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June 1, 2009

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Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, TX 78753

Via Hand Delivery

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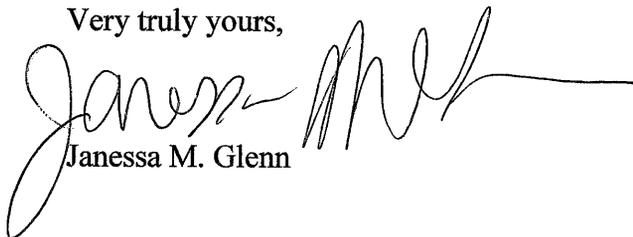
RE: Application by IESI for a New Type 1 MSW Permit; Proposed Permit No. 2332;
SOAH Docket No. 582-08-1804
TCEQ Docket No. 2007-1302-MSW

Dear Sir/Madam:

Enclosed for filing in the referenced cause is IESI TX Landfill L.P.'s Exceptions and Proposed Revisions to Proposal for Decision.

Please file mark the enclosed copy of the cover page and return it to the courier.

Very truly yours,


Janessa M. Glenn

JMG/pjp
Enclosures

cc: Marisa Perales (w/encl.)
Scott Humphrey (w/encl.)
Anthony Tatu (w/encl.)
Ron Olson (w/encl.)
Kerry Russell (w/encl.)

SOAH DOCKET NO. 582-08-1804
TCEQ DOCKET NO. 2007-1302-MSW

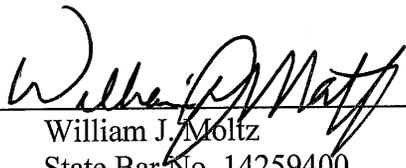
APPLICATION OF IESI TX LANDFILL § BEFORE THE STATE OFFICE
L.P. FOR A NEW TYPE 1 MSW PERMIT § OF
PROPOSED PERMIT NO. 2332 § ADMINISTRATIVE HEARINGS

IESI TX LANDFILL L.P.'S EXCEPTIONS AND
PROPOSED REVISIONS TO PROPOSAL FOR DECISION

Respectfully submitted,

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QUALITY

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TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

IESI TX LANDFILL, LP, (“IESI” or “Applicant”) the Applicant in this Proceeding for a Texas Commission on Environmental Quality (“TCEQ”) permit to develop and operate a Type I municipal solid waste landfill in Jack County, Texas in cooperation with the City of Jacksboro (the “Landfill”), respectfully presents these Exceptions to the honorable Administrative Law Judge’s (“ALJ’s”) Proposal for Decision (“PFD”) issued on May 5, 2009.

I. INTRODUCTION

Several years ago, the TCEQ’s Executive Director officially determined on behalf of the agency that IESI’s permit application was Administratively and Technically complete and contained adequate information for the agency to conduct a thorough review and analysis of compliance with the TCEQ’s municipal solid waste regulations. The present hearing record demonstrates that IESI carried its burden of proof on every applicable design and operating requirement contained in those regulations. Even the ALJ, Sarah Ramos, found that the Applicant properly conducted its site-specific subsurface investigation, properly characterized the groundwater depth and flow at the site, applied proper data to surface water modeling, met the specific design and operating requirements contained within the regulations, and otherwise met its burden on multiple virtually uncontested issues referred by the Commissioners. Despite the foregoing Judge Ramos ultimately recommends that the Commissioners deny the requested permit because the Application as submitted to the agency was not “complete” – an issue that was not specifically referred by the Commissioners to the State Office of Administrative Hearings (“SOAH”), and a recommendation that contradicts an irrevocable determination previously made by the agency under TEX. HEALTH & SAFETY CODE § 361.068(b).

The ALJ's *sua sponte* determination that IESI had not submitted a complete permit Application appears to have evolved from referred issues concerning the adequacy of geologic and hydrologic information in the Application, including the identification of wells and springs. Rather than evaluating the adequacy of such information in the context of established rule requirements, agency practice, and industry standards focused on designing a landfill that is protective of the quality (rather than the availability) of groundwater, the ALJ appears to conclude that additional sources of information (*e.g.*, area landowner interviews and inspections of neighboring properties; publications concerning non-major/minor aquifers and groundwater not present on the site) must be consulted and specifically discussed within the Application for the purpose of assessing the Landfill's potential impact on future groundwater availability. Such an issue is beyond the scope of these proceedings and outside the agency's jurisdiction.

Specifically, the ALJ bases her conclusion that IESI did not submit a complete Application on three factors: First, she asserts that the Applicant did not adequately identify and discuss all springs and water wells within one mile of the proposed facility's boundaries (by failing to conduct a door-to-door verbal survey, which would yield technically unreliable information that would not affect the Landfill design). Second, she asserts that the Applicant did not use the term "regional aquifer" when describing certain subsurface strata even though (1) that strata is highly impermeable and forms a physical barrier to downward migration at the Landfill site, (2) is not "regional" according to recognized and typically relied upon published sources, (3) only supports marginal groundwater production in limited off-site areas, and (4) nothing in her preferred description of the strata would result in any alteration to the design of the Landfill. Finally, the ALJ asserts that the Applicant did not describe the possible effects that dewatering may have on recharge areas within five miles of the site (which relates to groundwater

availability and would not affect the Landfill design from the relevant environmental protection standpoint).

As briefly outlined above and as further discussed below, the several factors underlying the ALJ's *sua sponte* determination that the Applicant did not submit a complete permit Application are not properly supported by the evidentiary record. More importantly, each factor is based on incorrect interpretations of governing statutes and regulations, the agency's policies and practices, and the issues actually referred to SAOH by the Commissioners. Irrespective of the questionable foundation for such a determination, the ALJ's ultimate conclusion is legally precluded by TEX. HEALTH & SAFETY CODE § 361.068(b).

Even from a practical perspective, the ALJ's proposed findings would impose an impossible standard on permit applicants. For example, despite overwhelming evidence from the Applicant's experts and the Executive Director's staff regarding the appropriate methods and standard of care that has always been and should continue to be applied in identifying water wells, the ALJ establishes a brand new standard - one that requires an applicant's consultants to traverse the entire area, trespass on people's property and/or knock on doors of area residents to ask probing questions about their water resources (in gratuitous support of a landfill project they are most likely inclined to oppose).

Each concern expressed by the ALJ is ultimately just a criticism of the textual descriptions in the Application and the Executive Director's determination that the Application was Technically and Administratively Complete when submitted to the agency. Remarkably, when both the City of Jacksboro and IESI offered to supplement certain hydrogeological descriptions in the Application, both prior to the hearing on the merits and during the hearing itself in response to questions raised by the Protestants, the ALJ steadfastly refused to let either

entity do so. Yet the recommendation for denial is based in some measure on the absence of surplus verbiage the ALJ refused to admit into evidence during the hearing.

The Executive Director properly applied the long-standing and appropriate policy with regard to well identification (*i.e.*, consult readily available governmental records and literature and perform a non-intrusive roadway reconnaissance) Nothing prior to or during the hearing indicated the necessity for any more intrusive survey. Even if IESI had undertaken such an unprecedented and potentially dangerous task, the only effect would have been to add another paragraph or two of prose to the Application and some additional data points based on potentially unreliable and inaccurate lay statements about off-site conditions. The ALJ found that the Applicant's actual on-site subsurface investigation was properly conducted, identified the uppermost aquifer, established the direction of groundwater flow and migration pathways, and otherwise met applicable design requirements for landfills.¹ Adding every bit of supplemental information the ALJ believed could have been added would change nothing about the final design and construction of the proposed landfill from an environmental protection standpoint.

The ALJ appears to have construed the Commission's referred issues regarding the adequacy of geologic and hydrologic information in the Application as an invitation to revisit the Executive Director's prior declaration of Administrative and Technical Completeness. Upon doing so, the ALJ established a new requirement that information necessary to assess potential impacts to groundwater availability, above and beyond the protection of groundwater quality, must be thoroughly developed in the original submittal. In this respect that the ALJ misinterprets

¹ The Applicant is not contending there are absolutely no circumstances where the Executive Director may request that an Applicant do additional analysis and/or provide additional information relating to area groundwater conditions. Where there is insufficient existing and reliable data to design a landfill in well records, other sources may be appropriate to investigate although the use of unreliable hearsay data from interviews would not seem to be such a reliable source of data. In this case, however, the data gathered by the Applicant and reviewed by the Executive Director's staff was more than adequate.

TCEQ statutory, regulatory and policy requirements and establishes new burdens that will affect not only this Application, but also the applications for all future Landfills in the State of Texas. The TCEQ should revise the ALJ's proposed findings and conclusions for reasons of law and policy and issue the requested permit based on the facility's demonstrative capability to protect the quality of groundwater as required in the agency's municipal solid waste regulations. The specific bases for these revisions are discussed below.

II. EXCEPTIONS TO PROPOSAL FOR DECISION

The ALJ issued her PFD on May 5, 2009, proposing that IESI's Application be denied. The recommendation of denial explicitly states that it is based on Judge Ramos's conclusions that the Application failed to: (1) adequately identify and evaluate all springs and water wells within one mile of the proposed facility's boundaries; (2) properly identify a regional aquifer; and (3) properly identify the impact of the landfill on recharge areas within five miles of the site. For clarity, these issues are discussed separately below.

In addition, "Attachment A" to these Exceptions identifies, by number, the individual Proposed Findings of Fact and Conclusions of Law objected to and provides additional clarifying findings on certain topics. Also included in Attachment A is a draft Order for the Commission's convenience in adopting proper Findings of Fact and Conclusions of Law.

A. The Applicant properly identified and evaluated nearby wells and springs

The Applicant excepts to Proposed Findings of Fact Nos. 126, 128 through 137 concerning identification and evaluation of water wells and springs. The Commission should adopt instead those Findings of Fact proposed by the Applicant, Nos. 141, 142, 149, 152, and 153. In addition to the discussion below, please also see Attachment A for the individual exceptions.

1. Water Wells

As referred to SOAH by the TCEQ, one issue presented is whether the “application adequately identified and evaluated all ... water wells....” The Application identified water wells within 500 feet of the proposed site and within 1 mile of the permit boundary, as required by TCEQ rules at 30 TEX. ADMIN. CODE § 330.53(b)(8)(E) and § 330.56(d)(4)(J).² The PFD acknowledges that these wells were identified by both conducting a search within applicable regulatory agency records and a “on the ground” visual check for evidence of active water wells.

Michael Snyder, a licensed geologist, former senior geologist for the Solid Waste Program for the Texas Department of Health (a predecessor division of the Texas Water Commission), and an experienced expert in hydrogeology, oversaw the water well search.³ The Application properly identifies the located water wells.⁴ The record evidence establishes that Mr. Snyder exercised the proper standard of care to locate water wells in the area. He used a combination of reviewing available commercial and public records and personal observation of those wells sites visible from nearby roadways.⁵

Dr. Charles Kreitler, expert geologist and hydrogeologist, testified that the Applicant’s evaluation and identification of water wells complies with applicable TCEQ requirements.⁶ Mr. John Worrall, a land use planning expert, testified that this identification fulfills the water well identification requirements of the applicable TCEQ rules addressing land use issues found at 30

² App. Ex. 100 Vol. 1, Part II, p. II-12; Appen. IID, Figure IID.1; Vol. 2, Attach. 4, Appen. 4A., Figure 4A.5; Vol. 2, Part III, Attach. 4, p. 4-6, Table 4-3, and Figure 4A.5; *see also* App. Ex. 1, Welch Direct Testimony at p. 26/lines 11 - 15); (App. Ex. 13, Worrall Direct Testimony at p. 11/lines 11 - 20.

³ App. Ex. 7, Snyder Direct Testimony at p. 8/line 14 - p. 9/line 5; Transcript Vol. 2, p. 33/lines 1-16, Snyder Cross Examination; App. Ex. 100 Vol. 1 Part II, p. II-12

⁴ App. Ex. 100, Vol. 2, Part III, Attach. 4, p. 4-6, Table 4-3, and Figure 4A.5.

⁵ App. Ex. 7, Snyder Direct Testimony at p. 8/line 14 through p. 9/line 5; Transcript Vol. 2, p. 33/lines 1-16, Snyder Cross Examination; App. Ex. 100 Vol. 1 Part II, p. II-12.

⁶ App. Ex. 9, Kreitler Direct Testimony at p. 8/line 4 - p. 10/line 2.

TEX. ADMIN. CODE § 330.53(b)(8)(E).⁷ Gale Baker, on behalf of the Executive Director of the TCEQ testified that the well search conducted by Mr. Snyder was adequate and that the Applicant met its burden of proof.⁸

The applicable TCEQ rules require a search of the available public records (30 TEX. ADMIN. CODE § 330.56(d)(4)), and Mr. Snyder did just that, plus went beyond the requirement of the rule in conducting a “windshield” check. The record clearly indicates that the Executive Director believed the information presented was adequate when the staff did its technical review, determined that the Application was Technically Complete, and issued a Draft Permit and continues to believe the information was adequate.

Despite this overwhelming evidence, the ALJ found the Applicant failed to conduct an adequate search of water wells. The ALJ based this finding on the testimony of protestant’s witness Dr. Lauren Ross, who is not a geologist and in fact has worked on only one landfill – in Paris, Texas in 1984 – in her entire career.⁹ Dr. Ross included as part of her direct testimony a “chart” allegedly listing various water wells in the area that were not identified in the Application.¹⁰ This chart was prepared by an individual member of the Protestant group, who in turn relied on information told to her by others.¹¹ The people who allegedly have at least some degree of personal knowledge of the information contained on the chart did not testify at the hearing. Dr. Ross agreed that the information came from someone else, who in turn relied upon verbal information from yet another individual.¹²

⁷ App. Ex. 13, Worrall Direct Testimony at p. 11/lines 11 – 20.

⁸ Transcript Vol. 7, p. 28/line 17 – p. 29/line 2.

⁹ Transcript Vol. 6, p. 93/line 23 through p. 94/line 10, Ross Cross Examination

¹⁰ Protestant Ex. 8G.

¹¹ Transcript Vol. 6, p. 120/line 21 – p. 121/line 13 Ross Cross Examination

¹² Transcript Vol. 6, p. 120/line 21 – p. 121/line 13 Ross Cross Examination

The referenced well information was eventually offered into the record of the hearing merely as illustrative of the type of materials Dr. Ross relied upon in developing her opinions.¹³ As obviously unreliable hearsay evidence and pursuant to Rule 703 of the Texas Rules of Evidence, this information is not part of the record evidence in this case for the alleged “factual” assertions it contains. It is essentially no evidence at all of whether these identified wells exist or do not and is certainly not evidence of the technical characteristics of any such wells. Instead, it is merely a partial basis for Dr. Ross’ opinion that the Applicant’s consultants should have interviewed local residents and obtained further information despite decades of TCEQ policy and precedent to the contrary. Yet, inexplicably, the ALJ draws upon specific “factual” statements within this highly suspect and legally meaningless chart as the basis for her proposal that the Applicant here, and supposedly in every other municipal solid waste permit proceeding, must themselves go door-to-door collecting questionable and unreliable lay statements from area landowners.

Even assuming for illustration that there are several wells within one mile of the permit boundary that were not listed in the Application, (*e.g.*, because proper water well records were never filed with the State of Texas), that absolutely should not be a death knell for this Application. The question ultimately is the protectiveness of the landfill and the appropriate method to gather well data. The methods used by the Applicant here are those relied upon in the industry for years, approved by the TCEQ staff and the Executive Director. The PFD proposes a new and more burdensome method based on testimony from a witness with virtually no experience in the landfill industry.

¹³ Transcript Vol. 6., p. 92/line 5 through p. 93/line 10

When the Commission referred the issue to SOAH as to the “adequacy” of certain aspects of the Application, it certainly did not intend to refer to SOAH the question as to whether TCEQ’s regulations, precedent, and policy were adequate. Instead, the referral clearly was for a proposal as to whether or not the Application complied with existing regulations, precedent, and policy and, therefore, presented a landfill that was designed and would be operated to be protective of public health and the environment. The PFD as it stands seeks to impose new, different and ill advised policies and procedures.

The Applicant and the City of Jacksboro, with the full support of the Executive Director, contend that an Applicant satisfied its burden of proof by conducting a search of the public records of the State of Texas and further by doing a visual reconnaissance along public roads in the area. Were there any valid reason to vary from this long established procedure, the Executive Director would certainly have requested additional information, (although such additional information would probably not be gathering door-to-door hearsay statements in any case). There is good reason the TCEQ does not urge or even condone the gathering of data in the manner espoused by the Protestants and by the ALJ in this case. Not only is such an approach potentially dangerous to the well being of those attempting to collect such data, it adds nothing to the design or analysis of the landfill while, at the same time, adds unreliability and generates data that, as a matter of law, is hearsay and not suitable to be used to determine any facts. The great majority of people whose wells are not properly registered with the State likely have no idea of the depth where their wells are completed, let alone the geologic characteristics. That is not to say, however, that they would be unwilling to hazard a guess based on who knows what. Additionally, any representative from a landfill project is not likely to get a warm reception when he or she shows up to question neighbors about their water supply. Apart from the physical

danger to the representative, even if residents knew any details of their wells they would have little motivation to provide accurate information to the landfill representative.¹⁴

Perhaps recognizing the difficulty of knocking on doors, the ALJ suggested that the Applicant could have simply asked the City whether the residents nearby the Landfill have access to water provided by the City. This misses the point entirely. Mr. Snyder testified over and over again that he designed the landfill to protect the groundwater used by any nearby water well, whether there are five or fifty or more.¹⁵ Thus, even if there are water wells within a mile of the permit boundary that are not listed in the Application, it is incorrect to say that the Applicant failed to consider the potential for additional water wells in designing a protective landfill. In several instances, the PFD focuses on the form - was every possible well identified regardless of the accuracy or usefulness of the data - verses the substance - were TCEQ's policy, precedent, and regulatory requirements followed and will the Landfill be protective.

The issue referred by the TCEQ was whether the well identification and consideration was "adequate" - not exhaustive and voluminous or complied with a standard different than that applied by the TCEQ. The overwhelming and only reliable, credible evidence establishes that it was more than adequate. As a practical matter, the number of water wells within a certain distance of any proposed or existing landfill will always be fluid in nature as new wells are drilled and existing wells are closed. Where the well driller gathers the required data and reports

¹⁴ The Protestants would also require that an applicant identify water wells not just within 1 mile of the permit boundary, but within 1 mile of the property boundary - in this case all of the approximately 652 acres IESI owns, including the driveway leading to main part of the property. (Transcript Vol. 6, p. 122/line 19 - p. 123/line 8; p. 124, lines 11-14, Ross Cross Examination). The applicable TCEQ rule requires identification of the aquifers for the water wells within one mile of the "property boundaries of the facility." 30 TEX. ADMIN. CODE § 330.56(d)(4)(J). Interpreting this TCEQ provision to mean within 1 mile of all the property owned by the Applicant is nonsensical. For any given landfill application, the amount of property the applicant owns will vary greatly, and may far exceed the actual facility boundaries or may not. Accordingly, the property boundary is not a relevant starting point. To the extent the PFD purports to adopt this standard, it is complete unworkable, and the Applicant would urge the TCEQ to make clear that this is not the standard of care.

¹⁵ See, for example, Transcript Vol. 2 p. 89/line 25 - p. 90/line 21; p. 95/line 25 - p. 96/line 2 Snyder Cross examination.

his/her activities and findings to the State as required, that reliable data will be available in the public records and will be reasonably relied upon pursuant to TCEQ's policy and precedent. An Applicant and the TCEQ can then rely upon this data to compile a snapshot in time showing accurate information relating to the water wells that are discernable through efforts that comply with that reasonable and appropriate standard of investigation.

IESI designed and proposed a landfill which is protective of all nearby water wells, no matter how many there may be, in compliance with TCEQ rules, policy, and precedent,. The Applicant used established, professional standards of care to collect reliable data of water sources, coupled with a professional evaluation of that information. The PFD proposes that this is not enough. The only possible use of the additional, unreliable information that the ALJ would require of this Applicant (and all future applications) is not for determining appropriate landfill location and design or environmental protection but, instead, use as a starting point to determine the mere potential existence of water supply wells as part of an adjudication of groundwater rights. The PFD seems to state that such rights should be addressed in a Technically Complete application although even the Proposal does not venture to propose any standards for such an adjudication. This is true despite the fact that groundwater availability and competing groundwater rights are not in any way addressed within the applicable TCEQ regulations relating to municipal solid waste landfills. As will be discussed in greater detail below in subsection (C), such a concern is not reasonable in this case and, more clearly and importantly, is not within the jurisdiction of the TCEQ.

2. Springs

TCEQ Rule at TEX. ADMIN. CODE § 330.53(b)(8) requires an application to include information concerning the use of the land surrounding a proposed landfill. That rules specifies various items that must be included – growth trends, zoning and proximity to churches, to name a few. What

Chapter 330 does not specifically require is a list of springs within one mile of the proposed landfill site, as the PFD seems to imply.

It is true that one of the issues referred by the TCEQ for consideration was: “[d]oes the application adequately identify and evaluate all springs...” without reference to a particular distance from the Landfill permit boundary and without reference to any specific regulatory requirement. Thus, the question becomes, did the Applicant meet the standard of care to adequately identify and evaluate all springs such that the proposed Landfill could be properly designed.

The record evidence shows that, in order to determine if there were any springs in the area surrounding the proposed Landfill, Mr. Snyder consulted the widely accepted and relied upon reference work *Springs of Texas*.¹⁶ Even Protestant’s expert agreed that this was the proper publication to consult and rely upon.¹⁷ That publication identifies only one spring in the area of the Jacksboro Landfill, but specifically states that it is a historical spring that “failed early” and no longer exists.¹⁸ Accordingly, relying upon and consistent with *Springs of Texas*, the Application indicates that there are no known springs in the area of the landfill.¹⁹ In any event, Mr. Snyder testified that he designed the Landfill to be protective of any nearby springs that might exist.²⁰ Certainly the Applicant met its burden of proof on this issue. The Applicant consulted the most widely used reference material on the subject of springs, relied upon that publication, and designed a Landfill that would be protective of springs regardless.

The ALJ ignores this evidence and instead recommends denial of the Application based on the testimony of a nearby landowner (who has no expertise in hydrogeology) that he has a

¹⁶ Gunnar Brune, Texas A&M University Press, 2002.

¹⁷ Transcript Vol. 6, p. 125/line 24 – p. 126/line 7 Ross Cross Examination

¹⁸ Transcript Vol. 2, p. 47/line 20 – p. 48/line 12, Snyder Cross Examination

¹⁹ App. Ex. 7, Snyder Direct Testimony at p. 13/line 9 through line 17.

²⁰ Transcript Vol. 2, p. 50/lines 9 through 23.

“spring” on his land. This creates a new and completely unattainable standard of care for an applicant. Essentially, if an Applicant’s expert uses reliable and verifiable information to identify and evaluate springs in the surrounding area, that effort is not “adequate” and warrants denial of a permit so long as a potentially biased lay-person testifies that he believes there is a “spring” on his land. As a matter of policy, this cannot be the basis for a denial of a permit.

The Applicant does not question the possibility of one or more pools of water on the neighboring property owned by Mr. Curtis Benson that do not go dry (and which were expanded by unpermitted human excavation and damming).²¹ That does not mean there are “springs” on the property as that term is used in TCEQ regulations. As the record evidence showed, the “spring” which Mr. Benson described and located is clearly not an outcrop of any of the aquifers of concern in this case.²² No expert in this case asserted that there was an aquifer at the location and elevation of the pools Mr. Benson described because there is no way, hydraulically speaking, that any aquifer of concern could be the source of the upgradient water in the pools described by Mr. Benson. Rather than resulting from what a hydrogeologist would refer to as a “spring”, these pools likely result from what is accurately referred to as “seeps”. As Mr. Benson testified, the water flows out of the side of the hill.²³ This is characteristic of a “seep” which occurs on hillsides all across Texas. All one need do is observe the excavations along public roads throughout the non-arid portions of Texas to spot such seeps and the resulting pools of water. Not being a hydrogeologist, however, Mr. Benson refers to water flowing from a hillside as a “spring”. The TCEQ’s rules do not impose any obligation to identify what are accurately referred to as seeps.

²¹ Transcript Vol. 4, p. 70/line 13.

²² Transcript Vol. 8, p. 153/lines 11 – p. 154/line 19, Snyder Rebuttal; Transcript Vol. 8, p. 200/line 3 – p. 210, line 15, Kreitler Rebuttal).

²³ Protestant Ex. 4, p. 2 lines 31 – 37; Transcript Vol. 4, p. 70/lines 7 – 16, Benson Cross-Examination.

Ultimately, whether or not the pools of water on Mr. Benson's property indicate what a hydrogeologist would call a "seep" or what Mr. Benson would call a "spring" is not what is important. What is important to understand is that these pools of water do not call into question the groundwater characterization presented in the Application nor the propriety of the design. Mr. Benson's water holes simply do not present any evidence of a threat to groundwater in the area of the Jacksboro Landfill and the ALJ does not hypothesize any. This was further confirmed by Dr. Charles W. Kreitler, who testified that the Applicant's evaluation of springs meets TCEQ requirements, and Mr. Mike Snyder who testified that he was conservative and cautious in his design of the facility so it will be protective of the groundwater in the area, whether springs were identified in that groundwater or not.²⁴ Protestant's expert witnesses could not connect these pools to any threat to groundwater, other than to just generally claim their existence. Had there been any significant springs in the area of the Landfill, those springs would have been described in the reference *Springs of Texas*.

The PFD further confuses this issue by suggesting that the Application does not contain correct information about springs because the Applicant "misread" *Springs of Texas* to locate nearby springs. First, there is absolutely no evidence to support a finding that the Applicant "misread" the publication. As is true in virtually all contested TCEQ cases before SOAH, the Applicant prefiled Mr. Snyder's written direct testimony prior to the actual hearing. When identifying and adopting his pre-filed written testimony during the hearing and before that written testimony was placed in the record of the proceeding, Mr. Snyder identified and corrected a typographical error. The written testimony, as pre-filed, stated "[t]here are no

²⁴ App. Ex. 9, Kreitler Direct Testimony at p. 8/line 4 through p. 10/line 5; Transcript Vol. 2, p. 50/lines 9 through 23.

springs in the Jack County area.”²⁵ At the outset of his live testimony, Mr. Snyder corrected that error so that the statement as it appears in the record is “[t]here are no springs in this area of Jack County.”²⁶ In other words, he testified that in the area directly surrounding the Landfill, there are no springs. Virtually every witness in this case routinely made such corrections to prefiled written testimony as they do within with most other TCEQ cases before SOAH. On cross-examination, Mr. Snyder explained that there are springs in every county in Texas, and anyone that says otherwise is very likely wrong.²⁷ Inexplicably, Judge Ramos ignored the actual and correct record evidence, and instead relied upon a typographical error in Mr. Snyder’s pre-filed testimony, which he corrected. Unquestionably, the only spring historically identified in the area of the Jacksboro Landfill by the *Springs of Texas* “failed early” and no longer exists.²⁸ That is exactly what the Application states.

Again, as with alleged nearby wells, the ALJ makes no finding that the water quality in Mr. Benson’s water holes will in any way be adversely impacted by the Landfill. In fact, the record shows such contamination is absolutely impossible due to the obvious topography in the area. As Dr. Kreitler testified, in order for the seeps on Mr. Benson’ property to be impacted, the water would have to flow through a valley, and then up a hill and back down the other side and find itself upgradient.²⁹ Instead, the ALJ seems to imply that groundwater rights are somehow in question in this proceeding and Mr. Benson’s water holes could dry up due to construction or operation of the Landfill. As was mentioned previously and will be discussed in greater detail

²⁵ Transcript Vol. 2, p. 7/lines 8 - 19, Snyder Direct.

²⁶ *Id.*

²⁷ Transcript Vol. 2, p. 45/line 13 through p. 46/line 2.

²⁸ Transcript Vol. 2, p. 47/line 20 – p. 48/line 12, Snyder Cross Examination

²⁹ Transcript Vol. 8, p. 208 line 13 through p. 210 line 15, Kreitler Rebuttal.

below, such a groundwater rights concern is not reasonable or appropriate in this case, was not referred to SOAH for consideration, and is beyond applicable TCEQ jurisdiction and regulations.

B. The Application properly identifies and describes the “regional” aquifer.

The Applicant excepts to Proposed Findings of Fact Nos. 139 through 142 concerning identification and description of the “regional” aquifer. The Commission should adopt instead those Findings of Fact proposed by the Applicant, Nos. 109 through 114. In addition to the discussion below, please see Attachment A for a discussion of the exceptions individually.

The regulations require an applicant to describe “the regional aquifers in the vicinity of the facility based upon published and open-file sources.” 30 TEX. ADMIN. CODE § 330.56(d)(4). In compliance with that rule, Mr. Snyder relied on a well known and widely used publication, *Aquifers of Texas* (published by the State of Texas), which lists and describes all of the major and minor aquifers of Texas.³⁰ Even the experts for the Protestant, Mr. Chandler and Dr. Ross, recognize that publication as authoritative and acknowledge that it was reasonable for Mr. Snyder to rely on the publication.³¹ *Aquifers of Texas* lists the Trinity as a major aquifer in the vicinity, and Mr. Snyder properly described the Trinity in the Application.

It is important to note that the specific TCEQ regulation in question relates to “*regional aquifers*”, not every source of water in the vicinity of a landfill. Hence, TCEQ policy and precedent is to rely on Springs of Texas and its listing of “major” and “minor” aquifers in all areas of Texas. The Applicant did indeed describe and account for the Pennsylvanian formation as it underlies the site and the ALJ agrees with that description and the protectiveness of the design with respect to the Pennsylvanian. The only issue, therefore, is whether or not one would characterize the Pennsylvanian as “regional”. Hardly a distinction worthy of denying a permit to

³⁰ Transcript Vol. 2, p. 59/lines 4-10, Snyder Cross Examination.

³¹ Transcript Vol. 6, p. 100, Ross Cross Examination; Vol. 5, p. 111, Chandler Cross Examination.

an environmentally protective landfill. The Executive Director and all testifying experts agreed that the State publication *Aquifers of Texas* is perfectly reasonable to base the determination as to whether any particular aquifer is significant enough to be termed “regional”. Even Pierce Chandler, one of the protestant’s primary experts, when questioned about the difference between a local and regional aquifer, explained that the “major” and “minor” aquifers listed in *Aquifers of Texas* are “normally considered the so-called regional aquifers of Texas.”³² Neither the Pennsylvanian formation nor any of the various substrata within that formation are mentioned anywhere in that authoritative publication. While some strata of the Pennsylvanian do contain water in some parts of Jack County, a proposition with which Applicant never disagreed, it is simply not a “regional aquifer”.

Despite no mention of the Canyon strata in *Aquifers of Texas*, the ALJ proposes that the Applicant should have described the Canyon strata of the Pennsylvanian as a regional aquifer. This conclusion is apparently based on a report (“Report 308”³³) on groundwater in Jack County. According to Report 308, many residents of Jack County obtain water from the Canyon Group. But the fact that some people obtain water from a broad geologic formation does not make that formation a “regional aquifer.” The water in the Canyon Group is of relatively poor quality, erratic and discontinuous.³⁴ The erratic and discontinuous nature of the water pockets make it virtually impossible to map the water occurrences in the Canyon; in fact the author of Report 308 declined to even attempt to map the water because any such map would be misleading.³⁵ The

³² Transcript Vol. 5, p. 150/lines 17-18, Chandler Cross Examination.

³³ Occurrence and Quality of Groundwater in Jack County, Texas (Report 308).

³⁴ (See, e.g., Transcript Vol. 2, p. 59/lines 4-15, Snyder Redirect and sources cited therein; Vol. 6, p. 104, Ross Cross Examination).

³⁵ Transcript Vol. 5, p. 115/line 10 through p. 116.line 9, Chandler Cross Examination.

Canyon strata of the Pennsylvanian is simply not a regional aquifer, and the Application is not deficient in any manner for not identifying the Canyon Group as such.

The only real distinction between what the Protestant urged as compared to what the Applicant, the City, and the Executive Director assert centers around whether or not the Pennsylvanian system underlying the proposed Landfill should have been described in the verbiage of the Application as an “aquiclude” *under the site* or a “regional aquifer” *in the area of the site*. For purposes of analysis of the Landfill site, the Applicant, the ALJ, the City, the Executive Director, and Protestant’s witness Dr. Ross all agree the Pennsylvanian forms a very low permeability barrier immediately under the landfill. It is not reasonably disputed, therefore, that there is an aquiclude under the location of the proposed landfill. This is critical to the landfill design in that such an underlying aquiclude prevents downward migration of anything from the landfill into any potentially water bearing strata below. When discussing the site geologic stratigraphy, therefore, Mr. Snyder and Dr. Kreitler, both expert hydrogeologists, testified that the Pennsylvanian was properly characterized in the Application as an aquiclude with respect to the Landfill.

Even though she agreed with the Applicant’s site-specific characterizations, the ALJ essentially adopts the Protestant’s argument that because the Pennsylvanian formation is a water-bearing unit in some other locations, the Applicant should have described that formation in more detail as a regional aquifer in its groundwater characterization. This is largely an academic discussion that does not affect the site-specific hydrogeological investigation or the design of the groundwater protection systems.

The actual site-specific investigation data shows the proper direction of groundwater flow. The PFD agrees that the Applicant correctly identifies the direction of water flow. The Landfill's groundwater monitoring system is designed based on the site-specific data. The Applicant's site specific data on groundwater is not contested except for a few musings here and there by the Protestant's witnesses. The ALJ agrees in the PFD that the site specific subsurface investigation was adequate. She further agrees that the Applicant has met its burden of proof that the Landfill was properly evaluated and designed to ensure groundwater protection, with the only exception being the "possibility" that a contaminant could somehow find its way through the liner system from the side of the landfill into some shallower sands. The ALJ suggest that her residual concern could easily be addressed by the addition of monitoring wells screened into those sands.

The TCEQ's rules are meant to ensure that landfills are designed and operated in a manner that is protective of groundwater quality. The PFD in this case suggests denial based on a perceived failure to describe an on-site aquiclude as a "regional aquifer." It would be bad public policy for the TCEQ to deny a landfill application - not because of insufficient site-specific subsurface investigation or improper landfill design - - but because the original application did not contain as much detail as a protestant would have liked on a particular geological stratum not characterized by recognized publications and experienced hydrogeologists as a true "regional" aquifer.

Denial of the Application based on the "failure" of the Applicant to more fully discuss the Pennsylvanian in the Application is particularly disturbing given that both the City and IESI attempted to offer clarification on this very issue well prior to and during the hearing on the merits and were repeatedly denied that opportunity by the ALJ. The City of Jacksboro requested that the Applicant go beyond what is required by the regulations and what is reasonably

necessary to design a groundwater monitoring system by more fully describing the Pennsylvanian strata in off-site areas of Jack County. Even though the additional verbiage was not necessary to demonstrate protectiveness and did not require any change to the facility design IESI agreed and prepared a short supplement to the Application further describing the Pennsylvanian. The City of Jacksboro then filed a *Motion for Leave for Applicant IESI TX Landfill, LP to Supplement Permit Application No. 2332* on September 26, 2008 requesting that the ALJ allow the brief supplement to become part of the Application. The City stated on the record that the reason for the supplement was to provide its citizens with as much information as possible in the consolidated Application document. The Protestant objected to the City's request that IESI address those very Protestant's concerns in the Application, and the ALJ denied the City's motion.

Later, during the hearing itself, the City of Jacksboro sought to have the design geologist, Mr. Mike Snyder, describe what was in the supplement. Again, the Protestant objected and the ALJ did not allow Mr. Snyder to provide the information. Now, nearly a year after the information was first offered, the ALJ is effectively proposing that the permit be denied because the Application does not contain that very verbiage. Denial of the Application under these facts and circumstances is bad policy.

C. The Application is not deficient in describing the impact of the landfill on recharge areas within five miles of the site.

The Applicant excepts to Proposed Finding of Fact No. 138 concerning the impact of the Landfill on recharge areas. In addition to the discussion below, please also see Attachment A.

The third and final reason cited by Judge Ramos as a basis for recommending denial is that the Application failed to properly identify the impact of the Landfill on recharge areas within five miles of the site. The concern expressed within the ALJ's proposal seems to be that the Landfill, particularly the dewatering activities during excavation, may negatively affect

groundwater recharge, which may affect water availability for neighboring water wells and “springs”. This groundwater rights issue is pervasive throughout the PFD. It is stated as the reason the Applicant should have gone beyond the TCEQ’s regulation and precedent in regard to not only “recharge” but also with respect to investigation and analysis of wells and purported “springs”.

Certainly, the Applicant does not believe that its activities will significantly affect the water wells of neighboring properties, Mr. Benson’s stock tank, or the groundwater recharge generally. It must be remembered that the entire landfill will **not** be excavated simultaneously. Instead, the excavation will be limited to approximately five acres or less at any one time. Were it required by the TCEQ regulations, IESI could easily have shown there would be no impact on its neighbors in this regard. As is discussed in more detail below, however, these issues were not considered to any significant degree by any of the parties at the hearing before SOAH because groundwater availability is not a factor within TCEQ’s jurisdiction.

Fundamentally, the TCEQ lacks jurisdiction to consider this type of groundwater rights issue in its decision making process and, therefore, there are no TCEQ regulations relating in any way to consideration of groundwater rights. This issue was not referred by the Commissioners for consideration at SOAH and legally could not have been. For these reasons, neither the Applicant nor any of the other parties to the SOAH hearing delved into this issue at any length. Relevant TCEQ regulations have absolutely no provisions relating to any sort of groundwater availability analysis.

For many years opponents of Texas' "rule of capture" law have attempted to get the TCEQ and its predecessor agencies to consider groundwater rights in its permit decisions. Prominent cases involving much greater potential impacts on groundwater availability have come before this agency only to have jurisdiction over that issue be uniformly and without exception found to be lacking. One of the most prominent cases in recent memory is the infamous "Living Waters Artesian Catfish Farm" in south Bexar County, Texas where a landowner drilled a 40,000 gpm well into the Edwards Aquifer and was seeking a TCEQ permit for discharge of those waters after industrial use. A second and more recent case are the expanded surface lignite mines in Bastrop and Lee Counties as part of ALCOA's Rockdale operations which allegedly were going to result in very significant draw down of groundwater over a multicounty area. In both cases, industrial operations needing TCEQ permits were alleged to pose significant threats to groundwater availability from what, in those cases, were truly regional aquifers used by literally millions of people. While there were indeed many other significant issues of appropriate concern to the TCEQ associated with those operations, the groundwater rights complaints were found to be beyond TCEQ's jurisdiction and therefore were not referred to SOAH for consideration as part of the permitting process, nor were they relied upon by the TCEQ in issuing its final orders.³⁶

This issue of groundwater rights adjudication was thoroughly explored over fifteen years ago when the Texas Water Commission sought to regulate groundwater withdrawal from the Edwards Aquifer through rulemaking. The Texas Water Commission adopted emergency, and then permanent rules limiting the amount of groundwater withdrawal from the aquifer, claiming that the aquifer is simply an "underground river". The constitutional and statutory validity of

³⁶ Order issuing TPDES Permit No. 04348 to Aloca, Inc. (August 22, 2003); TCEQ Docket No. 2002-0484-IWD; SOAH Docket No. 582-02-3008; Order issuing discharge permit No. 03462-01 to Living Waters Artesian Springs, Ltd. (September 22, 1993).

these rules were challenged by various parties. The Travis County District Court ruled that the Texas Water Commission (now the TCEQ) has no jurisdiction over groundwater withdrawal. *See, Texas Farm Bureau, et al. v. Tex. Water Commission*, Cause No. 92-05214 (12/21/92). In *Texas Farm Bureau*, the court found that there were no issues of fact, and ruled as a matter of law in granting a summary judgment declaring that: [u]nder existing statutes, the Texas Water Commission is without authority to enact the emergency rules adopted on April 15, 1992, or the permanent rules adopted on September 9, 1992 [relating to the regulation of groundwater withdrawal from the Edwards Aquifer]” In other word, the Texas Water Commission was without jurisdiction to regulate groundwater rights. Immediately following the Texas Water Commission’s brief foray into groundwater rights adjudication, the Texas Legislature revised Texas Water Code § 28.011 to make it abundantly clear that the TCEQ has no authority to regulate groundwater availability.³⁷ Specifically, the legislature adopted S.B. 1334 which made the following changes to the Texas Water Code, TCEQ’s enabling legislation:

Section 28.011 Underground Water: Regulations. Except as otherwise provided by this code, the [The] commission may [shall] make and enforce rules and regulations for [conserving,] protecting and [;] preserving the quality of [; and distributing] underground [;subterranean, and percolating] water [located in this state and shall do all other things necessary for these purposes].

These statutory changes make it very clear that the TCEQ is to regulate and protect groundwater quality but not groundwater availability, Recharge issues in that context are not a relevant consideration as a matter of law, and the ALJ erred in basing the denial of the permit on this factor.

³⁷ Texas Water Code § 28.011, Amended by Acts 1993, 73rd Leg., ch. 914, § 1, eff. Aug. 30, 1993.

III. SUMMARY

The PFD finds that the Applicant met its burden of proof on virtually all of the substantive issues referred by the TCEQ for consideration. The PFD is in error, however, in its ultimate conclusion, in contravention of § 361.069(b), that the Application as submitted was not Administratively or Technically complete and adopting three unsupportable form-over-substance objections raised by the Protestant. With respect to the first two objections, and apparently without considering the practical affects of such a proposal, the ALJ would have an applicant go door-to-door or trespass on neighbor's property to gather unreliable well and water hole information which, in this case, would not change any of the subsurface characterization nor result in a single new or different design feature of the Landfill. This has never been and should not be the policy of the TCEQ. Neither the TCEQ nor the citizens of the State of Texas are served by placing such a burden on an Applicant and the Executive Director. Furthermore, the apparent primary purpose for obtaining this information appears to be to facilitate a water rights adjudication in the context of a landfill proceeding. The TCEQ simply does not have jurisdiction to take that step even if it were its policy to do so, which it is not. The Commission should reject both of these proposals for policy reasons.

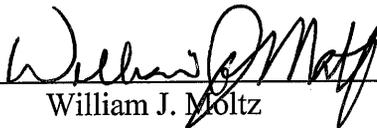
With respect to the remaining issue, the ALJ would have the Commission deny an Application which presents a fully protective and properly designed landfill over a dispute as to whether a particular geologic formation should have been characterized as a "regional" aquifer even though there is no real dispute as to the on-site hydrogeological characteristics of the formation (*i.e.*, aquiclude), the Applicant used uniformly accepted criteria and sources to make the characterization to the Executive Director's satisfaction, and the characterization would not affect the design or operation of the Landfill.

The PFD sets forth unreasonable and unprecedented interpretations of the TCEQ's statutory and regulatory requirements and policies, and then faults the Applicant for not meeting those requirements, even with regard to an issue where the Applicant was affirmatively denied the opportunity to try to do so by the ALJ's own rulings.

The Applicant would urge the Commissioners to issue an Order granting the permit and holding that the Applicant has met its burden of proof on all referred issues, as is required by the record evidence.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel of record via ___ email; ___ certified mail; X First Class mail; ___ facsimile; X hand delivery; ___ overnight, received delivery on June 1, 2009.



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QUALITY

**SOAH DOCKET NO. 582-08-1804
TCEQ DOCKET NO. 2007-1302-MSW**

APPLICATION OF IESI TX LANDFILL	§	BEFORE THE STATE OFFICE
L.P. FOR A NEW TYPE 1 MSW PERMIT	§	OF
PROPOSED PERMIT NO. 2332	§	ADMINISTRATIVE HEARINGS

ATTACHMENT A

**SPECIFIC EXCEPTIONS TO PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

**SOAH DOCKET NO. 582-08-1804
TCEQ DOCKET NO. 2007-1302-MSW**

APPLICATION OF IESI TX LANDFILL	§	BEFORE THE STATE OFFICE
	§	
L.P. FOR A NEW TYPE 1 MSW PERMIT	§	OF
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PROPOSED PERMIT NO. 2332	§	ADMINISTRATIVE HEARINGS

**ATTACHMENT A
SPECIFIC EXCEPTIONS TO PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

I. PROPOSED FINDINGS OF FACT

The ALJ has recommended permit denial in this matter based upon a misunderstanding of certain TCEQ policies and regulations as well as an apparent application of criteria which are beyond TCEQ's jurisdiction. The vast majority of the Proposed Findings of Fact, therefore, actually support the conclusion that the Landfill permit should be granted, including the Proposed Findings related to site specific investigation, surface water protection, groundwater depth and flow, the liner system, slope stability, design, and the Site Operating Plan. Accordingly, the Applicant agrees with most of the Proposed Findings of Fact.

Certain Proposed Findings of Fact, however, are completely unsupported by the record when properly viewed in light of applicable TCEQ policy, regulations, and jurisdiction. These issues were more fully discussed in the body of Applicant's Exceptions to the Proposal for Decision and will not be repeated here.

The erroneous Proposed Findings concern the ALJ's incorrect interpretations of governing statutes, regulations, and issues referred to SAOH as they relate to: the identification and discussion of springs and water wells; the use of the term "regional aquifer" when describing certain subsurface strata (even though that strata was properly described); and the identification of the impact of the Landfill on recharge areas. The Applicant's exceptions to the specific Proposed Findings of Fact in these categories are briefly discussed below. The discussion below

also identifies areas where additional clarity to the proper ultimate conclusion of law granting the permit. Also attached as an Exhibit to this Attachment A is a complete draft Order for the Commission's consideration, which eliminates and/or corrects the erroneous Proposed Findings of Fact and provides instead for the appropriate and legally valid Findings of Fact and Conclusions of Law.

A. The Proposed Findings of Fact for Wells and Spring; Usable Aquifer; and Health of Protestants and Their Families

1. Wells and Springs/Recharge Issues

The Applicant agrees with Proposed Findings of Fact Nos. 125 and 127 in this Section.

The Applicant excepts to Proposed Findings of Fact Nos. 126 and 128 through 137 concerning wells and springs. The Applicant further objects to Finding of Fact No. 138 within this section related to recharge during dewatering. These Proposed Findings are not supported by the record evidence, stem directly from unreliable and inadmissible information, ignore the site specific hydrogeology, and in some instances, contradict other correct Proposed Findings of Fact.

IESI's Proposed Findings of Fact Nos. 141, 142, 149, 152, and 153¹ addressing water wells and springs should be adopted by the Commission. IESI's Proposed Findings are supported by the record² and further support the ultimate Finding of Fact that the Applicant adequately identified all water wells and springs, as well as the ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

¹ Throughout this document, references to the Proposed Findings of Fact submitted by the Applicant or by IESI refers to the document entitled "Proposed Findings of Fact" IESI filed at SOAH with the ALJ on February 13, 2009.

² App. Ex. 100 at Part II, p. 11-12; Appendix IID Figure IID.1. and Attachment 4, Appendix 4A., Figure 4A.5; App. Ex. 1, Welch Direct Testimony at p. 26/ lines 11-15; App. Ex. 100, Vol. 2, Part III at Attach. 4, p. 4-6, Table 4-3, and Figure 4A.5; App. Ex. 9, Kreitler Direct Testimony, pp.8-10.

2. Usable Aquifer

The Applicant excepts to Proposed Findings of Fact Nos. 139 through 142 in this Section of the Proposal for Decision. These Proposed Findings are not supported by the record evidence, and in some instances contradict other correct Proposed Findings. Further, these Proposed Findings illuminate the ALJ's basic understating of the issue related to usable aquifers. The issue is not what aquifers may or may not be significant in the entirety of Jack County, but rather the identification of water-bearing units in the Landfill area.

The Commission should adopt Applicant's Proposed Findings of Fact Nos. 109 through 114 concerning geologic and hydrogeologic information. The information in these Findings of Fact is supported by the record³ and further supports the ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

3. Health of Protestants and Their Families

The Applicant excepts to Proposed Finding of Fact No. 178. This Finding is based entirely upon the prior erroneous findings by the ALJ that wells and springs within one mile of the site were not adequately identified and considered.

The Commission should adopt IESI's Proposed Findings of Fact Nos. 203 through 206 on this topic. The information in these additional Findings of Fact is supported by the record⁴ and further supports the ultimate finding that the Landfill will not adversely affect the health of the Protestants and their families, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

³ App. Ex. 100, Vol. 2, Part III, Attach. 4 at 4-6; Prot. Ex. 6, Henderson Direct Testimony, p. 3.

⁴ App. Ex. 16, B.C. Robison Direct Testimony. App. Exhibit 13, Worrall Direct Testimony, pp. 13-14; App. Exhibit 7, Snyder Direct Testimony, pp. 60-62. *See, generally*, Applicant's evidence cumulatively for support of ultimate Findings 204 and 206.

B. Other Categories of Proposed Findings of Fact

In many instances where the Applicant generally agrees with the ALJ's Proposed Findings of Fact on a particular topic, the Applicant nevertheless believes that additional, more descriptive findings should also be included. For convenience, the following additional specific exceptions to the Proposed Findings of Fact are presented in the same order and under the same section headings as they are presented in the ALJ's Proposed Findings of Fact. These are also reflected in the attached Exhibit (proposed Order).

1. Introduction and Procedural History

The Applicant generally agrees with the ALJ's procedural and introductory findings and, as such, agrees with Proposed Findings of Fact Nos. 1 through 4, 7 through 15, and 17 through 18 of this Section. However, there are certain aspect of this section of the Proposal for decision which should be further clarified as described below.

IESI excepts to Proposed Findings of Fact Nos. 5 and 6 in that they describe the notice of the preliminary hearing, generally, but do not state that the notice was proper and timely. This additional information would be useful in supporting the ALJ's jurisdiction. The Commission should adopt that additional information as provided in IESI's in Proposed Findings of Fact Nos. 5 and 6.

Proposed Finding of Fact No. 16 states the type of waste that will be accepted at the Landfill, generally, but does not state what special wastes will be accepted and does not state what wastes will not be accepted. The Commission should adopt that additional information as provided in IESI's Proposed Finding of Fact No. 14.

Finally, none of the Proposed Findings of Facts in this Section include a listing of the issues referred by the TCEQ to State Office of Administrative Hearings for consideration. Having this information in the Findings of Fact will make the record clearer. The Commission

should adopt Finding of Fact No. 4 submitted by IESI, which includes a list of the referred issues.

The information identified above is supported by the record⁵ and supports an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

2. Surface Water Protection

The Applicant agrees with the ALJ that it fully met its burden of proof with respect to surface water protection and, therefore, is in agreement with Proposed Findings of Fact Nos. 19 through 55 in this Section.

However, additional Findings of Fact would further support the proper ultimate findings and conclusions in this case. The Commission should adopt the following Findings of Fact proposed by the Applicant: 19, 20, 23, 24, 29, 32, 36 through 38, 40 through 42, 46 through 48, 50 through 57, 63, 65, and 66. These additional finding are supported by the record⁶ and add further support to the ultimate finding that IESI met it burden of proof with respect to surface water protection, as well as to the ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

3. Groundwater Protection

The Applicant generally agrees with Proposed Findings of Fact Nos. 56 through 90 in this Section.

However, additional Findings of Fact would clarify and further support the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Findings of Fact Nos. 67 through 69, 72, 73, 75, 80, 83, 86, 88, 89 through 92, 95 through 99 and 104-105. Further, the ALJ's Proposed Finding of Fact No. 80 is misleading, and should instead track the language found in IESI's Proposed Finding of Fact No. 94.

⁵ App. Ex. 100 Vol. 1, Part III, p. III-4.

⁶ App. Ex. 100 Vol. 2, Part III at Attachment 6; App. Ex. 100 Vol. 2, Part III at Attachment 6, 6A-6, 6A and 6B.

These additional findings are supported by the record⁷ and support the ultimate finding that IESI met its burden of proof with respect to groundwater protection, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

4. Geological Requirements

The Applicant generally agrees with Proposed Findings of Fact Nos. 91 through 106 in this Section.

However, additional Findings of Fact would clarify and further support the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Findings of Fact Nos. 107, and 109 through 122, detailing: (1) the groundwater formations; and (2) boring and sampling plan. These additional findings are supported by the record⁸ and support the ultimate finding that IESI met its burden of proof with respect to hydrogeological, geological and geotechnical requirements, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

5. Slope Stability

The Applicant generally agrees with Proposed Findings of Fact Nos. 107 through 111 in this Section.

⁷ App. Ex. 100, Vol. 2, Part III, Attach. 4, 4-27, through Attach. 5. App. Ex. 100, Vol. 2, Part III, Attach. 4, Appen. 4B, App. Ex. 7, Snyder Direct Testimony, p.21/lines 7-13. App. Ex. 7, Snyder Direct Testimony, p. 38; App. Ex. 100, Vol. 2, Part III, Attach. 4 at 4-31 to 4-32. App. Ex. 7, Snyder Direct Testimony, p. 37; App. Ex. 100, Vol. 2, Part III, Attach. 4 at 4-31 to 4-32. App. Ex. 100, Vol. 2, Part III, Attach. 4, Appendix 4E, Figure 4E.3. App. Ex. 7, Snyder Direct Testimony, p. 32. App. Ex. 100, Vol. 2, Part III, Attach. 5 at p. 5-4. App. Ex. 7, Snyder Direct Testimony, p. 41. App. Ex. 100, Vol. 2, Part III, Attach. 5, Appendix 5A, Figure 5A.1. App. Ex. 7, Snyder Direct Testimony, p. 40. Figure 5A.1. App. Ex. 100, Vol. 3, Part III, Attach. 15; App. Ex. 6, Adams Direct Testimony, pp. 19-20. Transcript Vol. 1, p. 180 and pp. 206-207, Adams Cross-Examination. App. Ex. 100, Vol. 2, Part III, Attach. 4; App. Ex. 7, Snyder Direct Testimony, p. 39.

⁸ App. Ex. 100, Vol. 2, Part III, Attach. 4 at 4-6; Prot. Ex. 6, Henderson Direct Testimony, p. 3. Transcript Vol. 2, p. 59, Snyder Redirect, and sources cited therein; Transcript Vol. 6, p. 100, Ross Cross Examination; Transcript Vol. 5, p. 111, Chandler Cross Examination. Transcript Vol. 6, p. 150, Chandler Cross Examination.

However, additional Findings of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Findings of Fact Nos. 134, 135, and 137. These additional findings are supported by the record⁹ and support the ultimate finding that IESI met its burden of proof with respect to slope stability, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

6. Land Use Issues

The Applicant generally agrees with Proposed Findings of Fact Nos. 112 through 124 in this Section.

However, additional Findings of Fact would further support and clarify the proper ultimate findings and conclusions in this case. As discussed above, the Commission should adopt IESI's Proposed Findings of Fact Nos. 139, 141, 142, 149, 152, and 153 with respect to identification of wells and springs.

Further, the Commission should adopt IESI's Proposed Findings of Fact Nos. 145 (identification of churches) and 158 (ultimate finding that the Landfill is compatible with surrounding land uses and residential growth trends).

These additional findings are supported by the record¹⁰ and support the ultimate finding that IESI met its burden of proof with respect to land use compatibility, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

⁹ App. Ex. 1, p. 106 lns. 13 – 17, Welch Direct Testimony.

¹⁰ App. Ex. 1, p. 106 lns. 13 – 17, Welch Direct Testimony. *See, generally,* testimony of Welch, Worrall, and Sessions for support of growth trends Finding.

7. Wells and Springs

The Applicant's exceptions to the Proposed Findings of Fact in this Section are discussed at length in Section I.A.1., above, and in the text of Applicant's Exceptions to the Proposal for Decision. Those discussions are adopted by reference.

8. Usable Aquifer

The Applicant's exceptions to the Proposed Findings of Fact in this Section are discussed at length in Section I.A.2., above, and in the text of Applicant's Exceptions to the Proposal for Decision. Those discussions are adopted by reference.

9. Site Operating Plan (Fire Protection)

The Applicant generally agrees with Proposed Findings of Fact Nos. 143 through 147 in this Section.

However, additional Findings of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Finding of Fact Nos. 162 and 165 related to the buffer distance of 200 feet as part of fire protection. This additional finding is supported by the record¹¹ and supports the ultimate finding that IESI met its burden of proof with respect to the Site Operating Plan, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

10. Odors, Dust, and Air Criteria

IESI has no exceptions to the Proposed Finding of Fact No. 148 in this Section.

11. Landfill Gas Management

IESI has no exceptions to the Proposed Findings of Fact Nos. 149 through 152 in this Section.

¹¹ App. Ex. 1, p. 106 lns. 13 – 17, Welch Direct Testimony.

12. Vectors and Scavenging

The Applicant generally agrees with Proposed Findings of Fact Nos. 153 through 156 in this Section.

However, additional Findings of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Findings of Fact Nos. 173 and 174. These additional findings are supported by the record¹² and support the ultimate finding that IESI met its burden of proof with respect to vectors and scavenging, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

13. Windblown Waste

IESI generally agrees with the Proposed Findings of Fact Nos. 157 and 158 in this Section.

However, an additional Finding of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Finding of Fact No. 180. This additional finding is supported by the record¹³ and supports the ultimate finding that IESI met its burden of proof with respect to windblown waste, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

14. Screening of Prohibited Wastes

IESI has no exceptions to the Proposed Findings of Fact Nos. 159 through 165 in this Section.

¹² Transcript Vol. 4, p. 28, lns. 9 – 17 and p. 31, lns. 5 – 13, Sewell Cross-Examination. *See, generally*, Application and testimony of Gustafson and Vieceli for support of ultimate Finding No. 174.

¹³ App. Ex. 100, Vol. 1, Part I, I-13.

15. Ponded Water

IESI has no exceptions to the Proposed Findings of Fact Nos. 166 through 168 in this Section.

16. Site Access

IESI has no exceptions to the Proposed Findings of Fact Nos. 169 through 171 in this Section.

17. Employee Training

IESI generally agrees with the Proposed Findings of Fact Nos. 172 through 177 in this Section.

However, an additional Finding of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Finding of Fact No. 198. This additional finding is supported by the record¹⁴ and supports the ultimate finding that IESI met its burden of proof with respect to employee training, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

18. Health of Protestants and their Families

The Applicant's exceptions to the proposed Findings of Fact in this Section are discussed at length in Section I.A.3, above, and in the text of Applicant's Exceptions to the Proposal for Decision. Those discussions are adopted by reference.

19. Buffer Zones

IESI generally agrees with the Proposed Findings of Fact Nos. 179 through 180 in this Section.

However, additional Findings of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed

¹⁴ App. Ex. 100, Vol. 3, Part IV, Sec. 3 (at IV-7 through IV-8), Figure 3.1 (at IV-10), and Table 3.1 (at IV-11 through IV-13).

Findings of Fact Nos. 208 through 212 related to the details of the proposed buffers and screening, and the effect of those buffers and screening on nearby residents, public view, and emergency access. These additional findings are supported by the record¹⁵ and support the ultimate finding that IESI met its burden of proof with respect to buffer zones, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

20. Nuisance Conditions

IESI generally agrees with the Proposed Findings of Fact Nos. 181 through 186 in this Section.

However, additional Findings of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Findings of Fact Nos. 217 through 221 and 223 through 227 related to the adequacy of the proposed prevention measures at the Landfill against various nuisance conditions, including windblown waste, limitations of activities in the buffer zones, odor control, vectors, scavenging, landfill gas, ponded water, screening waste, and leachate control.

Further, the Commission should adopt IESI's Proposed Findings of Fact Nos. 214 and 228, which are the ultimate findings that the Site Operating Plan fulfills the TCEQ's requirements and are adequate to control and/or prevent nuisance conditions.

These additional findings are supported by the record¹⁶ and support the ultimate finding that IESI met its burden of proof with respect to nuisance conditions, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

¹⁵ App. Ex. 19, Gustafson Direct Testimony, pp. 7-9, Gustafson-9 (p. 5). App. Ex. 1, Welch Direct Testimony, p. 63. App. Ex. 13, Worrall Direct Testimony, p. 12; App. Ex. 1, Welch Direct Testimony, pp. 68-69.

¹⁶ See, e.g., App. Exhibit 100, Vol. 3, Part IV, Sec. 8.5, 8.10, 8.13, 8.22 and App. Exhibit 1, Welch Direct Testimony, pp. 109-110. See, generally, the Application and Welch testimony for support of the ultimate Finding No. 228.

21. Transportation

IESI has no exceptions to the Proposed Findings of Fact Nos. 187 through 189 in this Section.

22. Regional Coordination

The Applicant generally agrees with Proposed Finding of Fact No. 190 in this Section.

However, additional Findings of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Finding of Fact No. 233, which is an ultimate finding that the Landfill is compatible with the local Regional Solid Waste Management Plan. This additional finding is supported by the record¹⁷ and supports the ultimate finding that IESI met its burden of proof with respect to regional coordination, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

23. Endangered and Threatened Species

IESI generally agrees with the Proposed Findings of Fact Nos. 191 through 194 in this Section.

However, additional Findings of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Findings of Fact Nos. 235 and 236. These additional findings are supported by the record¹⁸ and support the ultimate finding that IESI met its burden of proof with respect to endangered and threatened species, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

¹⁷ App. Ex. 100, Vol. 1, Part II, Appendix IIA, 11A-7 through 11A-11.

¹⁸ App. Ex. 100, Vol. 1, Appendix IIA; App. Ex. 10, Marusak direct testimony, pp. 12-15, Marusak-4. App. Ex. 100, Vol. 1, Part II, Appendix IIE; App. Ex. 10, Marusak Direct Testimony, pp. 6-9, Marusak-2, Marusak-3.

24. Compliance History

IESI generally agrees with the Proposed Findings of Fact Nos. 195 through 196 in this Section.

However, an additional Finding of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Finding of Fact No. 241. This additional finding is supported by the record¹⁹ and supports the ultimate finding that IESI's compliance history warrants granting the Application, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

25. Closure and Post Closure Plans

IESI generally agrees with the Proposed Findings of Fact Nos. 197 through 200 in this Section.

However, an additional Finding of Fact would further support and clarify the proper ultimate findings and conclusions in this case. The Commission should adopt IESI's Proposed Finding of Fact No. 243. This additional finding is supported by the record²⁰ and supports the ultimate finding that IESI's closure and post closure plans are adequate, as well as an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

26. Permit Term

IESI agrees with Proposed Finding of Fact No. 201 in this Section. However, additional Findings of Fact would further support and clarify the proper and ultimate findings and conclusions in this case. For clarification, IESI's Proposed Findings of Fact Nos. 247 and 248 should be adopted by the Commission. The information in these Findings of Fact are supported

¹⁹ App. Ex. 19, Gustafson Direct Testimony, pp. 2-3; see also, testimony cross-examination and re-direct examination of Gustafson and Vieceli.

²⁰ App. Ex. 100, Vol. 1, Part I, App. IE.

by the record²¹ and supports an ultimate and proper Conclusion of Law that IESI fulfilled all applicable requirements of the TCEQ's regulations and thus should be granted a permit.

27. Transcript Costs

IESI has no exceptions to the Proposed Findings of Fact Nos. 202 through 205 in this Section.

II. PROPOSED CONCLUSIONS OF LAW

IESI agrees with the ALJ's Proposed Conclusions of Law Nos. 1 through 3 and 7. The remainder of the ALJ's Proposed Conclusions of Law, however, are based upon the ALJ's incorrect reading of the TCEQ's rules and applicable statutes and are, therefore in error.

The Commission should adopt the Conclusions of Law Nos. 1 through 40 in their entirety as proposed by the Applicant. These Conclusions of Law set for the various issues referred by the Commission, and conclude that the Applicant has met its burden on these issues. The final Conclusion of Law states that the permit should be granted.

III. SUMMARY

As the above indicates, IESI is in general agreement with the great majority of the ALJ's proposed Findings of Fact and Conclusions of Law. Most of the proposed changes suggested herein, therefore, are merely for further support and clarification. This is indicative of the ALJ's error in her Proposal in that she basically finds the proposed Jacksboro Landfill to be protective of the environment and in compliance with TCEQ rules but then applies erroneous policies and statutory criteria to suggest permit denial. Upon the correct application of these policies and criteria, IESI has fully met its burden of proof and the requested permit should be granted by adopting the Order attached hereto.

²¹ Transcript Vol. 8, pp. 97-98, McCaine Cross Examination. The ultimate Finding No. 248 is supported generally by the Application and cumulative evidence.

**SOAH DOCKET NO. 582-08-1804
TCEQ DOCKET NO. 2007-1302-MSW**

APPLICATION OF IESI TX LANDFILL	§	BEFORE THE STATE OFFICE
	§	
L.P. FOR A NEW TYPE 1 MSW PERMIT	§	OF
	§	
PROPOSED PERMIT NO. 2332	§	ADMINISTRATIVE HEARINGS

**PROPOSED ORDER FOR ADOPTION BY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
GRANTING THE APPLICATION OF IESI TX LANDFILL, L.P., FOR PERMIT NO.
2332 FOR A NEW TYPE 1 MUNICIPAL SOLID WASTE PERMIT
SOAH DOCKET NO. 582-08-1804
TCEQ DOCET NO. 2007-1302-MSW**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the application of IESI TX Landfill L.P. (IESI or Applicant) for Permit No. MSW-2332 to authorize Applicant to construct a new landfill in Jack County, Texas. Sarah G. Ramos, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), presented a Proposal for Decision (PFD), which recommended that the Commission deny the application. After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Introduction and Procedural History

1. On April 5, 2005, the City of Jacksboro (City) filed an application for a new Type I municipal solid waste landfill (the landfill). The application was designated as TCEQ Permit No. 2332.
2. The permit application was declared administratively complete on April 29, 2005.
3. In August 2006, a revised application was submitted to the TCEQ to reflect IESI TX Landfill L.P. (IESI or Applicant) as the Applicant.
4. At TCEQ's open meeting on January 30, 2008, the Commission evaluated requests for hearing on the application. The Commission granted the hearing requests of

Dr. James Henderson, Gloria Sprencel, and the Two Bush Community Action Group and referred IESI's application to the SOAH for a contested case hearing on the issues of: whether there was proper notice of the landfill application; whether the site operation plan provides adequate controls for fire protection; odors, dust and air criteria; landfill gas; vectors; scavenging; windblown waste; screening of prohibited waste; ponded water; and site access, and is adequate to train employees and guide day-to-day operations of the facility; whether operation of the landfill will adversely affect the health of the requestors and the requestors' families; whether the proposed landfill is compatible with surrounding land uses and residential growth trends; whether the proposed buffer zones and screening are adequate; whether the application includes adequate transportation information; whether the Applicant properly evaluated and presented information on the vertical and horizontal flow characteristics of groundwater; whether the proposed groundwater monitoring system includes the proper number and location of wells, screened at the proper depths, for adequate monitoring; whether the liner and leachate system are adequate to protect against groundwater contamination; whether the geotechnical evaluation is adequate to ensure the stability of slopes and materials used for sidewalls; whether the proposed landfill is compatible with the Regional Solid Waste Management Plan; whether the landfill application provides adequate geologic and hydrologic information; whether the application includes the required information on soils; whether the Applicant provided adequate information regarding proposed surface water controls, floodplains, drainage route runoff from the facility, and off-site storm water contamination, including Jasper Creek; whether the appropriate rainfall data was used in the calculation of surface drainage; whether the proposed landfill is located in a wetland or an area with faults and fractures; whether the Applicant adequately provides for closure and post closure plans and proposes adequate

financial assurance; whether the Applicant adequately evaluated the presence of and potential adverse effects of the landfill on endangered and threatened species; whether the proposed permit is adequately protective to prevent nuisance conditions; whether the Applicants compliance history warrants the granting of the permit; whether the application includes adequate proof of property interests; whether the application adequately identifies and evaluates all springs, water wells, oil and gas wells, homes, churches, and other site specific issues requiring special consideration under Commission rules; and whether the permit term should be for life of the facility. The TCEQ denied all other hearing requests, requests for reconsideration, and issues. The Executive Director was directed to participate in the hearing. The Administrative Law Judge was directed to submit a Proposal for Decision and a draft order with Findings of Fact, Conclusions of Law and Ordering Provisions.

5. Notice of the preliminary hearing was properly and timely sent to interested parties on February 27, 2008. The notice included the time, date, and place of the hearing, the matters asserted, and the applicable statutes and rules.
6. On April 2, 2008, ALJ Kerry Sullivan held a preliminary hearing in Jacksboro, Texas, at the Jack County Courthouse at which he concluded that the Commission had jurisdiction to consider and act on IESI's permit application, SOAH had jurisdiction to conduct a hearing and to prepare a Proposal for Decision (PFD), and notice was proper and timely provided in this case.
7. At the preliminary hearing, the following parties were admitted: IESI TX Landfill, LP, represented by William J. Moltz, R. Steven Morton, Brian J. O'Toole, and Janessa C. Glenn; the City of Jacksboro, represented by Arturo D. Rodriguez, Jr., Kerry E. Russell, and David L. Spiller; the Protestants, Two Bush Community Action Group, represented by

Eric M. Allmon and Marisa Perales; TCEQ's Office of Public Interest Counsel, represented by Scott A. Humphrey; and TCEQ's Executive Director, represented by Anthony C. Tatu.

8. On April 18, 2008, ALJ Sullivan issued Order No. 1, Confirming Action Taken at Preliminary Hearing and Setting Procedural Schedule.
9. On June 13, 2008, ALJ Sullivan issued Order No. 3, Granting Unopposed Motion to Revise Procedural Schedule and Hearing on the Merits. The order set the date, time, and location for the hearing on the merits.
10. ALJ Sullivan's orders were sent to all parties by either facsimile transmission or regular mail.
11. ALJ Sarah G. Ramos convened the hearing on the merits on October 13, 2008, at SOAH, 300 W. 15th Street, Austin Texas. The hearing continued from day to day at SOAH, except that one day of the hearing was conducted at the Jack County Courthouse, 100 Main Street, Jacksboro, Texas. The hearing concluded on October 23, 2008. The record closed on March 6, 2009.
12. The landfill would be a new Type I municipal solid waste (MSW) landfill located in southeast Jack County, Texas.
13. The facility would serve a population equivalent of 171,000 people in the City, Jack County, and surrounding areas.
14. The landfill would be located approximately 13 miles southeast of the City and 1.25 miles south of State Highway 199.
15. The landfill's proposed site would consist of approximately 275 acres, with a landfill footprint of approximately 202 acres.
16. The landfill would accept waste generated from residential, commercial, institutional, municipal, manufacturing, industrial, recreational, and construction sources within the

landfill service area. It is anticipated wastes accepted will include paper, food wastes, glass, aluminum, metals, plastics, grass clippings, other organic wastes, wood wastes, textiles, brinks, and other inert materials. Special wastes will also be accepted at the facility including dead animals, slaughterhouse wastes, non-regulated asbestos containing material (non-RACM), empty containers, municipal water and wastewater treatment plant sludges, and grease or grit trap waste. Consistent with 30 TEX. ADMIN. CODE § 330.5 the facility will not accept Class 1 nonhazardous industrial wastes, regulated hazardous wastes, liquid wastes, radioactive wastes, PCB wastes, infectious medical waste, or other wastes prohibited by TCEQ regulations.

17. The facility would receive an initial average of 500 tons of municipal solid waste per day. The landfill's waste would ultimately be composed of 50 million cubic yards of waste and daily cover, and would include household and putrescible waste; Class 2 industrial waste; Class 3 industrial waste; and special waste, as allowed by TCEQ.
18. Applicant expects the facility to last 60 years.

Surface Water Protection

19. The landfill would be located in southeast Jack County in the West Fork of the Trinity River drainage basin.
20. The landfill permit boundary consists of three drainage areas in its undeveloped condition.
21. Under existing conditions, the stormwater runoff from the landfill property runs off into unnamed tributaries of Little Beans Creek to the west and Jasper Creek to the east.
22. Under existing conditions, runoff from the west portion of the landfill contributes to an existing tributary of Little Beans Creek just west of the proposed permit boundary.
23. The north part of the site contributes to small tributaries of Jasper Creek to the north of the proposed permit boundary.

24. The south part of the site runs off into a series of smaller tributaries of Jasper Creek south of the permit boundary and eventually enters a tributary of Jasper Creek east of the site.
25. Little Beans Creek and Jasper Creek are tributaries to Lake Bridgeport, located approximately 12 miles northeast of the landfill permit boundary.
26. The existing streams or creeks running through or adjacent to the site are intermittent streams.
27. The Application includes documentation that the Jacksboro Landfill will not cause discharges in violation of applicable Commission rules.
28. The Application includes provisions for the design, construction and maintenance of a run-off management system.
29. The Application includes provisions for the design, construction, and maintenance of swales, downchutes, embankments, drainage structures, perimeter drainage systems, and detention basins properly designed to handle the run-off.
30. The Application includes provisions for the grading of the slopes of the sides and toe.
31. When constructed, the facility's stormwater runoff would be collected in swales located near the upper grade break on the landfill and on the four (horizontal) to one (vertical) side slopes, leading to drainage let-down structures or chutes on the 25% slopes and to the perimeter drainage system.
32. The perimeter drainage system would be constructed as each sector is developed and is designed to convey the 25-year/24-hour runoff from the developed landfill consistent with TCEQ regulations.
33. The perimeter channels and detention ponds were designed to convey the runoff from a 100-year rainfall event.

34. Stormwater drainage from developed areas would be directed to detention ponds before being discharged offsite.
35. The detention ponds were designed to reduce the peak runoff from the developed landfill to pre-developed flow rates.
36. The detention pond outlet structures are designed as energy dissipaters to reduce the velocity and turbulence of the flow leaving the detention ponds.
37. Applicant would file a Notice of Intent with the TCEQ to discharge stormwater runoff consistent with a Texas Pollutant Discharge Elimination Systems (TPDES) General Permit No. TX05000 relating to stormwater discharges associated with industrial activity.
38. The final cover drainage system swales and chutes are designed to convey the 25-year peak flow rate. These swales, channels, and chutes will also reduce maintenance at the site after closure by minimizing erosion.
39. The stormwater outfall locations along the permit boundary remain consistent with the pre-development outfall locations.
40. The 25-year and 100-year discharge rates for post-development conditions would be approximately equal to the pre-development discharge rates.
41. The post-developed water surface elevations, peak flow rates, velocities, and runoff volumes are approximately at the pre-development water surface elevations, peak flow rates, velocities, and runoff volumes at the pre-developed outfall locations at the permit boundary.
42. Applicant used the United States Army Corps of Engineers (USACE) HEC-HMS and HEC-RAS computer models to determine and compare pre- and post-development drainage patterns.

43. The HEC-HMS and HEC-RAS models were proper and appropriate under TCEQ rules and “Guidelines for Preparing a Surface Water Drainage Report for a Municipal Solid Waste Facility” (August 2006).
44. The natural drainage conditions at the permit boundary would not be significantly altered by the proposed landfill development.
45. The Application includes a groundwater and surface water protection plan and drainage plan, including demonstration that natural drainage patterns will not be significantly altered as a result of the proposed landfill development.
46. The Application includes a final contour map.
47. The Application includes provisions that address ponded water.
48. A separate stormwater and surface water system has been designed to keep ponded waters that have not come in contact with solid waste at the landfill separated from leachate and contaminated water.
49. The leachate and contaminated water management plan for the Jacksboro Landfill will ensure the proper management of those materials.
50. The Jacksboro Landfill development will not significantly alter natural drainage patterns.
51. The proposed landfill design and operation would not result in any significant change to natural drainage patterns from pre-development to post-development conditions.
52. While a small area at the southeast corner of the site where Jasper Creek is located would be in the 100-year floodplain of Jasper Creek, that floodplain is not in an area where any construction of improvements or other activities are proposed.
53. The landfill would not significantly alter the 100-year floodplain of Jasper Creek at any location.

54. The landfill is located in an unincorporated area of Jack County and the Federal Emergency Management Agency has not defined the limits of the 100-year floodplain for this part of the county.
55. Applicant properly used USACE HEC-RAS and HEC-HMS models to define the pre- and post-development 100-year floodplain for Jasper Creek.
56. Jasper Creek is the only waterway with a 100-year flood potential which could potentially include portions of or could potentially be affected by activities on the site.
57. The 100-year floodplain for Jasper Creek is outside the landfill footprint and the perimeter drainage system for the Jacksboro Landfill.
58. No construction or operation associated with the Jacksboro Landfill will be located in a 100-year floodplain.
59. The landfill footprint will not be in a flood prone area.
60. Other than the run-on from Jasper Creek, the Site is topographically up-gradient from adjacent property, and no run-on will enter the Jacksboro Landfill.
61. The Application adequately addresses the run-on associated with Jasper Creek.
62. The Application contains a certification of compliance stating that the proposed landfill is in compliance with Subtitle D.
63. No leachate will be discharged off-site.
64. Leachate will be properly disposed of in accordance with TCEQ regulations.
65. Temporary containment berms will be constructed around the active face to collect and contain surface water that has come into contact with waste. In addition to the planned containment berms around the active face, temporary containment berms will be constructed whenever needed to collect contaminated water.
66. Engineering features will be used to minimize contaminated water generation.

67. Temporary containment berms would be constructed around the active face to collect and contain surface water that has come into contact with waste.
68. Daily cover and intermediate cover would be placed over filled areas to minimize the area of exposed waste.
69. The containment berms would provide storage for the 25-year, 24-hour storm event.
70. Contaminated water would be transported along with leachate to publicly owned treatment works.
71. Contaminated water would not be discharged into waters of the United States.
72. The Application adequately describes a leachate management plan.
73. Applicant provided adequate information regarding surface water controls, floodplains, drainage route runoff from the facility, and off-site stormwater contamination, including Jasper Creek.
74. Applicant used Abilene rainfall data within the EPA Hydraulic Evaluation of Landfill Performance (HELP) model to evaluate the leachate collection system.
75. Of those cities in the model, Abilene and Dallas are geographically closest to Jacksboro.
76. Dallas has more average annual rainfall than Abilene; however, the Dallas data may actually underestimate the maximum head on the liner.
77. The Abilene rainfall data was an appropriate choice to include in the HELP model.
78. Abilene rainfall data was conservative data to use in the HELP model.
79. Appropriate local rainfall data was used in the surface runoff and run-on analysis for purposes of drainage and floodplain analysis.
80. The Applicant used appropriate rainfall data in the calculation of surface drainage.

Groundwater Protection

81. The Applicant evaluated the vertical and horizontal flow characteristics of groundwater through an initial regional analysis followed by a site-specific investigation consisting of extensive boring and sampling, along with the installation and monitoring of fourteen piezometers at the site.
82. The Applicant's boring and sampling program was reviewed and approved by the TCEQ staff by letter dated March 8, 2004.
83. The Applicant properly evaluated and presented information on the vertical and horizontal flow characteristics of groundwater.
84. Three principal geologic units underlie the site, which Applicant described as Stratum I (primarily of clay and shale), Stratum II (sandstone and siltstone), and Stratum III (shale and clayey shale).
85. Stratum I has interbeds of sandstone and siltstone identified as Stratum IA.
86. The geologic materials in Stratum IA are discontinuous and uncorrelatable across the site.
87. Applicant would excavate Stratum IA sands almost completely during the landfill's construction.
88. Water is contained at discontinuous points in the Stratum IA sands.
89. Water levels from Stratum IA indicate higher hydraulic heads on the south portion of the site descending to lower heads on the north end of the site.
90. Stratum IA becomes less sandy and primarily clayey on the downgradient north and east sides of the site, preventing lateral migration of groundwater in Stratum IA.
91. The Applicant properly evaluated Stratum I-A characteristics
92. Stratum II has interbedded lenses and seams of clay and shale identified as Stratum IIA.
93. Groundwater is present in the sandstones and siltstones of Stratum II.

94. Groundwater generally flows to the north-northeast in Stratum II at about 15 feet per year.
95. Stratum II sandstones and siltstones have hydraulic conductivity ranging from 5.81×10^{-4} to 3.77×10^{-5} cm/sec.
96. Stratum II is the uppermost aquifer underlying the site.
97. Stratum III is correlatable across the site and is the lower confining unit.
98. Stratum III is a reddish-brown to greenish-gray, hard shale and clayey shale with interbedded silty shale and occasional silt parting and is correlatable across the site.
99. Stratum III has a hydraulic conductivity of 4.5×10^{-8} cm/sec
100. The Applicant properly evaluated Stratum II characteristics.
101. Applicant properly evaluated the site stratigraphy.
102. Following the drilling and grouting of the site exploration borings, fourteen piezometers were installed.
103. Eight of these piezometers (A-5, A-20, C-10, D-5, D-20, F-15, F-20, and G-5) were screened in Stratum II.
104. Three piezometers (B-15, D-10S, and D-15) were used to characterize the groundwater in Stratum IA.
105. Three piezometers (D-10C, E-20, and F-10) were screened in the clays and shales of Stratum I to characterize hydraulic head within the upper clay unit.
106. The piezometers were monitored thirteen times during the course of a year, and measurements of water levels were made to within 0.01 feet using an electronic water-level indicator.
107. Piezometer locations were selected to provide horizontal and vertical coverage of the uppermost aquifer and uppermost water bearing unit across the site from data gathered during site exploration.

108. The Applicant properly evaluated the site piezometers.
109. A total of eleven groundwater monitoring wells are proposed for the site. Nine would be distributed on the north and east boundaries, and Applicant would place them no more than 600 feet apart.
110. The nine wells would be screened in Stratum II at the north and east ends of the site, consistent with Applicant's characterization of the uppermost aquifer and the groundwater flow direction.
111. Two additional wells, one on the south boundary and one on the west boundary, have been proposed in upgradient positions.
112. If any leachate escaped from the sumps at the bottom of the facility, a contaminant would slowly make its way through the lower permeability materials in the upper parts of Stratum II. If it made it through those materials, it would move slowly downward into the more permeable sands of Stratum II.
113. Recharge of groundwater to Stratum II at the site is from the outcrop of Stratum II to the west of the site.
114. Groundwater would move laterally in Stratum II rather than downward into the shale and clay of Stratum III. Stratum III is correlatable across the site and is the lower confining unit as described by the regulations.
115. Permeability testing indicates that Stratum III has a hydraulic conductivity of 4.5×10^{-8} cm/sec. The low permeability shale and clayey shale inhibits downward movement of groundwater from the overlying Stratum II aquifer.
116. The Applicant properly evaluated Stratum III characteristics.
117. Stratum IA is not present across the entire site, it occurs in discontinuous lenses of sand, and it would be almost entirely removed during excavation of the site.

118. Liner and Leachate System
119. The composite liner system would have a two-foot-thick compacted soil liner, a 60-mil flexible membrane liner, and a two-foot-thick layer of protective cover.
120. The compacted soil liner, the lower unit of the composite liner system, would have a two-foot-thick layer of relatively homogeneous cohesive materials. The compacted soil liner material would have a plasticity index of at least 15, a liquid limit of at least 30, at least 30% passing the No. 200 sieve, and 100% passing the one-inch sieve.
121. The compacted soil liner would be compacted to at least 95% of the standard Proctor at or above the optimum moisture content and would have a laboratory permeability of 1×10^{-7} cm/sec or less.
122. The leachate system was designed with six-inch diameter pipes in gravel-struck trenches.
123. The leachate collection system could accommodate rainfall in excess of the amounts estimated for Dallas or Abilene.
124. The liner and leachate systems would be adequate to protect against groundwater contamination beneath the site.
125. The proposed groundwater monitoring system includes the proper number and location of wells, screened at the proper depths, for adequate monitoring.
126. A total of 11 groundwater monitoring wells are proposed for the site. Nine of the wells have been proposed at locations along the point of compliance. The wells are designed to be spaced no more than 600 feet apart.
127. Two additional wells have been proposed in upgradient positions to allow the determination of background water quality.

128. The most likely pathway of groundwater flow in Stratum II is toward the north-northeastern perimeters of the site. Groundwater monitoring wells are proposed to monitor this zone. Groundwater moves laterally in Stratum II at about 15 feet per year.
129. Precipitation infiltrating from the surface and potential contaminants are not likely to move laterally in Stratum I.
130. Recharge of groundwater to Stratum II is from the outcrop of Stratum II to the west of the site. Because groundwater flow in Stratum II is generally to the north-northeast, a contaminant entering the groundwater in Stratum II would move downgradient laterally to the north-northeast where it would be detected in the downgradient monitoring wells 1 through 9.
131. Stratum II is underlain by the low permeability Stratum III shales and clayey shales. This unit serves as the aquiclude beneath Stratum II, which is the uppermost aquifer. Due to the higher permeability of the Stratum II clastics, groundwater would move laterally in Stratum II rather than downward into the shale and clay of Stratum III.
132. Stratum I-A does not require monitoring because it is not present across the entire site, it occurs in discontinuous lenses of sand and it will be almost entirely removed during excavation of the site.
133. The Applicant used Abilene data in the HELP model. Dallas is closer to the landfill than Abilene. Dallas has more average annual rainfall than Abilene; however, the Dallas data may actually underestimate the maximum head on the liner, and thus the Abilene data results in a more conservative model.
134. Regardless of the city selected, the leachate collection system could accommodate rainfall far in excess of the amounts estimated for Dallas or Abilene. The leachate system was

designed with six-inch diameter pipes in gravel-struck trenches. This is a conservative design because it is larger than the Applicant calculated it would ever need.

Geological Requirements

135. The Application provides adequate geologic and hydrologic information.
136. The proposed facility location is near the western edge of the Western Cross Timbers physiographic province that is characteristic of Cretaceous sandstones.
137. The Cretaceous sandstones dip generally to the east and sit atop older Pennsylvanian System sediments such as the Canyon Group.
138. Regional Aquifers
139. The Trinity Aquifer's Twin Mountains Formation of the Cretaceous System is the most important source of groundwater in the region. This formation is part of the Trinity aquifer.
140. Beneath the Cretaceous System are the various formations of the Pennsylvanian System, including the Canyon Group. These formations are poorly permeable in the site area and, in terms of regional production, are not known to yield significant quantities of potable groundwater.
141. The regulations require the Applicant to describe "the regional aquifers in the vicinity of the facility based upon published and open-file sources."
142. *Aquifers of Texas*, published by the Water Development Board of the State of Texas in 1995, is a reasonable and reliable source for the Applicant to obtain such information.
143. *Aquifers of Texas* lists the Trinity as a major aquifer in the vicinity. The publication also identifies "minor" aquifers throughout the state. The major and minor aquifers described in *Aquifers of Texas* are normally considered the "regional aquifers" of Texas.

144. The Canyon Group is not identified as a major or minor aquifer in *Aquifers of Texas*, nor are any of the individual formations within the Group. The Canyon Group is not a regional aquifer as that term is used in the regulations.
145. Site Specific Geology and Subsurface Investigation
146. The Applicant developed a boring and sampling plan in conjunction with the TCEQ. The plan for this facility was approved by letter dated March 8, 2004.
147. The Applicant reasonably relied on the Executive Director's approval of the boring plan.
148. The drilling was contracted out to Stefan Stamoulis, under the direction of Michael Snyder and Greg Adams. Mr. Stamoulis is himself a registered geologist and a very experienced professional.
149. During the drilling phase of the investigation Mr. Adams was in contact with Mr. Stamoulis roughly two days per week while Mr. Snyder talked to Mr. Stamoulis every single day, and on many occasions several times per day.
150. Approximately 75-80 percent of the borings produced undisturbed cored samples. Mr. Snyder and Mr. Adams personally observed each core sample taken.
151. On occasion wash borings were taken. This was done when the team was confident the drill was in a particular layer where the sediment was consistent. The driller would make a request to Mr. Snyder, who would look at his existing correlations and if appropriate, give the approval. An experienced driller can generally tell when a different material is encountered while drilling.
152. Even when taking wash borings the driller would stop every few feet and bring up the sample for a visual inspection. If any change was noticed, either by visual inspection or during drilling, the core barrel would be reinstalled and core sampling would begin again.

153. The data produced by the subsurface investigation supports the Applicant's delineation of Stratums I, II and II described above.
154. Applicant's boring plan included 26 bore holes at various points throughout the proposed permit site.
155. Approximately 80% of the borings produced undisturbed core samples.
156. Applicant used wash borings in particular holes after it had determined sediment was consistent in the area.
157. Applicant classified the soils according to the Unified Soil Classification System to aid in the evaluation of the engineering properties of the soils.
158. Applicant performed physical property testing to determine the parameters used in the slope stability, settlement, and heave analyses.
159. Applicant tested the site's physical properties to determine the parameters used in the dewatering system design and to evaluate the onsite material for use as compacted clay liner.
160. The Application includes the required information on soils.
161. No wetlands are present in the landfill area.
162. Applicant conducted a fault study by reviewing aerial photographs of the site, reviewing available geologic literature and maps of the area, conducting site reconnaissance, and examining the subsurface boring data.
163. There was no evidence of surface faulting in the area or any lineament crossing the site.
164. There is no active faulting within 200 feet of the site.

Slope Stability

165. Greg Adams, P.E. prepared the sections of the Application and testified about slope stability in his prefiled testimony and in live testimony during the hearing. Mr. Adams has

personally performed slope stability analyses at approximately 25 landfills and has never experienced a failure.

166. The excavation slopes were analyzed for both short-term and long-term conditions by circular failure surfaces. The waste slope was analyzed for long-term conditions by random failure surfaces.
167. Part III, Attachment 4, Appendix 4G contains the slope stability analyses performed to predict the stability of the excavation slope, waste slope, and the sideslope liner and the final cover systems. The proposed slopes will be stable under the conditions analyzed.
168. Slope stability calculations were performed to evaluate the stability of the sideslope liner and final cover systems.
169. Soil parameters were selected based on a review of boring logs, laboratory test results, and on engineering judgment and experience with similar materials.
170. The geotechnical evaluation was adequate to ensure the stability of slopes and materials used for sidewalls.
171. The Applicant assumed even lower than average strength values for slopes.
172. Even if the landfill were located in the Pennsylvanian formation, the slope stability analyses would not change.

Land Use Issues

173. The Application included a legal description and surveys of the approximately 652-acre tract of land Applicant owns and upon which it would construct the landfill, the driveway easement, and a Property Owner Affidavit stating that IESI is the owner of the property. The Application included adequate proof of property interests.
174. The Application properly identified the approximately 25 residences within one mile of the proposed landfill site.

175. The land use of the surrounding area is primarily agriculture pasture-land, with some oil and gas development and rural residents.
176. There are no schools, licensed day-care facilities, churches, cemeteries, or recreational areas within one mile of the proposed site.
177. There are no churches within the one mile of the proposed facility.
178. There are no airports or significant business operations nearby.
179. The location does not raise any significant archeological concerns.
180. An unpaved public road, two industrial/commercial facilities, a greenhouse complex, and a new recreational vehicle park are within one mile of the proposed permit boundary.
181. The roads leading to the landfill are adequate without any need for improvement (other than the driveway entrance itself).
182. There are no zoning restrictions or any land-use variances needed for the operation of the landfill.
183. The recorded oil and gas wells within one mile of the site are shown in the Application.
184. No oil and gas wells would be allowed on the landfill.
185. The Application identifies the two unused water wells within the permit boundary. As shown by those maps, there are no other water wells identified within 500 feet of the proposed site.
186. The Application further identifies all the wells located within 1 mile of the permit boundary.
187. For purposes of landfill design, groundwater characterization, and local uses of water, Applicant has adequately described the springs in the area.
188. The depth and geology of the Barnett Shale and overlying formations are such that there will be no impact on the Jacksboro landfill.

189. The Application adequately identifies and evaluates all springs, water wells, oil and gas wells, homes, churches, and other site specific issues requiring special consideration under Commission rules.
190. The Application properly identified one church that is 1.5 miles from the proposed landfill site.
191. The location chosen for the proposed landfill is compatible with surrounding land uses and residential growth trends.

Wells and Springs

192. The Application identified five water wells within one mile of the permit boundary, two of which are within the permit boundary and not used.
193. Applicant identified 25 residences within one mile of the facility.
194. The Application identifies the two unused water wells within the permit boundary. As shown by those maps, there are no other water wells identified within 500 feet of the proposed site.
195. The Application further identifies all the wells located within 1 mile of the permit boundary.
196. For purposes of landfill design, groundwater characterization, and local uses of water, Applicant has adequately described the springs in the area.
197. The depth and geology of the Barnett Shale and overlying formations are such that there will be no impact on the Jacksboro landfill.
198. The Application adequately identifies and evaluates all springs, water wells, oil and gas wells, homes, churches, and other site specific issues requiring special consideration under Commission rules.

Usable Aquifer

199. The Twin Mountains Formation of the Cretaceous System is the most important source of groundwater in the region. This formation is part of the Trinity aquifer.
200. Beneath the Cretaceous System are the various formations of the Pennsylvanian System, including the Canyon Group. These formations are poorly permeable in the site area and, in terms of regional production, are not known to yield significant quantities of potable groundwater.
201. The regulations require the Applicant to describe “the regional aquifers in the vicinity of the facility based upon published and open-file sources.” 30 TEX. ADMIN. CODE § 330.56(d)(4).
202. *Aquifers of Texas*, published by the Water Development Board of the State of Texas in 1995, is a reasonable and reliable source for the Applicant to obtain such information.
203. *Aquifers of Texas* lists the Trinity as a major aquifer in the vicinity. The publication also identifies “minor” aquifers throughout the state. The major and minor aquifers described in *Aquifers of Texas* are normally considered the “regional aquifers” of Texas.
204. The Canyon Group is not identified as a major or minor aquifer in *Aquifers of Texas*, nor are any of the individual formations within the Group. The Canyon Group is not a regional aquifer as that term is used in the regulations.

Site Operating Plan

205. The Site Operating Plan (SOP) contains a Fire Protection Plan, which includes Fire Prevention Procedures, General Rules for Fires, Specific Fire-Fighting Procedures, Fire Protection Training, and the TCEQ Notification process.
206. The Jacksboro Fire Department would be charged with responding to fire emergencies at the landfill.
207. The Jacksboro Fire Department has adequate personnel and equipment for fire emergencies.

208. The fire procedures implemented as part of the SOP are in compliance with the TCEQ's published guidance on how to draft SOPs.
209. The SOP contains provisions including prohibiting the open burning of waste, daily covering of newly deposited landfill waste, controlling ponded water, the proper management of leachate and contaminated water, and the use of all-weather roads.
210. The Site Layout Plan calls for a minimum buffer distance of 200 feet between the disposal footprint and the permit boundary. This distance provides ample room for fire-fighting vehicles.

Odors, Dust, and Air Criteria

211. The SOP sections on air criteria, odors, and dust comply with the applicable TCEQ regulations and are adequate to protect against these conditions.
212. The Site Operating Plan provides adequate controls for fire protection.
213. Landfill Gas Management
214. The Landfill Gas Management Plan (LGMP) includes specific monitoring and maintenance procedures and shows the quarterly reporting forms required for the probes and facility structures.
215. The LGMP accounts for and describes response measures and a remediation plan in the event concentrations of methane exceed regulatory limits either within facility structures or at the permit boundary.
216. The design includes a landfill gas venting system as part of the final cover system to prevent excessive pressures from developing under the geomembrane cap.
217. The SOP provides adequate controls for landfill gas.

Vectors and Scavenging

218. The SOP describes measures that would be taken to control vectors such as daily, intermediate, and final cover and compaction, as well as more specific measures such as pesticides.
219. Human salvaging and scavenging would not be permitted.
220. The SOP adequately addresses the prevention and response to human salvaging and scavenging.
221. The SOP provides adequate controls for vectors and human salvaging and scavenging.
222. While feral hogs reside in Jack County, as well as in most of Texas, there is no evidence that they have entered any landfill facility.
223. Vectors, including wild feral hogs, will not be allowed to negatively affect the Jacksboro Landfill.

Windblown Waste

224. The SOP describes the measures that would be taken to control windblown waste, such as requiring adequate covers on waste transportation vehicles; limiting the size of the active working face; applying daily cover as frequently as needed; erection of litter control fences;; collection of windblown waste; and the utilization of earth berms as needed.
225. The SOP provides adequate controls for windblown waste.
226. The IESI property is approximately 652 acres which is significantly larger than the permit boundary itself.

Screening of Prohibited Wastes

227. The SOP outlined in the Application includes a screening program for the detection and prevention of the disposal of prohibited wastes.
228. All incoming loads would be visually monitored at the gatehouse and working face.

229. Site personnel would be properly trained to identify any prohibited wastes, and to perform random inspections and know what to do in the event prohibited wastes are identified.
230. Detection of a prohibited waste would trigger an investigation and appropriate measures.
231. The SOP requires the maintenance of records of load inspection reports and regulated hazardous or PCB waste notifications.
232. Prohibited wastes would be properly segregated, protected against the elements, secured against unauthorized removal, isolated from other waste and activities, and returned to the hauler for proper disposition.
233. The SOP provides adequate controls for screening of prohibited wastes.

Ponded Water

234. The SOP includes procedures for dealing with ponded water, including requiring any ponded water to be removed and the depressions filled as quickly as possible, but no later than seven days after ponding.
235. Because of the site grading and maintenance, ponded water would be minimal.
236. The SOP provides adequate controls for ponded water.

Site Access

237. The SOP would provide adequate controls for site access.
238. The only access point through the perimeter fence would be a gated entrance to the main property, and a gate attendant at the permit boundary.
239. Entry to the active portion of the site would be restricted to designated personnel, approved waste haulers, and properly identified persons whose entry is authorized by site management.

Employee Training

240. The SOP includes provisions related to training employees, including training for record keeping, license requirements, detection, prevention of disposal of prohibited wastes, fire protection and response, site inspection, site safety, site access, and maintenance.
241. The landfill personnel would receive training through a combination of classroom instruction and on-the-job training in procedures relevant to the position for which they are employed.
242. The landfill would have a program for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous and PCB wastes.
243. Site personnel would receive site-specific safety training.
244. In order to enhance site safety, access to the active areas would be limited to authorized personnel and equipment would be kept well-maintained.
245. The SOP would adequately provide for training of employees and guide the facility's day-to-day operations.
246. The Site Operating Plan also sets forth the various positions at the landfill, and the duties of those employees in running the facility on a day-to-day basis.

Health of Protestants and their Families

247. TCEQ regulations at 30 TEX. ADMIN. CODE Chapter 330 as applicable to this permit application are designed to ensure that a Type I municipal solid waste landfill is protective of public health.
248. The Jacksboro Landfill has been designed and will be operated in compliance with applicable provisions of 30 TEX. ADMIN. CODE Chapter 330 and other applicable TCEQ regulations.

249. The landfill, as designed in compliance with the applicable TCEQ regulations, will be protective of the environment and the health of citizens both from a land-use and a groundwater perspective.
250. The Application demonstrates that the operation of the Jacksboro Landfill will not adversely affect the health of the Protestants and their families.

Buffer Zones

251. The landfill design shows the buffer zone from the disposal footprint to the permit boundary to be a minimum distance of 200 feet, which exceeds the TCEQ's applicable regulation requiring a 50-foot buffer.
252. The buffer zones and screening proposed in the Application would be adequate.
253. The draft permit requires the Applicant to operate not only in compliance with the Site Operating Plan generally, but includes a specific provision stating that the Jacksboro Landfill must be managed so as to protect human health and the environment.
254. The extended buffer proposed by the Applicant not only better protects the nearby residents from nuisance conditions, it also provides for easier access for fire-fighting and other emergency vehicles.
255. The proposal landfill site consists of approximately 652 acres which allows for superior screening of the landfill operations from public view.
256. The landfill disposal footprint is located approximately 1.29 miles from the nearest paved road.
257. The permit boundary is set back 832 feet from the western property boundary and 2655 feet from the northern boundary in some places.

Nuisance Conditions

258. The site would have an entrance gate, and appropriate traffic control signs to direct and control traffic.
259. Applicant plans to confine the unloading areas to a minimum size.
260. The SOP has measures to control odors such as prompt landfilling of waste, daily covering of freshly landfilled waste, controlling ponded water, and the proper management of leachate and contaminated water.
261. There would be all-weather access maintenance of all roads, including internal roads, in a reasonably dust-free and liter free condition.
262. The SOP includes provisions for the use of the existing topography and vegetation as site buffers to screen the waste.
263. The site would have a barbed wire perimeter fence.
264. The Site Operating Plan includes measures to control windblown wastes and litter in compliance with 30 TEX. ADMIN. CODE § 330.120.
265. The Site Operating Plan has restrictions to prohibit waste unloading, storage, disposal, or processing within any buffer zone.
266. The buffer zone will be 200 feet minimum, which exceeds the TCEQ requirement found in 30 TEX. ADMIN. CODE § 330.121.
267. The Site Operating Plan has measures to control odors such as prompt landfilling of waste, daily covering of freshly landfilled waste, controlling ponded water, and the proper management of leachate and contaminated water in compliance with 30 TEX. ADMIN. CODE § 330.125.
268. The Site Operating Plan includes provisions designed for control of disease vectors in compliance with 30 TEX. ADMIN. CODE § 330.126.

269. There are measures to prevent human salvaging and scavenging in compliance with 30 TEX. ADMIN. CODE § 330.128.
270. There will be control and monitoring of landfill gas will be in accordance with the Landfill Gas Management Plan in compliance with 30 TEX. ADMIN. CODE §§ 330.56(n) and 330.130.
271. There will be use of a landfill compactor in accordance with § 330.132; daily cover, intermediate cover, and final cover; site grading and maintenance to minimize ponded water, and removal of ponded water as needed, but in any event within 7 days in compliance with complies with 30 TEX. ADMIN. CODE § 330.134.
272. The Site Operating Plan includes provisions for the use of the existing topography and vegetation, site buffers to screen the waste is in compliance with 30 TEX. ADMIN. CODE § 330.138.
273. The Site Operating Plan includes provisions for the control of leachate and contaminated water and conducting regular inspections and maintenance in accordance with a schedule.
274. The Site Operating Plan provisions fulfill the TCEQ's requirements and are adequate to control nuisance conditions.
275. The Application demonstrates that the proposed permit is adequately protective to prevent nuisance conditions.

Transportation

276. The Application includes a discussion of the availability and adequacy of the roads, the volume of vehicular traffic on the access roads, the volume of vehicular traffic generated by the facility, and the proposed entrance road plan.
277. The Application includes a discussion of the driveway permit that would be issued by the Texas Department of Public Safety if the Application is approved.
278. The Application includes adequate transportation information.

279. Regional Coordination
280. The Nortex Regional Planning Commission has determined that the proposed landfill is compatible with the local Regional Solid Waste Management Plan.
281. The proposed landfill is compatible with the Regional Solid Waste Management Plan.

Endangered and Threatened Species

282. Applicant provided the relevant technical data, a mitigation plan, and correspondence with the appropriate state and federal agencies regarding endangered and threatened species.
283. While no threatened or endangered species were observed at the proposed landfill site, because some areas of the landfill could serve as habitat for the Texas horned lizard and the timber rattlesnake, a proactive mitigation plan was developed.
284. The mitigation plan includes appropriate steps to be taken during both during construction and operation of the landfill to protect those species and to relocate the species if an animal is found.
285. Applicant adequately evaluated the presence of and potential for adverse effects of the landfill on endangered and threatened species.
286. The Application included the required correspondence between Mr. Marusak and the Texas Parks and Wildlife Department, the United States Army Corp of Engineers, and the United States Fish and Wildlife Service.
287. It also included the Section 404 Nationwide Permit Application and Authorizations addressing threatened and endangered species.

Compliance History

288. Applicant owns and operates multiple waste facilities of various types throughout Texas.
289. Applicant's compliance history reflects an overall "average" classification.
290. The Applicant's compliance history warrants the granting of the permit.

Closure and Post Closure Plans

291. The Application contains evidence of financial responsibility.
292. The financial assurance would be by surety bond to be filed upon issuance of the MSW permit to IESI.
293. The closure and post-closure plans are set out in the Application.
294. IESI has agreed to provide financial assurance pursuant to the financial assurance schedule found in the Application, at Part III, Attachment 8 – Cost Estimates for Closure and Post-Closure care. (App. Ex. 100, Vol. 1, Part I, App. IE.)
295. Applicant adequately provided for closure and post closure plans and proposed adequate financial assurance.

Permit Term

296. Ms. Teresa McCaine, testifying on behalf of the Executive Director of the TCEQ, confirmed that the Executive Director does not deem it appropriate for the term of the permit to be anything other than the life of the facility.
297. The Applicant has demonstrated that the permit term should be for the life of the facility.
298. There was no evidence that, if the Application were granted, the permit's term should be other than for the life of the facility.

Transcript Costs

299. All parties had a role in initiating the hearing.
300. A transcript was required because of the length of the hearing.
301. All parties participated substantially in the proceedings and benefitted from having a transcript for use in preparing their briefs.
302. The transcript costs should be assessed 50% to Applicant, 25% to Protestant, and 25% to the City.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the disposal of MSW and the authority to consider this permit under TEX. HEALTH & SAFETY CODE ANN. § 361.061.
2. Notice was provided in accordance with TEX. HEALTH & SAFETY CODE ANN. § 361.0665, 30 TEX. ADMIN. CODE §§ 39.5 and 39.101, and TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. SOAH has jurisdiction to conduct a hearing and to prepare a Proposal for Decision. TEX. GOV'T CODE ANN. § 2003.047.
4. Transcript costs should be assessed 50% to Applicant, 25% to the City, and 25% to Protestant.
5. The Texas Commission on Environmental Quality has jurisdiction over the Application.
6. This proceeding is governed by the Texas Solid Waste Disposal Act.
7. Proper public notice of the landfill application was given in this matter as to all public hearings for which notice was required.
8. IESI fulfills the all applicable requirements of the TCEQ's regulations, including of 30 TEX. ADMIN. CODE § 39.101(c) and § 39.501(c) in providing proper notice.
9. The Site Operating Plan provides adequate controls for fire protection and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.115 in regards to providing adequate controls for fire protection.
10. The Site Operating Plan provides adequate controls for odors and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.125 in regards to providing adequate controls for odors.

11. The Site Operating Plan provides adequate controls for dust and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.125, .127 in regards to providing adequate controls for dust.
12. The Site Operating Plan provides adequate controls for air criteria and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.125 in regards to providing adequate controls for air criteria.
13. The Site Operating Plan provides adequate controls for landfill gas and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.130 in regards to providing adequate controls for landfill gas.
14. The Site Operating Plan provides adequate controls for vectors and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.126 in regards to providing adequate controls for vectors.
15. The Site Operating Plan provides adequate controls for scavenging and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.128 in regards to providing adequate controls for scavenging.
16. The Site Operating Plan provides adequate controls for windblown waste and IESI fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.120 in regards to providing adequate controls for windblown waste.
17. The Site Operating Plan provides adequate controls for screening of prohibited waste and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.175 in regards to providing adequate screening of prohibited waste.
18. The Site Operating Plan provides adequate controls for ponded water and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.134 in regards to providing adequate controls for ponded water.

19. The Site Operating Plan provides for adequate controls for site access and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.116 in regards to providing adequate controls for site access.
20. The Site Operating Plan is adequate in regards to adequately training employees fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE §§ 330.114(1); 330.114(5)(C); 330.114(6) and § 335.586.
21. The Site Operating Plan provides an adequate guide for the operations of day-to-day operations of the facility and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.111 in regards to providing an adequate guide for the operations of day-to-day operations of the facility.
22. The operation of the landfill will not adversely affect the health of the requestors and the requestors' families and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(8) to not adversely affect the health of the requestors and the requestors' families.
23. The proposed landfill is compatible with surrounding land uses and residential growth trends and the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(7)-(8) regarding the proposed landfill's compatibility with surrounding land uses and residential growth trends.
24. The proposed buffer zones and screening for the landfill are adequate and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.121 and § 330.138 in regards to the adequacy of the proposed buffer zones and screening.
25. The application includes adequate transportation information and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE §§ 330.51(b)(6)(C) and 330.53(b)(9)(A)-(C) regarding the adequacy of transportation information.

26. The Applicant properly evaluated and presented information on the vertical and horizontal flow characteristics of groundwater and fulfills the requirements the applicable TCEQ Rules, including of 30 TEX. ADMIN. CODE § 330.56(e)(2)-(4) and § 330.56(D)(5)(C) regarding the proper evaluation and presentation of information on the vertical and horizontal flow characteristics of groundwater.
27. The proposed groundwater monitoring system includes the proper number and location of wells, screened at the proper depths, for adequate monitoring and IESI fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(e)(5) and § 330.230-.234 and 330.241 in regards to the proposed groundwater monitoring system.
28. The liner and leachate system are adequate to protect against groundwater contamination and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(f) and (o); § 330.201 and § 330.200, § 330.205 regarding the adequacy of the liner and leachate system to protect against groundwater contamination.
29. The geotechnical evaluation is adequate to ensure the stability of slopes and material used for sidewalls and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(D)(5)(B) in regards to the adequacy of the geotechnical evaluation to ensure the stability of slopes and material used for sidewalls.
30. The proposed landfill is compatible with the Regional Solid Waste Management Plan and fulfills the requirements of the applicable TCEQ Rules, in regards to compatibility with the Regional Solid Waste Management Plan.
31. The landfill application provides adequate geological and hydrological information and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.56(D)(1)-(4); § 330.53(b)(10)(A) in regards to the adequacy of the geological and hydrological information.

32. The landfill application includes the required information on soils and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(10)(A) in regards to the inclusion of the required information on soils.
33. The Applicant provides adequate information regarding proposed surface water controls, floodplains, drainage route runoff from the facility, and off-site storm water contamination, including Jasper Creek and fulfills the requirements of the applicable TCEQ Rules, including: 30 TEX. ADMIN. CODE § 330.55(b)(1)-(7) in regards to surface water; 30 TEX. ADMIN. CODE § 330.53(b)(11)(B) and § 330.55(b)(5) and § 330.56(F) in regards to drainage; and 30 TEX. ADMIN. CODE § 330.301 and § 330.53(b)(12)(A) in regards to floodplains.
34. The appropriate rainfall data was used in the calculation of surface drainage and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.55(b)(5) in regards to selecting the appropriate rainfall data in the calculation of surface drainage.
35. The proposed landfill is not located in a wetland or an area with faults and fractures and fulfills the requirements of the applicable TCEQ Rules, including: 30 TEX. ADMIN. CODE § 330.53(b)(12)(B) and § 330.302 in regards to wetlands; 30 TEX. ADMIN. CODE § 330.303 and § 330.53(b)(10)(B) and § 330.204 in regards to faults; 30 TEX. ADMIN. CODE § 303.304 in regards to seismic activity; and 30 TEX. ADMIN. CODE § 330.305 in regards to unstable areas.
36. The Applicant adequately provides for closure and post closure plans and proposes adequate financial assurance and fulfills the requirements of the applicable TCEQ Rules, including: 30 TEX. ADMIN. CODE § 330.52(b)(11) and § 330.280-.284, § 330.56(h) in regards to financial assurance; 30 TEX. ADMIN. CODE § 330.56(h), § 330.56(l), § 330.253 in regards to closure; and 30 TEX. ADMIN. CODE § 330.56(h), § 330.56(m), §330.254-.256 in regards to post-closure plans.

37. The Applicant adequately evaluated the presence of and potential for adverse effects of the landfill on endangered or threatened species and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(13) and § 330.302, § 330.51(b)(6)(8), § 330.55(b)(9) in regards to endangered or threatened species.
38. The proposed permit is adequately protective to prevent nuisance conditions and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.127 in regards to the prevention of nuisance conditions.
39. The Applicant's compliance history warrants the granting of the permit and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 60.1-60.3 in regards to its compliance history warranting the granting of the permit.
40. The application includes adequate proof of property interests and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.52(b)(4)(D) and .52(b)(5) in regards to proof of property interests.
41. The application adequately identifies and evaluates all springs, water wells, oil and gas wells, homes, churches, and other site specific issues requiring special consideration under Commission rules and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.53(b)(8)(E), § 330.52(b)(4)(D) and § 330.52(b)(5) in regards to adequately identifying and evaluating all springs, water wells, oil and gas wells, homes, churches, and other site specific issues which require special consideration under Commission rules.
42. The permit term should be for the life of the facility and fulfills the requirements of the applicable TCEQ Rules, including 30 TEX. ADMIN. CODE § 330.63 in regards to the permit term being for the life of the facility.

43. The ALJ's recommendation in this matter is based on specified findings of fact found in the record. TEX. GOV'T. CODE § 2001.141(c).
44. Based on all the foregoing Findings of Fact and Conclusions of Law, the TCEQ Permit No. 2332 for a municipal solid waste landfill should be granted.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. The Application of IESI TX Landfill L.P. for Permit No. MSW-2332 is granted
2. Transcript costs will be paid 50% by Applicant, 25% by the City, and 25% by Protestant.
3. The Chief Clerk of the Commission shall forward a copy of this Order to all parties.
4. All other motions, requests for specific Findings of Fact or Conclusions of Law, and other requests for general and specific relief, if not expressly granted, are denied for want of merit.
5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this Order.
6. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Buddy Garcia, Chairman
For the Commission**