

**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
	§	
	§	

**PLUM CREEK CONSERVATION DISTRICT'S RESPONSE TO
APPLICANT'S CLOSING ARGUMENT**

**I.
INTRODUCTION**

Plum Creek Conservation District ("District" or "the District") files this Response to the Closing Argument filed in this Hearing by the Applicant, EP 130 Environmental Park. LLC. The District has determined that its Response will be limited to commenting on some of the Applicant's proposed Findings of Fact and Conclusions of Law. In addition the District reiterates the comments in its own Closing Argument.

**II.
RESPONSES TO APPLICANT'S PROPOSED FINDINGS OF FACT**

In making these Responses to Applicant's Proposed Findings of Fact, the District will identify the particular Proposed Finding of Fact associated with a comment that the District is making.

1. Proposed Finding of Fact #3: Applicant's proposed Finding of Fact ("FOF") 3 uses the words "Site", "Permit Boundary" and "Facility Boundary" as synonyms. All three terms relate to the tract that is described as 519.746 acres. At the same time the District recognizes that there are two other land areas discussed in the Application. Those areas are the Landfill area of approximately 202 acres, and the Hunter Property, the large tract of 1,229.076

acres that has been optioned by the Applicant but is not a part of the Application. Stated in other words, there is a large tract, the Hunter tract, under option. The "Site" is a subset portion of 519.749 acres of the Hunter Property and the "Landfill" is a subset of the "Site" area. For consistency, the District will use those same descriptive terms in these Responses.

2. **Proposed Finding of Fact #38:** This Proposed Finding recites that the Application complies with TCEQ's Rules regarding property rights. As noted in the closing argument filed by the District, the District has a property interest in the Hunter Tract that is within one mile of the "Site" and was not listed among landowners in the Application. A better wording of this Proposed FOF would be that: **"Notice was mailed to Property Owners listed in the Appraisal District Records as required by TCEQ Rules"** and not imply that all property owners within a mile of the Site were listed in the Application because that proposed Finding of Fact is incorrect.

3. **Proposed Finding of Fact #57:** This proposed Finding of Fact states that 65 acres of Land within one mile of the Site is water bodies including the Site 21 Reservoir. The District notes that its easement allowing impoundment of water covers an area of the Hunter Tract that is about 327 acres and all those acres in the easement are within one mile of the "Site". The District does not know how the Applicant calculated the area of water bodies but after flooding, up to 327 acres of the Hunter Tract would be covered by impounded water associated with the District's easement for some period of time so the statement that "...65 acres of Land within one mile of the Site is water bodies including the Site 21 Reservoir" is clearly erroneous. Whether Plum Creek easement area is or is not included in the definition of a "water body" under TCEQ rules as interpreted by the Applicant is unknown to the District but whatever the definition, the area that could be in a water body within one mile of the "Facility" will be greater

than 65 acres during some periods. The District does continue to believe that the easement rights of the District should have received more attention in the application but the fact that the Applicant did not mention the District's easement more thoroughly may relate to the wording of TCEQ Rules as interpreted by the Applicant.

4. **Proposed Finding of Fact # 71:** This Proposed Finding states that "visibility of the Facility will be limited..." The Proposed Finding is accurate only for the period at the beginning of operations. Once the Landfill reaches some height above the currently existing grade its visibility will increase. Therefore the Finding ought to be that "...visibility of the Facility will be limited at the beginning of operations".

5. **Proposed Finding of Fact # 133:** This proposed Finding now reads that "most groundwater produced in northern Caldwell County is from wells tapping the Carrizo-Wilcox Formation, located east of the site." While it is accurate to say that most of the water production in northern Caldwell County that is from the Carrizo-Wilcox formation is east of the Site, it is not accurate to characterize the presence of the Formation as being only located to the east of the Site. Even the Applicant's Geologist relied upon Texas Bureau of Economic Geology Maps depicting the Formation as being in other areas in the vicinity of the Site. Additionally, the Applicant's information filed in support of the Application noted two Wilcox formation water wells south of the Facility across FM 1185 from the Hunter Property, and within the drainage area that could be impacted by the Facility. A more accurate statement of the Finding of Fact would be that: **"Most groundwater production in Northern Caldwell County that is produced from the Carrizo-Wilcox formation is east of the Site although the formation extends to an area south of the Site where there is water production from a formation identified as Wilcox by water well drillers."**

6. **Proposed Finding of Fact #190:** This proposed Finding now reads that “There are not site specific conditions that require special design considerations.” The District notes that the statement may be accurate only within the context of the meaning of “Site” as used in these Proposed Findings. It is clear that there were some special site conditions that were considered in connection with the design of the “Site” resulting in the shape of the landfill area. A better statement would be that: **“The Applicant took Site characteristics into consideration when developing its design for the Landfill and Site use.”**

7. **Proposed Finding of Fact #246:** The District believes that it is impossible to conclude now that the “construction and operation of the landfill will not cause or contribute to violations of any applicable State water quality standard”. The landfill has not been constructed and is not in operation so conditions associated with those actions is unknown now and is unknowable. As a result this proposed Finding should not contain the words “construction and operation” unless the words are further qualified to read: **“The construction and operations of the Landfill in accord with all permits terms and conditions and with laws governing such operations is unlikely to cause or contribute to violations of any currently applicable state water quality standards”.**

8. **Proposed Finding of Fact #361:** This Proposed Finding reads that “The Site Operating Plan contains an adequate fire protection plan”. There are assumptions built into this Proposed Finding that there will be adequate supplies of water available for fighting fires in accord with the Applicant’s proposed and proffered Operational Plan and that there will be adequate stockpiles of soil available in locations that allow access in times of need in order to comply with not only the Proposed Operational Plan but also with TCEQ rules for combating fires at landfills. The District is unwilling to make those assumptions without requirements in

the Permit that have been identified and proposed by the District that construction and operation are prohibited until the Operator has secured a firm water supply and has demonstrated, and constructed, adequate stockpiles of and placement of soils that will be available to fight fires. Therefore the District believes that the Proposed Finding cannot be adopted at this time without qualification and referencing permit provisions requiring water and soil supplies to be on site and available.

9. Proposed Finding of Fact #387: This proposed Finding assumes that water will be available to fill a water truck in sufficient quantity to be used for dust control. As stated in the above paragraph, that will be true only if any permit issued to the Applicant prohibits construction and operation until the Applicant has secured a firm water supply. As of this time, there isn't such an agreement in place for a firm water supply so there is no evidence in the record of the hearing that compliance with a requirement for use of water is possible. Until there is such a requirement in the permit for a supply of water to be available, the proposed finding should not be adopted. Rather, there should be a finding that: **“Once a water supply of sufficient quantity has been obtained as required for initiation of construction and operations dust on the landfill haul roads and the access road from Public Roads to the Facility will be controlled by periodic spraying from a water truck to prevent nuisance conditions.”**

10. Proposed Finding of Fact # 459: This proposed finding now reads that “Water will be supplied to the Facility by Polonia Water Supply Corporation”. There is evidence in the record of the hearing that no non-standard service agreement is in place for service from Polonia to the Applicant but that one would be required for the landfill to obtain service from Polonia. That being so, and as noted by the District in its closing argument, the finding should state that:

“Applicant expects to obtain its operational water supply from Polonia Water Supply Corporation pursuant to the terms of a non-standard service agreement and until such non-standard service agreement is in place for supplies of sufficient quantities of water for construction and operation and such an agreement has been provided to the Executive Director no construction nor operation under the terms of the Permit is authorized.”

11. Proposed Finding of Fact # 501: This proposed Finding now reads that “No other special permit provisions [than the cited ones] are necessary.: As noted above and in the Closing Argument filed by the District, the District disagrees and objects to this finding unless there are special provisions dealing with water and soil for operations, as noted and urged by the District.

III. RESPONSES TO APPLICANT’S PROPOSED CONCLUSIONS OF LAW

1. Proposed Conclusion of Law #55: This Proposed Conclusion of Law asserts that the Application and evidence complied with the provisions of Rule TAC 330.61(h). That rule states, in the portion relevant to the District that: “A primary concern is that the use of any land for a municipal solid waste facility not adversely impact human health or the environment. ... To assist the commission in evaluating the impact of the site on the surrounding area, the owner or operator shall provide the following: ... (2) information about the character of surrounding land uses within one mile of the proposed facility;

As stated in its closing Argument and restated above in this Response, an “easement” is a land right and although Plum Creek Conservation District is the owner of the easement and is making use of the easement within a mile of the “Site” the District was not identified as a “property owner” by the Applicant at the time the application was filed. There is very little in the

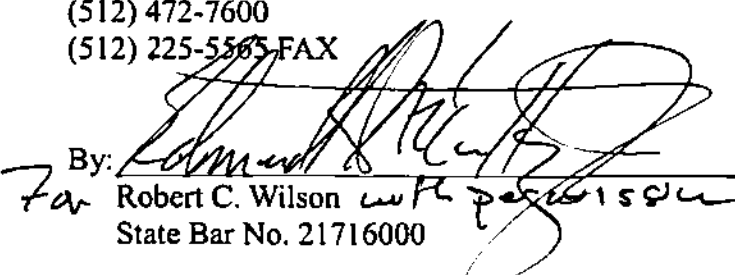
Application that deals with the District's existing use of its easement area nor about the impacts of the Site's operations on the District's use of its easement.

While the District understands that TCEQ Rules about mailing notice of applications state that notice is not inadequate if the list was developed from the records at the local Appraisal District, the District also believes that the Application would have received a preliminary title opinion about the Hunter Property at the time it entered into the Option with Ms. Hunter. At that point the District is fairly confident that the District's easement should have been disclosed to the prospective owners. However, if it was disclosed the information apparently was never communicated to those preparing the application.

In summary on this point, the District believes that any analysis of the "impact on the surrounding area" required by Rule 30 TAC 330.61(h) would have had to include an assessment of the impact of the proposed landfill on the use by Plum Creek Conservation District of its easement rights and the obligations on the District that are a part of the District's easement use. There was nothing about the Plum Creek District's use of its easement rights in the applicant's application other than to note the presence of an "SCS Lake". For this reason, the District believes that the application did not comply with the Rule cited in this proposed Conclusion of Law and it should not be adopted.

Respectfully submitted,

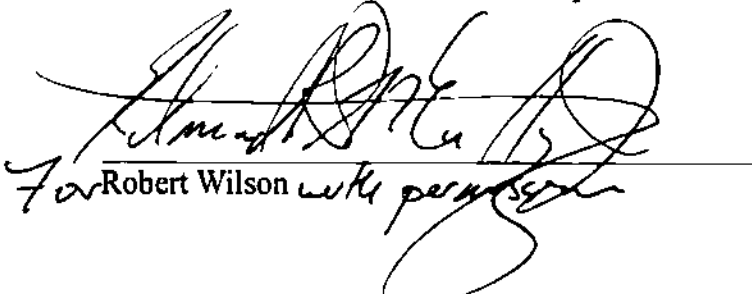
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the above and foregoing Plum Creek Conservation District's Closing Statement was sent via e-mail or Regular U.S. Mail, as indicated on the Service List, to the parties on the attached Service List on this the 28th day of November, 2016.


For Robert Wilson with permission

SERVICE LIST

SOAH Docket No. 582-15-2082; TCEQ Docket No. 2015-0069-NSW
130 Environmental Park Landfill, LLC; TCEQ Permit No. 2383

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