

November 29, 2013

**Texas Disposal Systems' Comments on the Green Group Holdings, LLC**  
**Host Agreement Presentation of the 130 Environmental Park, LLC**  
**for Caldwell County and Surrounding Property Owners**

**I. Summary Analysis of Proposed Host Agreement**

The proposed Host Agreement ("Agreement") proposed by 130 Environmental Park, LLC, ("Company") to the Caldwell County Commissioner's Court ("County") is designed to secure the County's current and future support for the Company's planned permitted Landfill, registered Transfer Station, and industrial park in exchange for future promises from the Company.

The problem with the Company's promises is that some appear to be illusory and many seem to lack significant value to the County as compensation for the County's part of the bargain. Further, the County, and potentially the county commissioners, would be bound to support future facility development plans, permit amendments and other authorizations the Company might seek for the site, at any time over the site operating life.

The Agreement contains the following main subjects of interest to the County:

- County Obligations to provide staff support at County expense to assist the Company obtain authorization for the planned Landfill, Transfer Station, industrial park development and other related facilities in the future not yet disclosed, as soon as the Agreement is signed and continuing into the future for the entire site operating life.
- Company Obligations to pay the County a Host Fee may not occur for years to come, if at all, under the Agreement. Company has several mechanisms in the Agreement to avoid paying the Host Fee, including simply selling the permit to another corporation that would operate the Landfill and Transfer Station it would own. In that case, the Company would not receive waste for disposal and, therefore, would owe no Host Fee. See other ways the Company can avoid paying Host Fees described in the following pages of this Summary.
- Company Obligations to provide discount disposal rates and other benefits has so many restrictions attached, the value to the County is hard to ascertain.

- Company Obligations under the Property Value Protection Program are only available after all final and non-appealable permits are issued (which could easily be several years after the TCEQ makes its decision on the permit) and would probably not cover the true fair market value for any property owner participating in the Program. The Program only guarantees the tax appraisal or potentially some value determined by an appraiser hired and paid by the Company. If the Company disagrees with the property owner appraisal and if the Company appraisal is less than owner appraisal by more than 5%, an average of the two will be paid.

The attached summary contains a brief analysis of each of the above listed main subjects. Also attached is a copy of the draft Agreement with notes to help the reader become more informed about the language in the proposed Agreement.

**II. The County is obligated to perform the functions listed below immediately upon the effective date of the Agreement and years before any Host Fees might be received by the County:**

1. County must cooperate, now and in the future, with the Company to permit and develop the Landfill at the Company's request, including future permit modifications or amendments, no matter what they may be, for the entire operating life of the Facility. County agrees to carry out any County requirements necessary for the Landfill and Transfer Station to be permitted and registered. Section 3(a).
2. County agrees not to enact any ordinances now and in the future which would restrict or prohibit the permitting, development, and operation of the entire Facility. Section 3 (b).
3. County must cooperate now and in the future with the Company on a proposed County Solid Waste Plan, if any. Section 3 (c).
4. County must cooperate now and in the future with the Capital Area Planning Council of Government (CAPCOG) to obtain a letter from CAPCOG indicating the Landfill is in compliance with the regional solid waste plan in order to be permitted by the Texas Commission on Environmental Quality ("TCEQ"). Section 3 (d). This would help establish local government's approval of the facility's land use compatibility, regardless of facts which might demonstrate otherwise.

5. County is required to pay for its normal and customary operating expenses, legal expenses, and incidental expenses to help support Company in obtaining the Landfill permit and Transfer Station registration. Section 3 (e).
6. County must cooperate now and in the future with the Company as requested to help Company develop the Landfill, other related facilities, and a mixed use commercial industrial park. Section 3 (f).
7. County agrees the Facility Site will be assessed at its fair market value in the same manner as other comparable commercial and industrial properties, even though it is not clear what legal authority the County has to make this commitment. Section 3 (g).
8. County represents and warrants it is in the public interest of the County to enter into the Host Agreement. This representation will allow the Company to present convincing evidence to the TCEQ that the Landfill, transfer station, recycling facility and compost facility satisfies the statutory land use compatibility requirement within this permitting and registration process and future permit amendments for the entire operating life of the Facility. Section 9 (a) (ii).
9. County will cooperate now and in the future with the Company in defending any claim or suit that seeks to invalidate the Agreement or any right of the Company, even if such a challenge comes from area residents and municipalities within Caldwell County. Section 9 (a) (iv).

**III. Ways for Company to avoid paying the proposed \$1 per ton host fee to the County:**

1. Host Fee is not payable until after the Commencement Date, which may not occur for years after the landfill begins accepting waste. See Commencement Date definition with final permitting phrase. Final permitting after all legal appeals can last for years after TCEQ issues a permit and the Landfill begins receiving waste. County could lose out on a significant amount of Host Fees for a number of years. See Section 5(a) for Commencement Date start date of payment. Also see the history of the Guadalupe County Settlement Agreement with Waste Management of Texas, Inc., to see how a very carefully worded host fee agreement (in that case it was called a Settlement Agreement) was used to avoid paying Guadalupe County for years when the County had an expectation of receiving millions of dollars.
2. Host Fee only applies to waste disposed at the Landfill. Any waste transferred, recycled, composted, made into refuse derived fuel cubes, incinerated, or otherwise processed or

diverted from landfill disposal will not generate a Host Fee for the County. See Section 5(a) for Landfill limitation.

3. Host Fee increase adjustment for inflation will be limited to 2% per year. The first adjustment will not be until one year after the Commencement Date, which could be years in the future after the \$1 Host Fee may have already lost significant value. See Section 5 (d).
4. No Host Fee shall be payable on any ton disposed for which the Company receives less than \$10 per ton Tipping Fee under Section 5 (e) (ii). The Company has the sole right to establish the amount of the Tipping Fee under Section 4(k). There are a few ways the Company can establish its charges so that the Tipping Fee portion of the total disposal fee remains below \$10.00 per ton, or to establish a special relationship with an established area trash collection company, to flow all or most of the landfill profits through.

One way is for the Company to establish a subsidiary Hauling Company. The Company owned Hauling Company, or the area trash collection company that is required to somehow benefit the Company in other ways having nothing to do with the Host Fee, could charge a customer say \$100 per ton for the service of collecting, processing and disposing of the customer's waste. The Company then charges its subsidiary Hauling Company \$1 per ton Tipping Fee. No Host Fee is due to the County by this arrangement under Section 5 (e) (ii) because the tipping fee is less than \$10.00/ton and the Hauling Subsidiary Company generates all the profit. This would simply transfer the profit from the Company pocket subject to host fees to the affiliated Hauling Company pocket without being subject to a host fee payment responsibility.

5. Another example is, if the Company decides it needs \$35 of revenue for each ton of waste disposed, but does not wish to pay a Host Fee, the Company can simply set the total cost per ton for disposal as follows:

Environmental Fee (not subject to Host Fee)	\$8.00/ton
Fuel Surcharge (not subject to Host Fee)	\$7.00
Administrative Fee (not subject to Host Fee)	\$6.00
Property Tax Reimbursement Fee (not subject to Host Fee)	\$5.00
Tipping Fee (subject to Host Fee calculation, but which is less than \$10/ton)	<u>+\$9.00</u>
Total Disposal Fee to Company	\$35.00/ton

In this case, the Company would retain the full \$35.00/ton amount received for disposal because the “Tipping Fee” would be less than \$10 as stated under Section 5 (e) (ii). No Host Fee would be due the County under this arrangement even though the total disposal fee is actually more than \$10. This is a trick of the trade sometimes used by waste services companies wishing to charge fees, which do not qualify for royalty payments or host fees.

6. The Company is under no obligation to assign the Agreement to an entity that purchases the Landfill from the Company. In that situation the Company could receive the permit from TCEQ then sell it to another company to construct and operate without any obligation for either the Company or for the purchasing company to pay the County a Host Fee. The purchaser of the landfill would not owe the County any Host Fee, since it is not a party to the Host Agreement. And, the Company would not owe the County any Host Fee since they would have no gross revenue from landfill tipping fee receipts to qualify as a Host Fee.
7. The Company can cancel the Agreement after it begins operations pursuant to the Force Majeure provision, if the Company decides payment of the Host Fees is impracticable due to interference by a third party. A third party could be any area landowner, municipality, or other entity opposing the Company during the initial permitting process or any subsequent permit modification or amendment process. See Section 1, Force Majeure definition and Section 11.

**IV. The Company says it will provide other benefits to the County as listed below:**

1. County will receive discounted tipping fees at the Landfill, but only for waste delivered to the Landfill by the County itself. Section 6 (c). If the Company decides the waste requires special handling, then the Company gets to set the tipping fee, which presumably would be at a much higher rate. Section 6 (e).
2. Company will provide a Pavilion for Community use. Company has not committed to a:
  - Specific fee for use of the Pavilion;
  - What definition constitutes a community event;
  - Certain amount of time the Pavilion can be used;
  - Definite size of the Pavilion;
  - Detailed architectural style (open, closed, heated, air conditioned, etc.) or value of the Pavilion;

- List of other details to help the County elevate the value of Pavilion including who will pay for the cleaning, maintenance, management and protection of the facility. Section 7 (a).
3. Company will provide a Citizens Convenience Center for citizens to drop off waste and recyclables for free, but only from 8 A.M. to noon on Saturday and no more than 2 cubic yards. Section 7 (b) and Section 7 (c). This doesn't stipulate the level of convenience to be provided and whether excessively long lines will be allowed to occur. Long lines will discourage the customers from using the free service and instead they would just pay for disposal since they are already at the Landfill.
  4. Company will allow free disposal (other than having to pay the government disposal fees) for waste from a County litter abatement program, as long as no other entity receives a fee for the collection, transportation, or disposal of that waste. Section 7 (d).
  5. The Company will provide free (other than having to pay the government disposal fees) clean-up days for the County six times per year, but only if the clean-up waste is transported by an entity that is not paid for collecting, transporting, or disposing of such waste. Section 7 (e). This doesn't stipulate the level of convenience to be provided and whether excessively long lines will be allowed to occur.
  6. The Company will allow school children to tour the Landfill only if any of them are studying environmental sciences. Section 7 (f).
  7. The Company agrees to allow the County to appoint a Citizens Advisory Committee to communicate with the Company. This is not clear how it benefits the County. Section 7(g). Furthermore, if any of the committee members oppose the Company, it could cancel the Agreement under the Force Majeure clause due to interference by a third party.
  8. The Company will only commit to try its best to develop the 130 Environmental Park industrial park after all permit appeals have been exhausted, but not if it creates a financial hardship for the Company. Section 7 (h).
  9. The Company will provide a \$2,000 scholarship for each public high school in the County. Section 7 (i).
  10. Company will pay the County the sum of \$5,000 for the library during the first four year period after the permit is final, but probably years after the Company begins the Landfill

operation, and during the second four year period after that time it will pay the sum of \$10,000. Section 7 (j).

**V. THE PROPERTY VALUE PROTECTION PROGRAM IN EXHIBIT B IS DESIGNED TO PRIMARILY BENEFIT THE COMPANY, NOT THE PROPERTY OWNERS BECAUSE:**

1. The Program is only available to property owners that can gain party status in a contested case against the Landfill (i.e. property owners within one mile of the Landfill boundary). Section 2.
2. In order to participate in the Program the property owner has to execute a waiver and release of all rights to bring a claim against the Company forever for damage or diminution in value due to the Landfill. Section 7.
3. The target value for the sale of the property by a participant owner is either the tax appraised value, a Company accepted appraisal the property owner acquired, or value set by an appraiser paid by the Company. Either one is likely to be less than fair market value. Therefore, the Company is only guaranteeing a sales price that is likely to be exceeded with an arms-length transaction under most circumstances. The Company will probably never have to pay anything to participants in the program in exchange for the participant's release of their right to sue the Company for any damages or to challenge future permits, permit modifications or permit amendments because the Company is only guaranteeing a lesser value of the property.