

Docket No. 2012-2222-MSW

APPLICATION BY CCAA, LLC § **BEFORE THE**
 §
FOR § **TEXAS COMMISSION ON**
 §
MSW PERMIT NO. 2376 § **ENVIRONMENTAL QUALITY**

APPLICANT’S RESPONSE TO CONTESTED CASE HEARING REQUEST

This response is submitted on behalf of CCAA, LLC, (“CCAA”), the applicant in the above-styled and captioned matter, pursuant to 30 TAC §55.209(d) and (e), in response to the contested case hearing request dated October 22, 2012 and filed with the Commission on October 24, 2012 on behalf of Concerned Citizens for Safety, Health and Justice (“CCSHJ”). This matter involves an application by CCAA for a permit (MSW Permit No. 2376) for a Type IV (construction and demolition waste) municipal solid waste landfill facility pursuant to Texas Health & Safety Code, Chapter 361. Requests for a contested case hearing regarding the application are governed by the provisions in subchapter F of 30 TAC Chapter 55 (30 TAC §§55.201-55.211).

The request by CCSHJ is the only contested case hearing request filed with the Commission in this matter.¹ Because this request does not substantially comply with the

¹ Copies of several other requests were transmitted with the Chief Clerk’s December 19, 2012 memorandum regarding this matter, but none of those is a request for a contested case hearing. The September 11, 2012 request from Robert Marshall, the October 14, 2012 request from Al W. Lister, and the October 24, 2012 request from Beverly Young all specifically request only reconsideration of the Executive Director’s decision in this matter, and do not request a contested case hearing. The September 4, 2012 letter from Dr. E. Dean Gage is clearly a request for an additional public meeting regarding the application and not a request for a contested case hearing: The first paragraph of Dr. Gage’s letter refers to “the first public hearing on July 19, 2012”, a reference to the public meeting regarding the application that was held on that date. Although there is a reference in that same paragraph “the process of our being able to respond to TCEQ to now request another public hearing”, it is clear that the request in the letter is for a second public meeting and not a contested case hearing because the same sentence goes on to say “after which citizens might have to request a contested case hearing or resort to legal actions, depending on TCEQ actions and decisions.”

applicable requirements in the Commission's rules regarding contested case hearing requests (at 30 TAC §55.201(d)), the Commission should deny the request.

Defects Regarding Standing and Status as Affected Person(s).

The CCSHJ request does not satisfy applicable requirements regarding the status of CCSHJ or any individual member of the group or association in connection with either standing or status as an affected person(s).

The CCSHJ request does not satisfy the requirements of 30 TAC §55.201(d)(2). That provision requires that a contested case hearing request

identify the...personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of 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.

However, the CCSHJ request does not provide the information required by this rule. There is no reference to a personal justiciable interest of CCSHJ affected by the application and there is no statement of CCSHJ's location and distance relative to the proposed facility and how and why CCSHJ believes it will be adversely affected by the proposed facility in a manner not common to members of the general public.

In addition, the CCSHJ request does not satisfy the primary requirement, in 30 TAC §55.205(a)(1), for a contested case hearing request by a group or association: the request does not show that one or more members of CCSHJ would otherwise have standing to request a hearing in their own right. The CCSHJ request does not specify a personal justiciable interest of any individual member of the group or association, does not include a statement of the location and distance relative to the proposed facility for any individual member of the group or association, and does not include any statement of how and why any individual member of the

group or association will be adversely affected by the proposed facility in a manner not common to members of the general public.

For both CCSHJ and any individual member of the group or association, the CCSHJ request fails to include information sufficient to establish that CCSHJ or any individual member is or would be an “affected person” pursuant to 30 TAC §55.203(a) and (c). There is no discussion of any particular legal right, duty, privilege, power, or economic interest of CCSHJ or any individual member that would be affected by the application or any related personal justiciable interest per 30 TAC §55.203(a), and there is no discussion of the factors set out in 30 TAC §55.203(c), including whether an interest claimed is one protected by the law under which the application will be considered, distance restrictions or other limitations imposed by law on an affected interest, whether a reasonable relationship exists between an interest claimed and the activity regulated, any likely impact of the regulated activity on the health and safety of and/or on the use of property of CCSHJ or any individual member, and/or any likely impact of the regulated activity on use by CCSHJ or any individual member of an impacted natural resource.

Defects Regarding Issues Included in the Request.

The CCSHJ request discusses 7 issues related to the CCAA permit application. However, with regard to each of these issues, the CCSHJ request fails to comply with the requirements of 30 TAC §55.201(d)(4) because the issues raised are not relevant and material to the Commission’s determination, the discussion of the issues does not include disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request and/or it does not list any disputed issues of law or policy. Each of the issues raised in the CCSHJ request is discussed below:

1. Health Issues Related to Airborne Particulates. The request refers to “particulate matter from construction materials transported by wind from the proposed landfill site to the surrounding

area” and to these particulates (including amorphous and crystalline silica) as a potential source of air pollution. However, CCAA’s permit application is an application for a municipal solid waste facility permit, not for an air permit. Pursuant to the Commission’s rule at 30 TAC §330.985(c), an owner/operator may claim the standard air permit as set out in Subchapter U of 30 TAC Chapter 330 (“STANDARD AIR PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES AND TRANSFER STATIONS”) for a Type IV municipal solid waste landfill facility like the one proposed by CCAA. As a result, issues related to air emissions are neither relevant nor material to the Commission’s decision in this matter.

2. Floodplain. The CCSHJ request does not dispute factual information in the CCAA permit application regarding the floodplain, including the statement that the permit boundary is located outside any 100-year floodplain, in accordance with Commission rules. Instead, the CCSHJ request includes a request “that a certified engineer or geologist investigate the potential site location of this landfill on the 100-year floodplain.” As set out in the application, and signed and sealed by a registered professional engineer, the proposed landfill permit boundary is not located in a 100-year floodplain, as shown on Federal Emergency Management Agency (FEMA) floodplain map. Pursuant to 30 TAC §330.63(c)(2)(B), “FEMA maps are prima facie evidence of floodplain locations.” As a result, this issue, as raised by CCSHJ is neither relevant nor material to the Commission’s determination. In addition, CCSHJ has not offered any information contrary to that shown in the permit application and on the FEMA map, so it has not raised any disputed issue of fact regarding floodplains.

3. Side Slope and Height related to Surface Water and Groundwater Contamination. CCSHJ’s discussion of this issue is based on slope and storm water runoff provisions in a TCEQ guideline regarding land treatment, specifically TCEQ’s Industrial Solid Waste Management Technical Guideline No. 5 “Land Treatment” (rev. 10/27/04). The facility proposed in CCAA’s permit application is neither an industrial solid waste facility nor a land treatment facility. As a result, none of the provisions in the referenced guideline are applicable to the facility or to CCAA’s permit application, so this issue is neither relevant nor material to the Commission’s determination in this matter.

4. Transportation and Access. CCSHJ’s discussion of this issue in its request is based on the incorrect assumption that operation of the Type IV MSW landfill facility proposed in the CCAA permit application will increase truck traffic on roadways in the vicinity of the facility. However, as explained in the permit application and the Executive Director’s response to comments, operation of the Type IV facility will actually reduce truck traffic in the area because the facility will provide capacity for disposal of waste generated at the existing recycling facility located adjacent to the proposed landfill. The waste will be transported from the recycling facility to the landfill without requiring trucks to travel on public roadways. Without the new landfill facility, waste materials generated at the recycling facility would continue to be transported by trucks traveling from that facility to other disposal facilities using public roadways in the vicinity. CCSHJ has not offered any information contrary to that shown in the permit application and the response to comments, so it has not raised any disputed issue of fact regarding transportation and access.

5. Land Use Compatibility. CCSHJ's discussion of this issue does not offer any relevant or material information contrary to that shown in the permit application and the response to comments, so it has not raised any disputed issue of fact regarding land use compatibility.

6. Public Notice. In its request, CCSHJ does not specifically allege the failure to comply with any applicable public notice requirements. In discussing the published newspaper notice (which CCSHJ admits was published in the classified section of the local newspaper, The Eagle) CCSHJ states only that some residents do not subscribe to that newspaper—a statement that clearly does not raise any disputed issue of fact or an issue that is relevant or material to the Commission's decision in this matter. CCSHJ also complains about the location of signs placed on the proposed facility site, but does not allege that the placement of the signs did not comply with Commission rule requirements (which was, in fact, the case). As a result, CCSHJ has, again, not raised any disputed issue of fact regarding adequacy of notice, or any issue regarding notice that is relevant or material to the Commission's decision in this matter

7. Regional Solid Waste Plan. In its request, CCSHJ does not allege that the proposed facility is not consistent with the regional solid waste plan (the applicable standard per the Commission's municipal solid waste rules), and it does not raise any disputed issue of fact regarding conformance with that plan.

For the reasons set forth above, CCAA respectfully requests that the Commission:

- (1) determine that the only contested case hearing request in this matter is the request by CCSHJ,
- (2) determine that the contested case hearing request by CCSHJ in this matter does not meet the requirements of 30 TAC Chapter 55, Subchapter F, and
- (3) deny the contested case hearing request by CCSHJ in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2013, copies of the foregoing Applicant's Response to Contested Case Hearing Request were sent by first class mail to:

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