

DOCKET NO. 2024-1407-MSW

IN RE THE APPLICATION OF	§	BEFORE THE
	§	
SOUTHWASTE DISPOSAL	§	
	§	TEXAS COMMISSION ON
MUNICIPAL SOLID WASTE	§	
	§	
PERMIT NO. MSW-2317	§	ENVIRONMENTAL QUALITY

APPLICANT’S RESPONSE TO REQUESTS FOR HEARING

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

COMES NOW, SouthWaste Disposal, LLC (“Applicant”), applicant for Permit No. MSW-2317, to authorize a limited scope amendment (“LSA”) to a composting facility in Bexar County, Texas, by and through its attorney, and submits this, its response to requests for contested case hearings (“Response”), 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

Applicant currently operates a 28.6-acre composting facility located at 20805 Old Lamm Road, Elmendorf, Texas, 78112 (the “Facility”), that has processed waste products such as grease trap waste into beneficial reuse compost for 20 years (with Applicant owning and operating the Facility for 14 of those years) with no NOV’s or NOEs and a “HIGH” compliance history score of 0.00. The permitted Facility includes bulk material chipping and storage areas, a lined grease trap waste/septic/sewage sludge (“GSS”) processing area, separate composting areas

for other approved wastes, a retention pond, a post-processing area, aboveground feedstock storage tanks, and office areas.

The proposed LSA, if granted, would: (1) shorten the hours of operation from 7:00am - 6:00pm to 8:00am - 5:00pm; (2) decrease the amount of above ground storage from 180,000 gallons to 120,000 gallons; (3) reduce the number of storage tanks from ten 18,000 gallon tanks to four 30,000 gallon tanks; (4) update the energy mass balance calculations to reflect the final product quantity due to changes to the proposed feedstock volumes; (5) increase the cost of the anticipated closure (and related fiscal assurance) from \$356,621 to \$599,497; (6) increase the permitted annual feedstock acceptance rate from 36,400 tons to 73,000 tons; and (7) change the permitted storage volume of immature compost from approximately 8,840 cubic yards to approximately 16,900 cubic yards.

Applicant filed the LSA on August 7, 2023 and it was declared administratively complete on September 6, 2023. The Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment (“NORI”) was issued on September 6, 2023 and mailed on September 13, 2023. The NORI was published in English in *San Antonio Express-News* on September 14, 2023, and in Spanish in *La Prensa Texas* on September 13, 2024.

The Executive Director (“ED”) completed the technical review of the LSA on March 18, 2024 and the Notice of Application and Preliminary Decision was published in English in *San Antonio Express-News* on March 22, 2024 and in Spanish in *La Prensa Texas* on March 24, 2024. The public comment period ended on April 23, 2024 and the ED issued her Response to Comments on June 6, 2024.

Because TCEQ received the Application after September 1, 2015, the application is subject to the requirements adopted pursuant to House Bill 801, 76th Legislature (1999), and Senate Bill 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 ("CCH") 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)(4). 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; and
- (6) whether the requestor timely submitted comments on the application that were not withdrawn.

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, the group must also:

- (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 one or more members by name and physical address that would otherwise have standing to request a hearing in their own right;
- (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(b).

Where a governmental entity files a request for a hearing for an application, the governmental entity must also 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 provide that a request for a CCH 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 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 and location relative to the proposed facility or activity and how he or she will be adversely affected in a way not common to 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; 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).

III.

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

The TCEQ Commissioners' Integrated Database identified 5 hearing requests filed on the LSA. However, as two requests are from the same Requestor, there are only four hearing requestors ("Requestors") which Applicant considers in this Response. Applicant's below recommendations are supported by Exhibit A which provides a map showcasing each Requestor's distance from the Facility.

Applicant recommends that the Commission grant the requests of Vincent Arreguin and Kathryn Avila and deny the requests of Ashley Perez and Rolando Ramirez (in all his possible capacities), for the following reasons:

Vincent Arreguin filed hearing requests on November 15, 2023 and April 2, 2024, which were each based on timely filed comments. Mr. Arreguin raised issues of odor, health, and business development and identified his property as 3024 Cenizo, San Antonio, Texas, 78264. Mr. Arreguin also states in his request that he owns the property less than a mile away from the Facility at 4370 E. Loop 1604 and is listed on the landowner's list in the application. Because of his proximity to the Facility and the fact that he raised at least one disputed question of fact that is relevant and material to the application which is not common to the general public, Vincent Arreguin should be designated an affected person.

Kathryn Avila filed a hearing request on April 16, 2024, which was based on a timely filed comment. Ms. Avila raised issues of odor, health, and business development and identified her property as 20415 Buffalo Ridge, San Antonio, Texas 78264, which is approximately three quarters of a mile from the Facility. Because of her proximity to the Facility and the fact that she

raised at least one disputed question of fact that is relevant and material to the application which is not common to the general public, Kathryn Avila should be designated an affected person.

Ashley Perez filed a hearing request on April 10, 2024, which was based on a timely filed comment. Ms. Perez raised issues of odor, health, and business development and identified her property as 3491 S. Loop 1604 E., San Antonio, Texas 78264, which is, at its closest point, approximately 1.3 miles away from the Facility. Although Ms. Perez states in her request that she also owns property less than a block away from the Facility, she does not identify this property in any way. Furthermore, she is not listed on the landowner's list in the application nor was she listed in the county real property records as owning any property closer to the Facility than the address she provided. Because she only identified her address on S. Loop 1604 E., which is not close enough to the to the Facility to make her specific concerns any different from the concerns of the general public, Ashley Perez should **not** be designated an affected person.

Rolando Ramirez filed a request on April 3, 2024 for a “public hearing so that [he has] an opportunity to speak in more detail,” which was based on a timely filed comment. Mr. Ramirez raised issues of odor and health.

First and foremost, it does not appear that Mr. Ramirez intended to request a CCH. The language in his request for a “public hearing” to afford him “an opportunity to speak in more detail” appears to be a request for a public meeting and not for a CCH. For that reason alone, Rolando Ramirez should **not** be designated an affected person.

Second, even if the Commission disagrees, Mr. Ramirez's hearing request is extremely unclear as to who the requestor is – himself (in an individual capacity), the Southside

Independent School District (“ISD”) (as a governmental entity), or the Southside Community (as a group or association). His request states:

On behalf of the Southside community we request that this [his odor and health concerns] be investigated and addressed. I request a public hearing so that I have an opportunity to speak in more detail the serious concerns I have in regards to the wellbeing of our students and staff.

Because it is not clear whether Mr. Ramirez is requesting a CCH on behalf of himself, Southside ISD, or the Southside Community, Applicant analyzes all three scenarios in this Response and shows that Mr. Ramirez’s hearing request fails to meet the criteria required under TCEQ’s regulations, no matter which entity is the Requestor. Applicant provides the following analyses which each come to the same conclusion:

Rolando Ramirez should *not* be designated an affected person in his individual capacity.

The only property Mr. Ramirez identified in his hearing request is his property at 1460 Martinez Losoya Road, San Antonio, Texas, 78221, which is over three miles away from the Facility. Because Mr. Ramirez does not live close enough to the Facility to make his specific concerns any different from the concerns of the general public, Rolando Ramirez should ***not*** be designated an affected person in his individual capacity.

Southside ISD should *not* be designated an affected party.

Mr. Ramirez identifies himself as the superintendent of schools at Southside ISD but does not purport (i) to be requesting a “public hearing” on the ISD’s behalf, (ii) that he has been authorized by the ISD to request a hearing on its behalf, or even (iii) that it is the ISD that is requesting a hearing. See 30 TEX. ADMIN. CODE § 55.201(d)(1) (requiring that a hearing request

identify the person requesting the hearing). In fact, to the extent that Mr. Ramirez purports to be speaking on anyone's behalf, it appears to be on behalf of the "Southside Community," not the ISD.

Further, Mr. Ramirez does not identify what school or schools he is referring to or their distance from the Facility. See 30 TEX. ADMIN. CODE § 55.201(d)(2) (requiring that a hearing request identify the requestor's location and distance relative to the Facility).

Finally, Mr. Ramirez does not identify what interest or statutory authority the ISD has over the application. See 30 TEX. ADMIN. CODE § 55.203(b) and (c)(7) (requiring that a governmental entity show that it has statutory authority over or interest in the issues relevant to the application).

Therefore, Southside ISD should *not* be designated an affected party.

The Southside Community should *not* be designated an affected party.

It does not appear that the "Southside Community" is an actual group or association that is requesting a CCH. If the Commission does consider this as a request by a group or association, Mr. Ramirez's request does not identify a member that would otherwise have standing in his or her own capacity (as discussed above, Mr. Ramirez is not affected in his own capacity), or that the interests that the group seeks to protect are germane to the organization's purpose, as required by 30 TEX. ADMIN. CODE § 55.205(a)(1). Therefore, the "Southside Community" should *not* be designated an affected party.

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 CCH. *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 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).

Applicant has identified three issues raised by the Requestors which it considers in this Response:

Whether odors at the Facility will comply with 30 TEX. ADMIN. CODE §§ 332.47 and 332.8 was raised by Vincent Arreguin, Ashley Perez, Kathryn Avila, and Rolando Ramirez. This is a disputed issue of fact that is relevant and material to the application. **Therefore, if the Commission finds that any of these parties are an affected party, this issue should be referred to SOAH.**

Whether the application will be protective of human health was raised by Vincent Arreguin, Ashley Perez, Kathryn Avila, and Rolando Ramirez. This is a disputed issue of fact

that is relevant and material to the application. **Therefore, if the Commission finds that any of these parties are an affected party, this issue should be referred to SOAH.**

Whether the Facility will have a negative impact on local businesses was raised by Vincent Arreguin, Ashley Perez, and Kathryn Avila. This is a disputed issue of fact but is not relevant and material to the application as it is outside of TCEQ's jurisdiction. **Therefore, if the Commission finds that any of these parties are an affected party, this issue should *not* be referred to SOAH.**

V.

MEDIATION

Applicant 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 limited number of parties and issues, Applicant requests a duration of 150 days, from the date of the preliminary hearing to the date of the PFD.

VII.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that the Commission find that Vincent Arreguin and Kathryn Avila are affected parties and deny the requests of Ashley Perez and Rolando Ramirez.

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

- 1) Whether odors at the Facility will comply with 30 TEX. ADMIN. CODE §§ 332.47 and 332.8; and
- 2) Whether the application will be protective of human health.

Respectfully submitted,

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ATTORNEYS FOR SOUTHWASTE DISPOSAL

DOCKET NO. 2022-0977-MSW

CERTIFICATE OF SERVICE

I hereby certify that on this the 16th day of September, 2024, 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.

/s/ Jeffrey S. Reed

JEFFREY S. REED

FOR THE CHIEF CLERK:

Via e-filing

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Fax: (512) 239-3311
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REQUESTORS:

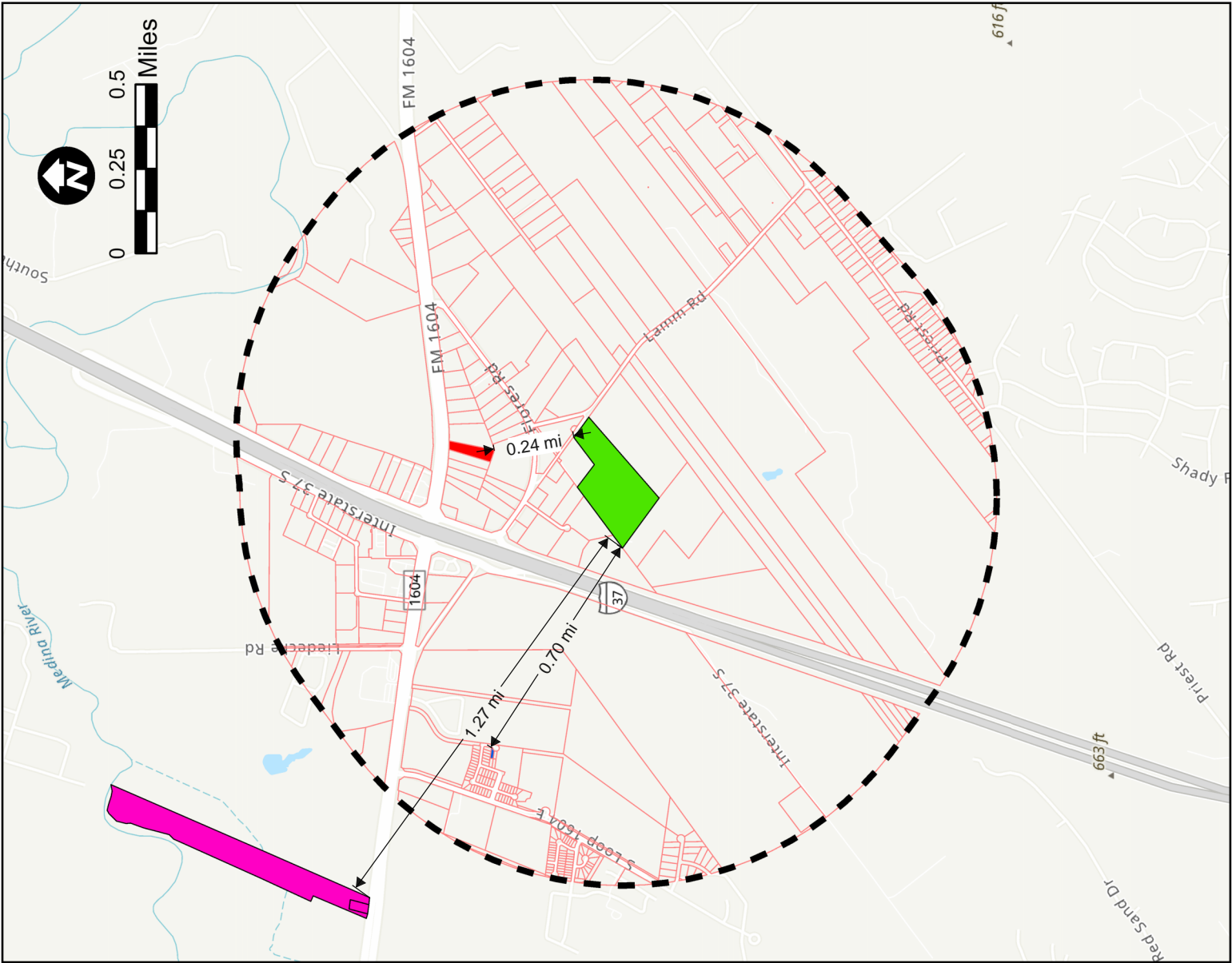
Vincent Arreguin
3024 Cenizo
San Antonio, Texas 78264

Ashley Perez
3490 South Loop 1604 Easte
San Antonio, Texas 78264

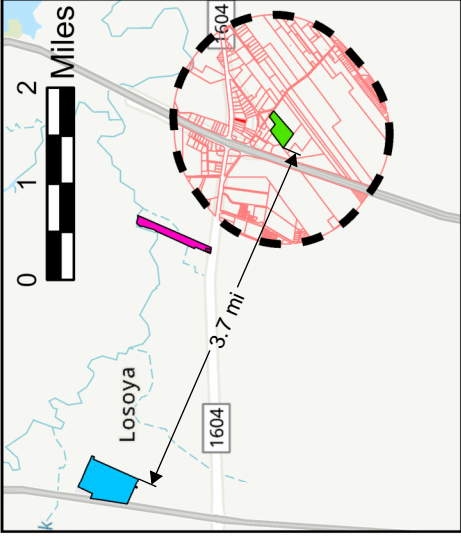
Kathryn Avila
20415 Buffalo Ridge
San Antonio, Texas 78264

Rolando Ramirez
1460 Martinez Losoya Road
San Antonio, Texas 78221

EXHIBIT A



KEY PLAN



NOTES:

- 1) LAND PARCEL LOCATION AND OWNERSHIP INFORMATION ARE BASED ON BEXAR COUNTY APPRAISAL DISTRICT RECORDS, DATA DOWNLOADED SEPTEMBER 10, 2024.
- 2) COORDINATE SYSTEM IS NAD 1983 STATEPLANE TEXAS SOUTH CENTRAL FIPS 4204 (US FEET).

LEGEND:

- PROPERTY BOUNDARY
- 1 MILE RADIUS
- LAND PARCELS
- VINCENT ARREGUIN
- ROLANDO RAMIREZ
- KATHRYN AVILA
- ASHLEY PEREZ

**SOUTHWASTE DISPOSAL
SAN ANTONIO FACILITY**

TCEQ MSW PERMIT NO. 2317A



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