

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



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 13, 2014

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: CITY OF FARMERS BRANCH
TCEQ DOCKET NO. 2014-1487-MSW**

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Rudy Calderon".

Rudy Calderon, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2014-1487-MSW

**IN THE MATTER OF THE MOTION
TO OVERTURN THE EXECUTIVE
DIRECTOR'S ISSUANCE OF
MODIFIED MUNICIPAL SOLID
WASTE PERMIT NO. 1312A TO THE
CITY OF FARMERS BRANCH,
CAMELOT LANDFILL TX, LP**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO MOTION
TO OVERTURN**

To the Honorable Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Motion to Overturn in the above-referenced matter and respectfully shows the following.

I. Introduction

The City of Carrollton filed a Motion to Overturn the TCEQ Executive Director's (ED) decision to approve the application of the City of Farmers Branch (Farmers Branch) for a modification of its municipal solid waste permit for its landfill located in Lewisville, Denton County, Texas. The permit modification authorizes the facility to install a slurry wall and additional monitoring wells at the Camelot Landfill operated by the City of Farmers Branch.

Farmers Branch applied for this modification in December 2012. In June 2014, Carrollton filed comments objecting to the Permit Modification. On September 10 2014, TCEQ staff filed responses to Carrollton's comments. On September 18, 2014, the Executive Director (the "ED") issued its final approval of the Permit Modification. The

TCEQ mailed notice of this approval on September 23, 2014, to all persons on the mailing list. Carrollton filed a Motion to Overturn this decision on October 16, 2014.

II. Applicable Law

A. Motion to Overturn

The applicant, OPIC, or any person may file with the TCEQ Chief Clerk a motion to overturn the ED's action on a modification application. Title 30, Texas Administrative Code (TAC), Subsections 50.139(a), 305.70(m). A motion to overturn must be filed no later than 23 days after the date the agency mails notice of the decision to the applicant and persons on any required mailing list for the action. 30 TAC 50.139(b). An action by the ED is not affected by a motion to overturn unless expressly ordered by the Commission. 30 TAC 50.139(e). The Commission or General Counsel may extend the period of time for filing motions to overturn and for taking action on the motions. 30 TAC 50.139(e). Wherever other agency rules refer to a "motion for reconsideration," that term should be considered interchangeable with the term "motion to overturn executive director's decision." 30 TAC 50.139(a).

B. Modification of Municipal Solid Waste Permit

Municipal solid waste (MSW) permit modifications "apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment." 30 TAC 305.70(d). Modifications may not authorize any increase in the permitted daily maximum limit of waste acceptance. 30 TAC 305.70(c). In order to receive authorization for the modification from the ED, the permittee must submit an application that at a minimum includes:

- (1) a description of the proposed change;
- (2) an explanation detailing why the change is necessary;
- (3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of a permit or a registration (i.e., a site development plan, site operating plan, engineering report, or any other approved plan attached to a permit or a registration document). These revisions shall be marked and include revision dates and notes as necessary in accordance with [30 TAC 330.57(g)];
- (4) a reference to the specific provision under which the modification application is being made; and
- (5) for those modifications submitted in accordance with subsection (l) of this section that the executive director determines that notice is required and for those listed in subsection (k) of this section, an updated landowners map and an updated landowners list as required under [30 TAC 330.59(c)(3)].

30 TAC 305.70(e).

Modifications listed in 30 TAC 305.70(j) do not require public notice if they do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment. Modifications listed in 30 TAC 305.70(k) require public notice in accordance with 30 TAC 39.106 and 39.413. The ED determines whether modifications not specifically listed have a similar impact to those listed in 30 TAC 305.70(k) and require public notice. 30 TAC 305.70(l). Before acting on an application, the ED shall review and consider any timely written public comments, but is not required to file a response to comments. 30 TAC 305.70(i).

III. Discussion

As an initial matter, the motion is timely under 30 TAC 50.139(b). The rule requires filing a motion to overturn with the TCEQ Chief Clerk no later than 23 days after the agency mails the decision. The TCEQ Chief Clerk mailed the decision on September 23, 2014, and Carrollton filed its motion on October 16, 2014, which is within the 23-day period.

The motion lists six grounds as a basis to overturn the ED's decision to grant the Permit Modification: 1) the motion requests the TCEQ address the changes requested in this modification in the pending major permit amendment for Permit No. 1312A, so that all issues may be addressed comprehensively; 2) Farmers Branch did not comply with 30 TAC § 330.409 by failing to plan for the installation of monitoring wells at the locations specified in 30 TAC § 330.409; 3) Farmers Branch did not comply with 30 TAC § 330.411 by failing to conduct a new or substantively revised assessment of corrective measures and selection of remedies to replace the 2009 Assessment of Corrective Measures and the 2010 Selection of Remedies prepared and implemented by Farmers Branch; 4) Farmers Branch has not made an attempt to analyze the effectiveness of a slurry wall as part of its waste containment system as required by 30 TAC § 330.413; 5) Farmers Branch has not complied with 30 TAC § 330.415 because it has failed to locate the source of the contamination, failed to properly characterize the nature and extent of the contamination, and failed to implement corrective measures to prevent or remediate the contamination with respect to the proposed slurry wall's effectiveness as part of the waste containment system; and 6) Farmers Branch has not shown how the slurry wall will achieve source containment.

Based on information contained in the motion, Farmers Branch's application and the TCEQ file on this matter, OPIC finds that Carrollton's objections fall into two categories: 1) an objection to the issuance of the permit modification as a notice only modification rather than as part of the major amendment on file and currently under technical review and 2) the authorization of the slurry wall and monitoring wells as an amendment to the 2009 Assessment of Corrective Measures and the 2010 Selection of Remedies approved for the facility.

As to category 1, the ED has determined, and OPIC agrees, that even though there is limited overlap with the major permit amendment on file, the permit modifications sought can be approved independently of the major permit amendment submitted by Farmers Branch. Permit modifications can be issued by the ED if the modification does not substantially alter the permit conditions or reduce the capability of the facility to protect human health and the environment, in accordance with 30 TAC § 305.70(d). The modification sought by Farmers Branch does not substantially alter the permit conditions in any way and is an attempt by Farmers Branch to provide additional safeguards to protect human health and the environment from contaminants. Additionally, OPIC concludes this overlap likely does not preclude consideration of these issues in a potential contested case hearing on the major amendment and can still be raised by Carrollton at that time.

As to category 2, Carrollton expresses concern about the lack of investigation and supporting scientific analysis of the effectiveness of the slurry wall and monitoring wells and the need for Farmers Branch to conduct a new or substantively revised assessment of corrective measures and selection of remedies. Carrollton objects to the ED's view that these modifications are an amendment to the 2009 Assessment of Corrective Measures and the 2010 Selection of Remedies prepared and implemented by Farmers Branch and approved by the ED. The 2009 Assessment of Corrective Measures and the 2010 Selection of Remedies were in response to continued groundwater contamination over an extended period of time. Farmers Branch is seeking to add a slurry wall and additional monitoring wells due to the fact that remedies implemented under previous plans, which included a landfill gas ("LFG") extraction system and the installation of ten monitoring wells, have proven unsuccessful in mitigating the migration of VOCs. OPIC

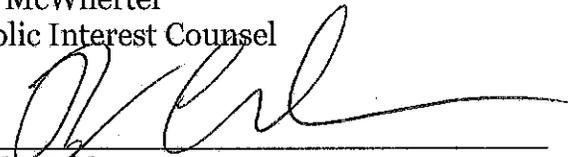
finds that Carrollton's insistence that Farmers Branch essentially start their analysis over by having to conduct a new or substantively revised assessment of corrective measures and selection of remedies when it comes to the effectiveness of a slurry wall and additional monitoring wells, would allow the migration of contaminants to continue indefinitely and would be harmful to human health and the environment. OPIC supports measures that would be more protective of human health and the environment and feels the addition of a slurry wall and additional monitoring wells would advance that cause. Therefore, OPIC agrees with the ED that these steps are an attempt to reach the goals laid out in the 2009 Assessment of Corrective Measures and the 2010 Selection of Remedies and as such should be considered an amendment to those already approved plans.

IV. Conclusion

OPIC recommends the Commission deny the motion.

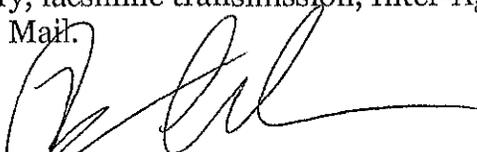
Respectfully submitted,

Vic McWherter
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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2014, the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Motion to Overturn was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Rudy Calderon

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