State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 12, 2026

Taylor Pearson
Benjamin Warms
Jessica Anderson
Christopher Knop
Clayton Sanders

VIA EFILE TEXAS

RE: SOAH Docket Number 582-25-08210.TCEQ; TCEQ No. 2024-1222-MSW-E; *The Executive Drector of the Texas Commission on Environmental Quality v. Carbon Sequestration, Inc.*

Dear Parties:

On March 11, 2026, the undersigned Administrative Law Judge (ALJ) issued an exceptions letter in this matter. Subsequent to the issuance of the exceptions letter, the ALJ discovered an error on page 4, second full paragraph, and related Footnote (FN) No. 3. On page 4, the ALJ stated:

> The Sourcing Criteria is dated after the record closed and is not included in the evidentiary record.

FN 3 provides:

> The record closed on October 16, 2025. Pursuant to CSI's exceptions the Sourcing Criteria is dated November 27, 2025.

The hearing in this matter convened on October 16, 2025, and the parties submitted all admitted evidence on October 17, 2025 pursuant to the ALJ's Order

Memorializing Post-Hearing Instructions, Extending the Record Close Date, and Requiring Briefing. The record closed on December 17, 2025 with the filing of reply briefs.

Accordingly, page 4, is amended to state:

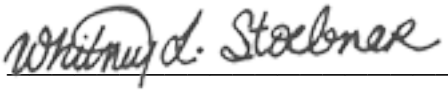
> The Sourcing Criteria is dated ~~after the record closed~~ after the admitted evidence was submitted and is not included in the evidentiary record.

FN No. 3 is amended to state:

> ~~The record closed on October 16, 2025~~. The parties were ordered to file the admitted exhibits by October 17, 2025. Pursuant to CSI's exceptions, the Sourcing Criteria is dated November 27, 2025.

With these corrections to the exceptions letter, the proposal for decision is ready for the Commission's consideration.

ALJ Signature(s):



Whitney L. Stoebner,

Presiding Administrative Law Judge

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RE: SOAH Docket Number 582-25-08210.TCEQ; TCEQ No. 2024-1222-MSW-E; *The Executive Director of the Texas Commission on Environmental Quality v. Carbon Sequestration, Inc.*

Dear Parties:

On February 6, 2026, the undersigned Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) in this matter. On February 24, 2026, Carbon Sequestration, Inc. (CSI) filed exceptions to the PFD. On February 26, 2026, the Executive Director (ED) for the Texas Commission on Environmental Quality (Commission) filed exceptions. The ED filed a reply to CSI's exceptions on March 6, 2026. The Office of Public Interest Counsel did not file exceptions or replies to the exceptions filed by other parties.

The ED supports the adoption of the PFD with a slight modification to Finding of Fact (FOF) No. 20 discussed further below. CSI contends the PFD errs as to findings regarding the lack of replacement of raw or virgin materials; storage timelines; unauthorized disposal of municipal solid waste (MSW); failure to notify; and remediation recommendations. For these reasons, CSI requests the PFD be modified to dismiss the violations and impose no administrative penalty or corrective actions. Notably, many of CSI's arguments were already fully addressed in the PFD. Additionally, CSI also relied upon materials outside the evidentiary record in

support of certain arguments in its exceptions. Ultimately, the ALJ recommends the correction recommended by ED be adopted; however, the ALJ does not find the modifications proposed by CSI to be warranted and, therefore, does not adopted CSI's proposed modifications or amendments.

I. ED'S EXCEPTION TO FINDING OF FACT NO. 20

FOF 20 states:

> On July 26, 2024, the Commission issued a Notice of Violation letter to CSI identifying the following violations: (1) unauthorized disposal of MSW; and (2) failure to notify the ED of any changes concerning waste management methods by conducting activities not authorized under its NOI.

The ED contends the reference to the "Notice of Violation" should be changed to reflect the July 26, 2024 communication was a Notice of Enforcement. Having reviewed the evidentiary record, the ALJ finds that FOF No. 20 should be amended, changing Notice of Violation to Notice of Enforcement.[1]

Accordingly, the ALJ applies the following correction to the PFD:

- FOF No. 20, shall be amended as follows:

  On July 26, 2024, the Commission issued a ~~Notice of Violation~~ Notice of Enforcement letter to CSI identifying the following violations: (1) unauthorized disposal of MSW; and (2) failure to notify the ED of any changes concerning waste management methods by conducting activities not authorized under its NOI.

[1] ED Ex. 5 at 00003.

II. CSI'S EXCEPTIONS

A. EXCEPTION TO FINDINGS REGARDING NO REPLACEMENT OF RAW OR VIRGIN MATERIALS

CSI contends that the ALJ erred in the findings related to the definition and interpretations related to whether the wood waste buried at CSI was recyclable material in FOF Nos. 15 and 18 and Conclusion of Law (COL) Nos. 11 and 13. Specifically, CSI argues the ALJ erred in finding that the buried wood waste is not recyclable material because a substantial portion of the waste is not consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. The FOFs and COLs at issue are as follows:

- FOF No. 15. The buried wood eventually results in the production of carbon credits, which offset carbon emissions and are sold as Carbon Dioxide Removal Credits (CORCs).

- FOF No. 18. Wood waste used in connection with the sale of CORCs does not substitute any raw or virgin material.

- COL No. 11. Recyclable material is material that can be, or has been, recovered or diverted from the waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Tex. Health & Safety Code § 361.421(5); 30 Tex. Admin. Code § 330.3(128).

- COL No. 13. The wood waste buried at the Facility is not recyclable material because a substantial portion of the wood waste is not consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Tex. Health & Safety Code § 361.421(5); 30 Tex. Admin. Code § 330.3 (128).

Though CSI excepted FOF No. 15 and COL No. 11, the ALJ is unclear of, and CSI provided no explanation for, the basis for these specific exceptions. FOF No. 15

provides basic background information regarding the eventual conversion of the buried wood waste to CORCs, which is supported by the evidentiary record. As to COL No. 11, this COL restates the relevant definitions of "recyclable material."[2] Though CSI disagrees with the ALJ's finding that the buried wood waste at issue is not recyclable material, such disagreement does not warrant an amendment to COL No. 11, which states the applicable law. Accordingly, the ALJ does not recommend any amendments or modifications to FOF No. 15 or COL No. 11.

As to FOF No. 18 and COL. No. 13, CSI argues that the PFD focuses on the absence of CSI replacing, "on a one-to-one basis" virgin or raw materials during the production of CORCs. CSI provides no citation to the PFD in support of this contention, and a review of the ALJ's analysis regarding recyclable material does not support CSI's argument as to this matter. Additionally, the issue of whether the wood waste at CSI Hardin meets the definition of "recyclable material" was fully considered by the ALJ and addressed in the PFD.

Notably, in support of its exceptions to FOF No. 18 and COL No. 13, CSI relies, in part, on an affidavit of Applicants' expert witness, Dr. James Gooding. The ALJ gives no weight to this affidavit as it was filed after the record was closed and, therefore, cannot be considered. CSI also relies upon "Puro.Earth's Biomass Sourcing Criteria v1.2 (Sourcing Criteria). According to CSI, the provisions contained in the Sourcing Criteria demonstrate that CORC-eligible products may rely on, in part, virgin forest biomass. CSI argues that when a CORC is produced by using waste wood, the waste wood substitutes for the virgin biomass that could otherwise be used by the same CORC. The Sourcing Criteria is dated after the record closed and is not included in the evidentiary record.[3] Accordingly, no weight was given to this portion of CSI's exceptions. For these reasons, the ALJ does not adopt the modifications or amendments regarding FOF No. 18 or COL No. 13 proposed by Applicant.

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[2] Tex. Health & Safety Code § 361.421(5); 30 Tex. Admin. Code § 330.3(128).

[3] The record closed on October 16, 2025. Pursuant to CSI's exceptions, the Sourcing Criteria is dated November 27, 2025.

B. EXCEPTIONS REGARDING STORAGE TIMELINES, UNAUTHORIZED DISPOSAL, AND THE FAILURE TO NOTIFY VIOLATION

CSI further excepts the ALJ's findings as to storage timelines for recyclable material, unauthorized disposal, and the failure to notify violation.[4] The ED contends these issues were fully considered and addressed in the PFD. The ALJ concurs. The evidence demonstrated CSI caused, suffered, allowed, or permitted the unauthorized disposal of MSW – in the form of wood waste – and failed to provide written notice to the ED regarding changes to the waste management methods utilized at CSI Hardin.[5] Notably, though the NOI stated the Facility's primary business would be the production of biochar, which would be achieved through composting and/or mulching clean wood materials buried underground in an anaerobic pit, the investigation demonstrated there were no composting, mulching, or biochar operations present on the Facility. Further, CSI intended for the wood waste to be buried for at least 100 years, exceeding the scope of its recycling NOI and the requirements of 30 Texas Administrative Code section 328.4(b). Contrary to the requirements of 30 Texas Administrative Code section 330.11(b), CSI did not notify the ED of the changes related to its waste management methods. The evidentiary record supports the ALJ's findings regarding storage timelines, unauthorized disposal, and the failure to notify violation. Therefore, the ALJ does not adopt the substantive amendments proposed by CSI.

C. EXCEPTIONS TO REMEDIATION RECOMMENDATIONS

CSI excepts the Proposed Ordering Provisions 3.a-c regarding technical requirements. Specifically, CSI argues the evidence failed to demonstrate environmental harm; CSI's trust provides ongoing oversight; excavation of the wood waste would reverse years of carbon removal; the ED did not calculate remediation costs; and CSI could achieve compliance by updating the NOI or securing a MSW permit. The ED contends that the evidence demonstrated actual environmental harm. Further the ED contends the protections offered by the trust are speculative and that CSI's argument that implementing the proposed corrective action would be

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[4] Specifically, CSI excepts FOF Nos. 14-15, 22-23 and COL Nos. 14, 16-18.

[5] 30 Tex. Admin. Code § 330.11(b), .15(a), (c).

harmful is not supported by evidence. In addition, the ED argues that the claim that the ED did not calculate actual remediation costs is irrelevant because regulated entities are under a continuing obligation to comply with state rules and statutes. When an entity fails to comply with those requirements, the ED contends the permittee is responsible for the costs associated with achieving compliance. Further, the ED argues that CSI cannot conduct its current operation under a recycling NOI and that CSI should have obtained a MSW permit prior to the commencement of operations.

The ALJ concurs with the ED that the technical requirements in Proposed Ordering Paragraphs 3.a-c should not be modified. As detailed in the PFD, the evidence demonstrated, at a minimum, that CSI's operations had the potential to cause environmental harm. However, as noted in the PFD, evidence regarding erosion on one of the wood vaults may have also demonstrated that actual harm was occurring.[6] Further, while the evidence demonstrated CSI created an independent trust, which provides monitoring and verification, the existence of the trust does not ameliorate potential or actual environmental harm posed by the wood waste burial, nor does it obviate the requirement that CSI comply with the applicable statutes and rules.[7] While, as discussed in the PFD, the ALJ is mindful of CSI's concerns related to the exhumation of the wood waste, the ALJ is unaware of any authority permitting the continued burial of a significant amount of MSW on the Facility absent a MSW permit. Further, the ALJ finds that CSI cannot operate under a recycling NOI. CSI's arguments regarding a MSW permit are speculative as there is no evidence that CSI has applied for such a permit. Further, the evidence failed to demonstrate how long it would take CSI to secure such a permit and what environmental harm may result during the pendency of the permit process. For these reasons, the ALJ recommends no changes to Proposed Ordering Provisions 3.a-c.

D. CSI'S ARGUMENT IN SUPPORT

CSI further argues detrimental reliance contending that it reasonably relied on the Commission's initial NOI acceptance and oversight. As discussed in the PFD and above, CSI engaged in unauthorized activities that exceeded the scope of the

[6] Rec. 1 (Cullens) at 3:10:52.

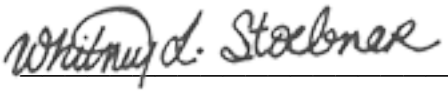
[7] Rec. 2 (Gooding) at 2:32:50; CSI Ex. M.

NOI. The ALJ is accordingly not persuaded by CSI's contention that it relied upon the NOI approval to its detriment. As to the argument that the PFD stifles innovation, the ALJ notes that as discussed in the PFD, the ED has not taken the position that CSI cannot conduct its operations under any circumstances. Rather, the ED maintains that in order to engage in such operations, CSI must obtain a MSW permit from the Commission.[8]

III. CONCLUSION

As to the ED's exceptions, the ALJ finds FOF No. 20 should be altered as described above. Further, having considered CSI's exceptions, ED's responses, and the evidentiary record, the ALJ does not adopt the amendments and modifications proposed by CSI. With the change recommended above, the PFD is ready for the Commission's consideration.

ALJ Signature(s):



Whitney L. Stoebner,

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[8] Rec. 1 (Cullens) at 1:57:52.