

TCEQ DOCKET NO. 2006-1830-MSW

IN RE THE APPLICATION OF)
) BEFORE THE STATE OFFICE
MCCARTY ROAD LANDFILL, TX, L.P.) OF
)
NO. MSW-261B) ADMINSTRATIVE HEARINGS

NORTHEAST ENVIRONMENTAL JUSTICE ASSOCIATION'S ("NEEJA") REPLY TO APPLICANT'S RESPONSE TO ITS REQUEST FOR CONTESTED CASE HEARING

COMES NOW Northeast Environmental Justice Association ("NEEJA"), movant and/or requester for a contested case hearing in the above enumerated and referenced action, by and through its attorney, and files this reply to the Applicant's Response to its Request for a Contested Case Hearing, showing as follows:

On or about February 26, 2007, the Applicant, McCarty Road Landfill filed its Response to various parties' Request(s) for Contested Case Hearings. Specifically, the Applicant identified the request filed by NEEJA as deficient, alleging that the organization failed to demonstrate "associational standing." The precise reason proffered by the Applicant is that NEEJA did not "provide sufficient evidence that it is a legitimate organization with requirements for membership organized for a proper purpose." Applicant's Response, p. 6

While recognizing that 30 Tex. Admin Code § 55.205(a) applies to determining NEEJA's status, the Applicant presents this Commission with a broad reading of said rule that has never been employed by this Commission when considering requests by any group, association, or organization. In fact, the Applicant would be hard-pressed to present this Commission with any statute, guidance, or caselaw, which supports such a draconian test.

Remarkably, the Applicant does not contest the first, second, or third prongs of the "test." Based on that failure alone, this Commission should find—as other parties to this issue have

maintained—that NEEJA meets the requirements as set forth in 30 Tex. Admin. Code § 55.205(a).
See also, Texas Ass'n of Business v. Air Control Bd., 852 S.W.2d 440, 447 (Tex.1993).

However, NEEJA is nonplussed by the Applicant's insistence on demonstrating "legitimacy," "requirements for membership," and "organization for a proper purpose." In its request for a contested case hearing, NEEJA identified members of its association with standing in their own individual right; enumerated the purposes of its organization, specifically—advancing community environmental justice concerns—as it pertains to the health and safety of residents in the impacted community; and demonstrated that it could address issues identified in its request without the individual participation of its members.

This is all the rule requires and NEEJA has demonstrated—satisfactorily—that it qualifies for "associational standing."

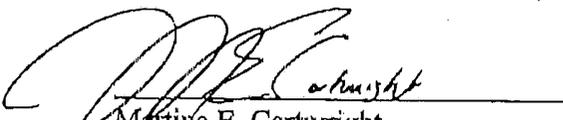
Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and foregoing copy was sent, March 19, 2007, to all parties of record, via facsimile and/or U.S. First Class Mail.



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