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February 9, 2011

Via Federal Express:
8534 5358 7267

Office of Chief Clerk
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Attn: Agenda Docket Clerk
12100 Park 35 Circle, Bldg. F
Austin, Texas 78753

**Re: Docket Number 2010-2075-AIR
Midway Industrial Park, L.L.C.
Permit No. 76962**

Dear Ms. Castanuela:

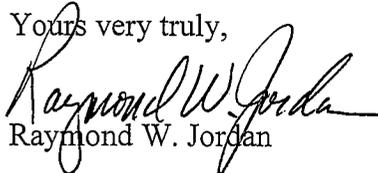
Following this letter please find the original and eight (8) copies of the Responses of the Applicant, Midway Industrial Park, L.L.C., to the Requests for Contested Case Hearings filed in the above-referenced matter.

Please file this correspondence and the Responses in the above-referenced matter. Please return a file-marked copy to me in the enclosed envelope.

By copy of this letter I am forwarding a copy of the Responses to the Executive Director, Public Interest Counsel, Director of the Office of Public Assistance, the Applicant and the persons requesting the Contested Case Hearings at their addresses listed on the Mailing List attached to your letter dated February 2, 2011, and as reflected upon the Certificate of Service attached to the Response.

Thank you very much.

Yours very truly,


Raymond W. Jordan

CHIEF CLERKS OFFICE

2011 FEB 11 PM 3:04

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RWJ/sls
Enc.
#18-006

DOCKET NO. 2010-2075-AIR

IN THE MATTER OF MIDWAY INDUSTRIAL PARK, L.L.C.
RN 104761606
PERMIT NO. 76962

BEFORE THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY

APPLICANT'S RESPONSES TO REQUESTS FOR CONTESTED CASE HEARING

Applicant, Midway Industrial Park, L.L.C., files this its Responses to the Requests for Contested Case Hearings filed herein and would show unto the Commission as follows:

I.

HISTORY OF REQUESTS FOR CONTESTED CASE HEARINGS OR REDETERMINATION OF EXECUTIVE DIRECTOR'S DECISION

- A. The original Application for Permit was filed by Midway Industrial Park, L.L.C. on September 22, 2005. Notice of the filing of the Application was published on October 18, 2005. Requests for Contested Case Hearing were filed by Amy Yeldell on behalf of the Concerned Citizens of Beaker Lake Estates on November 16, 2005; by Andrew Barrett on behalf of Earl and Emily Sabo and Don and Betty Rich on November 17, 2005; by Charlene and Joseph Elliott on November 21, 2005; and by Margaret and Robert Earnest on November 22, 2005.

- B. The Notice of Application and Preliminary Decision of the Executive Director to issue the permit was issued on June 1, 2009 and mailed on June 2, 2009. Notice was published on June 16, 2009; the comment period ended on July 16, 2009. No comments or requests for Contested Case Hearing were filed in response to the Notice of Preliminary Hearing.

- C. An Amended Notice of Receipt of Application and Intent to Obtain Air Permit was issued on July 13, 2010 and published on July 27, 2010. The comment period ended on August 26, 2010. No comments or Requests for Contested Case Hearing were filed within the comment period.

- D. The Executive Director issued his Final Decision Letter, and it was mailed to all parties in interest on November 23, 2010. The comment deadline for submitting Requests for Contested Case Hearing or reconsideration of the Executive Director's decision was December 23, 2010. No Requests for Contested Case Hearing or for reconsideration were filed within the time allowed.

II.

LACK OF TIMELY FILED REQUESTS AFTER APPLICATION FOR PERMIT AMENDMENT AND RENOTICE OF FILING

Applicant respectfully submits that there are no Requests for Contested Case Hearing which have been timely filed after the Application for Permit was amended to convert it from a Flexible Permit to a Subchapter B. State Permit.

RESPONSES TO ORIGINALLY FILED REQUESTS FOR CONTESTED CASE HEARING

III.

RESPONSE TO REQUESTS OF ANDREW N. BARRETT ON BEHALF OF EARL (NOW DECEASED) AND EMILY SABO AND DON AND BETTY RICH

- A. Applicant denies that the Sabos and the Richs have shown themselves to be Affected Persons. Their request does not show them to have an interest different from members of the general public. The properties of the Sabos and the Richs are located North of the property of the Applicant and are separated from their property by a railroad right-of-way and public road (U.S. Hwy 82) as stated in the Requests for Contested Case Hearing. Thus the Sabos and the Richs have not shown themselves to be Affected Persons.
- B. The unsubstantiated claims set forth in the Requests for Contested Case Hearing filed by Andrew N. Barrett are merely allegations and are not supported by any factual information relevant and material to the facts presented in the Application or the Executive Director's Response to Public Comment or the Executive Director's Decision Letter. Thus, Applicant disputes the unsubstantiated allegations.

- C. The facts regarding the emissions from the rail cleaning operations of the facility are not in dispute. The Requestors have provided no factual information regarding the emissions or the potential effects of the emissions. The facts as set forth in the Application are uncontested. There are no disputed questions of law.
- D. The issues of the Sabos and the Richs were raised by an initial filing in November, 2005, shortly after the original Application was filed by Midway Industrial Park, L.L.C. No Requests for Contested Case Hearings were filed after the Notice of Application and Preliminary Decisions was published on June 16, 2009.
- E. The allegations of the Sabos and Richs were not raised solely in a public comment.
- F. The hearing request fails to comply with the Rules in that it fails to state how and why the Requestor believes to be adversely affected in a manner not common to the general public and fails to list all relevant and material disputed issues of fact and that are the basis of the hearing request.
- G. The hearing requested was not timely filed in response to the amended Application and Notice dated November 23, 2010.
- H. If a Contested Case Hearing is scheduled in this matter, a maximum expected duration would be two days.

IV.
RESPONSE TO REQUEST FOR CONTESTED CASE HEARING OF
ROBERT AND MARGARET EARNEST

- A. The Request for Contested Case Hearing by letter dated November 11, 2005 on its face shows that Robert and Margaret Earnest are not Affected Persons. Their Request for Hearing clearly shows that their alleged interest is no different from other citizens in the area.

- B. The only potential issue raised in the Request is the statement that the health of all citizens in the effected surrounding area would be impacted by the facility. There is no factual support for how the Requestors would be impacted in a manner not common to the general public.
- C. The Requestors have provided no factual support for their allegations. Applicants submit that there is therefore no disputed question of fact. There is no disputed question of law. Requestors have not listed all relevant and material disputed issues of fact that are the basis of the hearing request.
- D. The issues were not raised by the letter filing within the applicable comment period.
- E. The alleged issues raised by the Hearing Requests have not been withdrawn.
- F. The issues raised in November 11, 2005 Requests are not relevant and material under the law to the decision on the Application.
- G. The hearing request was not timely filed in response to the amended Application and Notice dated November 23, 2010.
- H. In the event a Contested Case Hearing is held, the maximum expected duration would be two days.

V.
RESPONSE TO REQUEST FOR CONTESTED CASE HEARING OF
CHARLENE AND JOSEPH ELLIOTT

- A. The Request for Contested Case Hearing by letter dated November 11, 2005 on its face shows that Charlene and Joseph Elliott are not Affected Persons. Their Request for Hearing clearly shows that their alleged interest is no different from other citizens in the area.

- B. The only potential issue raised in the Request is the statement that the health of all citizens in the effected surrounding area would be impacted by the facility. There is no factual support for how the Requestors would be impacted in a manner not common to the general public.
- C. The Requestors have provided no factual support for their allegations. Applicants submit that there is therefore no disputed question of fact. There is no disputed question of law. Requestors have not listed all relevant and material disputed issues of fact that are the basis of the hearing request.
- D. The issues were raised by the letter filing within the applicable comment period.
- E. The alleged issues were raised by the Hearing Requests have not been withdrawn.
- F. The issues raised in November 11, 2005 Requests are not relevant and material under the law to the decision on the Application.
- G. The hearing request was not timely filed in response to the amended Application and Notice dated November 23, 2010.
- H. In the event a Contested Case Hearing is held, the maximum expected duration would be two days.

VI.

RESPONSE TO REQUEST FOR CONTESTED CASE HEARING BY AMY YELDELL ON BEHALF OF THE CONCERNED CITIZENS OF BEAVER LAKE ESTATES

- A. Requestors are named members of the Concerned Citizens of Beaver Lake Estates. The Requests states no interest subject to the jurisdiction of the Commission which is not common to the members of the general public.
- B. Applicant Midway Industrial Park does not believe that the Requests for Public Hearing actually raises an issue subject to the jurisdiction of the commission, but Midway

Industrial Park, L.L.C. disputes the allegations as stated in the November 14, 2005 Requests for Public Hearing.

- C. The allegations raised do not state facts and are not supported by factual information. Applicants submits that there are no disputed questions of fact in that none of the allegations contest the facts as stated in the Application. There are no disputed questions of law. Requestor has failed to list all the relevant and material disputed issues of fact that are the basis of the hearing request as required by Rule 55.201 (d)(4).
- D. The allegations were not raised during the public applicable comment period.
- E. The allegations have not been withdrawn.
- F. The unsubstantiated allegations raised by the Requests for Contested Case Hearing in the letter of November 14, 2005, are not relevant in material to the decision on the Application. The facts as stated in the Application are uncontested in that the Requestors have provided no factual evidence to contradict the terms of the Application or the findings of the Executive Director.
- G. The hearing request was not timely filed in response to the amended Application and Notice dated November 23, 2010.
- H. In the event a Contested Case Hearing is held, the maximum expected duration would be two days.

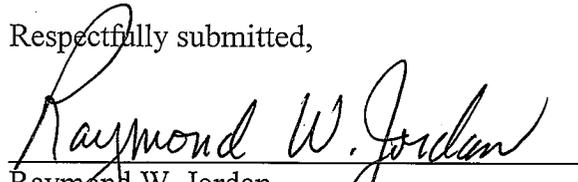
VIII.

All of the Requests for Contested Case Hearings were made in 2005 or in Public Comments in 2007. Since those Requests were made, no factual evidence of any kind has been submitted by any of the Requestors which contradicts the evidence supplied by the Applicant in support of its Application. None of the Requestors have Requested a Contested Case Hearing or

filed any Requests for Redetermination of the Executive Directors Final Decision Letter dated November 23, 2010.

Applicant, Midway Industrial Park, L.L.C. respectfully requests the Commission to deny all Requests for Contested Case Hearings in this matter and act on the issuance of the permit.

Respectfully submitted,

A handwritten signature in black ink that reads "Raymond W. Jordan". The signature is written in a cursive style and is positioned above a horizontal line.

Raymond W. Jordan
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Texarkana, Texas 75503
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Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the APPLICANT'S RESPONSES TO REQUESTS FOR CONTESTED CASE HEARING have been forwarded to the following by regular mail, postage prepaid, to wit:

Mark R. Vickery, Executive Director
Texas Commission on Environmental Quality
c/o Douglas Brown, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
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Tony Ionescu, Technical Staff
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Ms. Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
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Austin, Texas 78711-3087

Margaret and Robert Earnest
2510 Old Red Lick Road
Texarkana, Texas 75501-9629

Charlene and Joseph Elliott
2512 Old Red Lick Road
Texarkana, Texas 75501-9629

Amy Yeldell
Concerned Citizens of Beaver Lake Estates
152 Beaver Creek Run
Texarkana, Texas 75501-0909

Andrew N. Barrett
Attorney at Law
711 West 7th Street
Austin, Texas 78701

Signed this 10th day of February, 2011.


Raymond W. Jordan, Attorney for Applicant,
Midway Industrial Park, U.L.C.