

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## **AN INTERIM ORDER**

concerning the application by the City of Waco for new MSW Permit No. 2400; TCEQ Docket No. 2022-0977-MSW.

On September 22, 2022, the Texas Commission on Environmental Quality (Commission) considered during its open meeting numerous requests for hearing and reconsideration concerning the application by the City of Waco (Applicant) for new MSW Permit No. 2400 for a Type I MSW landfill, located on approximately 502.5 acres in McLennan and Limestone Counties, approximately 0.4 mile south of the intersection of TK Parkway and State Highway 31 near Axtell, Texas. The requests for hearing and reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55. The Commission also considered the responses to the hearing requests and requests for reconsideration filed by the Executive Director, Office of Public Interest Counsel, and Applicant; replies filed by several requesters; all timely public comment; and the Executive Director's Response to Comment.

After evaluation of all relevant filings, the Commission determined to grant the hearing requests filed by Cynthia and Joe Dunlap, Darren and Melissa Porter, David Reed, Steven and Elisabeth Rigby, James Trayler, Save Axtell Families and the Environment, and the McLennan and Hill Counties Tehuacana Creek Water Control and Improvement District No. 1. The

Commission also determined to refer the hearing request of Susan Swaner to the State Office of Administrative Hearings (SOAH) for a preliminary determination on whether she qualifies as an affected person. The Commission denied the remaining requests for hearing and all requests for reconsideration.

The Commission next referred this matter to the Commission's Alternative Dispute Resolution (ADR) Program, to run concurrently with SOAH preliminary hearing scheduling efforts. The Commission then determined whether the granted requests for hearing raised disputed issues of fact or mixed questions of fact and law that were raised by an affected person during the comment period, and which are relevant and material to the decision on the application. The Commission determined that the following issues met those requirements and directed that they be referred to SOAH for contested case hearing:

- A) Whether the permit application is adequately protective of endangered and threatened species;
- B) Whether the proposed facility is compatible with existing land uses in accordance with TCEQ statutes and rules;
- C) Whether the Applicant has demonstrated that the proposed landfill would be adequately protective of groundwater;
- D) Whether the Applicant has demonstrated that the proposed landfill would be adequately protective of surface water;
- E) Whether the Applicant has provided an adequate delineation of the relevant floodplains, floodways, and wetlands and adequately addressed potential impacts of the proposed facility upon floodplains, floodways, and wetlands;
- F) Whether the Applicant has adequately addressed geologic and slope stability at the proposed facility;
- G) Whether the Applicant has demonstrated sufficient availability of soils for construction of a liner;
- H) Whether the proposed design and operation of the landfill cover meets all applicable requirements;
- I) Whether the application includes adequate buffer zones in accordance with applicable TCEQ rules;

- J) Whether the application adequately delineates and addresses easements and whether the Applicant has the requisite property interests in the proposed site in accordance with applicable TCEQ rules;
- K) Whether the Applicant has provided an adequate Site Operating Plan, including provisions for fire and emergency response;
- L) Whether the Applicant has adequately addressed traffic impacts and traffic safety in accordance with applicable TCEQ rules;
- M) Whether the application adequately meets the applicable requirements for addressing visual impacts;
- N) Whether the Applicant has adequately addressed the control of windblown waste and debris;
- O) Whether the Applicant has adequately addressed the control of vectors at the proposed facility in accordance with applicable TCEQ rules;
- P) Whether the application includes a sufficient odor management plan;
- Q) Whether the Applicant has adequately addressed the hours of operation in accordance with applicable TCEQ rules;
- R) Whether the Applicant has an acceptable compliance history and has demonstrated evidence of competency as required by TCEQ rules;
- S) Whether the Commission may grant the draft permit given the Limestone County Ordinance and the provisions of Texas Health & Safety Code § 364.012;
- T) Whether the application is adequately protective of human health;
- U) Whether the proposed facility's design includes sufficient measures for erosion control and prevention;
- V) Whether the application includes a sufficient landfill gas management plan;
- W) Whether the Applicant has performed an adequate subsurface investigation and characterization; and
- X) Whether the Applicant has accurately characterized the groundwater at the site, including the uppermost aquifer and the seasonal high-water level.

Finally, the Commission specified that the maximum duration of the contested case hearing shall be 180 days from the date of the preliminary hearing until the proposal for decision is issued by SOAH.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

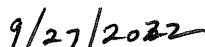
- 1) The hearing requests of Cynthia and Joe Dunlap, Darren and Melissa Porter, David Reed, Steven and Elisabeth Rigby, James Trayler, Save Axtell Families and the Environment, and the McLennan and Hill Counties Tehuacana Creek Water Control and Improvement District No. 1 are hereby GRANTED;
- 2) The hearing request filed by Susan Swaner is REFERRED to SOAH for a determination on whether she qualifies as an affected person;
- 3) The remaining requests for hearing and all requests for reconsideration are hereby DENIED;
- 4) This matter is hereby referred to the Commission's Alternative Dispute Resolution Program, to run concurrent with the SOAH preliminary hearing scheduling process;
- 5) The Chief Clerk shall refer the application to SOAH for a contested case hearing on the following issues:
  - A) Whether the permit application is adequately protective of endangered and threatened species;
  - B) Whether the proposed facility is compatible with existing land uses in accordance with TCEQ statutes and rules;
  - C) Whether the Applicant has demonstrated that the proposed landfill would be adequately protective of groundwater;
  - D) Whether the Applicant has demonstrated that the proposed landfill would be adequately protective of surface water;
  - E) Whether the Applicant has provided an adequate delineation of the relevant floodplains, floodways, and wetlands and adequately addressed potential impacts of the proposed facility upon floodplains, floodways, and wetlands;
  - F) Whether the Applicant has adequately addressed geologic and slope stability at the proposed facility;

- G) Whether the Applicant has demonstrated sufficient availability of soils for construction of a liner;
- H) Whether the proposed design and operation of the landfill cover meets all applicable requirements;
- I) Whether the application includes adequate buffer zones in accordance with applicable TCEQ rules;
- J) Whether the application adequately delineates and addresses easements and whether the Applicant has the requisite property interests in the proposed site in accordance with applicable TCEQ rules;
- K) Whether the Applicant has provided an adequate Site Operating Plan, including provisions for fire and emergency response;
- L) Whether the Applicant has adequately addressed traffic impacts and traffic safety in accordance with applicable TCEQ rules;
- M) Whether the application adequately meets the applicable requirements for addressing visual impacts;
- N) Whether the Applicant has adequately addressed the control of windblown waste and debris;
- O) Whether the Applicant has adequately addressed the control of vectors at the proposed facility in accordance with applicable TCEQ rules;
- P) Whether the application includes a sufficient odor management plan;
- Q) Whether the Applicant has adequately addressed the hours of operation in accordance with applicable TCEQ rules;
- R) Whether the Applicant has an acceptable compliance history and has demonstrated evidence of competency as required by TCEQ rules;
- S) Whether the Commission may grant the draft permit given the Limestone County Ordinance and the provisions of Texas Health & Safety Code § 364.012;
- T) Whether the application is adequately protective of human health;
- U) Whether the proposed facility's design includes sufficient measures for erosion control and prevention;

- V) Whether the application includes a sufficient landfill gas management plan;
  - W) Whether the Applicant has performed an adequate subsurface investigation and characterization; and
  - X) Whether the Applicant has accurately characterized the groundwater at the site, including the uppermost aquifer and the seasonal high-water level;
- 6) All issues not referred to SOAH in Ordering Provision No. 5 are hereby DENIED;
  - 7) The duration of the hearing shall be 180 days from the date of the preliminary hearing until the proposal for decision is issued; and
  - 8) If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
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Jon Niermann, Chairman

  
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Date Signed