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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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CHIEF CLERKS OFFICE

December 22, 2008

VIA HAND DELIVERY

Ms. Meghan Taack
Docket Clerk
TCEQ, MC 105
P.O. Box 13087
Austin, TX 78711-3087

**RE: Docket No. 2007-1792-MSW
Zapata County San Ygnacio Landfill
Requests filed on Permit No. 783A**

Please find enclosed for filing and original and eleven copies of Zapata County's Response to the Requests for Hearing.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Hector Uribe
Counsel for Zapata County
Commissioners Court

cc: Mailing List

TCEQ DOCKET NO. 2007-1792-MSW

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

ZAPATA COUNTY'S RESPONSE TO THE REQUESTS FOR HEARING

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the Zapata County Commissioners Court, the applicant for a permit for an amendment to its municipal solid waste permit 783A, and files this, its Response to Requests for Hearing filed by Victor Gonzalez, Jr., Brenda Jarczyoski, Luis A. Lozano, Gerardo Paredes, San Juanita Rocha, Erika Villarreal, Maria Valdez, and Aminta Yeasley. The County would respectfully show the following:

I. BACKGROUND

Zapata County's Landfill is a small Type I arid exempt municipal solid waste landfill facility, known as the San Ygnacio Landfill, and is located in Zapata County, Texas. It is used for waste generated in the County and it is the only landfill in the County. To meet the needs of the residents of the County, additional capacity for waste disposal is needed. Thus, Zapata County has applied for an amendment to laterally expand its Type 1AE landfill and to include a Type IV area within the permit boundary.

II. INTRODUCTION AND SUMMARY

The hearing requests of Victor Gonzalez, Jr., Brenda Jarczyoski, Luis A. Lozano, Gerardo Paredes, Sam Juanita Rocha, Orlando and Erika Villarreal, Jorge and Marina Valdez, and Paul and Aminta Yeasley should be denied. If not denied, any hearing on the Zapata County's application should be strictly limited in time and scope of issues.

This application was declared administratively complete on October 6, 2006. Thus, requests for a contested case hearing must be made pursuant to the requirements set forth in House Bill 801 (“HB 801”), including Section 5.556, TEX. WATER CODE, and TCEQ Chapter 55 rules.

Under HB 801 and TCEQ Chapter 55 rules, the hearing requests sent regarding this application must provide the name, address, and daytime telephone number of the requestor¹ and identify the requestor’s “personal justiciable interest affected by the application...and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public.”²

Requests must also list relevant and material disputed issues of fact **that were raised during the comment period.**³ The Commission may grant a person’s if the request raises disputed issues of fact that **were raised during the comment period** and that are relevant and material to the commission’s decision on the application.⁴

The hearing requests submitted by Mr. Gonzales et al do not satisfy these requirements and therefore, should not be granted.

III. HEARING REQUESTS BY MR. VICTOR GONZALEZ, JR

A. The Underlying Dispute by Mr. Gonzalez: The County’s February 1, 2008 responses to hearing requests, addressed many of the same issues regarding the complaint by Mr. Gonzalez. The County will summarize those issues again here.

The only hearing requests submitted by an “affected person” involve an underlying property dispute. Mr. Gonzalez was the previous owner of the landfill, and, as indicated by the

¹ 30 TAC § 55.201(d)(1)

² 30 TAC § 55.201(d)(2)

³ 30 TAC § 55.201(d)(4)

⁴ 30 TAC § 55.211(c)(2)(A)

documents he attached in his July 19, 2007 request for hearing, he transferred the landfill to Zapata County in 1999 by quitclaim deed with no limit on how long it could be used for a landfill. Even the 1996 map that he provided for his then proposed development shows the location of the proposed “Zapata County proposed landfill” that was to be located near his property.

The County must proceed with an expansion in order to meet the waste disposal needs of Zapata County residents. The County’s need to make the most economical use of its landfill property to protect the interests of the taxpayers and other residents of the County supersedes the eventual use of the property by Mr. Gonzalez as a park for his development.

B. Whether Mr. Gonzalez is an “Affected Person”: As an adjacent owner of property adjacent to the site proposed for expansion, Mr. Gonzalez has standing and is an “affected person.”

C. Whether Mr. Gonzalez Raised Issues Appropriate for Referral: The Commission shall refer an issue to SOAH if it involves a disputed issue of fact that was raised during the public comment period and is relevant and material to the commission’s consideration of the application.⁵

The public comment period after the first notice of technical completeness and preliminary decision ended on August 6, 2007. Mr. Gonzalez filed two hearing requests by that date. Other than the complaint that his property interests would be adversely affected, a comment that simply establishes his standing in the matter, those October 9, 2006 and July 19, 2007 requests, did not provide any substantive issues of fact.

A second notice of technical completeness and preliminary decision was published on March 27, 2008. The public comment period after this notice ended on April 28, 2008. By this

⁵ TEX WATER CODE § 5.556

date, counsel for Mr. Gonzalez filed a November 2, 2007 hearing request which included additional issues **not addressed during the comment period**. On July 25, 2008, another hearing request addressing the ED's Amended Response to Comments was filed after the second comment period ended. This final hearing request primarily reasserted the issues contained in the November 2 request and included repeated statements of concern regarding past compliance and an assertion that "failure to plan" in the past as an basis for his complaints.

Mr. Gonzalez's first comment letter and request for a hearing included his concerns regarding the economic impact on his proposed development of his property. Zapata County continues to support some of the positions of the Executive Director ("ED") on the issues identified by the ED in his response to comments. As previously stated, Comment 1 (regarding financial loss), and Comment 6 (regarding interpretation of the quitclaim deed) are clearly not valid issues for consideration by the Commission in a municipal solid waste landfill proceeding.

Mr. Gonzalez also complains in his first comment letter that "Zapata County has failed on several occasions in the operations of the landfill"⁶ as reflected by the TCEQ's compliance records. The operational issues Mr. Gonzalez referred to as being "reflected by" TCEQ records, were resolved to the agency's satisfaction, as is noted in the ED's Initial and Amended Response to Comments.

If Mr. Gonzalez's comments raised any issue, it is only an issue of wholly past compliance with TCEQ rules. And even that issue was not raised as a proper issue for hearing. Furthermore, examples of actual problems are not identified by date or other specific reference.

Zapata County does not agree that other issues identified by the Executive Director as being raised in Mr. Gonzalez's second comment letter requesting a hearing letter were, in fact, actually raised or even intended to be raised. For example, the flying trash and odors were

⁶ Mr. Gonzalez's October 9, 2006 comment letter and hearing request.

clearly mentioned to provide support on the compliance history issue. Moreover, the requestor stated that the “proposed site is visible from the majority”⁷ of his property but did not mention concern that the screening measures included in the proposed permit were inadequate.

Mr. Gonzalez also did not provide any comments or raise any issues that could be addressed by Zapata County or the Executive Director after the October 16, 2006 notice of administrative completeness.

Whether Mr. Gonzales Raised Timely Issues Following the Second Notice to Support a Hearing: The Commission must determine which issues raised by an affected person in a valid hearing request should be referred to the State Office of Administrative Hearings (“SOAH”) for consideration in the contested case hearing.⁸

Mr. Gonzalez may qualify as an “affected person” for a hearing, but many issues were raised for the first time by Mr. Gonzalez’s attorney in his November 2, 2007 hearing request and then reasserted in his July 25, 2008 request, and are not appropriate for referral to SOAH under House Bill 801.

The hearing request of Mr. Gonzalez should be denied. If granted, Zapata County urges the commission issue an order dictating an expeditious hearing be set with issues limited to those raised by Mr. Gonzalez in his comment letters and evaluated by the Executive Director’s first Response to Comments.

⁷ Mr. Gonzalez’s July 19, 2007 comment letter and hearing request.

⁸ Tex Water Code §5.556

IV. HEARING REQUESTS BY ADDITIONAL REQUESTORS

A. Whether Additional Requestors are “Affected Persons”:

After the second comment period ended, several residents submitted requests for a contested case hearing. Zapata County believes that according to Chapter 55.201(d) and 55.203(a) and (c), these requestors are not “affected persons”. Most of these additional requestors appear to live beyond one mile of the landfill’s permit boundary. Zapata County believes that due to the moderate size of the proposed expansion and landfill (30 acres total), and the nature of the expansion (the facility may accept a maximum of 20 tons/day in each area of the site), individuals living beyond one mile of the proposed permit boundary do not qualify as affected persons rather, their interests are common to members of the general public.

1. Brenda Jarczyoski The hearing request indicates that the requestor owns property adjacent to the San Ygnacio Landfill; however the address provided in the request conflicts with this statement. Zapata County Tax Appraiser Records do not show Ms. Jarczyoski as an adjacent landowner. Because Ms. Jarczyoski has not shown that she owns property within one mile of the facility, Zapata County contends that at this distance, her interests should be considered common to the general public; she has not shown a personal justiciable interest and should not be granted affected person status.

2. Luis A. Lozano Mr. Lozano’s hearing request indicates that he resides 300 feet from the landfill. However, the address provided in his request is a post office box and it cannot be confirmed that he owns property or resides within one mile of the facility. Because Mr. Lozano has not provided an address with which to determine his location, it is unclear whether he has a personal justiciable interest and thus, should not be granted affected person status.

3. Gerardo Paredes – The requestor indicates that they live and own property within 2 miles of the landfill. Mr. Paredes appears to be located at least one mile beyond the permit boundary of the proposed landfill and expansion and at this distance, has not shown that he has a personal justiciable interest. Mr. Paredes should not be granted affected person status.

4. Erika Villarreal – The requestor indicates that they live and own property within one mile of the landfill, however, the address provided in this request is a post office box and therefore it is impossible to determine the distance of the address relative to the facility. Mrs. Villarreal has not proven she has a personal justiciable interest and should not be granted affected person status.

5. San Juanita Rocha – The requestor indicates that they own property within one and a quarter miles of the landfill. Zapata County believes that at this distance, the requestor has not shown a personal justiciable interest and should not be granted affected person status.

6. Maria Valdez – Mrs. Valdez wrote that she owns property within one and a quarter miles of the landfill. Zapata County believes that at this distance, the requestor has not shown a personal justiciable interest and should not be granted affected person status.

7. Aminta Yeasley – Mrs. Yeasley also wrote that she owns property within one and a quarter miles of the landfill. Zapata County believes that at this distance, the requestor has not shown a personal justiciable interest and should not be granted affected person status.

B. Whether Additional Requestors Raised Issues Appropriate for Referral:

The rules regarding what must be included in a hearing request leave no room for doubt, the issues raised in this matter by additional requestors are not appropriate for referral. Issues that are the basis of the request must list issues of fact **raised during the public comment period**.

If the commission determines that any of the additional requestors meet the requirements for “affected person” status, it cannot ignore that **additional requestors raised issues raised for the first time by Mr. Gonzalez’s attorney in his November 2, 2007 hearing request, after the first comment period had ended**. Additional requestors submitted signed form letters, which appear were drafted by counsel for Mr. Gonzalez, and include the exact issues mentioned in Mr. Gonzalez’s November 2, 2007 hearing request. (Zapata County refers the commission to aforementioned arguments in this response, regarding whether Mr. Gonzalez raised issues appropriate for referral, those responses also apply to whether additional requestors’ raised appropriate issues. Because the issues raised by additional requestors were raised not only after the second comment period ended, but also after the first comment period, they should not be considered appropriate for referral to SOAH under House Bill 801.

The hearing requests of the additional requestors should be denied. If any are granted, Zapata County again requests an expeditious hearing with issues limited to those raised by Mr. Gonzalez in his comment letters evaluated in the Executive Director’s first Response to Comments.

V. DURATION AND LOCATION OF THE HEARING

A. If the Hearing Request is Granted, What Schedule Should be Set?:

Given the limited issues the fact that Mr. Gonzalez is a real estate developer with the apparently ability and desire to proceed quickly to resolve the matters, the hearing should be limited to four months, six at the very most.

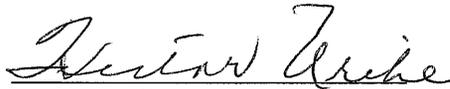
B. If the Hearing Request is Granted, Where Should it be Located?:

Finally, to make the process move as quickly as possible and to save all parties and the State resources, all aspects of the hearings should be held in Austin. Moreover, even Mr. Gonzalez does not reside in Zapata County. He provided his address as being in Helotes, Texas. In the interest of an expeditious and economic process, Zapata County asks for any hearings to be held in Austin, where counsel for each party resides.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Zapata County Commissioners Court respectfully urges the Commission to deny the hearing requests, or, in the alternative, limit any hearing granted to 4 months and the single and limited issue of compliance history.

Respectfully Submitted,



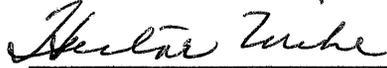
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CERTIFICATE OF SERVICE

I certify that on December 22nd, 2008, an original and eleven (11) copies of the foregoing Zapata County's Response To The Requests For Hearing was served upon the Chief Clerk of the TCEQ and a copy was served upon the parties identified below by first class mail and facsimile.



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