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November 9, 2016

Dwight C. Russell, P.E.  
Engineer V, Municipal Solid Waste Section  
TCEQ Waste Permits Division MC 124  
P.O. Box 13087  
Austin, Texas 78711

*Re: Rancho Viejo Waste Management, LLC, Laredo, Webb County, Texas;  
Application No. 2374; Proposed Permit No. 2374; Customer Reference No.  
CN603835489; Regulated Entity No. RN106119639; Municipal Solid Waste Type  
I Landfill.*

Dear Mr. Russell:

This letter responds to item 1 on the NOD list sent to Applicant on October 11, 2016. The inquiry is whether the Applicant has satisfied 30 TAC Sections 330.63(c)(2)(D)(i) and (ii). These provisions apply "for construction in a floodplain, submit **where applicable**" and provides options for satisfaction of the requirement. In this case, Applicant has chosen to remove the site from the floodplain by performing certain engineering work which has been reviewed and approved by FEMA.

To secure FEMA's approval for the CLOMR, Applicant first submitted its engineering plans and maps to the Webb County flood plain administrator, Rhonda Tiffin, for her review and approval. She certified her approval of the CLOMR Application to FEMA on November 14, 2011, stating in pertinent part that "we find the completed or proposed project meets or is designated to meet all of the community floodplain management requirements" and that "all necessary Federal, State and local permits have been, or in the case of a conditional LOMR, will be obtained." See attached Overview and Concurrence Form.

FEMA approved the CLOMR on November 21, 2014 thus satisfying TAC Sections 330.63(c)(2)(D)(i) and (ii). In turn, the TCEQ in reliance on that and other matters issued its letter of technical completeness along with a draft permit on March 11, 2016.

The provisions raised by the TCEQ are not applicable under the rule because the project area has been removed from the floodplain as a matter of law by FEMA's approved CLOMR. FEMA continues to stand by its determination and has advised Applicant that it will put same in writing soon. Additionally, Webb County has already stated that all local permits are satisfied.

The geology and the geography of the proposed site has not changed since the earlier actions by Webb County and FEMA. The only thing that has changed is local politics, which is not a subject for a state regulatory proceeding. Instead, such disputes must be resolved by the courts, and to that end, Applicant filed suit in Webb County District Court against the floodplain

administrator on October 18, 2016. In the action, Applicant points out the FEMA's issuance of the CLOMR on November 21, 2014 means that Webb County no longer has jurisdiction to regulate development on the project site. Applicant intends to move aggressively to resolve that lawsuit through obtaining a final judgment as quickly as possible. (See attached Original Petition)

In sum, Webb County certified in 2011 that all local requirements were satisfied. Moreover, even if a county permit were required to build in the floodplain, FEMA's granting the CLOMR Application means as a matter of law that the project site is not in a flood plain. The CLOMR/LOMR process determines whether a particular site is removed from the 100 year floodplain as a result of engineering analysis and work that establishes construction of the proposed facility will not adversely impact the 100 year flood event.

FEMA has advised Applicant that it has no intention whatsoever of revoking the CLOMR which it approved almost two years ago on November 21, 2014. It is clear that Webb County's attempt to revoke the CLOMR is based upon false, deliberately misleading and unfounded information provided by protestants to Applicant's permit application. FEMA has indicated that unless Webb County submits its own new CLOMR application with full engineering documentation, and can successfully undergo FEMA technical review and Applicant's technical challenge, the original CLOMR stands as issued.

TCEQ is not required to attempt to resolve local political infighting. TCEQ has a duty to proceed when all conditions have been met and to not allow protesting parties, through local politics, to thwart the regulatory process. It would be a travesty and grossly inappropriate to the Applicant to allow Webb County to certify approval and then, after years of additional time and money, to withdraw the approval to satisfy a protesting party. Specifically, the Webb County flood plain administrator works for County Commissioner John Galo. Galo is married to Applicant's cousin, Anna-Gloria Benavides Galo. Mrs. Galo is a protesting party, and the organizer of groups formed earlier this year to contest the application. Since his election as a County Commissioner in 2012, Galo has put pressure on the Webb County Floodplain Administrator to take steps to try to stop Applicant's project from moving forward. The agency does not have jurisdiction to resolve personal or family disputes, but it does have a duty to see that the integrity of the regulatory process is respected, and is allowed to proceed without improper manipulation.

Additionally, TCEQ should be aware that as an additional move against the Applicant, the Webb County Commissioners Court is now seeking to enact an ex post facto ordinance to restrict the placement of Applicant's proposed landfill. Whereas, the current permit application is exempt from a proposed new ordinance, if the TCEQ returns the application then Webb County will argue that any new filing will be subject to, and prohibited by the proposed new ordinance. It would be manifestly unjust at this point to return an Application in response to a local political maneuver with the knowledge that doing so will adversely affect an applicant that has fully complied with all the requirements of FEMA, Webb County and TCEQ.

Applicant urges TCEQ to allow this permit to proceed to SOAH which is the proper venue for determining if a permit should issue. This does not prejudice Webb County or the Application opponents because the court will hear and decide whether they may require a local development permit at this stage. In short, sending this matter to SOAH with these provisions treats all parties fairly and allows the state regulatory process to continue on the one hand, while the courts deal with local issues on the other. Allowing the permit to go to SOAH while the local issues are addressed in court fairly balances the interests of all parties and allows all relevant

issues to be heard in a timely manner by the right decision makers. SOAH and TCEQ will decide the state regulatory issues, and the courts will determine if Webb County has acted properly in withdrawing its prior approval of the CLOMR while also seeking to impose ex post facto regulations over construction of the landfill by county siting ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read "G. S. Connor". The signature is written in a cursive style with a large initial "G" and "S".

Geoffrey S. Connor  
*Attorney at Law*

GSC:slm

cc: Anthony Tatu