

TCEQ Docket No. 2013-1506-MSW

Application by Rancho Viejo Waste Management, LLC for MSW Permit No. 2374	§ § §	Before the Texas Commission on Environmental Quality
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The Hurds' Reply to Responses to Hearing Request

This reply is submitted on behalf of Hurd Ranch Company, Ltd., Hurd Enterprises, Ltd., and John R. Hurd Jr. and E. Eugene Garcia, individually and on behalf of Hurdco, Inc.¹, (for convenience, collectively “the Hurds”) in the above-captioned matter.

The Hurds previously requested a contested case hearing on the application of Rancho Viejo Waste Management, LLC (“Applicant”) for proposed Municipal Solid Waste Permit No. 2374, application Parts I and II, Land Use Compatibility (“the Application”), Webb County, Texas. The Hurds based their request on a number of personal justiciable interests related to legal rights, duties, privileges, powers, or economic interests affected by the Application.

The Hurds are Affected Persons

Both the Executive Director and the Office of Public Interest Counsel (“OPIC”) correctly concluded that the Hurds’ request for a contested case hearing complied with the requirements of 30 Texas Administrative Code (30 TAC) § 55.201(c) and (d). Both the Executive Director and OPIC also recommended that the Commission grant the hearing requests of one or more of the Hurds. The Hurds respectfully request that the Commission find that they are all affected persons and grant their hearing requests.

Hurd Enterprises, Ltd. owns mineral interests under the proposed facility (as acknowledged by the Applicant in the Application, pursuant to 30 TAC §330.59(c)(3)) and the Hurd ranch. Construction and operation of the proposed facility will adversely impact the exploration, development, and production of these minerals. A large municipal solid waste landfill is not compatible with surrounding land uses and the exploration and development of oil and gas resources in the area. As an affected property owner, Hurd Enterprises, Ltd. is an affected person.

Hurd Ranch Company, Ltd. owns a ranch approximately 16,500 acres in size (hereinafter the “ranch”) located less than 2 miles south and southeast from the proposed landfill facility. The Hurds disagree with the Executive Director that the distance between the proposed landfill facility and the ranch decreases the likelihood that the proposed landfill facility will impact the ranch in a way that is not common to the general public. As correctly noted by OPIC, there are no distance limitations for affected persons in the law applicable to this Application. 30 TAC § 55.203(b)(2). In fact the Commission’s rules require the Applicant to provide: (1) a published zoning map for the facility and within two miles of the facility; and (2) information about growth trends within five miles of the facility. This type of information is necessary “to assist the

¹ John R. Hurd, Jr. and E. Eugene Garcia are Presidents of Hurdco, Inc., a general partner of both Hurd Enterprises, Ltd. and Hurd Ranch Company, Ltd.

commission in evaluating the impact of the site on the surrounding area.” 30 TAC § 330.61(h). Clearly, the rules require consideration of areas beyond one mile when determining the impact on surrounding area under 30 TAC 330.61(h). Additionally, a significant portion of both the railroad and the roadway that will be used to access the proposed landfill facility and to transport waste to it *traverse* the ranch (approximately 6.2 miles of the railroad and approximately 3.9 miles of the roadway). The construction and operation of the proposed facility will adversely impact the Hurds and the use of their property, given the proximity of the proposed landfill facility and the many miles of railroad and roadway that traverse the ranch and that will be used for transporting waste to the facility. These facts distinguish Hurd Ranch Company, Ltd.’s interests from interests common to members of the general public.

Hurdco, Inc. is a general partner of both Hurd Enterprises, Ltd. and Hurd Ranch Company, Ltd., and it has the same interests of each. Those interests are not common to members of the general public. Rather the interests relate to a legal right, duty, privilege, power, or economic interest affected by the Application. As a general partner of both an owner of minerals interests under the proposed landfill facility and an owner of real property located less than 2 miles from the proposed landfill facility, Hurdco, Inc. is an affected person.

Similarly, John R. Hurd, Jr. and E. Eugene Garcia, both individually and as Presidents of Hurdco, Inc., are affected persons. John R. Hurd, Jr. and E. Eugene Garcia, along with their family members, guests, and/or employees live, ranch (run cattle, grow grass for feed, raise horses), and recreate (hunt, fish, bird watch, ride horses) on the ranch. This ranch has served as a home ranch to the Hurd family for multiple generations. It includes three permanent residences and various other buildings. Water wells located on portions of the ranch near the proposed landfill site supply water to the ranch residences and livestock. Given that a significant portion of both the railroad and the roadway that will be used to access the proposed landfill facility and to transport waste to it traverse the ranch (approximately 6.2 miles of the railroad and approximately 3.9 miles of the roadway) and the existence of past train derailments on and near the ranch, operation and construction of the proposed landfill facility will adversely impact John R. Hurd Jr. and E. Eugene Garcia, individually. Therefore, the Hurds respectfully request that the Commission find that they are affected persons and grant their hearing requests.

The Applicant relies solely on distance to conclude that Hurd Ranch Company, Ltd. is not an affected person. Distance is but one factor in an affected person determination. As previously explained the Hurds own significant property interests both under and within 2 miles of the proposed landfill facility. Based on an analysis of all the relevant factors under 30 TAC § 55.203, the Hurds are affected persons.

Issues to Refer

The Hurds generally agree with the issues that the Executive Director did recommend for referral. However, the Hurds respectfully request that the Commission refer all the issues identified by the Executive Director and raised by the Hurds in their hearing requests. The Executive Director appeared to determine that some issues raised by the requestors were “not relevant and material to the decision on whether this application is compatible with surrounding

land use.” Each of the issues identified by the Hurds related to specific subsections of the Commission’s rules related to Contents of Part I or Part II of the application. 30 TAC §§ 330.59-.61. Pursuant to 30 TAC § 330.57(a), if the Executive Director determines that a land-use only determination is appropriate then “the owner or operator shall submit a partial permit application consisting of Parts I and II of the application.” Consequently, the issues raised by the Hurds are relevant and material to the decision on whether the Application is compatible with surrounding land use. However, if the Commission decides not to refer these issues at this time then the Hurds respectfully request that these issues be considered again for referral at any subsequent hearing related to the Applicant and the proposed landfill facility.

The Applicant’s Response to Contested Case Hearing Requests spends considerable time explaining why property ownership is not a problem. This is a simple issue that is only complicated by the Applicant’s tortuous explanation. The Applicant does not own all the property (surface or minerals) on which the proposed landfill facility will be located. Therefore, the Executive Director was correct in recommending referral of the property ownership issue (Issue No. 4). The remaining portions of the Applicant’s Response only serves to highlight exactly why each issue identified by the Hurds is either a disputed issue of fact or law/policy.

Duration of the Contested Case Hearing

The Hurds recommend a twelve-month duration for a contested case hearing from the date of the preliminary hearing to the presentation of a proposal for decision.

Respectfully submitted,



Dan Miller
Attorney for the Hurds

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been sent by U.S. Certified Mail, Return Receipt Requested, or via E-Filing to the following service list on this 30th day of September, 2013.

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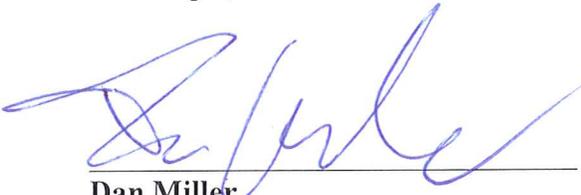
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