

## **Motion.**

1) **Adopt** the ALJ's proposed order with the following changes:

- i) Amend the title of the order to replace the word "denying" with the word "granting" to reflect the Commission's decision in this matter;
- ii) To include the complete justification provided by the Applicant in its application, amend Finding of Fact No. 11 to state:

"Applicant provided the following reason for the hours expansion: 'The 130 Environmental Park provides waste disposal for individuals, businesses, and communities in Caldwell County and the surrounding counties. The service area for the facility is a wide area with significant haul distances from some of the serviced communities. To better serve those communities, business, and customers, expanded operating hours will allow for more efficient waste collection and disposal outside typical working hours and peak traffic times, and reduce traffic and other impacts to infrastructure. The addition of Saturday operating hours will provide available weekend disposal, including for individuals who, for work or other reasons, may be unable to get to the landfill on weekdays, and for businesses (restaurants, grocery stores, etc.) needing waste collection and disposal services on Saturday. Authorizing waste acceptance hours to begin at 5 a.m. (6 a.m. on Saturday) will allow vehicles collecting waste in the very early morning hours to get their first loads of the day to the landfill and return to their collection routes before the peak morning traffic times for persons travelling to work, students travelling to schools, and others travelling on area roadways, thereby reducing peak hour traffic on roadways providing access to the landfill.'";

- iii) Amend Finding of Fact No. 15 to correct the date that notice was published in the *Lockhart Post-Register* from October 12, 2022, to October 13, 2022;
- iv) Amend Finding of Fact No. 19 to replace the date August 4, 2023, with August 17, 2023, to reflect the correct date that the Executive Director filed her Response to Comments with the Office of the Chief Clerk;
- v) Delete Finding of Fact No. 24 because it is a conclusion of law and is erroneous in this matter in light of the applicable rules;
- vi) Amend Finding of Fact No. 25 to replace 38.501(f)(3) with 39.501(f)(3) to correct the citation to the applicable rule;
- vii) Amending Finding of Fact No. 26 to replace 38.501(f)(2) with 39.501(f)(2) to correct the citation to the applicable rule;

- viii) Because the proposed order does not address the scope of the application and to reflect the evidence in the record regarding that topic, add new Finding of Fact No. 34A to state: “The Applicant’s limited-scope amendment application did not seek to amend the Landfill’s odor management plan.”;
- ix) Because the proposed order does not address the scope of the Commission’s review of the application and to reflect evidence in the record regarding that topic, add new Finding of Fact No. 34B to state: “During the review of the Application, the Executive Director did not request any information regarding odors, noise, access roads, nuisance conditions, or land use compatibility.”;
- x) Delete Finding of Fact Nos. 35-42, 44-48, and 50-53 because those facts are irrelevant and immaterial to the Commission’s decision in this matter under the limited-scope amendment requirements and, as such, must be excluded pursuant to TCEQ rules and applicable rules of evidence;
- xi) Amend Finding of Fact No. 49 to remove the word “no” to reflect that the great weight of relevant evidence in the record establishes that the Applicant provided a sufficient justification supporting the extended hours;
- xii) Because the proposed order does not include facts related to the justification for extended landfill hours and to reflect evidence in the record regarding that topic, add new Finding of Fact No. 49A to state: “Allowing trash trucks to enter the landfill earlier in the morning would improve landfill operations by reducing the truck traffic that currently waits outside of the landfill’s gates approximately one hour before the landfill opens. One of the benefits of the extended facility hours is for the trash trucks to get back on the roadways ahead of peak traffic hours to reduce the traffic strain on other drivers. Truck traffic currently enters the landfill when it opens at 7:00 a.m., drop off their loads, and then exit the landfill during peak traffic times. The amount of truck traffic could be the same with the extended hours and would allow for the trucks to be spread out earlier in the morning making it easier to manage waste acceptance and landfill traffic.”;
- xiii) Because the proposed order does not include facts related to the justification for extended landfill hours and to reflect evidence in the record regarding that topic, add new Finding of Fact No. 49B to state: “The Landfill’s operations manager, Mr. Lozano, received many comments from residents in Caldwell County asking for Saturday facility hours because they work Monday through Friday and cannot make it to the landfill to drop off their trash during the weekdays. Mr. Butler, the Landfill’s general manager, explained that Saturday facility hours would provide residents and other landfill customers with an option for disposal that they would not otherwise be able to take advantage of during the weekdays.”;

- xiv) Because the proposed order does not include facts related to the justification for extended landfill hours and to reflect evidence in the record regarding that topic, add new Finding of Fact No. 49C to state: “The Caldwell County Commissioners Court adopted Resolution 41-2022 that concluded that it would be beneficial to and in the best interest of the County and its residents to support the Applicant’s Application for extended hours. The County’s resolution states that extended waste acceptance hours will allow vehicles collecting waste in the very early morning to get their first loads of the day to the landfill and return to their collection routes before the peak morning traffic times for persons travelling to work, students traveling to school, and others travelling on area roadways, thereby reducing peak hour traffic on roadways providing access to the landfill. The County’s resolution finds that the addition of Saturday operating hours of the landfill will provide available weekend disposal, including for individuals who, for work or other reasons, may be unable to get to the landfill on weekdays, and for business (restaurants, grocery stores, etc.) needing waste collection and disposal services on Saturday.”;
- xv) Because the proposed order does not include facts related to the justification for extended landfill hours and to reflect evidence in the record regarding that topic, add new Finding of Fact No. 49D to state: “The Protestants did not provide any evidence specifically related to the justification for extended hours that was included in Applicant’s limited-scope amendment Application.”;
- xvi) Amend Conclusion of Law No. 1 to replace the citation to Texas Water Chapter 26 with Texas Health and Safety Code § 361.061 to reflect the correct citation for the Commission’s jurisdiction in this matter;
- xvii) To reflect the correct citations for notice in this matter, amend Conclusion of Law No. 3 to state: “Notice was provided in accordance with the applicable requirements in Tex. Health & Safety Code Chapter 361; Texas Government Code sections 2001.051 and 2001.052; and 30 Texas Administrative Code sections 39.405 and 39.501”;
- xviii) To apply record evidence to the legal standard for a limited-scope amendment, add new Conclusion of Law No. 13A to state: “As required by 30 TAC § 305.62(b), the limited-scope permit amendment narrative in the Application includes a statement describing the reasons for the requested changes to the Permit.”;
- xix) To include the applicable legal requirements for the Commission’s review of a limited-scope amendment, add new Conclusion of Law No. 13B to state: “Pursuant to 30 TAC § 305.62(j)(2) and (3), the Executive Director’s review of the Application and any hearing or proceeding on the limited-

scope amendment shall be limited to the proposed changes to the permit and additional information requested by the Executive Director.”;

- xx) To reflect the Commission’s determination after applying the correct legal standard, add new Conclusion of Law No. 13C to state: “The Draft Permit provision authorizing the extended waste acceptance and operating hours, if incorporated into an amended permit, would not violate 30 TAC § 330.135(a).”;
- xxi) Delete Conclusion of Law Nos. 14-16 because they cite Texas Register notices that are inapplicable to limited-scope amendments and are therefore inapplicable in this matter;
- xxii) To explain the Commission’s interpretation of applicable law, add new Conclusion of Law No. 16A to state: “Because the odors, nuisance prevention, and land use compatibility portions of Applicant’s municipal solid waste permit were not requested to be changed in this limited-scope amendment Application, and the Executive Director did not request information regarding those matters during review of the Application, evidence regarding those matters is outside the scope of this limited-scope amendment and not relevant to this proceeding. 30 Tex. Admin. Code § 305.62(j)(2).”;
- xxiii) To reflect the applicable law, add new Conclusion of Law No. 16B to state: “Neither Tex. Health & Safety Code Chapter 361 nor TCEQ’s municipal solid waste regulations establish noise limit requirements specifically applicable to landfills.”;
- xxiv) To apply record evidence to the applicable legal standards, add new Conclusion of Law No. 16C to state: “The Protestants did not present evidence rebutting the Applicant’s justification for extended hours provided in the Application and, therefore, did not present evidence that relates to the issue referred for hearing. Tex. Gov’t Code § 2003.047(i-2)(1).”
- xxv) To apply record evidence to the applicable legal standards, add new Conclusion of Law No. 16D to state: “The Protestants did not demonstrate that one or more provisions in the Draft Permit violate a specifically applicable state or federal requirement. Tex. Gov’t Code § 2003.047(i-2)(2).”;
- xxvi) To apply record evidence to the applicable legal standards, add new Conclusion of Law No. 16E to state: “The Protestants did not legally rebut the prima facie demonstration established by the administrative record. Tex. Gov’t Code § 2003.047(i-1) and (i-2).”;

- xxvii) To reflect the Commission's determination after applying record evidence to the applicable law, amend Conclusion of Law No. 17 to state: "Applicant provided an adequate justification for expanding its facility hours beyond those established in 30 Texas Administrative Code § 330.135.";
  - xxviii) To reflect the Commission's determination after applying record evidence to the applicable law, add new Conclusion of Law No. 17A to state: "The Draft Permit meets all state and federal legal and technical requirements.";
  - xxix) To reflect the Commission's determination after applying record evidence to the applicable law, add new Conclusion of Law No. 17B to state: "A permit consistent with the Draft Permit will protect human health and safety, the environment, and physical property.";
  - xxx) Amend Ordering Provision No. 1 to replace the word "denied" with "granted" to reflect the Commission's decision in this matter; and
  - xxxi) To provide clarity that the Commission's order prevails over any conflicts with the ED's Response to Comments, amend Ordering Provision No. 3 to state: "The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code section 50.117 to the extent it does not conflict with the Commission's order."
- 2) **Issue** the limited-scope amendment to MSW Permit No. 2382 in accordance with the ED's Draft Permit; and
- 3) **Adopt** the ED's Response to Comments to the extent it does not conflict with the Commission's order.