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VIA REGISTERED MAIL

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Re: Notice of Intent to File Suit Under RCRA Concerning Hawthorn Park Recycling and Disposal Facility (“Hawthorn”)

To Whom It May Concern:

Pursuant to section 7002(b) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b), Harris County, Texas hereby gives notice of its intent to file suit against USA

Waste of Texas Landfills, Inc. ("USA Waste") as owner and operator of the Hawthorn Park Recycling and Disposal Facility ("Hawthorn Landfill," "Landfill," or "Site"). Harris County provides notice of intended claims under 42 U.S.C. § 6972(a)(1)(A) and 42 U.S.C. § 6972(a)(1)(B), as described below.

This notice includes factual information from the facility's permit and operating history, TCEQ records, groundwater and gas-monitoring records, permit-amendment materials, internal and external correspondence, consultant reports, regulatory and operational records, and deposition testimony obtained in related administrative proceedings.¹ These materials document a functionally inactive landfill with chronic methane exceedances, longstanding and newly discovered elevated constituents, including iron and arsenic, in groundwater, an unexplained need for continuous depressurization, and continuing unresolved questions about the nature and composition of waste buried beneath portions of the Site. Harris County is filing this suit because those conditions violate federal regulations, and they pose serious risks to health, the environment, and specific County interests.

I. Facility and Responsible Party

The Hawthorn Landfill is a 171.6-acre Type IV Municipal Solid Waste Management Facility located at 10550 Tanner Road, Houston, Harris County, Texas, currently shown as operating under Permit No. 2185, that was originally approved in 1994.² The facility is a Type IV facility only authorized to accept construction and demolition debris, brush, rubbish, and Class III Industrial Solid Wastes and is not authorized to accept putrescible or household waste that generates methane. For decades Hawthorn has exhibited and continues to exhibit conditions that are not associated with a properly operating Type IV facility, including methane generated above the regulatory limit at the property boundary and elevated metals and chemicals in groundwater. USA Waste is the owner and operator of the facility and is the responsible party for the violations and endangerment conditions identified in this notice.³

The Landfill consists of three blocks: East, Center, and West. Permitted waste disposal at the Facility began in 1977 with the "West Block." The "East Block" received a Municipal Solid Waste ("MSW") permit in 1982 and the "Center Block" in 1994. The three sections were combined in MSW Permit Number 2185 approved by the Texas Natural Resource Conservation Commission in 1994.⁴

By USA Waste's own account, Hawthorn is not a single landfill but an accumulation of different types of disposal areas. The large central portion of the Site was used as a sand mine, with borrow excavation recorded as early as 1964. Waste disposal at the Site took place before much of the modern federal and state framework for solid waste disposal was in place. As a result,

¹ SOAH DOCKET NO. 582-23-22765; TCEQ DOCKET NO. 2023-0265-MSW.

² Permit No. MSW-2185. PIR 008429.

³ 03-February 2021 Hawthorn Park Permit Application, Vol. 1, Ptl Site and Applicant Information, Part 1, p. 1.

⁴ Permit No. MSW-2185. PIR 008429.

USA Waste cannot fully account for what lies beneath it. In deposition, USA Waste's own witnesses could not identify what liner systems exist across portions of the site's historical footprint. In 2023, USA Waste sought a permit amendment to expand the Landfill because the facility was at or near capacity. During the ensuing SOAH proceeding, USA Waste withdrew its expansion request after the Administrative Law Judge granted the protestants' motion to conduct soil and water testing at the Site. Since then, the Landfill has neither expanded nor closed.

II. USA Waste's Efforts to Conceal Site Conditions and Violations

USA Waste has consistently resisted Harris County's and others' efforts to determine what contaminants are present in the soil and water at and around the Hawthorn Landfill. In the now-aborted SOAH proceeding, USA Waste sought to expand the Hawthorn Landfill through a permit amendment. On September 25, 2023, the Protestants requested entry to the Landfill to inspect and test the site. USA Waste opposed those efforts. On November 8, 2023, the Administrative Law Judge ("ALJ") granted the Protestants' motion to conduct inspection and testing.⁵ In December 2023, sampling at GP-3 and MW-21 identified elevated gas levels and constituents in groundwater. USA Waste did not disclose to the ALJ or the Protestants the elevated gas levels or the constituents detected in groundwater while continuing to oppose inspection and testing.

On January 2, 2024, the ALJ again ordered that the Protestants' testing could proceed and denied USA Waste's motion to certify the issue for interlocutory review.⁶ Rather than allow Harris County and the other Protestants to test the soil, gas, and water at the facility, USA Waste withdrew its permit amendment application. On January 11, 2024, USA Waste also requested a modification to its Landfill Gas Management Plan to allow installation of another gas interceptor trench in an effort to address excess methane at the Landfill.

USA Waste continues to oppose efforts to determine what is in the soil, air, and water at the Hawthorn Landfill and they have challenged Harris County's attempt to secure inspection and testing in the 269th District Court of Harris County.

III. Notice of Intended Claims Under 42 U.S.C. § 6972(a)(1)(A)

A. Methane Exceedances and Open Dumping

Harris County gives notice that USA Waste is in violation of 40 C.F.R. § 257.3-8 and 40 C.F.R. § 257.1 and, therefore, is engaged in open dumping prohibited by RCRA § 4005, 42 U.S.C. § 6945, because methane generated by the Hawthorn Landfill has exceeded the regulatory limit at or near property-boundary gas probes and other boundary-area monitoring points. USA Waste is the owner and operator of the Landfill and is the person responsible for the violation described in this notice.

The violations described in this notice include methane exceedances occurring at GP-3, GP-4, and GP-1AR, which are located at the property boundaries of the East Block of the Landfill. USA Waste reported methane at GP-3 exceeding 5% at a concentration of 32.5% in December

⁵ SOAH November 8, 2023 Order.

⁶ SOAH January 2, 2024 Order.

2023; methane at GP-4 exceeding 5% on March 13, 2024, reaching 13.4%; and methane at GP-1AR exceeding 5% on July 30, 2025, with reported readings of 11.2% and 8.3%, and again on August 4, 2025, with a reported reading of 6.0%.⁷

The Landfill's regulatory history reflects persistent elevated methane from at least 2002 through 2025, including repeated and documented exceedances at property-boundary probes.⁸ The early exceedances marked the beginning of a long-running, continuing pattern of methane exceedances. For example, in June 2008, USA Waste notified TCEQ of an extreme methane problem, reporting concentrations of 54.4% and 46.3% at GP-15, a probe located at the southwestern property boundary in the eastern portion of the Landfill.⁹ Because methane concentrations continued to exceed 5 percent, TCEQ required monthly gas monitoring beginning in 2010 at GP-11, GP-10, GP-12, GP-15, GP-22, and OP-1, OP-2, and OP-3, all located at the property boundaries of the Center and East Blocks.¹⁰ Elevated concentrations still continued through 2013 at GP-11 and near GP-15 at OP-2 despite remediation efforts.¹¹

Persistent methane elevation led USA Waste to incorporate monthly monitoring beyond remediation and into the facility's 2016 Landfill Gas Management Plan for GP-10, GP-11, GP-12, GP-13, GP-14, GP-15, GP-22, and GP-27. GP-10, GP-11, GP-12, GP-13, GP-14, GP-15, GP-22, and GP-27 are located at the property boundary. Monthly monitoring remained in place for these probes at least through 2021.

Under 40 C.F.R. § 257.3-8, methane generated by a solid waste disposal facility may not exceed the lower explosive limit at the property boundary. Under 30 TAC § 330.371(a)(2), methane may not exceed 5.0% by volume at the property boundary. For methane, these are the same substantive limit. Because methane generated by the Landfill has repeatedly exceeded that limit at or near the property boundary, Hawthorn has failed to meet the methane open-dumping criterion in 40 C.F.R. § 257.3-8. Under 40 C.F.R. § 257.1, a facility that fails an applicable Part 257 criterion is an open dump. Therefore, Hawthorn has operated, and continues to operate, as an open dump in violation of 40 C.F.R. §§ 257.1 and 257.3-8, 30 TAC § 330.371(a)(2), and RCRA § 4005, 42 U.S.C. § 6945. This violation began in at least 2002 and is a continuing violation.

Harris County gives notice that USA Waste has operated and continues to operate the Landfill in violation of 40 C.F.R. § 257.3-8(a)(2) because methane generated by the facility has exceeded the lower explosive limit at the property boundary. Harris County's claim is based on the specific exceedances identified above and on all other methane exceedances above the lower explosive limit at the property boundary reflected in USA Waste's landfill gas management plans, remediation plans, landfill gas monitoring reports, landfill gas analyses, laboratory results, and other records submitted to TCEQ or maintained for the Landfill from 1995 to the present, including

⁷ Correspondence between USA Waste and TCEQ 2023, 2024, and 2025.

⁸ The current, continuing methane problems are not new. TCEQ records reflect reported methane exceedances at the Hawthorn Landfill over more than two decades, beginning in 2002 and continuing through 2025, including exceedances reported in 2003, 2008, 2010, 2011, 2013, 2016, 2023, 2024, and 2025.

⁹ APP-00001827.

¹⁰ MSW/TCEQ/8.28.13/ Implementation Report from USA Waste.

¹¹ PIR 016768.

at the following boundary probes: GP-2, GP-3, GP-1AR, GP-7, GP-8, GP-9, GP-4, GP-13, GP-14, GP-11, GP-10, GP-15, OP-1, OP-2, OP-3, OP-4, OP-5, GP-22, GP-24, GP-18, GP-26, GP-27, GP-5, GP-12, and GP-25. Records reviewed by Harris County also reflect methane exceedances at MGP-6, MGP-8, MGP-15 through MGP-18, and MGP-22 through MGP-27.

USA Waste's remedial measures have not eliminated, and have not been shown to eliminate, the real likelihood that methane generated by the Landfill will continue to exceed the lower explosive limit at the property boundary. Boundary exceedances have recurred from 2002 through at least 2025 despite the gas interceptor trenches, exhaust fans, passive vents, and accelerated and monthly monitoring USA Waste has employed throughout that period. The Landfill continues to generate landfill gas that migrates to and beyond the property boundary. The waste remains in place at a facility that has not received final cover and has not been finally closed. These facts establish an ongoing violation of 40 C.F.R. § 257.3-8(a)(2).

B. Groundwater Impacts and Open Dumping

Harris County gives notice that the Landfill's groundwater conditions constitute open dumping in violation of 40 C.F.R. §§ 257.1 and 257.3-4(a), and RCRA § 4005, 42 U.S.C. § 6945. Harris County intends to bring a claim under 42 U.S.C. § 6972(a)(1)(A) on that basis.

In 2024, USA Waste conducted supplemental groundwater monitoring at MW-21 in addition to Hawthorn's routine annual Type IV monitoring. In its April 12, 2024 letter to TCEQ, USA Waste stated that it conducted supplemental groundwater monitoring at MW-21 because of an increase in iron and TOC concentrations observed at that well. The letter confirms that MW-21 had shown increasing iron and TOC for several years, and that the results of the 2023 Annual Groundwater Monitoring Report ("AGMR") called for additional investigation. MW-21 is adjacent to GP-3 where excess methane was also detected in December 2023, the same time the groundwater monitoring tests were conducted for the 2023 AGMR.¹²

On February 14, 2024, USA Waste sampled MW-21 for the metals and volatile organic compound parameter list identified in 40 C.F.R. Part 258, Appendix I, and collected a confirmation sample from MW-21 on April 5, 2024 for chlorobenzene, barium, and arsenic. USA Waste reported chlorobenzene at 5.8 µg/L on February 14, 2024 and 4.9 µg/L on April 5, 2024; barium at 2,000 µg/L on both dates; and arsenic at 260 µg/L and 240 µg/L on those same dates. USA Waste proposed taking additional samples at MW-21 on a quarterly schedule in 2024, rather than waiting for the next annual sitewide monitoring event.

The supplemental testing was outside Hawthorn's normal annual Type IV monitoring program. The annual groundwater reports describe routine monitoring as testing for metals, anions, pH, specific conductance, total dissolved solids, and TOC. Volatile organic compounds (VOC) have not been collected under the annual permit monitoring requirements in place since 1994. The move from routine annual monitoring to supplemental Appendix I metals and VOC testing, and

¹² Hawthorn Landfill facility maps.

additional quarterly sampling at MW-21, shows that routine annual monitoring was no longer sufficient to evaluate groundwater conditions at that well.

Under 30 TAC § 330.417(6), additional sampling and analysis may be required if a facility appears to be contaminating the uppermost aquifer. Whether formally required by TCEQ or undertaken by USA Waste with TCEQ's knowledge and acceptance, the additional constituent testing at MW-21 shows that routine annual Type IV monitoring was no longer sufficient and that groundwater conditions at that well warranted investigation for possible impact to the uppermost aquifer. 40 C.F.R. § 257.3-4(a) provides that "[a] facility or practice shall not contaminate an underground drinking water source..." The Chicot aquifer is the uppermost aquifer at the site and is an underground source of drinking water.¹³ The additional constituent testing at MW-21, together with the multi-year increase in iron and TOC and the 2024 detections of chlorobenzene, barium, cobalt, vanadium, and arsenic, shows groundwater conditions serious enough to indicate impact to the Chicot aquifer and to support a claim under 40 C.F.R. § 257.3-4(a).

Harris County does not rely on the mere continued presence of contamination from completed past disposal. USA Waste's ongoing operation and maintenance of the Landfill, without final cover and without final closure, allows precipitation to infiltrate the waste mass and to generate and mobilize leachate. Through that ongoing conduct, USA Waste is introducing arsenic, barium, the other chemicals of concern identified above into the uppermost groundwater-bearing unit at concentrations that exceed the applicable Part 257 Appendix I maximum contaminant levels, or, to the extent those concentrations already exceed the levels, is increasing them, as reflected in the detections at MW-21. That ongoing introduction or increase, and not simply the legacy of past disposal, places USA Waste in current violation of 40 C.F.R. § 257.3-4(a).

Under 40 C.F.R. § 257.1, a facility that fails an applicable Part 257 criterion is an open dump. Harris County's lawsuit will bring legal claims that Hawthorn has operated, and continues to operate, as an open dump in violation of 40 C.F.R. §§ 257.1 and 257.3-4(a), and RCRA § 4005, 42 U.S.C. § 6945. This violation began in at least 2013 and is continuing.

IV. Notice of Intended Claims Under 42 U.S.C. § 6972(a)(1)(B)

A. Delayed Closure and Lack of Final Cover

Hawthorn Landfill has essentially reached permitted capacity and is no longer meaningfully operating. Since 2016, it has accepted only a *de minimis* amount of waste annually. Steve Jacobs, USA Waste's Area Director of Disposal Operations, acknowledged in his SOAH deposition that Hawthorn would have to close absent expansion. Even so, USA Waste has still not begun closure and refuses to do so.

Landfill post-closure care requirements can last for decades and are designed to ensure that closed/inactive sites do not threaten human health or the environment, requiring monitoring groundwater, managing landfill gas, and maintaining structural capping integrity, undertaking a rigorous assessment of the landfill's actual conditions, including the nature of the waste, the extent of the risks, and the measures necessary to address them. By refusing closure, USA Waste avoids

¹³ Permit Amendment Application; City of Houston Public Works.

that long-term financial undertaking and regulatory work to ensure protection of the public and environment, while it leaves the Site in limbo.

Consequently, Harris County gives notice that USA Waste has contributed and is contributing to the handling and disposal of solid waste at Hawthorn under conditions that may present an imminent and substantial endangerment because the landfill has remained largely inactive and at or near capacity for years without meeting the requirements of final closure and final cover for at least a decade.

All sections of the Landfill are under intermediate cover, and no part of Hawthorn has final cover, even though USA Waste recognized the need to close Hawthorn years ago. In 2013, at USA Waste's request, SCS Engineers prepared a Business Closeout Plan anticipating that Hawthorn would be filled to capacity in 2016, that closure would begin in 2017, and that the site should exit post-closure in 2022. The plan identified the East and West Blocks as already filled and showed that substantial inactive portions of the site still lacked a final cap, including the entire 62.1-acre Center Block and 24 acres of the East Block.

In October 2023, USA Waste's Area Director of Disposal Operations testified that the West, East, and Center Blocks were basically inactive, that Hawthorn was at or nearing permitted capacity, and that Hawthorn's records had been moved to the Atascocita Landfill because Hawthorn no longer had an onsite structure to house them. Those admissions show a landfill that is, for all practical purposes, no longer operating, yet still has not closed.

Intermediate cover is not final closure. Texas regulations do not treat years of inactivity under intermediate cover as the end of the landfill's closure obligations. Under 30 TAC § 330.165(c), areas that have received waste and will be inactive for longer than 180 days must have intermediate or final cover. Closure requirements are separately addressed in Subchapter K, including 30 TAC § 330.453 for Type IV landfills and related units. Hawthorn's years-long condition with filled or inactive areas left under intermediate, but not final, cover has deferred closure far beyond what the regulations require.

USA Waste's continued preservation of Hawthorn in this unresolved condition without final closure and final cover may present an imminent and substantial endangerment because it allows the risks already documented at Hawthorn to continue and potentially worsen. The Landfill remains vulnerable to ongoing conditions that can generate gases, affect groundwater, allow water to enter the landfill, facilitate seepage from older or unlined waste areas, contribute to slope failure, expose waste at the surface, and cause fires. Hawthorn has been left in long-term limbo: largely inactive, essentially at capacity, under intermediate rather than final cover, and without the final closure measures needed to stabilize the site and control these risks.

Harris County contends that USA Waste's continued preservation of Hawthorn in an unresolved, mostly closed state may present an imminent and substantial endangerment within the meaning of RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The conditions that created a risk of imminent and substantial endangerment began in 2016 and are continuing.

B. Methane Generation, Accumulation, and Migration

The regulatory history of the Hawthorn Landfill demonstrates methane levels above the regulatory limit at a frequency not expected for a landfill that does not accept putrescible waste.¹⁴ USA Waste's Director of Environmental Protection and Compliance, Heather Lehrmann, confirmed a TCEQ investigation summary stating that MGP-6 had *eighteen methane exceedances* ranging from 21.5% to 58.9%, that MGP-23 had *additional exceedances of 47% and 52.1%*, and that Hawthorn "continues to exceed methane gas limits at the permit boundary." Her testimony shows that USA Waste has long known that Hawthorn had a serious methane migration problem, that the exceedances were significant enough to require remediation and monthly monitoring, and that years of remedial efforts failed to definitively identify the source or stop the violations. TCEQ records show methane readings high enough to trigger remediation in 2002, 2003, 2008, 2010, 2011, 2013, 2016, 2023, 2024, and 2025 in each of the three sections of the Landfill. These continued exceedances are not isolated events.

This is not just a historical issue but reflects an ongoing and repeated serious issue for the Site. Methane levels continued to exceed the allowable 5% limit in 2023, 2024, and 2025. Methane at GP-3 exceeded 5% on December 20, 2023, including a reported concentration of 32.5%; methane at GP-4 exceeded 5% on March 13, 2024, reaching 13.4%; and methane at GP-1AR exceeded 5% again in 2025, with readings of 11.2% and 8.3% on July 30, 2025, and 6.0% on August 4, 2025. These exceedances required repeated remedial responses, including trenching, additional vents, and continued monthly monitoring. Current methane exceedances at the property boundary probes, particularly on the oldest portions of the Site, are especially serious given the history of unauthorized waste disposal and multiple closed or unpermitted landfills on or near the permit boundary.

Gas generated by buried waste may migrate off site and, if allowed to accumulate in enclosed or semi-enclosed spaces, can create a fire or explosion hazard. Fires have already occurred at the composting facility located over closed landfill permit MSW-1135 (part of the original historic footprint), with at least two occurring in 2023 (February and August). The August fire required 100 firefighters to attempt to control the blaze.

USA Waste has contributed and is contributing to the handling and disposal of solid waste at the Hawthorn Landfill under conditions that may present an imminent and substantial endangerment to health or the environment through methane generation, accumulation, and migration. The repeated methane exceedances, the need for continued corrective measures, and the recurrence of methane issues at or near the landfill boundary indicate an ongoing condition rather than an isolated event. Landfill gas generation and migration from active or inactive disposal areas is not being adequately contained, and those conditions present a serious risk to persons, adjacent property, and the environment. Harris County's lawsuit will plead that the Landfill's ongoing methane problems support relief under RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The conditions that created a risk of imminent and substantial endangerment began in at least 2002 and are continuing.

¹⁴ 40 C.F.R. § 257.3-8; 30 TAC § 330.371(a)(2) (methane may not exceed 5.0% by volume at the facility boundary).

C. Groundwater Contamination and Migration Risks

Harris County gives notice that USA Waste has contributed and is contributing to the handling and disposal of solid waste at Hawthorn under conditions that may present an imminent and substantial endangerment through unresolved groundwater contamination and migration risks.

Hawthorn's monitoring history reflects a longstanding and continuous groundwater problem. The 2023 Annual Groundwater Monitoring Report states that, since 2013, elevated concentrations of chloride, iron, specific conductance, total dissolved solids, and total organic carbon had been observed at MW-14, MW-18, MW-9, MW-17, MW-19, MW-20, and MW-21. Thirteen years after the groundwater problem became known to the public, the source, direction, and pathway of elevated constituents still has not been reliably resolved.

The record shows that MW-21 had become a specific groundwater concern by 2023. The 2023 Annual Groundwater Monitoring Report states that additional investigation would be conducted at MW-21 because iron and TOC concentrations at that well had increased over the past several years. The same report states that, in December 2023, MW-21 showed a continued increasing trend for iron, with a concentration of 28 mg/L. The MW-21 detection summary for that event reports iron at 28,000 µg/L and TOC results of 160, 160, 170, and 160 mg/L.

Additional investigation in 2024 identified constituents at MW-21 beyond Hawthorn's ordinary annual Type IV monitoring program. USA Waste reported chlorobenzene, barium, cobalt, vanadium, and arsenic above reporting limits in the February 14, 2024 sample. USA Waste also reported chlorobenzene at 5.8 µg/L on February 14, 2024 and 4.9 µg/L on April 5, 2024; barium at 2,000 µg/L on both dates; and arsenic at 260 µg/L on February 14, 2024 and 240 µg/L on April 5, 2024. Follow-up sampling in July and October 2024 continued to report chlorobenzene, barium, arsenic, iron, and TOC at MW-21.

The risk is not limited to MW-21. The 2023 Annual Groundwater Monitoring Report states that elevated chloride, iron, specific conductance, total dissolved solids, and TOC had been observed in multiple wells since 2013, first at MW-14 and MW-18 and later at MW-9, MW-17, MW-19, MW-20, and MW-21. The same long-running groundwater conditions that led to supplemental investigation at MW-21 may also affect other wells such that the full nature and extent of groundwater contamination and migration at Hawthorn, and the risks created by those conditions, remain unresolved and undelimited.

The available testimony, internal USA Waste communications, and groundwater monitoring history further show that depressurization has altered groundwater-flow conditions in ways that affect how monitoring wells are interpreted and may obscure how contamination moves through or away from the landfill. Before 2016, depressurization on the north side caused all landfill monitoring wells to be treated as upgradient. After north-side depressurization was discontinued and the system was reduced to the southern portion of the landfill, the 2022 AGMR report stated that the earlier inward gradient near MW-9 was no longer present and that groundwater flow was generally northeasterly. The 2023 Annual Groundwater Monitoring Report then stated that groundwater flow had shifted from northeasterly in 2022 to northerly in 2023, that groundwater velocity had increased to approximately three times the 2022 rate, and that those

changes were likely attributable to USA Waste's operation of the depressurization system. The changing post-depressurization conditions make it harder to determine which wells reflect background conditions, which wells may be receiving contamination moving from landfill waste, and whether the existing network is fully capturing the nature, extent, and movement of groundwater contamination. The continued need for depressurization also shows that subsurface conditions at Hawthorn remain unstable or unresolved rather than closed, controlled, and in compliance with regulatory requirements.

Harris County contends that USA Waste has contributed and is contributing to the handling and disposal of solid waste at Hawthorn under conditions that may present an imminent and substantial endangerment within the meaning of RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The groundwater record reflects a multi-year continued pattern of elevated constituents, additional constituent testing beyond the ordinary annual Type IV monitoring program, repeated detections at MW-21 in 2024, and unresolved questions about the extent, direction, and movement of groundwater impacts at the site. Taken together, those conditions create a present risk that landfill-related contamination may remain undetected, underestimated, or continue to migrate within groundwater beneath and around Hawthorn. The conditions creating a risk of imminent and substantial endangerment began in 2013 and are continuing.

D. Legacy Disposal Areas and Unresolved Liner Conditions

The Hawthorn facility is not a simple modern landfill with a uniform and documented liner system. The historical waste footprint includes older, reopened, or legacy disposal areas for which liner conditions remain undocumented or unresolved in the available record. Permitted waste disposal is reported to have begun in the West Block by 1977, the East Block received an MSW permit in 1982, and the Center Block in 1994. The large center portion of the site had previously been an unregulated sand mine, and borrow excavations are recorded as early as 1964. Historical records also reflect unauthorized dumping over the years and the existence of multiple old landfills on or in the immediate vicinity of the facility.¹⁵

In deposition testimony, USA Waste witnesses were unable to identify with certainty what liner systems exist across portions of the landfill's historical footprint. Steve Jacobs testified that he had no knowledge of liners on the West Block and no firsthand knowledge whether there were liners on the East Block. Heather Lehrmann likewise testified that she could not identify which portions of the permitted boundary actually have compacted clay liners or what liner requirements applied at each point in the landfill's long construction history.

Texas regulates Type IV landfills under 30 TAC § 330.5(a)(2). The provisions most directly relevant to liner and groundwater issues are 30 TAC §§ 330.331(d), 330.335, 330.337, 330.339, and 330.341 (liner design and operation), 30 TAC § 330.417 (groundwater monitoring at Type IV landfills), and 30 TAC § 330.453 (closure requirements for Type IV landfills). Hawthorn

¹⁵ Applicant's Document Production 26355; Applicant's Document Production 26372; Applicant's Document Production 15227; Harris County Hawthorn Document Production 12057-12088, 11916,12126,12050; Applicant's Document Production 19702.

still contains inactive, reopened, and legacy disposal areas whose liner conditions are unknown and likely unknowable without further investigation.

That uncertainty supports relief under RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). USA Waste has contributed and is contributing to the handling and disposal of solid waste at the Hawthorn Landfill under conditions that may present an imminent and substantial endangerment to health or the environment because the historical waste footprint appears to include old permitted, reopened, and possibly unauthorized disposal areas for which liner conditions are unknown, incomplete, or undocumented. If waste has been placed, or remains, in areas without compliant liners, adequate in situ soil protection, or other effective groundwater-protection measures, those conditions may increase the risk of leachate generation, groundwater contamination, gas migration, and release of landfill-related contaminants to surrounding Harris County property, drainage features, or other receptors. The conditions creating a risk of imminent and substantial endangerment began in at least 1994 and are continuing.

E. Faulting, Subsidence, and Unstable-Area Risks

Area faulting, subsidence, and unstable-area conditions threaten landfill structural integrity and may cause releases. The Brittmore fault lies within one-half mile of the Landfill's northwest permit boundary, but the only known fault study for the Landfill dates to 1993 – before the Landfill consolidated the East, West, and Center Blocks and before it built cells in the Center Block after 1994.

TCEQ regulations treat fault proximity, differential subsidence, and unstable-area conditions as matters requiring detailed study and engineering protection because such conditions can disrupt landfill structure and impair containment. See 30 TAC §§ 330.555 and 330.559. Hawthorn's continued stagnation as an inactive landfill that lacks final cover and has not been finally closed heightens the risks posed by faulting, differential subsidence, and unstable-area conditions. These conditions may threaten cover systems, drainage controls, gas controls, monitoring infrastructure, slopes, and other structural components needed to keep waste and waste-related constituents contained. Harris County therefore contends that USA Waste has contributed and is contributing to the handling and disposal of solid waste at Hawthorn under conditions that may present an imminent and substantial endangerment to health or the environment within the meaning of RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The conditions creating a risk of imminent and substantial endangerment began at least in 1994 and are continuing.

V. Harris County Interests Affected by the Conditions at Hawthorn

The conditions described above directly affect Harris County interests. USA Waste identified the County of Harris as an adjacent or potentially affected landowner, and 2021 HCAD records showed Harris County owns a lot across Tanner Road from the landfill. USA Waste's materials also state that a portion of the landfill's drainage reaches Tanner Road ditches maintained by Harris County. The landfill fronts or affects a segment of Tanner Road that Harris County controls and/or performs work on/maintains, giving the County a direct interest in associated roadway, right-of-way, and drainage features. TCEQ also recognized that Harris County has local

inspection authority relating to water, waste, and air compliance at Hawthorn in its response to comments concerning the permit amendment application.

VI. Relief Expected to Be Sought

Harris County intends to seek declaratory and injunctive relief in federal district court. Harris County expects to seek relief requiring, as appropriate, final closure and final cover; a complete methane investigation and corrective-action program; additional gas controls and monitoring points where necessary; confirmation of the exact locations and status of all boundary and near-boundary gas probes; a complete and reliable evaluation of groundwater conditions, groundwater flow, source attribution, migration pathways, point-of-compliance well designations, and the effects of depressurization or other operational activities on flow conditions; delineation of legacy waste, mined pits, unlined areas, and pre-Subtitle D disposal units within the facility; preservation and production of relevant records; and all other measures necessary to eliminate the imminent and substantial endangerment and bring the facility into compliance with applicable law. Harris County also intends to seek costs of litigation, including attorneys' fees and expert fees, and any other relief authorized by RCRA.

VII. Reservation of Rights

Harris County reserves the right to supplement or amend the factual and legal bases for its claims as additional records, testimony, expert analysis, and site investigation provide further evidence regarding the violations and the nature and extent of conditions at the facility.

Harris County intends to file suit at least 90 days after service of this notice, pursuant to 42 U.S.C. §6972(b)(2)(A). If you wish to discuss the matter prior to litigation, please contact me prior to the expiration of 90 days from the date of notice.

Respectfully submitted,

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