

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 19, 2016

TO: Persons on the attached mailing list.

RE: Waste Management of Texas, Inc.
Permit No. 249D

This letter is your notice that the Texas Commission on Environmental Quality (TCEQ) executive director (ED) has issued final approval of the above-named application. According to 30 Texas Administrative Code (TAC) Section 50.135 the approval became effective on October 17, 2016, the date the ED signed the permit or other approval unless otherwise specified in the permit or other approval.

You may file a **motion to overturn** with the chief clerk. A motion to overturn is a request for the commission to review the TCEQ ED's approval of the application. Any motion must explain why the commission should review the TCEQ executive director's action. According to 30 TAC Section 50.139 an action by the ED is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

A motion to overturn must be received by the chief clerk within 23 days after the date of this letter. An original and 7 copies of a motion must be filed with the chief clerk in person, or by mail to the chief clerk's address on the attached mailing list. On the same day the motion is transmitted to the chief clerk, please provide copies to the applicant, the ED's attorney, and the Public Interest Counsel at the addresses listed on the attached mailing list. If a motion to overturn is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

You may also request **judicial review** of the ED's approval. According to Texas Water Code Section 5.351 a person affected by the ED's approval must file a petition appealing the ED's approval in Travis County district court within 30 days after the effective date of the approval. Even if you request judicial review, you still must exhaust your administrative remedies, which includes filing a motion to overturn in accordance with the previous paragraphs.

Individual members of the public may seek further information by calling the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

Bridget C. Bohac

Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

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October 19, 2016

To All Concerned Parties:

Re: Waste Management of Texas Austin Community Recycling & Disposal
Facility - Travis County
Municipal Solid Waste - Permit No. 249D
Permit Modification - Increase Estimated Waste Acceptance Rate

Thank you for your comment submitted to the Texas Commission on Environmental Quality (TCEQ) Office of the Chief Clerk in response to the Notice of Application and Preliminary Decision regarding the application for a municipal solid waste (MSW) permit modification submitted by Waste Management of Texas, Inc. The purpose of the modification is to make changes to the Site Operating Plan (SOP) for the Austin Community Recycling & Disposal Facility (Austin Community RDF), to manage an increase in the estimated waste acceptance rate.

The TCEQ Office of the Chief Clerk received timely comment letters from the City of Austin, the Travis County Commissioners Court, and approximately 220 individuals, including neighbors and other interested persons. The Executive Director of the TCEQ provides this response to public comments as a courtesy.

Comment 1: Expectation that Landfill would be Closed, and General Opposition to the Modification

Commenters thought that the Austin Community RDF was supposed to have closed in 2015, or would be closing soon. Many commenters expressed general opposition to the modification.

Response 1:

The commenters may be confusing the Austin Community RDF with the adjacent BFI Sunset Farms Landfill, MSW Permit No. 1447A. The Sunset Farms Landfill, immediately north of Austin Community RDF ceased accepting waste on November 1, 2015, in accordance with a special provision in its amended permit issued on November 5, 2009.

Comment 2: Expansion of Landfill

Commenters expressed concern that the permit modification for the Austin Community RDF would expand the landfill. One commenter stated that builders should not be given permits to build residential neighborhoods if the landfill is allowed to expand.

Response 2:

The permit modification does not expand the footprint of the landfill nor increase the capacity of landfill; the modification makes changes to the SOP to manage an increase in the estimated waste acceptance rate. Waste acceptance rate is the amount of waste accepted during a year, and is reported to the TCEQ on a quarterly basis.

Comment 3: Increasing Waste Acceptance Rate by Permit Modification

One commenter stated that allowing an increase in the amount of waste allowed through the gates is not a minor change. Another commenter stated that the modification request contradicts the City of Austin's goal of zero waste by 2040.

Response 3:

TCEQ rules require landfills to maintain records of waste acceptance. If at any time the amount of waste received during the previous four quarters exceeds the rate estimated in the landfill permit application and the increase is not due to a temporary occurrence, the owner or operator is required to file an application to modify the permit and propose changes to the SOP in order to manage the increased waste acceptance rate to protect public health and the environment.

The specific changes made to the SOP were to add an equipment operator, laborer, and bulldozer.

Comment 4: Notice of the Application

A commenter stated that property and business across the street from the facility did not receive notice that Waste Management requested a modification of its permit.

Response 4:

The rules governing modifications require mailed notice to adjacent and potentially affected landowners within 1/4 mile of the facility in accordance with 30 TAC §330.59(c)(3) and §281.5. Appendix D of the modification application included a map of the facility with all property owners within 1/4 mile. From the address provided by the commenter, it appears the commenter's property is more than 1/4 mile from Austin Community RDF. Persons may request to be placed on a mailing list to receive public notices mailed by the Office of the Chief Clerk, regardless of distance from a facility. A person may request to be added to: (1) the mailing list for a specific application; (2) the permanent mailing list for a specific applicant name and permit or registration number; and/or (3) the permanent mailing list for a specific county.

Comment 5: Compatibility of Landfill with Neighborhoods

Commenters stated that the landfill is not compatible with adjacent neighborhoods, is an eyesore, and that other locations should be considered. Commenters raised concern that the landfill will negatively affect property values and will stifle economic growth and residential development in the area. Others commented that the modification would negatively impact their quality of life.

Response 5:

The impact of the facility on the surrounding area was evaluated by the commission during consideration of Austin Community RDF 2005 permit amendment application; the amended permit was issued on May 10, 2010. 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 regulations (30 TAC §305.122(c)).

TCEQ's jurisdiction over solid waste is set out by the Texas Legislature in Texas Health and Safety Code, Chapter 361. TCEQ has promulgated rules pursuant to its statutory authority to ensure that municipal solid waste is managed in a manner that will protect human health and the environment. TCEQ does not have the authority to require consideration of alternative locations or relocation of municipal solid waste management facilities.

Comment 6: Odors and Landfill Gas

Commenters reported experiencing bad odors, and were also concerned about possible health effects of gases from the landfill.

Response 6:

Odor from a landfill relates to landfill operation, and not allowed to become a nuisance. The rules and the permit require Austin Community RDF to control odors. The permit includes a landfill gas management plan that contains provisions for monitoring for potential migration of landfill gas at the perimeter of the facility, and for controlling landfill gas to prevent migration.

The TCEQ has received odor complaints associated with the landfills in this area. Five complaints were received in 2016; four of those were attributed to the Austin Community RDF, whereas one could not with certainty be associated with Austin Community RDF. The odors noted during investigations were not consistent enough in strength, or duration to successfully document a nuisance odor violation.

The applicable air quality rule, 30 TAC §101.4 (relating to Nuisance), states that no person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

To confirm adverse effects on the normal use and enjoyment of property from a nuisance odor, a TCEQ investigator must document the impact of the odor using the agency's Odor Complaint Investigation Procedures, which includes evaluating the four primary characteristics of odors—frequency, intensity, duration, and offensiveness (FIDO). If the investigation confirms that a nuisance condition exists, the complainant must submit a written, signed statement describing the impact and nuisance condition. If formal enforcement proceedings result from a nuisance violation issued under these circumstances, the complainant must formalize their statement in the form of a sworn, notarized affidavit and be willing to testify in related enforcement action regarding the contents of the statement. If a complainant alleges health effects as a result of the odor, then the requirements are similar to those listed above, except that: (1) if transitory health effects (such as nausea or eye irritation) are alleged, then the investigator must experience similar impacts and be able to confirm the origin as the alleged source; and (2) if significant health impacts are alleged, then documentation from a health care professional is necessary.

If odor or other activities from the facility create a nuisance, please report the problem to the TCEQ Region 11 office in writing or in person at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, or by telephone at (512) 339-2929 or toll-free at 1-888-777-3186. Citizen complaints may also be filed online at www.tceq.texas.gov/complaints. Further information about odor complaints is available at www.tceq.texas.gov/complaints/odor_complaint.html.

Comment 7: Attraction of Wild Animals and Pests

Commenters expressed concern that the modification will increase the number of wild animals, such as coyotes and vultures, in the neighboring subdivisions.

Response 7:

Austin Community RDF applied for a modification to its existing permit to increase the waste acceptance rate, which did not require additional information regarding disease vectors. During review of Austin Community RDF 2005 permit amendment application, the ED reviewed the procedures Austin Community RDF intended to use to control on-site populations of disease vectors, which include minimizing the size of the working face, ensuring proper waste compaction and application of daily cover, and checking for vector population on a daily basis. Additionally, the SOP includes a bird control plan which provides procedures to alter bird habitat and prevent birds from congregating at the landfill.

If activities from the facility create a nuisance, please report the problem to the TCEQ Region 11 office in writing or in person at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, or by telephone at (512) 339-2929 or toll-free at 1-888-777-3186. Citizen complaints may also be filed online at www.tceq.texas.gov/complaints.

Comment 8: Noise, Lights, and Vibrations

Commenters expressed concern over noise and lights from the facility. Commenters also expressed concern over ground rumblings thought to be caused by methane gas explosions.

Response 8:

TCEQ rules do not set limits on noise, vibrations, or light generated by landfill activities; however, MSW facilities are prohibited from causing a nuisance under 30 TAC §330.15(a)(2).

If activities from the facility create a nuisance, please report the problem to the TCEQ Region 11 office in writing or in person at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, or by telephone at (512) 339-2929 or toll-free at 1-888-777-3186. Citizen complaints may also be filed online at www.tceq.texas.gov/complaints.

Comment 9: Dust and Litter

Commenters expressed concern over dust and litter.

Response 9:

TCEQ rules prohibit dust from causing a nuisance to surrounding areas of a landfill. The rules require measures to minimize windblown material and litter at the facility, including operation of the working face of the landfill in a manner to control windblown waste by temporary fencing or other measures, and daily collection of windblown litter when the facility is in operation. The rules also require measures to minimize the escape of any part of a load along the route to the facility, including encouraging delivery vehicles to cover waste while in transit. In addition, the operator is required to collect waste along all roadways that provide access to the facility, within two miles of the facility entrance, at least once a day when the facility is operating.

Individuals are encouraged to report any concerns regarding dust, and wind-blown litter at the facility or along the access roads to the site to the TCEQ Region 11, Austin office by calling (512) 339-2929.

Comment 10: Traffic and Impact to Roads

Commenters expressed concern over increased truck traffic, including damage to local roads. One commenter expressed concern that the facility is not using the wheel wash.

Response 10:

Austin Community RDF 2005 amendment application and revisions included road and traffic information and made projections using annual growth rates from the Capital Area Council of Governments Regional Solid Waste Management Plan. The application indicated an existing daily traffic volume generated by the facility of 390 vehicles per day, and projected a future traffic volume generated by the facility in the year 2027 of 667 vehicles per day to account for expected increases in population and waste generation.

Waste hauling vehicles must comply with any local city or county regulations or ordinances that are related to transportation. If trucks or other vehicles are observed operating in an unsafe manner or if trucks are traveling on roads in violation of restrictions it should be reported to local law enforcement agencies.

The SOP for the facility requires exiting vehicles to use a truck wheel wash facility near the entrance on days when conditions require wheel washing. The SOP also states that mud and associated debris will be removed from the public roadway used to access the facility at least once per day on days when mud and associated debris are being tracked onto the roadway.

Comment 11: Runoff and Water Quality

Commenters expressed concern over runoff from the facility during storm events, and impact to water quality.

Response 11:

Austin Community RDF applied for a modification to its existing permit to manage an increase in the waste acceptance rate. There was no change to the design of the facility; therefore the facility was not required to submit additional information regarding runoff.

Austin Community RDF has operated under a series of Water Quality General Permits, which allows discharge of uncontaminated storm water. Contaminated water may not be discharged; according to the facility permit, contaminated water is transported off site to a treatment works for treatment and disposal.

Comment 12: Compliance History


Commenters expressed concern over the operating history of Austin Community RDF, citing various fines and complaints.

Response 12:

TCEQ considers an operator and facility compliance history during the five years preceding submission of an application when making a preliminary decision. The compliance history for Austin Community RDF during the five years preceding submission of this permit modification indicated a *Satisfactory* rating for the owner/operator and a *High* rating for the facility, and no written notices of violations.

If you have any questions regarding the review process for this application, please contact Mr. Arten Avakian at (512) 239-4419, or in writing at the address on our letterhead (please include mail code MC 124 on the first line). For further information regarding our agency, please visit our website at www.tceq.texas.gov.

Sincerely,



Chance Goodin, Manager
Municipal Solid Waste Permits Section
Waste Permits Division
Texas Commission on Environmental Quality
CG/AJA/cgm