

SOAH DOCKET NO. 582-15-2082
TCEQ DOCKET NO. 2015-0069-MSW

APPLICATION BY § BEFORE THE STATE OFFICE
130 ENVIRONMENTAL PARK, LLC § OF
FOR PROPOSED §
PERMIT NO. 2383 § ADMINISTRATIVE HEARINGS

**CALDWELL COUNTY’S RESPONSE TO CLOSING BRIEF OF
APPLICANT 130 ENVIRONMENTAL PARK, L.L.C**

Protestant Caldwell County (Caldwell County) files its Response to the Closing Brief of 130 Environmental Park, L.L.C. (the Applicant) in the proceeding before the State Office of Administrative Hearings (SOAH) concerning the hearing for the application of 130 Environmental Park, L.L.C. for a New Type I Municipal Solid Waste Landfill and would show the following:

**I.
Introduction**

At the conclusion of the hearing held on Monday, August 15, 2016 through Friday, August 26, 2016, the Administrative Law Judges (ALJs) requested that the parties submit closing argument briefs addressing those matters raised during the hearing and referred by the Texas Commission on Environmental Quality. The Parties agreed that the following matters would be addressed in the briefing submitted to SOAH:

- (1) Sufficiency of Property Rights; (2) Evidence of Competency; (3) Compliance History; (4) Land Use Compatibility; (5) Transportation and Traffic; (6) Geology and Soils; (7) Hydrogeology; (8) Faults; (9) Groundwater Monitoring; (10) General Facility Design; (11) Waste Management Unit Design; (12) Unstable areas; (13) Landfill Gas Monitoring; (14) Endangered or threatened species; (15) Wetlands; (16) Surface Water and Drainage; (17) Floodplains; (18) Local Regulations/Approvals; (19) Waste Acceptance Plan; (20) Site Operating Plan; (21) Odor; (22) Water Supply; (23) Buffer Zones; (24) Screening; (25) Permit duration; (26) Closure plan; (27) Post-Closure plan; (28) Financial Assurance; (29) Impacts on health, welfare, environment, or physical property of nearby residents and property owners; (30) Enforceability of Draft Permit; (31) Permit Special Provisions; and (32) Additional issues.

II.
Response to Applicant's Arguments in its Closing Brief

1. Sufficiency of Property Rights

Applicant has failed to demonstrate and satisfy the TCEQ rules indicating that it possesses or has acquired a sufficient interest in or right to use the property. As discussed in the closing argument briefs, the TCEQ rules require that “[i]t is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the surface estate of the property for which a permit is issued, **including the access route.**”¹ Further, it is the owner or operator’s responsibility to “retain the right of entry to the facility until the end of the post-closure care period for inspection and maintenance of the facility.”²

As noted in Plum Creek Conservation District’s (PCCD) closing arguments, PCCD “is the owner of the easement and is making use of the easement” for which it “was not identified as a ‘property owner’ by the Applicant at the time the application was filed.” See page 2 of PCCD’s Closing Arguments. Further, PCCD states that “there was nothing in the application that made reference to the fact that there was a Plum Creek Small Watershed Protection Work Plan in place that covered the area proposed to be used for the landfill.” *Id.* Under Texas law, PCCD’s easement is the dominant estate and the surface owner cannot interfere with the easement owner’s exercise of its rights. Applicant has ignored this easement owner and failed to provide any information either in the application and/or its evidence to demonstrate that it meets the TCEQ rules.

Applicant has also failed to demonstrate that it has complied with TCEQ rules as it identifies a portion of the access road that is not included in the permit boundary. Applicant has

¹ 30 Tex. Admin Code § 330.67(a)

² 30 Tex. Admin Code § 330.67(b)

failed to obtain all necessary approvals from Caldwell County, as discussed in detail in Section R of the Closing Arguments Brief.

Additionally, Caldwell County joins the closing arguments submitted by PCCD on October 24, 2016, related to these issues as well as, the Response to Closing Arguments filed by TJFA, LP & EPICC related to these issues.

- 2. Evidence of Competency; and**
- 3. Compliance History**

As previously stated, it is impossible to determine if the Applicant possesses the competency and financial solvency to own and/or operate the proposed facility. The application fails to meet the requirements of the TCEQ.

The Application states that “130 Environmental Park, LLC, the applicant, will own and operate 130 Environmental Park and that no other person or entity has over a 20 percent ownership of the proposed facility.”³ However, Green Group Holdings’ website states that 130 Environmental Park is one of Green Group’s facilities (in permitting process and operational).⁴ In part, the application identifies Ernest Kaufmann and Oscar Allen as “the names of the 130 Environmental Park, LLC principals and supervisors.”⁵ Further, Ernest Kaufmann and Oscar Allen are no longer listed and/or even referenced as part of the leadership at Green Group.⁶

Applicant provided no evidence or testimony related to the compliance history of any of the individuals listed as principles or supervisors. Finally, the Application states that “130 Environmental Park, LLC has no financial interests outside the state of Texas.”⁷ The Applicant

³ Exhibit EP-1, page 49.

⁴ See <http://www.gghcorp.com/facilities/>

⁵ Exhibit EP-1, page 50.

⁶ See <http://www.gghcorp.com/about/leadership/>

⁷ Exhibit EP-1, pages 49-51.

does not identify whether it has any assets.⁸

Caldwell County joins the closing arguments submitted by the Office of the Public Interest Counsel (OPIC) on October 24, 2016, related to these issues as well as, the Response to Closing Arguments filed by TJFA, LP & EPICC related to these issues. It is clear that the application fails to meet the requirements of the TCEQ.

4. Land Use Compatibility

Applicant has ignored evidence of the continued projected growth for Caldwell County, the contribution of the additional rural growth, the newly constructed elementary school and permits granted by Caldwell County near the proposed landfill site for subdivisions and septic systems. *See* Caldwell County's arguments concerning land use compatibility addressed in its Closing Arguments. Caldwell County also agrees with and joins in the arguments submitted by PCCD, OPIC, TJFA and EPICC in their closing argument briefs concerning this issue.

Applicant failed to demonstrate that it conducted an accurate and complete study related to site compatibility with area land uses.

5. Transportation and Traffic

Applicant has relied upon inaccurate data concerning the traffic volume site. The evidence and testimony during the contested case hearing demonstrate that the application fails to comply with TCEQ rules concerning the adequacy and availability of road that will be used to access the proposed landfill site, the supporting data for traffic and site-generated traffic, and account for current and future development that could impact traffic. As previously stated, Caldwell County joins the closing arguments submitted by TJFA, LP & EPICC related to these issues.

6. Geology and Soils; 7. Hydrogeology; 8. Faults; and 9. Groundwater Monitoring

⁸ *Id.*

Throughout the contested case hearing, Applicant relied on the supplemental geology report. The evidence and testimony presented by Dr. Lauren Ross, Michael Rubinov and Scott Courtney demonstrate that the 2013 geology report submitted in the application was inaccurate, unreliable and fails to comply with the TCEQ rules. Specifically, testimony demonstrated that the application did not include information regarding soil classifications which were oversimplified and/or inaccurate, soil descriptions that did not include the presence of gravel, descriptions that failed to identify faults, fractures and fissures, and multiple other inconsistencies and inaccuracies.

As noted by the PCCD and TJFA and EPICC, there is evidence that the Wilcox formation is present at or near the proposed landfill and Site 21. Specifically, PCCD argues that “it would be prudent to explore formations under the impoundment area of Site 21 to determine additional information related to potential impacts of planned operations at the proposed landfill.”⁹ It is clear that the application fails to provide adequate information to address these concerns. The evidence and testimony demonstrated that at least two wells have been drilled within the Wilcox Formation in close proximity to the proposed landfill. PCCD asserts that “a monitoring program addressing water quality of those wells ... should be a requirement in any permit issue for the proposed landfill operation.”¹⁰

As shown in the application, through cross-examination of Applicant’s witnesses and the expert testimony of Dr. Lauren Ross, Michael Rubinov and Scott Courtney, the application contains minimal broad, generalized and oversimplified data and descriptions concerning these matters; therefore, failing to meet the requirements of the TCEQ’s requirements. Applicant has failed to properly identify the soils and geology at the proposed site, provide sufficient data concerning any potential faults, adequately describe the geotechnical properties of the subsurface

⁹ See PCCD Closing Arguments, page 7.

¹⁰ See PCCD Closing Arguments, page 8.

soil materials, and properly identify potential groundwater as well as, identify the uppermost aquifer and any lower aquifers that are hydraulically connected beneath the proposed facility.

Caldwell County also agrees with and joins in the arguments submitted by TJFA and EPICC in their closing argument brief concerning this issue and response to closing argument briefs.

10. General Facility Design

The testimony and evidence during the contested case hearing demonstrates that the application fails to provide adequate analysis and explanation concerning the drainage, including but not limited to the control structures (drainage swales, downshoots, perimeter channels, detention ponds, and outlet structures), for the scale house, citizens convenience center, wheel wash, proposed transfer station, maintenance building, and leachate storage system. ¹¹

16. Surface Water and Drainage

Applicant's Closing Brief contains only conclusory statements that the Application meets TCEQ requirements concerning drainage. Generally, Applicant states that "[d]evelopment of the Facility will not adversely alter peak flow rates, velocities or runoff volumes" and that "[e]xisting drainage patterns will not be adversely altered by development of the Facility."¹²

As previously stated in Caldwell County's Closing Briefing, the TCEQ requires the applicant to "determine and report to the executive director any site-specific conditions that require special design considerations and possible mitigation of conditions...."¹³ The applicant must submit a facility surface water drainage report which consists of the following information and analyses:

(A) drawing(s) showing the drainage areas and drainage calculations;

¹¹ Testimony of Tyson Traw, Transcript page 575, line 11 through page 586, line 5.

¹² See Applicant's Closing Argument Brief, page 20.

¹³ 30 Tex. Admin. Code § 330.61.

- (B) designs of all drainage facilities within the facility area, including such features as typical cross-sectional areas, ditch grades, flow rates, water surface elevation, velocities, and flowline elevations along the entire length of the ditch;
- (C) sample calculations provided to verify that **existing drainage patterns will not be adversely altered**;
- (D) a description of the hydrologic method and calculations used to estimate peak flow rates and runoff volumes including justification of necessary assumptions:
- (i) the 25-year rainfall intensity used for facility design including the source of the data; all other data and necessary input parameters used in conjunction with the selected hydrologic method and their sources should be documented and described;
 - (ii) hydraulic calculations and designs for sizing the necessary collection, drainage, and/or detention facilities;
 - (iii) discussion and analyses to demonstrate that **existing drainage patterns will not be adversely altered as a result of the proposed landfill development**; and
 - (iv) structural designs of the collection, drainage, and/or storage facilities.¹⁴

Additionally, the applicant must demonstrate that the proposed facility will be “constructed, maintained, and operated to manage run-on and runoff during the peak discharge of a 25-year rainfall event and must prevent the off-site discharge of waste and feedstock material, including, but not limited to, in-process and/or processed materials.”¹⁵ Further, the “[s]urface water drainage in and around a facility shall be controlled to minimize surface water running onto, into, and off the treatment area.”¹⁶

The evidence and testimony demonstrate that the analysis provided by the Applicant is faulty and contains over simplifications that call in to question the validity of the results presented. Tracy Bratton testified that “[i]n developing the hydrologic modeling of this landfill, the application improperly uses Shallow Concentrated Flow in many areas where channels are visible on aerial photographs, blue lines that indicate streams appear on USGS maps, and where publicly available LIDAR topographic data exists.”¹⁷ Additionally, the analysis exceeds common

¹⁴ 30 Tex. Admin. Code § 330.63(c)(1) (emphases added).

¹⁵ 30 Tex. Admin. Code § 330.303(a).

¹⁶ 30 Tex. Admin. Code § 330.303(b).

¹⁷ Testimony of Tracy Bratton, Exhibit Caldwell County 1, page7 line 22 through page 8 line 21.

engineering practices of limiting the use of shallow concentrated flow lengths to approximately 1,000-ft or less in engineering analysis.¹⁸ Mr. Bratton testified that the applicant used shallow concentrated flow lengths of up to 8,945-ft and that there were many times where the applicant mischaracterized these watersheds with shallow concentrated flow instead of channel flow.¹⁹ Specifically, Mr. Bratton testified those failures in the analysis consisted of watershed areas OS1, OS2, OS3, OS4, OS5, OS6, OS7, OS8, OS9, OS10, OS16, OS17, A2, A4, and A5 as well as potentially, OS 14 and OS 15.²⁰

By using shallow concentrated flow inappropriately, the applicant has increased the time of concentration in its modeling. Specifically, Mr. Bratton testified that long times of concentration underestimates the peak flows and results “in incorrect calculations of the water surface elevation for the storm event being analyzed.”

As previously discussed, the application provides different modeling using the Manning’s Roughness coefficient for the exact same watershed under identical conditions (both entitled 130 Environmental Park Kinematic Wave Routing Parameters, Existing Watershed Characteristics; .045 Manning’s Roughness and .065 Manning’s Roughness, respectively).²¹ Further, Mr. Traw testified that he gave all of the off-site parameters a .065 Manning’s Roughness coefficient which he used to determine the floodplain and drainage analysis for the proposed application.²² However, Mr. Traw admitted that he didn’t personally evaluate these off-site drainage channels to determine the Manning’s Roughness.²³ Simply put, by using a higher value of .065, the applicant is reducing

¹⁸ *Id.*

¹⁹ *Id.* and Testimony of Tracy Bratton, Transcript page 1816 line 15 through page 1821 line 14.

²⁰ *Id.*, Specifically, Transcript page 1818, lines 13 – 15. See also, Exhibit 130EP-2, page 94.

²¹ Testimony of Tyson Traw, Transcript page 2043 line 8 through Specifically, Transcript pages 2051-2052; Exhibit EP-2, pages 95 and 270.

²² Testimony of Tyson Traw, Transcript page 2113.

²³ *Id.*

the speed within the streams and increasing the time of concentration.²⁴ The application is devoid of any explanation to support its justification or analysis of a higher value than .045 requested by Caldwell County during the preliminary plat review.²⁵ Further, Mr. Bratton testified that “just as with the excessive lengths used for shallow concentrated flows, using excessively high roughness coefficients translates in to higher time of concentration, lag time, and results in additional underestimation of the peak flow for the storm event being modeled.”²⁶

The Applicant submitted corrected data to Caldwell County and failed to submit the corrected data to the TCEQ. The information submitted by the Applicant’s engineer, Tyson Traw, demonstrates the changes based on the Manning roughness from .065 to .045 and decreasing the area for shallow concentrated flow down to an approximate 1000 feet in length.²⁷ The same hydrologic elements consisting of nearly identical drainage areas saw significant increases in peak discharge with the requested revisions.

In this matter, the trustworthiness of the information submitted in the application should be weighed for reliability against the Applicant’s own actions and willingness to change any parameters to obtain approval. It is evident from the testimony and exhibits that the Applicant made numerous changes to the hydrologic data submitted to Caldwell County in order to obtain the preliminary plat and satisfy Caldwell County’s assessment that the data was inaccurate/inconsistent and that the modeling uses inappropriate methods. Mr. Traw provided contradictory testimony throughout the hearing and is clearly willing to submit one set of information to TCEQ and another set of information to Caldwell County in order obtain approval from both entities.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at page 13, lines 20-22.

²⁷ Testimony of Tyson Traw, Transcript page 663, line 6-11.

Caldwell County joins the arguments submitted by TJFA and EPICC in their closing argument brief and response to closing arguments concerning surface water and drainage. For these reasons, the application fails to comply with the TCEQ rules and is insufficient to determine the effect on peak flow rates, velocities, runoff volumes and existing drainage patterns.

17. Floodplains

Applicant fails to provide sufficient analysis for drainage to accurately determine the location of the floodplain at the proposed site. Applicant states that “the landfill will not be located in any 100-year floodplain.”

As previously, stated the TCEQ rules “require that a landfill be protected from flooding by suitable levees constructed to provide protection from a 100-year frequency flood. Such levees must have a freeboard of at least three feet, and must not significantly restrict the flow of a 100-year frequency flood nor significantly reduce the temporary water storage capacity of the 100-year floodplain. In Section 330.547, the rules provide that no waste disposal operations shall be in the 100-year floodway as defined by FEMA and MSW storage and processing facilities must be located outside of the 100-year floodplain. Also, this rule provides that new municipal solid waste management units shall not restrict the flow of the 100-year flood or result in washout of solid waste so as to pose a hazard to human health and the environment.”²⁸ Further, the TCEQ rules require that “no solid waste disposal operations shall be permitted in areas that are located in a 100-year floodway as defined by the Federal Emergency Management Administration. New municipal solid waste management units, existing municipal solid waste units, and lateral expansions located in 100-year floodplains shall not restrict the flow of the 100-year flood, reduce

²⁸ 30 Tex. Admin. Code §330.307.

the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.”²⁹

Testimony provided by Tracy Bratton demonstrates that the application contained inadequate analysis to review the floodplain information. As shown above, the application includes unreasonable time of concentration calculations and that the floodplain as delineated by the applicant both in Site 21 and in the channels flowing through the landfill site are inaccurate.”³⁰ Further, Mr. Bratton testified that the ponds appear to be tightly squeezed between the landfill perimeter channels and the floodplain. Therefore, since some the ponds appear to be within 20-ft horizontally of the floodplain. The previously discussed inaccuracies in the applicant’s floodplain hydrology and hydraulic results brings in to doubt whether these detention ponds are in fact outside of the 100-year floodplain.³¹

Additionally, Dr. Ross testified that the Applicant failed to account for the effect of existing wetland features and ponds in hydrologic calculations, as required by FEMA standard policies.³² Specifically, there are eight open-water stock ponds or natural water features at the proposed site, occupying more than 20 acres. There are additionally 46 emergent wetlands that have been identified onsite. The application does not provide data that these existing ponds and wetlands on the site have been included in its hydrologic analysis.³³

Caldwell County joins the arguments submitted by TJFA and EPICC in their closing argument brief and response to closing arguments concerning floodplains. The application fails to meet the requirements of the TCEQ and should be denied in its entirety.

²⁹ 30 Tex. Admin. Code § 330.547.

³⁰ *Id.* at page 15, lines 3-5.

³¹ *Id.* at page 15, lines 15-22.

³² *Id.* at page 46, line 20 through page, 47, line 17.

³³ *Id.*

18. Local Regulations/Approvals

The application fails to contain all applicable permits and approvals as required by the TCEQ. Applicant's Closing Argument Brief ignores these issues raised during the contested case hearing and does not address its failure to meet these requirements.

The TCEQ requires that the Applicant obtain and submit in its application a copy of the "floodplain development permit from the city, county, or other agency with jurisdiction over the proposed improvements."³⁴ Further, the TCEQ requires that the "owner or operator [tø] obtain any permits or approvals that may be required by local agencies such as for building construction, discharge of uncontaminated waters into ditches under control of a drainage district, discharge of effluent into a local sanitary sewer system, etc."³⁵

As previously stated in its Closing Argument Brief, Caldwell County is the local authority that issues floodplain permits for the construction of anything in the floodplain.³⁶ If there is an alteration needed to the floodplain, Caldwell County acts as the local floodplain administrator and reviews the documentation.³⁷ Upon approval by Caldwell County, a form is completed which is a "local concurrence letter that the applicant would then send to FEMA as part of a conditional letter of map revision or a letter of map revision to officially change the floodplain."³⁸

The evidence and testimony during the contested case hearing is undisputed that portions of the 130 Environmental Park facility site is located with the floodplain, as well as the access road

³⁴ 30 Tex. Admin. Code § 330.63(c)(2)(D)(ii).

³⁵ 30 Tex. Admin. Code § 330.67(d).

³⁶ Testimony of Tracy Bratton, Transcript, page 1853 lines 9 – 18.

³⁷ *Id.*

³⁸ *Id.*

crossing the floodplain in several locations. The applicant has not requested floodplain permits from Caldwell County, the local floodplain administrator.³⁹

Additionally, Caldwell County has subdivision rules and regulations and a development ordinance. It is undisputed that Caldwell County has only reviewed the applicant's preliminary plat application for compliance with local regulations. The Applicant has not provided Caldwell County with a final plat or application for a commercial development permit for the proposed landfill.⁴⁰

Therefore, it is undisputed that the Applicant has failed to comply with these TCEQ requirements.

21. Odor

As previously stated, Applicant's witness, Martha O'Brien testified that earthen berms are not effective in diluting the odorous plume once the elevation is higher than the berm.⁴¹ Ms. O'Brien admitted that she had not reviewed the actual height of the overall landfill in comparison to the berm and maturity of the screening trees.⁴² Not only would the earthen berms be ineffective in preventing odor but also from providing screening of the landfill operations for Caldwell County citizens and adjacent or nearby property owners.

Caldwell County supports and joins in the arguments raised by TFJA and EPICC in their Closing Argument Brief and Response to Closing Arguments concerning this issue. The application fails to meet the TCEQ's requirements concerning odor management.

20. Water Supply

³⁹ Testimony of Tracy Bratton, Transcript page 1853 and Caldwell County Exhibit 1, Testimony of Tracy Bratton, page 16, lines 1-3.

⁴⁰ Caldwell County Exhibit 1, Testimony of Tracy Bratton, page 16, lines 10-13.

⁴¹ Id. at page 1009, line 23 through page 1010, line 12.

⁴² Testimony of Marth O'Brien, Transcript page 1006, line 22-25

As previously stated in the Closing Argument Brief, the application is completely silent concerning approval of water service at the proposed site. PCCD in its Closing Argument Brief “urges that the Applicant show that it has available adequate supplies of water for initial construction and then have firm supplies of the approximately 350,000 gallons per month for operations as estimated by Application from a dependable source supply.”⁴³ Further, PCCD asserts that the type of water service requested by the Applicant “requires a ‘non-standard’ service agreement” from Polonia, which “[n]o such an agreement is yet in place.”⁴⁴ The testimony and evidence demonstrate that there is no information in the record related to the simple question as to whether an adequate water supply is available from Polonia.

The application fails to provide sufficient information related to the Applicant’s source to fulfill its water needs including but not limited to, daily landfill operations, wheel wash, dust control, fire prevention, and landscaping (buffering and screening). Caldwell County supports and joins in the arguments raised by PCCD, TJFA and EPICC concerning this issue.

28. Financial Assurance

Applicant has offered no financial assurance because it has no assets. As shown in the Applicant’s closing argument brief, “130 Environmental Park has not owned or operated a solid waste site in Texas within the last ten years.”⁴⁵ “130 Environmental Park does not have a direct financial interest in any solid waste site other than the proposed Facility.”⁴⁶ Further, “[t]here is no compliance information about the Facility at the time the Executive Director developed the compliance history.”⁴⁷

⁴³ PCCD’s Closing Arguments, page 12.

⁴⁴ *Id.* at page 13.

⁴⁵ *See* Applicant’s Closing Argument Brief, page 5.

⁴⁶ *Id.*

⁴⁷ *Id.*

30. Enforceability of Draft Permit

Applicant, citing the Texas Water Code, Section 7.002, states that the “TCEQ is authorized to enforce the provisions of any permit it issues.”⁴⁸ Specifically, Section 7.002 states that

the commission may initiate an action under this chapter to enforce provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions. The commission or the executive director may institute legal proceedings to compel compliance with the relevant provisions of this code and the Health and Safety Code and rules, orders, permits, or other decisions of the commission. The commission may delegate to the executive director the authority to issue an administrative order, including an administrative order that assesses penalties or orders corrective measures, to ensure compliance with the provisions of this code and the Health and Safety Code within the commission's jurisdiction as provided by Section 5.013 of this code and rules adopted under those provisions.⁴⁹

However, the current application does not include approximately one mile of access road within the proposed permit boundary. Applicant fails to identify any provision within the TCEQ rules and regulations that provide enforcement authority to the TCEQ for the approximate one mile of access road that is not included in the permit boundary.

31. Permit Special Provisions

Applicant has failed to demonstrate compliance with TCEQ requirements; therefore, there should be no permit special provisions as the permit application should be denied in its entirety.

32. Assessment of Reporting and Transcription Costs

In response to Applicant's request that the transcript costs should be allocated as follows: Applicant -- \$3,679.69, PCCD - \$1,003.55, Caldwell County -- \$3,345.17 and TJFA and EPICC - \$8,697.44, Caldwell County asserts that the burden of proof is on the Applicant. Specifically, the TCEQ rules concerning contested case hearings states that “the burden of proof is on the

⁴⁸ See Applicant's Closing Argument Brief, page 33.

⁴⁹ Tex. Water Code §7.002

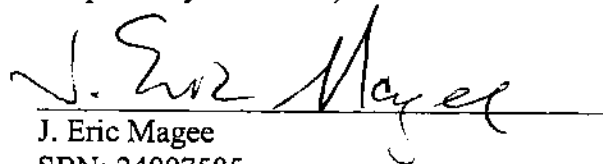
moving party by a preponderance of the evidence....”⁵⁰ The majority of Caldwell County’s participation in the contested hearing was limited to the cross-examination of the multiple witnesses presented by Applicant. Caldwell County’s presentation of its case-in-chief consisted of 79 pages (including direct, cross-examination and redirect) provided by its expert witness, Tracy Bratton.

Caldwell County argues that the entirety of the cost for the court reporting services and transcription should be assessed against Applicant.

IV. CONCLUSION

As shown during the hearing by the evidence and testimony, the design of the 130 Environmental Park, the aggressive footprint and height of the proposed landfill, as well as, the combination of multiple, oversimplifications, lack of detail, or incorrect analysis in this application combine to cause elevated risk to human health and the environment that are unique to this site. For these reasons, Caldwell County requests that the SOAH Administrative Law Judges determine that, based upon the evidence before them, Applicant has failed to demonstrate compliance with all TCEQ requirements and that, the permit application should be denied.

Respectfully submitted,



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⁵⁰ Tex. Admin. Code §80.17(a).

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November, 2016, I forwarded the foregoing to the attorneys of record by certified mail return receipt requested, facsimile, and/or electronically to the following:

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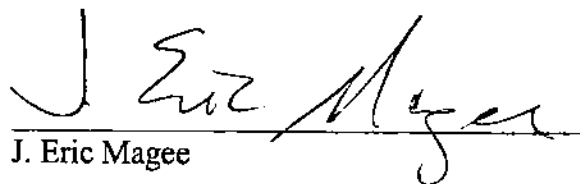
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