

KELLY HART & HALLMAN LLP

301 CONGRESS AVENUE, SUITE 2000
AUSTIN, TEXAS 78701

Telephone: (512) 495-6400
Telecopy: (512) 495-6401
Writer's Direct Dial: (512) 495-6430
Email Address: holly.vandrovec@khh.com

201 Main Street, Suite 2500
Fort Worth, Texas 76102
1000 Louisiana, Suite 4700
Houston, Texas 77002

January 5, 2009

Via Hand Delivery

Office of the Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F
Austin, Texas 78753

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JAN -5 PM 4:17
CHIEF CLERKS OFFICE

Attention: Agenda Docket Clerk

Re: Application by Zapata County for Amendment to TCEW MSW Permit No. 783A
TCEQ Docket No. 2007-1792-MSW

Dear Docket Clerk:

Enclosed please find the original and eight copies of Victor Gonzales, Jr.'s Reply to Zapata County's Response to the Requests for Hearing regarding the above-referenced matter. Please return a file stamped copy to the awaiting courier.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me at (512) 495-6430.

Sincerely yours,



Holly Vandrovce

HV/ja

Enclosures

cc: All Parties on Service List

TCEQ DOCKET NO. 2007-1792-MSW

2009 JAN -5 PM 4:17

APPLICATION BY ZAPATA COUNTY § BEFORE THE
FOR AMENDMENT TO TCEW MSW § TEXAS COMMISSION ON
PERMIT NO. 783A § ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**VICTOR GONZALES, JR.'S REPLY TO ZAPATA COUNTY'S RESPONSE
TO THE REQUESTS FOR HEARING**

Victor Gonzalez, Jr. files this Reply to Zapata County's Response to Requests for Hearing and would respectfully show the following:

I. INTRODUCTION AND STANDARD

The TCEQ rules provide that a "request for a contested case hearing *shall be granted* if" the request meets certain criteria. 30 Tex. Admin. Code § 55.211(c) (emphasis added). The multiple requests for a contested case hearing submitted by Victor Gonzalez, Jr. ("Mr. Gonzalez") meet each of these criteria as demonstrated herein. Thus, Mr. Gonzalez's request for a contested case should be granted.

II. VICTOR GONZALEZ, JR. IS AN AFFECTED PERSON

Mr. Gonzalez is an affected person" as that term is defined by 30 Tex. Admin. Code §55.203(a). Mr. Gonzalez owns property immediately adjacent to the landfill and Applicant Zapata County admits at page 2 of its Response that Mr. Gonzalez is an affected person.

**III. MR. GONZALEZ'S REQUEST FOR HEARING RAISE
DISPUTED ISSUES OF FACT**

Mr. Gonzalez's various requests for a contested case hearing raise numerous disputed issues of fact. For example, Mr. Gonzalez commented that the landfill and its expansion present numerous risks to human health, welfare, and the environment due to:

- o Control of Disease Vectors
- o Site Access and Traffic Concerns
- o Special and Prohibited Wastes
- o Gas Monitoring
- o Leachate and Gas Condensate
- o Landfill Cover

- Closure and Post-Closure Plans
- Financial Assurance
- Qualified Personnel
- Protections Against Fire
- Water Quality and Water Run-off

Mr. Gonzalez also expressed concerns regarding Zapata County's compliance history, noting that the County was forced to apply for a Minor Permit for Temporary Overfill Authorization in March of 2006 and has been disposing of waste into the landfill in excess of those amounts originally permitted since that time.

These concerns, in addition to the others raised by Mr. Gonzalez's various comment letters and requests for contested case hearing, constitute disputed issues of fact.

IV. Mr. GONZALEZ'S REQUEST FOR HEARING WAS TIMELY FILED

The TCEQ sent the Executive Director's Response to Public Comment to interested parties on June 26, 2008; thus, the deadline to submit comments and request a contested case hearing was July 27, 2008.¹ Mr. Gonzalez timely submitted comments and requested a contested case hearing on the following dates: October 9, 2006, July 19, 2007, November 2, 2007, April 30, 2008, and July 25, 2008.

Applicant Zapata County argues that because Mr. Gonzalez did not respond with comments at each and every of the numerous opportunities,² that his comments should not be considered. No law or rule, however, requires an interested party to submit comments at each and every opportunity. By submitting comments on five separate occasions by the end of the public comment period, Mr. Gonzalez feels that the TCEQ can appreciate his concern over the application.

In addition, Zapata County alleges that additional issues raised in subsequent comment letters requesting a contested case hearing should not be considered because those issues were

¹ 30 TEX. ADMIN. CODE § 55.201(a).

² See Response at 5 noting that Gonzalez did not comment after the October 16, 2006 Notice of Administrative Completeness was sent; however, Gonzalez did comment four times after that particular notice.

not raised in Mr. Gonzalez's initial comments. The TCEQ provided a Revised Notice of Application and Preliminary decision in March 2008 after it was discovered that the initial notice was deficient in that it failed to state that the proposed expansion of the landfill would not only be lateral, but also vertical. Accordingly, Mr. Gonzalez submitted additional comments and again requested a contested case hearing.

V. MR. GONZALEZ HAS A RIGHT TO HEARING AUTHORIZED BY LAW

Mr. Gonzalez has a right to hearing authorized by TEX. WATER CODE ANN. § 5.556 (Vernon 2008).

VI. MR. GONZALEZ'S REQUESTS FOR HEARING COMPLY WITH 30 TAC §55.201

Mr. Gonzalez's various hearing requests comply with the requirements of 30 Tex. Admin. Code §55.201. In particular, Mr. Gonzalez's requests were in writing; were submitted before the close of the public comment period on July 27, 2008; Mr. Gonzalez did not withdraw his public comment comments; each request contained Mr. Gonzalez's name, address, telephone number, and fax number; each request identified Mr. Gonzalez's personal justiciable interest that is affected by the application (including the fact that Mr. Gonzalez owns property immediately adjacent to the landfill); each request contained a request for a contested case hearing; and each request listed all relevant and material disputed issues of fact.

VII. CONCLUSION

As the foregoing establish, Mr. Gonzalez has met each element of the standard in TCEQ's rules at 30 Tex. Admin. Code § 55.211(c) entitling him to a contested case hearing.

Respectfully submitted,



Holly Vandrovec
State Bar No. 24049212
Monica Jacobs

State Bar No. 24007433

Kelly Hart & Hallman LLP
301 Congress Ave., Suite 2000
Austin, TX 78701
Telephone: (512) 495-6405
Facsimile: (512) 495-6605
Attorneys for Victor Gonzalez, Jr.

cc:

FOR THE APPLICANT:

The Honorable Rosalva Guerra
Zapata County Judge
PO Box 99
Zapata, TX 78076

Raul H. Garcia, P.E.
Garcia & Wright Consulting Engineers, Inc.
407 West Rhapsody Drive
San Antonio, TX 78216

The Honorable David Morales
Zapata County Judge
PO Box 99
Zapata, TX 78076

Hector Uribe, Attorney
1122 Colorado Street, Suite 307
Austin, TX 78701

FOR THE EXECUTIVE DIRECTOR:

Shana Horton, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
PO Box 13087
Austin, TX 78711

Mario Perez, Sr., Technical Staff
Texas Commission on Environmental Quality
Waste Permits Division, MC-124
PO Box 13087
Austin, TX 78711

Carlotta Vann, Technical Staff
Texas Commission on Environmental Quality
Waste Permits Division, MC-130
PO Box 13087
Austin, TX 78711

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
PO Box 13087
Austin, TX 78711

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
PO Box 13087
Austin, TX 78711

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
PO Box 13087
Austin, TX 78711

FOR CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
PO Box 13087
Austin, TX 78711

REQUESTER(S):

Brenda Jaicyzoski
4165 N. US Hwy. 83
San Ygnacio, TX 78067

Luis A. Lozano
PO Box 3
San Ygnacio, TX 78067

REQUESTER(S) CONTINUED:

Gerardo Paredes
4009 N. US Hwy. 83
San Ygnacio, TX 78067

San Juanita Rocha
107 Armadillo Hwy. 83
San Ygnacio, TX 78067

Maria Valdez
4085 N. US Hwy. 83
San Ygnacio, TX 78067

Erika Villarreal
PO Box 312
San Ygnacio, TX 78067

Aminta Yeasley
PO Box 92
San Ygnacio, TX 78067

PUBLIC OFFICIALS INTERESTED
PERSON(S):

The Honorable Judith Zaffirini, State Senator
Texas Senate
PO Box 12068
Austin, TX 78711