

COPY

CAUSE NO. D-1-GN-08-004503

TJFA, L.P. AND CONCERNED CITIZENS
AND LANDOWNERS,

PLAINTIFFS,

V.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,

DEFENDANT.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

Filed In The District Court
of Travis County, Texas
on 3-13-09
at 12:35 P.M.
Amalia Rodriguez-Mendoza, Clerk

**WASTE MANAGEMENT OF TEXAS, INC.'S PETITION
IN INTERVENTION, ORIGINAL ANSWER, AND COUNTERCLAIM**

Waste Management of Texas, Inc. ("*WMTX*"), pursuant to Rule 60 of the Texas Rules of Civil Procedure, petitions to intervene as a party defendant in this cause of action. In support of this petition, WMTX would respectfully show the Court the following:

**I.
PARTIES**

1. This suit challenges the Defendant's decision to issue Permit No. MSW-66B. Intervenor WMTX is the corporation to which that permit was issued. The permit authorizes WMTX to expand its municipal solid waste landfill facility near the town of New Braunfels in Comal County, Texas.

2. Plaintiffs, TJFA, L.P. ("*TJFA*"), and Concerned Citizens and Landowners, challenge Defendant's decision to issue Permit No. MSW-66B.

3. Defendant, Texas Commission on Environmental Quality ("*TCEQ*"), is the State agency responsible for, among other things, the issuance of certain municipal solid waste permits, such as the one challenged by Plaintiffs, pursuant to Chapter 361 of the Texas Health & Safety Code. Defendant has appeared and answered.

II.
THE ORIGINAL LAWSUIT

4. On or about December 15, 2008, Plaintiffs sued Defendant under TEX. GOVT. CODE § 2001.171 and TEX. HEALTH & SAFETY CODE § 361.321 to appeal TCEQ's October 1, 2008 order granting the application of WMTX for issuance of Permit No. MSW-66B in TCEQ Docket No. 2006-1931-MSW. On January 8, 2009, Defendant filed its Original Answer.

III.
WMTX'S RIGHT TO INTERVENE

5. Any person or entity with a justiciable interest may intervene to protect its rights as long as the intervention "does not delay the case or otherwise prejudice the existing litigants."¹

6. As the holder of Permit No. MSW-66B, the issuance of which is being challenged by Plaintiffs, WMTX has a justiciable interest in the present lawsuit. Intervention is essential to effectively protect WMTX's interest. If TCEQ's decision to issue the permit is in any way affected by order of this Court, WMTX's business plans to construct and operate its expanded municipal solid waste landfill facility, as authorized by Permit No. MSW-66B, would be substantially delayed, resulting in significant financial losses.

7. WMTX's intervention will not complicate the case by an excessive multiplication of the issues and will not cause delay or prejudice to any party.

8. All conditions precedent have been performed or have occurred.

IV.
ORIGINAL ANSWER

9. WMTX generally denies the allegations contained in Plaintiffs' Original Petition.

¹ *Atchley v. Spurgeon*, 964 S.W.2d 169, 174 (Tex. App.—San Antonio 1998, no pet.); *see also* TEX. R. CIV. P. 60.

V.
COUNTERCLAIM BY WMTX

10. WMTX files this Counterclaim against Plaintiff TJFA and alleges as follows:

NATURE OF THE CAUSE OF ACTION

11. This is a civil action against Plaintiff TJFA for the collection of \$3,096.47 in transcript costs that TCEQ ordered TJFA to pay per Ordering Provision No. 2 of TCEQ's October 1, 2008 order granting Permit No. MSW-66B to WMTX, plus accrued interest.

12. In the administrative proceedings below before the Texas State Office of Administrative Hearings ("*SOAH*"), SOAH Docket No. 582-07-0863, WMTX incurred \$15,192.00 in transcript costs, of which \$3,096.47 is owed by Plaintiff TJFA to WMTX per TCEQ's October 1, 2008 order granting Permit No. MSW-66B to WMTX.

13. WMTX's Counterclaim is not at the time of filing of WMTX's Original Answer the subject of a pending action.

14. WMTX's Counterclaim is mature and owed by Plaintiff TJFA to WMTX at the time of filing of WMTX's Original Answer.

15. WMTX's Counterclaim arose out of the same transaction or occurrence that is the subject matter of Plaintiff TJFA's claim in this matter.

16. WMTX's Counterclaim is against Plaintiff TJFA in the same capacity.

17. WMTX's Counterclaim does not require for its adjudication the presence of any third party over whom the Court cannot acquire jurisdiction.

JURISDICTION AND VENUE

18. WMTX's Counterclaim is within the jurisdiction of the Court and venue is proper.

19. WMTX's Counterclaim is within the jurisdictional limits of the Court.

CLAIM FOR RELIEF

20. Plaintiff TJFA is liable to WMTX for payment of \$3,096.47 in transcript costs that TCEQ ordered TJFA to pay per Ordering Provision No. 2 of TCEQ's October 1, 2008 order granting Permit No. MSW-66B to WMTX.

21. Plaintiff TJFA is liable to WMTX for payment of interest accrued on the \$3,096.47 in transcript costs that TCEQ ordered TJFA to pay per Ordering Provision No. 2 of TCEQ's October 1, 2008 order granting Permit No. MSW-66B to WMTX.

VI.
PRAYER

22. WMTX requests that the parties take notice of the filing of this Petition in Intervention, Original Answer, and Counterclaim.

23. WMTX respectfully prays that the Court enter judgment affirming and upholding the TCEQ's issuance of Permit No. MSW-66B to WMTX, and grant WMTX such other and further relief, both legal and equitable, to which it may show itself to be justly entitled.

24. WMTX respectfully prays that the Court enter judgment in favor of WMTX in the amount of \$3,096.47 plus accrued interest at the highest rate allowable under law.

25. WMTX respectfully prays that the Court enter judgment awarding WMTX costs and attorneys fees and all other relief to which WMTX may be entitled.

Respectfully submitted,

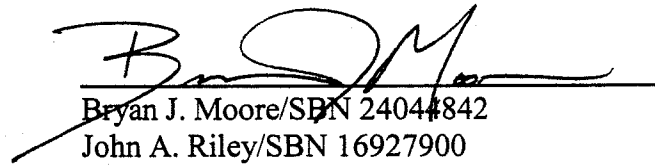
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Waste Management of Texas, Inc.'s Petition in Intervention, Original Answer, and Counterclaim have been sent to the following by certified mail, return receipt requested on this 13th day of March, 2009:

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