

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

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

APPLICANT'S RESPONSE TO TJFA/EPICC'S MOTION TO RE-OPEN THE RECORD TO ADMIT PROTESTANTS' EXHIBIT P-47 & P-48

TO: THE HONORABLE KERRIE JO QUALTROUGH, ADMINISTRATIVE LAW JUDGE
AND THE HONORABLE CASEY A. BELL, ADMINISTRATIVE LAW JUDGE

130 Environmental Park, LLC, the Applicant in this proceeding, files this response to TJFA, L.P. and Environmental Park in the Interest of Caldwell County's Motion to Re-Open the Record to Admit Protestants' Exhibit P-47 & P-48 (TJFA/EPICC's Motion to Re-Open) and respectfully requests that the ALJs deny the motion.

I. LIST OF PENDING MOTIONS

There are two motions pending at this time:

- TJFA/EPICC's Motion to Strike Portions of Applicant's Response to Closing Arguments requests that the ALJs strike various portions of Applicant's Response to Closing Arguments. This motion was filed on December 22, 2016. The deadline for responses to this motion was December 27, 2016.
- TJFA/EPICC's Motion to Re-Open the Record to Admit Protestants' Exhibit P-47 & P-48 (which this Response addresses) requests that the ALJs admit into evidence Protestants' Exhibit P-47 (a letter from the TCEQ Executive Director regarding the permit application for the Pintail Landfill in Waller County) and Exhibit P-48 (a copy of the TCEQ registration for the Pintail Landfill Transfer Station in Waller County). This motion was filed and served after 5:00 p.m. on December 22, 2016. Pursuant to Order No. 19, this motion is deemed filed and served on December 23, 2016. The deadline for responses to this motion is December 28, 2016.

II. ARGUMENT

TJFA/EPICC's Motion to Re-Open requests that the ALJs re-open the record and admit into evidence Protestants' Exhibit P-47 (a letter from the TCEQ Executive Director regarding the permit application for the Pintail Landfill in Waller County) and Exhibit P-48 (a copy of the TCEQ registration for the Pintail Landfill Transfer Station in Waller County). 130 Environmental Park, LLC objects to the admission of these exhibits because TJFA/EPICC's Motion to Re-Open is not timely, having been filed more than 21 days after the issuance of the TCEQ Executive Director's letter and after the record closed in this matter. TJFA/EPICC's Motion to Re-Open is one more in a long line of actions they have taken during the course of this proceeding seeking delay; those efforts should not be rewarded. 130 Environmental Park, LLC also objects to the admission of these exhibits because, as made very clear by TJFA/EPICC's own discussion of Caldwell County's ordinance in their Reply to Responses to Closing Arguments, these exhibits are not relevant to any issue in this proceeding. TJFA/EPICC assert that these exhibits relate in some way to the issue of the applicability of Caldwell County's December 9, 2013 Solid Waste Disposal Ordinance (included in *Caldwell Co. Ex. 3*) to 130 Environmental Park LLC's permit application (filed with TCEQ on September 4, 2013). But TJFA/EPICC are wrong and these exhibits are not relevant to this proceeding in any way. Without addressing the merits of the position taken by the Executive Director in Protestants' Exhibit P-47, 130 Environmental Park LLC will simply point out that the Executive Director's letter (which applies to the proposed Pintail Landfill in Waller County and not to the proposed 130 Environmental Park Landfill) addresses only one fact situation: "the City of Hempstead's and Waller County's ordinances prohibiting landfills in the proposed location were adopted before Pintail filed [its June 30, 2016 permit] application". In their Reply to Responses to Closing Arguments, TJFA/EPICC admit that such a fact situation does not exist with regard to the

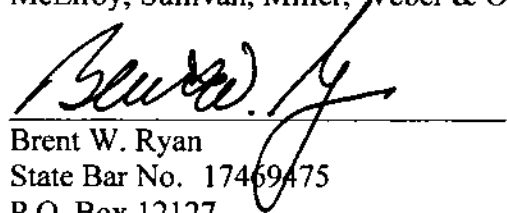
Caldwell County ordinance and 130 Environmental Park LLC's permit application: "**Admittedly, in this case, [sic] landfill permit application here was filed with TCEQ before the adoption of the County's landfill siting ordinance.**"¹ This admission unequivocally establishes that Protestants' Exhibits P-47 and P-48 are not relevant to this proceeding and should not be admitted into evidence or otherwise considered in this matter.

III. PRAYER

Wherefore, premises considered, 130 Environmental Park, LLC respectfully requests that the ALJs deny TJFA/EPICC's Motion to Re-Open the Record to Admit Protestants' Exhibit P-47 & P-48.

Respectfully submitted,
McElroy, Sullivan, Miller, Weber & Olmstead, LLP

By:


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CERTIFICATE OF SERVICE

On December 28, 2016, a true and correct copy of the foregoing was sent to each party representative via email and/or first-class mail, as shown on the attached service list.


Brent W. Ryan

¹ In their Motion to Re-Open, TJFA/EPICC assert that they are offering Protestants' Exhibits P-47 and P-48 "to rebut Applicant's argument that Caldwell County's landfill siting ordinance is not valid". However, 130 Environmental Park, LLC does not claim, and has never claimed, that Caldwell County's ordinance is not valid, only that the ordinance does not prevent TCEQ from issuing to 130 Environmental Park, LLC the permit sought by way of its permit application because the ordinance was not adopted until December 2013. See, Health & Safety Code §§363.112(c) and (d) and 364.012(e) and (f).

SERVICE LIST

SOAH Docket No. 582-15-2082; TCEQ Docket No. 2015-0069-MSW
Application of 130 Environmental Park Landfill, LLC for Proposed Permit No. 2383

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