

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

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

**MOTION TO RE-OPEN THE RECORD TO ADMIT  
PROTESTANTS' EXHIBIT P-47 & P-48**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES KERRIE JO  
QUALTROUGH AND CASEY BELL:

COME NOW Protestants TJFA, L.P. and Environmental Protection in the Interest  
of Caldwell County (collectively, "Protestants") and file this Motion to Admit Exhibits P-  
47 and P-48.

On December 1, 2016, the TCEQ Waste Permits Division sent the attached letter  
returning the Pintail Landfill application due to its failure to comply with Texas Health  
and Safety Code sections 363.112 and 364.012.<sup>1</sup> These regulations relate to the local  
siting ordinances that prohibit construction of the Pintail Landfill. A similar ordinance  
has been adopted by the Caldwell County Commissioner's Court.<sup>2</sup>

In their reply brief, Protestants explain, in greater detail, the relationship between  
the Pintail application, and in particular, the local landfill siting ordinances that apply in  
the Pintail matter, and the siting ordinance that was adopted by Caldwell County.  
Protestants offer this letter as an exhibit to rebut Applicant's argument that Caldwell  
County's landfill siting ordinance is not valid and respectfully urge the ALJs to consider  
this newly-issued relevant precedent from a similar landfill proceeding.

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<sup>1</sup> See Attachment A to this Motion.

<sup>2</sup> Ex. Caldwell-3.

Exhibit P-48 is a copy of the Pintail registration to operate a transfer station.<sup>3</sup> This exhibit was obtained from TCEQ's website. The purpose of this exhibit is to demonstrate that Pintail possessed a registration to operate a transfer station in Waller County, and yet the existence of this registration did not render the local landfill siting ordinances invalid. Taken together, Exhibits P-47 and P-48 rebut Applicant's argument that because an application for a transfer station registration was submitted by 130 Environmental Park before the County adopted its siting ordinance, the siting ordinance is invalid. This too is explained in greater detail in Protestants' reply brief.

**PRAYER**

Protestants respectfully request that the attached letter and registration be admitted for consideration by the ALJs as Exhibits P-47 and P-48.

Respectfully submitted,



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Marisa Perales  
State Bar No: 24002750

**FREDERICK, PERALES, ALLMON &  
ROCKWELL, P.C.**

707 Rio Grande, Suite 200  
Austin, Texas 78701  
Phone: (512) 469-6000  
Facsimile: (512) 482-9346

**COUNSEL FOR PROTESTANTS**

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<sup>3</sup> See Attachment B to this motion.

## CERTIFICATE OF CONFERENCE

Pursuant to SOAH Rule 155.305(b)(2), I certify that I attempted to confer with counsel for all parties to this proceeding about the foregoing Motion to Reopen the Record. Mr. Ryan, counsel for Applicant 130 Environmental Park LLC, is opposed to this Motion. As of this filing, no other parties have responded, indicating whether they are opposed to the motion.

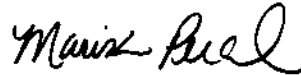


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Marisa Perales

**CERTIFICATE OF SERVICE**

By my signature, below, I hereby certify that a true and correct copy of the foregoing document has been served on the following attorneys of record by electronic mail, facsimile, or US Mail on this 22<sup>nd</sup> day of December, 2016.



Marisa Perales

**FOR 130 ENVIRONMENTAL  
PARK, LLC**

Brent W. Ryan  
bryan@msmtx.com  
MCELROY, SULLIVAN, MILLER,  
WEBER & OLMSTEAD, LLP  
P.O. Box 12127  
Austin, TX 78711  
Fax: 512.327.6566

**FOR TCEQ EXECUTIVE  
DIRECTOR**

Anthony Tatu  
anthony.tatu@tceq.texas.gov  
Kayla Murray  
Kayla.Murray@tceq.state.tx.us  
Aaron Vargas  
Aaron.Vargas@tceq.texas.gov  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 512.239.0606

**FOR TCEQ PUBLIC INTEREST  
COUNSEL**

Aaron Tucker  
aaron.tucker@tceq.texas.gov  
Office of Public Interest Counsel, MC-  
103  
TCEQ  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 512.239.6377

**FOR CALDWELL COUNTY**

Eric Magee  
e.magee@allison-bass.com  
ALLISON, BASS & MAGEE, LLP  
402 W. 12th St  
Austin, Texas 78701  
Fax: 512.480.0902

**FOR PLUM CREEK**

Bob Wilson  
bwilson@jacksonsjoberg.com  
JACKSON, SJOBERG, MCCARTHY &  
TOWNSEND, LLP  
711 West 7th Street  
Austin, Texas 78701  
Fax: 512.225.5565

Ben Pesi  
PO Box 242  
Dale, TX 78616

**VIA US MAIL**



# Attachment A

120 W. S. Young Blvd., Suite 100  
P.O. Box 100  
Dallas, Texas 75201  
Phone: (972) 232-2200

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

1000 North East Street, Austin, Texas 78702

December 1, 2016

Mr. David Green  
President  
Green Group Holdings, LLC  
P.O. Box 969  
Hempstead, Texas 77445

Re: Proposed Pintail Landfill - Waller County  
Municipal Solid Waste (MSW) - Permit Application No. 2391

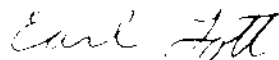
Dear Mr. Green:

On June 30, 2016, Pintail Landfill, LLC (Pintail) filed Parts I and II of a new application for a permit to construct a municipal solid waste landfill in Waller County, within the extraterritorial jurisdiction of the City of Hempstead. The Executive Director is returning the application.

Since the City of Hempstead's and Waller County's ordinances prohibiting landfills in the proposed location were adopted before Pintail filed this application, the Commission "may not grant" Pintail's application. See Texas Health & Safety Code sections 363.112 and 364.012.

If you have any questions, please contact Mr. Anthony Tatu, Staff Attorney, at (512) 239-5778.

Sincerely,



Earl Lott, Director  
Waste Permits Division

cc: Mr. John Riley, Jackson Gilmour & Dobbs, P.C., Austin  
Mr. Brent W. Ryan, McElroy, Sullivan & Miller, LLP, Austin  
Mr. Kenneth J. Welch, P.E., Biggs & Mathews Environmental, Mansfield

# Attachment B

# Texas Commission on Environmental Quality



## Registration for Municipal Solid Waste (MSW) Management Site

### Issued under provisions of Texas Health & Safety Code Chapter 361

MSW Registration No.: 40259  
Name of Site Operator/Registrant: Pintail Landfill, LLC  
Property Owner: Marengo Family Properties, Ltd.  
Facility Name: Pintail Landfill Transfer Station  
Facility Address: 24644 Highway 6, Hempstead, Texas 77445  
Classification of Site: Type V Transfer Station

The registrant is authorized to store and process wastes, and to recycle recovered materials in accordance with the limitations, requirements, and other conditions set forth herein. This registration is granted subject to the rules and Orders of the Commission and laws of the State of Texas. Nothing in this registration exempts the registrant from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality (TCEQ). This registration will be valid until canceled, amended, or revoked by the Commission.

*Approved, Issued and Effective* in accordance with Title 30 Texas Administrative Code (30 TAC) Chapter 330.

Issued Date: July 23, 2013

  
For the Commission

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## **I. Size and Location of Facility**

- A. This Type V Transfer Station is located at 24644 Highway 6, in Hempstead, Waller County, Texas. The facility contains 410.37 acres.
- B. The legal description is contained in Part 1, Appendix 1C of the application.
- C. Coordinates and Elevation of Site Permanent Benchmark:
  - Latitude: 30° 08' 12.73" N
  - Longitude: 96° 04' 07.43" W
  - Benchmark Elevation: 259.31 feet above Mean Sea Level

## **II. Waste Management Units and Operations Authorized**

### **A. Days and Hours of Operation**

This facility is authorized to accept waste from 7 am to 7 pm, Monday through Friday. The operating hours for operating heavy equipment and for transporting materials will be from 5 am to 9 pm, Monday through Friday. The operator shall post the operating and waste acceptance hours on the site sign.

### **B. Wastes Authorized at this Facility**

The registrant is authorized to separate, store, and transfer construction and demolition waste, as defined in 30 TAC Section (§)330.3(33), from the construction and demolition of residential, community, commercial, institutional, and recreational activities. All waste must be transferred to an authorized disposal facility. The facility is also authorized to recover recyclable materials and transfer the recovered recyclable materials to an authorized facility.

### **C. Wastes Prohibited at this Facility**

All liquid waste and solid waste not authorized in Provision II.B.

### **D. Waste Acceptance Rate**

Solid waste may be accepted for processing at this facility at a rate of up to 94 tons per day.

### **E. Maximum Volume Available for Storage**

The facility may store up to 100 tons of processed and unprocessed materials onsite. The 100 tons includes unprocessed and processed wastes, and all recyclable materials stored onsite. The maximum storage limit for unprocessed and processed wastes is 72 hours. Recyclable materials may be stored on site for a maximum of 180 days.

F. Waste Management Units Authorized

The registrant is authorized to operate the facilities related to the separation, storage, and transfer of the wastes authorized, and recycling of the recovered materials, which shall include units, structures, appurtenances, or improvements as described in the registration application.

The waste management units authorized at this facility include: the transfer station building; roll-off boxes, transfer trailers, and other suitable containers; and one 5,000 gallon contaminated water storage tank.

G. Changes, Additions, or Expansions

Any proposed facility changes must be authorized in accordance with TCEQ rules in 30 TAC Chapter 330 (Municipal Solid Waste) and 30 TAC Chapter 305 (Consolidated Permits).

### III. Facility Design, Construction, and Operation

A. Facility design, construction, and operation must comply with this registration, the registration application as incorporated by reference in Attachment A, and the regulations in 30 TAC Chapter 330.

B. The entire waste management facility shall be designed, constructed, operated, and maintained to prevent the release and migration of any waste, contaminant, or pollutant, and to prevent inundation or discharge from the areas surrounding the facility components. This site must be designed, constructed and maintained to collect spills and incidental precipitation in such a manner as to:

1. preclude the release of any contaminated runoff or spills; and
2. prevent washout of any waste by a 100-year storm.

C. The site shall be designed and operated so as not to cause a violation of:

1. the requirements of the Texas Water Code, §26.121;
2. any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, §402 as amended; or Texas Pollutant Discharge Elimination System requirements;
3. the requirements under the Federal Clean Water Act, §404, as amended; and
4. any requirement of an area wide or statewide water quality management plan that has been approved under the Federal Clean Water Act, §208 or §319, as amended.

- D. All facility employees and other persons involved in facility operations shall be qualified, trained, and experienced to perform their duties so as to achieve compliance with this registration. The registrant shall further ensure that personnel are familiar with safety procedures, contingency plans, the requirements of the Commission's rules, and this registration, commensurate with their levels and positions of authority.

#### **IV. Financial Assurance**

- A. General

Authorization to operate the facility is contingent upon compliance with provisions contained in this registration and maintenance of financial assurance in accordance with 30 TAC Chapter 330 Subchapter K and 30 TAC Chapter 37.

- B. Closure Financial Assurance

Closure Financial Assurance. The amount of financial assurance posted for closure shall be provided annually in current dollars in an amount equal to closing the entire facility pursuant to 30 TAC §330.505. The owner and/or operator shall annually adjust the closure cost estimate and the dollar amount of the financial assurance for inflation within 60 days prior to the anniversary date of the registration pursuant to 30 TAC Chapter 37 Subchapter B. Continuous financial assurance coverage for closure must be provided until all requirements of the final closure plan have been completed and the site is determined to be closed in writing by the executive director.

- C. Closure Financial Assurance Amount

Within 60 days after the date of registration issuance or prior to the initial receipt of waste, the registrant shall provide financial assurance instrument(s) for demonstration of closure in an amount equal to but not less than \$87,975.00 for closure in 2011 dollars. The amount of financial assurance to be posted annually shall be determined as described in Provisions IV.A. and IV.B of this registration and 30 TAC Chapter 37.

- D. Closure Plan Modifications

If the facility's closure plan is modified, the registrant shall provide new cost estimates in current dollars, which meet the requirements in 30 TAC Chapter 37 and 30 TAC Chapter 330, Subchapter L as applicable. Modifications shall be made pursuant to 30 TAC §305.70. The amount of the financial assurance mechanism shall be adjusted within 45 days after the modification is approved. Adjustments to the cost estimates and/or financial assurance instrument to comply with any financial assurance regulation that is adopted by the TCEQ subsequent to the issuance of this registration shall be initiated as a modification within 30 days after the effective date of the new regulation.

## **V. Facility Closure**

### **A. Closure shall commence:**

1. Upon direction by the Executive Director of the TCEQ for failure to comply with the terms and conditions of this registration or violation of State or Federal regulations. The Executive Director is authorized to issue emergency orders to the registrant in accordance with §§5.501 and 5.512 of the Texas Water Code regarding this matter after considering whether an emergency requiring immediate action to protect the public health and safety exists;
2. Upon abandonment of the site;
3. Upon direction of the Executive Director for failure to secure and maintain adequate financial assurance as required; or
4. Upon registrant's notification to the TCEQ that the facility will no longer operate.

### **B. Site Completion Requirements:**

The facility shall be completed and closed in accordance with Part III, Appendix IIIC (Closure Plan), Part III, Appendix IIID (Closure Cost Estimates), Part III of this Registration, and 30 TAC §330.21 – Closure, 30 TAC §330.451 – Applicability, 30 TAC §330.459 - Closure Requirements for Municipal Solid Waste Storage and Processing Units and 30 TAC §330.461 - Certification of Final Facility Closure.

## **VI. Standard Registration Conditions**

- A. This registration is based on and the site owner/operator shall follow the registration application submittal dated August 1, 2011, and the revisions dated August 8, 2011, August 29, 2011, November 16, 2011, January 18, 2012, March 15, 2012, May 1, 2012, May 31, 2012, July 20, 2012, September 14, 2012, and October 18, 2012. These application submittals are hereby approved subject to the terms of this registration, the rules and regulations, and any orders of the TCEQ. These application materials are incorporated into this registration by reference in Attachment A as if fully set out herein. Any and all revisions to these elements shall become conditions of this registration upon the date of approval by the Commission. The registrant shall maintain the Application and all supporting documentation at the facility and make them available for inspection by TCEQ personnel.
- B. Attachment B, consisting of temporary authorizations, modifications, and corrections to this registration, is hereby made a part of this registration.
- C. The registrant shall comply with all conditions of this registration. Failure to comply with any condition may constitute a violation of the registration, the rules of the Commission, and the Texas Solid Waste Disposal Act and is grounds for an enforcement action, revocation, or suspension.
- D. Inspection and entry onto the site by authorized personnel shall be allowed during the site operating life.

- E. The provisions of this registration are severable. If any registration provision or the application of any registration provision to any circumstance is held invalid, the remainder of this registration shall not be affected.
- F. Regardless of the specific designs contained in the registration application, the registrant shall be required to meet all performance standards in the registration, the application, or as required by local, State, and Federal laws.
- G. If differences arise between these registration provisions and the Application, these registration provisions shall prevail.
- H. The registrant shall comply with the requirements of the air permit exemption in 30 TAC §106.534, if applicable, and the applicable requirements of 30 TAC Chapters 106 and 116.

#### **VII. Incorporated Regulatory Requirements**

- A. The registrant shall comply with all applicable Federal, State, and local regulations and shall obtain any and all other required permits prior to the beginning of any operation authorized by this registration.
- B. To the extent applicable to the activities authorized by this registration, the requirements of 30 TAC Chapters 37, 281, 305, and 330, and future revisions are adopted by reference and are hereby made provisions and conditions of this registration.

#### **VIII. Special Provisions**

The facility must implement all roadway improvements specified in Part II, Appendix IIC of the registration application prior to their pre-opening inspection and operation of the transfer station.

#### **IX. Attachment A**

The Registration Application.

#### **X. Attachment B**

Temporary Authorizations, Modifications, and Corrections to MSW Registration No. 40259.