

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

APPLICATION OF WASTE
MANAGEMENT OF TEXAS, INC.
FOR MUNICIPAL SOLID WASTE
PERMIT AMENDMENT NO.
MSW-249D

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

20 FEB - 4 PM 3:37
OFFICE CLERK'S OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

CITY OF AUSTIN'S RESPONSE TO EXCEPTIONS
TO THE SUPPLEMENTAL PROPOSAL FOR DECISION

COMES NOW, Protestant, City of Austin ("City") and files this, its Response to Exceptions to the Supplemental Proposal for Decision and Order, and respectfully shows the following:

I. INTRODUCTION

The parties filed Exceptions to the Supplemental Proposal for Decision ("SPFD") on January 25, 2010. In this Response, Protestant City responds to the ED's and the Applicant's Exceptions and re-urges its Exceptions, as well as those filed by Travis County, NNC, OPIC, and TIFA, LP.

II. RESPONSE TO EXCEPTIONS

A. THE ED'S EXCEPTIONS TO THE SUPPLEMENTAL PROPOSAL FOR DECISION.

In the ED's Exceptions to the SPFD, the ED continues to impermissibly advocate for Waste Management of Texas, Inc. ("WMI" or "Applicant").¹ By recommending "the Commission approve the current operating hours for landfill operations and waste acceptance"², the ED is overstepping its boundaries of participating in the contested case hearing process solely

¹ 30 TAC §80.108(d),(e).
² ED at pg. 2.

to provide information to complete the administrative record.³ Contradicting itself, the ED goes on to state that the weight of evidence supports “upholding both findings of fact and conclusions of law regarding the ALJ’s recommendation to *reduce* operating hours.”⁴ Seeing as how it is impermissible for the ED to advocate, and how it is unclear if the ED is advocating for or against reduced operating hours, Protestant City requests that the ED’s Exceptions to the SPFD not be considered by the ALJ nor the Commission in making their determinations.

B. WMI’S RESPONSE TO THE SUPPLEMENTAL PROPOSAL FOR DECISION.

After having received another bite at the apple to present evidence as to why it should be allowed to operate outside the default hours of 30 TAC §30.135(a), WMI has the nerve to take exception with the ALJ’s recommendation that 100% of the reporting and transcription costs for the remanded hearing be allocated to WMI.⁵ WMI essentially has no other exceptions to make because the SPFD awards them the exact permit they requested from the TCEQ with no consideration or mitigation whatsoever towards the myriad of issues raised by the Protesting parties throughout these proceedings.

IV. CONCLUSION

Protestant City prays that the Exceptions filed by the Applicant and the Executive Director be denied. Protestant City re-urges its Exceptions and prays that, as they are not supported by the record, Findings of Fact 47, 48, 55, 56, 123, 124, 127, 131, 141, 145, 165, 167, 189, 192, 193, 195, 211, 214, 218, 219, 229, 231, 245, 246, 248, 249, 253, and Conclusions of Law Nos. 5, 7, 8, 9, 11, 28, 32, 37, 39, 42, 45, 46, 47, 48, 49, and 50 be modified or deleted in accordance with the above exceptions. Protestant City requests that the draft permit be denied.

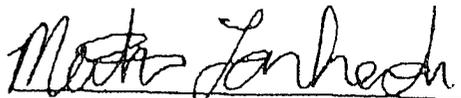
³ 30 TAC §80.108(d),(e).

⁴ (emphasis added) ED at Pg. 3.

⁵ WMI at pg. 1.

RESPECTFULLY SUBMITTED,

DAVID ALLAN SMITH, CITY ATTORNEY
ANNE L. MORGAN, CHIEF, LITIGATION DIVISION

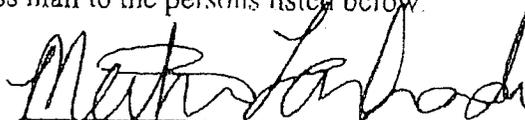


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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2010, a true and correct copy of the City of Austin's Exceptions in the Supplemental Proposal for Decision was served via facsimile, electronic mail, hand-delivery, e-service or regular first-class mail to the persons listed below.



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DATE SENT. 2/4/2010

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PLEASE DELIVER THIS FAX TRANSMISSION TO:

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- Paul M. Terrill
- Erich M. Birch and Angela K. Moorman
- Jim Blackburn and Adam Friedman
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REMARKS:

City of Austin's Response to Exceptions to the Supplemental Proposal for Decision

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