

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 11, 2024

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: **IN THE MATTER OF THE APPLICATION BY HILL COUNTRY
WASTE SOLUTION, L.L.C. FOR NEW MSW PERMIT NO. 2419
TCEQ DOCKET NO. 2024-1580-MSW**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-1580-MSW

APPLICATION BY HILL	§	BEFORE THE
COUNTRY WASTE SOLUTIONS,	§	
L.L.C. FOR NEW MUNICIPAL	§	TEXAS COMMISSION ON
SOLID WASTE (MSW) PERMIT	§	
NO. 2419	§	ENVIRONMENTAL QUALITY

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to requests for hearing in the above-referenced matter.

I. Introduction

A. Summary of Position

Based on the information submitted in the requests and a review of the information available in the Chief Clerk's file on this application, OPIC recommends the Commission grant the hearing request of Helen Aumeier. OPIC further recommends referring the issues specified in Section III.G for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days. Finally, OPIC recommends the Commission deny the hearing requests of James Lee and Ruth Lee.

B. Description of Application and Facility

On May 19, 2023, Hill Country Waste Solutions, L.L.C. (Applicant) applied to TCEQ for a new permit to authorize the proposed Spring Branch Transfer Station, a MSW processing facility (the Facility) to accept, store, and transfer

municipal household waste, commercial solid waste, and construction debris. The Facility may also accept, for storage and transfer, treated and de-watered sewage sludge from municipal wastewater treatment plants. The Facility would be located at 11301 U.S. Highway 281 North, Spring Branch 78070-6301.

C. Procedural Background

The TCEQ received the application on May 19, 2023, and declared it administratively complete on July 7, 2023. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on July 22, 2023, in the *New Braunfels Herald-Zeitung*. The Executive Director (ED) completed the technical review of the application on March 14, 2024 and prepared a draft permit. The Notice of Application and Preliminary Decision was published on March 22, 2024, in the *New Braunfels Herald-Zeitung*. The public meeting was conducted on April 4, 2024. The public comment period ended on April 22, 2024. The Chief Clerk mailed the ED's Decision and Response to Comments on July 30, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was August 29, 2024. The Commission received timely hearing requests from Helen Aumeier, James Lee, and Ruth Lee.

II. Applicable Law

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 Title 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 person'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.

30 TAC § 55.201(d).

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.

30 TAC § 55.203(d).

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 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.

III. Analysis of Hearing Requests

A. Whether the requestors are affected persons

Helen Aumeier

Helen Aumeier submitted timely comments and hearing requests. Her hearing requests raised concerns regarding treatment of sludge, water contamination and usage, decreased property value, increased traffic, bad odor and noise, and water and air pollution. Her hearing request also requested annual checks on air and water quality to ensure health safety. The ED's map shows that Ms. Aumeier resides within 0.5 miles, approximately 1,312.7 feet, from the Facility boundary. The Adjacent Landowners List and the Map provided in the application include Ms. Aumeier at number 3.

The TCEQ does not have jurisdiction to address concerns about property values when reviewing an MSW permit application, however, Ms. Aumeier's remaining concerns are interests that are protected by the law under which this

application is considered, and a reasonable relationship exists between those interests and regulation of the facility. *See* 30 TAC § 55.203(c)(1) & (3). Further, the proximity of her property to the proposed Facility increases the likelihood of impacts to health, safety, and use of property. *See* 30 TAC § 55.203(c)(4). Ms. Aumeier’s proximity, in combination with her stated interests, demonstrates that she is likely to be affected in a way not common to members of the general public—and thus possesses a personal justiciable interest in this matter. *See* 30 TAC § 55.203(a). Therefore, OPIC finds that Ms. Aumeier qualifies as an affected person.

James and Ruth Lee

James and Ruth Lee timely submitted hearing requests. James Lee’s hearing request states, “First off, I am dead set against this proposal. I request a public hearing as soon as possible.” Ruth Lee’s hearing request states, “I am against the above stated proposal. I request a public hearing as soon as possible.” Their hearing requests do not explain how the activity, or the Facility would impact James and Ruth Lee, or demonstrate a personal justiciable interest distinct from that of the general public, as required by 30 TAC § 55.201(d)(2).

The ED’s map shows that James and Ruth Lee reside within 0.5 miles, approximately 1,603.6 feet, from the Facility boundary. The Adjacent Landowners List and the Map provided in the application include James Lee at number 1. Without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. 30 TAC § 55.203(a). In spite of their proximity, James and Ruth Lee did not establish a personal justiciable interest related to a

legal right, duty, privilege, power, or economic interest affected by this application, and therefore, OPIC finds that they do not qualify as affected persons.

B. Which issues raised in the hearing requests are disputed

Ms. Aumeier raised the following disputed issues:

1. Whether the draft permit adequately addresses regulations for the treatment of sludge.
2. Whether the draft permit sufficiently protects water quality and human health and safety in accordance with applicable rules.
3. Whether the draft permit includes effective measures to prevent nuisance odors.
4. Whether the operations authorized by the draft permit would result in noise pollution.
5. Whether the operations authorized under the draft permit would increase traffic.
6. Whether the Facility and operations permitted under the draft permit would contribute to air pollution.
7. Whether the draft permit would negatively affect nearby property values.

C. Whether the dispute involves questions of fact or of law

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. 30 TAC § 55.211(c)(2)(A). The issues listed above are issues of fact.

D. Whether the issues were raised during the public comment period

All of the issues were raised by Ms. Aumeier during the public comment period.

E. Whether the hearing request is based on issues raised solely in a withdrawn public comment

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

F. Whether the issues are relevant and material to the decision on the application

To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny a permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law relating to the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

Air & Water Quality, Treatment of Sludge, and Health and Safety

The Texas Solid Waste Disposal Act, codified in Chapter 361 of the Texas Health and Safety Code, and 30 TAC Chapter 330 were established to protect human health and the environment. The TCEQ is responsible to ensure that authorized facilities are properly designed, constructed, and operated in compliance with these regulations, safeguarding both human health and the environment.

Under 30 TAC § 330.207(a), all liquids generated from the operation of solid waste facilities must be disposed of in a way that prevents pollution of

surface water or groundwater. As explained in the draft permit under Section IV. C., all contaminated water must be handled, stored, treated, and disposed of in accordance with 30 TAC § 330.207 and Part IV of the permit application. Also, the Facility site is located within the Edwards Aquifer Contributing Zone and is subject to the requirements of 30 TAC Chapter 213.

TCEQ rule 30 TAC § 330.245 and Chapter 330, Subchapter U establish air permitting and air pollution control requirements that an MSW transfer station must meet. The Site Development Plan in the application provides details about how sludge will be managed at the proposed Facility and the Site Operating Plan outlines the procedures for transferring sludge to and from the Facility. Therefore, Issue nos. 1, 2, and 7 are relevant and material.

Nuisance Odors

Rule § 330.245 mandates that the facility be operated in a manner that prevents the occurrence of nuisance odors. Additionally, 30 TAC § 330.543 prohibits the unloading, storage, or processing of waste within designated buffer zones. Therefore, the concerns regarding nuisance odors are relevant and material.

Noise Pollution

Rule § 330.239 requires the use of screening or other measures to minimize noise pollution. Additionally, 30 TAC § 330.543 mandates a minimum separation of 50 feet between solid waste processing activities and the site boundary. Therefore, Issue no. 4 concerning noise pollution is relevant and material.

Traffic

Rule § 330.61(i) requires the owner or operator to provide data on current and projected traffic volume within one mile of the proposed facility during its operational life and project the facility's expected traffic impact on access roads within one mile of the site. Therefore, Issue no. 6 regarding increased traffic is relevant and material.

Property Values

As discussed earlier, TCEQ does not have jurisdiction to consider the proposed permit's impact on property values. Therefore, issue no. 5 is not relevant and material to the Commission's decision to issue or deny this permit.

G. Issues Recommended for Referral

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

1. Whether the draft permit adequately addresses regulations for the treatment of sludge.
2. Whether the draft permit sufficiently protects water quality and human health and safety in accordance with applicable rules.
3. Whether the draft permit includes effective measures to prevent nuisance odors.
4. Whether the operations authorized by the draft permit would result in noise pollution.
5. Whether the operations authorized under the draft permit would increase

traffic.

6. Whether the Facility and operations permitted under the draft permit would contribute to air pollution.

H. Maximum expected duration for the contested case 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. Conclusion

For the reasons discussed above, OPIC recommends the Commission grant the hearing request of Helen Aumeier and refer the issues specified in Section III.G for a contested case hearing at SOAH with a maximum duration of 180 days. Finally, OPIC recommends the Commission deny the hearing request of James Lee and Ruth Lee.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2024, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

Pranjal
Pranjal M. Mehta

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TCEQ DOCKET NO. 2024-1580-MSW

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