



New TCEQ Post Closure Care Guidance

by Ty Embrey and Mattie Isturiz

As the 30th anniversary of Subtitle D of the Resource Conservation and Recovery Act quickly approaches, municipal solid waste (“MSW”) landfills in Texas that closed on or soon after October 9, 1993 will be seeking exit from Post Closure Care (“PCC”). In preparation for this, the Texas Commission on Environmental Quality (“TCEQ”) has begun developing guidance to address how it intends to handle landfills requesting to exit PCC. Currently, the process is primarily based on internal policy as the rules in 30 Texas Administrative Code (“TAC”) § 330.465 are not very specific. In fact, outside of notice requirements, the only requirements are that the facility send TCEQ a certification that PCC has been completed in accordance with the plan, that TCEQ send an inspector to the site, and that the owner then request that TCEQ revoke the permit.

TCEQ’s preparations are good news for landfill owners as they will soon have a much better understanding of what to expect when exiting PCC once the final guidance document is published.

TCEQ finalized a first draft of its guidance document in October of 2022 and solicited comments

on it in its Winter 2023 e-blast. As currently proposed, the guidance document provides various, non-exhaustive factors to consider when making a determination on exiting PCC and would require the following steps:

- The owner or operator must contact the TCEQ regional office for an inspection to confirm all PCC activities have been completed and that there are no deficiencies.

- A professional engineer must submit a certification verifying that PCC has been completed in accordance with the plan, accompanied by an assessment, completed by the certifying professional engineer, of facility conditions demonstrating that human health and the environment would be protected and that the facility is ready to exit PCC.

- TCEQ may increase the PCC period and require additional monitoring if it is determined that it is necessary to protect human health and the environment.

- Failure to submit the certification requires the permittee

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(effective February 13, 2023)

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Visit www.swana.org
for a membership
application.

Message from the President

by Jeffrey S. Reed

Hello, and a somewhat belated Happy New Year, fellow TxSWANA members!

Your Board has a big 2023 planned. First, if you've been watching your inbox, you've already see the announcement for the Chapter's Annual Conference this year. The conference is being held in Corpus Christi from June 12 – 14. You can't pick a better time or location for this event. The conference brings the industry together with the great presentations, the opportunity to run into folks you haven't seen in a long time, and a chance to see the latest and greatest technologies in the industry. Not to mention the opportunity to attend technical tours, or participate in a golf tournament and fishing tournament. Come, and bring your families! If you or your organization has done something that you want to showcase, consider presenting at the conference; the call for papers and more information on the conference can be found at SWANA Lone Star Chapter (TxSWANA) - Meeting/Event Information. A special thanks to David Lehfeldt for all the work he and his team are putting into making this a great conference.



We've also got the annual state-wide Road-E-O planned for April 21-22 in Denton. Brian Boerner and his team have been making plans for a fantastic event, and are arranging for a great rate on hotel rooms. You can find more information at SWANA Lone Star Chapter (TxSWANA) - Road-E-O. Registration will be opening soon; keep checking the website for more information.

Finally, I want to highlight our scholarship program. Each year, the Board awards a few scholarships to well-deserving students, encouraging the next generation to join this dynamic industry. More information and the application is available at SWANA Lone Star Chapter (TxSWANA) - Scholarships.

And, don't forget about our parent organization, SWANA. The Sustainability, Operations, Action, Resources (SOAR) conference is scheduled for April 17-20 in Atlanta, Georgia, and WasteCon is scheduled for September 27-29 in Boston, Massachusetts.

Stay safe out there.

Jeffrey S. Reed

(Continued from page 1) to continue PCC activities and to notify TCEQ explaining why the certification cannot be submitted.

To determine if landfill gas monitoring may be discontinued, the owner or operator must compile data in tables and time-series plots for each probe and provide a discussion about the gas generation rate and, if necessary, the range and trend of methane concentrations and potential future gas migration; if there is evidence of landfill gas migration or a trend of increasing methane concentrations, TCEQ may increase the PCC period.

To determine if groundwater monitoring may be discontinued, the owner or operator must compile historical data in tables and time-series plots for each well and provide a discussion about the data during the previous

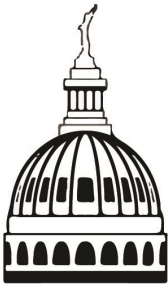
ten years; if any well is in assessment monitoring or corrective action status within the previous ten years or at the end of the PCC period, or if any constituent exhibits an increasing trend, TCEQ will increase the PCC period.

To determine if leachate collection and removal may be discontinued, the owner or operator must compile data in tables and time-series plots for each leachate collection area during each quarter or use the annual data and provide a discussion about the previous ten years' data; if the leachate generation rate for any leachate collection area does not show a stable or decreasing trend, TCEQ will increase the PCC period.

To determine if the final cover is functioning as designed, the owner or operator must inspect the cover, review past inspections, and provide a discussion about

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A T T O R N E Y S A T L A W

(Continued from page 4) the findings; if the cover is not stable and requires maintenance and repairs, TCEQ will increase the PCC period.

To determine if the surface drainage control system is functioning as designed, the owner or operator inspect the drainage feature, review past inspections, and include information about repairs performed during the previous five years; if there are ongoing surface drainage maintenance issues or drainage is not managed adequately, TCEQ will increase the PCC period.

However, after meeting with TCEQ representatives at TxSWANA's January board meeting, TxSWANA submitted several comments on the draft guidance that the Board anticipates TCEQ will thoughtfully consider. TxSWANA's comments included the following:

Professional liability insurance would likely not cover a certification as broad as requested; instead, the Board suggested alternative attesting language.

Engineers in training often perform assessments under the supervision of a licensed professional engineer; the Board recommended that it should not be required that the professional engineer complete the assessment, but that the assessment be done under the professional engineer's supervision.

The draft guidance doesn't recognize or provide a path for if the owner and/or professional engineer do not believe the facility is ready to exit PCC; the Board recommended that this option should be included, that it should be clearly stated that this would not constitute a violation of 30 TAC § 330.463, and that this would only extend the PCC period for the time recommended by the professional engineer.

The draft guidance allows TCEQ to extend the PCC period if it is determined that the facility would not be protective of human health and the environment, without any

guidance on how long that extension should be; the Board recommended that this be changed to allow TCEQ to extend the PCC period by five years unless a longer period is requested by the owner or professional engineer.

Some landfills are not required to collect groundwater data; the Board recommended that the requirement regarding discontinuing groundwater monitoring be to assess all available data rather than specifying ten years' data.

The Board recommended that every instance of TCEQ "will" extend the PCC period be changed to "may" extend to allow TCEQ room for discretion.

The Board recommended adding a summary of the process to exit PCC which explicitly provides that portions of a facility (either landfill units or landfill systems) may exit PCC separately.

The Board recommended adding a section addressing the implications exiting PCC would have on facilities authorized by registration based on being within a landfill's permit boundary (or within close proximity) which clearly states that re-notice would not be required.

The Board provided several typographical comments.

The TCEQ has not specified when a final guidance document may be published or if there will be additional drafts for review. If anyone is interested in reviewing the draft guidance, please email mswper@tceq.texas.gov; the guidance is not currently published online.

Ty Embrey is an attorney with Lloyd Gosselink Rochelle & Townsend, P.C., and Chair of the Governmental Relations Practice Group. Mattie Isturiz is an Associate with Lloyd Gosselink Rochelle & Townsend, P.C.



The 2023 TxSWANA Road-E-O will be held April 21-22 in Denton, Texas.

Registration

Registration for the 2023 TxSWANA Road-E-O is now live. Registration instructions are available on the TxSWANA website at txswana.org under Upcoming Events.

Hotel Information

The following hotels are available at a special TxSWANA Road-E-O rate. Be sure to reserve your room early to secure the special rate.

Best Western Premier Crown Chase Inn – 2450 Brinker Rd, Denton, Texas

Reservation Line: 940-387-1000

Reservation Link: <https://bit.ly/3Y4BEXq>

Hilton Garden Inn – 3110 Colorado Blvd, Denton, TX

Reservation Line: 940-891-4700

Reservation Link: [https://www.hilton.com/en/book/reservation/deeplink/?](https://www.hilton.com/en/book/reservation/deeplink/?ctyhocn=DFWDNGI&arrivaldate=2023-04-21&departuredate=2023-04-23&srpCodes=TXS)

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Courtyard by Marriott – 2800 Colorado Blvd, Denton, TX

Reservation Line: 940-382-4600

Reservation Link: Book your group rate for Texas Lone Star Chapter, Solid Waste Association of North America, INC

REGISTER NOW!

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2023 TXSWANA CONFERENCE

Corpus Christi, Texas

SAVE THE DATE!

June 12-14, 2023

Registration is now
open !

Texas Lone Star Chapter **Solid Waste Association of North America, Inc.**

Applications for the TxSWANA 2023 Scholarship Program are Now Being Accepted.

Scholarships are awarded to children and grandchildren of TxSWANA members in good standing. Top ranked applications will be forwarded to SWANA National for consideration in their program.

Applications, completion instructions, and timelines can be found on the TxSWANA website (<https://txswana.org/Scholarships>). Applications **and** supporting materials must be received by the local review committee no later than **March 17, 2023**.

Scholarship questions and submittals can be submitted to Scholarship@txswana.org

Good Luck!



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- Bilingual – English/Spanish.

Seat Belts: No Good Unless You're in Them!



by DeeAnn Crane

*Program Manager II, Mobility Safety Roadway
National Safety Council*



Buckle up. Front seat. Back seat. Short trip. Long journey. You've heard that before? So, why bring it up again now? When seat belt use declines, traffic fatality rates increase.

You believe you're a safe driver. What about that other guy or gal? Let's do everything we can to protect ourselves from those who lose their focus or nod off behind the wheel. Seat belts save lives and prevent injuries. They are the first line of defense in impaired-driving crashes.

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Download and share all of our Driver Behavior Safety Series videos from our YouTube playlist (free): <https://bit.ly/3QKNXDZ>.



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We Welcome the Following New Members (through Feb. 2, 2023)

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Raymond M. Benavidez	City of Austin
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Bryon Chapman	City of Mont Belvieu
Matthew Christianson	City of Austin
Travis Claypool	RDO Equipment & Technology
David Estrada	Lower Valley Water District
Tyler Farmer	Trillium
Abelardo Fernandez	City of Houston
Shawn Fields	City of Houston
David L. Fulton	Houston, TX
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Richard Herrera	City of Austin
Keith Koski	City of Houston
Paul Kuhar	Champion Waste & Recycling Services
Glenn Lattimore	The Lattimore Company

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Johathan Lumang	Weaver Consultants Group
Ryan Mayer	City of Denton
David McCluggage	City of Austin
Dusty McGehee	City of Denton
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Lester Powers	City of Houston
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Chastity Ringo	City of Houston
Ryan Rodriquez	Lower Valley Water District
Pablo Mario Rodrigueq	City of McAllen
Michael Samples	City of Sugar Land
Amy Schillerstrom	City of Austin
Andrea Scott	City of Tyler
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Jimmy Mack Smith	City of El Paso
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Brandley Sullivan	Stantec
Eliza A. Torrez	City of Austin

Calendar of Events

BOARD OF DIRECTORS

2023 MEETINGS

March 10	San Antonio
April 21	Denton
May 12	Austin
June 14	Corpus Christi
July 14	Dallas
Aug. 11	San Antonio
Sept. 8	Austin

2023 TXSWANA

Road-e-o

April 21-22, 2023

Denton, TX

2023 TXSWANA Annual Conference

June 12-14, 2023

Corpus Christi, TX

2023 SWANA WASTECON

Sept. 27-29

Boston, MA

2023 SWANA International Road-e-o

Oct. 14, 2023

Denver, CO