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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 JAN 18 PM 4:50
CHIEF CLERKS OFFICE

January 18, 2008

Ms. LaDonna Castañuela
Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711

Via facsimile and first-class mail

**Re: Application by IESI TX. MSW Permit No. 2332
TCEQ Docket No. 2007-1302-MSW**

Dear Ms. Castañuela,

Please find enclosed for filing an original and eleven copies of Two Bush Community Action Group's Reply to Responses to Its Hearing Request in the above-referenced matter.

If you have any questions please feel free to contact me.

Sincerely,



Marisa Perales

Enclosures

cc: Service List

TCEQ PROPOSED PERMIT NO. 2332
TCEQ DOCKET NO. 2007-1302-MSW

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

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 JAN 18 PM 4:50
CHIEF CLERKS OFFICE

TWO BUSH COMMUNITY ACTION GROUP'S REPLY
TO RESPONSES TO ITS HEARING REQUEST

TO THE HONORABLE COMMISSIONERS OF THE TCEQ:

Two Bush Community Action Group (Two Bush) submits this Reply to the Responses to its Hearing Request. Two Bush respectfully requests that its hearing request be granted, that the issues enumerated by the Executive Director, plus two additional issues identified below, be referred to the State Office of Administrative Hearings for a hearing on the merits, and that the Commission recommend nine months for the hearing on the merits, with the understanding that if circumstances warrant it, the SOAH judges have the authority to extend this timeframe as necessary.

DISCUSSION

A. Affected Person Status

Both the Office of Public Interest Counsel (OPIC) and the Executive Director (ED) agree that Two Bush has shown itself to be an affected person, whose hearing request should be granted. Applicant IESI, on the other hand, contends that Two Bush failed to satisfy the criteria to request a contested case hearing as a group or association. Two Bush will therefore reply to only IESI's arguments.

First, IESI contends that Two Bush failed to identify any specific member with a real, substantial, and personal interest in the permit application. But IESI later concedes that Mr.

James Henderson's hearing request should be granted; Mr. Henderson is one of the individual members named by Two Bush in support of its hearing request. Indeed, Mr. Henderson explained in his own hearing request that his farm, which is adjacent to IESI's property, is topographically lower than the elevation of the landfill site and that he is concerned about the potential for contamination from the landfill site to reach his three water wells. Mr. Henderson, a member of the Two Bush group, has shown himself to be an affected person with a real, substantial, and personal interest in the permit application.

Next, IESI contends that Two Bush has failed to satisfy the requirement that the interests Two Bush seeks to protect are germane to its purpose. Two Bush was formed with the specific purpose, as reflected in its mission statement, of protecting the health, environment, property interests, natural beauty, and wildlife for those who live or own property in the area of the proposed landfill. As reflected by the comments and issues presented in its hearing request, among the interests Two Bush seeks to protect is the quality of the groundwater of its members, as many of them, including Mr. Henderson, rely on water wells for their drinking water. Ensuring the quality of its members' groundwater is but one example of how the interests Two Bush seeks to protect are germane to its mission of protecting the health and property interests of its members. Contrary to IESI's assertions, protection of members' groundwater is not a vague and general interest in the environment that is shared by the general public; it is a specific interest that corresponds to the objectives of Two Bush.

Finally, IESI argues that Two Bush has failed to show why there is no need for individual participation by the members of Two Bush. The Two Bush members do not seek money damages by their participation in an administrative hearing on this permit application; nor is that an option for the members. Rather, the members of Two Bush seek denial of IESI's application

for this landfill permit. This goal is shared by the Two Bush organization. Thus, there is no need for individual participation by the Two Bush members, for they all seek the same remedy: denial of this permit application.

As noted by both the ED and OPIC, Two Bush has indeed satisfied the requirements to request a hearing as an association or a group. Its hearing request should therefore be granted.

B. Issues Referred

Two Bush agrees with the list of issues outlined by the ED to be referred to SOAH for a hearing on the merits. In addition, Two Bush urges the Commission to refer to additional issues: (1) Whether the permit conditions and the representations in the application are vague and unenforceable; and (2) Whether there should be restrictions on the acceptance of waste from certain areas.

With regard to the first of these two issues, should a permit be granted, it is crucial to the general public and particularly for local authorities that the permit include specific and enforceable provisions. Should any protesting party prove that a provision is too vague, an administrative law judge has the discretion to recommend special provisions to ensure the permit's enforceability. Thus, this issue should be referred for consideration in a hearing on the merits.

With regard to the second issue, again, if any protesting party were to prove that protection of the public's health and welfare and of the environment warrants certain restrictions or limitations on the acceptance of waste, then, the administrative law judge has the discretion to recommend special provisions to address the issue. Ultimately, the Commissioners will decide whether to accept or reject any of the administrative law judge's recommendations. But the issue

should at least be explored during a hearing on the merits. To deny it at this juncture is premature.

C. Expected Duration of Hearing

Two Bush again agrees with the ED and with OPIC with regard to the expected duration of the hearing on the merits—nine months from the date of the preliminary hearing until the issuance of the Proposal for Decision. Two Bush encourages the Commissioners to include in its Order a reminder that the nine-month duration is a recommendation, and that if circumstances require an extension of that nine-month period, the Administrative Law Judge may use his or her discretion to extend that timeframe.

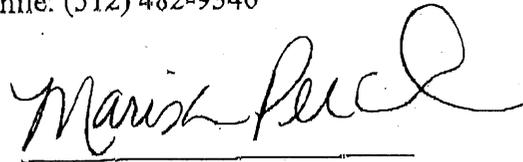
CONCLUSION

Two Bush respectfully requests that the Commissioners grant its hearing request and refer the issues identified by the ED, plus the two issues identified above, for a hearing on the merits at SOAH.

Respectfully submitted,

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By:



Marisa Perales

CERTIFICATE OF SERVICE

I, Marisa Perales, hereby certify that a true and correct copy of the foregoing Two Bush Community Action Group's Reply to Responses to Its Hearing Request was served to the individuals listed below via facsimile transmission and/or U.S. mail on this day, the 18th of January, 2008.


Marisa Perales

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From: Marisa Perales
Date: January 18, 2008

DOCUMENTS	NUMBER OF PAGES (not including cover pg.)
Two Bush Community Action Group's Reply to Responses to Its Hearing Request	6

COMMENTS:

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