TEXAS
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QUALITY

2008 MAR -7 PM 5:00

CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-06-3321
TCEQ DOCKET NO. 2005-0337-MSW

APPLICATION OF WILLIAMSON COUNTY FOR A PERMIT AMENDMENT TO EXPAND A TYPE I MUNICIPAL SOLID WASTE LANDFILL FACILITY; (PERMIT NO. MSW-1405B)	**§ § § § §**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

JONAH WATER S.U.D.'S EXCEPTIONS AND RESPONSES TO THE ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Jonah Water S.U.D. files these Reponses and Exceptions to the Proposal for Decision (PFD) of the Administrative Law Judges (ALJs) in this case.

Jonah disagrees with the Judges' PFD recommending that the Commission issue the Permit No. MSW-1405B to Williamson County and respectfully requests that the Permit be denied.

The Identity of the Owner, Operator, Applicant

The ALJs conclude that the Protestants' arguments that confusion results from the inclusion of WMTX on the permit is not grounds for denial of the permit because Judge Gattis's understanding of the relationship between Williamson County is what is important (p. 11). The ALJs point out that not only was Judge Gattis confused over legal definitions of operator, so was Roy Murray, sponsor of the Application. However, since under questioning Judge Gattis was able to accurately describe the relationship between

Williamson County and WMTX, the ALJs assume the confusion over legal terminology is irrelevant (p. 11).

Judge Dan Gattis is County Judge now. Will the next judge reach the same understanding that Judge Gattis currently has? What if s/he doesn't? If both the County Judge making the Application and the engineer sponsoring the Application are confused over the legal definitions that determine the identity of the Owner, Operator, and Applicant, then the lack of clarity has reached fatal proportions.

The Draft Permit

The ALJs reference the Health & Safety Code to demonstrate that a permit must identify the property owner and the operator (p. 12). Footnote 38 states: "While this definition contemplates an operator as a potential permittee, Williamson County is the sole Applicant here, so that the definition of "Site Operator" still applies only to Williamson County." Now if the "operator" so defined by the Health & Safety Code is a potential permittee and for that reason is required to be named on the permit, then a *contract* operator such as WMTX would not by such definition be required to be listed on the permit. Furthermore, no evidence in the record supports the claim that a *contract* operator's name should be on a permit application

We know that Williamson County is the sole Applicant because that is Judge Gattis's understanding. We know that the Health & Safety Code requires a permit to identify the property owner and the operator, operator being defined in such a way as to indicate "Site Operator." The ALJs conclude that since Williamson County is the sole Applicant, the definition of "Site Operator" applies only to Williamson County, yet they assert that both

entities—Williamson County and WMTX, the *contract* operator, must be identified in the permit (p. 13). On p. 15, the ALJs find that "Health & Safety Code 361.087(1) requires that the contract 'Operator' be disclosed on the permit." Yet in Footnote 38 on p. 12, the ALJs state that the referenced Health & Safety Code definition "contemplates an operator as a potential permittee." The operator referenced in the Health & Safety Code can't be both a contract operator and a potential permittee and therefore Health & Safety Code 361.087(1) cannot require that both entities, Williamson County, the potential permittee, and WMTX, the contract operator, be identified on the Draft Permit.

The confusion over legal terminology experienced by the County Judge and the Application sponsor appears to extend to the ALJs as well.

The ALJs acknowledge that removing WMTX from the Draft Permit would eliminate confusion and solve the problem. They report that Judge Gattis is not opposed to the removal of WMTX from the DraftPermit and that the ED does not take a position on the matter (p. 14). However, they are opposed to that solution because of a flawed understanding of Health & Safety Code 361.087(1). It is important to note that no examples of a contract operator being named on any other Permit have been adduced to support their position. Therefore, since all the parties to the case either require the removal of WMTX on the Permit or are neutral on the matter, and the findings of the ALJs regarding the requirements of Health & Safety Code 361.087(1) are seriously flawed and without supporting evidence, the inclusion of WMTX on the Permit should be grounds for its denial.

Land Use Compatibility

The arguments for land use compatibility include the following: 1) the surrounding land is primarily rural and agricultural, 2) Hutto's phenomenal growth is omnidirectional, and 3) Hutto's Growth Guidance Plan envisions institutional growth in the vicinity of the landfill. It is true that at the moment the surrounding land is primarily rural. However, it is worth noting that three of the Protesting groups are composed of citizens of the area who are opposed to the contemplated expansion of the landfill. It is clear that Hutto is experiencing phenomenal growth, and the ALJs state that "Mr. Worrall corroborated Protestants' evidence that Hutto has experienced tremendous growth" (p. 30). Such being the case, it is safe to assume that the surrounding land will not remain rural. Therefore, that the land is *presently* rural and agricultural does not support an argument for land use compatibility.

From his discussion with the Planning Manager for Hutto, Mr. Worrall concluded that Hutto's tremendous growth is omnidirectional (p. 29). However, SH130 and its access point, Chandler Road/University Drive, have just recently been completed. The ALJs refer to Mr. Worrall's testimony which establishes that he was unaware of University Drive as an access point to SH 130 (p. 30), an access point which will drive development to the north of Hutto along a west/east axis. They conclude the following:

> Although he may have been unaware of the University Drive access point to SH 130, he found SH 130 to be one of three primary reasons for Hutto's growth. So while he did not review "comprehensive data" on the impact of SH 130, he clearly captured its significance and impact on growth trends (pp.30-31).

However, Mr. Worrall clearly did not capture the significance and impact of the University Drive access point, of which he was unaware, even though his own testimony indicated that such access points are driving forces to growth (TR, p. 1885, *ll*, 15-22).

University Drive, even though unnamed by Mr. Worrall, will according to his own expert testimony drive development to the north of Hutto in the vicinity of the landfill.

The argument that because Hutto's Growth Guidance Plan envisions future growth around the landfill as institutional, those uses are compatible with the expanded landfill is easily disposed of. A Growth Guidance Plan is simply a vision. There are no zoning restrictions to enforce a reality. The ALJs refer to Mr. Worrall's acknowledgement that the existence of a school tends to encourage residential development, and HISD plans a school less than a mile from the site.

On p. 35 in a discussion of transportation, the ALJs assert that the expansion of the landfill "will result in a continuation of that traffic longer into the future, but it will not cause its increase." This assumes that the landfill will be limited to the County and its growth. However, there are no restrictions on where waste can come from. The present facility can accommodate the County for the next 25-50 years. The application for such a vastly expanded landfill indicates an intent to make this a regional—and perhaps beyond—landfill, to which the citizens of Williamson County have expressed their overwhelming opposition. Such a landfill would, of course, be an extreme detriment to development.

For these reasons and others, the Permit Application should be denied.

Intent

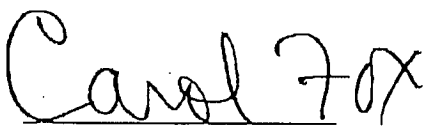
Statements or speculations about intent appear throughout the Proposal for Decision, although not all parties are scrutinized for intent. Jonah's primary intent can be clearly stated: to assure the safety of the water we distribute to our customers. The ALJs

conclude that TJFA's intent is competitive (p. 3, p. 13, footnote 42). Common sense would indicate that all parties to the case have an intent. Unfortunately, common sense has not been admitted to the record. On page 8, the ALJs assert that there is nothing sinister about this case, an interesting comment since no one in the record has suggested that there is. In discussing Steve Jacobs' inclusion of a certification, the ALJs speculate that it was *likely* necessary for various reasons, that uncertainty over 30 TAC 305.439B0's requirements *perhaps* explains the appearance of WMTX on the Application (pp. 18-19). However interesting to speculate on the intentions behind these actions, there is no evidence in the record to corroborate any such speculations. We are left to conclude that actions which confuse the identity of the Owner, Operator, Applicant, regardless of undeterminable intent, are grounds for the denial of the Permit.

Conclusion

Jonah Water S.U.D respectfully requests that the Commission reject the Administrative Law Judge's PFD .and deny the draft permit.

Respectfully submitted,



Carol Fox

Board Member, Jonah Water Special Utility District

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above instrument has been served upon Defendant as provided by the Texas Rules of Civil Procedure.

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COMMENTS: including coversheet