

## Jennifer Cox

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**From:** PUBCOMMENT-OCC  
**Sent:** Friday, June 14, 2024 4:42 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; Pubcomment-Dis  
**Subject:** FW: Harris County's Comments and Request for a Contested Case Hearing; Bissonnet 136, LLC; TCEQ Internal Control No. D-011820241-023 (MUD 584)  
**Attachments:** 2024.06.14. MUD 584 Comment Letter.pdf

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Jesús Bárcena  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office Phone: 512-239-3319

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**From:** Laurie Gharis <Laurie.Gharis@tceq.texas.gov>  
**Sent:** Friday, June 14, 2024 3:25 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** FW: Harris County's Comments and Request for a Contested Case Hearing; Bissonnet 136, LLC; TCEQ Internal Control No. D-011820241-023 (MUD 584)

Laurie Gharis  
Office of the Chief Clerk  
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**From:** Martinez, Lucinda (CAO) <Lucinda.Martinez@harriscountytexas.gov>  
**Sent:** Friday, June 14, 2024 1:32 PM  
**To:** Laurie Gharis <Laurie.Gharis@tceq.texas.gov>  
**Cc:** Utley, Sarah (CAO) <Sarah.Utley@harriscountytexas.gov>; Ivory, Adrianna (CAO) <Adrianna.Ivory@harriscountytexas.gov>  
**Subject:** Harris County's Comments and Request for a Contested Case Hearing; Bissonnet 136, LLC; TCEQ Internal Control No. D-011820241-023 (MUD 584)

Good afternoon!

Ms. Gharis,

Enclosed please find a copy of Harris County's Comments and Request for a Contested Case Hearing on Bissonnet 136, LLC that has been mailed out today. If you have any questions, please contact Sarah J. Utley or Adrianna Ivory.

Thank you.

Lucinda



**Lucinda Martinez**

Senior Paralegal

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OFFICE OF THE  
HARRIS COUNTY ATTORNEY  
**CHRISTIAN D. MENEFEE**

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June 14, 2024

**Via Email: [Laurie.Gharis@tceq.texas.gov](mailto:Laurie.Gharis@tceq.texas.gov)**

**First Class Mail and CMRRR No. 9214 8901 9137 2500 3755 47**

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: Harris County's Comments and Request for a Contested Case Hearing; Bissonnet 136, LLC; TCEQ Internal Control No. D-011820241-023

Dear Mrs. Gharis,

Harris County, a local subdivision of the State of Texas, files this comment and request for a contested case hearing regarding Bissonnet 136, LLC's ("Bissonnet 136") petition ("the Petition") for the creation of Harris County Municipal Utility District No. 584 ("MUD 584") with the Texas Commission on Environmental Quality ("TCEQ"). MUD 584 will, among other things, design, construct, and maintain storm water detention facilities and channels.<sup>1</sup> The proposed boundaries of MUD 584 coincide with applications filed with the TCEQ for development over a solid waste landfill that will notably include single-family and multi-family residences. Harris County is concerned about the impact of the proposed development on human health and the environment, and whether MUD 584 is feasible, practicable, and necessary. More specifically, Harris County is concerned that MUD 584 will have a negative impact on drainage and water quality and questions whether the Petition adequately addresses projected costs given the potential impacts on water quality, vapor migration, and post closure care obligations. Therefore, Harris County respectfully requests a contested case hearing on the Petition and respectfully submits the following:

**A. Background**

MUD 584 is proposed to include approximately 137 acres south of Westpark Tollway, north of I-69, east of Cook Road, and west of South Kirkwood Road. MUD 584 will construct

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<sup>1</sup> Petition to the TCEQ for Creation of Harris County Municipal Utility District No. 584; Engineering Report for the Creation of Municipal Utility District No. 584

water, sewer, drainage, paving, park and recreational facilities that will serve single-family and multi-family residential development along with retail and light industrial development.<sup>2</sup> The land includes the Doty Sand Pit Venture (“Doty Landfill”), which began as a sand mining operation and converted to a permitted landfill – closing operations in 1999 and entering post-closure care. In 2000, Doty Landfill was converted to a golf course without TCEQ authorization. In June 2019, Bissonnet 136, LLC acquired the property.

In addition to the Petition, various applications have been submitted to TCEQ regarding the proposed development and Doty Landfill. Applications have included the following: 1) Application to Disturb Final Cover over Closed Municipal Solid Waste Landfill for Non-Enclosed Structures<sup>3</sup>; 2) Application for Development for Proposed Enclosed Structure over Closed Municipal Solid Waste Landfill<sup>4</sup>; and 3) Application for Permit Modification with Public Notice Post-closure Land Use and Access Control Modification<sup>5</sup>. Harris County Pollution Control (“Pollution Control”), the Harris County department designated to inspect facilities in Harris County for compliance with environmental quality laws and regulations (air, water, and waste), and review permit applications, submitted comments to the TCEQ on all applications. Comment letters were submitted to TCEQ on November 17, 2023, February 5, 2024, April 8, 2024 (two separate letters), and May 21, 2024. The comment letters are attached as Exhibit A and incorporated herein for all purposes.

#### **B. Request for a Contested Case Hearing**

On June 5, 2024, due to concerns the Petition and related development pose a potential threat to the environment, health, and welfare of Harris County and its residents, Harris County Commissioners Court authorized the Harris County Attorney to oppose the Petition and take any and all steps necessary to protect the interests of the County and its residents. Pursuant to that authority, Harris County requests a contested case hearing on the Petition and provides the following information.

Harris County is represented by the Harris County Attorney’s Office and may be reached through the Environmental Division Director, Sarah Jane Utley and Assistant County Attorney, Adrianna Ivory.

Sarah Jane Utley  
Environmental Division Director  
Email: [sarah.utley@harriscountytexas.gov](mailto:sarah.utley@harriscountytexas.gov)  
Telephone: 713-274-5124  
Cell: 832-596-9786

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<sup>2</sup> *Id.*

<sup>3</sup> Application dated September 22, 2023

<sup>4</sup> Application dated December 22, 2023 and revised on February 13, 2024 and March 25, 2024

<sup>5</sup> Application dated March 15, 2024

Adrianna Ivory  
Assistant County Attorney  
Email: [adrianna.ivory@harriscountytexas.gov](mailto:adrianna.ivory@harriscountytexas.gov)  
Telephone: 713-274-5189  
Cell: 832-317-2054

According to TCEQ rules, “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.”<sup>6</sup> governmental entities, including local governments . . . with authority under state law over issues raised by the application may be considered affected persons.”<sup>7</sup>

1. Harris County is an Environmental Regulator

Harris County, a local subdivision of the State of Texas, is a local government.<sup>8</sup> As a local government, Harris County has the authority to inspect the Site<sup>9</sup> for compliance with various state environmental statutes and TCEQ rules and orders issued thereunder.<sup>10</sup> In addition to these investigatory powers, Harris County, as a local government, has the authority to file a civil suit in the same manner as the TCEQ for injunctive relief, civil penalties, or both.<sup>11</sup>

Pollution Control also works closely with the TCEQ’s Houston regional office that as a matter of course refers a substantial portion of environmental complaints, including nuisance complaints, from Harris County citizens to Pollution Control. As a part of its mission, Pollution Control conducts routine and complaint-driven investigations, issues Violation Notices when appropriate, and refers cases to the Harris County Attorney’s Office or District Attorney’s Office for civil or criminal enforcement. Thus, Harris County would have regulatory authority over MUD 584’s construction and operation of its wastewater, stormwater and drainage conveyances.

2. Harris County is a Member of the Storm Water Management Joint Task Force

Harris County, the Harris County Flood Control District and the City of Houston are members of the Storm Water Management Joint Task Force (“JTF”). The members of the JTF are co-permittees under a TCEQ Texas Pollutant Discharge Elimination System (“TPDES”) Permit, which authorizes the discharge of stormwater from all portions of the JTF Municipal Separate Storm Sewer System (“MS4”),<sup>12</sup> referred to as the JTF MS4 Permit.<sup>13</sup> The JTF MS4 Permit requires the co-permittees to prohibit non-stormwater discharges.<sup>14</sup> Stormwater from MUD 584

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<sup>6</sup> 30 Tex Admin. Code § 55.103.

<sup>7</sup> 30 Tex Admin. Code § 55.203(b).

<sup>8</sup> Tex. Health & Safety Code §§ 361.003(17), 382.003(8); Tex. Water Code § 26.001(18).

<sup>9</sup> Harris County has the ability to investigate or pursue enforcement within its jurisdiction, which includes everything within the physical boundaries of Harris County. The Site is within the physical boundaries of Harris County and therefore within its jurisdiction.

<sup>10</sup> Tex. Health & Safety Code §§ 361.032, 382.111; Tex. Water Code § 26.173.

<sup>11</sup> Tex. Water Code § 7.351.

<sup>12</sup> The MS4 is defined as the conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned or operated by the city, county or other public body that is designed for collecting or conveying stormwater, which is not combined with sewer and is not part of a POTW. JTF MS4 Permit, Part V(A)(1).

<sup>13</sup> TPDES Permit No. WQ0004685000

<sup>14</sup> JTF MS4 Permit, Part III.B.6.

will discharge into the JTF MS4 and may discharge chemicals of concern (“COCs”) into the JTF MS4 operated by the City, which is prohibited under the terms of the JTF MS4 Permit. Harris County has an interest in ensuring that MUD 584 is prohibited from discharging into the MS4 because it impacts compliance with the JTF MS4 Permit.

Accordingly, Harris County has a justiciable interest in the Petition and creation of MUD 584 and those interests are unique from the interests of the general public.

### **C. Pollution Control Concerns with the Petition**

Pollution Control has reviewed the Petition. Given the concerns identified by Pollution Control for the underlying development applications noted in Exhibit A and the potential associated impact with any construction or activity over or near Doty Landfill, Harris County has the following concerns regarding the Petition:

- 1) Whether the market study accurately reflects the true market conditions, including development over a landfill with inconsistent post-closure care and whether adverse property conditions such as methane exceedances or other landfill gas were fully considered as required by 30 Tex. Admin. Code § 293.11(a)(6);
- 2) Whether the developer’s financial statement is adequate as required by 30 Tex. Admin. Code § 293.11(a)(6);
- 3) Whether the proposed recreational area estimated costs and proposed financing adequately identify cost necessary to address concerns related to preventing impacts to the Doty Landfill cap, leachate migration, water quality and landfill gas as required by 30 Tex. Admin. Code § 293.11(a)(10);
- 4) Whether the itemized cost estimate of the proposed capital improvements and itemized cost summary for anticipated bond issuance adequately identify all costs that will be associated with infrastructure construction within the Doty Landfill to prevent impacts to water quality and landfill gas migration as required by 30 Tex. Admin. Code § 293.11(d)(5)(E);
- 5) Whether the engineering report adequately identifies the effect MUD 584 will have on runoff-rates and drainage as required by 30 Tex. Admin. Code § 293.11(d)(5)(H)(v);
- 6) Whether the engineering report adequately identifies the effect MUD 584 will have on water quality as required by 30 Tex. Admin. Code § 293.11(d)(5)(H)(vi); and
- 7) Whether creation of MUD 584 is feasible, practicable, and necessary, and will benefit all of the land as required by 30 Tex. Admin. Code § 293.11(d)(5)(J).

### **D. Conclusion**

In summary, Harris County is an affected person and asserts that the Petition may not be feasible, practicable, necessary and a benefit all the land to be included in MUD 584 as required by 30 Tex. Admin. Code § 293.11(d)(5)(J) and Texas Water Code § 54.021. Therefore, Harris County respectfully requests that TCEQ refer this matter for a contested case hearing on the Petition.

Thank you for your consideration of these comments.

Sincerely,

CHRISTIAN D. MENEFEE

Harris County Attorney

JONATHAN G. C. FOMBONNE

Deputy County Attorney & First Assistant

TIFFANY S. BINGHAM

Managing Counsel, Affirmative Litigation  
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SARAH JANE UTLEY



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Sarah Jane Utley

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Houston, Texas 77002

**ATTORNEYS FOR HARRIS COUNTY,  
TEXAS**

# EXHIBIT

## A

Comment Letters

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

Established in 1953



November 17, 2023

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
PO Box 13087  
Austin, TX 78711-3087

Re: Application for Development Permit for Proposed Enclosed Structure Over Closed Municipal Solid Waste (MSW) Landfill, Permit Modification for Doty Sand Pit Venture (Doty) Landfill MSW Permit No. 1247, 12000 Bissonnet Street, Houston, Texas with application dated September 22, 2023.

Dear Ms. Gharis,

Harris County Pollution Control Services (PCS) inspects facilities in Harris County for compliance with environmental laws and regulations, as well as reviews permit applications, and submits comments to the Texas Commission on Environmental Quality (TCEQ) on permitting actions. PCS also works closely with the TCEQ's Houston Region 12 office, which refers a substantial portion of environmental complaints, including nuisance complaints, from Harris County citizens to PCS for investigation. If non-compliance with the conditions of the permit or applicable regulations is discovered, PCS will issue a Violation Notice(s) and/or refer its findings to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement.

PCS respectfully submits the following comments on the Doty Landfill development application referenced above.

1. The application asks for the URL to be provided so the application and all revisions to that application will be posted. The applicant entered the following in the box provided: <https://www.skaconsulting.com/impact-residential-permit-documents>.

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

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## PCS Concern

The following message is provided when trying to access the URL address; "The page you are looking for is no longer here, or never existed in the first place (bummer). You can try searching for what you are looking for using the form below. If that still doesn't provide the results you are looking for, you can always start over from the home page." A search bar is provided but several efforts to enter keywords to retrieve the application were not successful.

## PCS Request

PCS requests the TCEQ require the applicant to either update the application to include a working URL, or repair the existing link in such a way that users are directed toward the promised content (application and all revisions).

2. The applicant is asked to fill in the information for the County Health Authority. The applicant responded Barbie Robinson - Harris County Public Health.

## PCS Concern

The County Health Authority is no longer the agency with environmental jurisdiction in Harris County; this is the role of PCS.

## PCS Request

PCS requests the TCEQ require the applicant to update its application to reference Dr. Latrice Babin and Harris County Pollution Control Services rather than the County Health Authority.

3. The applicant states stormwater detention is located off the Subject Property and will be addressed under a separate Application for Development Permit for Non-Enclosed Structure.

## PCS Concern

The Application for Development Permit for Non-Enclosed Structure was not provided with the application received and was not available on the SKA website.



### PCS Request

PCS requests the TCEQ require the applicant to place an electronic version of the Application for Development Permit for Non-Enclosed Structure on the SKA website. PCS also requests that an electronic copy of the Development Permit for Non-Enclosed Structure document and all referenced documents be provided to PCS for review.

4. Per **330.457(a)(2)** For MSW landfill units with no synthetic bottom liner, the clay-rich soil cover layer shall consist of a minimum of 18 inches of earthen material with a coefficient of permeability less than or equal to the permeability of any constructed bottom liner or natural subsoil present. The coefficient of permeability of the infiltration layer shall in no case exceed  $1 \times 10^{-5}$  cm/sec, even though the coefficient of permeability of the constructed bottom liner or natural subsoil is greater than  $1 \times 10^{-5}$  cm/sec or no data exist for the value(s) of the coefficient of permeability of the constructed bottom liner or natural subsoil. (3) For all MSW landfill units, the erosion layer shall consist of a minimum of six inches of earthen material that is capable of sustaining native plant growth and shall be seeded or sodded immediately following the application of the final cover in order to minimize erosion.

The applicant provided a site history, which stated that the Sugar Hill Golf Course was constructed and operated on top of the closed Doty Landfill from 2000 to 2005. In the application, the applicant alludes to over a million cubic yards of fill soil being brought on-site to shape the golf course. As such, the clay cap covering the landfill was covered by up to 15 feet of fill soil.

A review of an ENSR document dated February 28, 2001, states that the final cover thickness will be greater than the required two feet of fill soil. However, there is no reference provided regarding if this was achieved.

On July 25, 2001, Agreed Order Docket No. 2000-1451-MSW-E states that the owner and operator of the Doty Landfill failed to acquire approval from the Executive Director prior to constructing a golf course on a MSW landfill in violation of 30 TAC 330.225.

Then, per the Geotechnical Investigation Report dated October 21, 2022, a review of the soil borings conducted indicated that the combined surficial fill and landfill cap ranged in thickness from 2 feet to 13.5 feet. Further review of the soil borings shows some areas of the cap have less than 18 inches of clay-rich soil, for example, boring No. B22-2. Per the report fill..." on the Site range from 0 to as much as 10.5 feet in thickness above the landfill cap."

**PCS Concern**

Per the Geotechnical Report, the fill over the cap ranged from 0 to 10.5 feet of soil, but per TAC 330.457(a)(3) it must be a minimum of 6 inches throughout. Moreover, the geotechnical report states that the thickness of the cap is less than 1.5 feet thick in some locations which is below the requirements per TAC 330.457(a)(2). Finally, a golf course was constructed without prior approval from the Executive Director, which may have resulted in some areas of the clay cap being removed; meaning the current fill and cap may not be sufficient to meet the minimum requirements of the regulations.

**PCS request**

PCS requests the TCEQ require the applicant to ensure that the thickness of the clay cap and fill are sufficient to meet TAC 330.457(a). Furthermore, PCS requests the TCEQ require the applicant to have additional clay-rich soil on site to ensure the cap is supplemented as needed to come into compliance with the applicable regulations.

5. In a letter to PCS dated June 26, 2023, the Doty Landfill reported methane concentrations over 5% two times from one well, see below.

Gas Monitoring Probe	Methane Concentration (%) On March 28, 2023	Methane Concentration (%) On April 17, 2023
GMP-25	24.8	33.5

In a letter to PCS dated September 3, 2021, the Doty Landfill reported methane concentrations over 5% fourteen times from seven wells, see below.

Gas Monitoring Probe	Methane Concentration (%)		
	February 9, 2021	May 7, 2021	August 26, 2021
GMP-7	14.8	22.8	0.0
GMP-9R	9.5	0.0	0.0
GMP-24	29.7	18.2	0.0
GMP-25	24.3	5.9	0.0
GMP-26	36.2	33.1	0.0
GMP-28R2	54.9	34.2	10.3
GMP-29R	55.7	30.8	0.0

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

Established in 1953



In a letter to PCS dated July 14, 2021, the Doty Landfill reported methane concentrations over 5% thirteen times from seven wells, see below.

Gas Monitoring Probe	Methane Concentration (%) On February 9, 2021	Methane Concentration (%) On May 7, 2021
GMP-7	14.8	22.8
GMP-9R	9.5	0.0
GMP-24	29.7	18.2
GMP-25	24.3	5.9
GMP-26	36.2	33.1
GMP-28R2	54.9	34.2
GMP-29R	55.7	30.8

In a letter to PCS dated June 1, 2015, the Doty Landfill reported methane concentrations over 5% three times from three wells, see below.

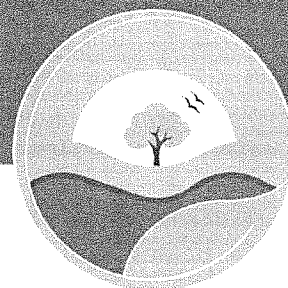
Gas Monitoring Probe	Most Recent Methane Concentration (%)
GMP-3	5.1
GMP-24	10.0
GMP-26	13.9

Another letter dated November 28, 2006, from the TCEQ indicates GMP-13 had a methane concentration of 37%.

A letter from the TCEQ dated July 31, 2023, from Robert C. Pederson, requests monthly monitoring results to be provided for GMP-25 until six consecutive readings are below 5% methane.

In a TCEQ letter dated September 29, 2005, the methane monitoring probes had not been maintained, repaired, or replaced.

In the application, the applicant is proposing to only conduct quarterly monitoring of the gas collection and control system (GCCS).



Per **30 TAC 330.371(k)** Monitoring frequency shall be determined as follows. (1) As a minimum, quarterly monitoring is required. The executive director may require more frequent monitoring based upon the factors listed in this section. When more frequent monitoring is necessary, the executive director shall notify the owner or operator. (2) The owner or operator shall monitor more frequently those locations where monitoring results indicate that landfill gas migration is occurring or is accumulating in structures.

### PCS Concerns

Methane exceedances over 5% have been reported since 2015 and have recently resulted in required monthly monitoring. The current owner took over the GCCS in 2020 and since then there have been 29 methane exceedances that PCS has been made aware of. Construction activity of an apartment complex may adversely affect probe maintenance, repair, replacement, monitoring, reporting, and landfill gas migration. Additionally, a map of the location of the above-mentioned probes was reviewed, and the majority of the exceedances were on the southern portion of the property.

### PCS Request

PCS requests the TCEQ require the applicant to continue monthly methane monitoring, maintenance, repair, replacement, and reporting activities as a condition of the permit. Based on the information provided and per TAC 330.371(k), exceedances detected on the southern portion of the property are especially of concern, and PCS requests the TCEQ require the applicant to provide extra scrutiny to the probes in this area.

6. Per the application, the current permittee has monitored the landfill gas network since 2020 and the average hydrogen sulfide concentration in the landfill gas is below the time-weighted average (TWA). They reported the following for hydrogen sulfide.

Parameter	No. of Readings	Maximum Conc.	Average Conc.	No. of Non-Zero Readings
Hydrogen Sulfide (ppm)	1051	138	1.5	244

# Harris County Pollution Control Services

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Per NIOSH for Hydrogen Sulfide, the immediate danger to life and health (IDLH) concentration is 100 ppm and the recommended exposure limit (REL) with a 10-minute ceiling is 10 ppm. The upper explosive limit (UEL) is 44% and the lower explosive limit (LEL) is 4% with a relative gas density of 1.19 (meaning it is heavier than air, so it settles in low-lying areas). OSHA permissible exposure limit (PEL) TWA for construction is 10 ppm. TWA is calculated for 8-hour workdays of a 40-hour week for employees. The EPA resident ambient air table has the Regional Screening Limit (RSL) for Hydrogen Sulfide of 1.5 ppb.

Per Appendix 11 Sampling Plans and Procedures, the ports on the landfill gas collection system under each building will be monitored quarterly for methane, hydrogen sulfide, carbon dioxide, and oxygen as a check on the permanently installed sensors.

## **PCS Concerns**

PCS does acknowledge Figure 12 showing a hydrogen sulfide sensor, but monitoring/detection equipment used around the apartment complex per the application doesn't specifically mention hydrogen sulfide. The concentrations for employees who work 8 hours per NIOSH and OSHA are 10 ppm, but for residents whose exposure can be 24 hours a day 7 days a week, the concentration per EPA RSL is 1.5 ppb. A maximum concentration of 138 ppm has been detected via a gas monitoring probe (in the past 3 years), meaning hydrogen sulfide along with other landfill gasses has the potential to enter the ambient air via a crack in the cap or tear in the liner under the apartment complex. These landfill gasses have the potential to adversely affect residents.

## **PCS Request**

PCS requests the TCEQ require the applicant to add hydrogen sulfide detection down to 1 ppb to the list of parameters for continuous daily monitoring/detection equipment at the apartment complex. PCS also requests the TCEQ require a residential exposure limit of 1.5 ppb based upon the EPA RSL.

7. The applicant provides additional site history concerning the transfer of the MSW permit no. 1247 to Northwest Metro Holding CS 34, Ltd (Northwest Metro). Northwest Metro has an MSW permit revocation request for MSW Permit No. 1247 pending before the TCEQ. Doty operated as a Type IV landfill receiving construction and demolition debris.

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

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PCS conducted an inspection on July 17, 2015, and noted fencing destroyed, uncontrolled onsite access, and tree removal.

A TCEQ letter dated October 24, 2008, states that resistivity soundings were performed at 17 of the 21 stations, with cessation of some of the resistivity surveys not authorized by the TCEQ, and the 2007 electrical resistivity was not conducted. As a note, post-closure monitoring and maintenance are performed to ensure the integrity of the containment system and to promptly detect and control releases to the environment. The Earth Electrical Resistivity Survey (EERS) is performed during post-closure care of landfills and can be used to determine landfill leachate migration in groundwater. Most Type IV landfills do not generate leachate since they do not contain putrescibles and the cap should prevent stormwater from infiltrating the landfill.

A TCEQ letter dated December 28, 2006, states that resistivity soundings were performed at 17 of the 21 stations, and the TCEQ requested additional information, equations, calculations, and revisions as part of the EERS landfill post-closure care.

Doty Landfill has been owned and/or operated by several entities since 2011 including Virgil Mott, Eco 1 Development, Bissonnet 136, and finally Northwest Metro Holding.

## **PCS Concern**

Post Closure Care of the Doty landfill has been inconsistent as demonstrated by additional information requested by the TCEQ, decreased resistivity at the site, unauthorized cessation of certain activities, unauthorized construction of a golf course, and frequent change of ownership. Furthermore, based on the records PCS has received, if the annual resistivity survey was not conducted annually, other activities may have failed to be conducted.

## **PCS Request**

PCS requests that the TCEQ deny the revocation request for the MSW permit. PCS also requests the TCEQ require the continuation of post-closure care with an emphasis on methane monitoring at regular intervals.

8. The following was mentioned in several of the TCEQ resistivity reports. Based on the lower resistivity measurements compared to previous surveys, an increase in the presence of leachate and/or groundwater is possible.

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

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Per the application, chemicals of concern (COC) detected in the first groundwater-bearing units (GWBUs) were: Metals (which include arsenic, barium, chromium, iron, lead, manganese, selenium, and zinc); VOCs (which include acetone, benzene, chlorobenzene, chloroform, chloromethane, 1,2-dichlorobenzene, 1,4-dichlorobenzene, ethylbenzene, p-isopropyl toluene, MEK, MTBE, toluene, and total xylenes); SVOCs (which include benzoic acid); and Total Petroleum Hydrocarbons (TPH). Of the COC's detected, arsenic, chromium, manganese, and TPH exceeded their respective residential assessment levels (RALs) without a Municipal Setting Designation (MSD). Additionally, the landfill leachate has caused naturally occurring arsenic and manganese in the soil minerals to become more soluble in groundwater. The groundwater flow direction at the site is generally to the north or northeast.

Per **TWC 26.121** Unauthorized Discharges Prohibited (a) Except as authorized by the commission, no person may: (1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state; (2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state

Per 30 **TAC 330.463** Post-Closure Care Requirements (a)(3) If there is evidence of a release from a municipal solid waste unit, the executive director may require an investigation into the nature and extent of the release and an assessment of measures necessary to correct an impact to groundwater.

## PCS Concern

As a Type IV landfill there should be minimal leachate and the cap should prevent infiltration of stormwater which would generate leachate. Groundwater investigations conducted in 2019 and 2020 determined that the Arsenic and Magnesium present were caused by leachate from the landfill. Additionally, the landfill was also determined to be a source of chromium and TPH, both are considered cancer-causing. Harris County Flood Control District (HCFCD) Drainage Ditch D120-00-00 on the north side of the property discharges to Brays Bayou, is hydraulically connected to the first GWBU, and is receiving leachate contaminated groundwater, thus causing pollution of the water in the state.



### PCS Request

PCS requests the TCEQ require the applicant to provide a remediation or compliance plan to address the landfill-contaminated groundwater that is entering the waters of the state in accordance with TWC 26.121. PCS requests the TCEQ require the applicant to complete a groundwater characterization study to determine the cause of the decreased resistivity measurements. PCS also requests the TCEQ require the applicant to correct the impact to groundwater in accordance with TAC 330.463(a)(3).

9. The application states the property is surrounded by the Doty Landfill and the adjacent landowner is Doty Landfill.

Per **30 TAC 305.45(a)(6)** a topographic map, ownership map, county highway map, or a map prepared by a Texas licensed professional engineer, Texas licensed professional geoscientist, or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following: for. ...(D), the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity;

Per **30 TAC 39.501(f)(3)(A)** If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located...

### PCS Concern

Per TAC 305.45(a)(6) "The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following: for. ...(D), the ownership of tracts of land adjacent to the facility and within a reasonable distance..." The regulation clearly states to show an area on a map that extends at least one mile beyond the tract boundaries and to show the owners adjacent to the facility and within a reasonable distance.

# Harris County Pollution Control Services

Dr. Latrice Babin, Executive Director

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## PCS Request

PCS requests the TCEQ require the applicant to notify landowners of the proposed activities of the new facility within a reasonable distance of 0.5 miles from the tract boundaries per TAC 39.501 and 305.45.

10. The applicant proposes using deep dynamic compaction (DDC) to densify the site soils, this involves using 6 to 20-ton steel weights that are dropped from 40 to 70 feet.

PCS responds to nuisance complaints from citizens of Harris County. Under Texas law, a nuisance is a "condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it."

Per Houston, Texas, Code of Ordinances, Ch. 30 Noise and Sound Level Regulation Section 30-5 (b) Regardless of the measurable dB(A) level established in this chapter and measured in a manner provided in subsection (a) of this section, the creation of any sound causing persons occupying or using any property other than the property upon which the sound is being generated to be aware of vibrations or resonance caused by the sound shall be prima facie evidence of a sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this chapter.

## PCS Concern

The applicant is currently not notifying adjacent landowners of the proposed activities. The City of Houston responds to noise or vibration and PCS responds to nuisance complaints, which may increase due to the applicant's proposed DDC activities and lack of notification to the surrounding community.

## PCS Request

PCS requests the TCEQ require the applicant to inform the local government of the proposed DDC activities before the activity is performed so they may be prepared to adequately address the complaints.

11. The application states methane and hydrogen sulfide will be measured during subsurface or grading activities and the area evacuated until the concentrations dissipate.

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

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## PCS Concern

Concentrations of concern for methane and hydrogen sulfide being detected above a certain value have a source on the landfill that needs to be located and addressed.

## PCS Request

PCS requests the TCEQ require the applicant to address the source of the gas emission and to eliminate or mitigate the source appropriately rather than just allowing for dissipation.

12. Per the application, utility vaults and other subgrade non-enclosed spaces will be inspected and monitored for landfill gas on a quarterly basis. Additionally, there will be monitoring points and detection equipment at various locations. Also, per the application, the applicant will engage the services of an environmental professional to monitor and maintain the landfill gas collection and monitoring systems for the enclosed structures. The systems will be inspected monthly at a minimum. The location of the approved permit, operating plans, and monitoring results will be maintained at the property manager's office on the Subject Property.

Per Appendix 11 Sampling Plans and Procedures has procedures specified for monitoring, inspecting, repairs, and a data sheet. Appendix 11 also specifies quarterly monitoring.

Per **30 TAC 330.951 (16)** Site operating plan--A prepared document that provides guidance for operations and procedures necessary to maintain human safety and environmental protection at the development, permitted development, or existing structure in a manner consistent with the development permit and the commission's regulations.

## PCS Concern

In one part of the application, utility vaults will be inspected quarterly, but enclosed structures and monitoring/detection equipment will be inspected monthly. Trained personnel who understand the purpose and consequences of gas monitoring should conduct all inspections and receive the information collected from the monitoring/detection equipment. The record-keeping and retention information specifically for the inspections, credentials, and training was not specified in the application or Appendix 11, which is inconsistent with development permits and the commission's regulations which normally contain this information.



### **PCS Request**

PCS requests the TCEQ require uniformity in the inspections and for the applicant to keep logs of the inspections, findings, actions, results from monitoring points, and credentials of the personnel conducting the activities. PCS also requests the TCEQ require recordkeeping and retention information to be specified in the application and Appendix 11 for inspections, findings, actions, results from monitoring points, and credentials of the personnel, which is consistent with other permits and regulations per 30 TAC 330.951.

13. Per **30 TAC 330.964** ... A person may not lease or offer for lease property that overlies a closed MSW landfill unit unless...(2) the person gives notice to the prospective lessee of what is required to bring the property and any development on the property into compliance with this subchapter and the prohibitions or requirements for future development imposed by this subchapter and by any development permit issued for development of the property under this subchapter.

Per the application in form TCEQ-20960, the community in the area is 44.6% Hispanic and the per capita income is \$35,103. The Environmental Notice provided in the application is in English.

### **PCS Concern**

The community who may become renters in the apartments over the landfill may not understand the Environmental Notice since it is in English. The information in the Environmental Notice is a public notice that makes the community aware of the hazards at the apartments and the emergency procedures.

### **PCS Request**

PCS requests the TCEQ require the applicant to provide the Environmental Notice in English and Spanish to ensure the Spanish-speaking community can understand the purpose of the alarm systems, the sensors, the monitoring for potential landfill gasses and vapors, and to give notice to the prospective lessee per 330.964 (2) in a language they can understand.

14. Per the application, the Alief Super Neighborhood Council are a community and stakeholder group in the area.

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Dr. Latrice Babin, Executive Director

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## PCS Concern

Upon review of the individuals copied in the application or specifically sent a copy of the application, the Alief Super Neighborhood Council was not mentioned.

## PCS Request

PCS requests the TCEQ require the applicant to provide a copy of the application to be sent to the Alief Super Neighborhood Council.

PCS looks forward to your response. Should you have any additional questions or concerns, please contact Elita Castleberry at (713) 274-6236 or by email at [elita.castleberry@pcs.hctx.net](mailto:elita.castleberry@pcs.hctx.net).

Sincerely,

A handwritten signature in black ink, appearing to read 'Latrice Babin', written in a cursive style.

Dr. Latrice Babin  
Executive Director

EC/ta

Cc: Kaylee Stephenson - Harris County Judge's Office  
Fernanda Marrerohi - Harris County Judge's Office  
Sarah Utley - Harris County Attorney's Office  
Amanda Leal - Harris County Precinct 4  
Nicole Bealle - TCEQ Region 12  
Robert Pederson - TCEQ MSW Permits Section

# Harris County Pollution Control Services

Dr. Latrice Babin, Executive Director

Established in 1953



February 5, 2024

**Via email**

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
PO Box 13087  
Austin, TX 78711-3087  
Laurie.Gharis@tceq.texas.gov

Re: Application for Authorization to Disturb Final Cover Over Closed Municipal Solid Waste Landfill for Non-Enclosed Structures; including roads, utilities, grading, drainage, and detention ponds; over Doty Sand Pit Venture (Doty) Landfill MSW Permit No. 1247, and Olshan Demolishing (Olshan) Landfill MSW Permit No. 1259 (revoked 2002) at 12000 Bissonnet Street, Houston, Texas dated December 22, 2023.

Dear Ms. Gharis,

Harris County Pollution Control Services (PCS) inspects facilities in Harris County for compliance with environmental laws and regulations, as well as reviews permit applications, and submits comments to the Texas Commission on Environmental Quality (TCEQ) on permitting actions. PCS also works closely with the TCEQ's Houston Region 12 office, which refers a substantial portion of environmental complaints, including nuisance complaints, from Harris County citizens to PCS for investigation. If non-compliance with the conditions of the permit or applicable regulations is discovered, PCS will issue a Violation Notice(s) and/or refer its findings to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement.

PCS respectfully submits the following comments on the application referenced above.

- 1. The application states methane and hydrogen sulfide will be measured during subsurface or grading activities where waste may be exposed and the area evacuated until the concentrations dissipate.***

**PCS Concern**

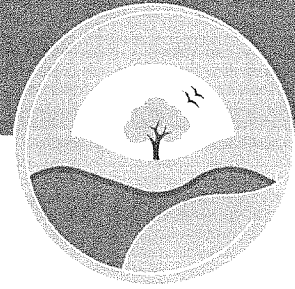
Concentrations of concern for methane and hydrogen sulfide being detected above a certain value indicate a source in the landfill that needs to be located and addressed. Additionally, the

Harris County

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application states these gases will be monitored where waste may be exposed during subsurface work, but these gases may be present regardless of the presence of waste.

## PCS Request

PCS requests the TCEQ require the applicant to locate the source of the gas emission and to eliminate or mitigate the source appropriately rather than just allowing for dissipation. PCS also requests the TCEQ require the applicant to monitor for these gases at all times as a precaution.

- 2. Per the application, proposed roadways such as Lima Drive and Hilltop Lookout Way, as well as other subsurface activities, may encounter waste during construction. Any areas where waste is exposed during the proposed construction will be backfilled with 2 feet of compacted clay consistent with the original landfill cap. Any waste that must be excavated during the proposed construction will be stockpiled and protected until the waste can be removed for off-site disposal at an approved facility.*

## PCS Concern

PCS is concerned the exposed waste will need to be excavated an additional 2 feet to place compacted clay consistent with the original landfill cap over the area.

## PCS Request

PCS requests the TCEQ require the applicant to log and verify the waste excavation, 2 feet of compacted clay placement, and proper storage and disposal of the waste.

- 3. A Preliminary Geotechnical Engineering Report dated August 29, 2006, was presented in the application. Appendix A Soil Boring Location Plan was not located in the report. Additionally, X-Coordinates and Y-Coordinates were provided for approximately 50 boreholes.*

## PCS Concern

Handwritten field notes were provided in the report, however, a map showing the location of the soil borings was not provided. PCS is concerned with the purpose of providing the Geotechnical Engineering Report if the locations of the soil borings are unknown.



### **PCS Request**

PCS requests the TCEQ require the applicant to provide a map with the location of the soil borings.

- 4. A Geotechnical Investigation Report dated October 21, 2022, was presented in the application for twelve soil borings. Field exploration for this report had to be modified since landfill gasses at high concentrations were encountered during 5 borings. Groundwater was encountered in only three borings B22-2, B22-3, and B22-11.***

### **PCS Concern**

Upon review of the boring logs, there were no notes regarding the concentration or type of landfill gasses encountered in the 5 borings. Additionally, the log for boring B22-4, notes free water was encountered at 10 feet. This note is identical to a note for boring B22-3.

### **PCS Request**

PCS requests the TCEQ require the applicant to add the amount and type of landfill gasses encountered in the 5 borings and to add B22-4 to the list of borings where groundwater was encountered.

- 5. A Geotechnical Investigation Report dated October 21, 2022, presented several ground improvement methods that should be further evaluated by the project team to determine the effectiveness, cost, and scheduling of the project. Ground improvement is needed to control settling and provide a compact, uniform, and consistent subgrade for foundation and slab-on-grade construction. Settlement could range from 2 to 5 inches depending on the subsurface material which is unknown since this is a landfill.***

***Settlement commonly occurs as a result of the non-uniform movement of the underlying soils, soil settlement at different rates can result in cracks.***

***The Geotechnical Investigation Report dated October 2, 2023, recommends all utility penetrations at building foundations be designed using flexible connections that can withstand up to 2 inches of displacement and be sealed to prevent landfill gas intrusion.***

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# Pollution Control Services

Dr. Latrice Babin, Executive Director

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## PCS Concern

PCS is concerned the settlement will result in cracks in foundations, roads, and other structures allowing for landfill gasses to be released. PCS is additionally concerned flexible connections able to withstand 2 inches of displacement may not be sufficient to prevent landfill gas intrusion if a settlement of 5 inches occurs.

## PCS Request

PCS requests the TCEQ require the applicant to include solutions for the displacement of more than 2 inches that may cause cracks that release landfill gasses.

6. *The Geotechnical Investigation Report dated October 21, 2022, under Conclusions and Recommendations, states the fill and cap should be at least 8 feet thick to allow the foundation and underground utility construction to not penetrate or disturb the cap. Surficial soils range from 0 to 10 feet above the cap currently. The report also said significant filling and grading will be required.*

## PCS Concern

PCS is concerned that the amount of filling and grading needed may disturb the cap.

## PCS Request

PCS requests the TCEQ require the applicant to have a verification method in place to ensure the filling and grading activities are conducted so as not to disturb the cap.

7. *The Geotechnical Investigation Report dated October 21, 2022, under Conclusions and Recommendations, states the fill and cap should be at least 8 feet thick to allow the foundation and underground utility construction to not penetrate or disturb the cap while the Geotechnical Investigation Report dated October 2, 2023, states at least 6 feet would be needed.*

## PCS Concern

Goodheart and Associates submitted both the 2022 and 2023 reports and are changing the recommendations from 8 to 6 feet without explanation or elaboration.

# Harris County Pollution Control Services

Dr. Latrice Babin, Executive Director

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## PCS Request

PCS requests the TCEQ require the applicant to be consistent with recommendations or give an adequate explanation for the change in recommendations.

8. *The Geotechnical Investigation Report dated October 21, 2022, under Conclusions and Recommendations states all brush and trees located above the landfill cap, should be cut and properly disposed of in accordance with local regulations.*

*Per the civil drawings, many trees will be removed and disposed of.*

## PCS Concern

PCS is concerned green waste from land clearing will be disposed of in local landfills.

## PCS Request

PCS requests the TCEQ require the applicant to dispose of green waste at local mulch facilities.

9. *A Geotechnical Investigation Report dated October 2, 2023, was presented in the application for seventeen soil borings. Landfill gasses at high concentrations were encountered during 5 borings. Groundwater was encountered in thirteen borings.*

## PCS Concern

PCS noted during the review of the boring logs, there are no notes regarding the concentration or type of landfill gasses encountered in the 5 borings.

## PCS Request

PCS requests the TCEQ require the applicant to add the amount and type of landfill gasses encountered to the data for the 5 borings provided in the application.

10. *Per the Geotechnical Investigation Report dated October 2, 2023, the construction sequencing should adjust the landfill cap thickness above the waste to a minimum of 3 feet thickness.*



### **PCS Concern**

PCS is concerned that throughout the application, a minimum of 2 feet of compacted clay is specified but in the construction sequencing, 3 feet is specified without indicating the type of soil to be used.

### **PCS Request**

PCS requests the TCEQ require the applicant to be consistent in all documents and require a minimum of 2 feet of compacted clay.

- 11. Appendix 3 contained logs for monitoring wells, soil borings, and temporary monitoring wells from 2019, 2020, and 2022. Maps were also presented and compared with the logs.***

### **PCS Concern**

Upon review of Maps in Appendix 3-1 to 3-4, a few soil borings such as EB-3, were not on the maps provided.

### **PCS Request**

PCS requests the TCEQ require the applicant to provide maps of all boring locations.

- 12. Per the civil drawings under erosion control, contractors shall comply with the requirements of the "TCEQ General Permit to Discharge under Texas Pollution Discharge Elimination System TXR 150000" which is the general stormwater permit for construction activities.***

***Per the civil drawings under cautionary notes regarding the landfill, plans for handling and disposal of contaminated soil and water generated during construction are to be prepared for the client by others.***

***A review of the civil drawings under clay cap excavation, shows the areas which will be excavated below the clay cap surface include parts of channel 2 and channel 3 and a significant part of basin 1.***

***Per the General Permit to Discharge under the Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit issued July 16, 2021, under Section L, Sector L of Industrial Activity - Landfills and Land Application Sites; contaminated stormwater is defined as stormwater that comes into direct contact with landfill waste.***

# Harris County Pollution Control Services

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## PCS Concern

PCS is concerned stormwater permit TXR150000 is not stringent enough to meet the requirements to protect the environment from the contaminants in the landfill. Per the Multi-Sector General Permit, contaminated stormwater is defined as stormwater that comes into direct contact with landfill waste. Therefore, PCS is concerned that excavation activities will potentially expose landfill waste to stormwater; generating contaminated stormwater that should be treated as wastewater. PCS is additionally concerned the large areas to be excavated below the clay cap will also expose landfill waste to stormwater that will infiltrate the landfill, further contaminating the groundwater in the absence of a leachate collection system.

## PCS Request

PCS requests the TCEQ require the applicant to obtain a more stringent TPDES permit addressing the above-mentioned concerns. PCS also requests the TCEQ require the applicant to provide adequate guidelines for the collection, containment, and disposal of contaminated stormwater at an approved facility offsite.

**13. *Per a review of the civil drawings, several trees located on the Doty landfill will be removed and disposed of.***

## PCS Concern

The roots of these trees may have infiltrated the clay cap. Removal of these trees may result in exposure to landfill waste.

## PCS Request

PCS requests the TCEQ require the applicant to include special instructions in the civil drawings and general construction notes for removing trees whose roots may have infiltrated the clay cap.

**14. *A review of the civil drawings noted the gas monitoring probes are not included in the civil drawings.***

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# Pollution Control Services

Dr. Latrice Babin, Executive Director

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## PCS Concern

PCS is concerned the 120 gas vents and 50 gas monitoring probes in place and currently being monitored will be removed during the proposed construction. As previously stated in a PCS letter to the TCEQ dated November 17, 2023, methane exceedances have been reported since 2015 with 29 known exceedances under the current property owner.

## PCS Request

PCS requests the TCEQ require the applicant to keep the gas collection and control system in place and continue methane monitoring, maintenance, repair, replacement, and reporting activities.

**15. Upon review of the civil drawings under channel cross sections, the existing grade, and proposed channels are displayed. The protective layer of loamy material, geomembrane liner, and compacted clay liner is not displayed in the channel cross-sections. The channels are instead described as grass-lined in many of the drawings.**

## PCS Concern

PCS is concerned the channels will not be afforded the same protections as the basins. Without protective layers in the channel, stormwater may infiltrate below the soil and impact the waste under the cap.

## PCS Request

PCS requests the TCEQ require the applicant to install protective layers that will convey stormwater to the basins instead of the groundwater under the cap.

PCS looks forward to your response. Should you have any additional questions or concerns, please contact Elita Castleberry at (713) 274-6236 or by email at [elita.castleberry@pcs.hctx.net](mailto:elita.castleberry@pcs.hctx.net).

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Babin'.

Dr. Latrice Babin  
Executive Director

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

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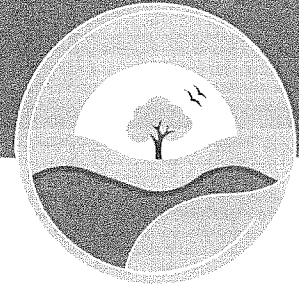
cc: Kaylee Stephenson - Harris County Judge's Office  
Fernanda Marrero - Harris County Judge's Office  
Sarah Utley - Harris County Attorney's Office  
Amanda Leal - Harris County Precinct 4  
Nicole Bealle - TCEQ Region 12  
Robert Pederson - TCEQ MSW Permits Section

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

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April 8, 2024

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
PO Box 13087  
Austin, TX 78711-3087.

Re: Application for Development Permit for Proposed Enclosed Structure over Closed Municipal Solid Waste (MSW) Landfill, Doty Sand Pit Venture (Doty) Landfill MSW Permit No. 1247, at 12000 Bissonnet Street, Houston, Texas dated March 25, 2024

Dear Ms. Gharis,

Harris County Pollution Control Services (PCS) inspects facilities in Harris County for compliance with environmental laws and regulations, as well as reviews permit applications, and submits comments to the Texas Commission on Environmental Quality (TCEQ) on permitting actions. PCS also works closely with the TCEQ's Houston Region 12 office, which refers a substantial portion of environmental complaints, including nuisance complaints, from Harris County citizens to PCS for investigation. If non-compliance with the conditions of the permit or applicable regulations is discovered, PCS will issue a Violation Notice(s) and/or refer its findings to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement.

PCS respectfully submits the following comments on the application referenced above.

1. A revised application dated March 25, 2024, was submitted in response to a TCEQ email dated March 18, 2024. In the correspondence, the TCEQ requested the applicant to address the adjacent landowner map in Figure 3A, "Include mineral interest owner and their addresses for Doty Sand Pit Venture Landfill property or a note that the mineral interest owners were not listed in the real property appraisal records for Harris County."

Per 30 TAC 330.954(a)(8)...The application shall also include an adjacent landowner list.

Per 30 TAC 330.59(c)(3) Land ownership map with accompanying landowners list. (A) These maps shall comply with the requirements in §281.5 of this title by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 1/4 mile of the facility, and all mineral interest ownership under the facility. (B) The adjacent and potentially affected landowners' list shall be keyed

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

Established in 1953



April 8, 2024

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
PO Box 13087  
Austin, TX 78711-3087

Re: Application for Development Permit for Proposed Enclosed Structure over Closed Municipal Solid Waste (MSW) Landfill, Doty Sand Pit Venture (Doty) Landfill MSW Permit No. 1247, at 12000 Bissonnet Street, Houston, Texas dated February 13, 2024.

Dear Ms. Gharis,

Harris County Pollution Control Services (PCS) inspects facilities in Harris County for compliance with environmental laws and regulations, as well as reviews permit applications, and submits comments to the Texas Commission on Environmental Quality (TCEQ) on permitting actions. PCS also works closely with the TCEQ's Houston Region 12 office, which refers a substantial portion of environmental complaints, including nuisance complaints, from Harris County citizens to PCS for investigation. If non-compliance with the conditions of the permit or applicable regulations is discovered, PCS will issue a Violation Notice(s) and/or refer its findings to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement.

PCS respectfully submits the following comments on the application referenced above.

- 1. The application dated February 13, 2024, is in response to a TCEQ email dated January 9, 2024, transmitting comments regarding a previously submitted application for the Development Permit for Proposed Enclosed Structure over Closed MSW landfill. The TCEQ requested the applicant to provide a map in accordance with 30 TAC 330.954(a)(8) and indicate landowner or mineral interest in accordance with 30 TAC 330.59(c).**

**Per 30 TAC 330.954(a)(8) ...The application shall also include an adjacent landowner list.**

**Per 30 TAC 330.59(c)(3) Land ownership map with accompanying landowners list. (A) These maps shall comply with the requirements in §281.5 of this title by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 1/4 mile of the facility, and all mineral interest ownership under the facility. (B) The adjacent and potentially affected landowners' list shall be keyed to the land ownership maps and shall give each property owner's name and mailing address. The list shall comply with the requirements of §281.5 of this title, and**

Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

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shall include all property owners within 1/4 mile of the facility, and all mineral interest ownership under the facility. Property and mineral interest owners' names and mailing addresses derived from the real property appraisal records as listed on the date that the application is filed will comply with this paragraph. Notice of an application is not defective if property owners or mineral interest owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

## PCS Concern

Upon review of the provided map and list, PCS noted the applicant only included the 14 landowners whose properties are adjacent to the landfill. The map does not include the property owners within ¼ mile of the facility per 30 TAC 330.59(c)(3).

## PCS Request

PCS requests the TCEQ require the applicant to update the map and provide a list of property owners within ¼ mile of the landfill. PCS additionally requests the applicant to send notifications of the application to all the addresses within ¼ mile of the landfill.

PCS looks forward to your response. Should you have any additional questions or concerns, please contact Elita Castleberry at (713) 274-6236 or by email at [elita.castleberry@pcs.hctx.net](mailto:elita.castleberry@pcs.hctx.net).

Sincerely,

Dr. Latrice Babin  
Executive Director

Cc: Kaylee Stephenson - Harris County Judge's Office  
Fernanda Marrero - Harris County Judge's Office  
Sarah Utley - Harris County Attorney's Office  
Amanda Leal - Harris County Precinct 4  
Nicole Bealle - TCEQ Region 12  
Robert Pederson - TCEQ MSW Permits Section

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Harris County

# Pollution Control Services

Dr. Latrice Babin, Executive Director

Established in 1953



to the land ownership maps and shall give each property owner's name and mailing address. The list shall comply with the requirements of §281.5 of this title, and shall include all property owners within 1/4 mile of the facility, and all mineral interest ownership under the facility. Property and mineral interest owners' names and mailing addresses derived from the real property appraisal records as listed on the date that the application is filed will comply with this paragraph. Notice of an application is not defective if property owners or mineral interest owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

Fourteen landowners whose properties are adjacent to the landfill are provided on the map and list. Additionally, a note was added, "Mineral interest owners were not listed in the real property appraisal records for Harris County, Texas."

## PCS Concern

Per previously submitted comments from PCS, the applicant has failed to notify adjacent landowners including owners of mineral interests per 30 TAC 330.954(a)(8) and 330.59(c)(3).

## PCS Request

PCS requests the TCEQ require the applicant to update the map and include a list of property owners within ¼ mile of the landfill. PCS additionally requests the applicant to send notifications of the application to all the addresses within ¼ mile of the landfill. Furthermore, PCS requests the mineral interest ownership under the facility be provided in the application.

2. Per 30 TAC 330.954(a)(8) As part of the application, the owner shall provide the name and physical and mailing addresses of a public building with normal operating hours such as library, city hall, or county courthouse where the application can be viewed by the general public. The facilities where the permit can be viewed shall be in compliance with all applicable requirements of the Americans with Disabilities Act...

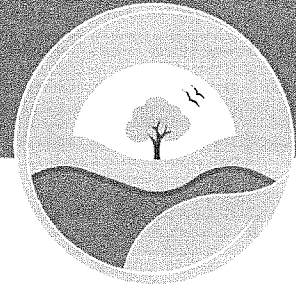
Per the permit application, the public place for the copy of the application is Alief – David M. Henington Regional Library.

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# Pollution Control Services

Dr. Latrice Babin, Executive Director

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## PCS Concern

Per management at the Alief Library, this application has not been received by the library.

## PCS Request

PCS requests the TCEQ require the applicant to send updates to the library.

PCS looks forward to your response. Should you have any additional questions or concerns, please contact Elita Castleberry at (713) 274-6236 or by email at [elita.castleberry@pcs.hctx.net](mailto:elita.castleberry@pcs.hctx.net).

Sincerely,

Dr. Latrice Babin  
Executive Director

Cc: Kaylee Stephenson - Harris County Judge's Office  
Fernanda Marrero - Harris County Judge's Office  
Sarah Utley - Harris County Attorney's Office  
Amanda Leal - Harris County Precinct 4  
Nicole Bealle - TCEQ Region 12  
Robert Pederson - TCEQ MSW Permits Section

EBC/HFR/SAM/TTA

# Harris County Pollution Control Services

Dr. Latrice Babin, Executive Director

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May 21, 2024

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
PO Box 13087  
Austin, TX 78711-3087.

Re: Permit Modification with Public Notice Post-Closure Land Use and Access Control Modification, Doty Sand Pit Venture (Doty) Landfill MSW Permit No. 1247/62053, at 12000 Bissonnet Street, Houston, Texas dated March 15, 2024

Dear Ms. Gharis,

Harris County Pollution Control Services (PCS) inspects facilities in Harris County for compliance with environmental laws and regulations, as well as reviews permit applications, and submits comments to the Texas Commission on Environmental Quality (TCEQ) on permitting actions. PCS also works closely with the TCEQ's Houston Region 12 office, which refers a substantial portion of environmental complaints, including nuisance complaints, from Harris County citizens to PCS for investigation. If non-compliance with the conditions of the permit or applicable regulations is discovered, PCS will issue a Violation Notice(s) and/or refer its findings to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement.

PCS reviewed the above-referenced permit application and respectfully submits the following comments on the modification referenced above.

1. ***Per the letter dated March 15, 2024, a permit modification was submitted without notice on September 22, 2023. As a result, the applicant resubmitted a permit modification application on March 15, 2024, with the necessary notice(s); replacing the September 22, 2023, permit modification application "in its entirety."***

## **PCS Concern**

PCS is concerned the March 15, 2024, application does not document how the site will meet the applicable post-closure care requirement per 30 TAC 330.463, 305.70(k)(12), and 330.957. The application dated March 2024 is forty-six (46) pages, while the September 2023 application was four hundred and fifty-seven (457) pages. PCS questions whether the forty-six (46) page permit

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application is sufficient to replace the previously submitted four hundred and fifty-seven (457) page application "in its entirety." For instance, the March 2024 application contains Figures 1 to 14 with information only on the site vicinity and neighboring landowners, while Figures included in the previous September 2023 application also included information on topography, wind directions, soil concentrations, water wells, and cut and fill to name a few titles. As the example with the figures shows, important information will be lost if the March 2024 application is considered a complete replacement.

## PCS Request

PCS requests the TCEQ require the applicant to specifically indicate which pages from the March 15, 2024, application will replace pages in the September 22, 2023, application and to indicate which pages are supplementing the September 22, 2023, application.

2. ***Per the letter dated March 15, 2024, the modification must address "changes to post-closure use of a landfill in accordance with 30 TAC 330.957 during the post-closure care period."***

***Per 30 TAC 330.957(b)(2)(B) the post-closure activities or improvements shall not increase or serve to create any potential threat to human health and the environment or that the proposed activities or improvements are necessary to reduce a potential threat to human health and the environment***

## PCS Concern

PCS is concerned the proposed development activities will not reduce the potential threat to human health and the environment and will instead perpetuate methane and other gas exposure at the site. Previously submitted comments from PCS dated November 17, 2023, noted concerns regarding twenty-nine (29) known methane emission exceedances over 5% since 2020, as well as concerns over probe maintenance, monitoring, reporting, and gas migration. PCS is also concerned with the landfill gas collection and monitoring system proposed for installation under each building, as well as the associated monitoring plan. The September 2023 application proposed these systems be monitored quarterly for methane, hydrogen sulfide, carbon dioxide, and oxygen.



### **PCS Request**

PCS requests the TCEQ require the applicant to continue monthly methane monitoring, maintenance, repair, replacement, and reporting activities as a condition of the requested modification. PCS also requests the TCEQ require the applicant to add hydrogen sulfide detection down to 1 ppb with continuous daily monitoring/detection and require a residential exposure limit of 1.5 ppb based upon the EPA limit. Both requests would reduce the potential threat to human health and the environment during the proposed post-closure activities and improvements.

3. ***The permit modification requests post-closure land use with mixed residential and commercial development throughout the entire permit area. The use of 6-foot fencing for access control at undeveloped portions of the site is also being requested.***

### **PCS Concern**

The permit modification application does not include information regarding access control for landfill monitoring equipment, such as groundwater and landfill gas monitoring systems, which may be located in developed areas. The application also fails to specify fencing, an access log, or an inspection schedule for verification of access control, which is necessary to guarantee that the landfill monitoring equipment remains protected and that undeveloped areas are not accessed. Additionally, during instances where methane migration warrants remediation, efforts to resolve the issues must take place in a controlled access area with adequate fencing.

### **PCS Request**

PCS requests the TCEQ require the applicant to resubmit the application with information regarding fencing, access control in developed areas, logs, and inspection schedules to ensure fencing is adequately maintained and in place. PCS also requests the placement of highly visible signage at multiple locations; sufficient to inform the public that access is restricted. Signage should be in the languages of the community per TCEQ public notice guidelines, see Comment 6 below.

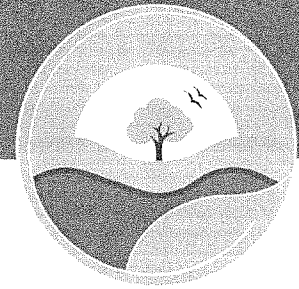
4. ***Per 30 TAC 330.463(b)(1)(E) The owner or operator shall continue earth electrical resistivity surveys at the frequency stated in the approved site development plan.***

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## PCS Concern

PCS is concerned that post-closure care will not be maintained and conducted per the permit conditions. The applicant has a history of failing to conduct post-closure care resistivity surveys; meaning potential leachate mitigation and migration were not responsibly monitored.

## PCS Request

PCS requests the TCEQ make post-closure care requirements per 30 TAC 330.463 an enforceable condition of this and future permit modifications.

5. ***Per the Post-Closure Land Use and Access Control Plan submitted in the March 15, 2024 application, "This addendum supersedes previously approved post-closure (plans) used in the Site Development Plan and/or Site Operating Plan." "This addendum supersedes prior access control measures in the Site Operating Plan."***

## PCS Concern

PCS is concerned that the post-closure care plan, Site Operating Plan (SOP), and Site Development Plan (SDP), currently in place, were not provided for review or comparison. PCS is additionally concerned the applicant intends the March 2024 submittal to fully replace the September 22, 2023, application, which as previously mentioned in item 1, is not sufficient to meet the post-closure care requirement per the regulations.

## PCS Request

PCS requests the TCEQ require the applicant to submit a comprehensive SOP and SDP that accurately reflects not only site access and post-closure use but also provides greater elaboration on post-closure activities (i.e., landfill gas monitoring system's monthly inspections and quarterly monitoring, groundwater monitoring, gas venting systems, and earth electrical resistivity surveys).

6. ***Upon review of the landowner list provided in Table 1, the surnames are mainly Hispanic, Asian, and English.***

***The EPA Environmental Justice Screening and Mapping Tool (Version 2.2) Community Report conducted April 2, 2024, from <https://ejscreen.epa.gov/mapper/> for a 1-mile area around the site indicates speakers consisting of 42% Spanish, 33% English, and 12% Vietnamese.***

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## PCS Concern

PCS is concerned the notices provided to the landowners may not be in the appropriate language.

## PCS Request

PCS requests the TCEQ require the applicant to provide the notice in multiple languages or provide a link with the notice available in other languages.

PCS looks forward to your response. Should you have any additional questions or concerns, please contact Elita Castleberry at (713) 274-6236 or by email at [elita.castleberry@pcs.hctx.net](mailto:elita.castleberry@pcs.hctx.net).

Sincerely,

Dr. Latrice Babin  
Executive Director

Cc: Kaylee Stephenson - Harris County Judge's Office  
Mikayla Panariello - Harris County Judge's Office  
Zac Nguyen - Harris County Judge's Office  
Sarah Utley - Harris County Attorney's Office  
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EC/HFR/SAM/TA