

Brooke T. Paup, *Chairwoman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 21, 2025

Via Electronic Filing

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: Transmittal of Documents for Administrative Record  
Peach Creek II, LLC  
Permit No.: 2406  
TCEQ Docket No.: 2025-0468-MSW

Dear Ms. Gharis:

Enclosed for filing is the administrative record for the above-referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Tatu".

Anthony Tatu, Staff Attorney  
Environmental Law Division  
[Anthony.Tatu@tceq.texas.gov](mailto:Anthony.Tatu@tceq.texas.gov)

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**Texas Commission on Environmental Quality**

**INTEROFFICE MEMORANDUM**

**To:** Office of the Chief Clerk  
**From:** Anthony Tatu  
Staff Attorney  
Environmental Law Division  
**Date:** August 21, 2025

**Subject:** Transmittal of Documents for Administrative Record

Applicant: Peach Creek II, LLC  
Peach Creek Environmental Park

Proposed Permit No.: 2406

Program: Office of Waste, Waste Permits Division

Docket Nos.: 2025-0468-MSW

I have enclosed the following documents to be included in the administrative record for the above-referenced matter:

- Final Draft Permit
- Technical Summary and Executive Director's Preliminary Decision
- Compliance History Reports
- Executive Director's Response to Public Comments

This memorandum also serves as a request that the Office of the Chief Clerk transmit the attached items, and copies of public notices relating to the permit application, to the State Office of Administrative Hearings.

# Texas Commission on Environmental Quality



## Permit for a Municipal Solid Waste (MSW) Management Facility

Issued under provisions of Texas  
Health & Safety Code  
Chapter 361

MSW Permit No.: 2406

Name of Site Operator/Permittee: PC-II, LLC

Operator: PC-II, LLC

Property Owner: PC-II, LLC

Facility Name: Peach Creek Environmental Park

Facility Address: Located in San Jacinto County and a physical location of approximately six miles northwest of the intersection of US 59 and Business SH 105.

Facility Classification: Type I Municipal Solid Waste Management Facility

The permittee is authorized to store, process, and dispose of wastes in accordance with the limitations, requirements, and other conditions set forth herein. This permit is granted subject to the rules and orders of the Commission and laws of the State of Texas, and it replaces any previously issued permit. Nothing in this permit exempts the permittee from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality. This permit will be valid until canceled, amended, or revoked by the Commission.

*Approved, Issued and Effective* in accordance with Title 30, Texas Administrative Code (30 TAC), Chapter 330.

Issued Date:

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For the Commission

## Contents

|              |                                                                                              |           |
|--------------|----------------------------------------------------------------------------------------------|-----------|
| <b>I.</b>    | <b>Facility Location and Size .....</b>                                                      | <b>3</b>  |
| A.           | Facility Physical Location .....                                                             | 3         |
| B.           | Facility Permanent Benchmark .....                                                           | 3         |
| C.           | Facility Legal Description.....                                                              | 3         |
| D.           | Facility Size .....                                                                          | 3         |
| <b>II.</b>   | <b>Hours of Waste Acceptance and Operation .....</b>                                         | <b>3</b>  |
| <b>III.</b>  | <b>Authorized Waste Streams, Waste Acceptance Rate, and Landfill Disposal Capacity .....</b> | <b>4</b>  |
| A.           | Authorized Waste Streams .....                                                               | 4         |
| B.           | Prohibited Waste Streams .....                                                               | 4         |
| C.           | Waste Acceptance Rate.....                                                                   | 4         |
| D.           | Landfill Disposal Capacity .....                                                             | 4         |
| <b>IV.</b>   | <b>Facility Design, Construction, Operation, and Maintenance.....</b>                        | <b>4</b>  |
| A.           | General Facility Requirements.....                                                           | 4         |
| B.           | Authorized Waste Management Units.....                                                       | 5         |
| C.           | Liner and Leachate Collection Systems.....                                                   | 6         |
| D.           | Elevations of Waste Placement .....                                                          | 6         |
| E.           | Management of Leachate and Gas Condensate .....                                              | 6         |
| F.           | Management of Contaminated Water .....                                                       | 6         |
| G.           | Final Cover System .....                                                                     | 6         |
| H.           | Landfill Gas Management.....                                                                 | 7         |
| I.           | Groundwater Monitoring System .....                                                          | 7         |
| J.           | Surface Water and Stormwater Management and Control .....                                    | 8         |
| K.           | Vector Control .....                                                                         | 8         |
| L.           | Facility Sign Requirements .....                                                             | 8         |
| M.           | Landfill Markers .....                                                                       | 8         |
| N.           | Facility Personnel.....                                                                      | 8         |
| <b>V.</b>    | <b>Financial Assurance .....</b>                                                             | <b>9</b>  |
| <b>VI.</b>   | <b>Facility Closure .....</b>                                                                | <b>9</b>  |
| <b>VII.</b>  | <b>Facility Post-Closure Care.....</b>                                                       | <b>10</b> |
| <b>VIII.</b> | <b>Standard Permit Conditions .....</b>                                                      | <b>10</b> |
| <b>IX.</b>   | <b>Incorporated Regulatory Requirements .....</b>                                            | <b>12</b> |
| <b>X.</b>    | <b>Special Provisions .....</b>                                                              | <b>13</b> |
|              | <b>Attachment A.....</b>                                                                     | <b>13</b> |
|              | <b>Attachment B .....</b>                                                                    | <b>13</b> |

**I. Facility Location and Size**

**A. Facility Physical Location**

Peach Creek Environmental Park

Its physical location is approximately six miles northwest of the intersection of US 59 and Business SH 105. The primary access route to the landfill will be from I-69 northbound to Business SH 105 west, to FM 1725 north, to Fostoria Tram Road south, to the site access driveway.

San Jacinto County

**B. Facility Permanent Benchmark**

N 10,142,891.41

E 3,919,027.91

Reference Frame: NAD83 (2011) (EPOCH:2010.0000) Texas Central Zone

Elevation: 206.99 feet above mean sea level

Datum: NAVD88 - GEOID18

**C. Facility Legal Description**

The legal description is contained in Section 13 of Parts I & II in Attachment A of this permit.

**D. Facility Size**

595 acres

**II. Hours of Waste Acceptance and Operation**

- A. The waste acceptance hours at this facility shall be any time between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday, and from 7:00 a.m. to 12:00 p.m. on Saturday. The operating hours at this landfill which include material transportation and use of heavy equipment shall be any time between the hours of 5:00 a.m. to 9:00 p.m. Monday through Saturday.
- B. The operator shall post the actual hours and days of operation on the site sign in accordance with 30 TAC §330.137.
- C. In accordance with 30 TAC §§330.135(c) and (d), the TCEQ Regional Office may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area. The facility must record, in the site operating record, the dates, times, and duration when any alternative operating hours are utilized.

### **III. Authorized Waste Streams, Waste Acceptance Rate, and Landfill Disposal Capacity**

#### **A. Authorized Waste Streams**

The permittee is authorized to dispose of household waste, yard waste, commercial waste, Class 2 and 3 non-hazardous industrial solid waste, construction-demolition waste, and specific special wastes identified in Part IV in Attachment A of this permit. The acceptance of the special wastes is contingent upon such waste being handled in accordance with 30 TAC §330.171, and in accordance with the listed and described procedures in Part IV in Attachment A of this permit, subject to the provisions of this permit.

#### **B. Prohibited Waste Streams**

The permittee shall not accept or knowingly dispose of the wastes listed in 30 TAC §330.15(e), subject to the provisions therein. The permittee shall not accept or knowingly dispose of Class 1 nonhazardous industrial solid waste, industrial hazardous waste, liquid wastes, or any other waste not identified in Section III.A. of this permit.

#### **C. Waste Acceptance Rate**

Solid waste may be accepted for disposal at this facility at the initial rate of approximately 371,800 tons per year [approximately 1,300 tons per day based on 286 days per year of operation] and increasing over time to a maximum acceptance rate of approximately 563,525 tons per year [approximately 1,970 tons per day based on 286 days per year of operation]. The actual yearly waste disposal acceptance rate is a rolling quantity based on the sum of the previous four quarters of waste acceptance. In accordance with 30 TAC 330.125(h), if the annual waste acceptance rate exceeds the rate estimated in the landfill permit application and the waste increase is not due to a temporary occurrence, the owner or operator shall file an application to modify the permit, including the revised estimated waste acceptance rate, in accordance with 30 TAC §305.70(k), within 90 days of the exceedance as established by the sum of the previous four quarterly summary reports. The application must propose any needed changes in the site operating plan to manage the increased waste acceptance rate to protect public health and the environment. The increased waste acceptance rate may justify requiring permit conditions that are different from or absent in the existing permit. This provision is not intended to make an estimated waste acceptance rate a limiting parameter of a landfill permit.

#### **D. Landfill Disposal Capacity**

The total waste disposal capacity of the landfill (including waste and daily and intermediate cover) is 16.3 million cubic yards.

### **IV. Facility Design, Construction, Operation, and Maintenance**

#### **A. General Facility Requirements**

1. Facility design, construction, operation and maintenance must comply with the provisions of this permit; commission rules, including but not limited to, 30 TAC Chapter 330; special provisions contained in this permit; Parts I through IV of the permit application incorporated by reference in Attachment A of this permit; and amendments, corrections, and modifications incorporated

by reference in Attachment B of this permit. The facility construction and operation shall be conducted in a manner that is protective of human health and the environment.

2. The facility shall be designed, constructed, operated, and maintained to prevent the release and migration of any waste, contaminant, or pollutant beyond the point of compliance defined in 30 TAC §330.3, and to prevent inundation or discharge from the areas surrounding the facility components. Each receiving, storage, processing, and disposal area shall have a containment system that will collect spills and incidental precipitation in such a manner that prevents:
  - a. The release of any contaminated runoff, spills, or precipitation;
  - b. Washout of any waste by a 100-year frequency flood; and
  - c. Run-on into the disposal areas from off-site areas.
3. The site shall be designed and operated so as not to cause a violation of:
  - a. The requirements of §26.121 of the Texas Water Code;
  - b. Any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements of §402, as amended, and/or the Texas Pollutant Discharge Elimination System (TPDES), as amended;
  - c. The requirements under §404 of the Federal Clean Water Act, as amended; and
  - d. Any requirement of an area wide or statewide water quality management plan that has been approved under §208 or §319 of the Federal Clean Water Act, as amended.

**B. Authorized Waste Management Units**

1. The permittee is authorized to operate a Type I municipal solid waste landfill consisting of a total area within the permit boundary of 595 acres and a waste disposal footprint of 115 acres. The permittee is also authorized to operate a Citizen's Convenience Center and other waste processing areas as identified in Part IV in Attachment A of this permit.
2. All waste disposal activities authorized by this permit are to be confined to the Type I landfill which shall include access roads, scales, gatehouse, dikes, berms and temporary drainage channels, permanent drainage structures, detention ponds, landfill gas management system, contaminated water management system, leachate management system, landfill liner and final cover systems, groundwater monitoring system, slurry wall, and other components.
3. All waste processing activities authorized by this permit are to be confined to the locations of the processing unit location depicted in figures and descriptions in Parts III and IV in Attachment A of this permit.

C. Liner and Leachate Collection Systems

1. A liner and leachate collection system in accordance with 30 TAC §330.331 must be installed in all cells. The liner and leachate collection systems shall be designed and constructed in accordance with the rules and the specifications in Part III in Attachment A of this permit, and must consist of, from top to bottom, a 24-inch-thick protective cover soil layer, 270-mil thick geocomposite leachate collection layer, a 60-mil thick HDPE geomembrane layer, and a 24-inch layer of re-compacted clay with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second (cm/s).
2. The liner system shall be installed over the entire bottom and sidewalls of the landfill.
3. The elevation of deepest excavation at the landfill disposal area is 170.00 feet above msl and is located at the leachate collection sump within Cells 1 through 5 of the landfill.
4. The elevations of the bottom of the excavations within the waste disposal areas shall be as shown in D3.3 in Part III, Attachment D in Attachment A of this permit.

D. Elevations of Waste Placement

1. The lowest elevation of waste placement will be approximately 178.5 feet above mean sea level (msl).
2. The maximum final elevation of waste placement will be approximately 381.9 feet above msl.

E. Management of Leachate and Gas Condensate

1. Any leachate collection and removal system required by this permit shall be operated and maintained in accordance with 30 TAC §§330.331(a)(2) and 330.333 and Parts III and IV in Attachment A of this permit.
2. Any leachate and gas condensate shall be handled, stored, treated, and disposed of in accordance with Part IV in Attachment A of this permit.

F. Management of Contaminated Water

All contaminated surface water and groundwater shall be handled, stored, treated, and disposed of in accordance with 30 TAC § 330.207 and Part IV in Attachment A of this permit.

G. Final Cover System

1. The final cover system shall be constructed over all waste placed in landfill cells in accordance with 30 TAC §330.457 and Part III in Attachment A of this permit, and must consist of, from top to bottom, a 24-inch thick erosion layer soil with the top six inches layer being capable of sustaining native plant growth, a 200-mil thick double-sided drainage geocomposite layer (sideslope) or an 8 oz/sy cushion geotextile layer (topslope), 40-mil thick LLDPE textured

geomembrane layer, and an 18-inch thick compacted clay with a coefficient of permeability no greater than  $1 \times 10^{-5}$  cm/s.

2. The maximum elevation of the final cover shall not exceed 385.4 feet above msl.
3. Best management practices for temporary erosion and sedimentation control shall remain in place until vegetative cover has been established to design percentage vegetative cover for control and mitigation of erosion.

#### H. Landfill Gas Management

1. A landfill gas management system, consisting of landfill gas monitoring probes and gas monitoring equipment for enclosed structures, shall be designed, installed, operated, and maintained in accordance with Part III, Attachment G in Attachment A of this permit and 30 TAC Chapter 330, Subchapter I. At a minimum, landfill gas monitoring shall be conducted quarterly.
2. The landfill gas management system shall ensure that the concentration of methane gas generated by the facility does not exceed 5% by volume in monitoring points, probes, subsurface soils, or other matrices at the facility boundary defined by the legal description in the permit and does not exceed 1.25% by volume in facility enclosed structures (excluding gas control or recovery system components). If methane gas levels exceeding these limits are detected, the owner or operator shall follow and implement the response procedures required in 30 TAC §330.371(c) to ensure protection of human health and the environment.

#### I. Groundwater Monitoring System

1. The groundwater monitoring system for the facility shall be designed, installed, and maintained in accordance with 30 TAC Chapter 330, Subchapter J, and Part III, Attachment F in Attachment A of this permit.
2. Groundwater from monitoring wells shall be sampled, samples analyzed, and results reported to the executive director in accordance with 30 TAC §§330.405, and Part III, Attachment F in Attachment A of this permit.
3. In the event a statistically significant increase over background for one or more of the constituents listed in 30 TAC §330.419 is determined, assessment monitoring shall be performed in accordance with 30 TAC §330.409 and Part III, Attachment F in Attachment A of this permit.
4. In the event that assessment monitoring identifies any of the 40 Code of Federal Regulations Part 258, Appendix II constituents at a statistically significant level above the groundwater protection standards defined in 30 TAC §330.409(h), (i), or (j), the permittee shall perform an assessment of corrective measures, selection of remedy, and groundwater corrective action in accordance with 30 TAC §§330.411, 330.413, and 330.415.
5. A subgrade slurry wall will be constructed outside of the waste disposal footprint and groundwater monitoring system to impede offsite migration of groundwater from the waste disposal area in accordance with Part III, Attachment K in Attachment A of this permit. Piezometers will be installed

around the outside of the slurry wall aligned across the wall from selected groundwater monitoring network wells. The piezometers will be monitored for water levels only during each groundwater sampling event and water level comparisons between each inside/outside pair will be provided in the groundwater monitoring reports submitted to the TCEQ discussed above. Additionally, one upgradient piezometer on the outside of the slurry wall will be analyzed for the same constituents as the wells in the groundwater monitoring system.

J. Surface Water and Stormwater Management and Control

Surface water and stormwater that has not come in contact with waste or leachate shall be managed and controlled with conveyance structures, berms, and levees that have been designed and constructed in accordance with 30 TAC §§330.63(c), 330.301 through 330.307 and Part III in Attachment A to this permit.

K. Vector Control

The facility shall be operated in a manner that ensures that the attraction of birds does not cause a hazard to low-flying aircraft and that appropriate bird control procedures are followed. Any increase in bird activity that could be hazardous to safe aircraft operations requires immediate mitigation actions.

The facility shall control on-site populations of disease vectors using proper compaction and daily cover procedures, and the use of other approved methods when needed. The general methods and performance-based frequencies for disease vector control shall be in accordance with Part IV in Attachment A to this permit.

L. Facility Sign Requirements

The permittee shall conspicuously display at all entrances to the facility through which wastes are received, a sign measuring at least four feet by four feet with letters at least three inches in height stating the facility name; type of facility; the hours and days of operation; an emergency 24-hour contact phone number(s) that reaches an individual with the authority to obligate the facility at all times that the facility is closed; the local emergency fire department phone number; and the permit number.

M. Landfill Markers

Landfill markers shall be installed and maintained in accordance with 30 TAC §330.143 and Part IV in Attachment A of this permit.

N. Facility Personnel

The permittee shall comply with 30 TAC §330.59(f)(3) regarding employment of a licensed solid waste facility supervisor. The permittee shall ensure that landfill personnel are familiar with safety procedures, contingency plans, the requirements of the Commission's rules and this permit, commensurate with their levels and positions of responsibility as specified in Part IV in Attachment A of this permit. All facility employees and other persons involved in facility operations must obtain and maintain the level of training or certification as required by applicable regulations.

**V. Financial Assurance**

- A. Authorization to operate the facility is contingent upon compliance with this permit and maintenance of financial assurance in accordance with 30 TAC Chapter 330 Subchapter L and 30 TAC Chapter 37.
- B. At least 60 days before the initial receipt of waste, the permittee shall provide to the executive director financial assurance instrument(s) for demonstration of closure in an amount not less than \$11,478,203.64 (2020 dollars). The mechanism must be in effect before the initial receipt of waste. The permittee shall maintain continuous financial assurance coverage for closure until all requirements for facility closure have been completed and the facility is officially placed under the post-closure maintenance period, as evidenced in writing by the executive director in accordance with 30 TAC §330.503(b).
- C. At least 60 days before the initial receipt of waste, the permittee shall provide financial assurance instrument(s) for demonstration of post-closure care of the landfill in an amount not less than \$6,765,018.75 (2020 dollars). The mechanism must be in effect before the initial receipt of waste. The permittee shall maintain continuous financial assurance coverage for post-closure care until the facility is officially released in writing by the executive director from the post-closure care period in accordance with 30 TAC §330.507(b).
- D. The permittee shall annually adjust the closure and post-closure care cost estimates for inflation within 60 days prior to the anniversary date of the establishment of the financial assurance instrument in accordance with 30 TAC §37.131. Per 30 TAC §330.503(a)(1) and §330.507(a), the permittee shall annually evaluate the closure and post-closure care cost estimates, to determine if an increase in the closure cost estimate or post-closure care cost estimate is required because of the continuous landfill development.
- E. If the facility's closure or post-closure care plan is modified, the permittee shall provide new cost estimates in current dollars in accordance with 30 TAC §§330.503 and 330.507. The amount of the facility's financial assurance mechanism shall be adjusted within 60 days after the modification is approved. Adjustments to the cost estimates or the financial assurance instrument to comply with any financial assurance regulation that is adopted by the TCEQ subsequent to the issuance of this permit shall be initiated as a modification within 30 days after the effective date of the new regulation.

**VI. Facility Closure**

- A. Closure of the facility must commence:
  - 1. Upon the landfill being filled to its permitted waste disposal capacity or upon the landfill reaching its permitted maximum waste elevations as depicted on drawings in Part III in Attachment A of this permit;
  - 2. Upon direction by the executive director of the TCEQ for failure by the permittee to comply with the terms and conditions of this permit or violation of State or Federal regulations. The executive director is authorized to issue emergency orders to the permittee in accordance with §§5.501 and 5.512 of the Water Code regarding this matter after considering whether an emergency requiring immediate action to protect the public health and safety exists;

3. Upon abandonment of the site by the permittee;
4. Upon direction by the executive director for failure by the permittee to secure and maintain an adequate bond or other acceptable financial assurance instrument as required; or
5. Upon the permittee's notification to the TCEQ that the landfill will cease to accept waste and no longer operate.

**B. Closure Completion Requirements:**

Facility closure shall be performed and completed in accordance with 30 TAC §§330.21, 330.451, 330.457, 330.459, and 330.461 and Part III, Attachment H in Attachment A of this permit.

**VII. Facility Post-Closure Care**

- A. Upon completion and closure of the landfill, post-closure care shall be conducted in accordance with 30 TAC §330.463 and Part III, Attachment I in Attachment A of this permit for a period of 30 years following written acceptance of the certification of final closure by the executive director.
- B. Throughout the post-closure care period the vegetation on the final cover must be monitored and necessary actions taken to establish and maintain the percentage vegetative cover specified in Part III, Attachment H in Attachment A of this permit.
- C. Following completion of the post-closure care period, the owner or operator shall submit to the executive director for review and approval a documented certification prepared by an independent professional engineer licensed in the State of Texas in accordance with 30 TAC §330.465.
- D. Upon written acceptance of the certification of completion of post closure care by the executive director, the permittee shall submit to the executive director a request for voluntary revocation of this permit.

**VIII. Standard Permit Conditions**

- A. This permit is based on and the permittee shall follow the permit application dated August 19, 2019 and received August 28, 2019 for Parts I and II; dated August 27, 2020 and received September 16, 2020 for Parts III and IV; and revisions dated January 28, 2020, August 27, 2020, December 11, 2020, April 30, 2021, June 11, 2021, August 13, 2021, October 11, 2021, August 31, 2023, and February 23, 2024. These application submittals are hereby approved subject to the terms of this permit, the rules and regulations, and any orders of the TCEQ, and are incorporated into this permit by reference in Attachment A as if fully set out herein. Any and all revisions to these application submittals shall become conditions of this permit upon the date of approval by the Commission. The permittee shall maintain the application and all revisions and supporting documentation at the facility and make them available for inspection by TCEQ personnel.
- B. Attachment B of this permit shall consist of all duly executed amendments, modifications, and corrections to this permit.

- C. The permittee has a duty to comply with all conditions of this permit. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- D. A pre-construction conference shall be held pursuant to 30 TAC §330.73(d) prior to beginning physical construction of the facility to ensure that all aspects of this permit, construction activities, and inspections are met. Additional pre-construction conferences may be held prior to the opening of the facility.
- E. A pre-opening inspection shall be held pursuant to 30 TAC §330.73(f). The facility shall not accept solid waste until the executive director has confirmed in writing that all applicable submissions required by the permit and applicable rules have been received and found to be acceptable and that construction is in compliance with the permit and the approved site development plan.
- F. The permittee shall monitor sediment accumulation in ditches and culverts on a quarterly basis, and remove sedimentation to re-establish the design flow grades on an annual basis or more frequently if necessary to maintain design flow. The roads within the facility shall be designed so as to minimize the tracking of mud onto the public access road.
- G. Prior to disposal of waste, the permittee shall record in the deed records of San Jacinto County, a metes and bounds description of all portions within the permit boundary on which disposal of solid waste has or will take place, and shall provide a certified copy of the recorded document(s) to the executive director in accordance with 30 TAC §330.19.
- H. Daily cover of the waste fill areas shall be performed with well-compacted clean earthen material that has not been in contact with garbage, rubbish, or other solid waste, or with an alternate daily cover which has been approved in accordance with 30 TAC §§330.165(d) and 305.70(k). Intermediate cover, run-on control berms, and run-off control berms shall not be constructed from soil that has been used as daily cover or which contains waste or chemical contaminants.
- I. During construction and operation of the facility, measures shall be taken to control runoff, erosion, and sedimentation from disturbed areas. Erosion and sedimentation control measures shall be inspected and maintained at least monthly and after each storm event that meets or exceeds the design storm event. Erosion and sedimentation controls shall remain functional until disturbed areas are stabilized with established permanent revegetation. The permittee shall maintain the on-site access road and speed bumps/mud control devices in such a manner as to minimize the buildup of mud on the access road and to maintain a safe road surface.
- J. Erosion stability measures shall be maintained on top dome surfaces and external embankment side slopes during all phases of landfill operation, closure, and post-closure care in accordance with 30 TAC §330.305(d) and Part III in Attachment A of this permit.
- K. In compliance with the requirements of 30 TAC §330.145, the permittee shall consult with the local District Office of the Texas Department of Transportation or other authority responsible for road maintenance, as applicable, to determine standards for litter and mud cleanup on state, county, or city-maintained roads serving the site.

Documentation of this consultation shall be placed in the site operating record prior to receipt of waste at the facility.

- L. The permittee shall retain the right of entry onto the site until the end of the post-closure care period as required by 30 TAC §330.67(b).
- M. The permittee shall retain the right of entry onto the site in accordance with 30 TAC §330.67(b) and shall allow entry onto the site by TCEQ personnel for inspection purposes during the site operating life and until the end of the post-closure care period in accordance with §361.032 of the Texas Health and Safety Code.
- N. The provisions of this permit are severable. If any permit provision or the application of any permit provision to any circumstance is held invalid, the remainder of this permit shall not be affected.
- O. Regardless of the specific design contained in the application or adopted by reference in Attachments A and B of this permit, the permittee shall be required to meet all performance standards required by the permit, the Texas Administrative Code, and local, state, and federal laws or ordinances.
- P. The permittee shall comply with the requirements of the air permit exemption in 30 TAC §106.534, if applicable, and the applicable requirements of 30 TAC Chapters 106 and 116 and 30 TAC Chapter 330, Subchapter U.
- Q. All discharge of storm water must be in accordance with the U.S. Environmental Protection Agency NPDES requirements and the State of Texas TPDES requirements, as applicable.
- R. The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit, and copies of records required to be kept by the permit.
- S. The permittee shall report any noncompliance to the executive director which may endanger human health and safety, or the environment in accordance with 30 TAC §305.125(9).
- T. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application, or in any report to the executive director, it shall promptly submit such facts or information.
- U. The permittee shall notify the executive, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy in accordance with 30 TAC §305.125(22).
- V. Any proposed facility changes, additions, or expansions must be authorized in accordance with the rules in 30 TAC Chapters 305 and 330.

#### **IX. Incorporated Regulatory Requirements**

- A. The permittee shall comply with all applicable federal, state, and local regulations and shall obtain any and all other required permits prior to the beginning of any on-site improvements or construction approved by this permit.

- B. To the extent applicable, the requirements of 30 TAC Chapters 37, 281, 305, and 330 are adopted by reference and are hereby made provisions and conditions of this permit.

**X. Special Provisions**

None.

**Attachment A**

Parts I through IV of the permit application.

**Attachment B**

Amendments, corrections, and modifications issued for MSW Permit No. 2406.

**Technical Summary and  
Executive Director's Preliminary Decision  
of the**

**Peach Creek Environmental Park  
MSW Permit Application  
No. 2406**

**Type I Municipal Solid Waste Facility  
San Jacinto County, Texas**

**Applicant:  
PC-II, LLC**

**Date Prepared: April 2024**

By the  
Municipal Solid Waste (MSW) Permits Section  
Office of Waste, Waste Permits Division  
Texas Commission on Environmental Quality

This summary was prepared in accordance with 30 Texas Administrative Code Section 281.21(c). The information contained in this summary is based upon the permit application and has not been independently verified.

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## Contents

|     |                                                        |    |
|-----|--------------------------------------------------------|----|
| 1.  | Applicant Contact Information.....                     | 5  |
| 2.  | General Information.....                               | 5  |
| 2.1 | Permit Application.....                                | 5  |
| 2.2 | Wastes to be Accepted.....                             | 5  |
| 2.3 | Waste Acceptance Rate and Landfill Life.....           | 5  |
| 3.  | Technical Review.....                                  | 6  |
| 4.  | Location and Size.....                                 | 6  |
| 4.1 | Location .....                                         | 6  |
| 4.2 | Elevation and Coordinates of Permanent Benchmark ..... | 6  |
| 4.3 | Size.....                                              | 6  |
| 5.  | Facility Design, Construction, and Operation .....     | 7  |
| 5.1 | Facilities Authorized .....                            | 7  |
| 5.2 | Waste Placement .....                                  | 7  |
| 5.3 | Liner.....                                             | 7  |
| 5.4 | Final Cover System .....                               | 7  |
| 5.5 | Leachate Collection System .....                       | 8  |
| 6.  | Land Use .....                                         | 8  |
| 6.1 | Zoning .....                                           | 8  |
| 6.2 | Surrounding Land Uses .....                            | 8  |
| 6.3 | Residences and Businesses.....                         | 8  |
| 6.4 | Schools, Churches, and Historical Sites.....           | 8  |
| 6.5 | Growth Trends .....                                    | 9  |
| 7.  | Location Restrictions .....                            | 9  |
| 7.1 | Airport Safety .....                                   | 9  |
| 7.2 | Floodplains.....                                       | 9  |
| 7.3 | Wetlands .....                                         | 9  |
| 7.4 | Fault Areas and Seismic Impact Zones .....             | 9  |
| 7.5 | Unstable Areas .....                                   | 10 |
| 7.6 | Protection of Endangered Species.....                  | 10 |
| 8.  | Transportation and Access.....                         | 10 |
| 9.  | Water Protection .....                                 | 11 |
| 10. | Groundwater Protection.....                            | 11 |

10.1 Groundwater Protection:..... 11

10.2 Monitoring Wells:..... 11

11. Landfill Gas Management..... 11

12. Site Development Plan and Site Operating Plan..... 12

13. Financial Assurance ..... 12

14. Public Participation Process. .... 12

15. Executive Director’s Preliminary Decision ..... 13

16. Additional Information ..... 13

Attachment 1—Municipal Solid Waste Site Assessment Form ..... 15

## **1. Applicant Contact Information**

Name of Applicant: PC-II, LLC  
300 Concourse Boulevard, Suite 101  
Ridgeland, MS 39157

Name of Facility: Peach Creek Environmental Park

Contact Person: Mr. Jeffery Hobby, Project Manager  
300 Concourse Boulevard, Suite 101  
Ridgeland, MS 39157  
Phone No.: (601) 362-3333

Consulting Engineer: Mr. Shawn C. Buell, P.E.  
Neel Schaffer, Inc.  
13430 Northwest Freeway, Suite 650  
Houston, TX 77040  
Phone No.: (225) 924-0235

## **2. General Information**

### **2.1 Permit Application**

The applicant has submitted this application requesting authorization to construct and operate a new Type I MSW landfill in San Jacinto County, Texas. The total permitted facility will include 595 acres of which approximately 115 acres will be used for waste disposal. The final elevation of the waste fill and final cover material will be 385.4 feet above mean sea level (msl).

### **2.2 Wastes to be Accepted**

Solid waste to be disposed of will consist of household waste, yard waste, commercial waste, Class 2 and 3 non-hazardous industrial solid waste, construction-demolition waste, and specific special wastes identified in Part IV in Attachment A of the permit. The proposed landfill will not be authorized to accept wastes other than the wastes mentioned above, and those waste streams that are expressly prohibited by Title 30 Texas Administrative Code (30 TAC) Chapter 330.

The landfill unit(s) may not accept wastes that are expressly prohibited by Title 30 Texas Administrative Code (30 TAC) Chapter 330, and any waste that is not authorized for acceptance.

### **2.3 Waste Acceptance Rate and Landfill Life**

Authorized wastes may be accepted at an initial rate of approximately 1,300 tons per day and may increase to approximately 1,970 tons per day. The estimated site life is approximately 21.4 years.

### **3. Technical Review**

The application has been technically reviewed by the MSW Permits Section to determine its compliance with the applicable requirements in 30 TAC Chapters 305 and 330. Chapter 305 sets forth standards and requirements for applications; Chapter 330 contains the minimum regulatory criteria for MSW facilities. A site assessment pursuant to 30 TAC 330.73(c) was conducted on November 16, 2023. The results of the assessment are documented in Attachment 1 to this Technical Summary.

The information in the permit application demonstrates compliance with the Chapters 305 and 330 regulatory requirements. The application was declared technically complete and a draft permit has been prepared.

### **4. Location and Size**

#### **4.1 Location**

The proposed facility is located in San Jacinto County and does not have a street address. Its physical location is approximately six miles Northwest of the intersection of US 59 and Business SH 105. The primary access route to the landfill will be from I-69 northbound to Business SH 105 west, to FM 1725 north, to Fostoria Tram Road south, to the site access driveway.

#### **4.2 Elevation and Coordinates of Permanent Benchmark**

Elevation: 206.99 feet above mean sea level (msl)

Coordinates: N 10.14289141  
E 3.91902791

Reference Frame: NAD83 (2011) (EPOCH:2010.0000) Texas Central Zone

Site Coordinates:

Latitude: 30° 23' 20" N  
Longitude: 95° 11' 25" W

#### **4.3 Size**

The total area within the permit boundary under the proposed permit is approximately 595 acres.

## 5. Facility Design, Construction, and Operation

### 5.1 Facilities Authorized

The permit will authorize the operation of a Type I municipal solid waste landfill with a total net disposal volume (waste and daily and intermediate cover) of approximately 16.3 million cubic yards in addition to support structures and facilities as described in the permit application and subject to the limitations contained in the permit and commission rules.

The facility consists of a site entrance with security fencing, a gatehouse, scales, an all-weather entrance road to the site, all-weather access roads, soil stockpiles, landfill gas monitoring and (if necessary) collection system, leachate collection system, groundwater monitoring system, below-grade slurry wall, and the solid waste disposal area. Structures for surface drainage and stormwater run-on/runoff control include a perimeter drainage system to convey stormwater runoff around the site, berms, ditches, detention ponds and associated drainage structures. The site also consists of a Citizen's Convenience Center and other auxiliary waste management areas as identified in Part IV of the application.

### 5.2 Waste Placement

The maximum elevation of waste placement will be approximately 381.9 feet above msl. The minimum elevation of waste placement will be approximately 178.5 feet above msl. The deepest excavation elevation for the liner and sumps is approximately 170.0 feet above msl.

### 5.3 Liner

A liner system meeting the requirements of 30 TAC Chapter 330 Subchapter H will be constructed. It will consist of the following components (listed in order from top to bottom of liner system):

- 270 mil geocomposite leachate collection layer
- 60 mil HDPE geomembrane
- 24 inches compacted clay (permeability no greater than  $1 \times 10^{-7}$  cm/s)

The liner system will be overlaid by two feet of soil protective cover. A slurry wall is proposed to be constructed around the waste disposal area outside the groundwater monitoring well network.

### 5.4 Final Cover System

The final cover system is designed to meet the requirements of 30 TAC Chapter 330 Subchapter K and will be placed on the above-grade waste. Each cell or phase will be covered with a composite final cover consisting of the following components (listed in order from top to bottom):

- 24 inches of erosion layer with the top 6-inch layer capable of sustaining native plant growth
- 200 mil double-sided drainage geocomposite on sideslope; and 8 oz/sy cushion geotextile layer on topslope
- 40 mil LLDPE textured geomembrane
- 18-inch infiltration layer (permeability no greater than  $1 \times 10^{-5}$  cm/s)

#### 5.5 Leachate Collection System

The leachate collection system consists of a leachate collection layer (geocomposite drainage layer), leachate collection trenches, pipes, sumps, risers, and pumps. Leachate re-circulation is not proposed for this facility. Leachate must be transported off-site for treatment and disposal. The leachate collection system is designed to meet the requirements of 30 TAC §330.333 and will be placed on top of the liner system.

### 6. Land Use

The application provides information about land use in the vicinity of the site in accordance with 30 TAC §330.61(h).

#### 6.1 Zoning

The proposed facility would be located outside of the territorial and extraterritorial limits of any city. There is no zoning at the site.

#### 6.2 Surrounding Land Uses

The predominant land use within one mile of the facility is classified as Open, consisting of silviculture (timber and forest land), agriculture (small farms and pastures), vacant, and floodplain. The land use within one mile is open (97.7%), residential (1.6%), cooperative (0.6%), and water bodies 0.1%). No cemeteries, churches, daycares, or other special-use facilities were observed on mapping, in database searches, during literature reviews, or during the field inventory survey conducted in January 2019.

#### 6.3 Residences and Businesses

There are 90 acres of residential land (90 residences) within one mile of the facility. The nearest residence is approximately 2,700 feet west of the landfill permit boundary.

#### 6.4 Schools, Churches, and Historical Sites

There are no known cemeteries, churches, daycares, or other special-use facilities within one mile of the permit boundary. The Texas Historical

Commission in its July 17, 2020 correspondence stated that no historical properties are present or affected by the proposed project; and there is no effect on identified archaeological sites or other cultural resources.

#### 6.5 Growth Trends

The proposed site is in San Jacinto County near the borders of Liberty County and Montgomery County. Major population growth has been taking place in the neighboring Montgomery County, south and southwest of the landfill site. The population in San Jacinto County increased by 7.2% from 2010 to 2017, compared to 10.6% in Liberty County and 25.3% in Montgomery County for the same period. Within five miles of the site, the population growth trends from 2012 to 2017 are 1.03% per year in San Jacinto County, 0.4% in area to the southeast in Liberty County, and 2.87% to 3.17% in areas to the west and south in Montgomery County.

### 7. Location Restrictions

Location restrictions for municipal solid waste landfills are set forth in 30 TAC Chapter 330, Subchapter M.

#### 7.1 Airport Safety

No airports are located within a six-mile radius of the facility.

#### 7.2 Floodplains

The proposed waste disposal and other waste management activities are not located within a 100-year floodplain. The facility is considered to be in compliance with 30 TAC §330.547.

#### 7.3 Wetlands

Section 11.2 of Parts I and II of the application states that on December 15, 2020, the U.S. Army Corps of Engineers made a preliminary jurisdictional determination that 1.58 acres of the site are jurisdictional waters of the U.S.; and the applicant is not proposing any disturbance or activities in those areas.

#### 7.4 Fault Areas and Seismic Impact Zones

The application indicates that based on literature review and field inspection, no evidence was found for any fault on the facility or within 200 feet of the facility boundary; and there is no active fault known to exist on or within ½ mile of the facility. Per Railroad Commission GIS information, there are only two oil wells and one gas well located within 1 mile of the facility (the nearest well is approximately one-quarter mile to the northeast). The facility area is also not experiencing withdrawals of significant amounts of groundwater; there are no producing water wells on the facility and fewer than 20 water wells located

within one mile of the facility. The facility is not located within a seismic impact zone as defined in 30 TAC §330.557. Therefore, the facility is considered to be in compliance with 30 TAC §330.555 and §330.557.

#### 7.5 Unstable Areas

No known unstable areas as defined in 30 TAC §330.559 were found at the site. The facility is considered to be in compliance with 30 TAC §330.559.

#### 7.6 Protection of Endangered Species

Coordination letters with the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department are included in Appendix B of Parts I and II of the application. A biological assessment prepared to evaluate potential impacts to endangered and threatened species and to provide measures for protection such species is included in Appendix H. The biological assessment determined that no area on or near the site has been identified as critical habitat for any threatened or endangered species. A species protection plan has been developed and included as Appendix IVC in Part IV of the application. Section 12 of Parts I and II concludes that no adverse impact to such species or any critical habitat is anticipated because of construction and operation of the landfill.

### 8. **Transportation and Access**

The primary access route to the landfill will be from I-69 northbound to Business SH 105 west, to FM 1725 north, to Fostoria Tram Road south, to the site access driveway. The facility will be accessed from a new site access driveway to be constructed within Peach Creek property extending northwest from Fostoria Tram Road. As discussed in the February 14, 2024 letter from San Jacinto County Commissioner David Brandon to TCEQ, included in Appendix L, the County Commissioner's Court approved the connection of the PC-II site access driveway and Fostoria Tram Road in the December 13, 2023 meeting and has entered into an agreement for proposed upgrades to Fostoria Tram Road.

The site access driveway, which will be an all-weather driveway constructed as described in Attachment D, Section 3.1 of this application, will be located west of Fostoria Tram Road, approximately 1.8 miles south of the intersection of Fostoria Tram Road and FM 1725. The proposed access roads for the landfill within a one-mile radius, FM 1725 and the site access driveway, are depicted on Drawing C0.02. Coordination with the Texas Department of Transportation (TxDOT), Lufkin District, is included in Appendix B.

The report of a Traffic Impact Analysis (TIA) study is included as Appendix L in Parts I and II of this application and has been provided to the Texas Department of Transportation. The TIA indicates that based on peak hour and daily traffic projections, the existing and proposed roadways and intersections serving the subject facility will be adequate for the traffic generated by the Landfill, as well as the background traffic not

associated with the proposed Landfill, through the year 2050. On April 1, 2024 TxDOT approved the TIA without any issues or concerns.

## **9. Water Protection**

Water that has come into contact with waste, leachate, or gas condensate is contaminated water, as defined in 30 TAC §330.3. Stormwater that comes into contact with solid waste will be considered contaminated water. Temporary berms will be constructed to minimize the amount of surface water that comes into contact with the waste. Contaminated stormwater at the working face will be contained by berms. Contaminated surface water and groundwater will not be placed in or on the landfill. Contaminated water will be transported to an authorized facility for treatment and disposal. A minimum 50-foot buffer will be maintained along the stream channels on the site for heavy equipment movement or construction activities. Equipment staging areas will be outside of riparian corridors.

## **10. Groundwater Protection**

### **10.1 Groundwater Protection:**

The liner system and leachate collection system will provide protection of groundwater from contamination. A slurry wall is proposed to be constructed around the waste disposal area outside the groundwater monitoring well network.

### **10.2 Monitoring Wells:**

The groundwater monitoring system which will provide for detection of potential releases from the facility will consist of 22 monitor wells. The groundwater monitoring network will be sampled, analyzed, and monitored in accordance with the procedures in the Groundwater Sampling and Analysis Plan (Attachment F of the Permit Application), which is part of the facility permit. A slurry wall is proposed to be constructed around the waste disposal area outside of the groundwater monitoring network of wells. Piezometers will be installed outside of the slurry wall to monitor water level differences between inside and outside the slurry wall and provide for additional groundwater monitoring if needed.

## **11. Landfill Gas Management**

A landfill gas monitoring system consisting of permanent landfill gas monitoring probes around the perimeter of the facility will be monitored quarterly to detect potential gas migration at the facility boundary.

Enclosed facility structures will be monitored quarterly for methane.

**12. Site Development Plan and Site Operating Plan**

The Site Development Plan (SDP) is Part III of the permit application and sets forth the engineering design and other technical aspects of the facility. The Site Operating Plan (SOP) is Part IV of the permit application. The SOP provides operating procedures for the site management and the site operating personnel for the daily operation of the facility to maintain the facility in compliance with the engineering design and applicable regulatory requirements. These documents become part of the permit.

**13. Financial Assurance**

Authorization to operate this facility is contingent upon the maintenance of financial assurance in accordance with 30 TAC Chapter 330, Subchapter L and Chapter 37 (Financial Assurance) for closure and post-closure care.

**14. Public Participation Process.**

Technical review of the application has been completed, the application has been declared technically complete, and a draft permit and *Notice of Application and Preliminary Decision* (NAPD) have been prepared. Information about the application, the draft permit, the notice, and this technical summary will be filed in the TCEQ Office of the Chief Clerk for processing.

The public can participate in the final decision on the issuance of a permit as follows:

- 14.1 The TCEQ will hold a public meeting if the executive director determines that there is substantial public interest in the application or if requested by a local legislator. During a public meeting the commission accepts formal comments on an application and holds an informal question and answer period. Two public meetings have been held on September 28, 2021 and March 22, 2022, respectively.
- 14.2 The NAPD will be sent to the applicant and published in a newspaper. The NAPD provides instructions for submitting comments, requesting a public meeting, or requesting a hearing on the application, and that all comments or requests must be submitted within 30 days from the date of newspaper publication of the notice.
- 14.3 After the comment period has ended, if comments are received a *Response to Comments* (RTC) will be prepared. The RTC will be sent to all persons who submitted comments or requested a public meeting or hearing on the application. Persons who receive the RTC will have an additional 30 days after the date the RTC is mailed in which to request a public hearing.

- 14.4 After the 30-day period to request a hearing has ended, if any requests have been received the matter will be placed on an agenda for a meeting of the TCEQ commissioners to determine whether to grant any of the hearing requests and refer the matter to the State Office of Administrative Hearings for a public hearing.
- 14.5 A public hearing is a formal process in front of an Administrative Law Judge (ALJ) who conducts the hearing. The applicant and protestant party(ies) present witnesses and testimony to support or dispute information contained in the application. When the hearing process is complete, the ALJ will issue a *Proposal for Decision* (PFD). The PFD will be placed on an agenda for a meeting of the TCEQ commissioners to consider whether to grant or deny the application.
- 14.6 After the commission has acted on an application, a motion for rehearing may be made by a party that does not agree with the decision. A motion for rehearing must be filed no later than 25 days after the party or the party's attorney of record is notified of the decision. The motion may be set on another agenda for consideration by the commission or allowed to expire by operation of law.
- 14.7 Applications for which no one requests a contested case hearing, and which meet all other requirements in 30 TAC 50.133(a) are uncontested applications and will be acted on by the executive director. An uncontested application will be placed on the executive director's agenda and the permit will be issued. The TCEQ will then mail notice that the permit was issued. The notice will be mailed according to 30 TAC 50.133(b) to the applicant, to any person who requested to be on the mailing list for the application, any person who submitted comments during the public comment period, and any person who timely filed a request for a contested case hearing. The notice will include information about the opportunity to file a motion to overturn the executive director's decision. Any motion to overturn the executive director's decision must be submitted no later than 23 days after the date the agency mails notice of the issued permit.

## **15. Executive Director's Preliminary Decision**

The executive director has made the preliminary decision that this proposed permit, if issued, meets all statutory and regulatory requirements.

## **16. Additional Information**

For information concerning the regulations covering this application, contact the Municipal Solid Waste Permits Section:

Mr. Frank Zeng, Project Manager  
Municipal Solid Waste Permits Section, MC 124  
Texas Commission on Environmental Quality  
P.O. Box 13087

Technical Summary

Peach Creek Environmental Park - Permit No. 2406

Page 14 of 16

Austin, Texas 78711

Email: Frank.Zeng@tceq.texas.gov

For more detailed technical information concerning any aspect of this application or to request a copy of the SDP or SOP, please contact the consulting engineer or the applicant at the address provided at the beginning of this summary.

The application can be viewed on the internet at  
<https://www.tceq.texas.gov/goto/mswapps>

For information concerning the legal aspects of the hearing process, agency rules, and submitting public comments, please contact the Texas Commission on Environmental Quality's Office of the Public Interest Counsel at (512) 239-6363.

## Attachment 1—Municipal Solid Waste Site Assessment Form



### Texas Commission on Environmental Quality

## Municipal Solid Waste Site Assessment Form

### Facility Information

|                                                                                                                                                        |                                                                                                     |                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------|
| Regulated Entity Name: PEACH CREEK ENVIRONMENTAL PARK                                                                                                  |                                                                                                     | RN: RN110843042 |
| Customer Name: PC-II LLC                                                                                                                               |                                                                                                     | CN: CN605694611 |
| Permit Number: 2406                                                                                                                                    | Application Type: <input checked="" type="checkbox"/> New Permit <input type="checkbox"/> Amendment |                 |
| Facility Type (check all that apply): <input checked="" type="checkbox"/> Type I <input type="checkbox"/> Type IV <input type="checkbox"/> Arid Exempt |                                                                                                     |                 |
| Physical Address: About 6 miles northwest of City of Cleveland, TX                                                                                     |                                                                                                     |                 |

### Facility Representative

|                                                                                                                                                   |                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Present (check all that apply): <input checked="" type="checkbox"/> Applicant <input type="checkbox"/> Consultant <input type="checkbox"/> Other: |                     |
| Name: Jeff Hobby                                                                                                                                  |                     |
| Email: info@peachcreekeep.com                                                                                                                     | Phone: 601-362-3333 |
| Additional Names (if applicable):                                                                                                                 |                     |

### TCEQ Reviewer

|                                                                                                                       |                                     |
|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Name: Frank Zeng                                                                                                      | Date of Site Assessment: 11/16/2023 |
| Email: frank.zeng@tceq.texas.gov                                                                                      | Phone: 512-239-1132                 |
| Is the location consistent with physical address? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |                                     |
| If No, provide location description:                                                                                  |                                     |
| Additional Names: Burgess Stengl, Eric Clegg                                                                          |                                     |

### Consistency with Application

Check **Yes** or **No** if an item is present or has been constructed, and if it is consistent with the application. If an item is not consistent with the application, explain briefly why in the *Comments* column. If an item is not applicable, skip to the *Comments* column and indicate **NA**. Use the Additional Comments section at end of this form for more comment space.

| Item                          | Constructed?                                                           | Consistent?                                                            | Comments                                                                                       |
|-------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Application Notice Signs      | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | The site entrance location will be relocated to a location different than originally proposed. |
| Facility Access Controls      | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                                                |
| Facility Entrance Roads       | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                                                |
| Facility Buildings            | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                                                |
| Landfill Gas Monitoring Wells | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                                                |

# Technical Summary

Peach Creek Environmental Park - Permit No. 2406

Page 16 of 16

| Item                                                   | Constructed?                                                           | Consistent?                                                            | Comments                                                               |
|--------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|
| Groundwater Monitoring Wells                           | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Existing or Abandoned Water Wells                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Existing or Abandoned Oil, Gas, or RRC Wells           | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Surface Water Features                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Permanent Benchmark                                    | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Permit Boundary Markers                                | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Buffer Zone Markers                                    | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Easement Markers                                       | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Floodplain Markers                                     | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Property Boundary                                      | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Easements Within or Adjacent to Permit Boundary        | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |
| Existing Structures Within 500 feet of Permit Boundary | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | From on-site no offsite structures can be observed due to dense trees. |

## **Additional Comments:**

Jayhawker Creek was observed dry with no water in the creek bed. Per the site personnel, the site area had rain for a week that ended a couple of days ago. A "temporary" on-site access road was observed with a two-barrel culvert on the creek.



# Compliance History Report

Compliance History Report for CN605694611, RN110843042, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

|                                                                                                   |                                                                                                                                                                                       |                                     |                                |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------------|
| <b>Customer, Respondent, or Owner/Operator:</b>                                                   | CN605694611, PC-II, LLC                                                                                                                                                               | <b>Classification:</b> UNCLASSIFIED | <b>Rating:</b> -----           |
| <b>Regulated Entity:</b>                                                                          | RN110843042, PEACH CREEK ENVIRONMENTAL PARK                                                                                                                                           | <b>Classification:</b> UNCLASSIFIED | <b>Rating:</b> -----           |
| <b>Complexity Points:</b>                                                                         | 7                                                                                                                                                                                     | <b>Repeat Violator:</b>             | NO                             |
| <b>CH Group:</b>                                                                                  | 11 - Waste Management (Excluding Landfills)                                                                                                                                           |                                     |                                |
| <b>Location:</b>                                                                                  | INTERSEC OF FM 1725 & FOSTORIA TRAM RD S 1.9 MI ON FOSTORIA TRAM RD TO JAYHAWKER RD W APPROX 0.7 MI TO RAJACK RD N 0.3 MI TO FACILITY ENTRANCE RD SAN JACINTO, TX, SAN JACINTO COUNTY |                                     |                                |
| <b>TCEQ Region:</b>                                                                               | REGION 10 - BEAUMONT                                                                                                                                                                  |                                     |                                |
| <b>ID Number(s):</b>                                                                              |                                                                                                                                                                                       |                                     |                                |
| <b>MUNICIPAL SOLID WASTE DISPOSAL PERMIT</b>                                                      | 2406                                                                                                                                                                                  |                                     |                                |
| <b>Compliance History Period:</b>                                                                 | September 01, 2018 to August 31, 2023                                                                                                                                                 | <b>Rating Year:</b> 2023            | <b>Rating Date:</b> 09/01/2023 |
| <b>Date Compliance History Report Prepared:</b>                                                   | March 28, 2024                                                                                                                                                                        |                                     |                                |
| <b>Agency Decision Requiring Compliance History:</b>                                              | Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.                                                                                   |                                     |                                |
| <b>Component Period Selected:</b>                                                                 | March 28, 2019 to March 28, 2024                                                                                                                                                      |                                     |                                |
| <b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b> |                                                                                                                                                                                       |                                     |                                |
| <b>Name:</b>                                                                                      | Frank Zeng                                                                                                                                                                            | <b>Phone:</b>                       | (512) 239-1132                 |

## Site and Owner/Operator History:

- |                                                                                                    |    |
|----------------------------------------------------------------------------------------------------|----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | NO |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

N/A

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

### **D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

### **E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

### **F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

## TCEQ MUNICIPAL SOLID WASTE NO. 2406

|                                                                                         |                  |                                                                    |
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| PERMIT APPLICATION BY<br>PC-II, LLC<br>FOR NEW MUNICIPAL SOLID<br>WASTE PERMIT NO. 2406 | §<br>§<br>§<br>§ | BEFORE THE<br><br>TEXAS COMMISSION<br><br>ON ENVIRONMENTAL QUALITY |
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### EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENTS

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The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comments (Response) on an application received from PC-II, LLC (Applicant) for new Municipal Solid Waste (MSW) Permit No. 2406. As required by 30 Texas Administrative Code (TAC), Section (§) 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant, and material, or significant comments, whether withdrawn or not withdrawn. The Office of Chief Clerk received timely written comments from the persons listed in Attachments 1 through 35 and the individuals referenced in this Response.

This Response addresses all timely public comments received, whether withdrawn or not withdrawn, regarding the application. All comments by David Van Weldon, David Van Weldon on behalf of Wood Duck Farm, and Bryan French, representing Wood Duck Farm and/or David Van Weldon, have been withdrawn. If you need more information about the MSW permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about TCEQ can be found on TCEQ's website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

#### I. DESCRIPTION OF FACILITY

The Applicant has applied to TCEQ for a permit to authorize the proposed Peach Creek Environmental Park (proposed facility), a Type I MSW landfill. The proposed facility will be located approximately seven miles northwest of the intersection of US 59 and SH 105 in San Jacinto County, Texas. Please refer to drawings included in Parts I and II of the application (including Drawing C 0.01, Facility Location Map) for the entire proposed landfill site.

The application, if granted, would include 595 acres within the proposed permit boundary; approximately 115 acres will be used for waste disposal. Authorized waste may be accepted at an initial rate of approximately 1,300 tons per day and may increase to a maximum of 1,970 tons per day. The estimated site life is approximately 21.4 years. The proposed facility would be located outside of the territorial and extraterritorial limits of any city, and there is no zoning at the proposed facility.

The Executive Director has prepared a draft permit that would authorize the Applicant to dispose of household waste, yard waste, commercial waste, Class 2 and 3 non-hazardous industrial solid waste, construction-demolition waste, and approved special waste. The Applicant would be prohibited from accepting or knowingly disposing of the wastes listed in 30 TAC § 330.15(e), subject to the provisions therein.

#### II. PROCEDURAL BACKGROUND

The application for a land use compatibility determination on a permit to authorize a new MSW Type I Landfill (Parts I and II of the permit application) was received on August 28, 2019, and declared administratively complete on October 28, 2019. The Notice of Receipt of Application for Land Use Compatibility Determination for a Municipal Solid Waste Permit was published on November 21, 2019, in the *San Jacinto News Times*. Parts III and IV of the application were received on September 16, 2020, and declared administratively complete on October 23, 2020. The Notice of Receipt of Application and Intent to Obtain MSW Permit (NORI) was published on November 26, 2020, in the *San Jacinto News Times*. A virtual public

meeting was held on September 28, 2021, and notice of the public meeting was published on September 9, 2021, September 16, 2021, and September 23, 2021 in the *San Jacinto News Times*.

The Executive Director completed the technical review of the application on December 9, 2021, and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) was published on December 16, 2021, in the *San Jacinto News Times*. A revised NAPD was published on February 24, 2022, in the *San Jacinto News Times*. A second virtual public meeting was held on March 22, 2022, and notice of the public meeting was published on March 3, 2022, March 10, 2022, and March 17, 2022, in the *San Jacinto News Times*. The public comment period ended on March 28, 2022.

This application has been significantly revised since the notice of preliminary decision was published on February 24, 2022. On August 31, 2023 and February 23, 2024, the applicant revised the application. The revisions include a reduction in the proposed facility acreage, relocation of the private access road that connects the proposed facility to the public road, and addition of a slurry wall surrounding the waste disposal unit. The Executive Director completed the technical review of the revised application on May 21, 2024, and prepared a draft permit. The NAPD was published on May 30, 2024, in the *San Jacinto News Times*.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature (1999) and Senate Bill 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

### III. ACCESS TO RULES AND LAWS

Rules and Laws applicable to this application are accessible at the following URLs:

- TCEQ rules in Title 30 of the Texas Administrative Code are available at: [www.sos.state.tx.us/tac/](http://www.sos.state.tx.us/tac/);
- Texas statutes are available at: [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us); and
- Federal rules in Title 40 of the Code of Federal Regulations are available at the EPA's public webpage at: [www.epa.gov/laws-regulations/regulations](http://www.epa.gov/laws-regulations/regulations).

Commission records for this application and the draft permit are available for viewing and copying in the Office of the Chief Clerk at the TCEQ's main office in Austin at 12100 Park 35 Circle, Building F, 1st Floor. Some documents located in the Office of the Chief Clerk may also be located on the Commissioner's Integrated Database at: <https://www14.tceq.texas.gov/epic/eCID/>.

### IV. COMMENTS AND RESPONSES

#### A. GENERAL COMMENTS

**Comment 1 General opposition:** The persons listed in Attachment 1 expressed their general opposition to the proposed facility

**Response 1:** The Executive Director acknowledges the comments made in opposition to the proposed facility.

**Comment 2 Quality of Life:** City of Cleveland, Charles Branch, San Jacinto County Commissioner David Brandon, Pat Burkett, Caylie Carnline, Jason P. Chadwick, Kathy Cook, Mandy Cook, Jordan Combs, Jillian Barnes, Marlana Bush, Margaret Collins, Jeffrey Egli, Connie Egli, Verondia Goddard, Jessica Grilliot, President of Peach Creek Plantation/Estates POA Robert Hill, Shane Hindman, William Lambard, Nirakorn Luangkhot, Wayne Mabry, Steven Malkey, Patricia Ann Mathes, Claude David Mathes, John David McDonald, Dana Moody, Mindy Morgan,

Jennifer Mundy, Darren Peltier, Melissa Peterson, Jesse Picard, Jeff Santos, Danial Semar, Brandt Mansion, on behalf of Sierra Club (Sierra Club), Ruth Ann Skaff, Kathryn Smith, Linda Stegenga, Elizabeth Sumrall, Christina Wheeler, and Courtney Thornburg expressed concern that operations at the proposed landfill will decrease quality of life and well-being of residents in the area.

**Response 2:** The Texas Solid Waste Disposal Act (TSWDA) in Chapter 361 of the Texas Health and Safety Code (THSC) and 30 TAC Chapter 330 were promulgated to protect human health and the environment. The role of the TCEQ is to ensure that authorized facilities are designed, constructed, and operated according to applicable rules that protect human health and the environment.

In accordance with 30 TAC § 330.407 (relating to Detection Monitoring Program for Type I Landfills) and 30 TAC § 330.409 (relating to Assessment Monitoring Program), an owner or operator of a MSW landfill facility must regularly monitor groundwater during the active life of the facility, as well as during its closure and the post-closure care period. Generally, the post-closure care period extends 30 years after a facility is closed (30 TAC § 330.463(b)(1)).

Under 30 TAC § 330.371 (relating to Landfill Gas Management), owners or operators of a MSW facility must also regularly monitor landfill gas levels generated at a facility and its boundary and, should gas levels exceed specified limits, provide notice and take necessary response steps to protect human health.

The technically complete application contains a groundwater sampling and analysis plan and a landfill gas management plan prepared in accordance with the requirements of 30 TAC § 330.63. Refer to responses Nos. 24 and 25 for more information on groundwater and response. Refer to response No. 31 for more information on landfill gas and groundwater.

These groundwater monitoring and landfill gas management systems are implemented to continually evaluate the performance of the proposed facility for potential impacts to human health and environmental media. As part of their permit application, an applicant for a permit to authorize a MSW facility is required to submit for approval a groundwater sampling and analysis plan and landfill gas management plan to implement these systems (30 TAC § 330.63).

Furthermore, the issuance of a permit does not authorize any injury to persons or property, an invasion of other property rights, or any infringement of state or local law or regulations in accordance with 30 TAC § 305.122(d). TCEQ rules also generally prohibit operation of an MSW landfill in a manner that causes, suffers, allows, or contributes to the creation or maintenance of a nuisance according to 30 TAC § 330.15(a)(2). The Executive Director has reviewed the application and preliminarily determined that, if the proposed facility is constructed and operated in accordance with the rules and the terms and conditions of the draft permit and application, the facility would adequately protect human health and the environment and prevent adverse health and environmental impacts.

**Comment 3 Property Values and Local Economy:** Dana Moody commented that the area has had an influx of residents recently and the population studies do not reflect the population change. Carol King commented that the population is growing. The persons listed in Attachment 2 expressed property value-related concerns. Sierra Club commented that the Applicant should be required to provide an analysis of the devaluation of surrounding properties.

Carson Combs, Jeffrey Egli, and Connie Egli commented that the community would not see economic benefit from the proposed landfill. Ashley Musil commented that the proposed landfill would discourage continued residential growth and would drive away current residents. Sierra Club commented that the proposed landfill would make development less likely.

Jordan Combs and Ashley Musil commented that their families' livelihoods would be affected. Mandy Cook commented that the proposed landfill may affect her livelihood and may affect the

livelihoods of small business owners in the area. Hon. Richard Boyett (Mayor of City of Cleveland), Jeffrey Egli, Connie Egli, Tava Foret, Jodi L. Garrett, Mirna Hernandez, John David McDonald, Dana Moody, Trevor Stubblefield, Ursula Toney, Timothy Scott Warren, Margaret Lane, Will Cook, Bryan French, representing Wood Duck Farm, and Jordan Combs commented that the livelihoods of local farmers, small business owners, and property owners may be affected.

**Response 3:** The current surrounding conditions and the growth trend analysis around the proposed site are included in Section 7 of Parts I and II of the application. The Applicant provided information in accordance with applicable TCEQ rules. Please also see Response to Comment No. 42.

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. Accordingly, TCEQ does not have jurisdiction to consider property values or other economic impacts when determining whether to approve or deny a permit application. However, the issuance of a permit does not authorize injury to persons or property, invasion of other property rights, or infringement of state or local law or regulation in accord with 30 TAC § 305.122(d).

The Executive Director has preliminarily determined that the required information concerning land use was submitted in the application. Please see Response to Comment No. 42.

**Comment 4 Health and Public Safety:** The persons listed in Attachment 3 expressed health concerns. Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC, commented that Part II, Section 7 of the application and supporting documentation do not demonstrate that the landfill would not cause landowners and members of the surrounding community to suffer adverse health effects or that the landfill would not negatively impact public safety. Mandy Cook referenced several articles related to health risks posed by landfills. Eleanor Zoeller commented that public health of residents in the area would be affected.

**Response 4:** The Executive Director has preliminarily determined that the proposed landfill complies with the TSWDA, Chapter 361 of the THSC, and 30 TAC Chapter 330, which were promulgated to protect human health and the environment. Landfill performance and potential impacts on environmental media are evaluated by monitoring programs put in place to monitor groundwater quality and landfill gas migration at the landfill boundary. If the permit is approved, the Applicant will be required to monitor groundwater and landfill gas while the landfill is active, during closure, and during the post-closure care period, which is 30 years from closure, unless specified otherwise. If the landfill is operated in accordance with the permit provisions and all applicable rules and requirements, human health and the environment would be adequately protected and prevent adverse health and environmental impacts.

**Comment 5:** The persons listed in Attachment 4 questioned the need for this facility since there are already several active landfill facilities in the area. Jackie Woychesin asserted that the Applicant is attempting to circumvent House Bill 1053 (codified in THSC § 361.123), which limits the location of certain MSW landfills. Linda Kay Stegenga commented that a portion of the east side of the landfill property is in Montgomery County.

**Response 5:** TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. Accordingly, TCEQ does not have jurisdiction to consider local need in deciding whether to issue an MSW landfill permit. In addition, TCEQ cannot restrict the area a landfill serves and does not have authority to consider the service area in deciding whether to issue a permit.

Part II, Appendix B of the application includes documentation that Parts I and II of the application were submitted to the Deep East Texas Council of Governments (DETCOG) for

review. The documentation is a letter dated August 19, 2019, from the Applicant's engineer to DETCOG. This documentation meets the requirements of 30 TAC § 330.61(p).

The application does not concern House Bill 1053 (later codified in THSC § 361.123) because the proposed facility is located in San Jacinto County, Texas, and San Jacinto County is not adjacent to a county with a population of more than 3.3 million.

Drawings included in Parts I and II of the application (including Drawing C 0.01, Facility Location Map), show that the entire proposed landfill site is within the limits of San Jacinto County. Per Drawing C 0.01, which is based on the Texas Department of Transportation (TxDOT) map and was signed and sealed by a Texas licensed engineer, the closest distance from the site (the west corner) to Montgomery County is more than 2 miles.

**Comment 6 Landfill Size:** Sierra Club commented that TCEQ should require the Applicant to provide the maximum landfill storage site footprint in acres, cubic feet, or tons for transparency.

**Response 6:** The proposed landfill site will consist of a total area within the permit boundary of 595 acres and a waste disposal footprint of 115 acres. The landfill's disposal capacity will be 16.3 million cubic yards. The capacity information is specified in the Facility Description in Section 1.2, Part III, Attachment A of the application; the same information is also listed in other portions of the application. The Executive Director has reviewed the application and preliminarily determined that the application complies with the applicable rules.

**Comment 7 Environmental Impact Statement:** Sierra Club and Olive Hershey asked that an environmental impact statement be completed.

**Response 7:** TCEQ does not require an environmental impact statement in permitting MSW facilities. The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare detailed statements known as an Environmental Assessment, Finding of No Significant Impact, or Environmental Impact Statement. TCEQ rules do not require an applicant for an MSW permit to submit an Environmental Impact Statement.

The Executive Director has reviewed the application and preliminarily determined that, if the proposed facility is constructed and operated in accordance with the rules and the terms and conditions of the draft permit and application, the facility should not adversely impact human health or the environment.

**Comment 8 Recycling and Composting:** Drinda Baily and David Zajicek commented that trash should be recycled or reclaimed rather than opening the proposed landfill. Roger A. Dietrich recommended waste avoidance, reduction, and diversion. Roger A. Dietrich also commented that TCEQ should ask that the landfill users present plans to lower their per-capita disposal rates over time as a condition of access to the landfill and that TCEQ should remove yard waste and other organics from the list of acceptable materials so that they may be composted instead. Kristin Lucas commented that non-recyclable packaging should be outlawed. Kate Wasserman commented that conservation and reduction of consumption should be considered. Mandy Cook asserted that a recycling program should be included in the application.

**Response 8:** TCEQ actively encourages waste diversion and minimization efforts. TCEQ has established rules and public outreach programs to support the diversion of materials from solid waste streams, to promote the economic recovery and reuse of materials, and to support the development of markets for recycled products or services in a sustainable manner that protects the environment, public health, and safety. TCEQ does not require alternative waste management activities as part of a permit application for a landfill. TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly,

TCEQ does not have jurisdiction to consider efforts to reduce waste in an area when determining whether to approve or deny a permit application.

**Comment 9 Application Review Process:** Jordan Combs expressed concern that the Applicant received numerous Notices of Deficiencies (NOD) during the permitting process and thus would not be able to effectively operate the proposed landfill. Jordan Combs commented that TCEQ should ensure the Applicant provides correct information in the application. Dana Moody, Curtis Moody, Ethan Moody, Miranda Moody, Madison Moody, Chase Moody, Vance Moody, and Allee Moody commented that the NOD responses have caused confusion.

Karen Weber Cullen commented that technical reviews must be vetted in a transparent way by researchers with no vested interest in the project. Dana Moody commented that third parties should be able to provide technical suggestions.

Venus Price expressed concern that minimal protections would be included in the permit, recommended additional, modern protections in the permit, and recommended general reevaluating and modernizing of protections for these types of permits. Patrick Rightmyer and Mike Thomas Farrell commented that the best technology should be used. Dana Moody and Melisa Peterson asked that more than minimum requirements be considered.

Heidiq Lensky asked why the proposed facility would be called an “environmental park” instead of a landfill.

Patricia Burkett asked whether the proposed landfill is already open. James Cole and Robert Harris asked about the status of the draft permit.

**Response 9:** TCEQ rules do not limit the number of NODs that may be issued in the review of a landfill application. During technical review of an MSW application, the Executive Director's staff identifies deficiencies in technical information submitted that must be corrected in accordance with 30 TAC §§ 281.19 and 330.57(d). The MSW application must meet all applicable rules in 30 TAC Chapter 330. An applicant is required to submit requested additional technical information as replacement pages to an application, in accordance with 30 TAC § 330.57(g)(6). The Executive Director's technical summary, draft permit, and preliminary decision issued in connection with an MSW application are based on an application that the Executive Director has preliminarily determined technically complete after all identified deficiencies have been addressed in accordance with 30 TAC §§ 281.19 and 281.21. The Executive Director has reviewed the application and preliminarily determined that it satisfies the regulatory requirements.

The TSWDA in Texas Health & Safety Code Chapter 361 and TCEQ's rules in 30 TAC Chapter 330 were enacted and promulgated, respectively, to protect human health and the environment and are the basis of TCEQ's jurisdiction over municipal solid waste facilities. The role of the Executive Director in the technical review process of a permit application is to evaluate the contents of the application, verify its compliance with all the statutory and regulatory requirements, and verify that information has been provided to ensure that the design, construction, and operation of the proposed facility will be protective of human health and the environment.

The rule requirements and operational standards in the application for this Type I MSW Landfill were found to be protective of human health and the environment. The Executive Director has reviewed the application and preliminarily determined that the landfill design, development, and operation described in the application meets the MSW regulatory requirements.

The Executive Director acknowledges the comment regarding the facility name; however, review of the proposed name of a landfill is outside the scope of the evaluation of the application.

The TCEQ MSW permit for the proposed landfill has not been issued. The proposed landfill may not be constructed and opened until the permit is issued. Please also see Responses to

Comment Nos. 49 and 50, regarding public participation in the permitting process, and the Procedural Background section pertaining to the permit review process.

**Comment 10 Landfill Operator:** Bryan French, representing Wood Duck Farm, and Dana Moody commented that the operator that would be in charge of operations at the proposed landfill is unknown and has not been vetted. Linda Kay Stegenga commented that more information should be requested to determine if the operator will be capable of operating a landfill and asked where that information could be found in the draft permit.

**Response 10:** In accordance with 30 TAC § 330.59(f), the applicant must list:

- All Texas solid waste sites that the applicant has owned or operated within the last ten years;
- all solid waste sites in all states, territories, or countries in which the applicant has a direct financial interest;
- that a licensed solid waste facility supervisor shall be employed before commencing facility operation;
- the names of the principals and supervisors of the owner's or operator's organizations together with previous affiliations with other organizations engaged in solid waste activities;
- show landfilling and earthmoving experience, and other pertinent experience or licenses possessed by key personnel; and
- the number and size of each type of equipment to be dedicated to facility operation.

Section 16 in Parts I and II of the application provides the evidence of competency as required by TCEQ rules. The Applicant states in Section 16.2 that a properly licensed solid waste facility supervisor will be hired prior to commencing the operation of the facility. Requirements regarding facility personnel are set forth in Section IV.N. of the draft permit. TCEQ rules do not require an applicant to have previously owned or operated an MSW facility.

**Comment 11 Out-of-State Applicant:** Sierra Club, Charles Branch, Caylie Carnline, Drew A. Dylewski, Tava S. Foret, Beth Grijalva, Olive Hershey, Shane and Wendy Hindman, Julie C. Jones, Richard Humphreys, Julie Koch, William Lambard, Steven Malkey, John David McDonald, Dana Moody, Mindy Morgan, Darren Peltier, Kathryn Smith, Courtney Thornburg, and Christina Wheeler commented that the Applicant is from out-of-state and is not concerned with the community. Tava S. Foret, Dana Moody, Curtis Moody, Ethan Moody, Miranda Moody, Madison Moody, Chase Moody, Vance Moody, and Allee Moody commented that TCEQ should not prioritize an out-of-state business over local individuals.

**Response 11:** In accordance with 30 TAC § 330.59(e), TCEQ rules require an applicant to verify its legal status. This may be done by submitting a one-page certificate of incorporation issued by the Texas Secretary of State. The Applicant provided a Certification of Filing from the Texas Secretary of State, which is contained in Appendix J of Parts I and II of the application. The Executive Director has preliminarily determined that the Applicant has sufficiently demonstrated its authorization to conduct business in Texas.

**Comment 12 Environmental Justice:** San Jacinto County Commissioner David Brandon (Commissioner Brandon), Jerald Witten, Seth Larsen, Cathy Hill, Martha Charrey, William Cluff, Mandy Cook, Jodi Garrett, Gannon Rust, David Van Weldon, Dana Moody, Curtis Moody, Vance Moody, Allee Moody, Madison Moody, Chase Moody, Ethan Moody, and Miranda Moody stated that the area where the proposed landfill would be located, including San Jacinto County, is economically disadvantaged and expressed concern with the burden of the proposed landfill on

an economically disadvantaged area. Dana Moody additionally commented that the county is culturally diverse. Linda Stegenga expressed environmental justice concerns generally.

**Response 12:** TCEQ and the United States Environmental Protection Agency (EPA) coordinate on the rules and policies of both agencies, and the EPA has primary jurisdiction over Title VI and environmental justice concerns. EPA's webpage, Environmental Justice | US EPA, notes that environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Although there are no TCEQ rules addressing the location of permitted facilities in areas with low-income populations, TCEQ has made a strong policy commitment to address environmental justice through access to and public participation in the permitting process.

TCEQ is committed to protecting human health and the environment for all Texans throughout the state. When evaluating permits that would authorize landfill facilities, TCEQ considers the surrounding community without regard to its socioeconomic or racial status. The Office of the Chief Clerk works to help citizens and neighborhood groups participate in the regulatory process to ensure that agency programs that may affect human health or the environment operate without discrimination and to make sure that citizens' concerns are considered thoroughly and are handled in a way that is fair to all.

For more information on environmental justice, individuals may contact the Office of Chief Clerk at 512-239-3300 or visit TCEQ's webpage, Title VI Compliance at TCEQ at [www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance](http://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance).

**Comment 13 Compensation:** Dana Moody asked why landowners are not compensated for violations. Linda Kay Stegenga provided comments about a deed granting ownership to the owner of Wood Duck Farm and asked if Wood Duck Farm would be compensated for damages. Danial Semar asked whether property owners would be compensated.

**Response 13:** TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, TCEQ does not have jurisdiction over compensation to third parties and cannot comment on agreements between other parties. In addition, 30 TAC § 305.122(d) provides that the issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulation. The Executive Director's review of a permit application considers whether the proposed facility meets the requirements of 30 TAC Chapter 330.

**Comment 14 Fires:** The persons listed in Attachment 5 expressed general concerns about the risk of potential fires at the proposed facility. Patricia Burkett raised concerns that the amount of trash will lead to a higher probability of wildfires which will strain local firefighting resources. Will Cook on behalf of Ms. Pat Burkett commented that flammable materials received by the proposed facility may cause forest fires. Dana Moody expressed concern with the availability of fire departments. Jordan Combs commented that landfills must have a constant fire going to burn off gas emitted by trash and asked how TCEQ will ensure the safety of local residents and the Sam Houston National Forest from fires with regard to local burn bans. Sierra Club commented that the proposed facility will cause wildfires to spread due to its nature and operations. Sierra Club also raised general concerns regarding the impact fires at the proposed facility will have on air quality. Bryan French, representing Wood Duck Farm (Wood Duck Farm), commented that the application does not adequately ensure against the danger of fire for adjoining properties. Specifically, Wood Duck Farm commented that the fire protection plan is inadequate because it lacks details of "triggering mechanisms" and information regarding landfill employee training, including training on the exclusion of flammable materials and the extinguishing of fires.

**Response 14:** In accordance with 30 TAC § 330.129 (relating to Fire Protection), an application for a MSW landfill facility is required to include a site operating plan that contains a fire

protection plan. The fire protection plan specifies fire protection procedures to be implemented at the facility. If a fire is detected at the facility, then an operator of the MSW landfill must initiate the procedures in the fire protection plan.

The fire protection plan required by 30 TAC § 330.129 for the landfill is included in Part IV, Section 7 of the application. The fire protection plan contains fire prevention procedures, including clearing dead trees, brush, or vegetation adjacent to the active working face to avoid grass, brush, or forest fires. The fire prevention procedures also include prohibiting open burning at the landfill, not allowing smoking at fire sensitive areas, and maintaining a stockpile of soil next to the working face of the landfill that is enough to cover the working face within one hour for smothering any fire. The application also represents that at a minimum the gatehouse, maintenance building, citizen's convenience center, and heavy equipment will be equipped with fire extinguishers.

Part IV, Section 3 and 7.4 of the application regarding training state that landfill personnel will be trained in fire protection procedures applicable in the event of a fire at the facility. Landfill personnel will also be trained in the use of firefighting equipment.

Additionally, the application states that information will be provided to the local fire department regarding waste disposal operations, fire sources, and firefighting techniques related to landfills. The fire protection plan also includes a list of specific firefighting measures. If possible, personnel will take steps to safely extinguish or contain the fire according to procedures included in the fire protection plan. The General Rules for Fires in the fire protection plan require the landfill personnel to call the local fire department if they cannot safely extinguish or contain the fire. As required by 30 TAC § 330.129, if a fire occurs that is not extinguished within ten minutes of detection, the commission's regional office must be contacted immediately after detection, but no later than four hours by telephone, and in writing within 14 days with a description of the fire and the resulting response.

The Executive Director has reviewed the application and preliminarily determined that it satisfies the rule requirements regarding fire protection. Air quality is discussed in Response to Comment No. 66.

**Comment 15 Location Details:** Rebecca Bridges and Mandy Cook commented that the coordinates of the proposed landfill provided in the application are inaccurate. Mandy Cook commented that if the coordinates are accurate, the proposed landfill would be located in a floodplain, and she provided a map. Stephen Walker asserted the permit boundary is landlocked. Jordan Combs commented that TCEQ should not accept outdated maps and inaccurate statements from the Applicant and expressed concern that the Applicant is providing inaccurate information.

James Cole asked if topography had been reviewed and commented that it might be affected by the recent InFRM information.

**Response 15:** The coordinates for the proposed site and the relevant maps are contained in Parts I and II of the application (including but not limited to, Drawings C0.01 and C0.02), and they are provided in accordance with the requirements of 30 TAC Chapter 330. The coordinates correlate well with the locations shown on the maps, which are based on the official maps from Texas Department of Transportation and U.S. Geological Survey. In addition, the site location checked using the TCEQ internal mapping system also confirmed that the location determined based on the coordinates is consistent with the base map. Please also see Response to Comment No. 39.

Regarding the concern that the facility's permit boundary is landlocked, please note that the access road to be built on the land owned by the permittee will connect the facility site to Fostoria Tram Road, a public road. For further information on the private access road, see Response to Comment No. 16.

The proposed landfill site meets all location restriction conditions of 30 TAC Chapter 330, Subchapter M, which do not require a landfill site to be located directly on or near public roads. Consistent with 30 TAC 330.59(d)(2)(C), the applicant acknowledges that the facility owner or operator and the State of Texas shall have access to the property during the active life and post-closure care period, if required, after closure for the purpose of inspection and maintenance. The access road to be built on the applicant's property will provide access by the TCEQ to the landfill.

Regarding the concerns with review of topography considering impact of the recent InFRM information, Section 11.1 of Parts I and II of the application states that the current effective FEMA 100-year flood map is used in the application; and a general topography of the site is based on the USGS Bear Creek 7.5-minute topo and adjacent topo maps (2016). The site's topography and contours are shown in maps C0.02 and C0.05 of parts I and II of the application, which are based on published sources, such as the U.S. Geological Survey and TNRS START Map. For more information on floodplain determination, refer to Response to Comment 39.

## **B. ROADS, LITTER, AESTHETICS, AND VECTORS**

**Comment 16 Road Conditions and Traffic:** The persons listed in Attachment 6 expressed road-related concerns. Specific concerns include large trucks traveling through residential areas; parked trucks blocking access to homes; safety, particularly that of resident children; road conditions including weight limits, width, and blind turns; road damage; the need to improve the roads; and insufficient county funds to repair the roads.

Additionally, Commissioner Brandon commented that San Jacinto County does not have the financial means to provide infrastructure to support the proposed facility and commented that Rajak Road will require extensive expansion, stabilization, and asphaltting to meet the standards to support the proposed traffic. Commissioner Brandon, Sierra Club, Bryan French, representing Wood Duck Farm (Wood Duck Farm), Jennifer Lee, on behalf of Houston San Jacinto Ranch LLC (Houston San Jacinto Ranch), and John David McDonald commented that the Applicant mischaracterized road materials, width, conditions, and location. Wood Duck Farm, John David McDonald, and Cathy McAdams asked who is responsible for the maintenance of the roads. Houston San Jacinto Ranch commented that the Applicant has failed to demonstrate coordination with local and state officials regarding adequacy of roadways or roadway maintenance. Dana Moody commented that having only one road for entry and exit is dangerous in cases of emergency and that the Applicant should consider TxDOT roads rather than County roads. Ms. Moody also asked how they timbered the land before this application.

Most commenters also raised concerns related to increased traffic. Specific concerns include that the traffic studies were inaccurate; the data used from 2016 does not reflect current traffic conditions; a third-party traffic study should be conducted; and increased traffic will increase roadkill and CO<sub>2</sub> emissions. Jordan Combs also stated that the Applicant changed the number of cars on every draft permit, and Ms. Moody asked whether the traffic studies were redone every time that page 18, section 8.1 of the application was revised. Wood Duck Farms also commented that leachate trucks should be included in the traffic calculations.

Ed Rinehart commented that school buses must share the roads around the facility with garbage trucks and that children would be boarding those school buses as facility-associated trucks were driving the same roads.

**Response 16:** In accordance with 30 TAC § 330.61(i), an application for an MSW landfill permit must include data on access roads for the proposed facility. This includes data regarding the availability and adequacy of roads that the landfill will use to access the site and data regarding the traffic volume that a facility is expected to generate on access roads located within one mile of the facility (30 TAC § 330.61(i)). A traffic impact analysis supplying the required traffic data, including proposed road improvements, is provided in Part II, Appendix L of the application.

Parts I/II, Section 8.1 of the application states that the primary access route to the landfill would be from I-69 northbound to Business SH 150 west, to FM 1725 north, to Fostoria Tram Road south, and to the site access road. The site access road will be built on the property owned by the Applicant. All the public and private roads are all-weather roads.

Regarding specific traffic concerns, the proposed facility is expected to contribute approximately 168 vehicles per day in the first year of operation to about 270 vehicles per day towards the end of the facility life. Vehicles accessing the landfill include trucks, employee vehicles, visitors' vehicles, and other vehicles. The trips generated by leachate trucks will be small compared to waste hauling trucks and were not separately listed in the total traffic estimates. Please refer to the traffic impact analysis contained in Appendix L of Parts I and II of the application, in which a category of Other Trucks is included in the total traffic estimates. The public access roads evaluated in the final report were consistent with Section 8.1. The traffic impact analysis concludes the existing roadways are considered to be adequate to handle the site-generated traffic. One improvement was identified in the analysis: the need for sight distance improvements at intersections of Fostoria Tram Road/FM 1725, Jayhawker Road/Fostoria Tram Road, and Rajak Road/Jayhawker Road.

When reviewing permit applications, the Executive Director defers to TxDOT recommendations on transportation and traffic issues regarding the traffic impacts and adequacy of state-maintained roadways and to recommendations by local authorities on transportation and traffic issues regarding the traffic impacts and adequacy of locally-maintained roadways. Coordination documents with TxDOT, required under 30 TAC § 330.61(i)(4), are provided in Part II, Appendix B of the application. A letter dated November 12, 2020, from TxDOT states that TxDOT has no issues or concerns regarding FM 1725. Another TxDOT letter, dated September 10, 2019, indicates that "in regards to your request for traffic or location restrictions," the Texas Department of Motor Vehicles (TDMV) website lists limits on vehicle size and weight on FM 1725. Section 8.1 of Part II of the application indicates that vehicles using the facility will all be within the standard size and weight limits (80,000 lbs) listed on the TDMV website.

To address the public concerns related to access roads beyond the regulatory requirements, the Applicant in August 2023 revised the site access route to relocate the private access road to connect to Fostoria Tram Road and will not use Jayhawker Road and Rajak Road. Appendix B of the Part II of the application has been updated to include the recent correspondence with TxDOT's Lufkin District. Section 8.1 of Part II of the application has been revised to show that the San Jacinto County Commissioner's Court has approved the connection of the PC II site access driveway and Fostoria Tram Road. Due to the relocation of the private access road and its connection to the public road, the site's traffic will not use Jayhawker Road or Rajak Road.

For concerns about emergency access, please refer to Response to Comment No. 17.

The Executive Director has preliminarily determined that the application has demonstrated compliance with applicable TCEQ requirements related to public and private access roads.

**Comment 17 Emergency Response Near the Facility:** San Jacinto County and Sierra Club commented that there is not enough law enforcement to control or respond to the increased accidents as a result of increased traffic. Martha Charrey commented that the increased traffic will cause an increase in the need for law enforcement which will put a financial strain on the community. Dana Moody commented that the county does not have locally staffed fire departments or hazmat staff. Dana Moody commented the emergency response system for the area is not up to date and sufficient staff is not in place.

**Response 17:** TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. Accordingly, TCEQ does not have jurisdiction to consider law enforcement, fire department, or hazmat response staffing concerns. Please see Response to

Comment No. 15 regarding traffic concerns, Response to Comment No. 14 regarding fire concerns, and Response to Comment No. 45 regarding concerns about hazardous waste.

**Comment 18 On-site Access Roads:** The persons listed in Attachment 7 commented that the full access road needs to be included in the application and/or permit. Sierra Club commented that the Applicant should be required to explain the access easement that goes through Wood Duck Farm. Sierra Club commented that impacts on vehicle access should be considered, preferably in an environmental impact statement. Ken Kramer commented that either access road (the right of way through Wood Duck Farm or 201 through the Sam Houston National Forest) is unacceptable. David Van Weldon commented that the application does not include the entire length of the access road and that road construction may not meet engineering requirements to achieve all weather transportation needs.

**Response 18:** The application was revised in August 2023 to relocate the site access route to a private access road to connect to Fostoria Tram Road, avoiding Jayhawker Road and Rajak Road. Section 8.1 of Parts I and II of the application identify all access roads (except for the new access road) as existing public roads. The new access road within the Applicant's property will be built to connect the proposed facility to the public access road (Fostoria Tram Road) and construction and use of this access road on the Applicant's property will be required to comply with all applicable rules. Pursuant to 30 TAC § 330.153, all-weather roads are required from the public access road into the facility and within the facility to the unloading areas. The new access road will be an all-weather asphalt road. According to the application, the access road would be constructed within the Applicant's property, thus not requiring an easement.

The Executive Director has preliminarily determined that the application has demonstrated compliance with applicable TCEQ requirements related to public and private access roads.

Please see Response to Comment No. 7 for information on an environmental impact statement. Please see Response to Comment No. 16 for general traffic concerns.

**Comment 19 On-Site Road Maintenance:** John David McDonald commented that the poor conditions of the road will create a bumpy drive and cause leakage from the trucks. John David McDonald expressed concern about excessive dust and dirt on the roads. Sierra Club commented that truck leachate is not mentioned by the Applicant, but that TCEQ should require the Applicant to be responsible for truck leaks as well as the owner/operator of the trucks. Sierra Club commented that the Applicant should be required to transport waste in fully enclosed vehicles. Sierra Club also commented that the Applicant should be required to remove tracked mud and associated debris from public roadways within two miles of the landfill three or more times per day and should be required to spray the landfill entrance and perimeter roads once per hour. Sierra Club further commented that the Applicant should be required to grade the roads three times per week to ensure nuisance mud and dust is reduced and that the Applicant should clearly state what dust reduction controls will be used, how often, and the appropriate maintenance to ensure the roads are kept in good working condition. Bryan French, representing Wood Duck Farm (Wood Duck Farm) commented that according to 30 TAC § 330.153(a) and (b), the roads must be all-weather and that dust may not be a nuisance. Wood Duck Farm also asked what will be done with the leachate ponds when the trucks cannot access them in times of flood, who will operate the leachate trucks, and where they will be marshalled on the property.

**Response 19:** All public roads used by vehicles for transporting wastes to this facility are all-weather roads and are maintained by TxDOT and/or the county. All internal roads (the access road, entrance road and perimeter roads) will be all-weather surface roads. The landfill personnel will be responsible for maintaining the internal roads and picking up waste spills on the public access roads. Sections 8.8 and 8.12 of Part IV of the application states the landfill personnel will maintain all internal roadways in a clean and safe condition; pick up litter and windblown debris at least daily; and re-grade roadways to minimize depressions, ruts, and

potholes. A Truck Wheel Wash will be used to reduce amount of mud and debris on vehicle tires leaving the site. Dust on the internal roads will be controlled by water spraying, sweeping, and other measures identified in Section 8.12. Dedicated equipment includes a rotary broom for sweeping and cleaning roads; a water truck for dust control and mud removal assistance; a motor grader for scraping mud leveling ruts and potholes; a tractor to move dirt, stone and litter; and a pick-up truck for collecting litter and waste. Trucked mud and waste spilled from waste hauling vehicles on public roadways within two miles of the landfill will be removed at least once per day. Consistent with 30 TAC § 330.145, the landfill operator will consult with the TxDOT, county, and/or local governments with maintenance authority over the roads concerning cleanup of public access roads. For more information on the public access roads, please see Response to Comment No. 16.

In accordance with 30 TAC Chapter 330, Subchapter C, prevention, containment, and removal of leakage and spills from waste transportation trucks along the route is the responsibility of the transporter, while spillage caused by the collection operation is the responsibility of the person operating the collection system. 30 TAC §§ 330.145 and 330.153 require management of materials, debris, and dust along the route and site access roads.

Additionally, the site would be operated in accordance with the TPDES Stormwater Pollution Prevention Plan (SWP3) spill and overflow measures. Please also see Response to Comment No. 32.

The Executive Director has preliminarily determined that the application meets the regulatory requirements.

**Comment 20 Windblown Waste:** The persons listed in Attachment 8 expressed general concerns that operations at the proposed facility will cause litter or windblown trash on neighboring properties and along the roads leading to the proposed facility. Specifically, Chris Helms expressed concern about litter polluting surface water in the area and flowing downstream into Lake Houston. Roy Mandell raised concerns that waste could spill while in transit to the proposed facility. Bryan French, representing Wood Duck Farm, stated that the application fails to adequately address windblown debris. Sierra Club commented that local wildlife will be harmed by eating or being caught by litter in and around the proposed facility, surcharges are not sufficient to deter litter violations, the owner and/or operator of the proposed facility should be required to turn away any vehicle hauling waste if the vehicle is not enclosed or securing its load, and the owner and/or operator of the proposed facility should “report habitual offenders.”

**Response 20:** 30 TAC § 330.139 requires that windblown materials and litter are properly managed to control unhealthy, unsafe, or unsightly conditions. 30 TAC § 330.145 requires that the landfill operator takes necessary measures to prevent and manage waste spills from the waste hauling vehicles on the public access roads. The measures described below are contained in the application for complying with the requirements of 30 TAC § 330.139 and 30 TAC § 330.145. Engineering method (litter fences) and other measures will be used to prevent and catch windblown litter at the working face. Litter scattered throughout the site, along fences and access roads, and at the gate must be picked up once a day and properly managed on the days the proposed facility is in operation. The landfill operator will take steps to encourage vehicles hauling waste to the facility to be enclosed or provided with a tarpaulin, net, or other means to prevent waste from blowing or spilling from waste transport vehicles. The steps will include posting signs, reporting offenders to proper law enforcement officers, adding surcharges, or similar measures. The adequacy of the covers or containment will be checked at the gatehouse. Additionally, when the proposed facility is in operation, the landfill operator will at least once per day clean up waste materials spilled along and within the right-of-way of public access roads serving the facility for two miles in either direction from any entrances used for the delivery of waste to the facility. Adjacent property owners will be contacted for

litter clean-up in instances where litter escapes facility control measures and enters private property.

The TCEQ Regional Office inspects Type I MSW landfills on a regular basis. Additionally, TCEQ encourages members of the public to report any observed violations at a facility to the Regional Office. Complaints regarding the facility may be made by contacting the TCEQ Region 10 Office at 409-898-3838 or the toll-free Environment Violation Hotline at 1-888-777-3186. Complaints may also be filed on-line at <https://www.tceq.texas.gov/compliance/complaints>. If the facility violates a term of the permit or TCEQ's regulations, the permittee may be subject to an enforcement action.

For additional information, please see Response to Comment No. 16.

The Executive Director has reviewed the application and preliminarily determined that it satisfies the rule requirements regarding the control of windblown material and litter.

**Comment 21 Aesthetics:** The persons listed in Attachment 9 expressed general concerns that the facility would adversely impact the environment, particularly the aesthetics of the surrounding area. Bryan French, representing Wood Duck Farm (Wood Duck Farm), stated that the application fails to adequately describe the proposed facility's impact on the surrounding area as required by 30 TAC § 330.61. Specifically, Wood Duck Farm contended the application fails to account for and describe the proposed facility's impact on "sites with exceptional aesthetic quality, etc." Sierra Club expressed concern that the proposed facility would lower the quality of life for residents by detracting "from the beautification of the neighborhood."

Bryan French, representing Wood Duck Farm, stated that the height of the landfill will "[tower] 179 feet above the landscape . . . [and degrade] the natural aesthetics of the area . . ." and any barriers to obscure the proposed facility will be insufficient. Additionally, Sierra Club asserted that the height of the proposed facility would degrade the aesthetic and scenic qualities of the area.

Pat D. Burkett commented that timber would be wasted. Peter Calenzo commented that removing trees would negatively impact the environment. Sadie Charley expressed concern that trees would be cut down.

Response 21: TCEQ promulgated rules for the management of MSW pursuant to statutory mandates, general authority, and jurisdiction over solid waste granted to TCEQ by the Texas Legislature in accordance with TCEQ's mission statement: TCEQ strives to protect our state's human and natural resources consistent with sustainable economic development. TCEQ's goal is clean air, clean water, and the safe management of waste. TCEQ's rules are designed to be protective of human health and the environment. For MSW facilities, TCEQ protects human health and the environment through the enforcement of 30 TAC Chapter 330 and other applicable regulations. The Executive Director has authority to consider the impact of the proposed facility on the surrounding area, including sites having exceptional aesthetic quality within one mile of the facility pursuant to 30 TAC § 330.61(h). The Executive Director has reviewed the application, evaluated its contents, and preliminarily determined that if the proposed facility is constructed and operated as described in the application, the facility should not adversely impact human health or the environment. Moreover, the Executive Director evaluated the information in the application regarding the impact of the proposed facility on the surrounding area and preliminarily determined that the proposed site complies with all applicable rules and regulations.

The rules governing MSW facilities generally do not provide direct and specific limitations on the height of a facility. Pursuant to 30 TAC § 330.175, visual screening of deposited waste materials at a municipal solid waste facility "must be provided by the owner or operator for the facility where the executive director determines that screening is necessary or as required by the permit." Part IV, Sec. 8.22 of the application states that visual screening of the deposited wastes will be provided by daily cover, natural vegetation/forest, fencing, constructed berms,

planted vegetation, and existing topography. The Executive Director evaluated the information in the application regarding the proposed facility's height and preliminarily determined that the proposed facility complies with all applicable rules and regulations regarding the construction, design, and structure of the proposed facility. In addition, the Executive Director has preliminarily determined that the visual screening measures in Part IV, Section 8.22 of the application are sufficient.

Regarding the concerns with trees being removed from the proposed landfill site, the site is located outside of the national forest limits; and the applicant has the responsibility to follow any applicable rules or ordinances when removing the trees. Beneficial use of the removed trees is encouraged, however, TCEQ MSW rules do not have requirements for this activity. If the removed trees are to be discarded, they must be managed in compliance with applicable rules. Please also see Response to Comment 32 for surface water drainage concerns.

Please also see Response to Comment No. 2 regarding quality-of-life concerns.

**Comment 22 Vector Control:** The persons listed in Attachment 10 expressed concerns that the proposed facility will attract wildlife, vectors, vermin, and other nuisance animals, including rodents, mosquitos, feral hogs, and native and non-native birds, which would harm nearby agricultural operations, the Sam Houston National Forest, and the normal ecology of the area. The persons listed in Attachment 10 asked how the Applicant would mitigate wild animal scavenging and what type of disease vector plan would be implemented. In addition, the persons listed in Attachment 10 raised concerns about the impact of seagull droppings on adjacent agricultural lands and how the extra nitrogen and phosphorus would impact the Sam Houston National Forest. Bryan French, representing Wood Duck Farm (Wood Duck Farm), and Jennifer Lee, on behalf of Houston San Jacinto Ranch LLC, contended that the application's vector and vermin control plan is deficient, and that the application fails to adequately address the impact of vermin and nuisance animals on adjacent properties, including the Sam Houston National Forest. Sierra Club recommended TCEQ require that the facility operator conduct an active feral hog removal program and contact adjacent and nearby property owners about an area/regional feral hog control program. Sierra Club also recommended that TCEQ require that the facility operator begin to remediate areas that have been affected or may be conducive to feral hogs within 24 hours of being found. In addition, Sierra Club recommended TCEQ require the Applicant to state how site operations will minimize ponding water and require the facility operator to begin filling depressions within 24 hours and complete within 3 days. Sierra Club also recommended that TCEQ should require the Applicant to document its process in determining whether ponded water is contaminated. In addition, Sierra Club commented that the increase in feral hogs to the area may result in a decrease in area water quality. Sierra Club recommended that TCEQ should contact and work with the Houston-Galveston Council Bacteria Implementation Group and Animals and Agriculture Work Group to determine what effects the proposed facility could have on the East Fork of the San Jacinto River Watershed and implement appropriate mitigation measures.

**Response 22:** A vector is defined under 30 TAC § 330.3(175) as an agent, such as an insect, snake, rodent, bird, or other animal capable of transferring a pathogen from one organism to another. 30 TAC § 330.151 requires applicants for MSW landfills to identify measures and procedures for controlling on-site populations of disease vectors, such as compaction and daily cover. Furthermore, in accordance with 30 TAC § 330.167, the ponding of water over waste on a landfill must be prevented and the Applicant must provide a ponding prevention plan in the Site Operating Plan (SOP). In accordance with 30 TAC § 330.167, the ponding prevention plan must identify techniques to be used at the landfill to prevent the ponding of water over waste, an inspection schedule to identify potential ponding sites, corrective actions to remove ponded water, and general instructions to manage water that has been in contact with waste.

Part IV, Section 8.11 of the application describes procedures for the control of on-site populations of disease vectors including proper waste compaction, timely application of cover soil or approved daily cover, minimizing the size of the working face, and control of ponded

water. Part IV, Section 8.19 of the application describes the water ponding prevention plan. Part IV, Section 8.11 of the application states that should these measures not control disease vectors, other methods approved by TCEQ will be used to ensure adequate control.

As noted previously, the TCEQ Regional Office inspects Type I MSW landfills on a regular basis. Additionally, TCEQ encourages members of the public to report any observed violations at a facility to the Regional Office. Complaints regarding the facility may be made by contacting the TCEQ Region 10 Office at 409-898-3838 or the toll-free Environment Violation Hotline at 1-888-777-3186. Complaints may also be filed on-line at <https://www.tceq.texas.gov/compliance/complaints>. If the facility violates a term of the permit or TCEQ's regulations, the permittee may be subject to an enforcement action.

The impact of seagull droppings on adjacent agricultural lands and how extra nitrogen and phosphorus would impact the Sam Houston National Forest is outside the scope of TCEQ's jurisdiction to evaluate MSW applications.

The Executive Director acknowledges Sierra Club's recommendations and finds that the application's proposed plan to prevent the ponding of water and control of vectors, including proposed feral hog control measures, complies with all applicable rules and regulations. Please see vector controls, generally, and Response to Comment No. 33.

Please also see Responses to Comment Nos. 23 and 32 through 36 for a more detailed discussion on contamination and surface water quality.

The Executive Director acknowledges Sierra Club's recommendation for TCEQ to contact the Houston-Galveston Council Bacteria Implementation Group and Animals and Agriculture Work Group; however, it is outside of the scope of review for the application.

The Executive Director has preliminarily determined that the application meets the requirements for vector control and ponding of water.

### **C. WATER, GEOLOGY, AND SOIL**

**Comment 23 General Concern of Water Quality:** The persons listed in Attachment 11 expressed general concern about water quality and water contamination.

**Response 23:** Responses to concerns about groundwater pollution, contamination of well water, aquifers, surface water, including Peach Creek, Jayhawker Creek, and Lake Houston are found in Responses to Comment Nos. 24 through 26, 29 through 32, 34, and 35.

**Comment 24 Groundwater:** The persons listed in Attachments 12 expressed concern about groundwater pollution and potential contamination of well water. David Van Weldon Frances Elaine Damon, and Roy Salazar raised concerns of contamination to well water. The Sierra Club commented that the Applicant should be required to conduct a thorough search for abandoned wells and ensure they are capped and plugged, and that this information be reported to the public.

Dana Moody provided a copy of the Joint Groundwater Monitoring and Contamination Report and information about other regulated entities, and she, Mandy Cook, and Shane Hindman asserted that the proposed landfill would cause groundwater contamination, would lead to long-term financial impacts, and would lead to groundwater contamination, respectively. Mandy Cook provided a document which discusses the long-term impacts, including financial impacts, of monitoring at landfills and commented that the application did not address how groundwater in the area would be protected. Mandy Cook, Jordan Combs, Andrea Marcogliese, Dana Moody, Carolyn Klein, and Wendy Hindman commented that contamination of water could contaminate food produced in the area.

Margaret Beck, Carla Cox, Rebecca Bridges, Jordan Combs, Linda J. Field, Anne Goode, Joan M. McKirachan, Aaryn Silva, Michelle Dechene, Rebecca Ojeda, Lauren Parrish, Jon Pitts, Lad A.

Rack, Pascale Schmidt, Carol Suzanne Sellner, Linda Kay Stegenga, Peter Calenzo, and Randall Stewart commented that activity from the proposed landfill would pollute aquifers, including the Evangeline Aquifer that supplies water to Houston. Randall Stewart commented that water will become contaminated and seepage to groundwater will occur to all underlying aquifers.

Senator Robert Nichols and Representative Ernest Bailes expressed concerns about the Evangeline water aquifer when requesting a public meeting. Theodore T. Walters expressed concerns about contamination of the Edwards water table. Abigail Gilson commented that the project site is located on several aquifer recharge areas that flow toward heavily populated areas.

**Response 24:** TCEQ's rules provide for protection of groundwater resources through a combination of construction requirements, including protective liners and leachate collection systems, construction of a groundwater monitoring system and monitoring of the uppermost groundwater leaving the site, and operational requirements such as separation of water that comes in contact with wastes from water that is unimpacted by waste. The Applicant provided information on current and abandoned oil and water wells in Section 7.3 of Parts I and II of the application as required by 30 TAC § 330.61(l) which showed one abandoned water well from 1964 that could not be located onsite. Section 8.16 of Part IV of the application also contains information related to abandoned wells if they are discovered during construction/operation. In accordance with 30 TAC § 330.161, should abandoned wells be discovered during development, the permittee must report to TCEQ and have the wells properly capped, plugged, and closed. The application was revised to add a slurry wall around the waste disposal area that is designed to further prevent any potential impact to groundwater which is discussed further in Response 25.

The protective liner system must be designed and constructed to meet the requirements of 30 TAC Chapter 330, Subchapter H; details about the liner design and construction are provided in Part III, Attachment D7 of the application. The landfill will be constructed with a composite liner (a 60-mil high-density polyethylene HDPE geomembrane and 24 inches of re-compacted soil) overlaid by two feet of protective soil cover and a leachate collection system (a geocomposite leachate collection layer, trenches and piping, sumps and pumps, and pump risers).

Part III, Attachment D6 of the application contains the leachate collection system design and provides information about leachate storage and off-site disposal. Leachate and any contaminated water, including stormwater that has contacted waste, will be properly stored and transported offsite for disposal at a Publicly Owned Treatment Works (POTW) or other TCEQ-approved treatment and disposal facility.

Please also see the Response to Comment No. 25, which contains a discussion of the Groundwater Monitoring System and the Groundwater Sampling and Analysis Plan (GWSAP) requirements.

Please also see the Response to Comment No. 32, which contains a discussion about requirements for unimpacted stormwater run-on and runoff control and serves to address concerns with landfill runoff that would seep into groundwater.

The Executive Director has preliminarily determined that the proposed liner, slurry wall, and leachate collection system meets the rule requirements and will therefore sufficiently protect human health and the environment.

**Comment 25 Groundwater Monitoring:** Several commenters asked questions relating to groundwater monitoring system design.

- ***Gravel beds and well spacing***

Dr. H.C. Clark, Kristen Schlemmer of Bayou City Waterkeeper (Bayou City Waterkeeper), and Mandy Cook expressed concerns that the gravel zones under the site would control the hydrogeology of the uppermost aquifer at the site and would present problems with sufficient groundwater monitoring. Dr. Clark proposed alternate values for hydraulic conductivity and permeabilities at the site and predicted that water will move through the gravel at greater velocities than the application provided and that a monitoring well spacing of less than 600 feet should be required. Bryan French, on behalf of Wood Duck Farm (Wood Duck Farm), and Bayou City Waterkeeper identified concerns about leachate contaminating groundwater and surface waters and commented that leachate leakage in gravel spreads 10 to 20 feet by the time it reaches the point of compliance and thus would possibly subvert the groundwater monitoring wells that are proposed to be spaced 600 feet apart, and, therefore, a closer well spacing should be required. Dr. Craig Nazor, on behalf of the Sierra Club, expressed similar concerns about water-created gravel beds and aquifer recharge zones creating high water contamination risk. Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC (Houston San Jacinto Ranch), commented that the soil in the area is not conducive to the proposed landfill and referenced Dr. Clark's comments about concerns with groundwater monitoring and hydrogeology due to gravel at the proposed location. Jason Roesner, District Ranger with the Sam Houston National Forest, United States Forest Service, United States Department of Agriculture (Forest Service) commented that the geology and soil type at the proposed location render it inappropriate for the proposed landfill and requested information about the design criteria and mitigation methods that will be used to avoid negative effects from the proposed landfill on water quality, health, wildlife, and recreation opportunities.

- ***Interconnection of aquifer and surface waters***

Dr. Clark expressed concerns that the aquifer water table appears to join the neighboring creek outside the permit boundary. Sierra Club described and provided information about land type phases, vegetation, topography, types of soil in the area, and the characteristics of groundwater and surface water connections, and commented that streams and aquifers recharge each other in the area where the proposed landfill will be located. Dr. Nazor (Sierra Club) and Wood Duck Farm expressed similar concerns. Dr. Clark, Wood Duck Farm, and Bayou City Waterkeeper expressed concerns that use of unlined stormwater detention ponds above the uppermost aquifer would lead to dilution of groundwater samples, thereby preventing detection of contaminants and commented that dewatering would violate 30 TAC § 330.331(a)(1) because of dilution of contaminants. They stated that monitoring wells nos. 11, 10, 6, 3, 4, and 5 are adjacent to unlined detention ponds that will recharge Stratum I immediately and move quickly to the uppermost aquifer, diluting any contaminants after a rainfall event and asked how dilution would be avoided.

- ***Dewatering concerns***

Dr. H.C. Clark, Dr. Ken Kramer, Bayou City Waterkeeper, Wood Duck Farm, and the persons listed in Attachment 13 expressed concern that the water table will be affected due to the pumping during dewatering and that it would affect the monitoring system for the landfill, drawing water into the landfill rather than allowing it to move through the groundwater monitoring system. Dr. Nazor (Sierra Club) referenced Dr. Clark's comments and stated that his analysis when combined with reports of land types and soil types demonstrates that dewatering may have water quality and monitoring impacts.

- ***Monitoring frequency and requirements***

Dustin Darkenwald and Shane Maberry expressed concern with how frequently groundwater would be monitored for contamination, and Mr. Maberry expressed concerns about E. coli and chloroform contaminating groundwater. Sierra Club commented that the Applicant must be required to monitor for leaks and groundwater contamination and must have a spill response,

long-term monitoring, a wider well monitoring system, and water cleanup plan from cradle to grave. John David McDonald commented that monitoring is not enough.

**Response 25:** In accordance with 30 TAC Chapter 330, Subchapter B (relating to Contents of Part III of the application), an owner or operator of a Type I MSW landfill facility is required to assess the geology and hydrogeology beneath the site. An application for a permit to authorize a MSW facility must include a geology report for a facility area that is prepared by a qualified groundwater scientist and contains soil and groundwater investigation results regarding subsurface conditions, as well as a description of aquifers near a facility per 30 TAC § 330.63(e)(3) and (4). An application for a permit to authorize a MSW facility must also include a description of all known water wells located within 500 feet of the proposed permit boundary in accordance with 30 TAC § 330.61(h)(5).

TCEQ rules specify a groundwater monitoring system must be designed to meet 30 TAC Chapter 330, Subchapter J requirements. The proposed landfill must include a groundwater monitoring system based on site-specific technical information to detect any contamination from the facility prior to migration off site. The proposed system must consist of a sufficient number of wells, installed at appropriate locations and depths, to yield representative groundwater samples from the uppermost aquifer, pursuant to 30 TAC § 330.403. An owner or operator must implement a system for groundwater monitoring, which must be conducted according to an approved GWSAP as required under 30 TAC § 330.405 (relating to Groundwater Sampling and Analysis Requirements). The owner or operator must also annually submit a sampling and analysis report to the Executive Director pursuant to 30 TAC § 330.407 with the results of the groundwater monitoring.

The proposed groundwater monitoring system will be based on site-specific hydrogeologic characteristics details in Part III, Attachment E of the permit application. The system will consist of 22 wells, installed at appropriate locations and depths. The 22 monitoring wells will be installed surrounding the landfill unit and the spacing of the wells will be no greater than 600 feet; and the wells will monitor groundwater of the uppermost aquifer in Stratum II. The groundwater monitoring wells will be sampled and analyzed in accordance with the GWSAP included as Part III, Attachment F of the permit application. Eight background groundwater samples will be taken from each well at approximately three-month (quarterly) intervals. After background sampling is completed, the detection monitoring program will consist of groundwater sampling on a semiannual basis.

The addition of a slurry wall constructed around the perimeter of the waste disposal area, on the outside of the monitoring well network, is designed to isolate the groundwater inside the disposal area from the groundwater outside the facility, which will provide additional protection to off-site groundwater resources. The slurry wall is a below-ground feature that will be constructed of a soil/bentonite mix at least 30 inches wide and installed down to a depth at least 18 inches into the Stratum III confining geologic layer. The slurry wall will severely retard groundwater flow from leaving the waste disposal area and therefore increase protectiveness of offsite groundwater resources.

Responses to specific groundwater monitoring questions are as follows:

- ***Gravel beds and well spacing***

The gravel layers are shown on the boring logs and cross-sections, however TCEQ rules do not require modifying the monitoring network based on the types of lithology, but only require that the wells be constructed to be able to collect representative groundwater samples of the uppermost aquifer. There are no provisions for requiring a well spacing less than 600 feet, per 30 TAC § 330.403(a)(2). Additionally, the slurry wall is designed to prevent subsurface preferential flowpaths due to gravel zones that could exist.

- ***Interconnection of aquifer and surface waters***

The purpose of the groundwater monitoring network is to detect contamination if it travels outside of the permitted waste disposal area. If groundwater contamination were determined to be sourcing from the permitted disposal area, the applicant would be required to remediate groundwater to prevent surface waters from being impacted above allowable levels. Additionally, the slurry wall is designed to prevent groundwater from inside the waste disposal area from potentially migrating to surface waters bodies. There are no restrictions relating to the position of stormwater detention ponds and the groundwater monitoring well locations in TCEQ rules. The wells are required to be constructed according to the State of Texas water well drillers requirements, which includes an annular seal around the well casing and surface pad to prevent infiltration of surface water into the well. Additionally, the detention ponds only contain water for short periods until it can be discharged according to the proposed facility's required Texas Pollution Discharge Elimination System (TPDES) permit, which would reduce any chances of percolation of surface water to the subsurface at quantities that would impact groundwater samples through dilution.

- ***Dewatering concerns***

The dewatering of the aquifer in the area of the landfill waste footprint is temporary and will occur during construction only. The groundwater point of compliance is determined by the groundwater flow directions both at the time of application and later in the life of the landfill, and can potentially be revised if flow directions change during the landfill life. As stated above, the purpose of the groundwater monitoring system is to detect releases leaving the permitted boundary once the facility is constructed, and therefore after dewatering.

- ***Monitoring frequency and requirements***

The groundwater monitoring is required to be conducted semiannually after the initial background sampling is completed. The constituents required for monitoring are specified in 30 TAC § 330.419. The applicants GWSAP complies with the requirements of 30 TAC § 330 Subchapter J.

**Comment 26 Geologic Assessment:** Several commenters asked questions relating to geologic investigation/characterization of the site.

- ***Position of landfill bottom compared to aquifer***

Dr. Clark asked whether the application, permit, or SOP states that the base of the liner system will be sufficiently above the base of the uppermost aquifer to allow for groundwater monitoring. Patrick Rightmyer, Dr. Nazor, and Jeff Egli expressed concern that the proposed landfill will be deep enough to enter the water table.

- ***Insufficient geologic assessment concerns***

Houston San Jacinto Ranch expressed concern that the landfill liner will not be adequate because the subsurface geology and landfill design have not been characterized adequately. Specifically, she commented that the application included 19 boring logs and asserted that the information about the number, proximity, and location of the boreholes provided in the application does not demonstrate sufficient establishment of subsurface stratigraphy across the proposed waste management units and that the boring logs showed a stratigraphic complexity that does not demonstrate that applicable subsurface siting requirements have been met and whether sufficient soil borings and piezometer wells were installed. Houston San Jacinto Ranch also commented that the piezometer completion logs do not show the total depth of each boring, do not provide sufficient surface completion details, and conflict with data in the Driller's Well Reports available through the Texas Water Development Board.

- David Van Weldon submitted comments with an enclosure of a review by Dr. Clark and maps and analysis of floodplains, soils, geological formations, and wetlands provided by Dr. Matthew Berg. Jordan Combs provided a link to a soil survey in the area and

commented that the soil in the county is considered severe for landfill use and will not filter out toxins. **Other concerns**

Wood Duck Farm commented that the Executive Director must consider the factors in 30 TAC § 330.331(c).

Wood Duck Farm commented that the application uses an outdated model (Hydrologic Evaluation of Landfill Performance or HELP) to evaluate hydraulics at the proposed landfill; commented that assumptions in the application should be revised to take the gravel layer into account; and stated that groundwater contamination would negatively affect Wood Duck Farm and other neighboring landowners. Bayou City Waterkeeper also commented that the application uses an outdated HELP model, should use the Environmental Protection Agency's (EPA) Stormwater Management Model (SWMM) model, and should use a permeability value with an assumption of gravel not sand.

**Response 26:** To characterize the soils and geology at the site, the Applicant conducted a subsurface investigation following preapproval of a soil boring plan that met the requirements of 30 TAC § 330.63(e)(4)(A) regarding the number of borings to assess the geology underneath the proposed facility. The soil boring plan also met requirements as to the depth of borings to identify the uppermost aquifer and deeper interconnected aquifers in accordance with 30 TAC § 330.63(e)(4)(B).

Part III, Attachment E of the application includes a geology report prepared by a licensed professional geoscientist that provides geologic and hydrogeologic assessment of the area proposed for the facility. The geology report includes a description of nearby aquifers and states that the uppermost aquifer is part of the Chicot Aquifer. In Parts I/II, Section 7.2 and Appendix E of Parts I/II of the application, the Applicant has identified the results of the required oil, gas, and water well searches.

- ***Position of landfill bottom compared to aquifer***

TCEQ rules do not require that the bottom of a landfill be located above the seasonal high-water table, only that the applicant provide methods to prevent groundwater infiltration into the waste cells. The methods proposed at the Peach Creek landfill include proper construction of the liner system and dewatering/ballast specifications as detailed in the Site Development Plan.

- ***Insufficient geologic assessment concerns***

The soil boring plan requirements of 30 TAC § 330.63(e)(4)(A) were met for the number and depths required to assess the geology beneath the site. The uppermost aquifer and the lower confining layer under the uppermost aquifer were identified. TCEQ rules in Chapter 330 do not require use of soil to filter contaminants.

- ***Other concerns***

The requirements of 30 TAC § 330.331(c) only apply to landfills that are using design criteria specified in 30 TAC § 330.331(a)(1) instead of 30 TAC § 330.331(b).

Regarding the concern of whether an outdated HELP model was used in this application, Appendix D6-B of Part III of the application indicates that the current HELP model version 4.0 was used in the leachate generation modeling. Information on the gravel layer is not required in the leachate generation modeling.

The Executive Director has reviewed the application and preliminarily determined that it meets the regulatory requirements regarding the protection of groundwater beneath the site, and that the proposed facility, operated according to 30 TAC Chapter 330 and the draft permit, would be protective of human health and the environment.

**Comment 27 Faulting, Subsidence, and Unstable Conditions:** Jennifer Lee, representing Houston San Jacinto Ranch, LLC (Houston San Jacinto Ranch), expressed concern with potential

faulting and subsurface instability at the location of the proposed landfill and commented that Part II, Sections 9.4 and 9.6 of the application, and other application materials demonstrate subsurface movement, possibly associated with faulting, subsidence, or otherwise unstable areas. Houston San Jacinto Ranch also commented that the area near the proposed landfill has experienced crude oil, natural gas, and groundwater withdrawal.

Stephen Richard Huberty expressed concern that contamination would occur because the proposed landfill is not in an elevated area and is in an area with clay.

**Response 27:** The Geotechnical Engineering Study found in Part III, Attachment D5 of the application contains information on the investigation of the subsurface conditions and evaluation of the landfill unit. The Geology Report found in Part III, Attachment E of the application includes discussions, evaluations, and figures that provide the information required by 30 TAC § 330.63(e). Part II, Section 9.6 (Unstable Areas) of the application states that poor foundation conditions and other unstable areas specified in 30 TAC § 330.559 do not exist at or immediately adjacent to the facility. Sections 9.4 and 9.5 of Part II of the application discuss compliance with requirements of 30 TAC §§ 330.555 (Fault Areas) and 330.557 (Seismic Impact Zones). Attachment A, Section 5 of Part III of the application concludes that the geology report confirms that the geology and soil conditions are suitable for operations as a municipal solid waste disposal facility. The application proposes to use a composite liner that meets requirements in 30 TAC §§ 330.331(a)(2) and 330.331(b). The required composite liner consists of a geomembrane and a re-compacted soil layer, the specifications and construction of which will meet the requirements contained in 30 TAC Chapter 330, Subchapter H, and Part III, Attachment D7 of the application. The liner system will help prevent infiltration and release. There are no requirements for landfills to be constructed in elevated areas or areas without clay.

Please also see Responses to Comment Nos. 25, 26, and 38.

**Comment 28 Landfill Liner:** Sierra Club and Dr. Craig Nazon, Kristen Schlemmer of Bayou City Waterkeeper, Andrew Dreher, Wendy Hindman, Dana Moody, Darelle Robbins, Joy Shipman, Holly Walrath, and Peter Calenzo additionally commented that all landfills leak, and Sierra Club provided information and articles about the topic, commented that liner leaks are often undetected for years, and stated that the Applicant could not know the status of landfill leaks from all Texas landfills. Linda R. Stead, P.E., and Cheryl Huffman expressed concerns about leaks in the landfill liner. Joshua Holley expressed concerns about fires causing leaks through landfill liners. Dana Moody and the persons listed in Attachment 14 expressed concern that volatile organic compounds could permeate through the landfill liner and contaminate groundwater. Dana Moody provided an article about landfill liners and asked what type of technology, such as digital leak detection technology, will be used to protect groundwater. Mandy Cook commented that landfill liners deteriorate over time and monitoring systems are faulty and provided a document that includes information about landfill liners. Elizabeth Martha House stated that use of phyto-remediation plantings should be investigated as an alternative to liners.

Dana Moody asked about the protectiveness of liners, requested clarification about page D-6-B-1 of the draft permit, and commented that the page states that defects may occur at ½ hole per acre and 1 seam failure per acre upon good liner installation techniques.

Abigail Gilson provided specific comments about the proposed liner design and expressed concern with certain portions of the application, including that according to Part 2.2.6 of Attachment D6 of the application, 48 inches of head is allowed in the sump area of the proposed landfill, but the federal guidelines only allow 12 inches. Ms. Gilson stated concerns that any leak in the bottom lining system would immediately impact the groundwater directly below the landfill because the sumps would be located in the areas of lowest elevation of the landfill, closest to groundwater, and that, according to Part 3.3 of Attachment D7 of the application, the liner would be built below the highest measured groundwater elevations.

**Response 28:** The Executive Director has preliminarily determined that the liner system design and the construction procedures in the application are compliant with the regulatory requirements in 30 TAC Chapter 330, Subchapter H. The Liner Quality Control Plan in Part III, Attachment D7 of the application specifies quality control measures for the installation of the liner system. Attachment D7 also includes product quality control criteria performed by the geomembrane liner manufacturers.

Regarding the concern about the assumed defects in the installed liner, the assumed number of defects included in Attachment D6-B (Leachate Generation Model) is consistent with the EPA's guidance and is in line with generally accepted engineering practice.

The leachate collection and removal system is described in Attachment D6 (pages D6-2 and D6-4) of Part III of the application. The system is designed to maintain leachate depths over the liner and the sump bottom at no greater than 30 cm (12 inches) and 36 inches, respectively. These leachate depth specifications are consistent with the generally accepted design and operating requirements. In addition, the sumps are designed to have one additional geomembrane liner for additional protection.

TCEQ rules in Chapter 330 do not require exploring the use of phyto-remediation as an alternative to the required landfill liner system. The application does not propose any alternatives to the required landfill liner system.

The Executive Director has reviewed the application and preliminarily determined that it meets the regulatory requirements.

**Comment 29 Monitoring Recommendation:** Abigail Gilson commented that federal guidelines may not be protective of groundwater because newer technologies, such as Electrical Leak Location (ELL), were developed after the regulations. Ms. Gilson described ELL as having the ability to detect leaks in installed geomembranes using electricity and recommended that ELL be used, even if on a voluntary basis. Patrick Rightmyer expressed concern that the proposed landfill would use a single barrier rather than a dual barrier with ELL technologies.

**Response 29:** The Executive Director has preliminarily determined that the liner quality control measures, including defects detection and repairing, in Attachment D7 of Part III of this application are consistent with the rules in 30 TAC Chapter 330, Subchapter H and TCEQ guidance document RG-534. Please also see Response to Comment No. 24.

**Comment 30 Monitoring Private Wells:** Sierra Club recommended that TCEQ monitor private wells.

**Response 30:** TCEQ rules in Chapter 330 do not require monitoring of private wells for MSW Type I landfill permitting.

**Comment 31 Landfill Gas and Groundwater:** Teresa Calenzo, Jason P. Chadwick, Sarah Lynskey, and the persons listed in Attachment 15 asserted that gasses from the landfill would contaminate groundwater.

**Response 31:** The landfill gas management measures and landfill liner system contained in Attachments D and G of Part III of the application are designed to prevent or reduce the probability of groundwater being contaminated by the landfill gas. The groundwater monitoring procedures described in Attachment F of Part III of the application are designed to detect groundwater contamination regardless of contaminant sources. The Executive Director has reviewed the application and preliminarily determined that it meets the regulatory requirements.

**Comment 32 Surface Water Drainage Analysis:** The persons listed in Attachments 16 raised concerns about the effect of the proposed activity on surface waters, including concerns that the proposed landfill would produce runoff that would pollute surface waters such as Peach

Creek, Jayhawker Creek, and other water bodies in the surrounding areas, potentially reaching Lake Houston. Venus Price expressed concern that the proposed landfill would be within the City of Houston's source water footprint. Will Cook commented that discharge of contaminated water to surface water would contaminate soil through leaching or run-off. Craig Gordon commented that his land has a pond and creek fed from the area where the proposed landfill will be located. Jesse Reynolds commented that a creek runs from the site of the proposed landfill to his backyard. Debra Rodriguez commented that toxic overflow from the landfill would pollute her pond. David Van Weldon stated that he uses surface water to irrigate his crops, stated concerns that livestock drink directly from surface waters, and expressed concern that natural drainage may be altered because of road construction to the landfill. Douglas Cole Grijalva expressed concerns that stormwater could affect Wood Duck Farm. Linda R. Stead expressed concerns that the proposed landfill is near an unconfined aquifer, which is the primary source of base flow in Peach Creek. Shane Hindman commented that water would be contaminated at some point, if not right away.

The persons listed in Attachment 18 raised general concerns regarding flooding, including the increased risk of downstream contamination during flooding events, and whether the location of the proposed facility is prone to flooding. The persons in Attachment 19 expressed several concerns that stormwater overflow, leachate, and volatile organic compounds (VOCs) will make the floodplain a conduit for contamination and negatively impact downstream populations and resources. Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC (Houston San Jacinto Ranch), commented that the application does not adequately demonstrate that water contaminated after encountering waste will not negatively impact nearby surface water quality.

Dana Moody asked in what situation contaminated waters may be released into surface waters. Eric Anderson asked what would be done to ensure overflow from water tanks would not contaminate drinking water. Linda Kay Stegenga asked whether the permit would allow the transport of contaminated water to a POTW for treatment and disposal.

Victoria Swanson expressed concern about the existing shortage of water.

Mandy Cook commented that the application does not address stormwater or surface water contamination during all phases of the landfill and does not address the possibility of water seeping into the landfill during or after operation and referenced an article. Mandy Cook further commented that San Jacinto County does not have the resources to address potential contamination or repair infrastructure if Jayhawker Creek overflows and drains into other creeks or bodies of water.

Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC, (Houston San Jacinto Ranch) commented that the application does not address impacts of construction and operation on neighboring properties on drainage and surface water. Eric Anderson commented that the standing water in the area outside of the proposed facility is not managed by the county and does not reflect the changes in the level of rain and potential flooding that will occur in the current environment. Houston San Jacinto Ranch commented that the application does not adequately demonstrate management of stormwater contact with reusable materials and stockpiles that would be used in the proposed landfill.

Kristen Schlemmer, on behalf of Bayou City Waterkeeper, (Bayou City Waterkeeper) and Wood Duck Farm commented that one foot of freeboard for detention ponds is not adequate due to recent rainfall levels.

Linda Stegenga commented that Big Buck Lake Dam has been authorized for construction in the area, asked whether the dam would collect storm water, expressed concern that water contamination and flooding would occur if the dam broke during a severe weather event, and referenced the 2017 Conroe Dam release.

Wood Duck Farm and Bayou City Waterkeeper commented that surface water flows into a creek that is within a floodplain, that the rainfall data considered in the application is incorrect, and that the flooding surface water drainage requirement would not be met.

**Response 32:** In accordance with 30 TAC §§ 330.63(c), 330.303, 330.305, and 330.307, an applicant must provide a Surface Water Drainage Report regarding the management of run-on and runoff at the landfill. The Surface Water Drainage Report for the proposed facility is contained in Part III, Attachment C of the application.

30 TAC § 330.305 requires design, construction, and maintenance of a run-on control system capable of preventing flow onto the active portion of the landfill during the peak discharge from at least a 25-year rainfall event (found in Part III, Attachment C1), assessment of existing and proposed drainage characteristics of the facility (found in Part III, Attachment C1), and a runoff management system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm (found in Part III, Attachment C1, App C1-A). Additionally, existing drainage patterns must not be adversely altered, and the landfill design must provide effective erosional stability to top dome surfaces and external embankment side slopes during all phases of landfill operation, closure, and post-closure care (found in Part III, Attachment C3). Dikes, embankments, drainage structures, or diversion channels sized and graded to handle the design runoff must be provided (found in Part III, Attachment C).

The Facility Surface Water Drainage Report found in Part III, Attachment C of the application, provides discussions and detailed designs, calculations, and operational considerations for the collection, control, and discharge of storm water from the landfill as required by the rules. The drainage system described in the application consists of various drainage structures, for example, perimeter channels, detention ponds, swales, and down chutes, including temporary berms constructed to minimize the amount of surface water that comes into contact with waste. The Facility Surface Water Drainage Report indicates that the drainage analysis was performed consistent with TCEQ rules and guidance and the TxDOT Hydraulic Design Manual (2019). The proposed landfill is designed to prevent discharge of pollutants into waters of the state or waters of the United States, as defined by the Texas Water Code and the Federal Clean Water Act, respectively. The application contains a certification statement in Part II, Section 10.2 indicating that the Applicant will obtain the appropriate TPDES coverage, as required by Section 402 of the Federal Clean Water Act, for the proposed facility to assure that storm water discharges are in compliance with applicable regulations.

Uncontaminated run-off from the landfill structure will be collected and conveyed through the perimeter channels to four detention ponds. The four detention ponds discharge into Jayhawker Creek. The system is designed to convey the 25-year peak flow rate from the top dome surfaces and external embankment side slopes consistent with TCEQ regulations. The comparisons of existing and post-development surface drainage conditions at four discharge points on the permit boundary indicate no adverse offsite impact due to the development of the landfill. The demonstration that existing permitted drainage patterns will not be adversely altered is provided under Part III, Attachment C1 of the application, as required. Contaminated water that has come in contact with waste will be addressed as provided in the Leachate and Contaminated Water Management Plan of the permit application.

Regarding the comment about minimum freeboard, the applicable sections of Chapter 330 of TCEQ rules do not specify the minimum freeboard for detention ponds. It is the design engineer's responsibility to ensure sufficient freeboard. Regarding concerns about minimum freeboard and dams, the surface drainage system proposed for this site was designed to have sufficient capacity to manage the surface runoff from 25-year 24-hour storm events as required by Chapter 330, Subchapter G, of TCEQ rules.

As discussed in more detail in Response to Comment No. 28, contaminated water will be collected and managed in accordance with the Leachate and Contaminated Water Management

Plan found in Part III, Attachment D-6 of the application. Contaminated water will not be placed in or on the landfill; rather, it will be transported offsite, by an authorized wastewater transporter, to an authorized facility for treatment and disposal.

Stormwater run-on/runoff at the reusable material areas are discussed in Attachment B, Section 2 of Part III and Section 8.25.2 of Part IV of the application. Stormwater runoff from piles of non-inert materials will be collected in berms and managed as contaminated water. In addition, stormwater management will be in accordance with the TPDES permits. Please also see Responses to Comment No. 33 and 34.

In accordance with 30 TAC §§ 330.63(c), 330.303, and 330.305, an applicant must provide a Surface Water Drainage Report regarding the management of run-on and runoff at the landfill. The Surface Water Drainage Report for the proposed facility is contained in Part III, Attachment C of the application.

An owner or operator of an MSW facility is required to: manage all liquids resulting from operation of the facility in a manner that will not cause surface water or groundwater pollution; provide for the treatment of wastewaters resulting from waste management activities, cleaning, and washing; and ensure that storm water and wastewater management comply with 30 TAC § 330.55 (relating to Other Authorizations). The application addresses these requirements in Attachment D6 and other relevant portions of the application and by being committed to obtain a TPDES permit.

The proposed facility's location in relation to a 100-year floodplain is discussed also in Response to Comment No. 39, below. The Executive Director has preliminarily determined that the application has demonstrated compliance with the requirements regarding the 100-year floodplain, surface drainage, waste spill clean-up, and prevention of contaminated water discharge. Please see Response to Comment No. 32 for more discussion.

Regarding the concern about tank overflow, the leachate storage tanks are equipped with a secondary containment system that has capacity to contain the volume of leachate from a worst-case scenario spill plus the volume for the stormwater from a 25-year 24-hour precipitation event. The calculations for the secondary containment system are included in Attachment D6-C of Part III of the application. The tanks will be operated per the site's Stormwater Pollution Prevention Plan (SWP3) spill and overflow measures.

Regarding the comment concerning an existing water shortage, according to Section 7 of Part IV of the application, the primary firefighting method is using soil with water as one of the supplemental means; and water for firefighting will be from available sources at the site including on-site water storage tank. It is the permittee's responsibility to make water available for the on-site activities. Drinking water shortages are outside of the scope of the evaluation of the application.

The Executive Director has preliminarily determined that the application complies with all applicable requirements regarding stormwater and contaminated water management.

Please see Response to Comment No. 25 for further discussion on groundwater seepage. Please also see Responses to Comment Nos. 33 and 39 about flooding. Details about the Floodplain Determination are found in Attachment C4 of the application.

**Comment 33 Flooding:** Bryan French, representing Wood Duck Farm (Wood Duck Farm), asserted that the Applicant failed to consider upstream alterations and water velocity as required by 30 TAC § 330.305(a), the Applicant's drainage analysis is flawed because the analysis solely focuses on downstream drainage impacts and ignores upstream drainage impacts not meeting the requirements of 30 TAC §§ 330.63 and 330.303, and without including the access road in the Permit Boundary would "controvert" 30 TAC § 330.305. The commenter was concerned that the creek that will receive discharges is within the FEMA 100-year floodplain and that removing trees will increase the water velocity in the area.

Wood Duck Farm and the persons listed in Attachment 17 commented that the proposed access road would leave little to no room for detention ponds or other actions to mitigate flooding because the access road is 100 feet wide and that the removal of trees for the access road within the floodplain may increase flood water velocity.

Wood Duck Farm commented that the application lacks provisions to mitigate the impoundment of surface water. Specifically, Wood Duck Farm asserted the application lacks a sheet flow analysis to show drainage patterns across the affected area, including areas off the permit boundaries where water may be impounded by facility activities.

The persons listed in Attachment 20 also expressed concern that roads in and around the proposed facility are susceptible to flooding, and some commenters submitted photographs. Bryan French, representing Wood Duck Farm, (Wood Duck Farm) commented that further study is necessary to prevent flooding given the location of the proposed access road. John David McDonald recommended that TCEQ consult with David Brandon, San Jacinto County Commissioner for Precinct 3, for his input as to flooding and road conditions. Mandy Cook expressed concerns that the proposed facility would not comply with San Jacinto County Development plans which provide that any commercial or private development that is being built in a potential flood area is required to have their first floor raised above ground level.

Timothy Sumrall raised concerns with area surface water drainage by providing photos and a video depicting water over a road at the corner of Jayhawker Road and Lucille Drive. Delores Strange raised concerns that the flooding county roads would not withstand the facility traffic expected. Ed Rinehart commented that this area is subject to flooding and regarding the impounding of surface water turns roads “into lakes.” Dana Moody included information about a Harvey Buyout Program and asked how the program would apply to flooding considerations when preparing the draft permit.

**Response 33:** The comparisons of surface drainage conditions between the pre-development and post-development scenarios are presented in Drawing C1.8 and Table C1-3 of Part III, Attachment C of the application. The four comparison points are located both up and downstream of the proposed landfill site. The comparisons show that there are no differences at Comparison Points 1-3 and very small changes at Comparison Point 4. Table C1-3 shows that peak velocities at the four comparison points remain almost the same between the pre-development and post-development scenarios. The Applicant has demonstrated there is no significant change in the velocities.

Regarding localized sheet flows or possible localized surface water ponding, it should be noted that the proposed facility will maintain a buffer zone of no less than 125-feet wide. In addition, the application proposes no changes to the existing contours along the east side of the permit boundary.

The Executive Director acknowledges John David McDonald’s recommendation.

A Harvey Buyout Program is outside of the scope of the evaluation of the application for an MSW permit.

The Executive Director has preliminarily determined that the surface drainage analysis in the application demonstrates compliance with the applicable requirements in 30 TAC Chapter 330.

For concerns regarding the access road, please see Responses to Comment Nos. 16, 18, and 19. Please see Response to Comment No. 32 about altering current drainage conditions.

For concerns related to water over the public access roads, please see Response to Comment No. 16. In response to public concerns regarding access roads, the application was revised to relocate the site access road to a private road connecting to Fostoria Tram Road. Jayhawker Road and Rajak Road will not be primary access routes.

**Comment 34 Water Permits:** Sierra Club recommended that the Clean Water Act, Section 401 program be considered. Bryan French, representing Wood Duck Farm, and Kristen Schlemmer of Bayou City Waterkeeper recommended that the TPDES permit should require that downstream surface water be tested, including for biochemical oxygen demand.

Charles Branch, Caylie Carnline, Julie C. Jones, Steven Malkey, Mindy Morgan, Kathryn Smith, Darren Peltier, Christina Wheeler, and William Lambard expressed concerns about the proposed landfill applying for a NPDES or water discharge permit.

Sierra Club recommended that TCEQ coordinate with the Houston-Galveston Council about its Watershed Protection Plan and Total Maximum Daily Load Implementation Plan for the East Fork of the San Jacinto River Watershed.

**Response 34:** Authorization to discharge storm water or treated effluent from the proposed landfill is subject to authorization under the commission's TPDES program and are therefore outside of the scope of this MSW landfill permit application. Section 10.2 of Parts I and II of the application states that the landfill will obtain coverage under the TPDES permits prior to construction and commencement of landfill operation. The application does not propose offsite discharge of contaminated water.

The Executive Director acknowledges the recommendation regarding coordination with the Houston-Galveston Council.

**Comment 35 Leachate Management:** Sierra Club commented that the permit should require leachate monitoring through cameras and should be updated every three years to the latest technology. Sierra Club commented, regarding section 8.25.6 of Part IV of the application, that the permit should only allow a maximum of 100,000 gallons of leachate storage for a maximum of 30 days to reduce the likelihood of leachate spills.

**Response 35:** The suggested measures are not required by the applicable sections of Chapter 330 of TCEQ rules. The leachate collection and removal system is described in Attachment D6 (pages D6-2 and D6-4) of Part III of the application. The system is designed to maintain leachate depths over the liner and the sump bottom at no greater than 30 cm (12 inches) and 36 inches, respectively. Leachate stored in the tanks will be periodically transported offsite for disposal at an authorized facility for treatment/disposal. Leachate will be removed from the storage tanks at a frequency such that the tanks will have sufficient remaining capacity to receive leachate from the sumps. See Response to Comment 28 for limitations on leachate depths. See Response 32 for more information on prevention of surface water contamination. The Executive Director has preliminarily determined that the application complies with applicable sections of Chapter 330 of TCEQ rules.

**Comment 36 Erosion Control:** Mandy Cook expressed concern that erosion would remain an issue during the life of the proposed landfill and asked how often erosion would be checked for compliance. Mandy Cook additionally stated that the application did not contain information about how erosion would affect water flow and the ecosystem, when considered with flooding issues. Sierra Club recommended the most stringent side slope erosion control measures including complete vegetation coverage.

**Response 36:** Inspection for erosion control is discussed in Section 8.26 of Part IV of the application. In accordance with the requirements of TCEQ rules found in Chapter 330, Subchapter G, erosion control measures are included in Attachment C3, Erosion and Sediment Control of Part III of the application. Attachment C3 specifies that the grass coverage on the intermediate and final covers of the landfill will be at least 95 percent along with limitations on the drainage swale spacing. With the erosion control measures implemented, the soil loss from the landfill slopes is calculated to be within the allowable limits. Section VIII. F of the draft permit requires periodic inspection and maintenance on the drainage system. In addition, the site will be subject to surface drainage measures included in the TPDES permit. The Executive

Director has reviewed the application and preliminarily determined that it complies with the applicable regulatory requirements.

**Comment 37 Wetlands:** Commentors questioned if the wetland determination was done following correct processes and using current data. Kristen Schlemmer of Bayou City Waterkeeper and Bryan French, representing Wood Duck Farm (Wood Duck Farm), expressed concerns with the federal nexus between the proposed landfill and Jayhawker Creek. Wood Duck Farm commented that the application relies on an outdated legal interpretation that restricted wetlands from the definition of “waters of the United States,” and under the current interpretation a 404 permit would likely be required. Kristen Schlemmer of Bayou City Waterkeeper commented that the approved jurisdictional determination obtained by the Applicant in 2020 depended on the Navigable Waters Protection Rule, which has been vacated by a federal court. Thus, she recommends a reconsideration of the wetlands determination using the *Rapanos* significant nexus test and the U.S. Army Corps of Engineers’ policy of finding jurisdiction over many wetlands in the 100-year floodplain. Kristen Schlemmer and Ayesha Durrani, both of Bayou City Waterkeeper, and Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC, also commented that the application does not adequately consider the impact of the proposed landfill on wetlands based on nearby water bodies and as required by 30 TAC § 330.553. Sierra Club recommended that the Clean Water Act Section 404 program be considered. Jackie Woychesin, Dana Moody, and Mandy Cook expressed concern about the proposed landfill’s effects on wetlands.

Kristen Schlemmer and Ayesha Durrani, both of Bayou City Waterkeeper, commented that TCEQ should complete an antidegradation review under 30 TAC § 307.5(a) to determine whether the proposed landfill would degrade downstream waters such as Peach Creek, Caney Creek, and Lake Houston, and should include consideration of how floodplains and wetlands may affect water quality. Sierra Club commented that an anti-degradation assessment should be considered and that TCEQ should coordinate with water programs.

**Response 37:** In accordance with 30 TAC § 330.61(m), the Applicant is required to include a wetlands determination under applicable federal law in the application. TCEQ relies on the U.S. Army Corps of Engineers (USACE) to make jurisdictional determinations regarding waters of the United States. Section 11.2 of Parts I and II of the application states that on December 15, 2020, the USACE made a preliminary jurisdictional determination that 1.58 acres of the site are jurisdictional waters of the United States, and the Applicant is not proposing any disturbance or activities in those areas. Thus, the USACE found no impacts to jurisdictional waters consistent with 30 TAC §§ 330.61 and 330.553. Additional information may be found in the correspondence contained in Appendix G of Parts I and II of the application. The Executive Director has reviewed the application and preliminarily determined that it satisfies the rule requirements regarding wetlands.

Regarding antidegradation reviews, the application does not propose discharge of contaminated water into the offsite water system or activities that would require a wetland permit from the USACE. The surface drainage system has been designed considering the possible impact on the existing drainage patterns consistent with the MSW regulatory requirements. Please also see Responses to Comment Nos. 32 and 33. An antidegradation review is outside of the scope of the evaluation of the application. The Executive Director has preliminarily determined that the application meets the applicable regulatory requirements.

**Comment 38 Soil Contamination:** City of Cleveland, Vanessa Luna, Sarah Lynskey, Dana Moody, Melisa Peterson, and Roy Mandell expressed concern that the proposed landfill will contaminate soil.

**Response 38:** The Texas Solid Waste Disposal Act (TSWDA) found at Texas Health & Safety Code Chapter 361 and TCEQ’s rules found at 30 TAC Chapter 330 were promulgated to protect human health and the environment and are the basis of TCEQ’s jurisdiction over municipal

solid waste. The role of the Executive Director in the technical review process of a permit application is to evaluate the contents of the application, verify its compliance with all the statutory and regulatory requirements, and verify that information has been provided to ensure that the design, construction, and operation of the proposed facility will be protective of human health and the environment. See Responses to Comments 26 and 32.

The Executive Director has preliminarily determined that the application complies with applicable sections of 30 TAC Chapter 330, which were promulgated to protect human health and the environment. If the proposed landfill is operated in accordance with the permit provisions and all applicable rules and requirements, no adverse health impacts are expected, which would include soil contamination.

**Comment 39 Floodplain:** The persons listed in Attachment 19 expressed several concerns regarding the proposed facility's proximity to a Federal Emergency Management Agency (FEMA) 100-year floodplain. The persons listed in Attachment 21 commented that the floodplain maps contained in the application are outdated and inaccurate, and, as a result, the facility is in a 100-year floodplain. Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC, and Mandy Cook commented that the application did not properly address whether the proposed facility is located on a floodplain. Bryan French, representing Wood Duck Farm (Wood Duck Farm), commented that the Applicant has not shown compliance with TCEQ mandates related to floodplain and wetland impacts. Wood Duck Farm commented that TCEQ should consider the well-known increases in rainfall events and the near certain expansion of the FEMA floodplain as the current application fails to adequately address hazards posed by potential flooding and alterations to area wetlands. Jason Roesner, District Ranger with the Sam Houston National Forest, United States Forest Service United States Department of Agriculture (Forest Service) commented that the delineation of the 100-year floodplain in the application is inconsistent with the Forest Service's assessment. The Forest Service recommended a review of the delineation of the 100-year floodplain as well as the development of additional design criteria for the facility to prevent flooding and additional mitigation measures in the event flooding occurs. The persons listed in Attachment 22 recommended that the Applicant provide updated floodplain maps.

**Response 39:** 30 TAC § 330.61(m) requires an owner or operator of a proposed MSW facility to submit a Floodplains and Wetlands Statement that includes information concerning the location of floodplains. 30 TAC § 330.63(c)(2) requires an applicant to identify in the Surface Water Drainage Report whether the site of the proposed MSW facility is located within a 100-year floodplain, and FEMA maps are prima facie evidence of floodplain locations. 30 TAC § 330.547(a) provides that no solid waste disposal operations shall be permitted in a 100-year floodway as defined by the FEMA, and 30 TAC § 330.547(b) provides restrictions and requirements for new MSW units located in 100-year floodplains. Pursuant to 30 TAC § 330.547(c), storage and processing facilities are required to be located outside of the 100-year floodplain unless the owner or operator can demonstrate that the facility is designed and will operate to prevent washout during a 100-year storm event or obtains a conditional letter of map amendment from the FEMA administrator. Section 11.1 of Parts I and II of the application states that the current effective FEMA 100-year flood map is used in the application. This section also states that the waste disposal footprint, storage and processing areas, and all construction will be located outside the limits of the 100-year floodplain. The applicable Floodplains and Wetlands Statement in the application indicates that, according to the Flood Insurance Rate Map, no portions of the proposed waste management areas are within the 100-year floodplain. The Applicant provided adequate information to show that the proposed facility will comply with 30 TAC § 330.547 and § 330.63(c)(2) related to the 100-year floodplain determination and restrictions. Use of the current effective FEMA map for the 100-year floodplain determination in this application is consistent with the TCEQ rule.

Concerning those comments regarding contamination and runoff, the Executive Director has preliminarily determined that the application has demonstrated compliance with requirements

on 100-year floodplain (No. 39), surface drainage (Nos. 32 and 33), waste spill clean-up (Nos. 16 and 19), and prevention of contaminated water discharge (Nos. 32, 35, and 19). Please see Responses to the above referenced Comments for further discussion.

Concerning the Forest Service's comment that the delineation of the 100-year flood plain in the application is inconsistent with their own assessment and recommendation for a review of the delineation of the 100-year floodplain as well as the development of additional design criteria, the Executive Director acknowledges the recommendations and has preliminarily determined that the application complies with all applicable regulatory requirements.

The surface drainage analysis and control measures contained in the application demonstrated compliance with the regulatory requirements of 30 TAC Chapter 330.

Regarding the concern that the access road is within the floodplain, please see Response to Comment No. 15. To address the public concerns related to access roads, the Applicant in August 2023 revised the site access route to relocate the private access road to connect to Fostoria Tram Road. The site access road relocation will eliminate any site traffic traveling through floodplain and residential areas on Jayhawker Road and Rajak Road.

#### **D. ENDANGERED SPECIES AND WILDLIFE**

**Comment 40 Threatened or Endangered Species:** The persons listed in Attachment 23 expressed concern that the proposed landfill would negatively affect endangered and threatened species in the area, and some expressed concern with specific species, such as the Red-cockaded woodpecker, Timber rattlesnake, Louisiana pine snake, White-tailed deer, and bald eagle.

Sierra Club commented that the biological assessment should be revised because the Red-cockaded woodpecker has a designated habitat within about a quarter- to a half-mile of the proposed landfill site, and the application states that no area near the proposed landfill site has been designated as a critical habitat.

Rachel Lange, on behalf of Texas Parks and Wildlife Department (TPWD), commented regarding several federally and/or state-listed species that could potentially be found in the proposed facility area. TPWD commented that the Applicant should review the TPWD lists and determine what species are in the area with negative observation and submit data about additional species found to the Texas Natural Diversity Database. Bryan French, representing Wood Duck Farm (Wood Duck Farm), Kristen Schlemmer on behalf of Bayou City Waterkeeper (Bayou City Waterkeeper), and Houston San Jacinto Ranch, LLC commented that the application did not provide enough information demonstrating that the proposed landfill would not adversely impact endangered species and their habitats. Mandy Cook provided a document with information about the effect of landfills on endangered species and their habitats and commented that the application did not adequately identify potential threatened or endangered species. Wood Duck Farm commented that the Applicant did not provide a required habitat conservation plan and that some correspondence with TPWD was not included in the application. Bayou City Waterkeeper commented that the Applicant does not have a sufficient plan to mitigate impacts to species. Wood Duck Farm and Bayou City Waterkeeper additionally commented that a field study should have been completed and that other mitigation strategies beyond removal should be considered.

Eleanor Zoeller commented regarding effects on wildlife habitats in the vicinity of the proposed facility.

**Response 40:** Provisions 30 TAC § 330.61(n), § 330.63(b)(5), and § 330.157 address impact of solid waste disposal facilities on threatened or endangered species. In accordance with 30 TAC § 330.551(a) (relating to Endangered or Threatened Species), "a facility and the operation of a facility shall not result in the destruction or adverse modification of the critical habitat of

endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.”

According to 30 TAC § 330.61(n)(2), an applicant must demonstrate compliance with the Endangered Species Act under state and federal laws and determine whether the proposed facility will be in the range of endangered or threatened species. This includes a biological assessment and coordination with USFWS and TPWD for locations and specific data relating to endangered and threatened species in Texas.

The application includes the appropriate letters of coordination with the USFWS and the TPWD, which are included in Appendix B of Parts I and II of the application. As part of the review of this permit application, a biological assessment, found in Appendix H of Parts I and II of the application, was prepared to evaluate potential impacts to endangered and threatened species and to provide measures for protection of such species. The biological assessment determined that no area on or near the proposed landfill site has been identified as a critical habitat for any threatened or endangered species, and Section 12 of Parts I and II of the application conclude that no adverse impact to endangered species or any critical habitat is anticipated because of construction and operation of the proposed landfill. A species protection plan has been developed and included as Appendix IVC in Part IV of the application.

The Species Protection Plan in Appendix IV C of the application provides for protective measures regarding the following species because the biological assessment indicated they could be present at site: (1) Bachman's Sparrow (state list); (2) Red-cockaded woodpecker (state and federal lists); (3) Timber rattlesnake (state list); (4) Rafinesque big-eared bat; (5) alligator snapping turtle; and (6) Louisiana pine snake. Personnel at the proposed facility will be provided with species identification materials for the endangered or threatened species referenced in the biological assessment and with instructions in the event such species are encountered. Personnel will be “directed not to annoy, pursue, hunt, wound, trap, capture or collect” any such species, except for capturing for purposes of relocation as authorized by the plan and a permit.

The Timber rattlesnake is a state-listed endangered/threatened species. The Species Protection Plan provides that facility personnel will be advised to avoid contact with and impacts to the Timber rattlesnake. If observed during construction, Timber rattlesnakes will be allowed to safely leave the facility or be relocated by a person permitted through TPWD Wildlife Permits Office to a nearby area to the minimum distance possible with similar habitat that would not be disturbed during construction.

The Red-cockaded woodpecker is a federally-listed endangered/threatened species. The Species Protection Plan provides that a qualified biologist will conduct pre-construction surveys for the red-cockaded woodpecker if disturbance to mature, open pine forests required by the Red-cockaded woodpecker is anticipated. If the Red-cockaded woodpecker or their habitat would be impacted by the proposed activity, or if the Red-cockaded woodpecker is observed, the owner/operator would coordinate with TPWD and USFWS as appropriate to determine strategies for avoidance, minimization, or mitigation. If the Red-cockaded woodpecker is observed, the owner/operator would additionally coordinate with the agencies for guidance and survey protocols.

The Executive Director has preliminarily determined that the information submitted in the application satisfies the statutory and regulatory requirements concerning protected wildlife and wildlife habitats.

Please also see Response to Comment No. 41.

**Comment 41 Wildlife:** The persons listed in Attachment 24 expressed concern over the proposed landfill's effect on wildlife and livestock in the area. Senator Robert Nichols and Representative Ernest Bailes requested a public meeting due to concerns about wildlife. Jason Roesner, District Ranger with the Sam Houston National Forest, United States Forest Service,

United States Department of Agriculture (Forest Service) commented that impacts on wildlife and their habitats potentially would be directly impacted by the proposed landfill and requested information about how these potential impacts would be mitigated. Bryan French, representing Wood Duck Farm, and Kristen Schlemmer of Bayou City Waterkeeper additionally asserted that some of the TPWD's recommended actions have not been incorporated in the draft permit. Rachel Lange, on behalf of TPWD, provided general recommendations to minimize adverse impacts to the state's fish and wildlife resources in the construction of the proposed facility.

Sierra Club expressed concern about the effect of lighting on wildlife. Sierra Club and Joy Shipman commented that the proposed landfill may affect aquatic life.

**Response 41:** Under 30 TAC § 330.63(b)(1), an applicant must describe how access will be controlled for the proposed facility, such as the type and location of fences or other suitable means of access control to prevent the entry of livestock. As described in Response to Comment No. 40, 30 TAC § 330.61(n) requires the Applicant to consider the impact of the proposed MSW facility on endangered and threatened species. MSW rules do not address other wildlife or livestock or facility lighting; however, if the facility is constructed and operated in accordance with the draft permit, the TPDES permit, and 30 TAC Chapter 330, local wildlife, aquatic life, and livestock will be adequately protected.

The Applicant provided TCEQ with a response letter addressed to TPWD that addressed TPWD's recommendations. Correspondence between the Applicant and TPWD is contained in Appendix B of Parts I and II of the application, and Appendix IVC (Species Protection Plan) was created in response to the TPWD recommendations.

#### **E. LOCATION OF LANDFILL**

**Comment 42 Land Use Compatibility:** The persons listed in Attachment 25 expressed concern that the location of the proposed facility is incompatible with surrounding land uses, specifically to adjacent residential neighborhoods. Martha Charrey, Rachel Lange, on behalf of Texas Parks and Wildlife, and Bryan French, representing Wood Duck Farm, commented that the application did not provide adequate information about surrounding land uses and its compatibility with the proposed landfill. John David McDonald commented that he has a water well that is not in state records and has not been considered.

The persons listed in Attachment 26 expressed concerns about the effects of the proposed landfill on Wood Duck Farm. Commenters expressed concern for Wood Duck Farm's financial livelihood as well as health concerns regarding consuming crops that have been contaminated due to the soil and water. The persons listed in Attachment 27 expressed concern for farms and farmers in the area, generally.

**Response 42:** In accordance with 30 TAC § 330.61(h), an owner or operator must provide information regarding the likely impacts of the proposed facility on cities, communities, groups of property owners, or individuals by analyzing the land uses, zoning in the vicinity, community growth patterns, water wells, and other factors associated with the public interest.

As required in 30 TAC § 330.61(h), Part II, Section 7 of the application provided the following: information about the character of the surrounding land uses within one mile of the proposed facility; information about growth trends within five miles of the proposed landfill with directions of major development; proximity to residences, business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; and information regarding all known wells within 500 feet of the site. Pursuant to Section 7 of the application, 97.7 percent of the surrounding land within one mile of the proposed facility is classified as Open, consisting of silviculture, forest land, agriculture (small farms and pastures), vacant, and floodplain. Residential land within one mile of the proposed facility consists of rural, single-family residential homes. As of January 2019, there are 90 residences (estimated

90 acres) within one mile of the proposed facility. Residential land is rural, single-family residential homes comprising an estimated 1.6 percent of the land area within one mile of the proposed facility. The Texas Historic Sites Atlas of the Texas Historical Commission did not identify any historic sites or structures or any archaeological sites within one mile of the proposed facility boundary. There are no churches, daycare centers, schools, recreational areas, cemeteries, or sites having exceptional aesthetic quality located within one mile of the proposed facility. In addition, there are no buildings or structures located within 500 feet of the proposed facility.

Pursuant to Section 7 of the application, the proposed facility is in an unincorporated area of San Jacinto County, not subject to municipal zoning requirements. Moreover, the proposed facility is more than 4 miles from any incorporated city. The proposed facility is not within the extraterritorial jurisdiction of any incorporated city and thus not subject to the subdivision regulations of any city. The proposed facility does not require approval as a nonconforming use or a special permit from any local government. As of the date of the application, San Jacinto County has not adopted any order or ordinance prohibiting solid waste disposal or processing. The area within 4 miles of the landfill site is not zoned. Section 7.2 of the application describes the water well search within one mile of the proposed facility permit boundary.

Apart from the land use compatibility requirements and the location restrictions in the rules referenced above, TCEQ does not have the authority to specify the location of the proposed facility, determine zoning ordinances, or to suggest an alternative location. The Executive Director is only permitted to review the application as submitted by the Applicant for compliance with all applicable rules and requirements. The Executive Director has reviewed the application and preliminarily determined that it meets the rule requirements regarding land use compatibility, including the proposed facility's proximity to residential neighborhoods.

The Executive Director has preliminarily determined that the application complies with all applicable land use requirements.

For comments concerning effects on farms, please also see the responses in Section C of this Response that addresses concerns about soil and water. Health concerns are addressed in Response to Comment No. 4, and concerns about livelihood are addressed in Response to Comment No. 3.

**Comment 43 Alternative Land Use:** Kyel Allmaras and Stephen Richard Huberty commented that the area where the proposed landfill is to be located could be put to a better use than land disposal. Darelle Robbins commented that the Applicant should withdraw its application and consider more sustainable options and other uses for the land.

**Response 43:** The rule requirements and operational standards for a Type I MSW Landfill were promulgated to be protective of human health and the environment. If a site meets the applicable statutory and regulatory requirements, TCEQ does not have the authority to mandate a different location for a facility. The Executive Director has reviewed the application and preliminarily determined that the application complies with the applicable rules.

**Comment 44 Recreational Impacts:** The persons listed in Attachment 28 expressed concern about the effect of the proposed landfill on recreational activities and forests/parks in the area given their proximity to the site of the proposed landfill. Jason Roesner, District Ranger with the Sam Houston National Forest, United States Forest Service, United States Department of Agriculture (Forest Service) identified flooding as a potential impact on the Sam Houston National Forest and asked for additional information regarding design criteria proposed to mitigate the potential impacts of flooding. Daniel Semar commented that the main hiking trail in the forest begins about 2 miles from the proposed landfill. David Zajicek commented that tourists travel to the National Forest to enjoy hiking, camping, swimming, fishing, and the outdoors and that odor would negatively affect the forest. Jordan Combs expressed concerns about fires in the National Forest. Brandt Mannchen and Dr. Craig Nazon, both with Sierra Club,

Frank Blake, Kristen Schlemmer on behalf of Bayou City Waterkeeper, Linda R. Shead, P.E. of Shead Conservation Solutions, Linda Kay Stegenga, and Dr. Ken Kramer commented that the National Forest is important for recreation, biodiversity, and wildlife, and as a recharge zone and watershed protecting regional water quality and quantity. Sierra Club and Holly Walrath raised concerns that the proposed facility would disrupt the flood reducing functions of the National Forest. Sierra Club and Holly Walrath commented that the Forest Service and TCEQ should work together to prevent the proposed landfill. Dr. Ken Kramer commented that an access road through the National Forest should not be used. James “Jamie” Hannan, Jr., Olive Hershey, Ph.D., Andrew Leslie, Regina Levoy, Brenda Lee Sherwood, Lara Alves, Kate Wasserman, and Mohamed Magdy Kandil commented that they enjoy recreation in the National Forest. The persons listed in Attachment 29 and Peter Calenzo, Regina Levoy, Dana Moody, Susan Nichols, Terri Thomas, Miguel A. Sosa, Cristina Y. Tipton, and Linda Field commented that the National Forest acts as a natural filtration system, and some commenters provided a link to more information. Dana Moody commented that the proposed landfill would disrupt the National Forest’s ecosystem and referenced the Multiple-Use Sustained-Yield Act and United States Department of Agriculture objectives. Mandy Cook expressed concern with invasive species in the National Forest.

Amy Grizzaffi expressed concern about the effect of the proposed landfill on Piney Woods. Shane Maberry asked what consideration was given to the impact on the Winter's Bayou Protected Area and the Lone Star Trail. Tommy Douglas expressed concerns about the proposed landfill's effect on recreation at the Lake Houston Wilderness Park. Eleanor Zoeller commented on the loss of recreational opportunities in the area due to the location of the facility. Trisha Beck, Patrick Cox, Sierra Club, Janna Richmond, Linda R. Stead, and Bryan French, representing Wood Duck Farm, (Wood Duck Farm) expressed concern about recreation in bodies of water.

**Response 44:** Please see Responses to Comment Nos. 31, 32, 34, 40, 41, and 42. for discussions regarding contaminated water management, general siting requirements, flooding, and wildlife. The proposed landfill site is not subject to the location restrictions of Texas Health & Safety Code § 361.123 and the TCEQ rules with respect to national forests.

The Facility Surface Water Drainage Report found in Part III, Attachment C of the application, provides discussions and detailed designs, calculations, and operational considerations for the collection, control, and discharge of storm water from the landfill as required by the rules. The drainage system described in the application consists of various drainage structures, for example, perimeter channels, detention ponds, swales, and down chutes, including temporary berms constructed to minimize the amount of surface water that comes into contact with waste. The Facility Surface Water Drainage Report indicates that the drainage analysis was performed consistent with TCEQ rules and guidance and the TxDOT Hydraulic Design Manual (2019). The proposed landfill is designed to prevent discharge of pollutants into waters of the state or waters of the United States, as defined by the Texas Water Code and the Federal Clean Water Act, respectively.

The Executive Director reviewed the application, and Parts I and II demonstrated coordination with all relevant government agencies as required by the MSW rules. The Executive Director has reviewed the application and preliminarily determined that it complies with applicable sections of 30 TAC Chapter 330, which were promulgated to protect human health and the environment.

## **F. WASTE CONCERNS**

**Comment 45 Types of Waste:** Special Waste - Senator Robert Nichols and Representative Ernest Bailes expressed concern that the proposed landfill would accept special waste, when requesting a public meeting. Dana Moody asked what types of waste will be accepted at the proposed landfill, asked for clarification about industrial waste and special waste, and attached application materials and correspondence. Jackie Woychesin asked for clarification about what types of waste will be accepted and what types of waste are included in “special waste” and

expressed concerns about these types of wastes. Mandy Cook expressed concern that animal carcasses would be disposed of at the proposed landfill.

Rebecca Bridges and Sierra Club expressed concern with acceptance of special waste, animal carcasses (special waste), asbestos (when non-friable, a special waste), contaminated soil (special waste, if contaminated with petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of TAC Title 30 (relating to Appendices), municipal hazardous waste (special waste), sludge (special waste), pesticide containers (special waste), waste from oil, gas, and geothermal activities (special waste), medical waste (special waste, when untreated), x-ray waste (X-ray machines made before July 1979 may contain a toxic substance called polychlorinated biphenyls or PCBs, in the transformer oil; x-ray film isn't generally considered a type of hazardous waste as the amount of silver in one is very small; and/or X-ray chemicals do class as hazardous waste as they are a type of chemical waste), and electronic waste (special waste, if from household).

Hazardous Waste - Candice Bonn commented that she refuses to be subject to hazardous waste. Michelle Clark, Tabitha Price, and Carol King commented that the landfill is hazardous. Mandy Cook, Wendy Hindman, and Jordan Combs commented that there is no guarantee that the Applicant will not dump hazardous materials at the proposed facility. Jacquelyn Wick-Bennet commented that something that was not thought to be hazardous, but is, will end up in the facility and leak. Mandy Cook expressed concern about asbestos in the proposed facility. Sierra Club commented that any spills of leachate from trucks are hazardous.

Class I Waste - H.C. Clark and the persons listed in Attachment 29 asked whether the draft permit explicitly states that Class I waste will never be accepted, and Bryan French, representing Wood Duck Farm, Sierra Club, and Kristen Schlemmer of Bayou City Waterkeeper echoed this concern that hazardous or Class 1 waste should never be allowed at this proposed landfill. Jennifer Lee, representing Houston San Jacinto Ranch, LLC, commented that if Class 1 waste with asbestos content will be accepted, the liner should meet the standards of industrial solid waste and municipal hazardous waste facilities. Marco Villegas expressed concern with hazardous material leakage. William B. Walter commented that a landfill that accepts industrial waste is not needed. Michael Robert Weaver commented that acceptance of waste from outside of Texas should not be allowed.

Michael Robert Weaver expressed concern about the extensive list of proposed allowable waste and types of waste that would be accepted. Sierra Club commented that TCEQ should require the Applicant to state how it will monitor that pesticide containers have been triple-washed and that the 1,500-ppm petroleum hydrocarbon waste limit is not exceeded for empty containers.

Sierra Club commented that TCEQ should provide information about what type of waste could be stored in the proposed landfill and about what type of long-term contamination issues could occur. Dana Moody expressed concern that additional types of waste may be allowed at a later date.

Roger A. Dietrich commented that TCEQ should remove yard waste and other organics from the list of materials that will be accepted.

Mandy Cook, Jodi Garrett, Gannon Rust, Dana Moody, Curtis Moody, Vance Moody, Allee Moody, Madison Moody, Chase Moody, Ethan Moody, and Miranda Moody provided documents and information about per- and polyfluoroalkyl substances (PFAS), expressed concerns that PFAS cause harm and are not accounted for in the draft permit, noted that EPA is considering a hazardous material designation for PFAS, and recommended that permitting of the proposed landfill be postponed until regulation of PFAS occurs. Dana Moody commented that new guidelines on PFAS and PFOS should be considered in connection with the Application.

Sierra Club commented that TCEQ should require the Applicant to state how it will monitor that pesticide containers have been triple-washed and that the 1,500-ppm petroleum hydrocarbon waste limit is not exceeded for empty containers.

Jennifer Lee, representing Houston San Jacinto Ranch, LLC, Veronica Ramos, and Frank Blake expressed concern about waste screening for unauthorized materials. Julie Johnson-Pitts and Cathy Hill commented that medicines and chemicals would be disposed of in the proposed landfill. Cathy Elaine Davis, Jackie Woychesin, and Dr. Rebecca LeBlanc commented that unauthorized materials, such as batteries and paint, would be disposed of in the proposed landfill. Sierra Club commented that TCEQ should require the Applicant to state how it would dispose of material received that is unauthorized.

**Response 45:** The Waste Acceptance Plan found in Section 2.2 of Parts I and II of the application indicates the waste streams proposed for acceptance and disposal. The major classifications of wastes to be accepted include household waste, yard waste, commercial waste, Class 2 and 3 non-hazardous industrial wastes, construction-demolition waste, and select special wastes. The landfill will not accept hazardous or Class 1 non-hazardous industrial waste as described in Section 2.2. All the waste streams proposed for acceptance and disposal are those typically authorized for disposal at Type I MSW landfills. As indicated in Section 2.2 of Parts I and II and Section 8.20 of Part IV of the application, many waste streams that are normally disposed of at Type I landfills are excluded from acceptance and disposal at this landfill, for example, but not limited to, dead animals and hazardous waste from conditionally exempt small quantity generators.

TCEQ evaluates applications for MSW landfills based on the information provided in the application and the rules in effect at the time the application was received by TCEQ. The Executive Director has preliminarily determined that the application complies with requirements in 30 TAC Chapter 330, including requirements regarding contaminated water management and groundwater protection in Subchapters G, H, and J. For additional information, please see Responses to Comment Nos. 24 and 32, which address groundwater and surface water concerns, respectively.

On April 8, 2024, the EPA released an Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances—Version 2 (2024). This interim guidance does not include requirements or restrictions related to disposal of PFAS and PFOS in MSW landfills.

The SOP contains measures that the site personnel will perform in deciding acceptance of special waste shipments, including checking shipping documents. When assessing for acceptance of triple-rinsed containers, 1,500 ppm of petroleum hydrocarbon is not a criterium pursuant to 30 TAC § 330.171(c)(5).

Only authorized wastes may be accepted and disposed of at the proposed landfill. The measures for screening and handling of unauthorized waste are contained in Sections 5, 8.2, and 8.20 of the SOP. The screening and handling measures (detection and prevention program) to be implemented at this landfill include random inspection of incoming loads; records of all inspections; monitoring of waste loads at the gatehouse and waste unloading at the working face; remediation of incidents; identification and sampling; personnel training; and notification to TCEQ non-compliance incidents. Landfills in Texas can accept waste from other states. Chapter 330 rules, including collection, transporting, and disposal, apply to MSW and special waste from out of state. Waste generated outside of Texas must meet the acceptance criteria for the receiving facility and is subject to the same screening process of in-state generated waste. The Executive Director has preliminarily determined that the application complies with requirements for waste screening including 30 TAC § 330.127.

**Comment 46 Alternative Daily Cover:** Dana Moody asked how contaminated soil as an alternative cover would protect the environment, if used.

**Response 46:** Consistent with 30 TAC § 330.165(a), the daily cover to be used at this landfill will be six inches of well-compacted soils that have not previously mixed with wastes. 30 TAC § 330.165(d)(4) allows use of contaminated soil as an alternative daily cover, if the use is approved by the TCEQ. The application does not apply for use of contaminated soil as an alternative daily cover. As indicated in Section 8.18.4 of the SOP, the Applicant did not apply for use of any alternative cover. The draft permit does not contain a clause authorizing use of any alternative daily cover. If in the future, the permittee decides to use an alternative daily cover, the permittee must first apply for a temporary authorization per 30 TAC § 305.62(k). If the performance of the alternative daily cover is satisfactory during the trial uses, the permittee may apply for use of the alternative daily cover on a permanent basis through a permit modification requiring public notice under 30 TAC § 305.70(k)(1).

**Comment 47 Long-term Care:** Sierra Club, Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC, and Melisa Peterson commented that the permit must include requirements for closure, including financial assurance, and that the Applicant must be responsible for long-term contamination. The persons listed in Attachment 30 stated concerns about management of potential future contamination if the facility owner/operator encounters financial challenges or bankruptcy. Peter Calenzo expressed concern that taxpayers would have to pay for cleanup of water contamination caused by the proposed landfill. Dr. Craig Nazor, on behalf of Sierra Club, Mandy Cook, Shane Hindman, and Douglas Cole Grijalva expressed concern with cleanup of long-term contamination. Sierra Club commented that companies are allowed to walk away from indefinite monitoring of water for contamination.

Sierra Club commented that the Applicant should manage surface water for as long as the landfill exists, even in inactive status. Carson Combs asked who would be liable for water contamination.

**Response 47:** Closure and post-closure care requirements for MSW landfills are established in 30 TAC Chapter 330, Subchapter K. In accordance with 30 TAC § 330.503(b), the owner or operator of any MSW unit must establish financial assurance for closure of the unit in accordance with 30 TAC Chapter 37, Subchapter R. In accordance with 30 TAC § 330.507(b), financial assurance must also address post-closure care costs. In an unlikely case when the permittee is unable to operate the landfill according to the permit conditions, the TCEQ will assume the responsibility of closing the landfill, by hiring a third party and using the fund provided by the financial assurance.

The closure measures in Attachment H of the application include final cover system; closure procedures; closure schedule; and closure cost estimate. The post-closure care provisions of Attachment J of the application cover activities, such as monitoring and maintenance, to be performed during the post-closure care period; persons responsible for post-closure care activities; post-closure land use; and the post-closure care cost estimate. This application does not propose any land use during the post-closure care period. During the 30-year post-closure care period, the permittee will be required to conduct required activities such as groundwater monitoring/corrective action, landfill gas monitoring/remediation, landfill final cover maintenance, and leachate management. Attachment J specifies the amount of financial assurance the permittee is required to maintain for completing the required activities during closure and post-closure care period. The Executive Director has preliminarily determined that these requirements have been adequately addressed by the application in Part III, Attachments H, I, and J. Part V of the Final Draft Permit states that authorization to operate the facility is contingent upon maintenance of financial assurance. Within 60 days prior to the initial receipt of waste, a permittee must provide financial assurance instrument(s) for demonstration of closure and post-closure care. A facility may not begin accepting waste without providing adequate financial assurance.

The permittee, if the permit is issued, will be responsible for managing surface drainage in accordance with the permit conditions during the active life of the site and during the post-

closure care period. Generally, permittees, owners, and operators may be responsible for water contamination. The TCEQ Regional Office inspects Type I MSW landfills on a regular basis. Additionally, TCEQ encourages members of the public to report any observed violations at a facility to the Regional Office. Complaints regarding the facility may be made by contacting the TCEQ Region 10 Office at 409-898-3838 or the toll-free Environment Violation Hotline at 1-888-777-3186. Complaints may also be filed on-line at <https://www.tceq.texas.gov/compliance/complaints>. If the facility violates a term of the permit or TCEQ's regulations, the permittee may be subject to an enforcement action.

## **G. PUBLIC PARTICIPATION**

**Comment 48 Public Notice:** Peter Calenzo, Jamie Corbett, Ruby Kelley, Maxine McAdams, John David McDonald, Jesse Reynolds, Alice Sweeten, and Martin Tate commented that no one was notified of the proposed facility and that they found out by word of mouth. William Cluff and Jessica Parker commented that there was no vote or question to the public about the proposed facility. Wendy Hindman, Mandy Cook, and Jordan Combs commented that the Applicant did not mail notice to the county wide mailing list. Mandy Cook further commented that the newspaper tear sheet was not on the TCEQ application update for several months. Taya Foret commented that San Jacinto and Liberty do not have a solid print media source and that the newspaper requirement is antiquated. Jordan Combs commented that Texas Health & Safety Code § 361.083 requires mailed notice which was not provided, that the notice was published in a newspaper that is not circulated in the area, and that the permit can be denied because of misleading information in the application about notice. Will Cook commented that he owns two parcels of land on Jayhawker Road, and he was not notified by mail as required. Melisa Peterson commented that her property appears to adjoin the Applicant's, and she was not notified by mail. Rebecca Bridges commented that many families were not notified by mail as required. Bryan French, representing Wood Duck Farm, Representative Penny Morales Shaw, Rhonda Bax, Jordan Combs, Mary Mayer, Kathy Preston, Sandra Smith, Cynthia Kizer, Dina Welch, and Eleanor Zoeller commented that the Applicant failed to post the draft permit at a public library as required by 30 TAC § 39.405(g). David Van Weldon commented that the newspaper that published the first public meeting is 20 miles away from the proposed landfill and is not circulated in the area, and the online version doesn't offer free usage. David Van Weldon further commented that the Shepherd Library is 20 miles away and that the Cleveland Library would have been better as it is only 7 miles away. David Van Weldon commented that the newspaper and library used would not reach those who would be affected by the proposed landfill. Dana Moody commented that the community is not local to Shepherd Library and has no local newspaper delivery. Rachel Lange, on behalf of Texas Parks and Wildlife Department, commented that she has been unable to locate the Biological Assessment (reported by Applicant in Revision 5, Part IV, Section 8.14 to be located in Part II, Appendix H) and the Species Protection plan (reported by Applicant in Revision 5, Part IV, Section 8.14 to be located in Appendix IVC). Bryan French, representing Wood Duck Farm, commented that the application is presented on the Applicant's website in a scattershot manner.

Dana Moody commented that TCEQ should consider making changes to future application public notice requirements in order to reflect unique local conditions to lessen the burden on the local residents.

**Response 48:** Pursuant to 30 TAC § 39.405(f)(2), when published notice is required, the Applicant shall publish notice in the newspaper of largest general circulation that is published in the county where the facility is proposed to be located. The Applicant published notice in the San Jacinto News Times which is the newspaper of largest general circulation that is published in San Jacinto County, Texas. Pursuant to 30 TAC § 39.405(g), the Applicant shall also make a copy of the application, including any subsequent revisions, and the Executive Director's preliminary decision available for review and copying at a public place in the county in which the facility is proposed to be located. In addition to maintaining a physical copy in a public place, the Applicant must also post a courtesy copy of the application and revisions online, for

informational purposes only, in accordance with 30 TAC § 330.57(i)(1). Additionally, notice signs were posted at the entrance to the facility in compliance with 30 TAC § 330.69.

The Applicant was required to publish five notices. The Notice of Receipt of Application for Land Use Compatibility Determination for a Municipal Solid Waste Permit was published on November 21, 2019, in the *San Jacinto News Times*. The Notice of Receipt of Application and Intent to Obtain MSW Permit (NORI) was published on November 26, 2020, in the *San Jacinto News Times*. The Notice of Application and Preliminary Decision (NAPD) was published on December 16, 2021, in the *San Jacinto News Times*. Notice of the first public meeting was published on September 9, 2021, September 16, 2021, and September 23, 2021, in the *San Jacinto News Times*. Notice of the second public meeting was published on March 3, 2022, March 10, 2022, and March 17, 2022, in the *San Jacinto News Times*. All publication requirements were met. However, due to document availability concerns, the comment period was extended to allow additional time for the public to review documents as well as to allow for a second public meeting, and a revised NAPD was published on February 24, 2022, in the *San Jacinto News Times*.

Additionally, pursuant to 30 TAC § 39.413, TCEQ's Office of the Chief Clerk (OCC) is required to mail notice to the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map, and to those on mailing lists, including the county-wide mailing list, kept pursuant to 30 TAC § 39.407. Under 30 TAC § 330.59(c)(3), an applicant for an MSW landfill must provide a landowner map and accompanying list that includes all property owners with 1/4 mile of the facility. Property owners' names and addresses derived from real property appraisal records as of the date of the application filing meet the requirements of 30 TAC § 330.59(c)(3)(B). Section 5 of Parts 1 and 2 of the application provides information about landowners as required by TCEQ rules. The OCC uses the landowner map and list supplied by an applicant to provide mailed notice of the application under 30 TAC § 39.413. A list of those required to receive mailed notice are provided in 30 TAC § 39.413. School districts are not required to receive mailed notice by rule.

When an Applicant submits a permit application to the TCEQ, no local vote or stakeholder consent or meeting is required prior to applying. While an application is not placed on local ballot cards, there are several opportunities for public participation. First, the public is encouraged to submit public comments on pending permit applications, which are considered and replied to in this Response to Comments. In this instance, two public meetings were also held during the comment period on September 28, 2021, and March 22, 2022. Once this Response to Comments is mailed, there is a 30-day period for the public to request the Executive Director's reconsideration of the permit or request a contested case hearing.

TCEQ records for this application and the draft permit are available for viewing and copying in the Office of the Chief Clerk at the TCEQ's main office in Austin at 12100 Park 35 Circle, Building F, 1st Floor. Some documents located in the Office of the Chief Clerk may also be located on the Commissioner's Integrated Database at:

<https://www14.tceq.texas.gov/epic/eCID/>. The technically complete application, draft permit, and Executive Director's preliminary decision were made available for review and copying at Shepherd Public Library, 30 North Liberty Street, Shepherd, Texas 77371. In addition, a courtesy copy of the application was made available online at: <https://peachcreekep.com/resources/>.

Please also see Responses to Comment No. 49.

The Executive Director acknowledges Dana Moody's comment regarding future changes to public notice requirements; however, future changes to public notice requirements are outside the scope of the evaluation of the application.

## H. SITE OPERATIONS

**Comment 49 Access Control:** Sierra Club expressed concern about security at the proposed landfill, specifically trespassers, security lights, and fences.

**Response 49:** 30 TAC § 330.131 sets forth access control requirements for MSW facilities. The access control measures contained in the application in Section 8.1 of Part IV of the SOP include measures such as perimeter fencing and a staffed entrance gate. The access control measures in the application are consistent with the requirements of 30 TAC Chapter 330. The Executive Director reviewed the application and preliminarily determined it meets the applicable regulatory requirements.

**Comment 50 Site Layout:** Sierra Club commented that the Applicant should be required to show where facilities for large item storage, reusable materials staging, citizens' convenience center, used/scrap tire storage, and wood waste processing would be allowed.

Sierra Club commented that the Applicant should have to reduce by half the amount of reusable materials from the staging area with respect to intake and maximum storage of inert materials and intake and maximum storage of non-inert materials.

**Response 50:** Information about locations of the waste processing areas commented on above are provided in the application in Part III, Section 2 of Attachment B, General Facility Design and the drawings under Appendix B1.

TCEQ rules do not require specific percentage reductions of reusable materials from the staging areas. The Executive Director has reviewed the application and preliminarily determined that the proposed measures related to reusable materials in Part IV of the application are consistent with the requirements of 30 TAC Chapter 330, Subchapter D.

**Comment 51 Easements and Buffer Zones:** Sierra Club requested that the Applicant be required to provide information about an access easement on the Wood Duck Farm property; be required to have a 25-foot buffer from the utility and pipeline easement boundary; and be required to have a 125-foot buffer zone between the permit boundary and where solid waste is at the facility.

Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC, expressed concern that the citizen's collection center and truck wheel wash area may encroach on the 125-foot buffer zone along the eastern side of the proposed facility, and the sump that would contain contaminated water associated with the truck wheel wash is within 125 feet of the facility boundary.

**Response 51:** 30 TAC § 330.141(b) requires establishment and maintenance of buffer zones between waste management activities and the facility permit boundary. Requirements for easements and buffer zones are found in 30 TAC § 330.543 and, as required by this section, a 125-foot buffer zone is provided in the SOP in Section 8.6.2 of Part IV of the application. According to the application, the entrance road would be constructed within the Applicant's property. The only easement within the permit boundary is a gas pipeline easement in the far northwest corner and outside of the proposed waste footprint. Section 2.3.1 in Parts I and II of the application includes easement protection measures for this pipeline easement. Please also see Response to Comment No. 16.

According to the application, the drop-off containers at the citizen's convenience center will be located outside of the 125-foot buffer zone. The truck wheel wash may be located within the 125-foot buffer zone as it is not a waste management activity. The Executive Director has reviewed the application and preliminarily determined that it is consistent with applicable TCEQ rules.

**Comment 52 Management of Large Items:** Sierra Club commented that the Applicant should dismantle large items received for disposal so that they do not disrupt the surface or subsurface of the proposed landfill.

Sierra Club commented that, with regard to the large storage item area, the Applicant should only be allowed to store items for 30 days and, with regard to the large storage item area and citizens' convenience center, should be required to cover containers with tarps.

**Response 52:** 30 TAC § 330.147 provides requirements for management of large items at MSW landfills. Large, heavy, or bulky items that cannot be incorporated in the regular spreading, compaction, and covering operations at landfills should be recycled. A special area should be established to collect these items. This special collection area must be designated as a large-item salvage area. The Applicant as owner or operator shall remove the items from the site often enough to prevent these items from becoming a nuisance and to preclude the discharge of any pollutants from the area. Items that can be classified as large, heavy, or bulky can include, but are not limited to, white goods (household appliances), air conditioner units, metal tanks, large metal pieces, and automobiles, except refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC). The relevant measures that address management of large items are specified in the Disposal of Large Items in Section 8.9 of Part IV of the SOP.

Please see Response to Comment No. 57 regarding large item storage duration. In accordance with Sections 8.25.1 and 8.25.3 of Part IV of the application, both the large item containers and the containers at the citizen's convenience center are covered by tarps during a rainfall event.

The Executive Director has reviewed the application and preliminarily determined that it meets the regulatory requirements.

**Comment 53 Recycling Timeframes:** Sierra Club commented that the Applicant should be required to recycle items within 60 days.

**Response 53:** 30 TAC §§ 330.147 and 330.155 provide that an owner or operator shall remove salvaged items and items that will be recycled from the site often enough to prevent these items from becoming a nuisance and to preclude the discharge of any pollutants from the area. Section 8.9 of Part IV of the SOP limits the maximum storage time to 180 days for large recyclable items and specifies that the recyclable materials will be recycled to prevent a nuisance and preclude discharge of fluids. Section 8.25 of the SOP specifies procedures for storage of recyclable materials in the large item storage area and citizen's convenience center. The Executive Director has preliminarily determined that these measures meet the regulatory requirements.

**Comment 54 Chlorofluorocarbons:** Sierra Club commented that the Applicant should be required to state its procedures for managing chlorofluorocarbons (CFCs).

**Response 54:** Sections 5.5 and 8.9 of Part IV of the SOP contain procedures for preventing acceptance or disposal of CFC-containing items, including load inspections and requirements for written certification that CFCs have been removed from items like refrigerators and AC units prior to waste acceptance.

**Comment 55 Daily and Intermediate Covers:** Sierra Club commented that the Applicant should be required to use a daily cover of one foot of compacted soil instead of six inches of non-compacted soil to reduce rainfall infiltration and vector problems, that the daily cover should be made of clay, and that the Applicant should not be allowed to strip its compaction protection prior to additional waste placement. Sierra Club also commented that the Applicant should use a compactor that is comparable to a bulldozer in terms of force. Sierra Club commented that regarding intermediate cover, the Applicant should only be allowed 30 days of inactivity, rather than 180 days, before cover of compacted material is required of at least 12 inches and commented that TCEQ should require the Applicant to state how it will determine intermediate cover soils are not saturated and to define what significant accumulations of leachate are. Sierra Club commented that the Applicant should explain publicly what alternative daily cover it will use, including the chemicals and health and environmental effects.

**Response 55:** The daily cover and intermediate cover related measures included in Section 8.18 of the SOP are consistent with regulatory requirements in 30 TAC § 330.165 regarding landfill covers and in 30 TAC § 330.163 regarding compaction. As indicated in Section 8.18.4, the

proposed landfill has not applied for use of an alternative cover. The Executive Director has reviewed the application and preliminarily determined that it meets the regulatory requirements.

**Comment 56 Stockpiles:** Sierra Club commented that the Applicant should be required to have stockpiled materials that have similar permeabilities and porosities for compaction.

**Response 56:** Relevant soil properties for the soils used for various landfill cover types are discussed in Sections 8.18.2, 8.18.3 and 8.18.6 of Part IV of the SOP. The facility will be required to maintain sufficient clean soil cover material stockpiles to provide at least one day's application of six inches of soil cover over the working face during operation. The Executive Director has reviewed the application and preliminarily determined that the measures included in the cited sections are compliant with TCEQ MSW rules.

**Comment 57 Accumulation of Material:** Sierra Club commented that, with regard to the 8.13 Salvaging and Scavenging, Page IV-30, the Applicant should be required to state what "excessive accumulation of material" is and reduce the 180-day storage period to 30-day storage to reduce the risk of spills.

**Response 57:** Excessive accumulation of material is included in the rule language in 30 TAC § 330.155, which states that an "owner or operator shall remove the salvaged items from the facility often enough to prevent the items from becoming a nuisance, to preclude the discharge of any pollutants from the area, and to prevent an excessive accumulation of the material at the facility." The Executive Director has reviewed the application and preliminarily determined that the measures contained in Section 8.13 of the application meet the requirements of 30 TAC § 330.155 regarding Salvaging and Scavenging.

**Comment 58 Climate Change:** Sierra Club commented that TCEQ should not allow a temporary waiver due to extreme climate conditions and should require the Applicant to plan for climate change as part of its normal operations. Bryan French, representing Wood Duck Farm, commented that the application does not account for climate change. John David McDonald raised general concerns that this area will experience more frequent flooding because of climate change and provided an article.

Sierra Club recommended that TCEQ should address climate change with a "climate change analysis" that includes an analysis of impacts to the proposed facility such as more extensive flooding in floodplains within 100 feet of the 100-year floodplain and within the existing 500-year floodplain, an analysis of air pollution from vehicles, and an analysis of air pollutants. Sierra Club recommended TCEQ prepare a climate change ecological resilience and resistance plan (CCERRP) because the CCERRP would assess the biological and ecological elements of climate change in the Sam Houston National Forest and the surrounding area where the facility would be located.

**Response 58:** Any future requests for temporary waiver for the daily cover or intermediate cover will be reviewed in accordance with TCEQ rules. Whether or not to grant a temporary waiver and climate change considerations are not within the scope of the MSW permit application review process.

The Executive Director acknowledges Sierra Club's recommendation about a climate change analysis. Such an analysis is outside the scope of the evaluation of the application. The surface water drainage system analysis and design are consistent with the requirements regarding 100-year floodplain and 25-year, 24-hour storm events contained in 30 TAC Chapter 330. 30 TAC Chapter 330 does not require a CCERRP as a part of the MSW landfill application and its review.

**Comment 59 Final Cover and Final Cover Inspections:** Sierra Club commented that TCEQ should be onsite to monitor placement of final cover and should require repair of final cover to begin within 24 hours and to be completed within three days.

Sierra Club commented that cover final inspection records should be available onsite and online.

**Response 59:** In accordance with 30 TAC § 330.63(h), a Closure Plan is included in Part III, Attachment H of the application. The Closure Plan contains the final cover specifications and construction requirements. A Final Cover Quality Control Plan (FCQCP) has been prepared to meet the final cover quality control demonstration requirements under 30 TAC § 330.457. The FCQCP, included as Attachment D8 of Part III of the application, contains measures related to installation, quality control, and reporting of the final cover system. Under this FCQCP, a geotechnical professional (a licensed Professional Engineer in the State of Texas) and construction quality assurance monitors (qualified representatives of the geotechnical professional), are responsible for all construction quality assurance activities during the final cover installation process. The geotechnical professional and the monitors will be on site during the final cover construction, performing supervision, sampling, testing, recording, and other activities required by the FCQCP. After construction of the final cover system, the geotechnical professional will prepare and submit a Final Cover Evaluation Report to the TCEQ on behalf of the permittee. The purpose of the Final Cover Evaluation Report is to document that the final cover system has been constructed consistent with the FCQCP. The TCEQ will review the Final Cover Evaluation Report.

As required by 30 TAC § 330.463 and 30 TAC § 330.165(g), the landfill personnel will perform periodic inspection and maintenance/repair of the installed final cover.

30 TAC § 330.125 provides for recordkeeping requirements for MSW landfills. In accordance with this rule, records, including cover inspection records, must be maintained at the site. 30 TAC § 330.165(h) provides that a cover application and inspection record must be kept on site. The recordkeeping measures are listed in Section 2 and Section 8.18.8 of Part IV of the SOP.

The Executive Director has reviewed the application and preliminarily determined that the measures related to final cover installation, inspection, maintenance/repair, and recordkeeping comply with the regulatory requirements.

**Comment 60 Location of Benchmark:** Mandy Cook commented that the proposed facility's permanent benchmark site being used on the application is a different city, county, and terrain over 11 miles away south, southeast from the proposed physical land location of the proposed landfill.

**Response 60:** The Executive Director has reviewed the application and has preliminarily determined that the benchmark information provided in Section 8.7 of Part IV of the application meets TCEQ requirements of 30 TAC § 330.143(8).

**Comment 61 Scrap Tires:** Sierra Club commented that fewer scrap tires should be allowed to be stored; all tires should be locked up and drained; and there should be a vector reduction plan for tire storage.

**Response 61:** Sections 5.5 and 8.25.4 of Part IV of the application include specifics on proper scrap tire management, such as restrictions of 500 tires on the ground or 2,000 tires in containers and a maximum storage time of 90 days. Vector controls onsite include inspections of tire storage areas every two weeks. The Executive Director has reviewed the application and preliminarily determined that the tire management measures included are consistent with applicable TCEQ rules.

**Comment 62 Wood Waste:** Sierra Club commented that an exact requirement should be put in place for the amount of wood waste that may be received, rather than using the term "approximately", and that wood waste should only be stored for 30 days.

**Response 62:** MSW rules do not have specific requirements specifying the amount of wood waste allowed or limiting wood waste storage to 30 days. The application states the expected

storage time will be 30 days. The Executive Director has reviewed the application and preliminarily determined that the wood waste management measures in Section 8.25.5 of Part IV of the application are consistent with applicable TCEQ rules, including 30 TAC § 330.209.

**Comment 63 Sediment Storage:** Sierra Club commented that sediment storage time should be reduced to 30 days.

**Response 63:** MSW rules do not have specific requirements regarding how often the sediment at the truck wheel wash system has to be cleared. The permittee is required to operate the landfill site in ways not to cause pollution or create nuisance conditions. The landfill operations, including the wheel wash station, will also be subject to applicable requirements of other TCEQ rules and authorizations (for example, air and TPDES requirements).

**Comment 64 Quality Control:** Bryan French, representing Wood Duck Farm, commented that the SOP has deficiencies. Dale-Raymond Wellington Thornburg expressed concern with daily quality control by landfill staff and expressed concern that quality control would decline over time.

**Response 64:** The Executive Director has reviewed the SOP and preliminarily determined that it is consistent with applicable rules in 30 TAC Chapter 330, including Subchapter D.

As previously mentioned, the TCEQ Regional Office inspects Type I MSW landfills on a regular basis. Additionally, TCEQ encourages members of the public to report any observed violations at a facility to the Regional Office. Complaints regarding the facility may be made by contacting the TCEQ Region 10 Office at 409-898-3838 or the toll-free Environment Violation Hotline at 1-888-777-3186. Complaints may also be filed on-line at <https://www.tceq.texas.gov/compliance/complaints>. If the facility violates a term of the permit or TCEQ's regulations, the permittee may be subject to an enforcement action.

## I. AIR QUALITY

**Comment 65 Air Quality:** The persons listed in Attachment 33 expressed concern about air pollution and the effects on air quality, and resulting health effects, from the proposed landfill's operations. Patricia Doris Burkett commented that the proposed landfill will create toxic chemical fumes. Cheryl Huffman commented that greenhouse gases and particulate matter would affect Wood Duck Farm. Rebecca Bridges, Cheryl Huffman, and Dana Moody expressed concern about volatile organic compounds (VOCs) as a result of landfill activity. Bryan French, representing Wood Duck Farm (Wood Duck Farm), expressed concern about potential nuisance violations and the health effects of methane gas and hydrogen sulfide gas. Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC (Houston San Jacinto Ranch), expressed concern that the proposed landfill will produce elevated levels of landfill gas, including methane, and that appropriate monitoring provisions are not included in the draft permit. Sierra Club and Sarah Lynskey expressed concern about explosions from methane. Sarah Lynskey expressed concern about severe health impacts from hydrogen sulfide. Sierra Club, Cheryl Huffman, Roger A. Dietrich, Cassondra Lucas, and Theodore T. Walters expressed concerns about methane pollution and the adequacy of methane collection systems.

Sierra Club commented that over time gasses are released despite methane gas systems and asked if there would be a pipeline to take methane to a clean-up facility for burning as natural gas; if there will be a flare onsite to burn-off the methane; and whether any of these systems would impact the environment. Sierra Club also commented that a methane reduction plan should be required for climate change mitigation.

Wood Duck Farm and Houston San Jacinto Ranch commented that the application provided inadequate information about the measures to control landfill gas at the proposed landfill. Mandy Cook expressed concern with the financial burden of landfills due to the need to monitor gas from the storage site.

Sierra Club commented that the permit should require a 100-foot placement of gas monitoring probes and that gas monitoring records be maintained for the life of the proposed facility and afterward in case groundwater is contaminated and not discovered. Sierra Club asked about the ability of a gas monitoring probe to “monitor the soil strata above the lowest planned future elevation of waste within 1,000 feet of the probe.” Sierra Club commented that the permit should require gas monitoring through cameras and sensors and should be updated every 3 years to the latest technology. Sierra Club additionally recommended that the permit should require a gas removal, treatment, and destruction control system to prevent methane from being released and to avoid health effects and greenhouse gas air pollution. Sierra Club recommended that gas monitoring, control equipment capture, treatment, and destruction must be done for air pollutants and methane and that gas and air pollutants should be put through an air pollution control device before venting. Sierra Club recommended that a catalytic incinerator or condensing unit can be used to reduce volatile hydrocarbon air pollution. Sierra Club commented that an air quality analysis, assessment, and evaluation, and an air quality control mitigation plan should be used to reduce air pollution. Sierra Club also recommended that the Applicant should be required to state what happens to gas extracted through wells.

**Response 65:** As required under 30 TAC § 330.55(a), the construction and operation of waste management facilities must comply with 30 TAC Chapter 330, Subchapter U and other approved air authorizations. The Applicant is required to obtain authorization from the Air Permits Division, when necessary.

Furthermore, as indicated in Response to Comment No. 67, the proposed facility's SOP includes an odor management plan and a gas management plan that address the control of odors and landfill gas. Subsurface gas migration and surface emissions at the proposed facility will be controlled by containment systems (liners and covers). Landfill gas will be monitored at the perimeter and in site structures. Gas migration in the subsurface will be monitored using a system of gas monitoring probes installed along the perimeter of the site to intercept potential gas migration pathways in the subsurface. The designs for the perimeter gas monitoring system are detailed in the Landfill Gas Management Plan in Attachment G to Part III of the application. The Executive Director has preliminarily determined that the provisions and procedures for landfill gas management specified in the Landfill Gas Management Plan meet the requirements of 30 TAC §§ 330.63(g) and 330.371 and are expected to control releases of gas and odors from the landfill.

According to TCEQ MSW rules, a landfill gas collection and control system (GCCS) or similar system is not a condition that has to be met before a landfill can be authorized for operation commencement. A GCCS will be installed and operated if required by a landfill gas remediation plan implemented to address gas exceedance detected in the gas probes. A GCCS may also be required when the landfill triggers the requirements under the TCEQ Air program. A flare may be used as the control method for the collected landfill gas. Installation and operation of the GCCS will be in compliance with all applicable TCEQ rules.

TCEQ rules in 30 TAC § 330.371 require the owner or operator of a landfill to implement a methane monitoring program to ensure that the concentration of methane gas generated by the facility does not exceed 1.25 percent by volume of methane in facility structures and 5 percent by volume at the facility boundary. If the methane gas is detected above the action levels as specified in the rule, the facility must take actions specified in the Landfill Gas Management Plan in Part III, Attachment G of the application to control and remedy the landfill gas issue. Specifically, if methane gas levels exceeding the limits specified in 30 TAC § 330.371(a) are detected, the owner or operator shall immediately take all necessary steps to ensure protection of human health and notify the Executive Director, including the TCEQ Region 10 Office, local and county officials, emergency officials, and the public. There will be a system of 20 permanent gas monitoring probes around the perimeter of the landfill to detect the migration

of methane gas, which is the primary explosive gas in landfill gas. Landfill gas monitoring at on-site buildings is also required.

As previously mentioned, the TCEQ Regional Office inspects Type I MSW landfills on a regular basis. Additionally, TCEQ encourages members of the public to report any observed violations at a facility to the Regional Office. Complaints regarding the facility may be made by contacting the TCEQ Region 10 Office at 409-898-3838 or the toll-free Environment Violation Hotline at 1-888-777-3186. Complaints may also be filed on-line at <https://www.tceq.texas.gov/compliance/complaints>. If the facility violates a term of the permit or TCEQ's regulations, the permittee may be subject to an enforcement action.

## **J. OTHER COMMENTS**

**Comment 66 Nuisances:** Bryan French, representing Wood Duck Farm, commented that facility operations will create nuisance conditions.

The persons listed in Attachment 34 expressed concern over noise from the proposed facility. Shane Maberry expressed concern that noise from the proposed facility would affect the Winters Bayou protected area. Jason Roesner, District Ranger with the Sam Houston National Forest, United States Forest Service, United States Department of Agriculture (Forest Service) requested additional information about any planned methods and additional criteria to mitigate noise at the proposed facility.

The persons listed in Attachment 35 expressed concerns over odor from the proposed facility. Jason Roesner, District Ranger with the Sam Houston National Forest, United States Forest Service, United States Department of Agriculture (Forest Service) commented that additional design criteria to mitigate odor should be implemented. Jennifer Lee, on behalf of Houston San Jacinto Ranch, LLC, commented that Part II, Attachment D, Sections 2 and 3 of the application and supporting documents do not demonstrate that the landfill would not produce nuisance odors or that the SOP indicates adequate odor control measures.

**Response 66:** 30 TAC § 330.15(a)(2) prohibits the creation and maintenance of nuisance conditions. Issuance of a landfill permit does not exempt an owner or operator from compliance with this requirement nor does it prevent the Executive Director from enforcing its general nuisance prohibition. As previously mentioned, the TCEQ Regional Office inspects Type I MSW landfills on a regular basis. Additionally, TCEQ encourages members of the public to report any observed violations at a facility to the Regional Office. Complaints regarding the facility may be made by contacting the TCEQ Region 10 Office at 409-898-3838 or the toll-free Environment Violation Hotline at 1-888-777-3186. Complaints may also be filed on-line at <https://www.tceq.texas.gov/compliance/complaints>. If the facility violates a term of the permit or TCEQ's regulations, the permittee may be subject to an enforcement action.

Regarding noise concerns, TCEQ rules do not place specific limits on facility-generated noise; however, 30 TAC § 330.15(a)(2) prohibits the creation and maintenance of nuisance conditions. Issuance of a landfill permit does not exempt an owner or operator from compliance with this requirement nor does it prevent the Executive Director from enforcing its general nuisance prohibition.

Regarding odor concerns, as indicated in Response to Comment No. 75, the proposed facility is subject to TCEQ rules concerning air pollution control. The owner or operator must ensure that the facility does not violate applicable requirements of the approved state implementation plan developed under the Federal Clean Air Act. Furthermore, the proposed facility's SOP in Part IV of the application includes an odor management plan in Section 8.10, in accordance with 30 TAC § 330.149, and the application includes a landfill gas management plan in Attachment G of Part III; these address the control of odors and landfill gas.

**Comment 67 County Building Requirements:** Mandy Cook commented that the proposed landfill would violate county building requirements.

**Response 67:** TCEQ rules regarding Type I MSW landfills do not address county ordinances or requirements, except when a county lawfully implements a permitting program for MSW landfills under § 330.25. San Jacinto County is not known to have such a program in place. The permit, if issued, would not preclude the applicant from securing any permits from the county.

**Comment 68 Compliance and Enforcement:** Will Cook asked who he should contact if compliance issues arise at the landfill. Sierra Club commented that TCEQ should have talked about compliance and enforcement programs during the public meeting.

**Response 68:** The TCEQ Regional Office inspects Type I MSW landfills on a regular basis. Additionally, TCEQ encourages members of the public to report any observed violations at a facility to the Regional Office. Complaints regarding the facility may be made by contacting the TCEQ Region 10 Office at 409-898-3838 or the toll-free Environment Violation Hotline at 1-888-777-3186. Complaints may also be filed on-line at <https://www.tceq.texas.gov/compliance/complaints>. If the facility violates a term of the permit or TCEQ's regulations, the permittee may be subject to an enforcement action.

**Comment 69 Future Expansions:** Bryan French, representing Wood Duck Farm, Sierra Club, Robert Harris, and Dana Moody expressed concern that the proposed landfill could expand in the future.

**Response 69:** The proposed facility could apply in the future to expand; however, under MSW procedural rules in 30 TAC § 305.62(j)(1), certain expansions must be authorized through a major amendment. An application for a major amendment includes submission of Parts I-IV, review by TCEQ, and an opportunity for public participation. A major amendment would be subject to public notice and public participation. Any application for an amendment would be required to meet TCEQ rules.

**Comment 70 Sewage Systems:** Jessica Grilliot expressed concern with the effect of the proposed landfill on sewage systems.

**Response 70:** The application has proposed to transport leachate for treatment/disposal at an offsite POTW. On-site sanitation and sewage systems would be installed and operated in accordance with TCEQ and other applicable rules.

**Comment 71 Economic Feasibility:** Sierra Club commented that the Applicant has not done an economic study. Melisa Peterson commented that the Applicant should be required to demonstrate economic feasibility.

**Response 71:** MSW rules do not require an economic feasibility study. As required by 30 TAC § 330.61(b), Section 2.2.1 of Parts I and II of the application contain information on the intended service areas and estimated volume of waste to be accepted at the proposed landfill.

TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. Accordingly, TCEQ does not have jurisdiction to consider economic feasibility when determining whether to approve or deny a permit application. The scope of the Executive Director's review of an application for a municipal solid waste permit includes whether an application includes the requisite submittals and demonstrations in accordance with the applicable regulations.

**Comment 72 County Funds:** Linda Kay Stegenga commented that the county would receive funds for the landfill.

**Response 72:** The Executive Director acknowledges the comment.

**Comment 73 Violations:** Alicia R. Rairden expressed concern that TCEQ has allowed air and water violations for large corporations.

**Response 73:** Air and water violations for other regulated entities are outside of the scope of the evaluation of this application for an MSW permit.

**Comment 74 TCEQ Access:** David Van Weldon asked how TCEQ would access the landfill if the Applicant went bankrupt.

**Response 74:** Section 14 of Parts I and II of the application contains the property owner's affidavit that guarantees TCEQ's access to the landfill, in accordance with 30 TAC § 330.59(d)(2)(C).

**Comment 75 Power Outages:** David Van Weldon commented that power outages are a concern in the area.

**Response 75:** The Executive Director acknowledges the comment. The Executive Director has preliminarily determined that the proposed landfill's development and operation as described in the application are in compliance with TCEQ MSW rules.

**Comment 76 Legal Actions:** Linda K. Stegenga asked what type of legal action third parties could take if they believe the proposed landfill will harm them.

**Response 76:** The Executive Director cannot comment on legal actions to which she is not a party. However, the issuance of a draft permit does not prevent a property owner from seeking private actions. Affected persons may request a contested case hearing; please see Response to Comment No. 48.

## V. CONCLUSION

The Executive Director has reviewed the application and preliminarily determined that it meets the regulatory and statutory requirements.

## VI. CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENTS

The Draft Permit has been revised to reflect the changes made to the application. The changes include the reduction in the proposed facility acreage, the relocation of the private access road that connects the proposed facility to the public road, and the addition of a slurry wall surrounding the waste disposal unit. The changes are made partially in response to comments received.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR  
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ENVIRONMENTAL QUALITY