



Colorado County Groundwater  
Conservation District  
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December 15, 2017

Ms Bridget C. Bohac  
Chief Clerk (MC-105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

*Via Certified Mail and electronic filing*

Re: Proposed Permit No. 50407 – Altair Disposal Services, LLC (“Altair”) – Request for Contested Case Hearing

Dear Ms Bohac:

This Request for Contested Case Hearing is being submitted on behalf of the Colorado County Groundwater Conservation District (“CCGCD”) in response to the Executive Director’s Response to Public Comments.

CCGCD was created under authority of Section 59, Article XVI of the Texas Constitution and in accordance with Chapter 36 of the Texas Water Code by the 80<sup>th</sup> Texas Legislature with the Act of May 23, 2007, House Bill 4032, (“An act relating to the creation”), as a governmental agency and a body politic and corporate. The CCGCD was later confirmed by the votes of Colorado County in November 2007, in accordance with the Underground Water Conservation Districts Act passed by the Texas Legislature in 1949 (currently codified as Chapters 35 and 36 of the Water Code, Vernon’s Texas Codes Annotated).

Texas Water Code, § 36.101 (a) gives authority to the District to make and enforce rules “to provide for conserving, preserving, protecting and recharging of the groundwater...in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter.” To that end, the mission of the CCGCD is “to evaluate, preserve, and protect the groundwater of Colorado County, to prevent waste, and to ensure an adequate supply for current and future residents, industry and agriculture.” Waste is defined in the Texas Water Code § 36.001(8D) as “pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground”. The proposed location for the Altair hazardous waste site has significant potential to cause “pollution or harmful alteration of groundwater” in Colorado County.

In accord with 30 T.A.C. § 55.203, Colorado County Groundwater Conservation District is an “affected person.” CCGCD previously filed comments in a timely fashion prior to the closing of the public comment period on the Altair permit application. None of those prior comments have been withdrawn. Therefore, in accordance with 30 T.A.C. § 55.211(c), a contested case hearing should be granted with respect to issues of disputed fact raised during the public comment period as listed below by CCGCD, all of which are relevant and material to the Commission’s decision on the Altair application. To the extent that any of these issues involve matters of law or policy, the Commission should also consider those issues either directly or indirectly through the State Office of Administrative Hearings.

This request is being filed for Colorado County Groundwater Conservation District by:

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We would also request that copies of all correspondence be sent to:

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### **DISPUTED ISSUES**

- 1. Whether Altair's application establishes that there is no practical, economic and feasible alternative to the proposed hazardous waste landfill. (Executive Director's Response No. 52.)**

Fact dispute: The Altair application does not address the restriction that no new hazardous waste landfill be permitted if "there is a practical, economic, and feasible alternative to the landfill to manage the types and classes of hazardous waste that might be disposed of at the landfill." Texas Health & Safety Code §361.106; 30 T.A.C. 335.205(a)(2). The Executive Director recognizes this restriction and the existence of two alternate Texas commercial hazardous waste landfills (not mentioning a facility in Louisiana), but does not make any determination of practicality, economy or feasibility, a factual determination.

- 2. Whether the proposed Altair hazardous waste landfill will be a "commercial hazardous waste management facility" and, if so, whether Altair's application has demonstrated it will comply with applicable requirements at Texas Health & Safety Code Sections 361.102, 361.109 and 361.113 as well as 30 T.A.C. §§ 305.50(a)(12), 335.204(3) and 335.205. (Executive Director's Response No. 48.)**

Fact dispute: A fact issue or a mixed issue of fact, law and/or policy exists as to whether the Altair facility is a "captive" (noncommercial) facility when the facility is not contiguous to the claimed "generator" incinerator facility, and the waste is shipped from a separate corporate entity, and whether that facility is the sole "generator" of the waste shipped to Altair when it carries hundreds of waste codes from the claimed generator's off-site commercial waste-originating customers and when the landfilled wastes include unspecified amounts of wastes other than incinerator ash.

- 3. Whether the proposed location for the Altair hazardous waste landfill complies with the location standards as set forth at 30 T.A.C. § 335.203 and § 335.204(e)(3). (Executive Director's Response No. 7.)**

Fact dispute: The application fails to reasonably minimize possible contamination of surface water and groundwater, especially in consideration of factors such as aquifer recharge. There

is a factual dispute as to whether the applicant has demonstrated that the site is not located in a recharge zone of the Gulf Coast Aquifer and therefore may be subject to contamination from runoff or leakage. The cited Geology report in the application indicates that quarries between Altair property and the Colorado River have created 'enhanced groundwater recharge conditions' which contradicts the assessment that the site is not in a recharge area.

**4. Whether the proposed location for the Altair hazardous waste landfill complies with the location standards as set forth at 30 T.A.C. § 335.203 and § 335.204(e)(4). (Executive Director's Response Nos. 3, 4, 5, 8, 9, 10, 11 and 12.)**

Fact dispute: The application fails to reasonably minimize possible contamination of surface water and groundwater, especially in consideration of factors such as stratigraphic profile, hydraulic conductivity of strata, separation distance from the facility to the aquifer and points of discharge to surface water. Ongoing sand and gravel mining operations and published technical reports counter the assertion that the landfill will be underlain by a consistent layer of low permeable clay of at least ten feet thickness. Colorado County Groundwater Conservation District monitor data shows a clear correlation between Colorado River height and shallow monitor well data. There is no basis to believe that old and heavily silted nearby quarries (i.e. pits) have created 'enhanced recharge conditions' or that there is a localized 'groundwater mound' that has developed because of a presumed 'hydraulic barrier' which was an artifact of quarrying activities adjacent to the Colorado River.

**5. Whether the proposed location for the Altair hazardous waste landfill complies with the location standards as set forth at 30 T.A.C. § 335.203. (Executive Director's Response No. 17.)**

Fact dispute: The proposed site is located in a recent river valley comprising thick sequences of largely unconsolidated sediments. The application fails to reasonably minimize possible contamination of surface water and groundwater, since the permit application has not sufficiently demonstrated that these unconsolidated sediments can support the weight of a landfill which could ultimately lead to subsidence significant enough to cause leakage.

The Colorado County Groundwater Conservation District reserves the right to supplement or otherwise amend this foregoing list of disputed issues and also incorporates by reference public comments made during the comment period by other affected persons in opposition to the Altair application.

Respectfully submitted,

Colorado County Groundwater Conservation District

By:   
James E. Brasher  
General Manager, CCGCD

cc: Monique Norman (CCGCD Attorney)

Thomas Kelley (Board President, CCGCD)