

SOAH DOCKET NO. 582-15-2082

TCEQ DOCKET NO. 2015-0069-MSW

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

HEARING ON THE MERITS

Friday, August 26, 2016

BE IT REMEMBERED THAT at 9:10 a.m., on Friday, the 26th day of August 2016, the above-entitled matter came on for hearing at the State Office of Administrative Hearings, William P. Clements, Jr., Building, 300 West 15th Street, Room 404, Austin, Texas, before KERRIE JO QUALTROUGH and CASEY BELL, Administrative Law Judges, and the following proceedings were reported by Lorrie A. Schnoor, Certified Shorthand Reporter.

P R O C E E D I N G S

FRIDAY, AUGUST 26, 2016

(9:10 a.m.)

(Exhibit Applicant Nos. 56 through 59
marked)

JUDGE QUALTROUGH: This is SOAH Docket
No. 582-15-2082, TCEQ Docket No. 2015-0069-MSW. It's
August 26, 2016. It is 9:10 a.m. We are back on the
record, and we are resuming with the Applicant's
rebuttal case.

MR. RYAN: Thank you, Your Honor. We'll
call Mr. Mike Snyder.

JUDGE QUALTROUGH: And I will need to
swear you in.

THE WITNESS: Okay.

(Witness sworn)

JUDGE QUALTROUGH: All right. Thank you.
You may take a seat.

REBUTTAL PRESENTATION ON BEHALF OF APPLICANT

JOHN MICHAEL SNYDER, P.G.,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RYAN:

Q Mr. Snyder, do you see in front of you the
sample from Protestants' Boring IV-3 at 24 to 25 feet?

1 A I do.

2 Q What features are present in that sample?

3 A That is what we refer to as a blocky texture.
4 What you see in that sample are fine cracks that result
5 from the shrink/swell of clays and is part of the
6 weathering process.

7 MR. RYAN: I'll pass the witness.

8 JUDGE QUALTROUGH: Anything from Plum
9 Creek?

10 MR. WILSON: No questions, Your Honor.

11 JUDGE QUALTROUGH: Executive Director?

12 MR. TATU: No questions.

13 JUDGE QUALTROUGH: OPIC?

14 MR. TUCKER: No questions.

15 JUDGE QUALTROUGH: Caldwell County? No
16 questions?

17 MR. MAGEE: Not my sample.

18 JUDGE QUALTROUGH: TJFA.

19 MS. PERALES: I don't know. Can I have a
20 second?

21 JUDGE QUALTROUGH: Sure.

22 (Pause)

23 MS. PERALES: Okay. I have a few
24 questions.

25 JUDGE QUALTROUGH: Okay.

1 CROSS-EXAMINATION

2 BY MS. PERALES:

3 Q So, Mr. Snyder, by describing IV-3 at 24 to
4 25 feet as a blocky texture, what are you comparing that
5 to?6 A I was not comparing it to anything. I was
7 describing what I saw.8 Q Okay. Well, is that consistent with the
9 description that was provided by Mr. Rubinov?10 A Mr. Rubinov's note says, "iron oxide filled
11 fissure."12 Q Okay. And you disagree with that? Is that
13 your point?

14 A I said that what I observed is blocky texture.

15 Q Okay. Are there any fractures in that sample?

16 A It appears not.

17 Q And you talked about the shrink/swell of clays.
18 Is that something that would also contribute to
19 fractures?

20 A It can.

21 Q Okay. And there is evidence of the shrink and
22 swell of clays on this site?23 A I think there's evidence of the shrink/swell of
24 clays on the site.

25 Q And that's one example?

1 A That's one example.

2 Q And yet you didn't find fractures throughout
3 the site?

4 A Yes.

5 MR. RYAN: Objection. Your Honor, that's
6 beyond the scope of the direct examination. He was
7 asked about one sample. Now she's wanting to talk about
8 the whole site. He testified about blocky textures.
9 She's -- now she's wanting to talk about fractures.

10 MS. PERALES: He also talked about the
11 shrink and swell of clays and how it exhibited itself in
12 this one sample, and I'm trying to draw a distinction
13 between what shrink and swell of clays might show in
14 this one sample versus other samples on the site.

15 JUDGE QUALTROUGH: All right. I'm
16 overruling that objection.

17 A I'm sorry, I -- I don't know -- I don't
18 remember the question.

19 Q (BY MS. PERALES) Neither do I.

20 JUDGE QUALTROUGH: It had to do with
21 fractures.

22 Q (BY MS. PERALES) Right, throughout the site.
23 That's right.

24 So if there's a shrink and swell of clays,
25 wouldn't one expect to see fractures throughout the

1 site?

2 A No.

3 Q Okay. And you certainly didn't. Isn't that
4 right?

5 A That's right.

6 Q In fact, you didn't see any in 2013?

7 A That's right, we didn't.

8 Q Okay. If there had been a fracture in this
9 interval, could that prevent bringing in an intact
10 sample?

11 MR. RYAN: Objection. That's beyond the
12 scope of the direct examination. I didn't ask him about
13 sampling techniques.

14 MS. PERALES: I'm asking about this one
15 sample.

16 MR. RYAN: Well, she's asking about
17 something that doesn't exist. What he's done is
18 identify what's in the sample. Now she wants to talk
19 about everything that's not in the sample.

20 MS. PERALES: I'm asking for his opinion
21 regarding the structure of the sample and whether a
22 fracture could have prevented the sample from
23 bringing -- being brought in intact.

24 JUDGE QUALTROUGH: All right. I'm
25 overruling the objection.

1 A I'm sorry.

2 Q (BY MS. PERALES) If this -- if there were a
3 fracture in this sample in this interval, could that
4 prevent bringing in an intact sample?

5 A I don't have an opinion about that.

6 Q You just don't know?

7 A I just don't know.

8 Q Is blocky texture, is that consistent with
9 cleave?

10 A I don't make a connection to that.

11 Q Okay. And you don't -- you don't observe any
12 fractures or fissures in this sample?

13 A I do not.

14 Q Okay. And you can't tell whether it cleaves
15 easily?

16 A No.

17 MS. PERALES: All right. I'll pass the
18 witness.

19 JUDGE QUALTROUGH: Redirect?

20 MR. RYAN: No.

21 JUDGE QUALTROUGH: All right, thank you.
22 You may step down.

23 All right.

24 MR. RYAN: Your Honor, I've got a few
25 rebuttal exhibits here.

1 JUDGE QUALTROUGH: Okay.

2 MR. RYAN: I'd like to hand those out.

3 (Pause)

4 JUDGE QUALTROUGH: All right. I've got
5 130EP-54, then I have 57, but I have three records. Is
6 that -- three TDLR records. Are they all under 57 or
7 are they individually --

8 MR. MOORE: There should be 56, 57, 58,
9 59.

10 JUDGE QUALTROUGH: Okay, let's go off the
11 record.

12 (Discussion off the record)

13 JUDGE QUALTROUGH: All right. Let's go
14 back on the record.

15 MR. RYAN: Thank you, Your Honor. We
16 would offer -- well, first, we would offer Exhibit
17 130EP-54, which is four pages of records from the
18 railroad commission regarding the Hunter King Well No. 1
19 that Mr. King testified about the other day.

20 JUDGE QUALTROUGH: All right. Any
21 objection to 130EP-54?

22 MS. PERALES: Yes.

23 JUDGE QUALTROUGH: Okay. And your
24 objection is?

25 MS. PERALES: Well, I -- it's not

1 authenticated and I don't have a witness to
2 cross-examine about this. I don't know who's prepared
3 this or put this document together. And it doesn't
4 appear to be complete.

5 And it -- well, it certainly should have
6 been part of the application. Even failing that, it
7 should have been part of prefiled testimony.

8 JUDGE QUALTROUGH: And why should that
9 have been part of the prefiled testimony?

10 MS. PERALES: Because the engineer of
11 record is tasked with conducting a search for all of
12 the -- any old oil and gas wells. And we all took the
13 deposition, or at least I think the County and TJFA took
14 the deposition of the property owner, and the property
15 owner made it clear that she knew of an abandoned well
16 on her property that had not been identified in the
17 application. So the Applicant was on notice that there
18 had been either a miss-identified or an unidentified
19 well on her property a long time ago.

20 JUDGE QUALTROUGH: All right. Response to
21 the authentication objection?

22 MR. RYAN: Yes. Your Honor, after
23 Mr. King testified the other day and he testified that
24 the Hunter King well was located 160 feet inside
25 Homannville Trail, we had somebody go to the Railroad

1 Commission to see if we could find any records about the
2 well. We did. We haven't been able to get the
3 certified copy back yet, but I can certainly get that if
4 that's a problem. That's in process. I was hoping we
5 could have it yesterday, but we just don't have it yet.

6 JUDGE QUALTROUGH: All right. Then the
7 objection that there's no witness and it's not complete.

8 MR. RYAN: Well, we're offering it for the
9 purpose of showing that the actual location of the well
10 is 50 feet from Homannville Trail. That's shown on Page
11 2, which is the plat that accompanied the W-1, the first
12 page, the application to drill the well. And then the
13 location's also confirmed on the Form W-3, the plugging
14 report, that establishes that the well was plugged in
15 2004.

16 And the -- I'll tell you, the thing that
17 we think the record needs to be clear on, Mr. King
18 testified that the well was drilled 160 feet in from
19 Homannville Trail, which would have put it inside our
20 permit boundary. The well's actually located 50 feet
21 from the road, which is outside the permit boundary.
22 It's a well that's been plugged and abandoned, but we
23 still think the record needs to reflect that it's not
24 within the permit boundary. And this exhibit does that.

25 JUDGE QUALTROUGH: And response that this

1 should have been provided in the application and in
2 prefiled?

3 MR. RYAN: We do have information about
4 this well in the application. At the time the
5 application was prepared, this well was shown on
6 Railroad Commission maps as being located on the
7 northeast side of Homannville trail. And so we were
8 surprised when Mr. King testified that it was on the
9 southwest side of Homannville Trail. And when he did
10 that, we went to see if we could find more information
11 at the Railroad Commission about it, and apparently they
12 had located a file about the well and we got some
13 records about it that establish that it was drilled
14 50 feet from the road.

15 JUDGE QUALTROUGH: All right. We're going
16 to overrule the objection and admit this exhibit, but
17 you'll need to provide us a certified copy.

18 MR. RYAN: Yes, ma'am.

19 THE REPORTER: That was 54?

20 JUDGE BELL: Correct.

21 JUDGE QUALTROUGH: That's 54.

22 (Exhibit Applicant No. 54 admitted)

23 JUDGE QUALTROUGH: All right.

24 MR. RYAN: And I'll offer Exhibits 130EP
25 56 through 59. These are certified copies of the state

1 well reports for four of the piezometers that were
2 installed at the site.

3 JUDGE QUALTROUGH: All right. Any
4 objections to 130EP Exhibits 56, 57, 58 and 59?

5 MS. PERALES: Yes.

6 JUDGE QUALTROUGH: Okay.

7 MS. PERALES: And -- well, I'll start with
8 not having a witness to cross-examine to verify that the
9 information included here is accurate. It's not clear
10 to me for what purpose they're being offered, what
11 they're rebutting.

12 And if I had a little more time to look at
13 them, I'm sure I could come one a few more.

14 JUDGE QUALTROUGH: And what is this in
15 rebuttal to?

16 MR. RYAN: It's in rebuttal to Dr. Ross'
17 testimony regarding the depth of various piezometers at
18 the site. In her testimony, she states that a number of
19 the piezometers that were installed at the site don't
20 extend down deep enough to actually be capable of
21 measuring water levels.

22 MS. PERALES: Well, in that case, Your
23 Honor, I have a couple other objections. I mean, if
24 this information was available and it's intended to
25 refute some of Dr. Ross' testimony, then it should have

1 been used to cross-examine her and then she could have
2 provided some information in relation to her -- her
3 review of these documents; but on top of that, we've
4 already seen in the prefiled testimony offered by the
5 Applicant that there have been a number of mistakes
6 related to the piezometers, their elevations and even
7 their locations, and they had to change the elevations
8 and the locations on a number of those piezometers just
9 this year, just a few months ago. And this -- these
10 records don't even have all of the -- there's no data on
11 elevation here.

12 So this is the type of information that
13 really is not reliable and needs to be offered by a
14 witness that we can then cross-examine, or we can put
15 Dr. Ross on the stand and she can explain perhaps why
16 this information is not reliable and doesn't address the
17 critiques that she made in her prefiled.

18 MR. RYAN: Your Honor, these are simply
19 copies of state well reports that have been filed with
20 the Department of Licensing and Regulation as required
21 under state law.

22 MS. PERALES: But they're being offered
23 for the truth of the matter asserted. They're being
24 offered to rebut the statements and the critiques that
25 were offered by Dr. Ross.

1 JUDGE BELL: Are you making a hearsay
2 objection then? I mean what --

3 MS. PERALES: I'm making a hearsay
4 objection too, yes.

5 JUDGE QUALTROUGH: Well, I think -- I
6 think the hearsay is addressed through the public
7 records. Wait a minute. This is a -- this is a
8 drilling log submitted by the driller. This wasn't
9 taking -- this wasn't developed by the government
10 through its investigation power. Right?

11 MR. RYAN: It's a report submitted to the
12 state and maintained in their files.

13 JUDGE QUALTROUGH: Right, but it -- that's
14 not under the public records exception.

15 MS. PERALES: And the statements that are
16 included in the report are -- or information that's
17 included in the report are information that was provided
18 by the driller. This is the same type of information
19 that was mistakenly provided by the driller the first
20 time.

21 MR. RYAN: Well, Your Honor, I'd also
22 offer that it's certainly the type of information that's
23 reasonably relied upon and as a result would be
24 admissible under the specific evidentiary provisions in
25 the Administrative Procedure Act.

1 JUDGE BELL: But this is information that
2 was provided from the driller.

3 MR. RYAN: Yes, it's a report that the
4 driller is required to file with the state under state
5 law. And if you'll note on the certification, it says
6 that these are official records that are authorized by
7 law to be recorded or filed and actually recorded or
8 filed with the Department of Licensing and Regulation,
9 including data compilations.

10 MS. PERALES: I mean, just looking at this
11 document, I'm seeing that the drilling method is
12 described as air rotary. We've heard testimony that air
13 rotary wasn't used by the Applicant. This is just not
14 reliable information.

15 MR. RYAN: Your Honor, evidence in the
16 record establishes that a -- that most of the
17 piezometers were installed using the air rotary method.

18 MS. PERALES: Wet rotary. Mr. Snyder
19 testified he used wet rotary for all piezometers.

20 MR. RYAN: No, that's not what he
21 testified to.

22 MS. PERALES: That's what he testified to
23 in his deposition.

24 JUDGE QUALTROUGH: All right. We're going
25 to sustain the hearsay objections.

1 MR. RYAN: I'd like to have these
2 considered as an offer of proof, Exhibits 130EP-56, 57,
3 58 and 59.

4 JUDGE BELL: Did you need to do anything
5 more for the offer?

6 MR. RYAN: No.

7 JUDGE BELL: Or simply that?

8 JUDGE QUALTROUGH: All right. All right.
9 Anything.

10 MR. RYAN: The Applicant rests.

11 JUDGE QUALTROUGH: All right. Thank y'all
12 very much. So that concludes the evidentiary portion.
13 We do need the outline and the dates. So do y'all want
14 to discuss that and --

15 MS. PERALES: Maybe spend some time here
16 now to --

17 JUDGE QUALTROUGH: We can do that. All
18 right. So let's go off the record.

19 (Recess: 9:36 a.m. to 9:46 a.m.)

20 JUDGE QUALTROUGH: All right. Okay.
21 We're back on the record. The -- as I said, the
22 evidentiary portion of this hearing has concluded and
23 the parties have come to agreement on a briefing
24 schedule.

25 It's my understanding that the final

1 transcript will be prepared by September 9th. Closing
2 arguments will be due October 21st. Responses will be
3 due November 18th. And the PFD will be -- will have 60
4 days from November 18th as the close of the record to
5 prepare the PFD, which we were estimating is
6 January 17th.

7 The parties will -- we'll put this in an
8 order, but the parties -- in addition to filing with
9 SOAH and the TCEQ, we request that the parties submit
10 Word versions of their closing arguments to our
11 administrative assistants, and we'll put the contact
12 information in the order.

13 Any findings of fact and conclusions of
14 law are welcomed. It would be helpful if those are
15 submitted with the closing arguments. And then that
16 will allow people, I guess, to respond to anything that
17 may be submitted.

18 JUDGE BELL: Uh-huh.

19 JUDGE QUALTROUGH: By the November 18th
20 response date.

21 All right. Any questions or anything we
22 need to talk about before we conclude?

23 (No response)

24 JUDGE QUALTROUGH: All right. Thank y'all
25 very much. I appreciate the professionalism and the way

1 that the hearing was conducted, thank y'all.

2 JUDGE BELL: Thank you.

3 JUDGE QUALTROUGH: This hearing is
4 adjourned.

5 (Proceedings concluded at 9:51 a.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF TRAVIS)

I, Lorrie A. Schnoor, Certified Shorthand Reporter in and for the State of Texas, Registered Diplomate Reporter and Certified Realtime Reporter, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control, and that the foregoing pages are a full, true, and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 9th day of September, 2016.



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