

SOAH DOCKET NO. 582-04-0975
TCEQ DOCKET NO. 2003-0729-MSW

IN THE MATTER OF THE
APPLICATION OF REGIONAL
LAND MANAGEMENT SERVICES,
LTD. FOR TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
PERMIT NO. MSW-2286

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

2008 SEP 29 PM 4:59

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**EXCEPTIONS TO THE PROPOSAL FOR DECISION
OF APPLICANT, REGIONAL LAND MANAGEMENT SERVICES, LTD.**

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Regional Land Management Services, Ltd. (RLMS), applicant in the above-captioned proceeding files these exceptions to the Proposal for Decision and Proposed Order in this case.

Initially, RLMS would like to state that it believes that the Administrative Law Judges who heard this case, the Honorable Carol Wood and the Honorable Carol S. Birch, conducted the hearing process in a fair and professional manner and did a remarkable job of evaluating the significant volume of evidence presented in this case (nearly 2200 pages of transcripts from 12 days of evidentiary hearing and more than 400 exhibits consisting of thousands of pages). RLMS believes the Judges reached the correct decision on every one of the issues referred for hearing in this case and did an excellent job of addressing those issues in their Proposal for Decision (PFD).

RLMS is filing these exceptions to point out one aspect of the Judges' recommendation (the wording of a groundwater monitoring special provision) that RLMS believes requires substantive revision, and several less significant, though still important, revisions to the proposed order that RLMS suggests should be made to provide a clear and more legally defensible order. These additional revisions all involve requested additional or slightly revised findings of fact/conclusions of law, and all are consistent with the Judges' analyses and conclusions as set out in the PFD.

I. GROUNDWATER MONITORING SPECIAL PROVISION

RLMS respectfully requests that the Commission's order in this matter include the special provision language regarding groundwater monitoring that RLMS has requested be part of a permit, instead of the different language recommended by the Judges in the PFD or the even different

language included in the Judges' proposed order. Because it has been shown that there is no potential for contaminants released from the proposed Ponderosa Regional Landfill to reach the uppermost aquifer beneath the landfill site, the Commission's rules do not require groundwater monitoring at the proposed facility. But, because other parties to the hearing have said they believe shallow groundwater at the site (above the uppermost aquifer) should be monitored, during the hearing RLMS presented a program to monitor that shallow groundwater and is willing to implement that program. However, in order to provide certainty in terms of what groundwater monitoring will be performed and to avoid potential legal challenges to the Commission's order, RLMS requests that the order include the special provision as proposed by RLMS. In the alternative, if the Commission is unwilling to include the special provision as proposed by RLMS (because of opposition by other parties, because of the concern expressed by the Judges that the Executive Director has not reviewed RLMS's proposed groundwater monitoring program, or because of some other reason), RLMS respectfully requests that the Commission's order not include a special provision regarding groundwater monitoring. If the Commission issues an order approving the issuance of a permit for the landfill, RLMS can then work with the other parties and the Executive Director to see about incorporating a groundwater monitoring program by way of a permit modification.

Background

RLMS's consultants conducted detailed field studies of the proposed landfill site and prepared thorough geologic and hydrogeologic characterizations of the site before RLMS's permit application was filed in July 2000. Those studies showed that, even though very small amounts of groundwater may be present in a shallow geologic formation at the site (the Yegua Formation), the uppermost aquifer beneath the site is the deeper Laredo Formation, the upper portion of which is located approximately 400 to 500 feet below ground surface. *Ex. A-78, p. III-A5-8; Barlock Testimony, Ex. A-28, p.15/44.* RLMS's permit application also included a demonstration, pursuant to Commission rule 30 TAC §330.230(b)¹, that because of the significant depth of very low

¹ 30 TAC §330.230(b) provides:

Groundwater monitoring requirements under §§330.231 and 330.233 - 330.235 of this title (relating to Groundwater Monitoring and Corrective Action) may be suspended by the executive director for an MSWLF unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that MSWLF unit to the uppermost aquifer as defined in §330.2 of this title (relating to Definitions) during the active life and the closure and post-closure care period of the unit.

permeability material between the bottom of the proposed landfill and the aquifer, there is no potential for contaminants that might be released from the landfill to migrate to the aquifer during the active life of the landfill and the closure and post-closure care periods (a total of approximately 124 years). In fact, the demonstration (referred to as a "no-migration demonstration") conservatively shows that it would take between 417 and 800 years for a released contaminant to migrate to the aquifer. *Ex. A-30 secs. 8.4.2 and 8.4.5 through 9.0 at pp.III-A4-36 through 43; Ex. A-78 sec. 4.0 at pp.III-A5-15 and 16.* Because of this, as authorized by 30 TAC §330.230(b), RLMS's permit application did not include a groundwater monitoring system for the landfill.²

The Executive Director conducted a technical review of RLMS's permit application and concurred with the conclusion that the uppermost aquifer at the landfill site is the deeper Laredo Formation, and agreed that the no-migration demonstration in the application is sufficient to support no groundwater monitoring at the site. *McCoy Testimony, Ex. A-229, p.20/13-p.22/1 and p.76/13-16.*

During the extended public comment period regarding RLMS's permit application, no one submitted any comments suggesting that the shallow Yegua Formation, rather than the deeper Laredo Formation, is the uppermost aquifer at the landfill site. And none of the hearing requests filed with the Commission took issue with the characterization of the deeper Laredo Formation as the uppermost aquifer. Then, in late June of 2007, less than a month before the beginning of the evidentiary hearing, protestants Highway 359 Landowners Coalition and Webb County submitted prefiled testimony for their witness George Rice. In his testimony, Mr. Rice asserted that the shallow Yegua Formation is the uppermost aquifer at the landfill site and that RLMS should have a program to monitor groundwater in the Yegua Formation. Neither Mr. Rice nor the parties on whose behalf he testified offered any specifics regarding the groundwater monitoring program he thought should be implemented, so RLMS began trying to get details from Mr. Rice. In a deposition taken by RLMS and during RLMS's extensive cross-examination during the hearing, Mr. Rice testified about his recommendations for groundwater monitoring. *Rice Testimony, Transcript vol. 5 pp. 753-897 and 915-941, and vol. 6 pp. 944-1107.* RLMS then directed its consulting hydrogeologist, Vince

² The Commission's municipal solid waste rules specify that, where a groundwater monitoring system is required by the rules, it must include monitoring wells deep enough to reach the uppermost aquifer so the wells can be used to detect a release of contaminants into the aquifer. 30 TAC §330.231(a).

Barlock, to develop a program to monitor groundwater in the shallow Yegua Formation, even though such monitoring is not required by the Commission's rules. As described in the PFD (at pp. 28-29):

Because of the other parties' concerns about the lack of groundwater monitoring at the facility and because Applicant "is committed to building and operating a facility that meets or exceeds all applicable requirements and expectations for environmental protection," Applicant asked its consulting hydrogeologist, Mr. Barlock, to design a groundwater monitoring system and to prepare a groundwater sampling and analysis plan to monitor groundwater in the water-bearing zones in the Yegua Formation found near the surface at the proposed site.

Mr. Barlock then prepared a Groundwater Sampling & Analysis Plan for monitoring groundwater in the shallow Yegua Formation at the proposed landfill site. The plan includes text that addresses groundwater sampling and analysis procedures, groundwater quality, quality control, and a discussion on detection monitoring.³ The plan also includes tables (with details of monitor well design details) and figures (a site plan showing the monitor well layout and details of well design and construction), and appendices with chain of custody and field forms. *Barlock Testimony, Transcript vol. 7, p.1282/17-p.1285/10; Ex. A-287*. The groundwater sampling and analysis plan proposed by RLMS, Exhibit A-287, incorporates nearly every recommendation for a plan for the proposed Ponderosa Regional Landfill made during many hours of testimony on the subject by George Rice. *Barlock Testimony, Transcript vol.7 p.1285/11-25*.⁴ Mr. Barlock is a "qualified groundwater scientist" per Commission rule at 30 TAC §330.2(109), and prepared the plan in accordance with TCEQ rules at 30 TAC §330.231(e). Data from soil borings, piezometers, and the geologic cross-sections for the Site were specifically evaluated for each monitoring well location in developing the design of the groundwater monitoring system, including the depths and intervals at which the wells will be screened. *Barlock Testimony, Transcript vol.8 p.1386/13 -p.1395/13*. The

³ As a starting point for the text portions of the plan, Mr. Barlock used the Groundwater Sampling & Analysis Plan for another Texas MSW landfill facility that had recently been approved by the Executive Director. This is the same plan about which protestants' witness, George Rice, testified and to which he had recommended changes during his deposition and hearing testimony. *Barlock Testimony, Transcript vol. 7, p.1282/17-1283/20; Ex. A-287; Murray Testimony, Transcript vol. 7, p.1176/23-1179/22; Rice Testimony Transcript vol. 5, p.783/5-p.897 and pp.915-941, and vol. 6 pp. 944-1107; Exs. A-271 and A-272*.

⁴ A comparison of Mr. Rice's recommendations to the plan submitted by RLMS shows that the only recommendation made by Mr. Rice but not included in the plan is to include as monitoring constituents (in addition to the 62 constituents listed on Table III-11.4 and atrazine, a specific chemical recommended by Mr. Rice and included in RLMS's plan) one or more unspecified "things used to kill fire ants and so on." *Ex. A-287; Rice Testimony, Transcript vol.5 p.782/5-p.891/21 and p.915/19-940/20 and vol.6 p.944/18-p.993/3*.

monitor well design is based on site-specific information regarding the Ponderosa Regional Landfill site. *Barlock Testimony, Transcript vol.7 p.1290/24-1291/16*. The proposed groundwater monitoring system consists of eight background wells and 40 detection monitoring wells located along a "point of compliance" per TCEQ rules at 30 TAC §§330.2(98) and 330.231(b)(1) and (2), with the detection monitoring wells spaced slightly less than 600 feet apart. *Barlock Testimony, Transcript vol.7 p.1288/6-1290/23; Ex. A-287 Fig. III-11.3; Rice Testimony, Transcript vol.6 p.993/13-p.1012/23 and 1016/15-1020/11; Ex. A-276*. The 600 feet spacing between wells is in conformance with TCEQ's current groundwater monitoring rule at 30 TAC 330.403(a)(2). *Barlock Testimony, Transcript vol. 7 p.1289/24-p.1290/17; Ex. A-277*.⁵ Mr. Barlock was cross-examined by attorneys for each of the other parties about the Yegua Formation groundwater monitoring program he had prepared. *Barlock Testimony, Transcript vol. 8 pp. 1363-1400*.

RLMS has requested, at the hearing, and in post-hearing pleadings, that the groundwater monitoring program developed by Mr. Barlock (set out in Exhibit A-287) be incorporated into a permit issued for the Ponderosa Regional Landfill. RLMS has requested that a permit include a special provision as follows:

The permittee shall install the groundwater monitoring system and implement the Groundwater Sampling and Analysis Plan described and shown in Exhibit A-287, TCEQ Docket No. 2003-0729-MSW.

PFD and Proposed Order

In the PFD, the Judges concluded that the uppermost aquifer at the proposed landfill site is the Laredo Formation, not the Yegua Formation. *PFD at p. 24. See discussion at PFD pp. 24-28*. The Judges also agreed with RLMS and the Executive Director that the no-migration demonstration in RLMS's application is sufficient to support a suspension of groundwater monitoring for the facility:

Because no potential exists for migration of hazardous contaminants from Applicant's landfill unit to the uppermost aquifer, Applicant is not required to have a groundwater monitoring system.

PFD at p. 30.

⁵RLMS did not incorporate the monitoring well spacing of 20 to 50 feet that Mr. Rice would generally recommend for municipal solid waste landfills in Texas. *Rice Testimony, Transcript vol.6 p.1013/6-11*. Also, RLMS's groundwater monitoring system design is not based on the assumption, which Mr. Rice testified he would employ in designing a groundwater monitoring system, that the facility won't comply with various construction and operational requirements. *Rice Testimony, Transcript vol.6 p.1019/15-19*.

These two conclusions are also incorporated into the Judges' proposed order. Proposed Finding of Fact 56 states, "The uppermost aquifer at the site is the Laredo Formation", and Proposed Finding of Fact 58 states, "The "no-migration" demonstration in the application is sufficient to support suspension of groundwater monitoring for the Ponderosa Regional Landfill."

In the PFD and in their proposed order, the Judges recommend that the permit for the Ponderosa Regional Landfill include a special provision requiring groundwater monitoring. The PFD recommends one special provision and the proposed order includes a different one, but neither recommendation incorporates the groundwater monitoring plan Exhibit A-287 as prepared by Mr. Barlock and requested by RLMS. The special provision recommended by the Judges in the PFD (at page 31) is:

The permittee shall install a groundwater monitoring system and implement a groundwater sampling and analysis plan.⁶

The Judges' proposed order includes (in Ordering Provision No. 2 at page 26) a different recommended special provision:

A groundwater monitoring system shall be installed and the Groundwater Sampling and Analysis Plan described and shown in Exhibit A-287, TCEQ Docket No. 2003-0729-MSW shall be implemented.

RLMS's Concerns Regarding the Judges' Recommendations

The evidence in the record, the Judges' PFD, and the findings of fact and conclusions of law in the Judges' proposed order all conclude that groundwater monitoring is not required. The only basis for including a groundwater monitoring special provision in a permit for the Ponderosa Regional Landfill is RLMS's request for such a special provision. RLMS is requesting and will not object to a permit special provision incorporating the groundwater monitoring program set out in Exhibit A-287. However, RLMS respectfully requests that any permit issued for the Ponderosa Regional Landfill not include any groundwater monitoring special provision not based specifically on the one in Exhibit A-287, including either version recommended by the Judges. RLMS is concerned about the legal effect of both versions recommended by the Judges.

⁶ In discussing the special provision recommended in the PFD, the Judges state:

because the ED's staff has not had an opportunity to review Exhibit A-287, the Judges decline to recommend that the Commission adopt Applicant's requested special provision. Instead, the Judges suggest the Commission include the following special provision: "The permittee shall install a groundwater monitoring system and implement a groundwater sampling and analysis plan."

First, RLMS is concerned about a requirement stating that "the permittee shall install a groundwater monitoring system" or that "a groundwater monitoring system shall be installed" without a specific reference to the system proposed by RLMS by way of Exhibit A-287. Such a requirement could be interpreted as requiring the type of groundwater monitoring system described in the Commission's rules at 30 TAC §330.231(a): a system with monitoring wells deep enough to reach the uppermost aquifer so the wells can be used to detect a release of contaminants into the aquifer. Because the uppermost aquifer at the site is the Laredo Formation, this interpretation could require monitoring wells extending into the Laredo Formation, the top of which is 400 to 500 feet below the ground surface. Not only would such monitor wells not provide any useful information (remember, it would take 417 to 800 years for contaminants from the landfill to reach the Laredo Formation), the installation and maintenance costs of such wells would be prohibitive. And, most importantly, such wells would not be capable of detecting releases into groundwater that may be present in the shallower Yegua Formation, the groundwater about which the other parties have expressed concern and the formation in which they have asked for monitoring.

In addition, RLMS is concerned that an order approving a permit that includes a non-specific groundwater monitoring requirement would be subject to challenge on appeal based on the concept of finality. In Walker Creek Homeowners Ass'n of Ellis County v. Texas Dept. of Health Resources, 581 S.W.2d 196 (Tex.Civ.App.-Austin 1979, no writ), the Austin Court of Appeals sent a case involving a municipal solid waste landfill permit back to the Texas Department of Health because the permittee (the City of Ennis) was required by a special provision in the permit to prepare a site access plan and have it approved by the agency. The Court stated that "an administrative order must leave nothing open to dispute in order to be a final order...So long as matters remain open, unfinished or inconclusive, there is no final decision." In a situation like this one, where the Judges expressed in the PFD their concern that "the ED's staff has not had an opportunity to review Exhibit A-287", a requirement to implement a non-specific groundwater monitoring program could be argued to require RLMS to prepare a plan and submit it to the Executive Director for review and approval. It could even be asserted, as the protestants in this case have already done, that additional hearings should be held to consider the plan.

The most important thing to keep in mind in considering a groundwater monitoring special provision for inclusion in a permit in this case is that, pursuant to the Commission's rules (as demonstrated by RLMS, concurred in by the Executive Director, and concluded by the Judges) no groundwater monitoring is required for the proposed landfill facility. In order to address concerns expressed by protestants, RLMS has designed and offered to implement a program that goes beyond the Commission's requirements to monitor groundwater in the shallow Yegua Formation. RLMS respectfully requests that, if a requirement for groundwater monitoring is to be included in a permit, that it be a requirement to implement the plan that has already been developed.

RLMS respectfully requests that the Commission's order and permit include the special provision language sought by RLMS:

The permittee shall install the groundwater monitoring system and implement the Groundwater Sampling and Analysis Plan described and shown in Exhibit A-287, TCEQ Docket No. 2003-0729-MSW.

In the alternative, RLMS respectfully requests that the Commission's order not include a special provision regarding groundwater monitoring. If the Commission issues an order approving the issuance of a permit for the Ponderosa Regional Landfill, RLMS can then work with the other parties and the Executive Director to see about incorporating a groundwater monitoring program for the Yegua Formation by way of a permit modification.

II. REVISIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Judges' proposed order includes findings of fact regarding each of the issues referred to the State Office of Administrative Hearing (SOAH) for hearing. In addition, the proposed order includes conclusions of law (or ultimate findings of fact) regarding most of the hearing issues. RLMS respectfully requests, that in order to provide a complete analysis and set of determinations on every hearing issue, that additional conclusions of law be added to the order regarding hearing issues for which no conclusion of law is presently provided. In addition, RLMS believes that a complete discussion of each hearing issue in the order requires the addition of or minor revision to findings of fact. RLMS's suggestions are set forth below, organized in the order that the hearing issues were listed in the referral order to SOAH. RLMS asserts that each of these additional or revised findings is consistent with the Judges' discussion of the issue in the PFD and/or is fully supported by the evidence in the record.

A. Issue No. 4: Does the application meet TCEQ site selection criteria with regard to unstable areas, faults, wetlands and floodplains?

Requested Additional Conclusion of Law: The application meets TCEQ site selection criteria with regard to unstable areas.

The evidence in the record regarding unstable areas, the Judges' recommendation in Sections I. and VI. (at pages 1 and 68 of the PFD) that "the Commission find that Applicant met its burden of proof on each of the issues referred for hearing", Proposed Finding of Fact 101, and proposed Conclusion of Law 10 provide sufficient support for such a conclusion.

Requested Additional Conclusion of Law: The application meets TCEQ site selection criteria with regard to faults.

The evidence in the record regarding faults and faulting, the Judges' recommendation in the PFD regarding faults: "the Judges recommend the Commission find as follows: The application meets TCEQ site selection criteria with regard to...faults" (item 1 of Section IV.B of the PFD, at p. 50.), the Judges' recommendation that "the Commission find that Applicant met its burden of proof on each of the issues referred for hearing" (Sections I. and VI. of the PFD, at pages 1 and 68), and Proposed Findings of Fact 102-103 regarding faults and faulting provide sufficient support for such a conclusion.

Requested Additional Conclusion of Law: The application meets TCEQ site selection criteria with regard to wetlands.

The evidence in the record regarding wetlands, the Judges' recommendation in the PFD regarding wetlands: "the Judges recommend the Commission find as follows: The application meets TCEQ site selection criteria with regard to...wetlands" (item 1 of Section IV.B of the PFD at p. 50), the Judges' recommendation that "the Commission find that Applicant met its burden of proof on each of the issues referred for hearing" (Sections I. and VI. of the PFD, at pages 1 and 68), and Proposed Finding of Fact 104 regarding wetlands provide sufficient support for such a conclusion.

Requested Additional Conclusion of Law: The application meets TCEQ site selection criteria with regard to floodplains.

The evidence in the record regarding floodplains, the Judges' recommendation that "the Commission find that Applicant met its burden of proof on each of the issues referred for hearing" (Sections I. and VI. of the PFD, at pages 1 and 68), and Proposed Findings of Fact 105-107 regarding floodplains provide sufficient support for such a conclusion.

B. Issue No. 8: Is the information submitted on geology and hydrology for the site adequate?

Requested Additional Conclusion of Law: The information submitted on hydrology for the site is adequate.

The evidence in the record regarding hydrology issues, the Judges' analysis in Section IV.A.3. of the PFD (regarding drainage and stormwater controls, at pp. 39-44), their recommendation in Sections I. and VI. (at pages 1 and 68 of the PFD) that "the Commission find that Applicant met its burden of proof on each of the issues referred for hearing", Proposed Findings of Fact 60-100, and proposed Conclusion of Law 8 provide sufficient support for the requested Conclusion of Law.

C. Issue No.9: Are the designs for the landfill liner, sidewalls, leachate collection systems, and stormwater controls adequate?

Requested Revision to Proposed Finding of Fact 119: The designs for the liner, and sidewalls, and leachate collection system of the proposed Ponderosa Regional Landfill are consistent with good engineering practice and methods.

Requested Additional Finding of Fact: The designs for the landfill liner, sidewalls, and leachate collection system proposed for the Ponderosa Regional Landfill satisfy the requirements of TCEQ rules.

Requested Additional Conclusion of Law: The design for the landfill liner, sidewalls and leachate collection system are adequate.

Exhibits A-169 through A-192 are portions of the Soil Liner Quality Control Plan for the proposed Ponderosa Regional Landfill. *Exs. A-169 through A-192; Reed Testimony Ex. A-165, p.2/4-5/8.* This plan includesXX Exhibit A-259 is a copy of provisions from TCEQ's municipal solid waste rules regarding landfill liner and sidewall designs. *Ex. A-259; Reed Testimony Ex. A-165, p.1/16-19.* Jeff Reed, a well-qualified professional engineer with significant experience in landfill design, testified that the design of the proposed landfill liner and sidewalls is consistent with good engineering practice and methods, and that the designs comply with the requirements in TCEQ's rules. *Reed Testimony Ex. A-165, p.7/7-15.*

Exhibits A-142 through A-158 are portions of the Leachate and Contaminated Water Management Plan for the proposed Ponderosa Regional Landfill. *Ex. A-142; Murray Testimony Ex. A-92, p.10/37-12/42.* This plan includes a detailed description of and design for the leachate collection system proposed for the facility, including the design parameters for the leachate drainage layer, the leachate collection trenches, the leachate recovery sumps, and the leachate pump and riser system (*Ex. A-142, secs. 4.0-4.5*). In addition, the plan includes a table of leachate generation rates (*Ex. A-143*) with supporting computer modeling summaries (*Exs. A-150 through A-153*), design appendices with calculations and analyses used in design of the leachate collection system (*Exs. A-144 through A-149*), and engineering drawings of the leachate collection system and details (*Exs. A-*

154 through A-158). Exhibit A-256 is a copy of provisions from TCEQ's Municipal Solid Waste Rules related to leachate and leachate collection systems. *Ex. A-256; Murray Testimony Ex. A-92, p.14/19-24*. James Roy Murray, a well-qualified professional engineer with significant experience in landfill design, testified that the leachate collection system proposed for the Ponderosa Regional Landfill satisfies the requirements of TCEQ rules regarding leachate collection systems, and that the design of the leachate collection system proposed for the facility is consistent with good engineering methods and practices. *Murray Testimony Ex. A-92, p.15/30-39*.

D. Issue No.11: Does the applicant propose adequate financial assurance?

Requested Additional Conclusion of Law: The applicant proposes adequate financial assurance.

The evidence in the record regarding financial assurance, the Judges' recommendation in the PFD regarding financial assurance: "the Judges recommend the Commission find that Applicant has proposed adequate financial assurance." (item 9 of Section IV.B of the PFD, at pp. 50-51), the Judges' recommendation that "the Commission find that Applicant met its burden of proof on each of the issues referred for hearing" (Sections I. and VI. of the PFD, at pages 1 and 68), and Proposed Findings of Fact 130-133 (regarding closure and post-closure care plans and cost estimates and financial assurance) provide sufficient support for such a conclusion.

E. Issue No.12: Did the applicant present adequate transportation information?

Requested Additional Conclusion of Law: The applicant presented adequate transportation information.

The evidence in the record regarding transportation, the Judges' recommendation in the PFD regarding transportation, that "Applicant presented adequate transportation information." (item 11 of Section IV.B of the PFD, at pp. 51-52), the Judges' recommendation that "the Commission find that Applicant met its burden of proof on each of the issues referred for hearing" (Sections I. and VI. of the PFD, at pages 1 and 68), and Proposed Findings of Fact 134-140 (regarding transportation information) provide sufficient support for such a conclusion.

F. Issue No.13: Are the proposed buffer zone and screening adequate?

Requested Additional Conclusion of Law: The proposed buffer zone and screening are adequate.

The evidence in the record regarding buffer zones and screening, including Ex. A-159, sec. 4.26; Ex. A-159, sec. 4.10; Ex. A-110; and Ex. A-240, the Judges' recommendation in the PFD regarding buffer zones and screening, that "The proposed buffer zones and screening are adequate" (item 2 of Section IV.B of the PFD, at p. 50), the Judges' recommendation that "the Commission

find that Applicant met its burden of proof on each of the issues referred for hearing” (Sections I. and VI. of the PFD, at pages 1 and 68), and Proposed Findings of Fact 141-145 provide sufficient support for such a conclusion.

G. Issue No.14: Should the permit term be for the life of the facility?

Requested Additional Conclusion of Law: The permit term should be for the life of the facility.

The evidence in the record regarding the permit term, the Judges’ recommendation in the PFD regarding the permit term, that “The permit term should be for the life of the facility” (item 7 of Section IV.B of the PFD, at p. 50), the Judges’ recommendation that “the Commission find that Applicant met its burden of proof on each of the issues referred for hearing” (Sections I. and VI. of the PFD, at pages 1 and 68), and Proposed Finding of Fact 150 provide sufficient support for such a conclusion.

III. PRAYER

Wherefore, premises considered, RLMS respectfully requests that the Commission’s final order in this matter include the findings of fact and conclusions of law as set forth herein, and that, if the order includes a requirement for groundwater monitoring at the Ponderosa Regional Landfill, that it do so by way of a permit special provision that states:

The permittee shall install the groundwater monitoring system and implement the Groundwater Sampling and Analysis Plan described and shown in Exhibit A-287, TCEQ Docket No. 2003-0729-MSW.

Respectfully submitted,

McELROY, SULLIVAN & MILLER, L.L.P.

Brent W. Ryan

Texas Bar No. 17469475

Thomas M. Weber

Texas Bar No. 00794828

P.O. Box 12127

Austin, Texas 78711

1201 Spyglass, Suite 200

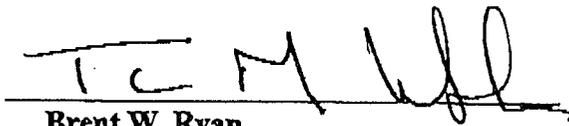
Austin, Texas 78746

Tel. (512) 327-8111

Fax (512) 327-6566

**ATTORNEYS FOR REGIONAL LAND
MANAGEMENT SERVICES, LTD.**

By: _____



Brent W. Ryan

CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of September 2008, a true and correct copy of the foregoing Exceptions of Applicant, Regional Land Management Services, Ltd. was sent via fax to the Administrative Law Judges and by email or fax to attorneys for the parties as shown below:

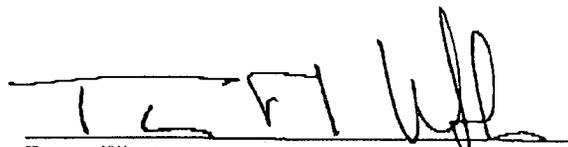
Richard Lowerre, Marisa Perales, and Eric Allmon
Lowerre & Kelly
44 East Avenue, Suite 101
Austin, Texas 78701
Fax: (512) 482-9346

Helen Currie Foster and John McFarland
Graves, Dougherty, Hearon & Moody, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
Fax: (512) 480-5681

James Allison and Eric Magee
Allison, Bass & Associates, LLP
402 West 12th St.
Austin, TX 78040
Fax: (512) 480-0902

Garrett Arthur, Attorney
Office of the Public Interest Counsel
Texas Commission on Environmental Quality
MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Fax: (512) 239-6377

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 SEP 29 PM 4: 59
CHIEF CLERKS OFFICE


Brent W. Ryan

McELROY, SULLIVAN & MILLER, L.L.P.
ATTORNEYS AT LAW

MAILING ADDRESS:
P.O. BOX 12127
AUSTIN, TX 78711

1201 SPYGLASS DRIVE
SUITE 200
AUSTIN, TX 78746

TELEPHONE
(512) 327-8111

FACSIMILE
(512) 327-6566

OIL & GAS, ENVIRONMENTAL, WATER RIGHTS, UTILITIES, LAND TITLE
ADMINISTRATIVE, TRIAL AND APPELLATE PRACTICE

FAX TRANSMITTAL

PLEASE DELIVER IMMEDIATELY

To/Fax No: Judge Carol Birch
Judge Carol Wood
Fax: (512) 475-4994
Fax: (512) 936-0730

LaDonna Castanuela, Chief Clerk
Fax: (512) 239-3311

From: Brent Ryan

Date: September 29, 2008

Re: **SOAH DOCKET NO. 582-04-0975**
APPLICATION OF REGIONAL LAND MANAGEMENT SERVICES, LTD.

CHIEF CLERKS OFFICE
2008 SEP 29 PM 4:59
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Client/Matter Number: 2150-01

This Transmission Consists of a Cover Page and 14 Pages.

WE ARE TRANSMITTING FROM A RICOH 3200L. IF YOU HAVE DIFFICULTY RECEIVING THIS TRANSMISSION, PLEASE CALL US AT 512/327-8111.

THIS FACSIMILE MAY CONTAIN CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED AND WHICH IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS FACSIMILE, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR COPYING OF THIS FACSIMILE MAY BE STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL SERVICE. THANK YOU.