

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

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

CALDWELL COUNTY'S CLOSING ARGUMENTS

Protestant Caldwell County (Caldwell County) files its 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 and would show the following:

**I.
Introduction**

The Texas Commission on Environmental Quality (TCEQ) referred this application to SOAH for determination during a contested case hearing.

The SOAH Administrative Law Judges (ALJs) convened the preliminary hearing in this case in Lockhart, Texas on March 26, 2015. The ALJs granted party status to Caldwell County at the preliminary hearing after hearing testimony and admitting Caldwell County's exhibits.¹ Ultimately, the following were designated as parties in this matter: (1) the Applicant; (2) Caldwell County; (3) Plum Creek Conservation District; (4) Environmental Protection in the Interest of Caldwell County (EPICC), (5) TJFA, L.P.; (6) Ben Pesl; (7) TCEQ Executive Director; and (8) TCEQ Public Interest Counsel. The ALJs ordered that the issues for the hearing on the merits were that the Applicant "must prove that its application complies with all applicable statutory and

¹ SOAH Order No. 1.

regulatory requirements as required for cases directly referred to the State Office of Administrative Hearings. 30 Texas Administrative Code § 55.210(b).”²

The contested case hearing on the application was held on Monday, August 15, 2016 through Friday, August 26, 2016 in Austin, Texas. At the conclusion of the hearing, the ALJs requested that the parties submit closing argument briefs addressing those matters raised during the hearing and referred by the TCEQ. The Parties agreed that the following matters would be addressed in the briefing submitted to SOAH:

(1) Sufficiency of Property Rights; (2) Evidence of Competency; (3) Compliance History; (4) Land Use Compatibility; (5) Transportation and Traffic; (6) Geology and Soils; (7) Hydrogeology; (8) Faults; (9) Groundwater Monitoring; (10) General Facility Design; (11) Waste Management Unit Design; (12) Unstable areas; (13) Landfill Gas Monitoring; (14) Endangered or threatened species; (15) Wetlands; (16) Surface Water and Drainage; (17) Floodplains; (18) Local Regulations/Approvals; (19) Waste Acceptance Plan; (20) Site Operating Plan; (21) Odor; (22) Water Supply; (23) Buffer Zones; (24) Screening; (25) Permit duration; (26) Closure plan; (27) Post-Closure plan; (28) Financial Assurance; (29) Impacts on health, welfare, environment, or physical property of nearby residents and property owners; (30) Enforceability of Draft Permit; (31) Permit Special Provisions; and (32) Additional issues.

II. Summary of Argument

Caldwell County submits that the 130 Environmental Park, L.L.C. application should be denied because the applicant has failed to meet the requirements established by the TCEQ. The applicant failed to demonstrate that the proposed landfill site is compatible with area land uses. Additionally, the application fails to properly address numerous requirements including but not limited to floodplains, compliance history, financial assurance, transportation information and local regulations. Finally, the application does not adequately address surface water drainage nor

² SOAH Order No. 3.

does it include the information and analyses required to determine if the natural drainage pattern will be significantly altered by the development of the landfill.

III. ARGUMENT

A. Sufficiency of Property Rights

The TCEQ rules requires that “[i]t is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the surface estate of the property for which a permit is issued, including the access route.”³ Further, it is the owner or operator responsibility to “retain the right of entry to the facility until the end of the post-closure care period for inspection and maintenance of the facility.”⁴ The application identifies a portion of the access road that is not included in the permit boundary. Applicant has failed to demonstrate that it has complied with this rule. Finally, the Applicant has failed to obtain all necessary approvals from Caldwell County, as discussed in detail in Section R; thus, failing to comply with this rule.

B. Evidence of Competency

The Applicant is required to provide evidence of competency as required by Texas Administrative Code § 330.59(f). During the hearing, Kerry Maroney testified that he did not inquire into any background information for Ernest Kauffman to determine whether it satisfied TCEQ’s requirements.⁵ Mr. Maroney simply placed the information provided by Mr. Kauffman in the application and has no knowledge of the position he holds with 130 Environmental Park.⁶ Further, Mr. Maroney testified that he has no information or knowledge about Oscar Allen or Thad Owings and their affiliation with 130 Environmental Park.⁷ Finally, Mr. Maroney stated that he

³ 30 Tex. Admin Code § 330.67(a)

⁴ 30 Tex. Admin Code § 330.67(b)

⁵ Testimony of Kerry Maroney, Transcript pages 2077 - 2078

⁶ *Id.*

⁷ *Id.*

had no knowledge of Mr. Kaufmann's relationship and/or capacity with Green Group Holdings.⁸

The Application states that "130 Environmental Park, LLC, the application, will own and operate 130 Environmental Park and that no other person or entity has over a 20 percent ownership of the proposed facility."⁹ Further, the application provides no information or minimal/broad, at best, concerning the management and personnel of 130 Environmental Park.¹⁰ The application fails to identify the positions held by Oscar Allen and Thad Owings with 130 Environmental Park.¹¹ There is no compliance history for the Applicant. Further, the Applicant has provided no evidence or testimony related to the compliance history of any of the individuals listed as principles or supervisors. Finally, the Application states that "130 Environmental Park, LLC has no financial interests outside the state of Texas."¹² The Applicant does not identify whether it has any assets.¹³

Therefore, it is impossible to determine if the Applicant possesses the competency and financial solvency to own and/or operate the proposed facility. The application fails to meet the requirements of the TCEQ.

C. Compliance History

Caldwell County's arguments concerning the adequacy of information related to compliance history are addressed above in Subsection B, "Evidence of Competency."

D. Land Use Compatibility

The TCEQ rules state that "a primary concern is that the use of any land for an MSW site not adversely impact human health or the environment" and that "the impact of the site upon a city, community, group of property owners, or individuals must be considered in terms of

⁸ *Id.*

⁹ Exhibit EP-1, page 49.

¹⁰ Exhibit EP-1, pages 50-51.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest.”¹⁴ The applicant is required to provide the following to assist the executive director in evaluating the impact: “(A) zoning at the site and in the vicinity. If the site requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted; (B) character of surrounding land uses within one mile of the proposed facility; (C) growth trends of the nearest community with directions of major development; (D) proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.). Give the approximate number of residences and business establishments within one mile of the proposed facility including the distances and directions to the nearest residences and businesses; and (E) description and discussion of all known wells within 500 feet of the proposed site.”¹⁵

John Worrall, on behalf of the Applicant, testified that he was unaware that Caldwell County had a development ordinance.¹⁶ Further, Mr. Worrall testified that he was not familiar nor did he review any documents from Caldwell County related to the County’s development ordinance, subdivision regulations and septic permits.¹⁷ Further, Mr. Worrall has not reviewed all permits granted by Caldwell County for subdivisions and/or septic permits within one mile of the proposed landfill site to determine any anticipated growth.¹⁸ Finally, Mr. Worrall testified that he did not review any data concerning the anticipated growth trends by Lockhart ISD for Strawn elementary and Plum Creek elementary.¹⁹ The Alma Brewer Strawn Elementary is the newly

¹⁴ 30 Tex. Admin Code § 330.53(b)(8);

¹⁵ *Id.*

¹⁶ Testimony of John Worrall, page 111, line 25 through page 112, line 4.

¹⁷ *Id.* at page 112.

¹⁸ *Id.*

¹⁹ *Id.* at page 120.

constructed Lockhart ISD elementary school about two and half to three miles east along FM 1185 from the proposed landfill site.²⁰

By limiting its discussion, the applicant has failed to take into consideration the continued projected growth for Caldwell County, the contribution of the additional rural growth, the newly constructed elementary school and/or any permits granted by Caldwell County near the proposed landfill site for subdivisions and septic systems. Therefore, the applicant has failed to demonstrate that it conducted an accurate study and failed to demonstrate that the proposed landfill site is compatible with area land uses.

E. Transportation and Traffic

Caldwell County will not be addressing transportation and traffic issues in its closing arguments but joins the closing arguments submitted by TJFA, LP's & EPICC'S closing arguments related to these issues. Caldwell County asserts that the application fails to comply with TCEQ rules concerning the adequacy and availability of road that will be used to access the proposed landfill site, the supporting data for traffic and site-generated traffic, and account for current and future development that could impact traffic.

F. Geology and Soils

Caldwell County will not be addressing geology and hydrogeology issues in its closing arguments but joins the closing arguments submitted by TJFA, LP's & EPICC'S closing arguments related to these issues. Caldwell County asserts that the evidence and testimony demonstrate that the Applicant has failed to properly identify the soils and geology at the proposed site, provide sufficient data concerning any potential faults, adequately describe the geotechnical properties of the subsurface soil materials, and properly identify potential groundwater as well as,

²⁰ *Id.* at page 90.

identify the uppermost aquifer and any lower aquifers that are hydraulically connected beneath the proposed facility. Further, Caldwell County asserts that the application contains minimal broad, generalized and oversimplified data and descriptions concerning these matters; therefore, failing to meet the requirements of the TCEQ's requirements.

G. Hydrogeology

Caldwell County will not be addressing geology and hydrogeology issues in its closing arguments but joins the closing arguments submitted by TJFA, LP's & EPICC'S closing arguments related to these issues. *See* discussion in Subsection F.

H. Faults

Caldwell County will not be addressing geology and hydrogeology issues in its closing arguments but joins the closing arguments submitted by TJFA, LP's & EPICC'S closing arguments related to these issues. *See* discussion in Subsection F.

I. Groundwater Monitoring

Caldwell County will not be addressing geology and hydrogeology issues in its closing arguments but joins the closing arguments submitted by TJFA, LP's & EPICC'S closing arguments related to these issues. *See* discussion in Subsection F.

J. General Facility Design

Caldwell County will not be addressing general facility design except for the applicant's failure to provide adequate analysis and explanation concerning the drainage for the scale house, citizens convenience center, wheel wash, proposed transfer station, maintenance building, and leachate storage system.²¹ control structures (drainage swales, downshoots, perimeter channels, detention ponds, and outlet structures)

²¹ Testimony of Tyson Traw, Transcript page 575, line 11 through page 586, line 5.

K. Waste Management Unit Design

Caldwell County joins the closing arguments submitted by TJFA, LP's & EPICC'S closing arguments related to Waste Management Unit Design. Specifically, Caldwell County asserts that the application fails to meet the requirements of the TCEQ by failing to adequately address slope stability and soil loss.²²

L. Unstable areas

Caldwell County will not be addressing any issues related to unstable areas in its closing arguments, except as those addressed herein related to the floodplains and the Site 21 Reservoir.

M. Landfill Gas Monitoring

Caldwell County will not be addressing the issues of landfill gas monitoring in its closing arguments.

N. Endangered or threatened species

The TCEQ requires that the "[t]he owner or operator shall consider the impact of a solid waste disposal facility upon endangered or threatened species."²³ Mr. Marusak testified that he made no attempts to discover the likelihood of the occurrence of any rare, threatened or endangered species at the propose site by talking with surrounding neighbors or landowners.²⁴

Mr. Friedrich testified that in November 2014 he observed a whooping crane on his property which is adjacent to the landfill.²⁵ It is unclear whether sufficient data has been obtained by the Applicant to meet the requirements of TCEQ.

O. Wetlands

²² Caldwell County, Exhibit 1, Testimony of Tracy Bratton, page 18, line 10 through page 26, line 18. See also Exhibit G and H to Caldwell Exhibit 1.

²³ 30 Tex. Admin. Code § 330.61(n)(1).

²⁴ Testimony of R. Marusek, Transcript page 1105, lines 1-6.

²⁵ Testimony of Byron Friedrich, Transcript page 1330, lines 12-21 and page 1340, line 23 through page 1341, line 11.

Caldwell County will not be addressing the issue of wetlands in its closing arguments, except as provided herein related to floodplains.

P. Surface Water and Drainage

Generally, the TCEQ requires the applicant to “determine and report to the executive director any site-specific conditions that require special design considerations and possible mitigation of conditions....”²⁶ The applicant must submit a facility surface water drainage report which consists of the following information and analyses:

- (A) drawing(s) showing the drainage areas and drainage calculations;
- (B) designs of all drainage facilities within the facility area, including such features as typical cross-sectional areas, ditch grades, flow rates, water surface elevation, velocities, and flowline elevations along the entire length of the ditch;
- (C) sample calculations provided to verify that **existing drainage patterns will not be adversely altered**;
- (D) a description of the hydrologic method and calculations used to estimate peak flow rates and runoff volumes including justification of necessary assumptions:
 - (i) the 25-year rainfall intensity used for facility design including the source of the data; all other data and necessary input parameters used in conjunction with the selected hydrologic method and their sources should be documented and described;
 - (ii) hydraulic calculations and designs for sizing the necessary collection, drainage, and/or detention facilities;
 - (iii) discussion and analyses to demonstrate that **existing drainage patterns will not be adversely altered as a result of the proposed landfill development**; and
 - (iv) structural designs of the collection, drainage, and/or storage facilities.²⁷

Additionally, the applicant must demonstrate that the proposed facility will be “constructed, maintained, and operated to manage run-on and runoff during the peak discharge of a 25-year rainfall event and must prevent the off-site discharge of waste and feedstock material, including, but not limited to, in-process and/or processed materials.”²⁸ Further, the “[s]urface water drainage

²⁶ 30 Tex. Admin. Code § 330.61.

²⁷ 30 Tex. Admin. Code § 330.63(c)(1) (emphases added).

²⁸ 30 Tex. Admin. Code § 330.303(a).

in and around a facility shall be controlled to minimize surface water running onto, into, and off the treatment area.”²⁹

The testimony and evidence is undisputed that during Caldwell County’s initial review of the analysis relating to existing drainage conditions (for a preliminary plat), the applicant submitted the identical drainage analysis from this application.³⁰ The evidence and testimony demonstrate that the analysis is faulty and contains over simplifications that call in to question the validity of the results presented. Further, many of the elements contained in the analysis lack details necessary to evaluate whether the Applicant’s proposed landfill is feasible.”

In accordance with the TCEQ rules, the applicant identified the hydrologic method and calculations used in its drainage analysis. However, as Tracy Bratton testified that “[i]n developing the hydrologic modeling of this landfill, the application improperly uses Shallow Concentrated Flow in many areas where channels are visible on aerial photographs, blue lines that indicate streams appear on USGS maps, and where publicly available LIDAR topographic data exists.”³¹ Additionally, the analysis exceeds common engineering practices of limiting the use of shallow concentrated flow lengths to approximately 1,000-ft or less in engineering analysis.³² Mr. Bratton testified that the applicant used shallow concentrated flow lengths of up to 8,945-ft and that there were many times where the applicant mischaracterized these watersheds with shallow concentrated flow instead of channel flow.³³ Specifically, Mr. Bratton testified those failures in the analysis consisted of watershed areas OS1, OS2, OS3, OS4, OS5, OS6, OS7, OS8, OS9, OS10, OS16, OS17, A2, A4, and A5 as well as potentially, OS 14 and OS 15.³⁴

²⁹ 30 Tex. Admin. Code § 330.303(b).

³⁰ Testimony of Tracy Bratton, Exhibit Caldwell County 1, page 4 and Transcript, page 1886.

³¹ Testimony of Tracy Bratton, Exhibit Caldwell County 1, page 7 line 22 through page 8 line 21.

³² *Id.*

³³ *Id.* and Testimony of Tracy Bratton, Transcript page 1816 line 15 through page 1821 line 14.

³⁴ *Id.*, Specifically, Transcript page 1818, lines 13 – 15. See also, Exhibit 130EP-2, page 94.

By mischaracterizing these watersheds as shallow concentrated flow, this analysis creates an unreasonable assumption that the “velocity of runoff accumulating in a shallow concentrated manner in this watershed will be 1.53 feet per second over a length thousands of feet or that the water depth at its deepest flow would be less than 0.5 feet.”³⁵ As an example of the effect of this inaccurate modeling, the portion of watershed OS1 that the applicant assumes as shallow concentrated flow drains several hundred acres. To accept the calculations presented as correct, we would have to accept that in a 100-year storm event in this portion of the watershed that the deepest and fastest flowing portion of the stream draining several hundred acres is flowing at depth of less than 6-inches and a speed approximately two thirds slower than an average walking speed.”³⁶

By using shallow concentrated flow inappropriately, the applicant has increased the time of concentration in its modeling. As Mr. Bratton testified, long times of concentration underestimates the peak flows and which results “in incorrect calculations of the water surface elevation for the storm event being analyzed.” Therefore, such an error produces water surface elevations lower than those using the correct peak flows – resulting in an underestimation of the floodplain.

The general principle of protecting the health, safety, welfare and environment must always be considered when evaluating an applicant’s submitted data. The Manning’s Roughness sets the parameters for determining “the roughness, or resistance, to water flow in this case in a stream.”³⁷ By using a higher value of .065, the applicant is reducing the speed within the streams and

³⁵ Testimony of Tracy Bratton, Exhibit Caldwell County 1, page 9 line 23 through page 10 line 2.

³⁶ *Id.* at page 10, lines 2-7.

³⁷ Testimony of Tracy Bratton, Caldwell County Exhibit 1, pages. 12 -13.

increasing the time of concentration.³⁸ The application is devoid of any explanation to support its justification or analysis of a higher value than .045 requested by Caldwell County during the preliminary plat review.³⁹ Mr. Bratton testified that “[t]his value of 0.045 is an appropriate Manning’s n for small natural streams that are winding, weedy, and include ineffective areas or areas of pooling. In addition, as an engineer you should justify your assumption or make an assumption that is protective or conservative. Assuming a value of 0.065 results in a less protective analysis of the storm event being analyzed.⁴⁰ Further, Mr. Bratton testified that “just as with the excessive lengths used for shallow concentrated flows, using excessively high roughness coefficients translates in to higher time of concentration, lag time, and results in additional underestimation of the peak flow for the storm event being modeled.”⁴¹

As demonstrated by the chart below, the Applicant submitted identical data to both the TCEQ and Caldwell County – correcting the data during Caldwell County’s preliminary plat review and leaving the TCEQ data without revisions. As demonstrated below, Table 1 is the current data provided in the application and Table 2 demonstrates the revisions submitted to Caldwell County.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at page 13, lines 6-17.

⁴¹ *Id.* at page 13, lines 20-22.

Table 1.

Hydrologic Element	Drainage Area	Peak Discharge
OS16	.521	928.4 cfs
A5	.234	550.5 cfs
OS5	.527	1149.3 cfs ⁴²

Table 2.

Hydrologic Element	Drainage Area	Peak Discharge
DC3	.51	1164.6 cfs
DC4	.233	599.1 cfs
TF1	.527	1253.6 cfs ⁴³

As the testimony demonstrated during the hearing, the aforementioned areas are examples of the revisions made by the Applicant following Caldwell County's review of the hydrologic modeling.⁴⁴ The information submitted by the Applicant's engineer, Tyson Traw, demonstrates the changes based on the Manning roughness from .065 to .045 and decreasing the area for shallow concentrated flow down to an approximate 1000 feet in length.⁴⁵ The same hydrologic elements consisting of nearly identical drainage areas saw significant increases in peak discharge with the requested revisions.

Another example is demonstrated on EP-2, page 95 and EP-2, page 270, the application provides different modeling using the Manning's Roughness coefficient for the exact same watershed under identical conditions (both entitled 130 Environmental Park Kinematic Wave Routing Parameters, Existing Watershed Characteristics; .045 Manning's Roughness and .065 Manning's Roughness, respectively).⁴⁶ Further, Mr. Traw testified that he gave all of the off-site parameters a .065 Manning's Roughness coefficient which he used to determine the floodplain

⁴² See Caldwell County, Exhibit 6 and Exhibit 7.

⁴³ See Caldwell County, Exhibit 8 and Exhibit 9.

⁴⁴ See Caldwell County, Exhibits 6 through 9; Testimony of Tyson Traw, Transcript pages 685 – 662.

⁴⁵ Testimony of Tyson Traw, Transcript page 663, line 6-11.

⁴⁶ Testimony of Tyson Traw, Transcript page 2043 line 8 through Specifically, Transcript pages 2051-2052; Exhibit EP-2, pages 95 and 270.

and drainage analysis for the proposed application.⁴⁷ However, Mr. Traw admitted that he didn't personally evaluate these off-site drainage channels to determine the Manning's Roughness.⁴⁸

In this matter, 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. It is evident from the testimony and exhibits that the Applicant made numerous changes to the hydrologic data submitted to Caldwell County in order to obtain the preliminary plat and satisfy Caldwell County's assessment that the data was inaccurate/inconsistent and that the modeling uses inappropriate methods. Mr. Traw provided contradictory testimony throughout the hearing and is clearly willing to submit one set of information to TCEQ and another set of information to Caldwell County in order obtain approval from both entities.

Q. Floodplains

As demonstrated above, the Applicant fails to provide sufficient analysis for drainage to accurately determine the location of the floodplain at the proposed site. The TCEQ rules "require that a landfill be protected from flooding by suitable levees constructed to provide protection from a 100-year frequency flood. Such levees must have a freeboard of at least three feet, and must not significantly restrict the flow of a 100-year frequency flood nor significantly reduce the temporary water storage capacity of the 100-year floodplain. In Section 330.547, the rules provide that no waste disposal operations shall be in the 100-year floodway as defined by FEMA and MSW storage and processing facilities must be located outside of the 100-year floodplain. Also, this rule provides that new municipal solid waste management units shall not restrict the flow of the 100-year flood or result in washout of solid waste so as to pose a hazard to human health and the

⁴⁷ Testimony of Tyson Traw, Transcript page 2113.

⁴⁸ *Id.*

environment.”⁴⁹ Further, the TCEQ rules require that “no solid waste disposal operations shall be permitted in areas that are located in a 100-year floodway as defined by the Federal Emergency Management Administration. New municipal solid waste management units, existing municipal solid waste units, and lateral expansions located in 100-year floodplains shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.”⁵⁰

Tracy Bratton testified that “in reviewing the applicant’s floodplain analysis for existing conditions, [his office] found it to be lacking and required corrections. Based upon my review of the materials submitted to TCEQ for the landfill application, I find them inadequate for the purpose of issuing a construction permit. The analysis lacks sufficient detail in with respect to stormwater management for the estimated 44-year operating life of the landfill.”⁵¹ As discussed generally in Section P, “if the design flow rates as calculated by the applicant in HEC-HMS are inaccurate due to unreasonable time of concentration calculations, the floodplain as delineated by the applicant both in Site 21 and in the channels flowing through the landfill site are inaccurate.”⁵² Further, Mr. Bratton testified that the ponds appear to be tightly squeezed between the landfill perimeter channels and the floodplain. Therefore, since some the ponds appear to be within 20-ft horizontally of the floodplain. The previously discussed inaccuracies in the applicant’s floodplain hydrology and hydraulic results brings in to doubt whether these detention ponds are in fact outside of the 100-year floodplain.⁵³

⁴⁹ 30 Tex. Admin. Code §330.307.

⁵⁰ 30 Tex. Admin. Code § 330.547.

⁵¹ Caldwell County Exhibit 1, page 16, lines 15-19.

⁵² *Id.* at page 15, lines 3-5.

⁵³ *Id.* at page 15, lines 15-22.

Further, Dr. Lauren Ross testified and as undisputed by the Applicant that the proposed access road lies within the FEMA-mapped 100-year floodplain.⁵⁴ Additionally, Dr. Ross testified that the Applicant has failed to account for the effect of existing wetland features and ponds in hydrologic calculations, as required by FEMA standard policies.⁵⁵ Specifically, there are eight open-water stock ponds or natural water features at the proposed site, occupying more than 20 acres. There are additionally 46 emergent wetlands that have been identified onsite. The application does not provide data that these existing ponds and wetlands on the site have been included in its hydrologic analysis.⁵⁶

The application fails to meet the requirements of the TCEQ and should be denied in its entirety.

R. Local Regulations/Approvals

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.”⁵⁷ Further, the TCEQ requires that the “owner or operator [tø] obtain any permits or approvals that may be required by local agencies such as for building construction, discharge of uncontaminated waters into ditches under control of a drainage district, discharge of effluent into a local sanitary sewer system, etc.”⁵⁸

Caldwell County is the local authority that issues floodplain permits for the construction of anything in the floodplain.⁵⁹ If there is an alteration needed to the floodplain, Caldwell County

⁵⁴ Protestants’ Exhibit 5, page 47.

⁵⁵ *Id.* at page 46, line 20 through page, 47, line 17.

⁵⁶ *Id.*

⁵⁷ 30 Tex. Admin. Code § 330.63(c)(2)(D)(ii).

⁵⁸ 30 Tex. Admin. Code § 330.67(d).

⁵⁹ Testimony of Tracy Bratton, Transcript, page 1853 lines 9 – 18.

acts as the local floodplain administrator and reviews the documentation.⁶⁰ Upon approval by Caldwell County, a form is completed which is a “local concurrence letter that the applicant would then send to FEMA as part of a conditional letter of map revision or a letter of map revision to officially change the floodplain.”⁶¹

The evidence and testimony during the contested case hearing is undisputed that portions of the 130 Environmental Park facility site is located with the floodplain, as well as the access road crossing the floodplain in several locations. The applicant has not requested floodplain permits from Caldwell County, the local floodplain administrator.⁶²

Additionally, Caldwell County has subdivision rules and regulations and a development ordinance. It is undisputed that Caldwell County has only reviewed the applicant’s preliminary plat application for compliance with local regulations. The Applicant has not provided Caldwell County with a final plat or application for a commercial development permit for the proposed landfill.⁶³

Therefore, it is undisputed that the Applicant has failed to comply with these TCEQ requirements.

S. Waste Acceptance Plan

Caldwell County will not be addressing the issues of landfill gas monitoring in its closing arguments.

T. Site Operating Plan

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Testimony of Tracy Bratton, Transcript page 1853 and Caldwell County Exhibit 1, Testimony of Tracy Bratton, page 16, lines 1-3.

⁶³ Caldwell County Exhibit 1, Testimony of Tracy Bratton, page 16, lines 10-13.

Caldwell County has addressed issues related to the Site Operating Plan throughout the closing argument brief. The TCEQ requires that the Site Operating Plan “include provisions for site management and the site operating personnel to meet the general and site-specific requirements of this subchapter. A site operating plan must be retained during the active life of the facility and throughout the post-closure care maintenance period.”⁶⁴ The Applicant has failed to meet this requirement as it relates to water availability and demands for the proposed site, adequate explanation of the daily soil cover, odor management plan, inadequate information relating to the operation of the potential transfer station, and fire control.

Further, Tracy Bratton testified regarding the concerning related to accessibility of the site in a disaster or emergency. The TCEQ requirements state that Site development plan. This plan must include criteria that in the selection and design of a facility will provide for the safeguarding of the health, welfare, and physical property of the people and the environment through consideration of geology, soil conditions, drainage, land use, zoning, adequacy of access roads and highways, and other considerations as the specific facility dictates.”⁶⁵ Specifically, Mr. Bratton testified that “the Applicant The Applicant has represented that they will not be taking access to the site off of the adjacent County roadway. That means that the only access to the site is from SH 130. In the event of a fire, this presents significant safety hazards and challenges to fighting a fire. Depending up on the proximity of the fire to the single access road to the landfill or the wind direction, emergency services may not be able to access the site at all. In addition, the single road accessing the land fill crosses the floodplain in 2 locations.”⁶⁶ Additionally, the application does not include adequate information concerning the access road which does not account for headwalls

⁶⁴ 30 Tex. Admin. Code § 330.127.

⁶⁵ 30 Tex. Admin. Code § 330.63(A).

⁶⁶ Caldwell Exhibit 1, Testimony of Tracy Bratton, page 16, line 21 through page 18, line 8.

or erosion protection of these critical culverts and no assurances that the roadway or the culverts will be armored to protect them from wash out during a storm event exceeding the design storm.”⁶⁷

U. Odor

The TCEQ’s regulations require that the Site Operating Plan address odor and screening. Martha O’Brien testified that she had not reviewed the actual height of the overall landfill in comparison to the berm and maturity of the screening trees.⁶⁸ Further, Ms. O’Brien testified that earthen berms are no effective in diluting the odorous plume once the elevation is higher than the berm.⁶⁹ Not only would the earthen berms be ineffective of preventing odor but also from providing screening of the landfill operations for Caldwell County citizens and adjacent or nearby property owners.

V. Water Supply

The application is completely silent concerning approval of water service at the proposed site. The testimony and evidence demonstrate that 130 Environmental Park received a letter from Polonia Water Supply Corporation CCN stating that Polonia would service the development when all conditions of the tariff have been met. However, there is no evidence or testimony that 130 Environmental Park has applied for water service, notified Polonia of its expected needs/demands and/or received any type of approval or notification concerning the tariffs associated with service.

Mr. Maroney testified that preliminary estimated usage would be for 350,000 gallons per month.⁷⁰ Mr. Friedrich testified that he serves as a board member of Polonia Water Supply Corporation and that there is no pending application of EP130 for service.⁷¹

⁶⁷ *Id.*

⁶⁸ Testimony of Marth O’Brien, Transcript page 1006, line 22-25

⁶⁹ *Id.* at page 1009, line 23 through page 1010, line 12.

⁷⁰ Testimony of Kerry Maroney, Transcript pages 2099-2100.

⁷¹ Testimony of Bryon Friedrich, Transcript page 1314, lines 7 – 20.

The application fails to provide sufficient information related to the Applicant's source to fulfill its water needs including but not limited to, daily landfill operations, wheel wash, dust control, fire prevention, and landscaping (buffering and screening).

W. Buffer Zones

Caldwell County will not be addressing the issue of the buffer zones.

X. Screening

Caldwell County's arguments concerning the adequacy of screening is addressed above in Subsection Y, "Odor."

Y. Permit duration

Caldwell County will not be addressing the issue of the permit duration.

Z. Closure plan

Caldwell County will not be addressing the issue of closure plan in its closing arguments except as addressed herein concerning competency, financial assurance, sufficient property rights in the access road and enforceability of the draft permit concerning the access road outside the permit boundary.

AA. Post-Closure plan

Caldwell County will not be addressing the issue of the post-closure plan in its closing arguments except as addressed herein concerning competency, financial assurance, sufficient property rights in the access road and enforceability of the draft permit concerning the access road outside the permit boundary.

BB. Financial Assurance

Caldwell County's arguments concerning the adequacy of information related to financial assurance is addressed above in Subsection B, "Evidence of Competency."

CC. Impacts on health, welfare, environment, or physical property of nearby residents and property owners

Caldwell County's arguments concerning this matter are addressed throughout the closing argument briefing.

DD. Enforceability of Draft Permit

Caldwell County's arguments concerning this matter is addressed throughout the closing argument briefing. Further, the testimony and evidence fail to identify any provision within the TCEQ rules and regulations that provide enforcement authority to the TCEQ for the approximate one mile of access road that is not included in the permit boundary.

EE. Permit Special Provisions

Caldwell County will not be addressing any permit special provisions in its closing arguments as the Applicant has failed to demonstrate compliance with TCEQ requirements. The permit application should be denied in its entirety.

FF. Additional issues

The Site 21 Reservoir and the proximity of the floodplain, as discussed above, make this type of proposed development "uncommon."⁷² During Mr. Traw's deposition, he testified that he was unaware of any other landfills that are adjacent to a dam.⁷³ As stated herein, the unusual shape of the proposed landfill as well as, its location to the floodplain and the Site 21 Reservoir should preclude the TCEQ from issuing a permit. Mr. Bratton testified that This reservoir is classified as "High Hazard". A dam being classified as high hazard means that failure or mis-operation of the dam is expected to result in the loss of human life. In the Dam Assessment Report dated October 8, 2010 the reservoir was found to be in need of substantial improvements. The improvements are

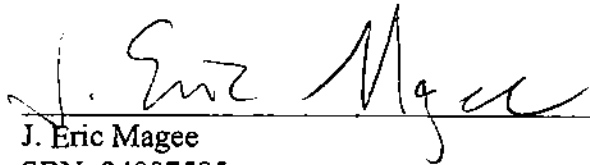
⁷² Testimony of Tyson Traw, Transcript page 552.
⁷³ Testimony of Tyson Traw, Transcript pages 553.

required to make the reservoir compliant with performance and safety standards for high hazard dams. The scope of improvements include major changes to the dam and spillway.⁷⁴

IV. 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, the Applicant has failed to demonstrate compliance with all TCEQ requirements and that, the permit application should be denied.

Respectfully submitted,



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⁷⁴ Caldwell County Exhibit 1, Testimony of Tracy Bratton, page 27, lines 17-22.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of October, 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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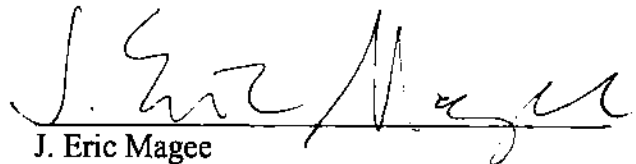
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