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October 5, 2009

Ms. LaDonna Castañuela
Office of Chief Clerk, MC-105
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, TX 78753

Via Hand Delivery

Clerk of the Court
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

Via Hand Delivery

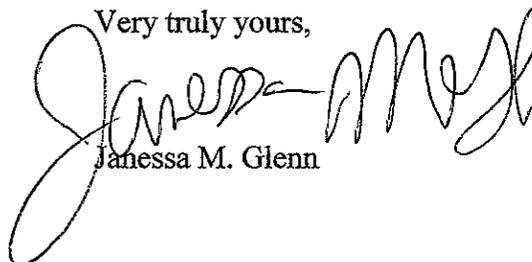
RE: Application by IESI for a New Type 1 MSW Permit; Proposed Permit No. 2332;
SOAH Docket No. 582-08-1804
TCEQ Docket No. 2007-1302-MSW

Dear Sir/Madam:

Enclosed for filing in the referenced cause is IESI TX Landfill L.P.'s Reply to Exceptions to Amended 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.)
Kerry Russell (w/encl.)

CHIEF CLERKS OFFICE

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

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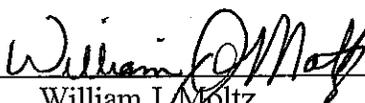
APPLICATION OF IESI TX LANDFILL § BEFORE THE STATE OFFICE
L.P. FOR A NEW TYPE 1 MSW PERMIT § OF
PROPOSED PERMIT NO. 2332 § ADMINISTRATIVE HEARINGS

CHIEF CLERKS OFFICE

IESI TX LANDFILL L.P.'S REPLY TO EXCEPTIONS
TO AMENDED PROPOSAL FOR DECISION

Respectfully submitted,

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TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

I. INTRODUCTION

Two Bush Community Action Group (“Two Bush” or “Protestant”) has filed Exceptions to the Amended Proposal for Decision (“Amended PFD”) issued by Administrative Law Judge Sarah Ramos (“ALJ”), urging the Texas Commission on Environmental Quality (“TCEQ”) to reject the ALJ’s recommendation that IESI’s Application for a Type I MSW permit be granted. The TCEQ’s Office of the Public Interest Council (“OPIC”) filed Exceptions joining the Protestant in this request. Both seek a denial of the permit even though the ALJ’s Amended PFD recommends a Special Provision be added to the permit to address the very concerns that were raised by the Protestant during the hearing on this matter. The City of Jacksboro and the TCEQ’s Executive Director have filed Exceptions which recommended issuance of the permit as proposed by the ALJ, but with suggested changes to the underlying Findings of Fact and Conclusions of Law.

To the extent the Protestants and OPIC are, as they claim, motivated by a desire to ensure groundwater protection, they should be pleased with the Amended PFD, which recommends a Special Provision that goes well beyond the requirements of the applicable TCEQ rules addressing groundwater monitoring. Instead, the Protestant continues to confuse the issues and tries to paint IESI and the City of Jacksboro as unconcerned with protecting the environment, while OPIC asserts that it is unfair to actually address Protestant’s concerns. IESI has maintained throughout this proceeding that the Protestant is not interested in ensuring the proposed Jacksboro Landfill is protective of human health and the environment, but rather is motivated purely by a desire to see this permit denied based on any imagined deficiency. This

latest filing confirms IESI's belief. It also appears that OPIC's concern is not environmental protection but, instead, merely assisting the Protestant in achieving their desired ulterior motive.

IESI and the City of Jacksboro have been heavily invested in this project for approximately seven years. The personnel resources and hard dollars spent by IESI and the City have been extraordinary, and absolutely everything has been done and every commitment sincerely made to ensure that the Jacksboro Landfill will be an exemplary facility and the environment will be absolutely protected. IESI is willing to take on the long term and multi-million dollar obligation to install and monitor for decades additional monitor wells completely encircling the landfill, which the Special Provision will require, even though the groundwater monitoring system proposed in the Application satisfies applicable agency regulations and was deemed technically sufficient by the Executive Director. Clearly, IESI is willing to undertake not only appropriate measures to protect human health and the environment, but also *extraordinary* measures that will make the Jacksboro Landfill arguably the most monitored landfill in the State of Texas. This is hardly a "quick fix," as the Protestant has pejoratively asserted.

Neither the Exceptions filed by the Protestant nor those filed by OPIC are supported by the record evidence. The Commission should follow the ultimate recommendation of the ALJ, which is supported by the Executive Director, and issue IESI a permit. In doing so, the Commission should adopt the Findings of Fact and Conclusions of Law presented by the ALJ, with the modifications suggested by IESI in Attachment A. For the Commission's convenience, IESI has attached to this Reply a redlined document (Attachment A) comparing the Findings of Fact and Conclusions of Law issued by the ALJ to the Findings of Fact and Conclusions of Law requested by IESI.¹

¹ In order to conform IESI's proposed Order to the modified Conclusion of Law requested by the Executive Director

II. RESPONSE TO EXCEPTIONS FILED BY PROTESTANT

A. Groundwater Protection

1. Additional Monitoring Wells

IESI included in its response to the ALJ's original PFD an attachment detailing 28 additional groundwater monitoring wells around the perimeter of the landfill site to be screened in Stratum I/IA. IESI agreed to install those additional wells should the Commission determine to add a Special Provision to the permit as invited by the ALJ in her original PFD. The ALJ indicates in her Amended PFD that the inclusion of this Special Provision will address any lingering concerns she may have had as to groundwater protectiveness. Of course, the Special Provision also addresses Protestant's complaint that more monitor wells are needed.

Should the Commissioners elect to incorporate into the permit this substantially more stringent groundwater monitoring obligation, IESI agrees with the Special Provision as proposed by the ALJ. These additional monitor wells are placed and designed according to TCEQ regulatory standards and policies for such monitor wells as described in the record of this proceeding. For convenience, Attachment A provides the entire Special Provision proposed by the ALJ and the attachments referenced in that Special Provision.² This Special Provision would be included in the permit at Section X., entitled "Special Provisions." The referenced attachment to the Special Provision is labeled "Special Provision Table 1". As shown in Attachment B, IESI is agreeing to install 28 additional monitoring wells, in full compliance with TCEQ rules and design standards, all around the perimeter of the Jacksboro Landfill.

in his Exceptions to the Amended Proposal for Decision, Conclusion of Law No. 8 has been modified from that contained in the Order attached to IESI's Exceptions. A limited number of additional Conclusions of Law have been modified from those contained in the Order attached to IESI's Exceptions in response to the various Exceptions filed by the Parties.

² While the Special Provision proposed by the ALJ is worded somewhat differently from that suggested within IESI's prior Reply to the Exceptions, it is substantively the same and IESI is in agreement with the Special Provision as proposed by the ALJ in her Amended PFD. Attachment A is the Special Provision as proposed by the ALJ.

In agreeing to the Special Provision, IESI believed that nothing could be more protective of the groundwater than this approach. However, the Protestant has predictably found a new way to complain. The latest argument combines unsupportable assumptions to leap to an inconsistent and rather ridiculous conclusion.

a. *Background*

By way of background, within the Application and throughout this proceeding, the parties have referred to the geologic formations in which the Landfill will be constructed as Strata I, IA, and II. The uppermost layer is Stratum I, consisting of clay, shale, and shaley clay.³ All parties agree that “Stratum I” is both present and correlatable across the site, and is not water bearing. In some areas of the Landfill site, the lower portions of Stratum I contain discontinuous layers or pockets of material consisting of sandstone, silty sand, and siltstone.⁴ The lower portions of Stratum I where these discontinuous pockets of sandy type materials are located have been termed “Stratum IA”. As water moves down through Stratum I, it may temporarily pool within these discontinuous pockets of sandy type materials. All parties agree that Stratum IA is not present across the entire site. It is further undisputed that the Stratum IA sands do contain some groundwater, but the groundwater is in the isolated pockets of sandy materials and, therefore, is discontinuous and uncorrelatable across the site. A substantial portion of Stratum IA will be physically excavated during ongoing landfill construction activities. Below Stratum I and IA lies a permeable layer of sandstone and siltstone which contains groundwater. This groundwater bearing stratum has been termed “Stratum II.” The groundwater in Stratum II is both present and correlatable across almost the entire site.⁵ Underneath Stratum II is a very thick and

³ Applicant Exhibit 100, Vol. 2, Attachment 4, p. 4-9 through 4-10.

⁴ *Id.*

⁵ *Id.*

impermeable layer of shale and clayey shale. This layer has been termed “Stratum III” and is the layer IESI has described as an “aquiclude”. As shown in the Application, the Pennsylvanian geologic system exists below the Cretaceous system in this portion of Jack County. The ALJ found that Stratum III is the top of the Pennsylvanian geologic system and Strata I, IA, and II are part of the overlying Cretaceous Trinity group.

b. *Stratum II Contains the Trinity Aquifer*

Throughout this entire proceeding, beginning with comments submitted to the Executive Director and their Request for Hearing, Protestant has argued that the Jacksboro Landfill is in the recharge area of the Trinity aquifer, sometimes referred to as the “Twin Mountains” aquifer which is merely the name of a portion of the Trinity aquifer located in southeast Jack County. This assertion continues within all of Protestant’s positions and arguments including the recently filed Exceptions to the ALJ’s Amended PFD. IESI agrees that the Jacksboro Landfill is located in the Cretaceous Trinity group and thoroughly addressed that fact within the Application and throughout this proceeding. The ALJ and the Executive Director also agree with this conclusion.

Protestant’s expert, Dr. Lauren Ross, relied heavily upon Report 308 of the Texas Water Development Board, and attached the entire Report 308 to her pre-filed testimony. The Protestant has been critical of the Applicant for not placing enough reliance on Report 308. Included in this Reply as Figure 1 on the following page is a copy of a Geologic Map of Jack County taken from Report 308.⁶ That map shows in clear, unequivocal color, that the proposed Jacksboro Landfill is located in the Cretaceous Trinity Group. The Pennsylvanian Canyon Group is located well to the east. This is consistent with the site specific data, the testimony of

⁶ Protestant’s Exhibit 8, Ross Pre-filed Testimony at Exhibit 8B, Figure 6.

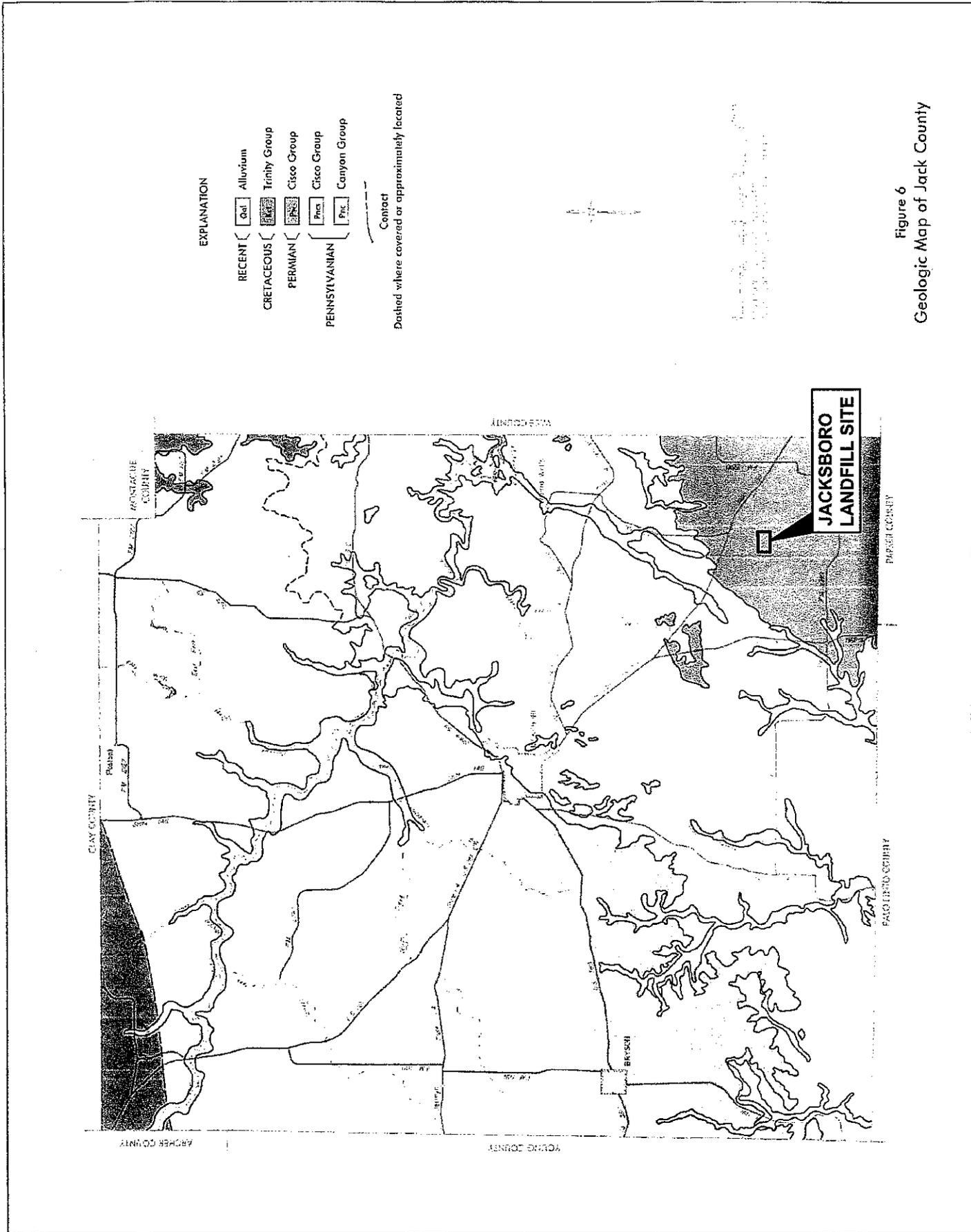


Figure 6
 Geologic Map of Jack County

FIGURE I

Mr. Snyder and Dr. Kreitler for IESI, and in many respects, Dr. Ross for the Protestants. It is also consistent with the Geologic Vicinity Map included in the Application as 4A.1.

In reality, there is no reasonable dispute of the fact that the Jacksboro Landfill is located in the Twin Mountain aquifer of the Cretaceous Trinity formation. This geologic and hydrogeologic description is entirely consistent with the Application, the prefiled testimony of Dr. Ross, and all the published data, including TWDB Report 308, which Protestant repeatedly cites. The water bearing formation at the site which corresponds to the Trinity or "Twin Mountains" aquifer is Stratum II which the ALJ found is the uppermost aquifer at the site. If, as repeatedly asserted by Protestant, the site is in the recharge area for the Trinity aquifer, the absolute only possible location of that aquifer is within Stratum II (*i.e.*, above the impermeable Stratum III).

c. *Groundwater In Stratum II Moves to the East and Northeast*

It was further repeatedly stated in the Application and in the testimony of all parties' experts that the groundwater in the Trinity or "Twin Mountains" aquifer moves to the east and northeast. As will be discussed in greater detail below, the site specific data clearly confirms this groundwater migration direction to the east and northeast. The flow direction of the Trinity aquifer was not only described in the Application, but also in the prefiled testimony of Protestant's expert, Dr. Ross, as follows:⁷

...

Groundwater within the Trinity Group generally moves downdip, to the east

...

Contamination leaking from the bottom or sides of the proposed landfill would migrate vertically into the Trinity. It would flow north or east, following the regional groundwater gradient....

⁷ Protestant Exhibit 8, Ross Prefiled Testimony at p. 11, 29, and Exhibit 8C.

Protestant can not assert that the Jacksboro Landfill is in the Cretaceous Trinity formation, which they have consistently done and continue to do and which all experts uniformly agree, and then suddenly claim that Stratum II is now in the Pennsylvanian geologic formation with groundwater moving in the opposite direction. Yet this is exactly what they have done in their Exceptions to the ALJ's Amended PFD. Apparently realizing the blatant inconsistency in this argument, the Protestant attempts to explain that the "groundwater in Stratum II flows not only to the east, but also to the west."⁸ This is nonsensical. Apparently, the Protestants would have the Commissioners believe that groundwater found in the aquifer in Stratum II under the proposed Landfill site magically flows in two opposite directions at the same time. Groundwater under the site migrating on top of impermeable Stratum III simply cannot flow in two opposite directions to sneak around monitor wells.

IESI asks the Commissioners to step back and take notice of Protestant's strategy. The groundwater monitoring system initially proposed by IESI and approved by the Executive Director placed numerous detection monitor wells in Stratum II designed specifically to thoroughly protect the Trinity or Twin Mountain aquifer in that stratum. In response to musings about a possible sidewall liner breach and horizontal (rather than vertical) movement of contaminants through Stratum I/IA, IESI volunteered to encircle the landfill with groundwater monitor wells screened in Stratum I/IA as a further protective measure even though groundwater will not flow laterally through those discontinuous formations. With Strata I, IA, and II all thoroughly addressed and equipped with groundwater monitoring systems exceeding TCEQ standards, it became apparent to Protestant that groundwater would now need to exit the site to the west/southwest within Stratum II for them to have any complaint. Unfortunately, such a position would be inconsistent with the fact that the Jacksboro Landfill is located in the Twin

⁸ Protestant's Exceptions to Amended PFD at p. 12.

Mountain aquifer, as they have repeatedly asserted, and would also conflict with the site specific data. The only way the Protestant can reconcile these inconsistent positions is to have the water in Stratum II magically flow in two opposite directions at the same time. Hence, their incredible assertion that “groundwater in Stratum II flows not only to the east, but also to the west”.⁹

Even if the Commission were to take the bait, completely ignore Protestant’s repeated and ongoing claim that the Jacksboro Landfill overlies the Trinity or Twin Mountains aquifer (an assertion with which IESI, the Executive Director, and the ALJ agree), and label Stratum II as containing an aquifer within the Pennsylvanian system and not the Cretaceous Trinity, it would still be necessary to consult the site specific data regarding the actual direction of groundwater flow at the Landfill site. This is exactly why the TCEQ’s rules require a groundwater monitoring system to be designed based on site specific data, not regional data. Here, the undisputed *site specific* data establishes that under the Landfill site, the groundwater moves to the east/northeast, which matches the regional flow direction of the Trinity aquifer. In addition, all of the results of the on-site boring logs indicate that Stratum II itself generally dips downward to the east and northeast.¹⁰ This further confirms Stratum II is part of the Cretaceous Trinity formation and that groundwater flows to the east and northeast.

d. *The Piezometer Data Shows the Flow of Groundwater to the East and Northeast in Stratum II*

In one last attempt to show that the groundwater in Stratum II somehow flows to the west, the Protestant makes misleading observations about the groundwater levels shown by the piezometers installed by IESI in Stratum II. Protestant does so by making selective out-of-context observations about piezometers D-20 and F-20 as shown on Figures 4H.3 and 4H.4 of the Application. For convenience, Figures 4H.3 and 4H.4 from the Application are reproduced

⁹ Protestant Exceptions to Amended PFD at p. 12.

¹⁰ Application, App. Ex. 100, Attachments 4B and 4C.

behind Tabs 1 and 2 to this Reply. The Protestant argues that because the groundwater level in piezometer D-20, located on the southern boundary of the site, is lower than the groundwater level in piezometer F-20, located in the southeastern corner of the site, groundwater will flow in a western direction from F-20 to D-20, and then head off-site to wells located west of the site. This proves, the Protestant argues, that water moves west in Stratum II. This assertion is extremely misleading and simply wrong. It is not possible to determine groundwater flow direction at a landfill site using only two groundwater elevation points. It is absolutely necessary to look at all of the groundwater elevations in all of the piezometers and establish a potentiometric surface. Groundwater will flow from higher elevations to lower elevations consistent with that potentiometric surface. Simply put, groundwater will flow downhill along the potentiometric surface, not simply from one piezometer location to another.

IESI presented on Application Figures 4H.3 and 4H.4 the potentiometric surface for Stratum II. For obvious reasons, Protestant never prepared nor presented any contrary potentiometric surface to support its claim. The groundwater elevation data from the piezometers simply would not support such a contrary purported potentiometric surface. Protestant completely ignores the groundwater elevations in the other piezometers, most notably piezometer G-5 located in the northeast corner of the site where the groundwater elevation is consistently and significantly lower than the levels in any of the other piezometers, including piezometers D-20 and F-20 selectively referenced by Protestant. This consistency is clearly shown on Table 4-13 in the Application where the groundwater elevations for all the piezometers are shown for a period of over one year. (For convenience, Table 4-13 is also reproduced in this Reply behind Tab 4.) It is also shown on Figures 4H.3 and 4H.4 referenced by Protestant and attached hereto behind Tabs 2 and 3.

By considering all of the piezometers and groundwater elevations, it is clear that in no circumstance will groundwater be flowing to the west and, in every instance, will be leaving the site on the north and east boundaries. This is consistent with the Applicant's characterization of groundwater flowing to the east and northeast and with Stratum II containing the Twin Mountains aquifer. It is particularly amazing that the Protestant is making this misleading argument based on only two piezometers, D-20 and F-20, given that Dr. Ross, testifying for the Protestant, recognized that all piezometers need be considered when she agreed that the groundwater elevation at piezometer G-5 in the northeast corner of the site is the low point and the groundwater would flow toward that point.¹¹ As she stated in her prefiled testimony:

The lowest piezometers on the site is up in the northeast corner, G-5. That's the low point towards which water will tend to flow.

e. *There is no Evidence to Support Protestant's Claims*

Even ignoring the impossibility of water in a homogeneous permeable stratum, such as Stratum II, flowing in two opposite directions at the same time, there is no credible evidence to support the Protestant's bold assertion that there is a western direction to groundwater flow. None of the site specific data supports that assertion.

Apparently realizing that the groundwater monitoring system proposed by IESI and contained within the Application was designed to monitor groundwater in the Twin Mountain aquifer contained in Stratum II as it flowed in the easterly and northeasterly direction, Protestant first complained that IESI would not be monitoring Stratum I and IA. Although IESI does not believe it is necessary to monitor these strata due to their hydrogeologic and geologic characteristics, the ALJ has now proposed a Special Provision that requires monitoring of those strata and IESI has agreed to place monitor wells encircling the Landfill for that purpose. Faced

¹¹ Transcript Vol. 6, p. 185.

with a PFD that addresses every mythical complaint made by the Protestants, the Protestants have turned to applying regional data to the Landfill, and ignoring site specific data, and suggesting that groundwater flows in two opposite directions simultaneously. These arguments have no merit.

Within Protestant's Exceptions to the Amended PFD they also make various misleading and out-of-context statements relating to groundwater characteristics at the site to which IESI would like to reply. First, Protestant states that "the Cretaceous and Pennsylvanian are hydraulically connected" as evidenced by the "higher water quality in southeastern Jack County". While this may be true in parts of Jack County, the statement is misleading in what it omits. The hydraulic connection, if any, between the Cretaceous and the Pennsylvanian occurs well east of the Jacksboro Landfill site. Dr. Ross pointed out this potential off site connection in her prefiled testimony. Groundwater, however, would have to travel east past IESI's monitoring well system and then quite some distance further east to reach this possible hydraulic connection. The Jacksboro Landfill was designed to prevent such an occurrence. There is no evidence of any hydraulic connection between the Cretaceous and the Pennsylvanian formations at the site of the Landfill. Rather, there is a highly impermeable Stratum III that separates the overlying Cretaceous system from the underlying Pennsylvanian formation at the landfill site.

Second, Protestant states as follows:

Moreover, water wells within a mile and west of the landfill have been completed in the Pennsylvanian. The depths of these wells correspond to the Stratum II sands, not Stratum IA.

First, Protestant cites to nothing in the record for this assertion. Even the unreliable hearsay documents resulting from door-to-door conversations between area residents fail to support any statement about wells near the site being completed in Stratum II (to the exclusion of Stratum IA) or in the Pennsylvanian system (to the exclusion of the Cretaceous Trinity group).

Second, the completion depth of an off-site well, by itself, does not dictate the geologic age of the formation or the orientation of its water bearing zone in relation to a landfill site one mile away. A trained geologist or hydrogeologist would determine the geologic formation into which a well is completed based on many factors. Initially, he/she would look at the depth of the completion. In addition, he/she would observe the well logs, the nature of the strata encountered, geologic maps, water quality, and other such technical factors. IESI did all those things based on good, reliable data. Protestant, however, seeks to recharacterize subsurface strata, refute site specific data, contradict regional geologic maps, and question the opinion of trained geologists and hydrogeologists by merely making conclusory inexpert statements in their Exceptions after referring to the unreliable hearsay gathered by its members.

IESI has clearly met its burden of proof and the Jacksboro Landfill will be an exemplary facility. It meets all relevant TCEQ requirements regarding groundwater protection. This is especially true with the addition of the Special Provision proposed by the ALJ.

2. "Fairness" Arguments

Although adding the Special Provision would certainly address even the most far-fetched concerns espoused by Protestant, Protestant continues to object. This is because the environmental protection goals of the TCEQ are not aligned with the ultimate objectives of Protestant (i.e., defeat the permit irrespective of technical merit). Predictably, the Protestant and OPIC are both asserting that it would not be "fair" for the TCEQ to issue the permit with a Special Provision, and would somehow violate due process rights of the Protestant. Tellingly, the Protestant cites to no case law, statutory or constitutional provision, or any other legal precedent for its claims that the TCEQ would be engaging in a "dangerous precedent." In fact, such claims ignore the long history of the TCEQ, in that a great many other permits contain special provisions.

In a fact situation less favorable than presented in this case, the Third Court of Appeals upheld the decision of the Texas Department of Health to issue a municipal solid waste landfill permit. *See, North Alamo Water Supply Corp. v. Tex. Dept. of Health and Browning-Ferris, Inc.*, 839 S.W.2d 448 (Tex. App. – Austin 1992, writ denied). In that case, a Type I municipal solid waste landfill permit was issued following a contested evidentiary hearing. The issued permit had a Special Provision requiring the applicant to revise the liner design submitted in its application, and to submit to the agency documentation of its plan to make that alteration, before any excavation at the site.¹² The protestant argued that the permit was not “final” because of the Special Provision and because it denied the protestant its rights to a full hearing on the application.¹³ The court began by recognizing the long-established principle that “an agency permit may contain special provisions that do not preclude its review as a final agency order.”¹⁴ The critical distinction is between: (1) a permit with a provision that imposes further, future agency discretionary approval – which is not a final permit; and (2) a permit with a provision that does not require future agency discretionary approval - which is a final permit.¹⁵ In the *North Alamo* case, the language required action by the applicant and compliance with the permit Special Provision, but did not require further action by the agency; therefore, the permit was final. The Special Provision proposed by the ALJ in this case does not require any future discretionary approval by the TCEQ. The Court further found the protestant’s argument regarding a fair hearing invalid.¹⁶ The court noted that the protestant had participated in the contested evidentiary hearing, had itself voiced concerns, and that the revisions to the liner

¹² *Id.* at 450.

¹³ *Id.*

¹⁴ *Id.* citing *Walker Creek Homeowners Ass’n v. Tex. Dep’t of Human Resources*, 581 S.W.2d 196, 198 (Tex. Civ. App. 1979, no writ).

¹⁵ *Id.* at 450-451.

¹⁶ *Id.* at 451-452.

design directly responded to those concerns. That, the court said, was ample opportunity to participate, and no additional hearing was necessary. That is exactly what has happened here. Finally, the court confirmed that the Texas Solid Waste Disposal Act, § 361.087(3) specifically allows for the agency to issue permits with special provisions. That statute remains substantively unchanged to this day.

Based on the *North Alamo* decision (as well as the other Texas court decisions concerning finality of agency decisions),¹⁷ it is clear that the TCEQ can issue IESI a permit in this matter with a Special Provision that IESI include in its Landfill design the monitoring wells provided for in the plan in Attachment A. Such a permit would be a final permit requiring no further action by the Commission and should certainly and completely address any concern of Protestant or OPIC with respect to groundwater protection.

Protestant also repeatedly asserts that IESI has attempted to “amend” its application previously and the Special Provision is just another such “amendment”. First, at no time during this proceeding has IESI attempted to amend the Application. As was mentioned in IESI’s previously filed Exceptions as well as other briefing, early in this proceeding and at the request of the City of Jacksboro, IESI sought to add some brief textual material to the Application because Protestant was clearly attempting to misread and misinterpret IESI’s use of the term “aquiclude” with respect to the Pennsylvanian geologic system. Of course, Protestant did not want their misreading and misinterpretation addressed and objected to any such clarification. Second, agreeing to a Special Provision after an invitation to do so in the original PFD is

¹⁷ See also, for example, *Pistocco v. TNRCC*, 2000 Tex. App. Lexis 1094 (Tex. App. – Austin 2000) (upholding the granting of a municipal solid waste permit amendment; holding that special provisions added to the permit amendment did not render it “not final” because the special provisions do not require additional action by the Commission; holding that the protestants were not entitled to an additional evidentiary hearing); *City of Houston and Civil Serv. Comm’n v. Vitek*, 849 S.W.2d 882 (Tex. Civ. App. – Houston [14th Dist.], 1993) (noting that a final agency decision is one that leaves nothing open for future consideration, and merely because an order is “conditional” does not fail to make it final).

certainly not an amendment. IESI stands by everything in its Application but is willing to comply with the suggested Special Provision should the Commissioners deem such a provision prudent.

The resistance to the Special Provision shows, again, that the Protestant is not really interested in whether the Landfill design will be protective of human health and the environment, but rather is just looking for any means to defeat the Landfill. TCEQ is fully authorized to issue permits with special provisions, and there is absolutely nothing peculiar about a contested case resulting in a permit with a special provision.

3. Water-Well Identification

The Protestant's Exceptions are so full of inaccuracies with regard to the water well identification issue that a reasoned response is quite difficult. For instance, so ingrained is the Protestant's desire to mischaracterize the evidence and confuse the issues that it actually now accuses IESI of failing "to recognize the existence of the Trinity aquifer..."¹⁸ The Trinity aquifer is discussed at great length in the Application and was discussed virtually every day at the hearing. This accusation is just a continuation of the practice of accusing IESI of so many failings that perhaps something will stick. Further, the Protestant further states that IESI's experts concluded that the 25 nearby residences do not use groundwater for their water supply.¹⁹ That assertion is a complete fabrication. IESI's experts concluded no such thing and there is absolutely no evidence that IESI at any time ever drew any such conclusion. IESI's design geologist, Mr. Snyder, concluded that he could not be sure what source of water was used by these residents, so he designed the Landfill to be protective of any and all nearby water wells.²⁰

¹⁸ Protestant Exceptions to Amended PFD at p. 22.

¹⁹ Protestant Exceptions to Amended PFD at p. 22.

²⁰ 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.

Effectively, Mr. Snyder and IESI assumed that **all** residents **could** have water wells and designed the Landfill accordingly. Going door to door collecting unreliable statements about those potential wells would have added nothing to his considerations.

Unfortunately for the citizens of Jacksboro, IESI, and the legitimacy of this entire permitting process, the Protestant was able to convince the ALJ that some of its arguments have merit. The Amended PFD continues to find that the Applicant's identification of wells was inadequate, based in part on the argument that IESI should be required to canvass private property in the area and contact local residents to obtain lay-statements and general speculation about water wells. The Protestant is not interested in ensuring the Landfill is appropriately designed to be protective of human health and the environment; it is interested only in killing this Application at all costs. For that reason, the Protestant is relying on non-substantive "gotcha" arguments made by a non-geologist expert who in turn relies upon double or even triple hearsay from biased lay-persons not called as witnesses.

The underlying suggestion of Protestant seems to be that had all the wells listed on Dr. Ross's double or even triple hearsay chart been identified in the Application, the Applicant would have more fully appreciated the importance of the Pennsylvanian Canyon Group and then, presumably, done something different in the design of the Landfill. The Protestant never identified what would, could or should have been done differently had the additional wells been listed. The answer, of course, is "nothing."

In its zeal, the Protestant conveniently ignores the fact that the Application clearly identified a nearby well completed in the Canyon group.²¹ Thus the Applicant clearly discloses that there is some water in the Canyon and that it is near the landfill. Even assuming for sake of

²¹ App. Ex. 100, Vol. 2, Part III, Attach. 4, p. 4-7.

argument that there is some accurate information contained in Dr. Ross's hearsay water well chart and that there were, for example, several additional wells in the Canyon group in the vicinity of the site, nothing would change about this Landfill's design. Mr. Mike Snyder testified over and over again that he identified as many wells as possible using the appropriate methods for gathering reliable information and the established standard of care, and then he designed the Landfill to protect the groundwater used by any nearby water well, whether there are five or fifty or more.²² He knew there was water in the Canyon near the landfill, and designed the Landfill to protect that water along with every other possible source of water in the area. There is absolutely no merit to the Protestant's claim that IESI ignored the "fact" that there may be additional water wells in the area. The practical reality is that the existence or absence of additional wells does not require any change to the groundwater protection or monitoring system at the site. The Protestant carried on this line of argument based squarely on an assumption that the information contained in the well location "chart" attached to Dr. Lauren Ross' pre-filed direct testimony are "facts" that are reliable and are a part of the record evidence in this case. Neither is true. The information is neither reliable nor in the record to show these alleged "facts". Relying upon this so-called "evidence," the Protestant boldly proclaims that "many of the wells near the landfill site identified during the hearing draw their water from the Pennsylvanian" and "many of the nearby wells appear to be completed into the Stratum IA sands." These are exactly the kind of conclusions that make the use of this type of unreliable hearsay information so dangerous. Both long standing TCEQ policy as well as the even longer standing rules of evidence recognize this danger and specifically do not allow reliance on this type of unreliable hearsay information. While it is dangerous enough to even rely on the hearsay information for the assertion that any

²² 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.

given number of wells actually exist, the real danger comes when Protestant suggests that the residents characterization as to geologic formation, depth to water, and source of water should be relied upon to characterize subsurface geology and hydrogeology. Certainly it is better to design a landfill which is protective of all water resources rather than use unreliable guesswork data to supplement and/or modify real, reliable data. With regard to the Jacksboro Landfill, there is nothing even in the unreliable hearsay well data that would result in any change to the Landfill's design. It is unsupportable, therefore, to assert that IESI's well search was inadequate.

Ironically, the Protestant claims that it just wanted IESI to "honestly characterize the information set forth in the public literature." As the record evidence shows, IESI did just that when it reviewed the open source documents and then took the extra step to locate wells it could (1) honestly confirm are in existence and (2) define with meaningful and useful data. What IESI did not do, and was appropriately not required to do by TCEQ's rules, policy and precedent, was ask a neighbor to ask some other neighbors about their water wells, and then ask a non-geologist to incorporate this information into an otherwise reliable characterization of water wells prepared by a licensed professional geologist.

The adequacy of a water well search and its resulting data is not determined by the sheer volume of data gathered. Voluminous data corrupted with unreliable and potentially erroneous information is far less adequate than a smaller volume of reliable and correct data. TCEQ's rules, policy, and precedent recognize this fact. IESI should not be held to the standard espoused by Protestant and suggested by the ALJ which looks solely to the quantity of data rather than its reliability.

4. Spring Identification

Protestant's Exceptions discuss springs very vaguely, stating simply that the Amended Proposal does not place any undue burden on the Applicant because it only expects the Applicant

to identify springs from the information set forth in the public literature. The Amended PFD does find that the Applicant did properly identify springs using the available public sources.²³

IESI is unclear what the Protestant's argument is and therefore is unable to respond.

In the Introduction portion of its Exceptions, Protestant does complain that IESI did not attempt to correct its Application when its land use expert "observed the presence of [] springs first-hand when he accessed the property on which the springs were located."²⁴ First, this statement infers that Mr. Worrall, IESI's land use expert, observed Mr. Benson's stock pond prior to the submittal of the Application, which is not the case. But more importantly, Mr. Worrall is a land use expert. He is not a geologist or a hydrogeologist. During his site visit to a neighboring property, he saw a relatively small stock pond. Protestant infers that Mr. Snyder should have redesigned the groundwater monitoring system (which was already designed to protect groundwater no matter how many springs might exist nearby) because the land use expert saw a stock pond on neighboring ranch land across a valley from the Landfill site. This argument is almost comical. Second, Protestant's argument assumes Mr. Benson's stock pond is the result of a spring. As IESI discussed in more detail in its Exceptions to the original PFD, Mr. Benson's stock pond is much more likely the result of a seep on the side of a hill than a spring.

²³ IESI notes that the first sentence of the ALJ's Analysis of well and springs which begins on page 15 of the Amended PFD is unchanged from the original PFD in that it's first sentence continues to state "IESI did not conduct an adequate search of water wells and springs". The following amended discussion, however, deletes the original discussion regarding springs from the original PFD and replaces that discussion with a new discussion which "finds Applicant performed an adequate search of possible springs". (amended PFD, Page 16) In addition, the Findings of Fact regarding springs in the original proposed Order no longer appear in the amended proposed Order. IESI believes that the totality of these circumstances indicates that the ALJ has amended her PFD to find that IESI adequately identified springs and we agree with that finding. If this interpretation is incorrect, however, IESI excepts to a finding that it did not adequately identify springs and incorporates by reference the prior discussion of this issue as contained in its original Exceptions to the Proposal for Decision as filed on June 1, 2009.

²⁴ Protestant Exceptions to Amended PFD at p. 3.

B. Regional Aquifers

In its Exceptions to the Amended PFD, Protestant asks that the Pennsylvanian be characterized as a regional aquifer because it is an “important aquifer in this region.” There is no supporting discussion on this issue.

In the Amended PFD, the ALJ correctly found that the Pennsylvanian Canyon Group is not a regional aquifer. There is nothing in the record to support any other findings. The evidence shows that the small amounts of water that exist in the Canyon Group are erratic and discontinuous, so much so that the water cannot be accurately mapped, and the Canyon Group is not mentioned as either a “major” or “minor” aquifer in *Aquifers of Texas*, which is undeniably the leading authority in providing regional information responsive to the rule.²⁵ IESI did not state in the Application that there is no water anywhere in the Canyon Group; it did not describe the Canyon as a *regional* aquifer because the Canyon is not a regional aquifer. The Protestant’s own expert witness, Pierce Chandler, apparently agrees that the Pennsylvanian is not a “regional aquifer.” Mr. Chandler testified under oath that the so-called “regional” aquifers are the major and minor aquifers listed in the publication *Aquifers of Texas*. Protestant is asking that the Pennsylvanian Canyon be designated a regional aquifer despite the lack of any evidence to support that assertion and despite the testimony of its own witness. This is a clear example of the Protestant’s strategy in this case – distort the record evidence in attempt to create enough confusion to result in permit denial.

The ALJ is correct in her conclusion that the Pennsylvanian is not a regional aquifer.

C. Subsurface Investigation Report

The Protestant has regurgitated its argument that the subsurface investigation was inadequate, which was rejected by the ALJ in both the original and the Amended PFD. The

²⁵ 30 TEX. ADMIN. CODE §§ 330.2(6) and 330.56(d)(2)(B).

Protestant is asking the Commissioners to ignore the fact findings of the ALJ, re-evaluate the factual evidence, and make its own independent decision of the weight of the evidence. This is beyond the scope of review provided by Texas Health and Safety Code § 361.0832. However, for purposes of completeness, the Applicant will respond to the Protestant's unsupported claims.

The subsurface investigation was addressed at length in the Application, in the Applicant's pre-filed direct testimony and again at the hearing. The Applicant properly relied on a soil boring program approved by the Executive Director.²⁶ The team of professionals included Mr. Stamoulis, Mr. Snyder and Mr. Adams. The results of their work are presented, in accordance with the applicable TCEQ regulations, in boring logs and in the textual discussion in the Application. Dr. Kreitler, an expert geologist and hydrogeologist, reviewed the subsurface investigation and confirmed that it was proper.²⁷ Judge Ramos, while critical of the format of the boring logs, found that the Applicant properly conducted its subsurface investigation.

In its Exceptions Two Bush essentially argues that Judge Ramos should have rejected the sworn testimony of Mr. Snyder and Mr. Adams and should have found that the subsurface investigation is invalid or inadequate because of excessive reliance on wash borings. Two Bush goes on to repeat the same spoliation and *Daubert* arguments it raised for the first time in the Closing briefs. Those arguments are not applicable in this context nor are they timely raised. The *Daubert* argument in particular seems to say that if Two Bush had made a proper pretrial

²⁶ Transcript Vol. 5, p. 119/line 0 through p. 120/line 11, Cross Examination of Chandler; *see also*, App. Ex. 100, Vol. 2, Part III, Attach. 4 at 4 - 8 through 4-14; App. Ex. 7, Snyder Direct Testimony, p. 15/line 12 through p. 16/line 12.

²⁷ The Protestant's argument that Dr. Kreitler violated "the Rule" by discussing his rebuttal testimony with Mr. Snyder and Mr. Adams is a mischaracterization of Dr. Kreitler's testimony. Dr. Kreitler testified in his pre-filed direct testimony that he believed that a substantial number of cuttings had been used in the subsurface investigation. During cross examination, he corrected that statement. During rebuttal, he acknowledged that in the months between the time he filed his pre-filed direct testimony and the evidentiary hearing he spoke with Mr. Snyder and Mr. Adams. Despite the efforts by the Protestant's counsel to infer that Dr. Kreitler violated "the Rule," Dr. Kreitler actually testified as to conversations following his pre-filed testimony. There was nothing improper about those conversations. Transcript Vol. 8, p. 228/line 25 through p. 231/line 25.

discovery motion to exclude expert testimony, the motion would have been granted and so the trier of fact – and now the Commissioners – should pretend the pretrial motion was actually made and should grant it retroactively. Judge Ramos correctly rejected this argument when it was made in the Closing briefs. The Commissioners should do the same.

The spoliation argument is equally frivolous and untimely. Two Bush argues that Mr. Snyder, based on his 25 years of experience with landfill proceedings, including employment with the TCEQ predecessor entities, should have known that the draft boring logs were relevant and material to the case. But Mr. Snyder surely also knew that there is no requirement in the regulations or elsewhere that he keep working drafts of every document leading up to the Technically Complete Application. Was Mr. Snyder required to keep all of his phone records showing that he talked to Mr. Stamoulis every day and, on many occasions, several times a day;²⁸ or every note he may have made of a conversation, or every notation he made on drafts of each map or page of text in the Application? Of course not, and neither was he required to keep every draft of each boring log, including the initial field notes. The applicable regulation requires that certain information be submitted on the logs. The field logs are simply drafts of the final logs that were submitted with the Application. Mr. Adams testified that the company policy is and has been to destroy initial field notes when coming up with the final versions of the logs.²⁹ There is no requirement to maintain drafts of the logs any more than to maintain drafts of every other page and every other attachment to the Application.

Furthermore, the fraudulent motive that Two Bush wants to imply clearly does not exist. Both Mr. Snyder and Mr. Adams testified under oath that wash borings or cuttings were taken only in certain, narrowly prescribed circumstances. Mr. Stamoulis would have to contact Mr.

²⁸ Transcript Vol. 2, p. 74, Snyder Cross Examination.

²⁹ Transcript Vol. 1, p. 221 lines 17 - 24 Adams Redirect.

Snyder to get approval for wash borings.³⁰ Protestant asserts that neither Mr. Adams nor Mr. Snyder actually observed all of the boring and, therefore, the only way they could know whether or not wash boring was used was by looking at the field logs. What Protestant disingenuously fails to mention, however, is that Mr. Adams personally observed every square inch of cored sample all of which was brought to the lab.³¹ The text of the Application describes the sampling boring and sampling procedure.³² This information was verified at the hearing by two experienced and credible professionals.³³ Ultimately Two Bush's entire criticism of the boring and sampling process rests on the notion that Mr. Snyder and Mr. Adams prepared and submitted a false Application and further perjured themselves at the hearing. Yet they provide no evidence to support such a serious allegation. They base this accusation only on an inference drawn by one of their witnesses only from the fact that Mr. Snyder and Mr. Adams did not repeat on the boring logs themselves the description of the boring methods which was clearly provided elsewhere in the text of the Application.³⁴ Protestant could point to no requirement that the description be repeated in that fashion and provides no other evidence questioning these professional's veracity. Protestant asserts that these two men, one a licensed professional engineer and the other a licensed professional geoscientist and both of whom work with the TCEQ regularly, risked their careers, their reputations and their livelihood by falsifying an application and lying under oath. That notion is both outrageous and absurd.

What really happened, IESI submits, was much more subtle and disturbing. Mr. Chandler apparently prepared and filed his prefiled testimony after reviewing the boring logs but

³⁰ Transcript Vol. 2, p. 98/line 20 through p. 99/line 19, Snyder Re-direct.

³¹ Transcript Vol. 1, p. 214/lines 3 – 8, Adams Re-direct.

³² App. Ex. 100, Vol. 2, Part III, Attach. 4, p. 4-11 through 4-12 and App. 4B.

³³ *See, generally*, Transcript Vol. 2, pgs. 97 - 102, Snyder Redirect and Vol. 1, pgs. 207 - 222, Adams Redirect.

³⁴ App. Ex. 100, Vol. 2, Part III, Attach. 4, p. 4-11 through 4-12.

not reading or at least not understanding the written description of the boring program contained elsewhere in the text of the Application. As a result, he erroneously implied from the boring logs that wash borings were generally used and formed his desired negative opinion on that basis. When the error of his implication as well as the complete description of the boring procedures contained elsewhere in the Application were pointed out, Mr. Chandler, rather than acknowledge his error, continued to support his erroneous assumption by claiming he was right and the two professionals directly involved with the boring program must be lying and the text in the Application must be false. Mr. Chandler, who never observed any aspect of the boring program nor any of the core samples, simply refused to admit his error and chose instead to malign other professionals and mislead the ALJ and this Commission. To this day, Protestant ignores the written description of the boring program contained in the text of the Application and asserts that IESI and its retained consultants are lying about the boring program and destroying evidence although they have absolutely no evidence to support such an allegation. This is indicative of the far fetched and disingenuous arguments Protestant continues to make to confuse this proceeding. It is also indicative of the disingenuousness of Mr. Chandler's testimony. The ALJ was certainly correct in rejecting Protestant's argument.

D. Surface Water Protection

The Protestant acknowledges that the ALJ's Amended PFD is essentially unchanged from the original PFD with respect to the discussion and findings on surface water protection. The ALJ correctly found in her original PFD that the Applicant met its burden of proof with respect to this issue. The Amended PFD recognizes that the overwhelming evidence in favor of IESI on this issue has not changed. According, the Protestant has simply re-produced its exceptions to the original PFD in is exceptions to the Amended PFD. IESI will respond in kind.

The Protestant complains that the ALJ should have found that the Applicant failed to meet its burden of proof on the issue of demonstration that natural drainage patterns will not be significantly altered. The Protestant's argument in support is essentially a regurgitation of arguments the Protestant made at the hearing that were rejected by the ALJ in the PFD. In essence, the Protestant is asking the Commission to re-examine the record and make its own, independent evaluation of the record evidence on a factual and technical issue. This sort of evaluation is not appropriate under the standard of review set forth in Tex. Health & Safety Code § 361.9832.

Without becoming too entrenched in an inappropriate re-hashing of the evidence, IESI will briefly address the Protestant's substantive arguments. The evidence showed that the Applicant utilized the U. S. Army Corps of Engineer's HEC-HMS model to evaluate the effect of the proposed Landfill on natural drainage patterns.³⁵ This analysis complies with (1) the literal reading of the relevant TCEQ rule;³⁶ the TCEQ's Guidance document *TCEQ Guidelines for Preparing a Surface Water Drainage Plan* which addresses that rule;³⁷ and the method historically utilized and accepted by the staff of the TCEQ³⁸ and previously approved in prior adjudications relating to proposed municipal solid waste landfills.³⁹ The fact that the Protestant was able to locate a witness who was willing to testify that he would have used the more simplistic "rational method" model (which does not allow for consideration of key site-specific

³⁵ App. Ex. 100, Vol. 2, Part III. Attach. 6A, at 6A-3 to 6A-4 (including all attachments and exhibits referenced thereto); Transcript Vol. 1, p. 24/line 23 through p. 25/line 6, p. 30/lines 20 – 22, Welch Cross Examination.

³⁶ 30 TEX. ADMIN. CODE § 330.55(b)(5)).

³⁷ App. Ex. 4; Transcript Vol. 1, p. 102/line 10 through p. 105/line 16, Welch Cross Examination.

³⁸ Transcript Vol. 1, p. 36/line 25 through p. 37/line 6, p. 98/line 4 through p.100/line 7, Welch Cross Examination.

³⁹ App. Ex. 24, Proposal for Decision, *In Re: Application of Regional Land Management Services*, p. 40 through p. 44.

parameters)⁴⁰ does not negate the overwhelming evidence that the Applicant used an appropriate method (indeed, the most appropriate method and the method suggested by the TCEQ's guidance document). This is not the first time an ALJ has rejected the conclusions suggested by the Protestant's witness, Mr. Larry Dunbar. His espoused method was specifically rejected as "an incorrect application of Commission rules and an inappropriate use of hydrologic modeling techniques"⁴¹ and as "resulting in an unequal and invalid comparison"⁴² in a prior landfill permit hearing. In fact, the record is devoid of any credible evidence that the Rational Method should have been used to analyze natural drainage patterns.

The Protestant is pre-occupied by a portion of the Application indicating that the Applicant included information showing peak flow rates calculated utilizing the Rational Method (in addition to the peak flow rates, volume, and velocity calculated using the HEC-HMS method) for predevelopment conditions. The Protestant complains that the Applicant just relied upon the higher peak flow rate between the two. This assertion is simply not true. Nor is it true that the permit engineer, Mr. Kenneth Welch, changed his opinion about the "compatibility" of the two methods. Mr. Welch repeatedly testified that the HEC-HMS method resulted in more appropriate, accurate, and reliable results for both predevelopment and post-development conditions.⁴³ He further explained that the Rational Method and the HEC-HMS model results are "generally compatible", but can produce different results that are inappropriate to compare.⁴⁴ As Mr. Welch repeatedly testified, he included the Rational Method results because he was of the opinion that the regulations required him to provide that information and the TCEQ asked

⁴⁰ Transcript Vol. 1, p. 142/lines 15 – 25, Welch Cross Examination.

⁴¹ *Id.* at p. 40.

⁴² App. Ex. 25, Proposal for Decision, *In Re: Application of Juliff Gardens*, p. 36.

⁴³ Transcript Vol. 1, p. 119/line 19 through p.120/line 25, p. 42/line 10 through p.44/line 24; p. 36/lines 4 – 12, p. 147/lines 1 - 15, Welch Cross Examination.

⁴⁴ Transcript Vol. 1, p.77/lines 15 – 21, p. 78/lines 9 – 13, Welch Cross Examination.

him to put it in the Application.⁴⁵ He did not, however, use that information to analyze the landfill's affect on drainage patterns. It is a complete fabrication to assert that the Applicant just relied upon the higher peak flow rate.

Protestant repeatedly points out that the Rational Method and the HEC-HMS methods for determining peak flow rates result in different values. Of course they result in different values – they are different methods. The Rational Method is simplistic and of little use in complex analysis while the HEC-HMS is complex and precise. The Applicant compared the predevelopment HEC-HMS analysis to the post-development HEC-HMS analysis. That comparison showed there would be no significant impact on natural drainage patterns. Protestant would have the TCEQ compare a predevelopment Rational Method analysis to a post-development HEC-HMS analysis. All credible experts, including the Executive Director's staff expert and decision makers in prior cases, have consistently deemed Protestant's approach to be incorrect.

As the ALJ found after weighing all the testimony and evidence put before her, the Applicant's engineers and hydrologists used the appropriate TCEQ prescribed methods to characterize the predevelopment and post-development drainage patterns and relied upon the most appropriate, reliable, and accurate results. Those results showed there will be no significant alteration of natural drainage patterns, and so the ALJ appropriately found that the Applicant met its burden of proof on this issue.

E. Geotechnical Evaluation (Slope Stability)

The Protestant continues to disagree with the ALJ's findings with respect to the adequacy of the geotechnical evaluation (slope stability). In support, the Protestant argues that the ALJ

⁴⁵ Transcript Vol. 1, p. 34/ lines 8 – 10, Welch Cross Examination; p. 103/line 10 – p. 104, Welch Re-Direct Examination.

should have ignored the testimony of Mr. Adams; instead she should have adopted the musings of the Protestant's expert that were based on assumptions that have no basis in fact and are not in the record evidence. The Protestant continues to be critical of the geotechnical evaluation because it did not analyze the potential for block failure on the intermediate slopes. As Mr. Adams testified, the reason the potential for block failure was not analyzed is because the situation that could create a block failure will not occur at this site.⁴⁶ IESI was not required to invent conditions that could never occur and then analyze those non-existent conditions. In any event, the Protestant improperly asks the Commission to step outside the scope of its review of the PFD as set forth in Texas Health and Safety Code § 361.0832 to re-weigh the evidence and come to a different conclusion. This is not the Commission's role at this point in the proceeding.

F. The Applicant's Site Operating Plan properly addresses scavenging and vectors.

The Protestant argues that the term "scavenging" as used in the TCEQ MSW rules⁴⁷ refers not only to human scavenging, but also animal scavenging. It is IESI's position that the TCEQ has historically interpreted "scavenging" to refer only to human scavengers, while the TCEQ rule addressing vector control deals with animals.⁴⁸ IESI has long been aware that the Commission's decision adopting Judge Ramos' PFD in *Tan Terra*⁴⁹ would seem to hold otherwise. IESI is also aware of decades of TCEQ policy and precedent contrary to the implication of a single case, *Tan Terra*. IESI also understands that the Amended PFD in the instant matter appears to agree that scavenging as used in the applicable TCEQ rule includes both animal and human scavenging.

⁴⁶ Transcript Vol. 1, p. 172/line 1 – p. 173/line 17, Adams Cross Examination; Vol. 9, p. 43/line 6 – p. 45/line 19, Adams Redirect.

⁴⁷ 30 TEX. ADMIN. CODE §330.116.

⁴⁸ 30 TEX. ADMIN. CODE § 330.126.

⁴⁹ TCEQ Docket No. 2004-0743-MSW; SOAH Docket No. 582-05-0868.

Whether animal control is termed “vector control” or as “scavenging” or any other term, however, is not determinative. What is important are the provisions for control of those animals in the Site Operating Plan. As the PFD states, the Site Operating Plan includes adequate measures for the prevention and control of scavenging, and that human and animal scavenging will not be permitted.⁵⁰ There is no evidence in the record whatsoever that the Site Operating Plan is inadequate. There certainly are no grounds for the Commission to overturn the PFD on this issue. The Protestant argues that the Landfill Site Operating Plan is inadequate because it does not provide specific enough measures for controlling feral hogs; particularly, the proposed fencing will not be adequate. The Protestant further complains that IESI plans only to deal with feral hogs after they become a problem. In support of its arguments, the Protestant refers to *BFI Waste Systems v. Texas Natural Resources Conservation Commission*, 93 S.W.3d 570, 579 (Tex. App. – Austin 2002, pet. denied) and *Tan Terra v. TCEQ*, No. D-1-GN-06-002425. But the *BFI* case is inapposite. The *BFI* case involved a proposed Site Operating Plan that was found to be lacking in sufficient detail regarding the day to day operations, primarily because it merely tracked the very language then used in the applicable regulations.⁵¹ In direct response to the *BFI* decision, the TCEQ revised its Site Operating Plan rules in two important respects. First, the rules themselves provided more detail concerning the day-to day operations of a landfill.⁵² Second, in several instances, the term “specific” was removed, so that under the revised rules, an Applicant is no longer required to have a Site Operating Plan that provides a very specific, detailed description of the landfill’s daily activities.⁵³ This was meant to provide more flexibility to a landfill’s operation, and was meant to address the very problem in *BFI*, i.e., the denial of a

⁵⁰ See ALJ’s Proposed Findings of Fact Nos. 149 – 151.

⁵¹ *BFI v. TNRCC*, 93 S.W.3d at 579-580.

⁵² See 30 TEX. ADMIN. CODE CHAPTER 330 Subchapter F, Adopted November 10, 2004, effective December 2, 2004.

⁵³ *Id.*

landfill application based on an overly burdensome requirement to detail daily operations. IESI's Application was submitted under, and complies with, the post-*BFI* Site Operating Plan rules. The Protestant's reliance on *BFI* is thus misplaced. The Protestant also misapplies the decision in *Tan Terra*. In that case, the ALJ and the Commission found that the Applicant failed to present effective measures to control animal scavenging, and the Applicant was inappropriately seeking a permit with the understanding that the permit might need to be modified in the future. IESI is proposing no such thing.

The Protestant's arguments in general, and its reliance on *BFI* and *Tan Terra*, in particular, conveniently ignore the very specific provisions of the IESI Site Operating Plan related to the control of scavenging. The Site Operating Plan does not just contain a provision for a perimeter fence, as the Protestant's exceptions would imply. It includes very specific daily operational requirements for the control of scavenging, including daily compaction and daily cover. This is exactly what the applicable TCEQ rules require.⁵⁴ IESI further intends to conduct daily inspection of the site perimeter.⁵⁵ There is no evidence in the record that IESI intends to take a "wait and see" approach. The Site Operating Plan requires specific, daily, affirmative action during landfill operations to prevent scavengers. As to feral hogs particularly, the record indicates that the feral hog situation in Jack County is no different than anywhere else in Texas and Mr. Joe Vieceli testified that feral hogs have not been a problem in the various other landfills currently operating in Texas that use similar control methods.⁵⁶

TCEQ Rule 30 Tex. Admin. Code § 330.128 states that scavenging shall not be allowed. Just as IESI does not allow scavenging at its other Texas facilities, it will not allow scavenging at the Jacksboro facility by using a similar daily control plan. Both 30 Tex. Admin. Code §

⁵⁴ 30 TEX. ADMIN. CODE § 330.126.

⁵⁵ Transcript Vol. 9 at pgs. 10-12.

⁵⁶ Transcript Vol. 9 at pgs. 10-11.

330.128 and § 330.133 refer to the use of daily cover as the approved means to control scavenging and vectors. This is one of the measures that IESI proposes, among others, to control scavenging. IESI will, of course, take all additional necessary actions, if any should ever become needed, the same as any properly operated landfill. This is certainly not a valid reason to deny the permit.

III. RESPONSE TO THE EXCEPTIONS FILED BY THE OPIC

Much of the Exceptions filed by OPIC simply and summarily agree with the arguments Protestant has made in the past, and continues to make, with respect to well identification and groundwater protection. IESI's response to those arguments will not be repeated here, but instead the responses provided previously in this Reply regarding those issues are adopted by reference.

However, IESI does take special issue with OPIC's characterization of the permitting process as a game to be won or lost, with the ALJ, and ultimately the Commission, as the referee deciding who scores what points. The purpose of public participation (through a Protestant and/or OPIC) in a hearing process, is to ensure the Application is subjected to review to determine protectiveness of human health and the environment. To the extent that OPIC and the Protestant were participating in this proceeding to achieve that goal, they should be pleased with the Amended PFD.

OPIC's assertions about "fairness" espouse a basic misunderstanding of the reason the Commission refers issues to SOAH for a hearing. The Commission is charged by the legislature with ensuring that a proposed facility will be protective of public health and the environment. When presented with a proposal, albeit with a Special Provision, that will clearly be protective, the Commission must issue the permit. Such a proposal has been presented by the ALJ. The

Protestant and OPIC seem to be asserting that a valid goal of the Commission is to stop a proposed activity even though it will be protective of public health and the environment if the real goal of the Protestant is something other than ensuring the protectiveness of the facility and even though the disingenuous environmental claims on which they based their hearing request have been addressed. While the true ulterior motive for instituting this type of costly proceeding is generally not relevant as long as genuine environmental concerns can be asserted, it would certainly be unfair to an Applicant to have a permit denied based on the ulterior motive once the asserted environmental concerns have been addressed. This is what OPIC and Protestant are espousing. It is that result that would truly be unfair and, we submit, contrary to law and an abuse of the process.

Property rights matter in the State of Texas. Property owners have every right to develop their property in the manner they chose. Of course and for very good reason, there are limits to that right. One such limitation is the protection of public health and the environment imposed by the Texas Solid Waste Disposal Act. TCEQ's has been tasked by that statute with the duty to delineate the specific needed requirements through rulemaking and enforce those important requirements. The TCEQ has been presented with a PFD that finds the Landfill will protect public health and the environment and complies with the criteria for permit issuance. By law, the TCEQ must grant IESI the requested permit.

Whatever resources the Protestant has dedicated to this proceeding, it is fair to say that IESI and the City of Jacksboro have expended substantially more through acquiring the site, designing the Jacksboro Landfill, and participating in the permit application process for several years. What would indeed be "unfair" would be to deny the permit because Protestant's ulterior non-environmental motive has not been satisfied. OPIC is wrong in its formulation of "fairness" in this proceeding.

IV. RESPONSE TO THE EXCEPTIONS FILED BY THE EXECUTIVE DIRECTOR

IESI is in full agreement with the Exceptions filed by the Executive Director. In his Exceptions, the Executive Director proposed that the Conclusion of Law regarding the water well search be modified to indicate that IESI's water well search was adequate. In our Exceptions to the Amended PFD, IESI suggested a very similar modification to the ALJ's proposed Conclusions of Law. IESI has no objection to the revision as proposed by the Executive Director and has revised its proposal, as contained in Attachment B, hereto, to be consistent with that suggested by the Executive Director.

V. RESPONSE TO EXCEPTIONS FILED BY THE CITY OF JACKSBORO

IESI is in full agreement with the Exceptions filed by the City of Jacksboro, including the City's proposed revisions to the ALJ's Proposed Findings of Fact and Conclusions of Law, which substantially conform with those proposed by IESI.

VI. SUMMARY

Throughout this proceeding, Two Bush Community Action Group has sought to obfuscate the relevant and appropriate facts, law, and policy applicable to the Jacksboro Landfill. Realizing that IESI and the City of Jacksboro went to extreme lengths to properly locate, design, and propose an exemplary Type I municipal solid waste landfill according to applicable TCEQ regulations and policies, it sought to fabricate potential issues for groundwater contamination that do not really exist, and then fault IESI for not addressing those non-existent issues. The Amended PFD specifically addresses these illusionary "faults" by recommending a Special Provision, and yet the Protestant and the OPIC are not satisfied. Clearly, their goal is to defeat the Jacksboro Landfill for reasons that have nothing to do with environmental protectiveness, but

instead for reasons that are not within the jurisdiction of the TCEQ. The Amended PFD cannot be rejected on such grounds.

VII. PRAYER

For the reasons expressed in this Reply as well as the Exceptions to the Amended Proposal for Decision filed by IESI, the City of Jacksboro, and the Executive Director, IESI respectfully prays that the Commissioners adopt the ALJ's PFD, as modified, and more specifically delineated in Attachment A hereto, and issue the requested permit.

Respectfully submitted,

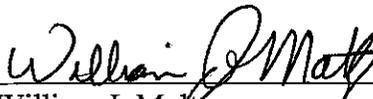
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Certificate of Service

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, receipted delivery on October 5, 2009.



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TEXAS
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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 Type 1 Landfill in Jack County, Texas. Sarah G. Ramos, Administrative Law Judge ("ALJ") with the State Office of Administrative Hearings ("SOAH"), presented ~~aan~~ Amended Proposal for Decision ("Amended PFD"), which recommended that the Commission ~~deny grant IESI the application permit with a Special Provision added to the permit.~~ 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; Protestant, 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.
2731. 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.

- ~~2832~~. 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.
- ~~2933~~. The perimeter channels and detention ponds were designed to convey the runoff from a 100-year rainfall event.
- ~~3034~~. Stormwater drainage from developed areas would be directed to detention ponds before being discharged offsite.
- ~~3135~~. The detention ponds were designed to reduce the peak runoff from the developed landfill to pre-developed flow rates.
- ~~3236~~. The detention pond outlet structures are designed as energy dissipaters to reduce the velocity and turbulence of the flow leaving the detention ponds.
- ~~3337~~. 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.
- ~~3438~~. 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.
- ~~3539~~. The stormwater outfall locations along the permit boundary remain consistent with the pre-development outfall locations.
- ~~3640~~. 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.

3742. 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.

3843. 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).

3944. 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 patters 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.

4048. 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.

4452. 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.

4253. The landfill would not significantly alter the 100-year floodplain of Jasper Creek at any location.

4354. 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.

4455. 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.

~~4565.~~ Temporary containment berms ~~would~~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.

~~4667.~~ Daily cover and intermediate cover would be placed over filled areas to minimize the area of exposed waste.

~~4768.~~ The containment berms would provide storage for the 25-year, 24-hour storm event.

~~4869.~~ Contaminated water would be transported along with leachate to publicly owned treatment works.

~~4970.~~ Contaminated water would not be discharged into waters of the United States.

~~5071.~~ The Application adequately describes a leachate management plan.

~~5172.~~ Applicant provided adequate information regarding surface water controls, floodplains, drainage route runoff from the facility, and off-site stormwater contamination, including Jasper Creek.

~~5273.~~ Applicant used Abilene rainfall data within the EPA Hydraulic Evaluation of Landfill Performance (HELP) model to evaluate the leachate collection system.

~~5374.~~ Of those cities in the model, Abilene and Dallas are geographically closest to Jacksboro.

~~5475.~~ Dallas has more average annual rainfall than Abilene; however, the Dallas data may actually underestimate the maximum head on the liner.

~~5576.~~ The Abilene rainfall data was an appropriate choice to include in the HELP model.

~~77.~~ Abilene rainfall data was conservative data to use in the HELP model.

~~78.~~ Appropriate local rainfall data was used in the surface runoff and run-on analysis for

purposes of drainage and floodplain analysis.

79. The Applicant used appropriate rainfall data in the calculation of surface drainage.

Groundwater Protection

80. 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.

81. The Applicant's boring and sampling program was reviewed and approved by the TCEQ staff by letter dated March 8, 2004.

~~5682.~~ 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).

~~5783.~~ Stratum I has interbeds of sandstone and siltstone identified as Stratum IA.

84. 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.

~~5885.~~ The geologic materials in Stratum IA are discontinuous and uncorrelatable across the site.

86. Applicant plans to excavate the landfill site to 74 feet below the ground surface.

~~5987.~~ Applicant will excavate Stratum IA sands almost completely during the landfill's construction.

~~6088.~~ Water is contained at discontinuous points in the Stratum IA sands.

~~6189.~~ 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.

~~6290.~~ 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. Precipitation infiltrating from the surface and potential contaminants are not likely to move laterally in Stratum I.

92. 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.

93. The Applicant properly evaluated Stratum I-A characteristics

6394. Stratum II has interbedded lenses and seams of clay and shale identified as Stratum IIA.

6495. Groundwater is present in the sandstones and siltstones of Stratum II.

6596. Groundwater generally flows to the north-northeast in Stratum II at about 15 feet per year.

6697. Stratum II sandstones and siltstones have hydraulic conductivity ranging from 5.81×10^{-4} to 3.77×10^{-5} cm/sec.

98. Stratum II is the uppermost aquifer underlying the site as defined by the regulations.

99. Stratum III is correlatable across the site and is the lower confining unit.

67100. 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.

68101. Stratum III has a hydraulic conductivity of 4.5×10^{-8} cm/sec

102. The Applicant properly evaluated Stratum II characteristics.

103. Applicant properly evaluated the site stratigraphy.

69104. Following the drilling and grouting of the site exploration borings, fourteen piezometers were installed.

70105. 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.

74106. Three piezometers (B-15, D-10S, and D-15) were used to characterize the groundwater in Stratum IA.

72107. 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.

73108. 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.

109. 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.

110. The Applicant properly evaluated the site piezometers.

74111. Applicant will have 11 groundwater monitoring wells that screen Stratum II. Nine wells will be placed on the north and east boundaries, ~~and~~, Applicant will place them no more than 600 feet apart.

75112. ~~Two additional~~ wells, one on the south boundary and one on the west boundary, will also monitor Stratum II.

~~76. Groundwater wells within one mile of the permit boundary are in the Pennsylvanian Canyon formation.~~

~~77. The landfill site overlies both the Cretaceous and Pennsylvanian formations, and the Pennsylvanian formation flows generally to the west.~~

~~78. Points A 5 at 1,113.58 feet on the northwest corner of the site and F 20 at 1,112.06 in the southeast corner are the highest potentiometric points, but they are at opposite ends and have a trough between them; therefore, it is not clear what direction groundwater will flow.~~

- ~~79. Applicant plans to excavate the landfill site to 74 feet below the ground surface.~~
- ~~80. During the excavation of Stratum IA, sands will still be present at the interface with the landfill sidewalls and extend to areas off site, such as those into which groundwater wells are completed.~~
- ~~81. Contaminants could escape from the side liners into the Stratum IA sands, past the Stratum II monitoring wells.~~
- ~~82. Since leachate may migrate off site in Stratum IA, IESI should install monitoring wells in that stratum.~~
113. 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.
114. Two wells, one on the south boundary and one on the west boundary, have been proposed in upgradient positions.
115. 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.
116. Recharge of groundwater to Stratum II at the site is from the outcrop of Stratum II to the west of the site.
117. 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.
118. Groundwater would move laterally in Stratum II rather than downward into the shale and clay of Stratum III.

119. Stratum III is correlatable across the site and is the lower confining unit as described by the regulations.

120. 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.

121. The Applicant properly evaluated Stratum III characteristics.

122. The Applicant properly evaluated site stratigraphy.

Liner and Leachate System

83123. 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.

84124. The compacted soil liner, the lower unit of the composite liner system, would have a two-foot-thick layer of relatively homogeneous cohesive materials.

85125. 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.

86126. 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.

87127. The leachate system was designed with six-inch diameter pipes in gravel-struck trenches.

88128. The leachate collection system could accommodate rainfall in excess of the amounts estimated for Dallas or Abilene.

89129. The liner and leachate systems would be adequate to protect against groundwater contamination beneath the site.

130. 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.

131. 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

132. The Application provides adequate geologic and hydrologic information.

90133. The proposed facility location is near the western edge of the Western Cross Timbers physiographic province that is characteristic of Cretaceous sandstones.

91134. The Cretaceous sandstones dip generally to the east and sit atop older Pennsylvanian System sediments such as the Canyon Group.

135. The Application provides adequate geologic and hydrologic information.

136. 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.

137. 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.

138. 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).

139. *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.

140. 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.
141. 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.
142. 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.
143. The plan called for 26 bore holes at various points throughout the tract. The Applicant reasonably relied on the Executive Director's approval of the boring plan.
144. 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.
145. 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.
146. Approximately 75-80 percent of the borings produced undisturbed cored samples. Mr. Snyder and Mr. Adams personally observed each core sample taken.
147. 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.

148. 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.

149. The data produced by the subsurface investigation supports the Applicant's delineation of Stratums I, II and II described above.

Regional Aquifers (includes Site Specific Geology and Subsurface Investigation)

92150. The Trinity Aquifer's Twin Mountain Formation of the Cretaceous System is the regional aquifer and is the most important source of groundwater in the region. This formation is part of the Trinity aquifer.

93. Site Specific Geology and Subsurface Investigation

151. 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 know to yield significant quantities of potable groundwater.

152. The regulations require the Applicant to describe "the regional aquifers in the vicinity of the facility based upon published and open-file sources."

153. 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.

154. 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.

155. 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.

156. The Applicant developed a boring and sampling plan in conjunction with the TCEO. The plan for this facility was approved by letter dated March 8, 2004.

157. The plan called for 26 bore holes at various points throughout the tract. The Applicant reasonably relied on the Executive Director's approval of the boring plan.

158. 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.

159. 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.

160. Approximately 75-80 percent of the borings produced undisturbed cored samples. Mr. Snyder and Mr. Adams personally observed each core sample taken.

161. 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.

162. 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.

163. The data produced by the subsurface investigation supports the Applicant's delineation of

Stratums I, II and III described above. The Application provides adequate geologic and hydrologic information, including properly identifying the lowermost aquifer capable of producing usable groundwater pursuant to the applicable TCEQ regulations.

~~94~~164. Applicant's boring plan included 26 bore holes at various points throughout the proposed permit site.

~~95~~165. Approximately 80% of the borings produced undisturbed core samples.

~~96~~166. Applicant used wash borings in particular holes after it had determined sediment was consistent in the area.

~~97~~167. Applicant classified the soils according to the Unified Soil Classification System to aid in the evaluation of the engineering properties of the soils.

~~98~~168. Applicant performed physical property testing to determine the parameters used in the slope stability, settlement, and heave analyses.

~~99~~169. 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.

~~100~~170. The Application includes the required information on soils.

~~101~~171. No wetlands are present in the landfill area.

~~102~~172. 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.

~~103~~173. There was no evidence of surface faulting in the area or any lineament crossing the site.

~~104~~174. There is no active faulting within 200 feet of the site.

~~105~~. Because Applicant did not identify wells within one mile of the proposed facility, it consequently did not identify the base of the lowermost aquifer capable of providing useable

~~groundwater.~~

Slope Stability

175. 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.

176. 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.

177. 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.

~~178.~~ Slope stability calculations were performed to evaluate the stability of the sideslope liner and final cover systems.

~~179.~~ Soil parameters were selected based on a review of boring logs, laboratory test results, and on engineering judgment, and experience with similar materials.

~~180.~~ The geotechnical evaluation was adequate to ensure the stability of slopes and materials used for sidewalls.

181. The Applicant assumed even lower than average strength values for slopes.

~~182.~~ Even if the landfill were located in the Pennsylvanian formation, the slope stability analyses would not change.

Land Use Issues

~~183.~~ 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.

~~111~~184.The Application included adequate proof of property interests.

~~112~~185.The Application properly identified the approximately 25 residences within one mile of the proposed landfill site.

~~113~~186.The land use of the surrounding area is primarily agriculture pasture-land, with some oil and gas development and rural residents.

~~114~~187.There are no schools, licensed day-care facilities, churches, cemeteries, or recreational areas within one mile of the proposed site.

~~115~~188.There are no airports or significant business operations nearby.

~~116~~189.The location does not raise any significant archeological concerns.

~~117~~190.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.

~~118~~191.The roads leading to the landfill are adequate without any need for improvement (other than the driveway entrance itself).

~~119~~192.There are no zoning restrictions or any land-use variances needed for the operation of the landfill.

~~120~~193.The recorded oil and gas wells within one mile of the site are shown in the Application.

~~121~~194.No oil and gas wells will be allowed on the landfill.

195. 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.

196. The Application further identifies all the wells located within 1 mile of the permit boundary.

197. For purposes of landfill design, groundwater characterization, and local uses of water, Applicant has adequately described the springs in the area.
198. The depth and geology of the Barnett Shale and overlying formations are such that there will be no impact on the Jacksboro landfill.
199. 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.
200. The Application properly identified one church that is 1.5 miles from the proposed landfill site.
201. The location chosen for the proposed landfill is compatible with surrounding land uses and residential growth trends.

Wells and Springs

- ~~122~~202. The Application identified five water wells within one mile of the permit boundary, two of which are within the permit boundary and not used.
- ~~123~~203. Applicant identified 25 residences within one mile of the facility.
- ~~124.~~ No regional or area water system is available for those residences.
204. The Application identifies the two unused wells within the permit boundary. As shown on those maps, there are no other water wells identified within 500 feet of the proposed site.
- ~~125.~~ Within one mile of Applicant's property boundaries, there are 46 wells, the majority of which are within one mile of the proposed permit's boundaries.
- ~~126.~~ The wells range in depth from about 70 feet below grade to 500 feet, but most are between 100 and 300 feet deep.

205. The Application further identifies all the wells located within 1 mile of the permit boundary.
- ~~127. The shallower wells are likely completed in the Twin Mountains or Trinity aquifer.~~
- ~~128. The deeper, higher yielding wells are consistent with the depth of the Pennsylvanian formation.~~
- ~~129. Most of the water wells are west and southwest of the site.~~
- ~~130. Many of the nearby wells appear to be in the Stratum IA sands.~~
206. For purposes of landfill design, groundwater characterization, and local uses of water, Applicant has adequately described the springs in the area.
207. The Application adequately identifies and evaluates all springs and water wells.

Usable Aquifer

- ~~131. The Pennsylvanian formation is critically important source of usable groundwater in the vicinity of the landfill; at many locations, there may be no other available water supply resource.~~
- ~~132. The most important water bearing units in the county are of Pennsylvanian age, with minor contributions of groundwater by units of the Trinity Group and alluvium.~~
- ~~133. Within one mile of the landfill site, there are usable amounts of groundwater in the Pennsylvanian formations.~~
- ~~134. Applicant did not adequately describe the present use of groundwater withdrawn from aquifers in the vicinity of the facility~~
- ~~135. Applicant did not identify the location and list the aquifer of all water wells within one mile of the property boundaries of the~~
- ~~136. Given that the application does not include the information in the two preceding Findings of~~

~~Fact, a special provision should be added to the permit requiring that Applicant install 28 monitoring wells around the facility's perimeter that will screen contaminants in Stratum I and Stratum IA.~~

208. 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.
209. 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 know to yield significant quantities of potable groundwater.
210. 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).
211. 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.
212. 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.
213. 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.
214. Applicant has agreed to adhere to Special Provision added to the permit requiring the Applicant to install 28 monitoring wells around the facility's perimeter that will screen contaminants in Stratum I and Stratum IA.

Site Operating Plan

~~137~~215.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.

~~138~~216.The Jacksboro Fire Department would be charged with responding to fire emergencies at the landfill.

~~139~~217.The Jacksboro Fire Department has adequate personnel and equipment for fire emergencies.

~~140~~218.The fire procedures implemented as part of the SOP are in compliance with the TCEQ's published guidance on how to draft SOPs.

~~141~~219.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.

220. 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.

221. The Site Operating Plan provides adequate controls for fire protection.

Odors, Dust, and Air Criteria

~~142~~222.The SOP sections on air criteria, odors, and dust comply with the applicable TCEQ regulations and are adequate to protect against these conditions.

~~143~~ Landfill Gas Management

~~144~~223.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.

~~145~~224.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.

~~146~~225.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.

~~147~~226.The SOP provides adequate controls for landfill gas.

Vectors and Scavenging

~~148~~227.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.

~~149~~228.Human salvaging and ~~human and~~ animal scavenging will not be permitted.

~~150~~229.The SOP adequately addresses the prevention and response to salvaging and scavenging.

~~151~~230.The SOP provides adequate controls for vectors, salvaging, and scavenging.

231. 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.

232. Vectors, including wild feral hogs, will not be allowed to negatively affect the Jacksboro Landfill.

Windblown Waste

~~152~~233.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.

~~153~~234.The SOP provides adequate controls for windblown waste.

235. The IESI property is approximately 652 acres which is significantly larger than the permit

boundary itself.

Screening of Prohibited Wastes

~~154~~236.The SOP outlined in the Application includes a screening program for the detection and prevention of the disposal of prohibited wastes.

~~155~~237.All incoming loads would be visually monitored at the gatehouse and working face.

~~156~~238.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.

~~157~~239.Detection of a prohibited waste would trigger an investigation and appropriate measures.

~~158~~240.The SOP requires the maintenance of records of load inspection reports and regulated hazardous or PCB waste notifications.

~~159~~241.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.

~~160~~242.The SOP provides adequate controls for screening of prohibited wastes.

Ponded Water

~~161~~243.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.

~~162~~244.Because of the site grading and maintenance, ponded water would be minimal.

~~163~~245.The SOP provides adequate controls for ponded water.

Site Access

~~164~~246.The SOP would provide adequate controls for site access.

~~165~~247.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.

166248. 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

167249. 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.

168250. 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.

169251. The landfill would have a program for the detection and prevention of the disposal of prohibited wastes, including regulated hazardous and PCB wastes.

170252. Site personnel would receive site-specific safety training.

171253. In order to enhance site safety, access to the active areas would be limited to authorized personnel and equipment would be kept well-maintained.

172254. The SOP would adequately provide for training of employees and guide the facility's day-to-day operations.

255. 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

256. 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.

257. 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.

258. 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.

259. The Application demonstrates that the operation of the Jacksboro Landfill will not adversely affect the health of the Protestants and their families.

Buffer Zones

173260.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.

174261.The buffer zones and screening proposed in the Application would be adequate.

262. 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.

263. 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.

264. The proposal landfill site consists of approximately 652 acres which allows for superior screening of the landfill operations from public view.

265. The landfill disposal footprint is located approximately 1.29 miles from the nearest paved road.

266. 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

~~175~~267.The site would have an entrance gate, and appropriate traffic control signs to direct and control traffic.

~~176~~268.Applicant plans to confine the unloading areas to a minimum size.

~~177~~269.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.

~~178~~270.There would be all-weather access maintenance of all roads, including internal roads, in a reasonably dust-free and liter free condition.

~~179~~271.The SOP includes provisions for the use of the existing topography and vegetation as site buffers to screen the waste.

~~180~~272.The SOP provides for a perimeter fence. Portions of the west and north permit boundaries may be secured by natural barriers. A fence will also be located on both sides of the entrance road. The fencing will be barbed wire, woven wire, wooden fencing, plastic fencing, pipe fencing, or other suitable material.

273. The SOP includes measures to control windblown wastes and litter in compliance with 30 TEX. ADMIN. CODE § 330.120.

274. The Site Operating Plan has restrictions to prohibit waste unloading, storage, disposal, or processing within any buffer zone.

275. The buffer zone will be 200 feet minimum, which exceeds the TCEQ requirement found in 30 TEX. ADMIN. CODE § 330.121.

276. 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.

277. The Site Operating Plan includes provisions designed for control of disease vectors in compliance with 30 TEX. ADMIN. CODE § 330.126.

278. There are measures to prevent human salvaging and scavenging in compliance with 30 TEX. ADMIN. CODE § 330.128.

279. 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.

280. 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.

281. 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.

282. 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.

283. The Site Operating Plan provisions fulfill the TCEQ's requirements and are adequate to control nuisance conditions.

284. The Application demonstrates that the proposed permit is adequately protective to prevent nuisance conditions.

Transportation

~~181~~285.The Application discusses 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.

~~182~~286.The Application discusses the driveway permit that would be issued by the Texas Department of Public Safety if the Application is approved.

~~183~~287.The Application includes adequate transportation information.

288. Regional Coordination

~~184~~289. The Nortex Regional Planning Commission has determined that the proposed landfill is compatible with the local Regional Solid Waste Management Plan.

290. The proposed landfill is compatible with the Regional Solid Waste Management Plan.

Endangered and Threatened Species

~~185~~291.Applicant provided the relevant technical data, a mitigation plan, and correspondence with the appropriate state and federal agencies regarding endangered and threatened species.

~~186~~292.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.

~~187~~293.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.

~~188~~294.Applicant adequately evaluated the presence of and potential for adverse effects of the landfill on endangered and threatened species.

295. 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.

296. It also included the Section 404 Nationwide Permit Application and Authorizations addressing threatened and endangered species.

Compliance History

~~189~~297. Applicant owns and operates multiple waste facilities of various types throughout Texas.

~~190-~~298. Applicant's compliance history reflects an overall "average" classification.

299. The Applicant's compliance history warrants the granting of the permit.

~~191.~~ Closure and Post Closure Plans

~~192~~300. The Application contains evidence of financial responsibility.

~~193~~301. The financial assurance would be by surety bond to be filed upon issuance of the MSW permit to IESI.

~~194~~302. The closure and post-closure plans are set out in the Application.

303. 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.)

304. Applicant adequately provided for closure and post closure plans and proposed adequate financial assurance.

Permit Term

~~195~~305. 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.

306. The Applicant has demonstrated that the permit term should be for the life of the facility.

307. There was no evidence that, if the Application were granted, the permit's term should be

other than for the life of the facility.

196.—Transcript Costs

~~197~~308. All parties had a role in initiating the hearing.

~~198~~309. A transcript was required because of the length of the hearing.

~~199~~310. All parties participated substantially in the proceedings and benefitted from having a transcript for use in preparing their briefs.

~~200~~311. 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 (TAC) §§ 39.5, 39.101, and 39.501(c) 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. The provisions of 30 TEX. ADMIN. CODE . ANN. CH. 330 in effect as of March 22, 2006 apply to the application.
- ~~5. With the addition of the Special Provision, Applicant's application complies with TEX. HEALTH & SAFETY CODE ANN. §§ 361.066 and 361.068, and demonstrates that it will comply with all relevant aspects of the application and design requirements as provided in 30 TEX. ADMIN. CODE ANN. §§ 330.71(a) and 330.57(d).~~
65. The application was processed and the proceedings described in this Order were conducted in

accordance with applicable law and rules of the TCEQ, specifically 30 TEX. ADMIN. CODE ANN § 80.1 *et seq.*, and the State Office of Administrative Hearings, specifically 1 TEX. ADMIN. CODE ANN. § 155.1 *et seq.*, and Subchapter C of TEX. HEALTH & SAFETY CODE ANN. Chapter 361.

76. The burden of proof was on the Applicant, in accordance with 30 TEX. ADMIN. CODE ANN § 80.17(a).

87. Applicant met its burden with respect to all issues ~~except~~ including identification of groundwater wells within one mile of the proposed facility's boundaries and areas of water recharge.

98. The evidence in the record is sufficient to meet the requirements of applicable law for issuance of the Draft Permit, including TEX. HEALTH & SAFETY CODE ANN. Chapter 361 and 30 TEX. ADMIN. CODE ANN. Chapter 330.

109. If constructed and operated in accordance with the Solid Waste Disposal Act, 30 TEX. ADMIN. CODE ANN Chapter 330, the attached Draft Permit, the facility will not adversely affect public health or welfare or the environment.

110. The contents of the permit to be issued to the facility meet the requirements of the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE ANN. §§ 361.086(b) and 361.087.

~~12.~~11. Applicant has submitted documentation of compliance with the NPDES program under the federal Clean Water Act Section 402, as amended, as required by 30 TEX. ADMIN. CODE ANN. § 330.51(b)(5).

~~13.~~12. As required by 30 TEX. ADMIN. CODE ann. §§ 330.61(k)(3), 330.61(i)(4), and 330.61(i)(5) Applicant has submitted documentation of coordination with TCEQ for compliance with the

federal Clean Water Act Section 402, the Federal Aviation Administration for compliance with airport location restricts, and the Texas Department of Transportation for traffic and location restrictions.

14.13. Applicant has submitted wetland determinations required by applicable federal, state, and local laws as required by 30 TEX. ADMIN. CODE ANN. §§ 330.61(m).

14. 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.

15. The application conforms to the applicable requirements of the Engineering Practice Act, TEX. REV. CIV. STAT. ANN. art. 3271a, as provided in 30 TEX. ADMIN. CODE ANN. § 330.57(f).

16. The application meets the technical requirements of 30 TEX. ADMIN. CODE ANN. §§ 305.45, 330.57(c)(1), (c)(2) and (3), 330.57(c)(2), 330.61 330.63 and 330.59, and the Site Development Plan meets the requirements of 30 Tex. ADMIN. CODE ANN. §§ 330.63 and 330.61.

~~17. The application meets the technical requirements of 30 TEX. ADMIN. CODE ANN. §§ 305.45, 330.57(c)(2), and 330.61.~~

~~18. The Site Development Plan meets the requirements of 30 Tex. ADMIN. CODE ANN. §§ 330.63 and 330.61.~~

~~19. The application meets the requirements of 30 TEX. ADMIN. CODE ANN. §§ 330.45, 330.57(c)(3), and CODE ANN. §§ 330.63 and 330.61.~~

- ~~20~~17. Part IV of the application, the SOP, meets the requirements of 30 Tex. ADMIN. CODE ANN. §§ 330.57(c)(4) and 330.127.
- ~~21~~18. Applicant has shown that it will comply with the operational prohibitions and requirements in 30 TEX.- ADMIN. CODE ANN. §§ 330.5, 330.111 - 330.139.
- ~~22~~19. The application includes adequate provisions to prevent the ponding of water over waste in the landfill, in compliance with 30 TEX. ADMIN. CODE ANN. § 330.167 and 330.134.
- ~~23~~. ~~With the addition of the Special Provision, Applicant's geology report will comply with 30 TEX. ADMIN. CODE ANN. § 330.63(e).~~
- ~~24~~. ~~The application contains the required information regarding the effect of facility construction on groundwater flow required by 30 TEX. ADMIN. CODE ANN. § 330.403(e)(1).~~
- ~~25~~. ~~With the incorporation of the additional 28 monitoring wells into the groundwater monitoring system, the application will meet the requirements of 30 TEX. ADMIN. CODE ANN. §§ 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407, concerning groundwater protection.~~
- ~~26~~20. The groundwater sampling and analysis plan meets the requirements set forth in 30 Tex. ADMIN. CODE ANN. §§ 330.56(k) and 330.63(f), and Subchapter J of Chapter 330.
- ~~27~~21. Applicant has demonstrated that existing drainage patterns will not be adversely altered as a result of the proposed landfill development, as required by 30 TEX. ADMIN. CODE ANN. § 330.63(c)(D)(iii) and 330.305.
22. Applicant's application complies with Tex. Health and Safety Code §§ 361.066 and 361.068, and demonstrates that it will comply with all relevant aspects of the application and design requirements as provided in 30 Tex. Admin. Code Ann. §§ 330.71(a) and 330.57(d).
- ~~28~~23. The landfill gas monitoring system complies with 30 TEX. ADMIN. CODE ANN. § 330.159

and 330.130 in regards to providing adequate controls for landfill gas.

- ~~29~~24. Applicant has demonstrated compliance with applicable TPDES storm water permitting requirements.
- ~~30~~25. Applicant has demonstrated compliance with the location restrictions set forth in 30 Tex. ADMIN. CODE ANN. §§ 330.345, 330.347, 330.553, 330.555, 330.557, and 330.559.
- ~~31~~26. Applicant has submitted information regarding closure and post-closure and proposed adequate financial assurance that demonstrates compliance with the requirements of 30 Tex. ADMIN. CODE ANN. §§ 330.63(h), (i), 330.457, 330.461, 330.463, ~~and 330.465,~~ 330.52(b)(11), ~~330.280-.284,~~ 330.56(h), 330.56(l), 330.253, 330.56(m), and 330.254-.256.
- ~~32~~27. The Soil and Liner Quality Control Plan complies with 30 TEX. ADMIN. CODE ANN. §§ 330.63(d)(C)(3) and (4)(G), and 330.339.
- ~~33~~28. Applicant is not proposing to site a new MSW landfill within five miles of an airport serving turbojet or piston-type aircraft, as confirmed in correspondence with the Federal Aviation Administration and in compliance with 30 Tex. ADMIN. CODE ANN. §§ 330.61(i)(5) and 330.545.
- ~~34~~29. As required by TEX. HEALTH & SAFETY CODE ANN. § 361.069, the facility is compatible with surrounding land uses.
- ~~35~~30. Section 363.066 of the TEX. HEALTH & SAFETY CODE ANN. does not affect the Solid waste Disposal Act, under which the Commission may supersede any authority granted to or exercised by the council of governments.
- ~~36~~31. The facility is compatible with the applicable regional solid waste management plan, pursuant to TEX. HEALTH & SAFETY CODE ANN. § 361.062.
- ~~37~~32. The methods specified in the SOP comply with the MSW rules to prevent the creation of any

nuisance, as defined by 30 TEX. ADMIN. CODE ANN. § 330.3(95).

- 38-33. The buffer zones established by Applicant between the edge of fill and the facility boundary and the proposed screening are compliant with the MSW rules, including 30 TEX. ADMIN. CODE ANN. §§ 330.141(b), 330.121 and 330.138.
- 39-34. Applicant has provided sufficiently detailed information regarding the operational methods to be utilized at the facility when using daily cover and its preventative effect on vectors, fires, odors, windblown waste and litter, and scavenging, as required by 30 TEX. ADMIN. CODE ANN. § 330.165(a) and (b), 330.115.
35. 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.
36. 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.
37. 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.
38. 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.
39. 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.

40. 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.
41. 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.
42. 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.
43. 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.
4044. The methods specified in the SOP for the control of windblown waste and litter comply with the MSW rules, including 30 TEX. ADMIN. CODE ANN. §§ 330.127, 330.139, and 330.120.
4145. Applicant has provided adequate information related to transportation in compliance with 30 TEX. ADMIN. CODE ANN. § 330.61(i)-, 330.51(b)(6)(C) and 330.53(b)(9)(A)-(C).
4246. The operating hours proposed in the application have been shown to be appropriate.
- ~~43. Pursuant to the authority of, and in accordance with applicable laws and regulations, the attached Permit should be granted with the addition of the following provision:~~
47. 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.

48. 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.
49. 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.
50. 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 ANN §§ § 330.56(e)(5) and § 330.230-234 and 330.241 in regards to the proposed groundwater monitoring system.
51. The application will meet the requirements of 30 Tex. Admin. Code Ann. §§ 330.63(b)(4), 330.401, 330.404, 330.405, 330.407, and 330.403.
52. 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.
53. 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.

54. 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.

55. The proposed groundwater monitoring system will adequately protect human health and the environment in compliance with 30 Tex. Admin. Code Ann. § 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407.

~~44. The proposed groundwater monitoring system as revised to incorporate the additional monitoring wells into the groundwater monitoring system will provide adequate groundwater monitoring, in compliance with § 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407.~~

~~45. As revised, the proposed groundwater monitoring system will adequately protect human health and the environment in compliance with 30 TEX. ADMIN. CODE §§ 330.63(b)(4), 330.401, 330.403, 330.405, and 330.407.~~

~~46. Pursuant to the authority of, and in accordance with, applicable laws and regulations, the requested permit should be granted with the modifications described in this Order.~~

~~47.56 With the addition of the Special Provision, the application will comply with Tex. Health & Safety Code Ann. §§ 361.066 and 361.068 and 30 TAC 330.4(m) and 330.51(b)(1).~~

57. Applicant's geology report complies with 30 Tex. Admin. Code Ann. § 330.63(e).

58. 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.

59. 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.
60. 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.
61. 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.
62. 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.
63. 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.
64. 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.
65. 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.

66. 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.

67. Applicant properly described all groundwater recharge areas within five miles of the site.

4868. The application was processed and the proceedings described in this Order were conducted in accordance with applicable law and rules of the TCEQ, specifically 30 TAC § 80.1 *et seq.*, and the SOAH, specifically 1 TAC § 155.1 *et seq.*, and Subchapter. C of the TEX. HEALTH & SAFETY CODE ANN. Ch. 361.

~~49. With the addition of the Special Provision, the application will meet all requirements of the Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE ANN Ch. 361 and 30 TAC Ch. 330.~~

~~5069.~~ Pursuant to 30 TEX. ADMIN. CODE ANN. §§ 80.23(d)(2), the Executive Director and Office of Public Interest Counsel may not be assessed any portion of the transcript and reporting costs.

~~5170.~~ Transcript costs should be assessed 50% to Applicant, 25% to the City, and 25% to Protestant.

71. Pursuant to the authority of, and in accordance with, applicable laws and regulations, the requested permit should be granted with the modifications described in this Order.

72. The Commission has overturned or revised certain Findings of Fact proposed by the ALJ

based on the Commission's finding that the overturned or revised Findings of Fact were not supported by the great weight of the evidence in accordance with § 361.0832 of the Texas Health & Safety Code. The Commission has overturned or revised certain Conclusions of Law proposed by the ALJ based on the Commission's finding that the overturned or revised Conclusions of Law were clearly erroneous in light of precedent and applicable rules in accordance with § 361.0832 of the Texas Health & Safety Code. Because this decision involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the Commission, certain ultimate findings proposed by the ALJ are rejected for reasons of policy in accordance with § 361.0832. Certain other Findings of Fact and Conclusions of Law are consistent with the ALJ's proposal, but provide additional clarification and are based on evidence in the record.

73. Applicant met its burden with respect to all referred issues.

74. The application meets all requirements of the Solid Waste Disposal Act, Texas Health and Safety Code Ann. Chapter 361 and 30 TAC Chapter 330.

75. Pursuant to the authority of, and in accordance with applicable laws and regulations, the attached Permit should be granted with the addition of the following provision:

5276. Based on all the foregoing Findings of Fact and Conclusions of Law, the TCEQ Permit No. 2332 for a MSW municipal solid waste landfill should be granted, with the addition of the a Special Provision requiring the Applicant to install 28 monitoring wells around the facility's perimeter that will screen contaminants in Stratum I and Stratum IA.

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. A Special Provision is added to the permit as follows:

In addition to the groundwater monitoring wells in Attachment 5 to the application that will monitor groundwater in the uppermost aquifer (Stratum II), 28 additional monitoring wells shall be installed within the Stratum I and I-A interval as shown in the Attached Special Provisions Table No. 1. The wells will be installed in accordance with the monitoring well details described in Part III, Attachment 5, of the application and will be sampled in accordance with the Groundwater Sampling and Analysis Plan in Attachment 11 and in accordance with 30 TEX. ADMIN. CODE ANN. §§ 330.401 through 330.415 and §§ 330.419 through 330.421.
3. Transcript costs will be paid 50% by Applicant, 25% by the City, and 25% by Protestant.
4. The Chief Clerk of the Commission shall forward a copy of this Order to all parties.
5. 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.
6. 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.

7. 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**

X. SPECIAL PROVISION

In addition to the groundwater monitoring wells in Attachment 5 to the application that will monitor groundwater in the uppermost aquifer (Stratum II), 28 additional monitoring wells shall be installed within the Stratum I and I-A interval as shown in the Attached Special Provisions Table No. 1. The wells will be installed in accordance with the monitoring well details described in Part III, Attachment 5, of the application and will be sampled in accordance with the Groundwater Sampling and Analysis Plan in Attachment 11 and in accordance with 30 TEX. ADMIN. CODE §§ 330.401 through 330.415 and §§ 330-419 through 330.421.

Special Provisions – Table No. 1

PROPOSED MONITORING WELLS				
MONITORING WELL NO.	GROUND ELEVATION (ft msl)	TOTAL DEPTH (ft bgs)	SCREENED INTERVAL (ft msl)	
			FROM	TO
MW-101	1184	34	1160	1150
MW-102	1198	30	1178	1168
MW-103	1185	25	1170	1160
MW-104	1180	22	1168	1158
MW-105	1200	24	1186	1176
MW-106	1200	50	1170	1150
MW-107	1220	35	1195	1185
MW-108	1220	55	1175	1165
MW-109	1242	52	1200	1190
MW-110	1242	72	1180	1170
MW-111	1264	59	1215	1205
MW-112	1252	62	1200	1190
MW-113	1222	47	1190	1175
MW-114	1212	47	1175	1165
MW-115	1208	43	1175	1165
MW-116	1214	49	1175	1165
MW-117	1191	41	1160	1150
MW-118	1156	21	1145	1135
MW-119	1142	17	1135	1125
MW-120	1138	23	1125	1115
MW-121	1141	21	1130	1120
MW-122	1150	40	1120	1110
MW-123	1158	38	1130	1120
MW-124	1166	31	1140	1135
MW-125	1172	42	1140	1130
MW-126	1162	27	1145	1135
MW-127	1170	25	1155	1145
MW-128	1170	20	1160	1150

Notes:

1. Well to be drilled by Texas licensed driller.
2. Installation and well development to be supervised by qualified geologist or engineer.
3. Fluids introduced into borehole must be treated clean water.
4. Steamclean procedures should be used for all equipment that enters boreholes such as tremie pipes or drill pipe.
5. Well development should continue until pH, specific conductance and temperature have stabilized.
6. All depths and elevations are estimated based on site characterization information in Attachments 4 and 5.

