these issues cannot be addressed in proceedings on this application and should not be referred to SOAH.

H. Issues Recommended for Referral

For the reasons stated above, OPIC recommends referral of the following issues to SOAH:

1. Whether the proposed expansion of the facility will adversely affect human health and safety, animal life, or the environment;
2. Whether the proposed discharge will adversely impact water quality, including groundwater;

⁸ <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>

⁹ More information on TCEQ's Title VI Compliance efforts can be found at: <https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance>

3. Whether the proposed Landfill Gas Management Plan is adequate and consistent with the requirements of 30 TAC § 330.371;
4. Whether the application is complete and accurate;
5. Whether Applicant complied with all relevant notice requirements;
6. Whether the Applicant's compliance history or technical capabilities raises any issues regarding Applicant's ability to comply with the draft permit;
7. Whether the location of the proposed expansion is an unstable area pursuant to 30 TAC § 330.559;
8. Whether the proposed expansion will improperly interfere with land use;
9. Whether the draft permit is adequately protective of nuisance conditions, including noise, dust, odors, and vermin;
10. Whether the buffer zone proposed in the application is compliant with the requirements of 30 TAC §330.543(b);
11. Whether the draft permit protects against occurrences of windblown waste,
12. Whether the proposed expansion will utilize roads sufficient to accommodate ingress and egress of facility traffic;
13. Whether the draft permit contains adequate provisions to ensure proper drainage; and
14. Whether the draft permit adequately sets forth procedures to prevent the acceptance of prohibited wastes.

I. Maximum Expected Duration of Hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is

earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this Application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. ANALYSIS OF REQUESTS FOR RECONSIDERATION

Natasha Bahri submitted a request for reconsideration on behalf of Myra Jefferson and Gregory Hudson. The request raises a suite of issues related to expansion, potential nuisance conditions, air quality and emissions concerns, sufficiency of protective testing, potential ground and surface water contamination, adequacy of flood control and drainage measures, environmental justice concerns, suitability of the facility's location, Applicant's compliance history, illegal conveyance of rights-of-way, acceptance of prohibited wastes, presence of on-site concrete crushing and recycling operations, Applicant's circumvention of the Commission's permitting process, and adequacy of the Applicant's Site Operating Plan to address emergencies.

Michael L. Woodward submitted a request for reconsideration on behalf of Westwind Industries. The request indicates the ED's decision should be overturned because the Applicant repeatedly provided significant false information to the TCEQ, and because the proposed overliners fail to meet TCEQ rules requiring that an underlying formation be of sufficient strength to ensure stability and long-term viability.

Sarah Jane Utley submitted a request for reconsideration on behalf of Harris County, raising concerns related to human health and the environment, nuisance conditions, impacts to roads and traffic, adequacy of the gas management plan, odors,

acceptance of prohibited waste, adequacy of records requirements, adequacy of the Site Operating Plan, and environmental justice.

Celia Lopez submitted a request for reconsideration that articulates concerns related to road conditions, flooding, aesthetics, impacts to human health, and property values.

Donna Brownlow submitted a request for reconsideration on behalf of Northwest Houston Environmental Injustice Coalition. The request articulates concerns related to the gas management plan, and states general opposition towards the additional capacity that would be authorized by the amendment.

While OPIC is recommending a hearing and referral of issues encompassing many of requestors' concerns expressed in the requests for reconsideration, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would need to exist in order to recommend that the requests for reconsideration be granted. As no such record exists, OPIC cannot recommend the requests be granted at this time.

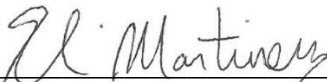
V. CONCLUSION

Having found that Carverdale Civic Club; Revitalize America; Myra Ann Wrenn Jefferson; Gregory Hudson; Victor Herbert; Damien Lawson; Hope, Healing, and Hooves; Westwind Industries; and Harris County qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issue Nos. 1-14 specified in Section III. H. for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC recommends denial of all remaining hearing

requests. Finally, OPIC further recommends the Commission deny all pending requests for reconsideration.

Respectfully submitted,

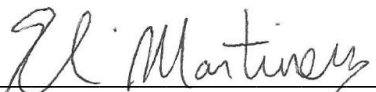
Garrett T. Arthur
Public Interest Counsel

By: 

Eli Martinez
Assistant Public Interest Counsel
State Bar No. 24056591
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6363 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2023 the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Eli Martinez

MAILING LIST
USA WASTE OF TEXAS LANDFILLS, INC.
TCEQ DOCKET NO. 2023-0265-MSW

FOR THE APPLICANT

via electronic mail:

Charles A. Rivette, Director
Waste Management of Texas, Inc.
24275 Katy Freeway, Suite 450
Katy, Texas 77494
crivette@wm.com

Charles G. Dominguez, Principal
Golder Associates, Inc.
14950 Heathrow Forest Parkway
Suite 280
Houston, Texas 77032
charles_dominguez@golder.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Anthony Tatu, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
anthony.tatu@tceq.texas.gov

Jianing Li, Technical Staff
Texas Commission on Environmental
Quality
Waste Permits Division MC-124
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-1867 Fax: 512/239-2007
jianing.li@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK

via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

See attached list.

REQUESTER(S)

Iesheia Ayers-Wilson
10235 Morocco Rd
Houston, TX 77041-7429

Natasha Bahri
Lone Star Legal Aid
Po Box 396
Houston, TX 77001-0396

Ms Donna Brownlow
Northwest Houston Environmental Injustice
Coalition
10047 Hardison Ln
Houston, TX 77041-6135

Rodrigo Garza Cantu
Earthjustice
1415 Fannin St
Houston, TX 77002-7632

Rodrigo Garza Cantu
Earthjustice
Po Box 398
Houston, TX 77001-0398

Mark Harding
Carverdale Civic Club
10139 Porto Rico Rd
Houston, TX 77041-7539

Dr. Victor E Hebert
5651 Triway Ln
Houston, TX 77041-7421

Damien D Lawson
10235 Morocco Rd
Houston, TX 77041-7429

Mrs Celia Lopez
10126 Morocco Rd
Houston, TX 77041-7534

V Blayre Pena
1801 Red Bud Ln
Ste B169
Round Rock, TX 78664-3813

Kathleen Cynthia Pickett
The Pickett Law Group PLLC
3050 Post Oak Blvd
Ste 620
Houston, TX 77056-6527

D A Rambo
4403 Langtry Ln
Houston, TX 77041-9201

Robert Rigdon
4403 Langtry Ln
Houston, TX 77041-9201

Sarah Jane Utley
Harris County Attorneys Office
1019 Congress St
Fl 15
Houston, TX 77002-1700

Mr Lester Whiteing Jr
21506 Hawkspur Ridge St
Richmond, TX 77406-5259

Mr Michael L Woodward
Hance Scarorrough LLP
400 W 15Th St
Ste 950
Austin, TX 78701-1600

Myra Ann Wrenn Jefferson
17518 Waverly Grove Dr
Houston, TX 77084-6322

Myra Ann Wrenn Jefferson
5417 Gessner Rd
Houston, TX 77041-7405