

SOAH DOCKET NO. 582-08-2186
TCEQ DOCKET NO. 2006-0612-MSW

APPLICATION OF	§	BEFORE THE STATE OFFICE
WASTE MANAGEMENT OF TEXAS, INC.	§	
FOR A MUNICIPAL SOLID WASTE	§	OF
PERMIT AMENDMENT;	§	
PERMIT NO. MSW-249D	§	ADMINISTRATIVE HEARINGS

APPLICANT WASTE MANAGEMENT OF TEXAS, INC.'S
REPLY TO EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
SUPPLEMENTAL PROPOSAL FOR DECISION

COMES NOW Applicant Waste Management of Texas, Inc. ("*Applicant*" or "*WMTX*") and, per 30 Tex. Admin. Code § 80.257(a), files this reply to the exceptions of Protestants and the Office of Public Interest Counsel ("*OPIC*") to the Administrative Law Judge's ("*ALJ's*") Supplemental Proposal for Decision ("*Supplemental PFD*") in the above-captioned matter. These parties' exceptions lack support in the evidentiary record and cannot be reconciled with the statutory and regulatory requirements applicable to WMTX's application and this remanded proceeding. Accordingly, Protestants' and OPIC's exceptions provide no basis for amending the ALJ's Supplemental PFD or any provision of the ALJ's revised proposed order ("*Revised Proposed Order*").

All of Protestants' and OPIC's exceptions concerning the limited, remanded issue of operating hours were fully addressed in WMTX's Closing Argument Regarding Operating Hours and Response to Closing Arguments Regarding Operating Hours. To the extent that Protestants attempt to broaden the scope of this remanded proceeding and except to portions of the ALJ's Supplemental PFD that concern issues other than operating hours, such exceptions add nothing new to the discussion regarding these issues – issues which were previously litigated in the initial contested case hearing, briefed by the parties, resolved by the ALJ, argued before the Commission, and decided by the Commission. Such exceptions are largely, if not entirely,

restatements of each party's prior closing arguments and exceptions following the initial contested case hearing. In fact, many of the arguments that these parties put forth this time around were taken verbatim from the respective party's prior briefs and exceptions following the initial hearing and merely repackaged and reargued on remand as "exceptions" to the ALJ's Supplemental PFD. The parties' repeated attempts to urge the very same arguments serve no constructive purpose.

WMTX will not compound the unnecessary burden on the Commission, the ALJ, and the parties by repeating its prior, prevailing arguments in response to Protestants' and OPIC's repetitious claims. Given that the arguments put forth by Protestants and OPIC in their exceptions have been fully briefed and argued by the parties, and thoroughly considered by the ALJ, they can be resolved by reference to the ALJ's PFD and Supplemental PFD and Revised Proposed Order and WMTX's closing briefs – those filed following the initial hearing, as well as those filed following the remanded proceedings. Accordingly, WMTX incorporates its closing briefs herein for all purposes and respectfully refers the Commission to those filings, as well as the ALJs' treatment of these issues in his PFD and Supplemental PFD and Revised Proposed Order.

CONCLUSION

For the foregoing reasons, and those set forth in WMTX's closing briefs, Protestants' and OPIC's exceptions to the ALJ's Supplemental PFD are not supportable and provide no basis for amending the ALJ's PFD, Supplemental PFD, or Revised Proposed Order. Accordingly, Applicant WMTX respectfully requests that the ALJ's Revised Proposed Order be modified as proposed in WMTX's Brief in Response to the ALJ's Supplemental PFD and issued by the Commission with those modifications.

Respectfully submitted,

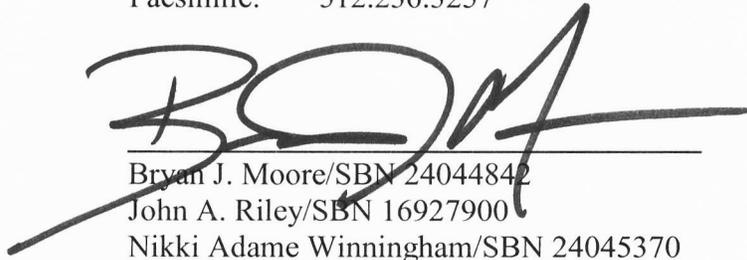
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing reply has been served on the following on this the 4th day of February, 2010:

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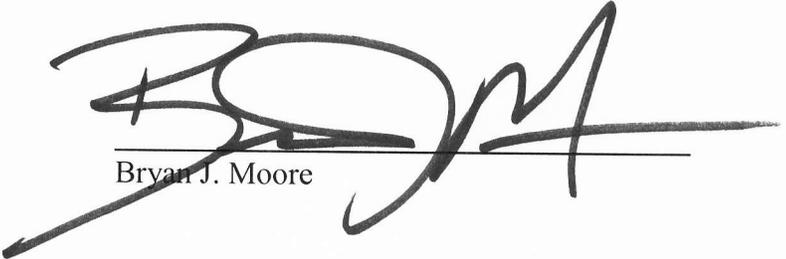
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