

TCEQ PROPOSED PERMIT NO. 2332

APPLICATION BY
IESI TX LANDFILL LP
FOR MSW PERMIT NO. 2332

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

2008 JAN -4 PM 2:50
OFFICE CLERKS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RESPONSE OF IESI TX LANDFILL LP TO REQUESTS FOR HEARING/COMMENTS

NOW COMES IESI TX Landfill LP (“IESI” or “Applicant”), applicant in the above-referenced proceeding, and files this Response to the hearing requests and comments¹ submitted to the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) concerning its Application for a permit to construct and operate the Jacksboro Type I municipal solid waste landfill in Jack County, Texas. With respect to the requests for a contested case hearing, IESI asserts that Two Bush Community Action Group’s hearing request should be denied because that group has failed to demonstrate that it is entitled to a hearing as required under 30 TAC § 55.205.² In addition, certain other individual requestors have wholly failed to demonstrate that they are affected persons entitled to a hearing as required under 30 TAC § 55.203. To the extent that an individual or group properly demonstrates in accordance with TCEQ rules that he or she is an affected person – and that his or her hearing request raises disputed issues of fact that are relevant and material to the agency’s decision on the application and were raised during the comment period – then IESI would not object to a hearing on those issues. In the event the Commission refers this matter to the State Office of Administrative Hearing (“SOAH”) for a contested case proceeding, IESI submits that the issues thus referred must be specifically

¹ The Executive Director’s Response to Public Comments dated July 5, 2007 sets forth a “Commentor’s List” listing the names of the various persons/entities submitting comments and/or requests for hearing up to that date. IESI is aware of the following persons filing comments and/or requests for hearing after July 5, 2007: Brad Dixon, Marisa Perales (as counsel on behalf of Two Bush Community Action Group), James Henderson, and B.J. and Shelly Haffly. This Response by IESI is intended to respond to all of these commentors/requestors.

² All references to the TAC are to the Texas Administrative Code.

delineated and limited to those raised by the hearing requests determined to be valid and also previously raised in properly submitted comments. In support of this Response, IESI respectfully submits the following:

**I.
BACKGROUND**

On April 5, 2005, the City of Jacksboro filed an application for a new Type I municipal solid waste landfill in Jack County, Texas (the "Jacksboro Landfill"). The application was designated as TCEQ Permit No. 2332. The proposed Jacksboro Landfill is to be located in Jack County, Texas, approximately 13 miles southeast of the City of Jacksboro near the intersections of SH 199 and FM 1156. The permit application was declared administratively complete on April 29, 2005. The Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit was properly published on May 13, and May 17, 2005. Three public meetings were held in Jacksboro, Texas on May 17, 2005, October 18, 2005, and August 26, 2006.

The Application has made it clear at all times that IESI would be the day-to-day operator of the Jacksboro Landfill as well as the ultimate owner of the real property upon which the landfill would be constructed and operated (the "Site"). As originally contemplated when the Application was being prepared and filed, IESI would hold a purchase option contract on the Site during the permitting process and grant the City of Jacksboro a lease allowing it to use the Site for the Jacksboro Landfill. IESI was to be the proposed operator of the Landfill during permitting and physically operate the Landfill throughout its life pursuant to a contract with the City. It was further contemplated and agreed between the City and IESI that, after permitting, IESI was to exercise the option and purchase the Site. IESI's operations were to be governed by an operating agreement with the City wherein IESI would be given broad discretion in the day-

to-day operations and the City would retain the right to ensure that the Landfill remained in compliance with applicable state and federal regulations.

Initially, IESI was not designated as the applicant because, even though it was the day-to-day operator, the City of Jacksboro was to hold a lease on the Site for Landfill operations, retain all legal rights and duties to ensure the landfill remained in compliance with all applicable laws and rules, hold the permit, and be ultimately responsible for the activities at the landfill. Based upon these contractual arrangements, the TCEQ staff agreed that IESI need not be a co-applicant with the City. For various reasons, IESI actually exercised its purchase option contract and closed on the purchase of the Site on July, 26, 2005, before the Application was determined technically complete by the TCEQ's permitting staff. IESI and the City also amended their agreement such that the City would no longer lease the Site and would no longer hold the permit and have ultimate responsibility for compliance with applicable regulatory requirements. Since the very reasons that made the City the appropriate applicant in the view of IESI, the City, and the TCEQ Staff were no longer the case, it became appropriate for IESI, as owner, operator, and responsible party, to be designated the applicant pursuant to TCEQ regulations.

On August 23, 2006, therefore, the applicant designation was changed from the City of Jacksboro to IESI in accordance with agency rules. This change had no impact on the proposed design or operation of the Jacksboro Landfill or upon the fact that IESI was to maintain a long term contractual relationship with the City of Jacksboro relating to the Landfill. The change occurred prior to the Application being declared technically complete and before the issuance of Notice of Application to the public.

The Application was declared technically complete on October 25, 2006. The Notice of Application and Preliminary Decision was properly issued and published on December 22 and

December 26, 2006. The public comment period ended on January 25, 2007. The Executive Director's Response to Public Comments was filed on July 5, 2007. The period to file a request for contested case hearing/request for reconsideration following the Executive Director's Response expired on August 10, 2007.

Pursuant to applicable rules at 30 TAC § 330.1(a)(2), the Application is to be reviewed under 30 TAC Chapter 330 Rules effective prior to March 27, 2006 since it was filed on April 5, 2005, long before the effective date of the 2006 revisions to Chapter 330. Any references to the TCEQ Rules at Chapter 330, therefore, are to those in effect prior to March 27, 2006.

II. REQUESTS FOR A CONTESTED CASE HEARING

A. **Two Bush Does Not Meet the Requirements of 30 TAC § 55.205(a) to Request a Contested Case Hearing as a Group or Association**

The TCEQ received comments (dated January 5, 2007) and a request for a contested case hearing (dated August 3, 2007) from what appears to be an informal assemblage of people referring to themselves collectively as the "Two Bush Community Action Group" ("Two-Bush"). These two documents were substantively very similar.

For a hearing request of a group or association to be granted by the TCEQ, the group or association must demonstrate that it meets the conditions in 30 TAC § 55.205(a), and the hearing request must meet the procedural and substantive conditions specified in 30 TAC § 55.201(d). Two Bush's hearing request, although prepared by legal counsel, does not meet these requirements; accordingly, IESI respectfully requests that the TCEQ Commissioners deny the hearing request filed by Two Bush.

Pursuant to the provisions of 30 TAC § 55.205(a), a group or association of persons may request a contested case hearing relative to a permit application only if the group or association demonstrates that all of the following requirements are met:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right [i.e., must be an “affected person” as defined in § 55.203];
- (2) the interests the group or association seeks to protect are germane to the organization’s purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

(Emphasis added).

Based on the information Two Bush has submitted to the TCEQ, Two Bush has not demonstrated that all of the requirements in § 55.205(a) have been met. Accordingly, Two Bush’s request for a contested case hearing should be denied. IESI is aware that, pursuant to TCEQ Rule 55.205(b), Two Bush may submit additional information in response to the deficiencies presented below relating to their associational standing. Should such additional information be properly submitted, IESI may reconsider its position.

1. Affected Person

There is insufficient establishment that one or more of the individual members in Two Bush is an “affected person” as defined by 30 TAC § 55.203. An affected person is:

...one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest that is common to members of the general public does not constitute a personal justiciable interest. 30 TAC § 55.203(a).

Two Bush has the burden of showing that at least one of its members is an affected person. Two Bush’s hearing request does not properly demonstrate that any member has a real, substantial, and personal interest in the permit application. Two Bush makes unsubstantiated

claims about how the landfill will be harmful to the community. However, nothing in the hearing request states that IESI's proposed facility will affect the health, safety, or property of a particular Two Bush member, other than a general statement that "many" of its members obtain drinking water through individual wells. All of the concerns Two Bush expresses in the hearing request are concerns relating to the general public's common interest in ensuring good water and air quality in Jack County (an interest IESI shares).

Two Bush specifically mentions three individuals in its request for hearing as so-called affected persons: James Henderson, Danny Blankenship, and J.C. Benson. Two Bush asserts that these individuals own property nearby or adjacent to the proposed landfill. But the simple fact of owning nearby or adjacent land does not establish affected person status as a matter of law. Two Bush does not meet its burden under the rules by just providing the names of several members, and then generally referring the TCEQ to the Application for information about the location of their land. In fact, none of the individuals actually appears to own any land adjacent to the permit boundary or even within the 500' radius referenced in Chapter 330 (although it appears they may own land adjacent to property owned by IESI but not part of the Site). There is no legal presumption of adverse impact upon which Two Bush may rely. In determining whether or not any member of a group or association is an affected person, one factor to consider is the "likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person." 30 TAC § 55.203(c)(4). There is no information in Two Bush's hearing request that supports a conclusion that the health, safety, or property of the three named individuals will be adversely impacted by the new landfill in a manner within the scope of the TCEQ's jurisdiction. Although the hearing request states that many members obtain drinking water from wells on their property, the three named individuals are *not* identified as persons who

utilize groundwater, nor is any nexus drawn between the landfill and the health and safety of the individuals or the use of their property.

In this case, the TCEQ's Chief Clerk issued and mailed to all interested persons detailed instructions on "[h]ow to Request a Contested Case Hearing" which included the requirements discussed above. Subject to the receipt of such additional specific factual information, IESI believes Two Bush has not met the requirements of 30 TAC § 55.205(a)(1).

2. Germane to the Organization's Purpose

Two Bush further has failed to show it meets the requirement of 30 TAC § 55.205(a)(2) that the interests the group or association seeks to protect are germane to the organization's purpose. Two Bush makes a very vague and general statement that it was organized to protect the public health, the environment, and property interests of its members and to protect the nature and beauty of Southeast Jack County. There is no discussion of meetings held, an organizational charter, or any other formation formalities or objectives. Two Bush's conclusory statements do not indicate anything more than an interest in the environment that is shared by the general public. Two Bush does not explain its specific objective relative to the landfill project other than to generally object on unsupported "environmental" grounds. Two Bush says that it has standing because "the interests the organization seeks to protect are directly related to the organization's purposes...." This statement is completely circular – its interests are related to its purposes. What is required is an explanation of what those particular interests are in relation to the landfill proposal and how they closely relate to the group's official business.

3. Need for Individual Participation

Further, Two Bush makes a conclusory statement that there is no need for individual participation because the relief sought by its members are the same as the entity. However, Two

Bush provides no showing of why this statement is true. Without identifying the relief being sought by Two Bush and its members in this proceeding, there is no means of evaluating the group's bare statement and its compliance with the rules. Additionally, the request of Two Bush does not demonstrate nor even mention whether the claims asserted (as distinguished from the relief requested) requires the participation of individual members.

B. The Individual Hearing Requestors

IESI is aware of the following individuals who have requested a contested case hearing or filed ambiguous public comment in which it was unclear whether a hearing request was actually made, either prior to or following the Executive Director's Response to Comments:

Brad Dixon	January 19, 2007 and August 10, 2007
B.J. and Shelly Haffly	August 6, 2007
James Henderson	January 13, 2007 and August 3, 2007
James and Linda Thompson	October 17, 2005
Tommy Aslin	October 18, 2005
Gloria Sprencl	November 15, 2005
Roger and Kathy Pruitt	October 27, 2005 and January 21, 2007

The hearing requests of Brad Dixon, B.J. and Shelly Haffly, James and Linda Thompson, Tommy Aslin, and Roger and Kathy Pruitt must be denied because these requestors have no personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application as required to be an "affected person" pursuant to 55 TAC § 55.203. An interest shared by members of the general public does not constitute a personal justiciable interest. 30 TAC § 55.203(a). Further, there is no reasonable relationship between the interest claimed and the proposed activity, and the likely impact of the activity on the health and safety of those requestors and on the use of the property.

Mr. Tommy Aslin is clearly not an affected person, because his interest is common to that of the general public. Mr. Aslin lists his address as Mineral Wells, Texas. Mineral Wells is

approximately thirty (30) miles from the proposed landfill. There is no indication from Mr. Aslin that he lives or owns property anywhere near the proposed facility. Mr. Aslin does not even begin to identify a right, duty or privilege that is personal to him related to the landfill. His hearing requests makes general statements that he is concerned about extreme rainfall events affecting the landfill, but does not explain what his personal interest is in such a rainfall event, or any other aspect of the proposed landfill. Mr. Aslin's request was filed back in 2005 but not renewed in response to the Executive Director's Response to Comments in 2007. Mr. Aslin's request for a contested case hearing must be denied.

Likewise, the request by Roger and Kathy Pruitt must be denied. The Pruitts indicate that they own property approximately two (2) miles from the proposed landfill site.³ They express concerns shared by the general public such as air quality, water quality, and water availability. In fact, most of their request directly addresses the general public, such as "persons with chronic ailments" and "school children." While they do mention that their household source of water is a well that "comes from a finger of the Trinity Aquifer," their expressed interest is no different than all members of the general public who obtain water from the Trinity Aquifer. They have shown no reasonable relationship between the interest they claim and the proposed landfill. The Pruitt's request for a contested case hearing must be denied.

B.J. and Shelly Haffly are also not affected persons. The address they provide is approximately ten (10) miles from the proposed landfill. Like the Pruitts, the Hafflys discuss concerns common to the general public, such as odor, air quality, and water quality. While the Hafflys state that their source of water is the Trinity Aquifer, their interest in the water quality of

³ The Pruitts mention that their property and the City of Perrin are located within a few miles of the Site; however, Perrin is located approximately four to five miles southwest from the Site and the Pruitts provided no physical address or mapping.

the Trinity Aquifer is also shared by the general population of the north-Texas area. There is no reasonable relationship between the interest they claim and the proposed landfill, and any impact of the landfill on the health and safety of the Hafflys or on the use of their property is highly remote and speculative, at best.

Brad Dixon is not an affected person. His request for a contested case hearing indicates that he lives four (4) miles north from the proposed facility.⁴ His concerns focus on groundwater and are common to those of the general public whose water source is the Trinity Aquifer. Because he has not shown a personal justiciable interest, Mr. Dixon is not entitled to a contested case hearing. Mr. Dixon has not shown a reasonable relationship between his complaints and the landfill activities, and any impact of the landfill on the health and safety of Mr. Dixon or the use of his property is tenuous, at best.

James and Linda Thompson indicate in their request for a contested case hearing that they own land "in close proximity" to the proposed landfill, but do not provide more specific information as to the location of their property. It is therefore impossible for the Commissioners to determine whether or not the Thompsons are affected persons and they have not met their burden of showing that they are affected. In addition, the Thompsons' request was filed back in 2005 but not renewed in response to the Executive Director's response to comments in 2007. Accordingly, the Thompsons have not established themselves as affected persons and their request should be denied based on this insufficiency.

Gloria Sprencel stated back in 2005 that she owns property adjacent to the proposed landfill and "would like to request a hearing" and asked, "how do I get a hearing." Ms. Sprencel was confused about the Site, however, stating that "Waste Management Company" is the

⁴ Mr. Dixon provided no physical address or mapping of his property, providing only a mailing address in

applicant, which it is not. Also, it does not appear that Ms. Sprencel actually owns any property that is located adjacent to the permit boundaries or within the 500' radius referenced in the Chapter 330 rules. Despite asking for, and later receiving from the TCEQ Chief Clerk, specific information about how to request a contested case hearing, Ms. Sprencel never followed up and made an affirmative request for a hearing. As provided by 30 TAC § 55.201(f), documents that are filed with the Chief Clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment. Ms. Sprencel's letter does not constitute a timely request for hearing under the agency's rules and she should not be granted a hearing.

Of all the timely hearing requests submitted by individuals, only that submitted by James Henderson states that he owns property adjacent to the proposed landfill. Notwithstanding such statement, however, Mr. Henderson does not actually own property that is located adjacent to the permitted boundaries of the landfill or within the 500' radius referenced in Chapter 330. As mentioned previously, it appears that Mr. Henderson owns property adjacent to property owned by IESI but which is not part of the Site. Nevertheless, IESI does not object to the Commission granting Mr. Henderson a hearing in his individual capacity if such hearing is limited to the issues raised in his hearing request, as set forth below.⁵ IESI strongly believes that the issues and concerns as presented by Mr. Henderson have no merit as would be demonstrated during any contested case hearing.

Jacksboro, fourteen miles northwest of the Site.

⁵ By agreeing not to contest Mr. Henderson's request for a hearing as a matter of courtesy, IESI does not waive and expressly reserves its right to challenge Mr. Henderson's justicible interest and object to his standing to the extent that Two Bush or any other third party seeks to rely on Mr. Henderson's membership or property to confer standing.

C. Jack County Commissioners Court Resolution

By correspondence dated October 29, 2007, Jack County Judge Mitchell Davenport forwarded a Resolution of the Jack County Commissioners Court also dated October 29, 2007 to the TCEQ. In essence, the Resolution states that the Jacksboro Landfill will be located in Jack County, various Jack County citizens have expressed concerns relating to the Landfill, and the Commissioners Court requests that the TCEQ hold a "full, contested case hearing in Jack County on this application to allow all the voices to be heard." IESI does not believe the intent of this Resolution was to be an independent hearing request or criticism of the pending application on the part of the County, but rather is an expression of support by the Commissioners Court for any constituents who properly filed requests for hearing. Inasmuch as the Resolution submitted by Judge Davenport was filed after the time period for affected persons to request a hearing, it is along the lines of an amicus pleading in support of hearing requests submitted by others. The Resolution indicates no intent on the part of the County to intervene in any such hearing nor takes any position with respect to the merits of IESI's Application. While IESI is not objecting to the hearing request submitted by Mr. Henderson and, therefore, expects the County Commissioners' request to potentially be effectively granted based on Mr. Henderson's request, IESI believes that whether or not this matter is referred to SOAH for a contested case is a matter for determination based on applicable law and regulations as discussed previously.

With respect to the County's expressed desire that any such hearing be held "in Jack County", the venue for any contested case after a matter has been referred to SOAH is to be determined by the substantive law and policies applicable to the SOAH proceeding. It would be inappropriate for the TCEQ to attempt to dictate the venue for any such proceeding once the matter has been referred to SOAH. To the extent any party to a SOAH proceeding desires to raise such an issue, the applicable forum for such issues is before the SOAH Administrative Law

Judge. As previously noted, however, a series of public meetings have already been held in Jack County including gatherings that were formally noticed and conducted in accordance with TCEQ rules.

**III.
THE ISSUES REFERED TO SOAH MUST BE LIMITED**

Assuming that the Commission determines that one or more of the hearing requests should be granted in this matter, 30 TAC § 55.211(b) provides the following instruction as to limiting the issues that are referred the State Office of Administrative Hearings (“SOAH”):

(b) The Commission will evaluate public comment, executive director’s response to comment, requests for reconsideration, and requests for contested case hearing and may: ...

(3) determine that a hearing request meets the requirements of this subchapter and:

(A) if the request raises disputed issues of fact that were raised during the comment period that were not withdrawn by the commentor in writing by filing a withdrawal letter... and that are relevant and material to the commission’s decision on the application:

(i) specify the number and scope of the specific factual issues to be referred to SOAH....

30 Tex. Admin. Code § 55.211(b)(3)(A)(i). Accordingly, assuming the Commission finds that there is a valid hearing request(s), the Commission must determine which, if any, relevant and material factual issues have been specifically raised by that valid hearing request(s) and specifically delineate those factual issues in its referral to SOAH.

IESI discusses below each of the hearing requests, and indicates whether each issue presented is potentially referable to SOAH. For convenience, IESI has attached as “Exhibit A” to this Response a reference chart showing each requestor, each issue presented by that requestor, and whether the issue is appropriate for consideration at a contested case hearing. No

such issue should be referred, however, unless that issue was raised in a timely and valid hearing request filed by an affected person who has complied with the agency's rules and demonstrated he or she has a justiciable interest. The discussions of individual issues are grouped below by the alleged "hearing request" in which they appeared. These discussions only become relevant, however, where the Commission first determines that the "hearing request" containing those issues was submitted by an affected person in compliance with relevant TCEQ rules.

A. Issues Raised by Mr. Henderson

Pursuant to § 55.211, only those issues submitted by a valid hearing requestor may be considered by the Commission for potential referral to SOAH. As discussed above, IESI as a matter of courtesy does not object to the Commission granting Mr. Henderson a hearing in his individual capacity if such hearing is limited to the issues set forth below.⁶ Accordingly, only the issues presented in Mr. Henderson's hearing request should even be reviewed to determine if they should be referred to SOAH.

The following are the issues arguably raised by Mr. Henderson and a brief response to each:

1. Applicant "did not consider the clay mineralogy of the soil and the subsoil or the "soil texture." He further asserts that the "soils and sediments of the Trinity have both the wrong mineralogy and texture for a landfill site".

IESI disagrees with these assertions. They do, however, present disputed factual issues appropriate for SOAH consideration if Mr. Henderson is granted a contested case hearing.

2. Applicant "did not adequately evaluate the velocity of water movement in the subsurface."

⁶ See *supra* note 5.

IESI disagrees with this assertion. It does, however, present a disputed factual issue appropriate for SOAH consideration if Mr. Henderson is granted a contested case hearing.

3. Requestor asks for "a tabulation and identification of the compounds that will analyzed (sic) in the monitoring wells, the method of chemical analysis, the laboratory methods used, and the frequency of analysis and the limits of detection."

This is a request for information contained within TCEQ guidance and regulations. It presents no disputed issue of fact and, therefore is not appropriate for referral to SOAH.

4. Applicant "used the rainfall data for Abilene, TX to calculate the extent of the flood plain." Mr. Henderson further requests that the "construction design of the landfill" be examined by TCEQ "using more reasonable anticipated rainfall and that daily rainfall data be used dating backward to the inception of record keeping."

IESI disagrees with this assertion. Whether or not IESI used appropriate rainfall data as indicated does, however, present a disputed issue appropriate for referral to SOAH if Mr. Henderson is granted a contested case hearing.

5. "Meteoric water will percolate through the landfill dissolving substances, some of which are toxic. This contaminated water will reach the membrane and move horizontally into a containment point. The contaminated water must be treated to remove the pollutants."

IESI disagrees with this assertion. It does, however, present a disputed factual issue appropriate for SOAH consideration if Mr. Henderson is granted a contested case hearing.

6. Request for "the water treatment and purification plans for effluent fluids percolating through the landfill" and "TCEQ permit requirements for water which is re-introduced into the public streams."

This is a request for information. It presents no disputed issue of fact and, therefore is not appropriate for referral to SOAH.

7. "A review of the literature has revealed that the synthetic liner will eventually decompose." Request for "clarification as to the exact nature and origin of the soil liner and clarification as to how long the synthetic

liner will be functional. Additionally, how will the shrinking of the clay liner be prevented during prolonged droughts.”

This is a request for information. It presents no disputed issue of fact and, therefore is not appropriate for referral to SOAH. Synthetic liners are required by TCEQ regulations. Mr. Henderson’s claim that the liners are inappropriate and/or inadequate is a collateral attack on TCEQ regulations and not appropriate for referral to SOAH.

8. “Implementation of the proposed landfill could hamper future development and deprive surrounding mineral owners of their rights to production.”

IESI disagrees with this assertion. Further, any potential impairment of the ability of third persons to develop and produce oil and gas minerals is a matter beyond the jurisdiction and expertise of the TCEQ. As reflected in agency rulemaking, the TCEQ’s permitting process is not the appropriate forum in which to address issues regarding the protection of mineral interests or access to minerals under a proposed site. This is not an environmental or public health concern and is not appropriate for referral to SOAH.

9. “Former exploratory wells, now plugged and abandoned, exist beneath the landfill site.” “These plugged and abandoned wells would be conduits to the surface for treatment fluids used in offsetting wells.”

IESI disagrees with this assertion. It does, however, present a disputed factual issue appropriate for SOAH consideration if Mr. Henderson is granted a contested case hearing.

10. Mr. Henderson requests “a tabulation and identification and the probable concentration of the constituent organic and inorganic compounds that may be introduced into the atmosphere (particulate and non-particulate); the analytical methods that will be used for their detection; and a copy of air emissions permit to be used by the State of Texas.”

These requests do not raise any fact issues for SOAH determination but, as indicated, are requests for information. Even to the extent the requests are intended to be contested issues, they relate to air quality regulation and permitting which is not the subject of this proceeding and for

which Mr. Henderson would not have a justiciable interest. Such issues are regulated under an entirely different program implemented by the TCEQ through entirely separate procedures.

11. Applicant has “seriously underestimated the projected future growth of the area in West Cross Timbers area (WCTA) of Jack County.”

IESI disagrees with this assertion. It does, however, present a disputed factual issue appropriate for SOAH consideration if Mr. Henderson is granted a contested case hearing.

12. “Construction of the landfill would seriously impede growth and perhaps cause an exodus of current residents.”

IESI disagrees with this assertion. It does, however, present a disputed factual issue appropriate for SOAH consideration if Mr. Henderson is granted a contested case hearing.

13. Landfill “would create serious traffic problems that would be very detrimental to the well being of citizens in many surrounding communities included Jacksboro.”

IESI disagrees with this assertion. It does, however, present a disputed factual issue appropriate for SOAH consideration if Mr. Henderson is granted a contested case hearing.

14. Request for the “projected growth rate be recomputed based on the observable growth and that a study of traffic flow be conducted.”

This request does not raise any fact issues for SOAH determination and is a collateral attack on the agency’s rules. It is therefore not appropriate for referral to SOAH.

15. “...a performance bond should be required of BFI/IESI to ensure that the landfill will be satisfactorily closed and that funds be available to satisfy claims in the case of environmental or other damages caused by negligence.”

TCEQ regulations require and IESI has proposed appropriate financial assurance under those regulations. To the extent Mr. Henderson requests a different form of financial assurance, such a request is irrelevant and immaterial as well as a collateral attack on TCEQ’s regulations. It is therefore not appropriate for referral to SOAH.

While certain of the issues raised by Mr. Henderson may be appropriate for SOAH determination as indicated above, IESI intends to show at any contested case hearing that the issues have no merit. IESI is confident that following any consideration by SOAH, the Commission will ultimately determine that a permit should be issued as set forth in IESI's application and consistent with the Executive Director's recommended permit.

B. Issues Raised In Other Hearing Requests

As discussed above, IESI does not believe the Requests for Hearing filed by Two Bush, Gloria Sprencel, Brad Dixon, B.J. and Shelly Haffly, James and Linda Thompson, Tommy Aslin, and Roger and Kathy Pruitt should be granted and, therefore, the issues contained therein are not to be referred to SOAH. Nevertheless, IESI addresses each of those issues below and requests that the Commission consider this portion of our Response in the event it determines any of those Requests are valid. By doing so, IESI does not waive its arguments that Two Bush, Brad Dixon, B.J. and Shelly Haffly, James and Linda Thompson, Tommy Aslin, and Roger and Kathy Pruitt are not entitled to a hearing. Nor does IESI waive its arguments that only those issues noted in Section III.A.1, above, raised by Mr. Henderson are even arguably appropriate for referral to a contested case hearing.

Of the issues raised during the comment periods by the various commentors and subsequently raised by a requestor, most are not appropriate for consideration by SOAH because they address policy issues, are a collateral attack on TCEQ's regulations, are not within the jurisdiction of the TCEQ, present no fact issue, and/or present fact issues that are not relevant and material. A contested case hearing should only be granted on disputed issues of fact that are relevant and material to the Commission's decision on the application.

1. **Issues Raised by Two Bush**

(a) Procedural Issues

(i) Excessive Review

Two Bush first raises the following issues relating to the TCEQ Staff's application review procedures:

1. "Excessive notices of deficiency." "For some years now, TCEQ staff has allowed no more than two notices of deficiencies";
2. "The applicant here was given special treatment." "Applicant was reminded of the TCEQ limitations and procedure in several letters, but it was given several opportunities to amend its application after it failed to adequately respond to the second NOD";
3. "TCEQ rules provide that the technical review period should not exceed 75 working days." "The technical review period in this case has exceeded a year because of the applicant's failure to provide complete and accurate information, as requested by TCEQ staff."

By raising these issues, Two Bush basically claims that the TCEQ staff has spent too much time in their review of the Application and the Applicant has been too careful in ensuring that each and every issue raised by the TCEQ staff and/or the public has been fully addressed and the Application appropriately clarified. Two Bush complains that the application was not submitted in accordance with the rules, that the technical review period should not take more than 75 days, that this application had more than two NODs, and is "piecemeal" are simply untrue or irrelevant. It is true that the TCEQ does have guidelines and policies that both prevent the staff from being bogged down by a recalcitrant applicant and protect applicants from unreasonable delays occurring within the staff's review. In this case, the Applicant has not been recalcitrant and the staff has not been unreasonable. The guidelines cited by Two Bush are not mandatory and have no relevance here. They were never intended to thwart careful review by the Staff and thorough responses by an applicant. The TCEQ rules which form the basis for Two

Bush's arguments even specifically set out the potential sanction where the timeframes for review have been exceeded. Specifically, 30 TAC § 281.19(b) provides, in pertinent part, as follows:

If the necessary additional information is not received by the executive director prior to expiration of the technical review period and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, *the executive director may return the application to the applicant.* (Emphasis added)

Obviously, the Executive Director made the decision not to "return the application to the applicant" nor was there any reasonable basis to do so.

Furthermore, Two Bush cannot reasonably complain that the technical review has taken too long. There simply is no harm to Two Bush. Instead, this argument illustrates the disingenuousness of the entirety of Two Bush's arguments. If they truly had a concern for compliance with TCEQ requirements, they would applaud the meticulous review process which the Applicant and the TCEQ staff have undertaken. Their argument is simply without merit and such issues are not appropriate for referral to SOAH.

(ii) Public Notice

Two Bush next raises several issues which relate to the notice given relating to the Application. These issues are as follows:

1. "...there was not: Notice in Spanish"
2. "...there was not: Accurate information in the notice"
3. "...there was not: Proper notice to property and mineral interest owners and residents within ½ mile"
4. "...there was not: Notice published in accordance with the law."

The public notice requirements applicable to this permit are stated with specificity in the TCEQ's rules. There is no dispute that the original applicant (the City of Jacksboro) published

the Notice of Intent to Obtain a Municipal Solid Waste Permit timely and in the required media source. Nor is there any dispute that IESI later published the Notice of Application and Preliminary Decision timely and in the required media source. Notice was also provided to the adjacent property owners and to all persons on the TCEQ's "interested persons" mailing list. Any additional notices the Requestors complain were not given are not required by law. Particularly, there is no legal requirement that every revision to the application during technical review between the initial Notice of Intent to Obtain a Municipal Solid Waste Permit and the Notice of Application and Preliminary Decision be the subject of a separate notice. It is common for many such revisions to occur during the technical review process; indeed, such a requirement would be impractical not only for the TCEQ and the applicant, but also the interested parties.

As a matter of law, there were no alternative language requirements applicable to this municipal solid waste permit application which was filed in April of 2005.⁷ Further, there is no requirement for mailed notice to mineral interest owners for this application.⁸ Finally, there is no requirement for notice to owners of property within ½ mile of the facility prior to the issuance of any notice of hearing.⁹ The requestor does not explain how the public notice was deficient in this area. The comment that notice was not published in accordance with the law is so completely vague, general, and conclusional that it cannot possibly be a distinct issue at SOAH. These issues effectively complain that IESI did not take certain actions which, by law, were not required to be taken. This presents no issue of disputed fact for determination by SOAH.

⁷ Under 30 TAC § 39.405(h)(1), the alternative language requirement applies only to solid waste applications filed on or after November 30, 2005.

⁸ Under 30 TAC § 330.59(c)(3), the requirement to include mineral interest owners only applies to applications filed on or after March 27, 2006, and is applicable only to mineral interests under the facility as derived from the real property appraisal records.

⁹ See Texas Health and Safety Code § 361.081(a).

(iii) Change in Applicant

Two Bush next makes several allegations relating to the change of applicant from the City of Jacksboro to IESI as follows:

1. "The change in owner/operator affects public notice and many aspects of the application. For example, a nearby landowner may have very different concerns about the operation of the landfill by the City versus operation of the landfill by a large waste management company, whose interests are not tied to the local community or economy";
2. "Likewise, in this case, the City of Jacksboro was the original applicant, and the Mayor, an elected public official, filed the sworn affidavit averring that the application is complete and accurate and that the landfill would be properly operated. The transfer of the application from the City to a large waste management corporation affects the reliability of these statements, as well as a host of other issues, including financial assurance, compliance history, debts to the state, etc.";

There is no legal authority for the allegation that that the change in applicant from the City of Jacksboro to IESI should have triggered a "restart" of the entire application process, including administrative and technical review (and thus new Notice of Intent to Obtain a Municipal Solid Waste Permit). The effect of any transfer of an application to a new applicant is specifically addressed in the TCEQ's rules at 30 TAC § 281.33(a) as follows:

281.23. Application Amendment.

(a) No amendments to an application which would constitute a major amendment under the terms of 305.62 of this title (relating to Amendment) can be made by the applicant after the chief clerk has issued notice of the application and draft permit, unless new notice is issued which includes a description of the proposed amendments to the application. For purposes of this section, an attempted transfer of an application shall constitute an amendment requiring additional notice.

As the above clearly indicates, the transfer of an application *after* the Notice of Application and Preliminary Decision has been published requires that particular notice be republished indicating that the transfer has been made. In this case, the change in applicant from the City of Jacksboro to IESI took place *before* the Notice of Application and Preliminary Decision was published. When the Notice of Application and Preliminary Decision was

published, it properly indicated that IESI is the Applicant. As a result of that notice, the public was given an opportunity to comment on IESI as the Applicant.

It is important to note that Two Bush (as well as the public generally) has at all times been aware that IESI was to be the operator of the Landfill and that there was a contractual relationship between IESI and the City of Jacksboro. These facts were set forth in the original permit application, a copy of which was continuously available in a publicly accessible location within Jack County. As well, the property owners' affidavits submitted with the original application made it clear that IESI would acquire and become the owner of the real property upon which the landfill would be operated by IESI. IESI representatives were present at all three public meetings and participated in the technical review process. As noted above, the only change has been that IESI actually purchased the Landfill site during the technical review process, and IESI and the City thereby modified their contractual arrangement so that the City would no longer lease the tract, hold the permit, and be ultimately responsible for activities at the landfill. Accordingly, it became more appropriate for IESI, as the owner, operator, and responsible party to be the named applicant. The name of the "applicant" was changed during the technical review, but the Landfill design and operations remain unchanged. The change in applicant designation occurred in full compliance with agency rules.

Two Bush's comments revealed no deficiency in the notices, but rather only general, unsubstantiated arguments seeking additional notices and delay that are not required by law. This issue should not be presented to SOAH because there is no issue presented for a fact finder. Because there is no disputed issue of fact that is relevant and material to the Commission's decision on the application, the public notice comments cannot be referred to SOAH for review.

(iv) Groundwater Protection.

Two Bush makes the following allegations with respect to the groundwater protection measures to be utilized at the Jacksboro Landfill:

1. "The site is on the recharge zone of the Twin Mountains formation, a significant aquifer";
2. "There are lenses of sand, clay and silt in the aquifer, which create a complex aquifer system. That system of sands, clays, and silts has not been adequately evaluated or described";
3. "Leaks from the landfills (sic), from leachate management areas, and from spills and wastes, fuels or other liquids could result in contamination of the groundwater. Yet, no proper evaluation has been done, and no adequate protections have been established in case of spills or leaks";
4. "The protective measures necessary to prevent damage to the liner have not been proposed in the application or required in the permit. The risk of such damage to by moving groundwater and pressure on the liner has not been properly evaluated";
5. "The proposed landfill will be deeper than shallow perched groundwater, ground water (sic) that has not been identified or characterized, and, thus, has not been considered in the design of the landfill or in the consideration of necessary safeguards for these conditions";
6. The groundwater monitoring system "does not meet the requirements for the proper number and location of wells, depths, and/or locations of screens to collect representative samples of the groundwater at the varies levels in the aquifer system and for the different densities of wastes likely to contaminate the aquifer system";
7. The groundwater monitoring system is "not designed based on adequate site data";
8. The groundwater monitoring system is "not properly designed to detect releases of contaminated water from the landfill";
9. The "application does not properly identify up gradient and down gradient wells or the point of compliance";
10. The "application does not propose an adequate procedure for collecting background data on the groundwater";
11. The "applicant has not qualified for any alternative design under Section 330.231(c) or other rule".

While IESI does not agree with the conclusory allegations made, they do raise fact issues and, to the extent the Commission determines that Two Bush's hearing request is valid, these issues would be potentially referable to SOAH. We do object, however, to the referral of the vague, general, and conclusory headings to Two Bush's comments and issues. With respect to these groundwater issues, Two Bush has headed its issues with the general bold headings that state the "proposed permit is not adequate to prevent groundwater contamination given the site conditions and the application" and the "proposed groundwater monitoring system is inadequate". These statements embedded in the headings are not fact issues for referral to SOAH. They present overly broad legal conclusions and are not appropriate for referral to SOAH.

(v) Surface Water Protection

Two Bush makes the following allegations with respect to the surface water protection measures to be utilized at the Jacksboro Landfill:

1. "There are not adequate controls to prevent contamination of storm waters by wastes, leachate or spills of fuels or other materials at the landfill";
2. "The designs for the channels and ponds (size, configuration and location) are not adequate";
3. "Drainage controls have not been designed to assure historic levels of runoff and to protect surrounding properties, and the application itself shows that there will be significant changes to the drainage patters at the landfill and off-site";
4. "The changes to the drainage patters will result in damage to property off-site including increased erosion and loss of water supplies"; and
5. "The design to avoid flooding of parts of the landfill is not adequate."

While IESI does not agree with the conclusory allegations made, they do raise fact issues and, to the extent the Commission determines that Two Bush's hearing request is valid, these issues would be potentially referable to SOAH. We do object, however, to the referral of the

vague, general, and conclusory heading to Two Bush's comments and issues. With respect to these surface water issues, Two Bush has headed its issues with a general bold heading that states, in its entirety, "the surface water controls are inadequate". This statement embedded in the heading is not a fact issue for referral to SOAH. It presents an overly broad legal conclusion and is a collateral attack on TCEQ's rules and, therefore, is not appropriate for referral to SOAH.

(vi) Rainfall Rates

The following issues regarding rainfall rates were raised by Two Bush:

1. "The application relies on the wrong rainfall station(s)"
2. "This results in an underestimation of rainfall, and accordingly inaccurate evaluation of leachate and surface water management controls"
3. "The temporary dewatering systems proposed in the application are also based on these inaccurate numbers and therefore do not accurately reflect the amount of water that must be managed, much less the reasonable worst case scenario that should be used."

IESI disagrees with these assertions. To the extent the Commission determines that Two Bush's hearing request is valid, they do present disputed factual issues potentially appropriate for SOAH consideration.

(vii) Mineral Development

The following issues regarding mineral development were raised by Two Bush:

1. "The application does not evaluate the extent of mineral development, including minerals that would be mined from the surface or oil and gas;"
2. "There are a number of oil/gas wells near the site and on the site; thus, there is likely mineral development that has not been identified or considered;"
and
3. "There has not been an adequate evaluation of unplugged or poorly plugged oil and gas wells, exploratory wells and water wells."

These issues all basically allege the same assertion. That is, whether IESI has adequately considered past and future mineral development in the area. What is or is not "adequate", however, has been specified in relevant TCEQ rules. To the extent the issues seek to challenge the adequacy of such regulatory requirements, the issues are not suitable for SOAH consideration. Also, any potential impairment of the ability of third persons to develop and produce oil and gas minerals is a matter of conjecture and beyond the jurisdiction and expertise of the TCEQ. As reflected in agency rulemaking, the TCEQ's permitting process is not the appropriate forum in which to address issues regarding the protection of mineral interests or access to minerals under a proposed site. To the extent the Commission determines that Two Bush's hearing request is valid, these issues would be potentially referable if they were clarified and limited to IESI's compliance with relevant TCEQ rules relating to the scope of consideration of such mineral interests. Any consideration beyond those standards is not appropriate for SOAH consideration. Subject to such limitation, issues 1 and 2 above present fact issues while issue 3 seeks to challenge TCEQ regulations and is not appropriate for referral to SOAH.

(viii) Endangered Species

Two Bush raises the following issues with respect to endangered species:

1. "The application does not provide an adequate evaluation of the existence of endangered or threatened species (animals, plants, etc.), habitats for such species, or the risks of landfill activities for such species;"
2. "The application and SOP do not provide adequate plans for protection of such species and habitats;" and
3. "The application and SOP have neither identified nor considered the ramifications of landfill activities for the unique and rare species of trees in the area."

To the extent the Commission determines that Two Bush's hearing request is valid, certain of these issues would be potentially referable as follows: Issue number 1, above, presents

a disputed question of fact only to the extent "adequate" is defined as compliance with 30 TAC § 330.53(b)(13). To the extent Two Bush seeks to redefine "adequate", the issue is a collateral attack on TCEQ rules and not suitable for SOAH consideration. Issue number 2, above, to the extent it is relevant and material, is subsumed into Issue 1. In addition, to the extent Issue number 2 assumes "plans for protection of such species and habitats" are necessary at this site, the issue is inappropriate. Issue number 3 relates to consideration of "unique and rare species of trees in the area", a consideration that is beyond the scope of relevant TCEQ rules and, therefore, irrelevant and immaterial.

(ix) Geology and Hydrology

Two Bush raises the following issues relating to the site's geology and hydrology:

1. "There has not been an adequate number of borings at the correct locations and depths for the evaluation of the geology and groundwater, given the conditions at this site and the importance of the groundwater monitoring system to protect the groundwater systems under the site";
2. "The application does not contain adequate information on existing surface water, groundwater, oil, gas, exploration and water wells, faults, fractures, caves, sinkholes, unstable areas, etc.";
3. "The application does not adequately describe the regional or site specific geology and the regional aquifers";
4. "The application does not adequately describe the vertical and horizontal flow characteristics of the groundwater or of the leachate that will leak from the landfill";
5. "The application does not properly characterize the soil"; and
6. "The application does not properly evaluate the availability of water and soils at the site needed for the construction of liners, for cover materials, for dust suppression, etc."

These issues all basically relate to the same assertion. That is, whether IESI has adequately evaluated and considered the geologic and hydrologic conditions in the area of the Landfill. What is "adequate", however, has been specified in relevant TCEQ rules. To the

extent the issues seek to challenge the adequacy of such regulatory requirements, the issues are not suitable for SOAH consideration. To the extent the Commission determines that Two Bush's hearing request is valid, certain of these issues would be potentially referable if they were clarified and limited to IESI's compliance with relevant TCEQ rules regarding such consideration. Any consideration beyond that standard is not appropriate for SOAH consideration.

(x) Landfill Liner

Two Bush raises the following issues relating to the liner system proposed for the Landfill:

1. "Neither the application nor the draft permit provides for an adequate liner given the site selected, with its shallow water and sandy soils";
2. "The geotechnical evaluation for the design of the landfill is inadequate as the slopes and materials for the sidewalks will not assure long-term stability";
3. "The design and operating provisions will not protect the liner from puncture during construction or filling or from leaks at seams";
4. "The applicant has not proposed an adequate dewatering system"; and
5. "The application does not qualify for alternative designs under Subchapter H".

These issues all basically relate to the same assertion. That is, whether the liner system IESI has proposed is "adequate". What is "adequate", however, has been specified in relevant TCEQ rules. To the extent the issues seek to challenge the adequacy of such regulatory requirements, the issues are not suitable for SOAH consideration. To the extent the Commission determines that Two Bush's hearing request is valid, these issues would be potentially referable if they were clarified and limited to IESI's compliance with relevant TCEQ rules regarding such consideration. Any consideration beyond that standard is not appropriate for referral to SOAH.

(xi) Transportation Information

Two Bush raises the following issues relating to transportation information:

1. "...there is an inadequate description and inadequate evaluation of:"
"Roads"
2. "...there is an inadequate description and inadequate evaluation of:"
"Bridges in the area"
3. "...there is an inadequate description and inadequate evaluation of:"
"Weight limits"
4. "...there is an inadequate description and inadequate evaluation of:"
"Railroad crossings that will be affected" and
5. "...there is an inadequate description and inadequate evaluation of:" "The design of the access sites for the landfill, to provide adequate offsite parking and maneuvering areas to minimize risks of accidents on and off site and to assure proper access by fire and emergency vehicles during working hours and when the landfill is closed."

TCEQ regulations require certain information to be included as part of the required traffic study. IESI has submitted such a study. To the extent that Two Bush seeks a different or additional traffic study, such a request is irrelevant and immaterial as well as a collateral attack on TCEQ's regulations. To the extent Two Bush claims that IESI's traffic study does not comply with the TCEQ regulations, IESI disagrees with these assertions. To the extent the Commission determines that Two Bush's hearing request is valid, these issues do present disputed factual issues potentially appropriate for SOAH consideration if clarified and limited to IESI's compliance with relevant TCEQ rules regarding such consideration. Any consideration beyond that standard is not appropriate for referral to SOAH.

(xii) Compatibility with Regional Solid Waste Plan

Two Bush raises the following issue relating to compatibility with the Regional Solid Waste Plan:

1. "...the landfill is not necessary to meet the regional needs and is not limited to protect the needs that exist or prevent unnecessary risks to the local communities"

Not only is this allegation incorrect, whether or not a landfill is necessary to meet "regional needs" is not a factor in a landfill permitting proceeding. The applicable TCEQ rule specifies that: "[t]he applicant shall submit demonstration of compliance with regional solid waste plan." 30 TAC § 330.51(b)(10). Whether or not "regional needs" are or are not met is not a relevant consideration under the TCEQ's rules. IESI has complied with the submittal requirement of 30 TAC § 330.51(b)(10) as evidenced in Part IIA of the Application.¹⁰ The Nortex Regional Planning Commission has confirmed in writing that the IESI proposed facility is in compliance with the Regional Solid Waste Plan.¹¹ IESI requests that the Commission take official notice of that determination and, in the interest of conserving the resources of all involved, thereby avoid the need to litigate this issue which is not subject to reasonable dispute.

(xiii) Buffer and Screening

Two Bush raises the following issue relating to buffer and screening:

"The proposed buffer and screening are inadequate, with insufficient green belts, trees, and wind breaks to protect surrounding land uses."

¹⁰ See Application at Part IIA, copy of correspondence dated August 20, 2004 from Joe Cox, Director of Regional Services at NORTEX to Michael Snyder, PG, of Biggs & Mathews Environmental.

¹¹ *Id.*

IESI disagrees with these assertions. To the extent the Commission determines that Two Bush's hearing request is valid, they do present disputed factual issues potentially appropriate for SOAH consideration if adequacy is measured against applicable TCEQ rules.

(xiv) Financial Assurance

Two Bush raises the following issues relating to financial assurance.

1. "The proposed financial assurance is inadequate."

Pursuant to the TCEQ's rules requiring the limiting of issues, such general topics are inappropriate for referral to SOAH. This allegation does not identify any particular statutory, regulatory, or other issue. TCEQ regulations require and IESI has proposed appropriate financial assurance in the manner specified by the rules. To the extent Two Bush requests a different form of financial assurance, such a request is irrelevant and immaterial as well as a collateral attack on TCEQ's regulations. A contested case hearing is not the appropriate forum for such a collateral attack of TCEQ rules.

2. "The types and amounts of money proposed for closure and post closure care are not based on reasonable worst case scenarios with closure by independent third parties, including contingencies for the need to bring water and dirt to the landfill site, the failure of the liner, the shifting of the landfill, etc."

IESI disagrees with these assertions. To the extent the Commission determines that Two Bush's hearing request is valid, they do present disputed factual issues potentially appropriate for SOAH consideration.

(xv) Property Interests

Two Bush raises the following issue relating to property interests:

"The application does not demonstrate adequate proof of property interests, including adequate interests in the site to protect against inconsistent future uses, such as mineral development."

The application sets forth a legal description of the site and provides an affidavit by the owner as to the interest in compliance with agency rules and forms. This interest is not disputed. Further, there is no requirement that an applicant show mineral or other types of property interests under the rules applicable to this Application. Because there is no disputed issue on any rule/requirement, there is nothing for SOAH to consider. This is a collateral attack on the TCEQ's requirements and not appropriate for referral to SOAH.

(xvi) Site Operating Plan

Two Bush raises the following issues relating to the site operating plan:

1. "The applicant has not provided adequate details and enforceable requirements to guide day to day operations and to allow the enforcement of the SOP."
2. "The individual plans are often only restatements of the rules or promises to develop plans."
3. "The SOP does not provide the detail required for training and procedures to allow the employees to use the plans."
4. "The operational procedures will not prevent or even assure a minimization of the acceptance of lead acid storage batteries, used motor oil, used oil filters, whole scrap tires, items containing chlorinated fluorocarbons, liquid waste, hazardous waste, radioactive wastes or polychlorinated biphenyls."
5. "The SOP does not prevent or assure proper identification and response to fires and other safety or health hazards."
6. "The SOP does not prevent or minimize access by rats, insects, birds and other carriers of disease or the spread of such disease vectors off-site."
7. "The SOP does not prevent or minimize litter or windblown waste or provide for timely and adequate clean-up on site or on nearby private property."
8. "The SOP does not prevent or minimize windblown dusts, and run-off of soils and wastes from the site."
9. "The SOP does not prevent or minimize the ponding of water on the landfill."
10. "The SOP does not prevent or minimize odors."

11. "The SOP does not provide adequate emergency response and contingency plans for fires, accidents, injuries spills, and other such conditions."

12. "The SOP does not assure adequate coordination with local fire and emergency response services or provide for adequate on site equipment, water, soil, and personal equipment for on-site responses."

13. "The SOP does not assure that the landfill site will have adequate controls over access by unauthorized persons."

14. "The SOP does not provide for adequate control of animal or human scavenging."

IESI disagrees with each of these assertions. To the extent the Commission determines that Two Bush's hearing request is valid, issues 4 through 14 do present disputed factual issues potentially appropriate for SOAH consideration if clarified and limited to the standards set forth in TCEQ rules and such that they are not collateral attacks on the agency's applicable regulations. Issues 1 through 3 are legal conclusions, collateral attacks on TCEQ rules, and are based on issues previously associated with prior versions of TCEQ's rules that are no longer applicable or appropriate for consideration or referral to SOAH.

(xvii) Compliance History

Two Bush raises the following issues relating to compliance history:

1. "The applicant has a history of poor compliance at this or other facilities."

2. "The compliance record requires: Denial of the application; or Additional conditions and terms in the proposed permit to minimize the likelihood of future violations, such as self reporting of spills, accidents and fires, release of windblown waste."

By definition, there is no compliance history at the proposed Jacksboro Landfill; therefore, this cannot be an issue. The comment that IESI has a "poor" compliance history at other sites it owns or operates is simply not true. Because there is no disputed issue, but rather simply a misrepresentation of publicly available records, referral to SOAH is inappropriate. IESI requests that the Commission take official notice of its compliance history database rating for

IESI and, in the interest of conserving the resources of all involved, thereby avoid the need to litigate this issue which is not subject to reasonable dispute.

(xviii) General Topic – Application Adequacy

Two Bush raises the following issues relating to the adequacy of the application:

1. Application contains “inadequate information” on “the location of the floodplain and the risks of flooding.”

IESI disagrees with these assertions. To the extent the Commission determines that Two Bush’s hearing request is valid, they do present disputed factual issues potentially appropriate for SOAH consideration if adequacy is measured against TCEQ rules.

2. Application contains “inadequate information” on “the existence of wetlands.”

IESI disagrees with these assertions. To the extent the Commission determines that Two Bush’s hearing request is valid, they do present disputed factual issues potentially appropriate for SOAH consideration if adequacy is measured against TCEQ rules.

3. Application contains “inadequate information” on “other site-specific issues requiring special considerations.”

Pursuant to the TCEQ’s rules requiring the limiting of issues, such general topics are inappropriate for referral to SOAH. This allegation does not even identify these so-called “site-specific issues” complained about. There is no allegation of a violation of any statutory, regulatory, or other issue.

4. Application contains “inadequate information” on “the types of soils at the site, which are subject to extensive erosion and not adequate for use at the landfill for cover, sidewalks, or fill.”

IESI disagrees with these assertions. To the extent the Commission determines that Two Bush’s hearing request is valid, they do present disputed factual issues potentially appropriate for SOAH consideration if adequacy is measured against TCEQ rules.

5. Application contains “inadequate information” on “the size and extent of the design storms.”

IESI disagrees with these assertions. To the extent the Commission determines that Two Bush’s hearing request is valid, they do present disputed factual issues potentially appropriate for SOAH consideration if adequacy is measured against TCEQ rules.

6. “The applicant has not presented sufficient justification for the permit term of the life of the facility.”

IESI disagrees with these assertions. To the extent the Commission determines that Two Bush’s hearing request is valid, they do present disputed factual issues potentially appropriate for SOAH consideration if sufficiency is measured against TCEQ rules.

7. “A five year term with provisions for expiration and renewal is justified given the facts.”

This is not required by statute or TCEQ rule. To the extent Two Bush seeks additional requirements, such a request is irrelevant and immaterial as well as a collateral attack on TCEQ’s regulations. It is further a legal conclusion not appropriate for consideration by SOAH. A contested case hearing is not the appropriate forum for such a collateral attack of TCEQ rules and this issue is not appropriate for referral to SOAH.

8. “Many of the permit conditions and aspects of the application that are incorporated into the permit are vague and unenforceable, including, but not limited to the SOP.”

Pursuant to the TCEQ’s rules requiring the limiting of issues, such general topics are inappropriate for referral to SOAH. This allegation does not identify these so-called “vague and unenforceable” permit conditions complained about. There is no allegation of a violation of any statutory, regulatory, or other requirement.

9. "The representations in the application that are incorporated into the permit are vague and unenforceable."

Pursuant to the TCEQ's rules requiring the limiting of issues, such general topics are inappropriate for referral to SOAH. This allegation does not identify these so-called "vague and unenforceable" permit representations complained about. There is no allegation of a violation of any statutory, regulatory, or other requirement.

(xix) Policy Matters

Issuance of permit inconsistent with state policies including the legislative and regulatory directives that:

1. "Promote the maximum conservation and protection."
2. "Prohibit discharges and actions that could result in pollution of water, ground or surface, of the state."
3. "Require the safeguarding of the state's air from pollution."
4. Require the control of all aspects of the management of municipal solid waste by all practical and economically feasible methods consistent with the law."
5. "Prohibit the collection, storage, disposal, transportation, or processing of municipal solid waste in a fashion that: results in the discharge of imminent threat of discharge of municipal solid waste into or adjacent to the waters in the state; creates or maintains nuisance conditions; and endangers human health or welfare of the environment."
6. "Prevent issuance of permits to operators with a history of non-compliance with environmental laws at their facilities."

None of the above matters should be referred to SOAH. Matters of policy are, by definition, matters to be considered by the Commission and are inappropriate for referral to SOAH for a factual review.

(xx) Land Use Compatibility

Two Bush raises the following issues relating to land use compatibility:

1. "Odors and other nuisance conditions, especially, given the operating hours, will interfere with the normal use and enjoyment of surrounding properties and homes and interfere with growth patterns in the area."

TCEQ's consideration of odors and nuisance conditions is limited to those requirements specifically set forth in Chapter 330. General "nuisance conditions" are not specifically within the jurisdiction of the TCEQ and are privately enforceable. IESI has included in its application an odor management plan. There is no suggestion that there is any particular alleged deficiency in this plan or fact issue to be considered within the scope of the applicable rules. Other "nuisance conditions" are not identified by Two Bush. If, after the landfill is operational, any person has a complaint regarding odor or any other nuisance condition, that person may make a formal complaint with the TCEQ or file suit seeking common law remedies as appropriate under the circumstances. This is not properly considered as part of a permitting determination hearing unless adequacy is measured against applicable TCEQ rules.

2. "The number and routing of trucks is incompatible with roads and railroad crossings in the area."

IESI included as part of its application a traffic study showing that the number and routing of trucks are compatible with current roads and railroad crossings. IESI disagrees with Two Bush's assertions. To the extent the Commission determines that Two Bush's hearing request is valid, however, they do present disputed factual issues potentially appropriate for SOAH consideration.

3. "The landfill should be located in an industrial area not only because of its nature but also because of the other industrial activities that will be attracted to the area with the landfill."

There is no legal requirement that a landfill be located in an "industrial area." That Two Bush may prefer the landfill be located in an industrial area is immaterial. This issue is not appropriate for referral to SOAH.

(xxi) General

1. "The proposed permit does not:" "Comply with agency rules."

Pursuant to the TCEQ's rules requiring the limiting of issues, such general topics are inappropriate for referral to SOAH. This allegation does not identify any particular statutory, regulatory, or other issue. This issue is effectively subsumed within the other more specific issues discussed above and should not be referred to SOAH.

2. "The proposed permit does not:" "Adequately address health hazards nuisances and other adverse effects to the public and environment."

Pursuant to the TCEQ's rules requiring the limiting of issues, such general topics are inappropriate for referral to SOAH. This allegation does not identify any particular statutory, regulatory, or other issue. This issue is effectively subsumed within the other more specific issues discussed above and should not be referred to SOAH.

(xxii) Incorporation by Reference

In the hearing request, Two Bush makes a general statement that it "seeks a hearing on all issued raised and identified in the ED's response to comments, and any other properly raised." Presumably, Two Bush is attempting to include as an issue in its hearing request, by reference only, any and all written comments presented by any person and raised at any juncture in this proceeding. This is completely inappropriate. It is not incumbent upon the TCEQ Commissioners, nor IESI as the applicant to determine through a seek-and-find method all the potential issues Two Bush might have with the application. Rather, Two Bush itself must present its issues for the Commission's consideration. In any event, IESI believes that Two Bush's more specifically stated issues substantially raise the issues that are enumerated throughout the comments.

2. **Issues Raised by Other Requestors – Brad Dixon; B.J. and Shelly Haffly; James and Linda Thompson; Tommy Aslin; Roger and Kathy Pruitt; Gloria Sprencel**

As discussed above, none of the referenced hearing requestors have demonstrated they are affected persons entitled to a contested case hearing. Should TCEQ disagree with this assertion, IESI offers the following responses to the remaining hearing requests.

With a few exceptions, the remaining hearing requestors present issues identical to or substantially similar to those raised by Mr. Henderson. Accordingly, whether those issues are ripe for referral to a contested case hearing has already been considered and determined with respect to Mr. Henderson's request.

(a) Brad Dixon

Mr. Dixon raised the following issues in his request for hearing.

“[g]roundwater in this area is very shallow in places.” “The location is subject to major run-off (it is in one of the highest areas of the country). Expresses concerns about “the contamination of groundwater both through leaching and surface run-off.”

This is a very general statement that presents no issue for referral. Groundwater contamination concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate Mr. Dixon's issue.

“Liner... subject to construction error, negligent installment, questionable monitoring and undeniable eventual decay.”

Liner concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate Mr. Dixon's issue.

(b) B.J. and Shelly Haffly

“All rules states (sic) were from the rules prior to March 27, 2006 which ... should not be applied to this permit as it is clearly 2007.”

As a matter of law, the rules applicable to this permit application, which was filed in April of 2005, are found in Chapter 330 prior to the 2006 amendments to that Chapter. That the Hafflys may prefer some other rules be applied is immaterial. This issue is not appropriate for referral to SOAH.

“[t]he City of Jacksboro was the original applicant.”

The change in the applicant is discussed at length in this Response in Part I. and at Part III.B.1.(a)(iii) above. This issue is not appropriate for referral to SOAH for the previously stated reasons.

“[p]roper notice to property owners within ½ mile is not a fair and widespread notification”

As a matter of law, proper notice only requires individual notice of hearing to property owners within ½ mile from the proposed site. That the Hafflys may prefer some additional notice requirements is not only immaterial, it is a collateral attack on State law and the TCEQ's rules, which is not proper for referral to a contested case hearing. This issue is not appropriate for referral to SOAH.

“Substantial public interest test has been met.”

Whether or not the “substantial public interest test” is met is purely within the discretion of the TECQ, and is a matter of policy that is not subject to a contested case hearing.

“IESI cannot/will not be able to contain the smells or provide an adequate barrier around the facility.”

Odor control concerns were addressed at length previously in this Response.¹² To the extent the Commission determines that the Haffly hearing request is valid, this presents a disputed factual issue potentially appropriate for referral to SOAH if adequacy is measured against applicable TCEQ rules as previously discussed.

Contamination will occur into nearby ponds and wells because IESI “will not be able to contain the flood waters such as that which occurred during the Spring and Summer of 2007.”

Water contamination concerns were identified by Mr. Henderson’s request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Hafflys’ issue.

“the small county area volunteer fire fighting staff do not have the training, facilities, or equipment to fight, maintain or control a fire.”

As a matter of law, there is no requirement that a landfill be located in an area serviced by a city or other professional fire department. That the Hafflys may prefer some additional fire fighting requirements is not only immaterial, it is a collateral attack on State law and the TCEQ’s rules, which is not proper for referral to a contested case hearing. This issue is not appropriate for referral to SOAH.

“The ED, owners, operators or most especially the city of Jacksboro do not care if the rural residences of the county are impacted every day by the site, smell, and traffic created by this landfill.”

These nuisance and traffic issues were identified by Mr. Henderson’s request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Hafflys’ issue.

“This landfill would be better suited in an industrial area, not a ranch and farming community, on the highest elevation in the area.”

¹² See Response at Part III.B.1.(a)(xvi)(10) and (xx)(i) above.

There is no legal requirement that a landfill be located in an "industrial area" or in a low-lying area. That the Haffly's may prefer the landfill be located in an industrial area is immaterial. This issue is not appropriate for referral to SOAH.

"IESI cannot guarantee that the local well water will not be affected."

Groundwater contamination concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Hafflys' issue.

"It is evident by the Trinity Aquifer maps ... that any location 15 miles west (or more) of the proposed location would be a much better and safer alternative."

Groundwater contamination concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Hafflys' issue. Further, the TCEQ is without jurisdiction to mandate where an applicant proposes to locate a landfill. That the Hafflys may prefer the landfill be located 15 miles to the west is immaterial.

(c) James and Linda Thompson

"The geological soil characteristics are highly unsuitable."

"The underlying Trinity Aquifer is down-gradient to the Southeast towards Ft. Worth, and is a major source of fresh water."

Groundwater contamination concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Thompsons' issue.

The site is "inherently vulnerable and fragile and holds a high potential for pollution" such as "the soils are sandy" "highly prone to erosion by both wind and water"

Groundwater contamination concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Thompsons' issue.

Flood conditions could produce "hydrostatic pressure on containment membrane" and "pose a threat of partial collapse or rupture"

Such liner and related concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Thompsons' issue.

"Site is elevated relative to surrounding countryside making it visually distasteful, as well as susceptible to windblown dispersal of wastes"

Such concerns were addressed at length previously in this Response.¹³ To the extent the Commission determines that the Thompsons' hearing request is valid, this presents disputed factual issues potentially appropriate for SOAH consideration if adequacy is measured against applicable TCEQ rules as previously discussed.

"pose a significant threat of air pollution"

This concern is stated so generally as to not identify any particular issues with the permit application. In addition, air pollution concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Thompsons' issue.

"unpleasant odors"

Such concerns were addressed at length previously in this Response.¹⁴ To the extent the Commission determines that the Thompsons' hearing request is valid, this presents disputed

¹³ See Response at Part III.B.1.(a)(xii) and (xv)(7) above.

¹⁴ See Response at Part III.B.1.(a)(xvi)(10) and (xx)(i) above.

factual issues potentially appropriate for SOAH consideration if adequacy is measured against applicable TCEQ rules as previously discussed.

“will not benefit from the good road infrastructure... available in more urban areas.

Transportation concerns were identified by Mr. Henderson’s request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Thompsons’ issue. Further, the TCEQ is without jurisdiction to instruct an applicant where to propose to locate a landfill.

“will not benefit from ... extensive firefighting and emergency response capabilities available in more urban areas”

As a matter of law, there is no requirement that a landfill be located in an area serviced by a city or other professional fire department. That the Thompsons may prefer some additional fire fighting requirements is not only immaterial, it is a collateral attack on State law and the TCEQ’s rules, which is not proper for referral to a contested case hearing. This issue is not appropriate for referral to SOAH.

(d) Tommy Aslin

“the amount of rainfall that could cause the site to overflow and contaminated the surrounding areas.”

Water contamination concerns were identified by Mr. Henderson’s request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate Mr. Aslin’s issue.

(e) Roger and Kathy Pruitt

The Pruitts submitted a contested case hearing request that expressed concerns about two issues only: air pollution and groundwater contamination. In addition, they submitted written comments on another date. Only those issues listed as part of the request for contested case hearing are specifically addressed below. In any event, all of the issues listed in the Pruitts’

comments were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the issues brought up in the Pruitts' comments.

In their hearing request, the Pruitts state the following:

"worry about air pollution in the area"

This concern is stated so generally as to not identify any particular issues with the permit application. In addition, air pollution concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Pruitts' issue.

"using one of the highest topographical elevations atop the recharge area of the Trinity Aquifer adjacent to Jasper Creek is environmentally unsound"

Groundwater contamination concerns were identified by Mr. Henderson's request for hearing, and were addressed at length previously in this Response. The referral decision as related to Mr. Henderson will necessarily incorporate the Pruitts' issue.

(f) Gloria Sprencel

Ms. Sprencel expressed general concerns in 2005 that the City of Jacksboro was the permit applicant but does not own the landfill site, and that much of the waste accepted by the landfill will not originate in the City of Jacksboro. IESI is the applicant in this proceeding and these facts are not disputed or subject to reasonable dispute. Additionally, the geographical source of solid waste to be managed at the facility is not a relevant consideration under applicable regulations. Ms. Sprencel's concerns are simply a collateral attack on the TCEQ's rules. These issues are not, therefore, appropriate for referral to SOAH.

Ms. Sprencel also expresses general concerns about the "environmental impact" such as endangerment to wildlife, water, and the air, and excess noise and light. Such broad

environmental concerns can encompass essentially any environmental topic. Pursuant to the TCEQ's rules requiring the limiting of issues, such general topics are inappropriate for referral to SOAH. Ms. Sprenzel does not identify any particular statutory, regulatory, or other issue she has with the Application itself. Essentially, Ms. Sprenzel is questioning the appropriateness of TCEQ's rules and whether they are protective of the environment. A contested case hearing is not the appropriate forum for such a collateral attack of TCEQ rules. Obviously, a referral to SOAH to consider "environmental issues" such as air, water, and impact on wildlife does not comply the requirement of § 55.211 to limit the issues and the scope of those issues. As to noise and light, those issues are not within the TCEQ's jurisdiction and should not be referred to SOAH. In addition, Ms. Sprenzel's "issues" appear to be subsumed within the more specific issues raised by Mr. Henderson. Even if her letter qualified as a timely request, Ms. Sprenzel's hearing request does not, therefore, include any independent issues for referral to SOAH.

IV. INFORMATIONAL REQUIREMENTS FOR HEARING REQUEST RESPONSES

Section 55.209(e)(1)-(7) of the TCEQ rules enumerate certain information that must be included in responses to requests for contested case hearings. The following addresses each of these requirements in turn:

- (1) Whether the requestor is an affected person?

As discussed in Section II. of this Response, Two Bush does not meet the requirements of § 55.205(a) that a contested case hearing request by a group or association must meet. Accordingly, the TCEQ Commissioners should deny Two Bush's hearing request. Likewise, none of the individual hearing requestors have met the rules for requesting a hearing or demonstrating they have a justiciable interest. As set forth above, however, IESI does not object

as a matter of courtesy to the Commission granting Mr. Henderson a hearing in his individual capacity if such hearing is limited to the issues set forth above.¹⁵ All other individual hearing requests must be denied.

- (2) Which issues raised in the hearing request are disputed?

IESI disputes that any of the complaints raised in the hearing requests are valid as further supported by the Executive Director's determination that the Application meets all applicable requirements. Upon hearing on this matter, IESI will prove that none of the complaints or concerns raised by the hearing requestors that are referred to a contested case hearing are valid.

- (3) Whether the dispute involves questions of fact or law?

Many of the disputes involve a matter law or policy, including collateral attacks on existing laws and rules, and are therefore not appropriate for referral to a contested case hearing. Others will ultimately be shown to be invalid, but do potentially present factual issues. Please see the prior discussion as well as "Exhibit A" for a chart listing the issues presented by the various hearing requestors, and whether the issue is a question of fact or law.

- (4) Whether the issues were raised during the public comment period?

The issues discussed in Section III. were raised during the public comment period.

- (5) Whether the issues raised were later withdrawn?

IESI is not aware that any of the comments have been withdrawn in writing.

¹⁵ See *supra* note 5.

(6) Whether the issues are relevant and material relative to the application?

Please see the prior discussion in Section III., as well as "Exhibit A" for a chart listing the issues presented by the various hearing requestors, and whether those issues are relevant and material to the application.

(7) The maximum duration for a contested case hearing.

IESI estimates the probable maximum duration of any contested case hearing that is properly limited to address the valid, reviewable issues raised by Mr. Henderson (as outlined in this Response) at six months. To the extent Two Bush's issues are included in the referral to SOAH, the probable maximum duration would increase to nine months.

V. CONCLUSION

IESI and the City of Jacksboro have collaborated to present a proposal to the TCEQ for a state-of-the-art Type I municipal solid waste landfill which was carefully sited and will be fully compliant with all applicable TCEQ policies and regulations. Many overly general and unfounded comments were submitted to the TCEQ and all were properly and thoroughly responded to by the Executive Director. As discussed in greater detail, above, none of the "hearing requests" submitted relating to this application was adequate and sufficiently in compliance with TCEQ regulations such that the matter should be referred to SOAH for a contested case hearing. Nevertheless, IESI would not object to a referral to SOAH of certain of the issues raised in Mr. Henderson's "request" for the reasons, and subject to the limitations, previously set forth herein.

In addition, IESI is aware that those persons previously submitting "hearing requests" are allowed by relevant TCEQ regulations to address IESI's concerns by a timely reply to this filing. In the event additional legally sufficient information is submitted, IESI may reconsider its positions as delineated above and tabulated within Exhibit A.

Respectfully submitted,

MOLTZ MORTON O'TOOLE, LLP
The Littlefield Building
106 E. 6th Street
Austin, Texas 78701
Telephone: (512) 439-2171
Telecopier: (512) 439-2165

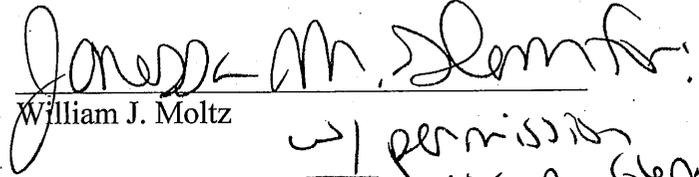
By:


William J. Moltz
State Bar No. 14259400

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the foregoing have been sent by the method indicated to each of the persons listed below on this 4th day of January, 2008.


William J. Moltz

w/ permission
Jessica M. Glen
TSB # 50511431

FOR THE EXECUTIVE DIRECTOR:

Ron Olson, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law, MC 173
12100 Park 35 Circle, Bldg. A, 3rd Floor
Austin, TX 78753
Tel: (512) 239-0608
Fax: (512) 239-3939

Via Hand Delivery

Karen Cleveland, Technical Staff
Texas Commission on Environmental Quality
Waste Permits Division, MC 124
12100 Park 35 Circle, Bldg. F, Rm. 513
Austin, TX 78753
Tel: (512) 239-4519
Fax: (512) 239-2007

Via Hand Delivery

Bob Brydson, Program Staff
Texas Commission on Environmental Quality
Waste Permits Division, MC 126
12100 Park 35 Circle, Bldg. F, Rm. 5180
Austin, TX 78753
Tel: (512) 239-6602
Fax: (512) 239-2007

Via Hand Delivery

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Public Interest Counsel
Texas Commission on Environmental Quality
Office of the Public Interest Counsel, MC 103
12100 Park 35 Circle, Building F, 4th Floor
Austin, TX 78753
Tel: (512) 239-6363
Fax: (512) 239-6377

Via Hand Delivery

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
12100 Park 35 Circle, Building F, 4th Floor
Austin, TX 78753
Tel: (512) 239-1056
Fax: (512) 239-4007

Via Hand Delivery

FOR ALTERNATIVE DISPUTE RESOLUTION:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
12100 Park 35 Circle, Building F, 4th Floor
Austin, TX 78753
Tel: (512) 239-4010
Fax: (512) 239-4015

Via Hand Delivery

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
12100 Park 35 Circle, Building F, Rm. 1101
Austin, TX 78753
Tel: (512) 239-3300
Fax: (512) 239-3311

Via Hand Delivery

REQUESTORS:

Tommy Aslin
PO Box 1332
Mineral Wells, TX 76068-1332

**Via Certified Mail
Return Receipt Requested**

Mitchell G. Davenport
County Judge, Jack County
100 N. Main St., Suite 206
Jacksboro, TX 76458

**Via Certified Mail
Return Receipt Requested**

M. Brad Dixon
446 W. Live Oak St.
Jacksboro, TX 76458-1750

**Via Certified Mail
Return Receipt Requested**

BJ and Shelly Haffly
8751 FM 2210 E
Poolville, TX 76487

**Via Certified Mail
Return Receipt Requested**

James H. Henderson
10118 Maple Ridge Dr.
Dallas, TX 75238-2151

**Via Certified Mail
Return Receipt Requested**

Marisa Perales, Attorney
Lowerre & Frederick
44 East Avenue, Suite 100
Austin, TX 78701-4384

**Via Certified Mail
Return Receipt Requested**

Kathy and Roger Pruitt
P.O. Box 266
Perrin, TX 76486

**Via Certified Mail
Return Receipt Requested**

Gloria Sprencel
801 Elenburg Rd.
Perrin, TX 76486-3125

**Via Certified Mail
Return Receipt Requested**

James R. and Linda Henderson Thompson
3310 Doolin Dr., Apt. A
Austin, TX 78704-5965

**Via Certified Mail
Return Receipt Requested**



OF RESPONSE TO HEARING REQUESTS

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Application Submittal</u> "Excessive notices of deficiency." "For some years now, TCEQ staff has allowed no more than two notices of deficiencies"	No – addresses agency guidelines/policy decision not proper for SOAH consideration
Two Bush	<u>Application Submittal</u> "The applicant here was given special treatment." "Applicant was reminded of the TCEQ limitations and procedure in several letters, but it was given several opportunities to amend its application after it failed to adequately respond to the second NOD."	No – addresses agency guidelines/policy decision not proper for SOAH consideration
Two Bush	<u>Application Submittal</u> "TCEQ rules provide that the technical review period should not exceed 75 working days." "The technical review period in this case has exceeded a year because of the applicant's failure to provide complete and accurate information, as requested by TCEQ staff."	No – addresses agency guidelines/policy decision not proper for SOAH consideration
Two Bush	<u>Notice</u> "...there was not: Notice in Spanish"	No – collateral attack on agency rules; additional notice not required
Two Bush	<u>Notice</u> "...there was not: Accurate information in the notice"	No – general statement of conclusion that raises no factual issue; collateral attack on agency rules; additional notice not required
Two Bush	<u>Notice</u> "...there was not: Proper notice to property and mineral interest owners and residents within ½ mile"	No – collateral attack on agency rules; additional notice not required

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Notice</u> "...there was not: Notice published in accordance with the law."	No – general statement of conclusion that raises no factual issue; collateral attack on agency rules; additional notice not required
Two Bush	<u>Transfer to IESI</u> "The change in owner/operator affects public notice and many aspects of the application. For example, a nearby landowner may have very different concerns about the operation of the landfill by the City versus operation of the landfill by a large waste management company, whose interests are not tied to the local community or economy"	No – as a matter of law, there was no requirement to "restart" the entire process; change in applicant took place according to TCEQ rules; collateral attack on agency rules
Two Bush	<u>Transfer to IESI</u> "the City of Jacksboro was the original applicant, and the Mayor, and elected public official, filed a sworn affidavit averring that the application is complete and accurate and that the landfill would be properly operated. The transfer of the application from the City to a large waste management corporation affects the reliability of these statements, as well as a host of other issues, including financial assurance, compliance history, debts to the state, etc.	No – as a matter of law, there was no requirement to "restart" the entire process; change in applicant took place according to TCEQ rules; collateral attack on agency rules
Two Bush	<u>Groundwater</u> "The site location is on a recharge zone for the Twin Mountain formation, a significant region aquifer."	Yes
Two Bush	<u>Groundwater</u> "There are lenses of sand, clay and silt in the aquifer, which create a complex aquifer system. That system of sands, clays, and silts has not been adequately evaluated or described."	Yes
Two Bush	<u>Groundwater</u> "Leaks from the landfills (sic), from leachate management areas, and from spills and wastes, fuels or other liquids could result in contamination of the groundwater. Yet, no proper evaluation has been done, and no adequate protections have been established in case of spills or leaks.	Yes

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Groundwater</u> “The protective measures necessary to prevent damage to the liner have not been proposed in the application or required in the permit. The risk of such damage to by moving groundwater and pressure on the liner has not been properly evaluated.”	Yes
Two Bush	<u>Groundwater</u> “The proposed landfill will be deeper than shallow perched groundwater, ground water (sic) that has not been identified or characterized, and, thus, has not been considered in the design of the landfill or in the consideration of necessary safeguards for these conditions.”	Yes
Two Bush	<u>Groundwater Monitoring System</u> “does not meet the requirements for the proper number and location of wells, depths, and/or locations of screens to collect representative samples of the groundwater at the varies levels in the aquifer system and for the different densities of wastes likely to contaminate the aquifer system”	Yes
Two Bush	<u>Groundwater Monitoring System</u> “not properly designed to detect releases of contaminated water from the landfill”	Yes
Two Bush	<u>Groundwater Monitoring System</u> “not designed based on adequate site data”	Yes
Two Bush	<u>Groundwater Monitoring System</u> “application does not properly identify up gradient and down gradient wells or the point of compliance”	Yes
Two Bush	<u>Groundwater Monitoring System</u> “application does not propose an adequate procedure for collecting background data on the groundwater”	Yes
Two Bush	<u>Groundwater Monitoring System</u> “applicant has not qualified for any alternative design under Section 330.231(c) or other rule.”	Yes

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Surface Water Controls</u> “There are not adequate controls to prevent contamination of storm waters by wastes, leachate or spills of fuels or other materials at the landfill”	Yes
Two Bush	<u>Surface Water Controls</u> “The designs for the channels and ponds (size, configuration and location) are not adequate”	Yes
Two Bush	<u>Surface Water Controls</u> “Drainage controls have not been designed to assure historic levels of runoff and to protect surrounding properties, and the application itself shows that there will be significant changes to the drainage patterns at the landfill and off-site”	Yes
Two Bush	<u>Surface Water Controls</u> “The changes to the drainage patters will result in damage to property off-site including increased erosion and loss of water supplies”	Yes
Two Bush	<u>Surface Water Controls</u> “The design to avoid flooding of parts of the landfill is not adequate.”	Yes
Two Bush	<u>Rainfall Rates</u> “The application relies on the wrong rainfall station(s)”	Yes
Two Bush	<u>Rainfall Rates</u> “This results in an underestimation of rainfall, and accordingly inaccurate evaluation of leachate and surface water management controls”	Yes
Two Bush	<u>Rainfall Rates</u> “The temporary dewatering systems proposed in the application are also based on these inaccurate numbers and therefore do not accurately reflect the amount of water that must be managed, much less the reasonable worst case scenario that should be used.”	Yes

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Mineral Development</u> “The application does not evaluate the extent of mineral development, including minerals that would be mined from the surface or oil and gas”	No – collateral attack on the agency’s rules. Yes, if clarified to determine if any specific rule complied with
Two Bush	<u>Mineral Development</u> “There are a number of oil/gas wells near the site and on the site; thus, there is likely mineral development that has not been identified or considered”	No – collateral attack on the agency’s rules. Yes, if clarified to determine if any specific rule complied with
Two Bush	<u>Mineral Development</u> “There has not been an adequate evaluation of unplugged or poorly plugged oil and gas wells, exploratory wells and water wells”	No – collateral attack on the agency’s rules.
Two Bush	<u>Endangered Species</u> “The application does not provide an adequate evaluation of the existence of endangered or threatened species (animals, plants, etc.), habitats for such species, or the risks of landfill activities for such species”	Yes to the extent “adequate” is defined with compliance with rule 330.53(b)(1); otherwise, collateral attack on TCEQ rules
Two Bush	<u>Endangered Species</u> “The application and SOP do not provide adequate plans for protection of such species and habitats”	No to extent it is collateral attack on TCEQ rules – otherwise subsumed into above issue.
Two Bush	<u>Endangered Species</u> “The application and SOP have neither identified nor considered the ramifications of landfill activities for the unique and rare species of trees in the area.”	No – beyond scope of TCEQ rules and irrelevant and immaterial
Two Bush	<u>Geology and Hydrology</u> “There has not been an adequate number of borings at the correct locations and depths for the evaluation of the geology and groundwater, given the conditions at this site and the importance of the groundwater monitoring system to protect the groundwater systems under the site”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Geology and Hydrology</u> “The application does not contain adequate information on existing surface water, groundwater, oil, gas, exploration and water wells, faults, fractures, caves, sinkholes, unstable areas, etc.”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Geology and Hydrology</u> “The application does not adequately describe the regional or site specific geology and the regional aquifers”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Geology and Hydrology</u> “The application does not adequately describe the vertical and horizontal flow characteristics of the groundwater or of the leachate that will leak from the landfill”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Geology and Hydrology</u> “The application does not properly characterize the soil”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Geology and Hydrology</u> “The application does not properly evaluate the availability of water and soils at the site needed for the construction of liners, for cover materials, for dust suppression, etc.	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Liners</u> “Neither the application nor the draft permit provides for an adequate liner given the site selected, with its shallow water and sandy soils”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Liners</u> “The geotechnical evaluation for the design of the landfill is inadequate as the slopes and materials for the sidewalks will not assure long-term stability”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Liners</u> “The design and operating provisions will not protect the liner from puncture during construction or filling or from leaks at seams”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Liners</u> “The applicant has not proposed an adequate dewatering system”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Liners</u> “The application does not qualify for alternative designs under Subchapter H”	No to extent seeking to challenge what TCEQ rules defines as “adequate.” Yes to extent seeking to determine if rule complied with.
Two Bush	<u>Transportation Information –</u> “...there is an inadequate description and inadequate evaluation of:” “Roads”	No to extent seeks additional or different traffic study; Yes to extent seeking to determine if rule complied with
Two Bush	<u>Transportation Information-</u> “...there is an inadequate description and inadequate evaluation of:” “Bridges in the area”	No to extent seeks additional or different traffic study; Yes to extent seeking to determine if rule complied with
Two Bush	<u>Transportation Information-</u> “...there is an inadequate description and inadequate evaluation of:” “Weight limits”	No to extent seeks additional or different traffic study; Yes to extent seeking to determine if rule complied with

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Transportation Information-</u> "...there is an inadequate description and inadequate evaluation of:" "Railroad crossings that will be affected"	No to extent seeks additional or different traffic study; Yes to extent seeking to determine if rule complied with
Two Bush	<u>Transportation Information-</u> "...there is an inadequate description and inadequate evaluation of:" "The design of the access sites for the landfill, to provide adequate offsite parking and maneuvering areas to minimize risks of accidents on and off site and to assure proper access by fire and emergency vehicles during working hours and when the landfill is closed"	No to extent seeks additional or different traffic study; Yes to extent seeking to determine if rule complied with
Two Bush	<u>Compatibility with Regional Solid Waste Plan</u> "...the landfill is not necessary to meet the regional needs and is not limited to protect the needs that exist or prevent unnecessary risks to the local communities"	No – no fact issue that proper documentation was submitted; TCEQ can take official notice of the NORTEX correspondence
Two Bush	<u>Buffer and Screening</u> "The proposed buffer and screening are inadequate, with insufficient green belts, trees, and wind breaks to protect surrounding land uses."	Yes, if adequacy is measured against applicable TCEQ rules
Two Bush	<u>Financial Assurance</u> "The proposed financial assurance is inadequate."	No – general conclusion statement that presents no real issue for consideration; collateral attack on agency rules
Two Bush	<u>Financial Assurance</u> "The types and amounts of money proposed for closure and post closure care are not based on reasonable worst case scenarios with closure by independent third parties, including contingencies for the need to bring water and dirt to the landfill site, the failure of the liner, the shifting of the landfill, etc."	Yes

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Property Interests</u> “The application does not demonstrate adequate proof of property interests, including adequate interests in the site to protect against inconsistent future uses, such as mineral development.”	No - no disputed issues; collateral attack against the agency rules
Two Bush	<u>Site Operating Plan</u> “The applicant has not provided adequate details and enforceable requirements to guide day to day operations and to allow the enforcement of the SOP.”	No - legal conclusions, collateral attacks on TCEQ rules, and based on issues previously associated with prior versions of TCEQ’s rules that are no longer applicable or appropriate for consideration or referral to SOAH
Two Bush	<u>Site Operating Plan</u> “The individual plans are often only restatements of the rules or promises to develop plans”	No – legal conclusions, collateral attacks on TCEQ rules, and based on issues previously associated with prior versions of TCEQ’s rules that are no longer applicable or appropriate for consideration or referral to SOAH
Two Bush	<u>Site Operating Plan</u> “The SOP does not provide the detail required for training and procedures to allow the employees to use the plans”	No - legal conclusions, collateral attacks on TCEQ rules, and based on issues previously associated with prior versions of TCEQ’s rules that are no longer applicable or appropriate for consideration or referral to SOAH

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Site Operating Plan</u> “The operational procedures will not prevent or even assure a minimization of the acceptance of lead acid storage batteries, used motor oil, used oil filters, whole scrap tires, items containing chlorinated fluorocarbons, liquid waste, hazardous waste, radioactive wastes or polychlorinated biphenyls”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not prevent or assure proper identification and response or assure proper identification and response to fires and other safety or health hazards”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not prevent or minimize access by rats, insects, birds and other carriers of disease or the spread of such disease vectors off-site”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not prevent or minimize litter or windblown waste or provide for timely and adequate clean-up on site or on nearby private property”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not prevent or minimize windblown dusts, and run-off of soils and wastes from the site”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not prevent or minimize the ponding of water on the landfill”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not prevent or minimize odors”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not provide adequate emergency response and contingency plans for fires, accidents, injuries spills, and other such conditions”	Yes, if properly clarified and limited

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Site Operating Plan</u> “The SOP does not assure adequate coordination with local fire and emergency response services or provide for adequate on site equipment, water, soil, and personal equipment for on-site responses”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not assure that the landfill site will have adequate controls over access by unauthorized persons”	Yes, if properly clarified and limited
Two Bush	<u>Site Operating Plan</u> “The SOP does not provide for adequate control of animal or human scavenging”	Yes, if properly clarified and limited
Two Bush	<u>Compliance History</u> “The applicant has a history of poor compliance at this or other facilities”	No – no compliance record at this facility; no disputed fact issue; misrepresentation; IESI asks TCEQ to take official notice of compliance history
Two Bush	<u>Compliance History</u> “The compliance record requires: Denial of the application; or Additional conditions and terms in the proposed permit to minimize the likelihood of future violations, such as self reporting of spills, accidents and fires, release of windblown waste.”	No – no disputed fact issue; IESI asks TCEQ to take official notice of compliance history
Two Bush	<u>General Topic – Application Adequacy</u> Application contains “inadequate information” on “the location of the floodplain and the risks of flooding”	Yes, if adequacy is measured against agency rules
Two Bush	<u>General Topic– Application Adequacy</u> Application contains “inadequate information” on “the existence of wetlands”	Yes, if adequacy is measured against agency rules

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>General Topic– Application Adequacy</u> Application contains “inadequate information” on “other site-specific issues requiring special considerations”	No – general conclusion statement that presents no real issue for consideration
Two Bush	<u>General Topic– Application Adequacy</u> Application contains “inadequate information” on “the types of soils at the site, which are subject to extensive erosion and not adequate for use at the landfill for cover, sidewalls, or fill”	Yes, if adequacy is measured against agency rules
Two Bush	<u>General Topic– Application Adequacy</u> Application contains “inadequate information” on “the size and extent of the design storms”	Yes, if adequacy is measured against agency rules
Two Bush	<u>General Topic – Application Adequacy</u> “The applicant has not presented sufficient justification for the permit term of the life of the facility”	Yes, if sufficiency is measured against agency rules
Two Bush	<u>General Topic– Application Adequacy</u> “A five year term with provisions for expiration and renewal is justified given the facts”	No – collateral attack on agency rules; irrelevant and immaterial; legal conclusion
Two Bush	<u>General Topic– Application Adequacy</u> “Many of the permit conditions and aspects of the application that are incorporated into the permit are vague and unenforceable, including, but not limited to the SOP”	No – general conclusion statement that presents no real issue for consideration
Two Bush	<u>General Topic– Application Adequacy</u> “The representations in the application that are incorporated into the permit are vague and unenforceable”	No - general conclusion statement that presents no real issue for consideration
Two Bush	<u>Policy Matters</u> Issuance of permit inconsistent with state policies including the legislative and regulatory directives that: “Promote the maximum conservation and protection“	No – involves a policy decision by the agency not proper for SOAH review

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Policy Matters</u> Issuance of permit inconsistent with state policies including the legislative and regulatory directives that: “Prohibit discharges and actions that could result in pollution of water, ground or surface, of the state”	No – involves a policy decision by the agency not proper for SOAH review
Two Bush	<u>Policy Matters</u> Issuance of permit inconsistent with state policies including the legislative and regulatory directives that: “Require the safeguarding of the state’s air from pollution”	No – involves a policy decision by the agency not proper for SOAH review
Two Bush	<u>Policy Matters</u> Issuance of permit inconsistent with state policies including the legislative and regulatory directives that: “Require the control of all aspects of the management of municipal solid waste by all practical and economically feasible methods consistent with the law”	No – involves a policy decision by the agency not proper for SOAH review
Two Bush	<u>Policy Matters</u> Issuance of permit inconsistent with state policies including the legislative and regulatory directives that: “Prohibit the collection, storage, disposal, transportation, or processing of municipal solid waste in a fashion that: <ol style="list-style-type: none"> 1. results in the discharge of imminent threat of discharge of municipal solid waste into or adjacent to the waters in the state; 2. creates or maintains nuisance conditions; and 3. endangers human health or welfare of the environment. 	No – involves a policy decision by the agency not proper for SOAH review

Requestor	Issue Presented by Hearing Requestor	Referral?
Two Bush	<u>Policy Matters</u> Issuance of permit inconsistent with state policies including the legislative and regulatory directives that: "Prevent issuance of permits to operators with a history of non-compliance with environmental laws at their facilities"	No – involves a policy decision by the agency not proper for SOAH review
Two Bush	<u>Land Use Compatibility</u> "Odors and other nuisance conditions, especially, given the operating hours, will interfere with the normal use and enjoyment of surrounding properties and homes and interfere with growth patterns in the area"	No - no fact issues raised; privately enforceable, Yes- if limited to the issue of whether applicable TCEQ rules complied with
Two Bush	<u>Land Use Compatibility</u> The number and routing of trucks is incompatible with roads and railroad crossings in the area	Yes
Two Bush	<u>Land Use Compatibility</u> "The landfill should be located in an industrial area not only because of its nature but also because of the other industrial activities that will be attracted to the area with the landfill.	No – no requirement that a landfill be located in an industrial area.
Two Bush	<u>General</u> "The proposed permit does not: Comply with agency rules; Adequately address health hazards nuisances and other adverse effects to the public and environment."	No – general conclusion statement that presents no real issue for consideration; subsumed within more specific issues
Henderson	<u>Trinity Aquifer</u> Applicant "did not consider the clay mineralogy of the soil and the subsoil" or the "soil texture." "Soils and sediments of the Trinity have both the wrong mineralogy and texture for a landfill site."	Yes
Henderson	<u>Trinity Aquifer</u> Applicant "did not adequately evaluate the velocity of water movement in the subsurface."	Yes

Requestor	Issue Presented by Hearing Requestor	Referral?
Henderson	<p><u>Trinity Aquifer</u></p> <p>Requestor asks for “a tabulation and identification of the compounds that will analyzed (sic) in the monitoring wells, the method of chemical analysis, the laboratory methods used, and the frequency of analysis and the limits of detection.”</p>	No – seeks information, but does not present an issue
Henderson	<p><u>Trinity Watershed</u></p> <p>Applicant “used the rainfall data for Abilene, TX to calculate the extent of the flood plain.” Request that the “construction design of the landfill” be examined by TCEQ “using more reasonable anticipated rainfall and that daily rainfall data be used dating backward to the inception of record keeping.”</p>	Yes
Henderson	<p><u>Trinity Watershed</u></p> <p>“Meteoric water will percolate through the landfill dissolving substances, some of which are toxic. This contaminated water will reach the membrane and move horizontally into a containment point. The contaminated water must be treated to remove the pollutants.”</p>	Yes
Henderson	<p><u>Trinity Watershed</u></p> <p>Request for “the water treatment and purification plans for effluent fluids percolating through the landfill” and “TCEQ permit requirements for water which is re-introduced into the public streams.”</p>	No – seeks information, but does not present an issue
Henderson	<p><u>Soil and Synthetic Liner</u></p> <p>“A review of the literature has revealed that the synthetic liner will eventually decompose.” Request for “clarification as to the exact nature and origin of the soil liner and clarification as to how long the synthetic liner will be functional. Additionally, how will the shrinking of the clay liner be prevented during prolonged droughts.”</p>	No – seeks information, but does not present an issue; collateral attack on agency rules
Henderson	<p><u>Petroleum Geology & Development</u></p> <p>“Implementation of the proposed landfill could hamper future development and deprive surrounding mineral owners of their rights to production.</p>	No – beyond the jurisdiction of the TCEQ; permitting process not appropriate forum to consider protection of third party mineral interests

Requestor	Issue Presented by Hearing Requestor	Referral?
Henderson	<u>Petroleum Geology & Development</u> “Former exploratory wells, now plugged and abandoned, exist beneath the landfill site.” “these plugged and abandoned wells would be conduits to the surface for treatment fluids used in offsetting wells.”	Yes
Henderson	<u>Air Quality and Emissions</u> Request for: <ol style="list-style-type: none"> 1. tabulation and identification and the probable concentration of the constituent organic and inorganic compounds that may be introduced into the atmosphere (particulate and non-particulate) 2. analytical methods that will be used for their detection 3. copy of air emissions permit to be used by the State of Texas 	No – request for information, but does not present an issue; to extent they are issues, deal with area that is regulated by a different program at TCEQ
Henderson	<u>Demographics</u> Applicant has “seriously underestimated the projected future growth of the area in West Cross Timbers area (WCTA) of Jack County.”	Yes
Henderson	<u>Demographics</u> “Construction of the landfill would seriously impede growth and perhaps cause an exodus of current residents.”	Yes
Henderson	<u>Demographics</u> Landfill “would create serious traffic problems that would be very detrimental to the well being of citizens in many surrounding communities included Jacksboro.”	Yes
Henderson	<u>Demographics</u> Request for the “projected growth rate be recomputed based on the observable growth and that a study of traffic flow be conducted.”	No – collateral attack on agency rules
Henderson	<u>Performance Bond</u> “a performance bond should be required of BFI/IESI to ensure that the landfill will be satisfactorily closed and that funds be available to satisfy claims in the case of environmental or other damages caused by negligence.”	No – collateral attack on agency rules; irrelevant and immaterial
Sprenzel	Cannot be “called a City of Jacksboro Landfill, when the city does not and will not own the land and will not operate the landfill?”	No – no disputed fact that IESI is applicant

Requestor	Issue Presented by Hearing Requestor	Referral?
Sprenzel	"The land in question is miles from Jacksboro."	No – no disputed fact; no legal requirement for location; collateral attack on agency rules
Sprenzel	"less than one percent of the trash in the dump would be from the city of Jacksboro"	No – no disputed fact; no legal requirement for amount of trash; collateral attack on agency rules
Sprenzel	"Wildlife will be displaced."	No – general conclusion statement that presents no real issue for consideration; subsumed in Henderson issues
Sprenzel	"Water will be endangered"	No – general conclusion statement that presents no real issue for consideration; subsumed in Henderson issues
Sprenzel	"There would be noise, light, and air pollution."	No – general conclusion statement that presents no real issue for consideration; subsumed in Henderson issues
Sprenzel	"Trees and plant life will be replaced with barren mounds of dirt"	No – general conclusion statement that presents no real issue for consideration
Sprenzel	"The land will be destroyed."	No – general conclusion statement that presents no real issue for consideration

Requestor	Issue Presented by Hearing Requestor	Referral?
Sprenzel	"There is a much better use of the land."	No – general conclusion statement that presents no real issue for consideration; outside TCEQ jurisdiction
Sprenzel	"effect of the landfill on the water"	No – general conclusion statement that presents no real issue for consideration; subsumed in Henderson issues
Sprenzel	City of Jacksboro "should provide water to this area before the construction of the landfill begins."	No – no legal requirement
Dixon	"[g]roundwater in this area is very shallow in places." "the location is subject to major run-off (it is in one of the highest areas of the country). Expresses concerns about "the contamination of groundwater both through leaching and surface run-off."	No – general conclusion statement that presents no real issue for consideration; subsumed into issues of Henderson
Dixon	"Liner... subject to construction error, negligent installment, questionable monitoring and undeniable eventual decay."	No - subsumed into issues of Henderson
Haffly	"All rules states (sic) were from the rules prior to March 27, 2006 which ... should not be applied to this permit as it is clearly 2007."	No - Applicable rules are a matter of law
Haffly	"[t]he City of Jacksboro was the original applicant."	No - as a matter of law, change in applicant took place according to TCEQ rules; collateral attack on agency rules
Haffly	"[p]roper notice to property owners within ½ mile is not a fair and widespread notification"	No – public notice rules are a matter of law and were complied with
Haffly	"Substantial public interest test has been met."	No - Collateral attack on policy decisions of agency

Requestor	Issue Presented by Hearing Requestor	Referral?
Haffly	"IESI cannot/will not be able to contain the smells or provide an adequate barrier around the facility."	Yes, if limited and adequacy is measured against TCEQ rules
Haffly	Contamination will occur into nearby ponds and wells because IESI "will not be able to contain the flood waters such as that which occurred during the Spring and Summer of 2007."	No - subsumed into issues of Henderson
Haffly	"the small county area volunteer fire fighting staff do not have the training, facilities, or equipment to fight, maintain or control a fire."	No - collateral attack on TCEQ's rules
Haffly	"The ED, owners, operators or most especially the city of Jacksboro do not care if the rural residences of the county are impacted every day by the site, smell, and traffic created by this landfill."	No - subsumed into issues of Henderson
Haffly	"This landfill would be better suited in an industrial area, not a ranch and farming community, on the highest elevation in the area."	No - there is no legal requirement that landfill be located in an industrial area
Haffly	"IESI cannot guarantee that the local well water will not be affected."	No - subsumed into issues of Henderson
Haffly	"It is evident by the Trinity Aquifer maps ... that any location 15 miles west (or more) of the proposed location would be a much better and safer alternative."	TCEQ has no jurisdiction to direct location; subsumed in Henderson issues
James and Linda Thompson	"The geological soil characteristics are highly unsuitable."	No - subsumed into issues of Henderson
James and Linda Thompson	"The underlying Trinity Aquifer is down-gradient to the Southeast towards Ft. Worth, and is a major source of fresh water."	No - subsumed into issues of Henderson
James and Linda Thompson	The site is "inherently vulnerable and fragile and holds a high potential for pollution" such as "the soils are sandy" "highly prone to erosion by both wind and water"	No - subsumed into issues of Henderson
James and Linda Thompson	Flood conditions could produce "hydrostatic pressure on containment membrane" and "pose a threat of partial collapse or rupture"	No - subsumed into issues of Henderson
James and Linda Thompson	"Site is elevated relative to surrounding countryside making it visually distasteful, as well as susceptible to windblown dispersal of wastes"	Yes, if properly limited and adequacy is measured against TCEQ rules
James and Linda Thompson	"pose a significant threat of air pollution"	No - subsumed into issues of Henderson

Requestor	Issue Presented by Hearing Requestor	Referral?
James and Linda Thompson	“unpleasant odors”	Yes, if properly limited and measured against TCEQ rules
James and Linda Thompson	“will not benefit from the good road infrastructure... available in more urban areas.	No - subsumed into issues of Henderson; TCEQ has no jurisdiction to direct location
James and Linda Thompson	“will not benefit from ... extensive firefighting and emergency response capabilities available in more urban areas”	No – no legal requirement; collateral attack on TCEQ rules
Tommy Aslin	“the amount of rainfall that could cause the site to overflow and contaminated the surrounding areas.”	No - subsumed into issues of Henderson
Roger and Kathy Pruitt	“worry about air pollution in the area”	No – general statement of concern that presents no real issue for consideration; subsumed into issues of Henderson
Roger and Kathy Pruitt	“using one of the highest topographical elevations atop the recharge area of the Trinity Aquifer adjacent to Jasper Creek is environmentally unsound”	No - subsumed into issues of Henderson