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

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

## CALDWELL COUNTY'S REPLY TO RESPONSES TO CLOSING ARGUMENTS

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

### 16-17. Surface Water and Drainage and Floodplains

In addressing Caldwell County's Closing Arguments, Applicant attempts to assert that the "existing and postdevelopment conditions ~~that~~ shows no adverse alteration of existing drainage patterns." Further, Applicant falsely asserts that its "demonstration of no adverse change to drainage patterns indicates that the landfill would reduce peak discharges and slightly increase discharge volume."

It is undisputed that the information submitted to Caldwell County during the initial review of the analysis relating to existing drainage conditions (for a preliminary plat) was different than the analysis submitted to the TCEQ in this application. The data submitted to Caldwell County reflects the consequences of inputting inaccurate data into these calculations.[1] Specifically,

[1] *See generally* Hearing Transcript, Testimony of Tracy Bratton, pages 1836 - 1852

Caldwell County requested the Applicant make "changes to Manning's N values, any calculation of velocity for open channel flow… and for changes in the calculation of lag time in respect to which portions of flow were shallow concentrated flow versus open channel flow."[2] The purpose of these changes being to move "part of this watercourse length that shallow concentrated flow, we were decreasing those and moving more of that length over into the channel flow length, which is the middle column, under Channel Flow; but also in making changes to the Manning's N value, the water is flowing faster in those channels than what was in the Applicant's original application."[3] Additionally, Caldwell County requested that the Applicant redraw some of the basins because they did not represent true hydrological elements as Applicant's submission to the TCEQ stopped at artificial boundaries such as roads or property lines.[4] Contrary to Applicant's statements, some of these changes demonstrate significant changes in the peak discharge.[5] These changes demonstrate an increased discharge from the data submitted to the TCEQ, in one example, an increase as high as 25 percent.[6]

As demonstrated during the hearing, the application includes inappropriate flow lengths for shallow concentrated flow and inappropriate values for "Manning's n" (a roughness coefficient). Thus, 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.

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[2] *Id.* at page 1836 L22 through page 1837 L2.
[3] *Id* at page 1838 L9 through L16.
[4] *Id* at page 1839.
[5] *See* Table in Caldwell County's Closing Argument Brief, page 5; [5] See Caldwell County, Exhibits 6 through 9; Testimony of Tyson Traw, Transcript pages 655 – 662; and Testimony of Tracy Bratton, Transcript pages 1839 – 1844.
[6] *See* Testimony of Tracy Bratton, Transcript page 1844.

In Applicant's Response, Applicant states that "the FEMA floodplain map shows that the landfill proposed for the 130 Environmental Park Landfill site will be located outside the 100-year floodplain." However, Mr. Traw made it very clear in both his deposition and testimony during the hearing that he was not sure if the proposed landfill was "pretty close or pretty much abuts" to the floodplain in several areas. The location of the placement of the landfill was a determination made by Mr. Adams not Mr. Traw.[7] As previously stated and addressed throughout the briefing of the Protesting Parties, the application provides both inaccurate data and inadequate analysis to properly review the floodplain information. It is undisputed that the landfill footprint is oddly designed and is "forced" into areas at or near the Applicant's own determination of the floodplain. Therefore, there are legitimate concerns and doubt that the applicant's floodplain hydrology and hydraulic results demonstrate that the landfill footprint, detention ponds and drainage control structures are, in fact, outside of the 100-year floodplain.

**18. Local Regulations/Approvals**

In its Response, Applicant admits that it has failed to obtain the necessary floodplain permit and commercial development permit from Caldwell County. Applicant argues that these required permits are addressed by two special provisions as proposed by the Executive Director. However, these types of special provisions are contrary to clear requirements of the Texas Administrative Code. Specifically, 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."[8] Further, the TCEQ requires that the "owner or operator [~~to~~] obtain any permits or approvals that may be required by local agencies such as for building

[7] Hearing Transcript, pages 541- 547.
[8] 30 Tex. Admin. Code § 330.63(c)(2)(D)(ii).

construction, discharge of uncontaminated waters into ditches under control of a drainage district, discharge of effluent into a local sanitary sewer system, etc."[9] These required permits/approvals must be contained in the Application.

As the application does not contain all of the applicable permits and approvals required under 30 TAC §330.63(c)(2)(D)(i) and (ii), Applicant should be required to comply with the Texas Administrative Code and provide documentation in the application that the permits or approvals have been obtained in accordance with 30 TAC §§330.63(c)(2)(D)(i) and (ii).

## 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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[9] 30 Tex. Admin. Code § 330.67(d).

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## CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 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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