

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

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

EXCEPTIONS TO PROPOSAL FOR DECISION

OF

THE CITY OF JACKSBORO

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
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CHIEF CLERKS OFFICE

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**THE CITY OF JACKSBORO’S EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS:

COMES NOW THE CITY OF JACKSBORO, TEXAS (“City” or “Jacksboro”), and presents to the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) this its Exceptions to the Proposal for Decision (“PFD”), and proposed Findings of Fact (“FOF”), Conclusions of Law (“COL”), and Ordering Paragraphs issued on May 5, 2009, by the Administrative Law Judge (“ALJ”) in the above-captioned proceeding.

**I. INTRODUCTION**

The City supports the majority of the PFD and Proposed Order, with the exception of the four issues wherein the PFD asserts the Application does not meet the Commission’s regulatory requirements for a Type I municipal solid waste permit. While the evidentiary findings in the PFD support issuance of the permit, it appears the ALJ believes there are requirements the Applicant must meet that are beyond the regulatory standards the Application itself must meet. As the City understands from the PFD, the ALJ believes that the Applicant: (1) did not perform an adequate search for water wells and springs;<sup>1</sup> (2) did not list the aquifer(s) for all water wells

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<sup>1</sup> Proposal for Decision, *Application of IESI TX Landfill L.P. for a New Type I MSW Permit Proposed Permit No. 2332*, SOAH Docket No. 582-08-1804, TCEQ Docket No. 2007-1302-MSW (May 5, 2009) [hereinafter PFD] at 11.

within one mile of the site;<sup>2</sup> (3) did not address the possible impact of dewatering on area wells and springs;<sup>3</sup> and (4) did not properly describe the regional aquifer(s) in the landfill's vicinity.<sup>4</sup> The City notes that none of these alleged deficiencies relate to the actual design or operation of the landfill, but only question the preparation of the Application. The City also notes that there are no specific regulatory requirements to support these alleged deficiencies and that fact is clear from the Executive Director's support of the Application. The Commission adopted its municipal solid waste ("MSW") rules to ensure that landfills are designed and constructed to protect the environment and public health. Because the PFD ultimately concludes that the Applicant has taken the necessary design precautions to protect the environment and public health the ALJ's new standards for application preparation, as described in her PFD, should be rejected.

The City is also concerned that the alleged deficiencies in the Application are supported in the PFD only by the testimony of Dr. Lauren Ross, not by evidence in the record. The record is clear that Dr. Ross' opinions are questionable because she is not a qualified groundwater scientist<sup>5</sup>, has essentially no experience in landfill design<sup>6</sup>, and has no practical experience with the geology and hydrogeology of this area of Jack County. In contrast, the Applicant's expert, Mr. Mike Snyder, who prepared the geology and hydrogeology sections of the Application that are challenged in the PFD has extensive landfill design experience and practical experience with the geology and hydrogeology of Jack County and surrounding counties. Further, an Applicant supporting expert, Dr. Charles Kreidler, a registered geoscientist, agrees with the conclusions drawn by Mr. Snyder. The City is at a loss to understand how Mr. Snyder's, Dr. Kreidler's, and the Executive Director's experts can be called into question solely by Dr. Ross's unsupported opinions.

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<sup>2</sup> PFD at 11, *supra* note 1.

<sup>3</sup> *Id.* at 14.

<sup>4</sup> *Id.* at 19.

<sup>5</sup> Tr., Vol. 6, at 93, l. 20-22.

<sup>6</sup> *Id.* at 94, l. 3-10.

The City believes that the information provided in these Exceptions addresses the ALJ's four areas of concern and provides a clear basis, supported by the evidentiary record, for a modification of the PFD and issuance of Permit No. MSW-2332. Further, the City does not believe that 25% of transcription costs should be allocated to it simply because it took the necessary time during the hearing to demonstrate the lack of credibility of Dr. Ross' testimony and Mr. Pierce Chandler's testimony. Therefore, the City respectfully requests that the ALJ, after considering the information set out in these Exceptions, modify the PFD and Proposed Order to support issuance of Permit No. MSW-2332. If the PFD and Proposed Order are not so modified, then the City respectfully requests that: (1) the Commission not adopt the ALJ's Proposed Order; and (2) the Commission adopt a revised Order approving the Application as proposed in these Exceptions.

The City wishes to be clear that it supports all of the ALJ's proposed Findings of Fact and Conclusions of Law not specifically excepted to in these Exceptions. As reflected by the Executive Director's experts' testimony at the Hearing on the Merits ("HOM"), the Application meets all regulatory requirements.<sup>7</sup> The Application clearly conforms to Commission precedent on all contested issues. To deny this Application based on different standards than have been required of other landfill permit applications will cause significant harm to the approximately 171,000 citizens of Jack County and surrounding areas who will be served by the proposed facility.<sup>8</sup>

In the following sections, the City will focus on those portions of the Application, the regulations, and Commission precedent that will justify a modification of the PFD and proposed Order in this proceeding.

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<sup>7</sup> See ED Ex. 1 at 3.

<sup>8</sup> As noted by the ALJ, the proposed facility would serve a population equivalent of 171,000 people in the City, Jack County, and the surrounding areas. See ALJ's Proposed FOF No. 13.

## II. EXCEPTIONS TO PFD

- 1. Applicant adequately identified and evaluated all springs within one mile of the proposed facility boundaries in compliance with TCEQ regulations.**

The City excepts to the following Findings of Fact as proposed by the ALJ:

Finding of Fact No. 136. There are more than 20 springs in Jack County, including those that may be particularly impacted by the landfill because of their location in southeastern Jack County.

Finding of Fact No. 137. Two springs are about 845 feet north of Applicant's property boundary.

There is no evidence in the record to support Dr. Ross' testimony that there are springs within one mile of the proposed landfill site. While there may be some wet weather seeps in the area, the existence of actual springs has not been established. During the HOM there was no documentation or credible expert testimony that established the existence of even a single spring in the area surrounding the proposed landfill. *Springs of Texas* indicates that the only known spring in the area (Haley Spring) failed many years ago and no longer exists. Dr. Ross agreed with the Applicant at the HOM that the *Springs of Texas* is a reliable reference that an applicant should rely on to determine springs in existence.<sup>9</sup> Other than discussion of a wet weather seep on to the Curtis Benson property, there is no evidence in the record to establish that the Benson seep is the failed Haley Spring or that it is even a spring rather than a seep. Mr. Benson admitted that he built a dam to capture enough of the seeping water to allow his cattle to drink it.<sup>10</sup> While Dr. Ross believes that the Benson seep might be a spring, she did not do any independent verification to determine whether the seepage on the Benson property possesses any of the characteristics of a spring.<sup>11</sup> Dr. Ross could not even reliably identify an alleged picture of the Benson seep.<sup>12</sup> In fact, at the HOM Dr. Ross testified that she had not personally visited the

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<sup>9</sup> See Tr., Vol. 6, at 125, l. 24- 126, l. 7.

<sup>10</sup> See *id.*, Vol. 4 at 67, l. 14-15.

<sup>11</sup> See *id.*, Vol. 6 at 95, l. 17-19.

<sup>12</sup> See *id.*, l. 20-25.

alleged spring on Mr. Benson's property.<sup>13</sup> The wholesale acceptance of the "Benson Spring" in the PFD is troublesome in that Dr. Ross, nor any other geoscientist, ever did anything to establish it as a spring. The alleged presence of "Benson Spring", a significant distance upgradient of the landfill boundary, cannot form any legal basis for denial of the Application. This is particularly the case when the evidence in the record clearly demonstrates the proposed landfill's design will protect groundwater quality in the area.

The PFD describes Mr. Snyder as "misreading" the *Springs of Texas* as a primary justification for alleging the Applicant did not adequately identify nearby springs. The City notes that Mr. Snyder did not misread the *Springs of Texas*. He testified, quite forthrightly, that his prefiled testimony contained a typographical error that was corrected when he swore to the veracity of his prefiled testimony.<sup>14</sup> The mischaracterization of Mr. Snyder's testimony is indicative of the problem with the PFD in regard to identifying springs. One can call anything a spring without providing any reliable information on the alleged spring's characteristics, with supporting technical data; but such does not constitute evidence in a contested case hearing. In accordance with the TCEQ's MSW rules, the Applicant relied on verifiable independent information to determine that no springs exist near the landfill site and, regardless, designed the facility to be fully protective of groundwater quality.

Because the evidence does not support the Findings of Fact as described above, the City hereby suggests the following changes to Finding of Fact No. 136, proposes two additional Findings of Fact, and proposes that Finding of Fact No. 137 be deleted.<sup>15</sup>

~~Finding of Fact No. 136. There are more than 20 springs in Jack County, including those that may be particularly impacted by the landfill because of their location in southeastern Jack County.~~

~~Finding of Fact No. 137. Two springs are about 845 feet north of Applicant's property boundary.~~

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<sup>13</sup> See *id.*, l. 17-19.

<sup>14</sup> *Id.*, Vol. 2 at 6, l. 11-18.

<sup>15</sup> All proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs will be presented in strikethrough format.

Proposed Finding of Fact No. 138. The only nearby spring mentioned in published materials is known as the “Haley Springs”, which failed early and no longer exists.

Proposed Finding of Fact No. 139. Applicant adequately identified all springs within one mile of the proposed landfill’s permit boundary.

**2. Applicant adequately identified and evaluated all water wells within one mile of the proposed facility’s boundaries in compliance with TCEQ regulations.**

The City excepts to the following Findings of Fact as proposed by the ALJ:

Finding of Fact No. 126. For the few wells that Applicant identified, Applicant discussed neither the underlying aquifers nor their recharge zones.

Finding of Fact No. 129. 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.

Finding of Fact No. 130. The wells range in depth from about 70 feet below grade to 500 feet, but most are between 100 and 300 feet deep.

Finding of Fact No. 131. The shallower wells are likely completed in the Twin Mountains or Trinity aquifer.

The Applicant identified and evaluated all water wells within a one mile radius of the proposed landfill site as required by applicable TCEQ rules. The Applicant utilized the same standard of professional practice and care as other applicants in the past have used in making this determination. The well search methodology employed by the Applicant has been approved by the Commission in other recent landfill permit proceedings. The well search requirements proposed in the PFD would result in a significant expansion of the explicit language of the regulation and would be a drastic departure from established Commission precedent.

The City begins by noting that the PFD mischaracterizes the Applicant’s identification of water wells within one mile of the proposed landfill. The Applicant adequately described all water wells within one mile of the landfill site through its search of open and available water well records and by conducting a standard driving survey. A door-to-door well survey for some undefined distance from a proposed landfill site has never been required by the Commission and

is clearly not included in the regulatory language. The Executive Director was explicit that the water well search performed by the Applicant meets all regulatory requirements.<sup>16</sup>

The danger in adopting the PFD as written is that it completely ignores the professional standard of care appropriate for preparing a MSW application. Some type of undefined door-to-door search would be inconsistent in both application and result. It would be inconsistent in its application because there is no reliable method for an applicant to access all private property in the area of a proposed landfill. This is particularly true in an area such as this part of Jack County with many non-resident landowners. It would be inconsistent in result since many owners of undocumented wells know nothing about the technical aspects of their wells or the water quality. A professional standard of care must have consistency in both application and result. The Applicant's professional standard of care was appropriate in this case. The Commission, by issuance of MSW permits with similar water well search methodology, has approved of the methodology used in this case.<sup>17</sup> The type of drastic regulatory expansion proposed by the ALJ is legally possible only through an APA rulemaking proceeding, and certainly is not appropriate in a contested case hearing.

Moreover, regardless of the location or number of nearby water wells, it is important to note that the landfill has been designed to be fully protective of the groundwater - **period**. Mr. Snyder testified, and the ALJ agreed in her PFD, that groundwater will be protected by the landfill's standard Subtitle D design.

Because the evidence does not support the Findings of Fact as described above, the City hereby suggests the following changes to Findings of Fact Nos. 126, 129, and 130 and proposes deleting Finding of Fact No. 130.

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<sup>16</sup> See ED Ex. 4 at 2.

<sup>17</sup> See MSW Permit No. 576B, issued Dec. 12, 2002, MSW Permit No. 1428A, issued Aug. 14, 2003, MSW Permit No. 2290, issued Oct. 31, 2003, MSW Permit No. 1454B, issued Oct. 20, 2004, and MSW Permit No. 47A, issued Aug. 17, 2007. All of the referenced permits authorize type I MSW landfills that have utilized the same water well search methodology as Applicant has in the instant Application.

Finding of Fact No. 126. For the few wells that Applicant identified, Applicant adequately discussed neither the underlying aquifers ~~nor~~ and their recharge zones.

Finding of Fact No. 129. Utilizing the proper regulatory standard of care for a water well search, Applicant identified five water wells within one mile of the permit boundary, two of which are within the permit boundary and not used. ~~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.~~

Finding of Fact No. 130. Applicant identified all water wells within one mile of the permit boundary that are registered on state water well databases. ~~The wells range in depth from about 70 feet below grade to 500 feet, but most are between 100 and 300 feet deep.~~

Finding of Fact No. 131. ~~The shallower wells are likely completed in the Twin Mountains or Trinity aquifer.~~

### **3. Applicant did identify an important regional aquifer.**

The City excepts to the following Findings of Fact as proposed by the ALJ:

Finding of Fact No. 132. The deeper, higher yielding wells are consistent with the depth of the Palo Pinto aquifer in the Pennsylvanian formation.

Finding of Fact No. 134. Many of the nearby wells appear to be in the Stratum IA sands.

Finding of Fact No. 135. Since monitoring wells will be screened only in Stratum II, there is no system planned to detect contaminants that could travel in the Stratum IA sands.

Finding of Fact No. 139. 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.

Finding of Fact No. 140. The most important water-bearing units in the county are Pennsylvanian age, with minor contributions of groundwater by units of the Trinity Group and alluvium.

Finding of Fact No. 141. Within one mile of the landfill site, there are usable amounts of groundwater in the Pennsylvanian formations.

Finding of Fact No. 142. Applicant did not adequately describe regional aquifers within the landfill's vicinity based on published and open file sources.

In addition to the Findings of Fact excepted to above, the City excepts to the ALJ's use of the heading "Usable Aquifer" on page 15 of the proposed Order. The heading should read "Regional Aquifers."

It is difficult for the City to determine where the evidentiary record might lead the ALJ to conclude that the Applicant did not identify an important regional aquifer, specifically the Pennsylvanian Canyon Group. The Applicant's regulatory burden is to show a "generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable groundwater, or from a depth of 1,000 feet, whichever is less, to the land surface."<sup>18</sup> The Applicant provided exactly this information.

As properly noted by the ALJ, an aquifer is a "geologic formation...capable of yielding *significant* quantities of groundwater to wells or springs"<sup>19</sup> (emphasis added). The uppermost aquifer is the "geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary."<sup>20</sup> The regulations require that landfill permit applicants analyze "usable" groundwater in formations that yield "significant quantities" of groundwater.<sup>21</sup> It is axiomatic that a waterbearing formation must meet these two fundamental criteria to even be considered as a regional aquifer. In reaching the ultimate conclusion that the Application does not identify the Pennsylvanian Canyon Group as a regional aquifer, the PFD alleges that the Pennsylvanian formation in this area yields usable and significant amounts of groundwater. The PFD also alleges that Nordstrom's Report 308 designates the Pennsylvanian formations as the most important water bearing units in Jack County. Both allegations are in clear error if Nordstrom's Report 308 is read in its entirety.

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<sup>18</sup> 30 TEX. ADMIN. CODE § 330.56(d)(2)(B).

<sup>19</sup> *Id.* § 330.2(6).

<sup>20</sup> *Id.* § 330.2(158).

<sup>21</sup> *See id.* §§ 330.2(6) & 330.56(d)(2)(B).

The ALJ apparently makes her recommendation to deny the Application because the Applicant did not include Nordstrom's Report 308 in the Application or, perhaps, did not rely solely on that report in making its regional aquifer determination. The ALJ's confusion appears to revolve around what is a "regional" aquifer in the regulatory context of a landfill permit application and what type of formation produces "significant" amounts of groundwater. Because the PFD appears to rely heavily on Nordstrom's Report 308, the City highlights the fact that the report does not identify the Pennsylvanian Canyon Group as a regional aquifer. Nordstrom's Report 308 explicitly states that Jack County is underlain by Pennsylvanian rocks, but the formations therein yield limited amounts of fresh to saline groundwater.<sup>22</sup>

Based on the study performed by Nordstrom, the Pennsylvanian Canyon Group groundwater demonstrated that the "overall quality of groundwater for domestic use is fairly poor."<sup>23</sup> Nordstrom went further and analyzed the use of Pennsylvanian Canyon Group groundwater for irrigation wells. Nordstrom concluded that "groundwater from the Canyon Group is not suitable for extensive irrigation practices."<sup>24</sup> Nordstrom notes that Bill Dennis, a Jack County historian, mentioned that because of the poor quality of the groundwater in the Canyon Group, Jack County was settled late or not at all.<sup>25</sup> Nordstrom concluded that Pennsylvanian formation water should not be used for domestic purposes or for irrigation purposes.<sup>26</sup> Nordstrom's Report 308 clearly refutes the PFD's allegation that the Pennsylvanian Canyon Group yields either significant amounts of useable groundwater. Thus, while the ALJ is probably correct in observing that some people in the area may use water from the

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<sup>22</sup> TBCAG Ex. 8B at iii.

<sup>23</sup> *Id.* at 63.

<sup>24</sup> *Id.* at 63-64.

<sup>25</sup> *Id.* at 54.

<sup>26</sup> *Id.* at 71-72.

Pennsylvanian formations, the Pennsylvanian Canyon Group is not an aquifer in the regulatory context as promulgated by the TCEQ. There is nothing in the literature, or the evidentiary record, that groundwater withdrawn from the Pennsylvanian formation in this area is anything other than of limited quantity and potability. At best, it can only serve a few people on an unreliable basis and, therefore, cannot be a regional aquifer.

When asked if the Pennsylvanian Canyon Group is an aquifer (much less a regional aquifer), Dr. Ross explicitly did **not** testify that the formation is an aquifer. She merely opined that it is an “important source of usable groundwater in the vicinity of landfill” and that there may be “no other available water supply resource.”<sup>27</sup> Dr. Ross’ opinion, even if true, definitely does not make the Pennsylvanian Canyon Group a “regional” aquifer for regulatory purposes. In contrast, Nordstrom’s Report 308 states that the Pennsylvanian is so discontinuous and occurs so erratically that potentiometric maps and water quality maps cannot be constructed and would be misleading. Those are certainly not characteristics of a regional aquifer.

In addition to Nordstrom’s Report 308, the primary aquifer identification publication issued by the State of Texas, *Aquifers of Texas*, does not list the Pennsylvanian formation as either a major or minor aquifer. Even Dr. Ross agrees that *Aquifers of Texas* is a reliable source from which to determine a regional aquifer.<sup>28</sup> With such authorities agreeing that the Pennsylvanian formations do not produce sufficient groundwater for use over a large area by a significant population, the Applicant did not, and should not have, listed the Pennsylvanian Canyon Group as a regional aquifer. Nordstrom and the Applicant agree that the Twin Mountains formations of the Trinity Aquifer, not the Pennsylvanian formations, are the most

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<sup>27</sup> TBCAG Ex. 8 at 8.

<sup>28</sup> See Tr., Vol. 6 at 100, l. 13-23.

important sources of groundwater in the region.<sup>29</sup> As illustrated by the Application, all regional aquifers have been identified utilizing standard industry practice and in accordance with Commission regulations.

In identifying the stratigraphic column, the Application listed the only possible “aquifers” for any possible water wells within one mile of the landfill site. Finding of Fact No. 67 properly concludes that Stratum II is the uppermost aquifer. Much of the discussion in the PFD then tries to imply that Stratum IA must also be identified as an aquifer since some allegedly nearby wells may draw limited amounts of groundwater from Stratum IA. The evidence in the record clearly establishes that Stratum IA is not an aquifer in the TCEQ regulatory context. Even if it were, it has been identified in the Application. Even if the PFD is alleging that the underlying Pennsylvanian Canyon Group is an aquifer for any water well, it has been identified in the Application. The City is at a loss to understand what else the Application could possibly include since it contains all of the information required by applicable Commission regulations. If, in fact, the PFD is trying to apply some higher standard beyond the regulatory requirements, such is beyond the scope of a contested case proceeding and was certainly not an issue that the Commission referred to the ALJ to consider in this evidentiary hearing.

It should be expressly noted that the Applicant conducted a physical on-site subsurface investigation and characterization of the underlying geology and hydrology. The ALJ agreed with the Applicant and TCEQ staff that it was properly conducted, and she fundamentally agrees with the resulting characterization and associated facility design. Because the Applicant identified the groundwater resources and designed the proposed facility to be protective of such resources, it is immaterial that there is some disagreement about whether a formation may or

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<sup>29</sup> See TBCAG Ex. 8B at 79; *see also* App. Ex. 100, Vol. 2, Attachment 4 at 4-3.

may not be properly “identified” as a regional aquifer. The purpose of the rules has been satisfied – to protect the environment and public health.

Because the evidence does not support the Findings of Fact as described above, the City hereby suggests the following changes to Findings of Fact Nos. 135, 139, 140, and 142 and proposes deleting Findings of Fact Nos. 132, 134, and 141.

~~Finding of Fact No. 132. The deeper, higher yielding wells are consistent with the depth of the Palo Pinto aquifer in the Pennsylvanian formation.~~

~~Finding of Fact No. 134. Many of the nearby wells appear to be in the Stratum IA sands.~~

~~Finding of Fact No. 135. Since Monitoring wells will be screened only in Stratum II as it is the uppermost aquifer, there is no system planned to detect contaminants that could travel in the Stratum IA sands.~~

~~Finding of Fact No. 139. The Pennsylvanian formation does not yield significant quantities of usable groundwater and is not a regional aquifer as defined by the TCEQ regulations 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.~~

~~Finding of Fact No. 140. Applicant correctly identified the most important water-bearing units in the county are Pennsylvanian age, with minor contributions of groundwater by units of the Trinity Group and alluvium as the regional aquifer in vicinity of the proposed landfill site.~~

~~Finding of Fact No. 141. Within one mile of the landfill site, there are usable amounts of groundwater in the Pennsylvanian formations.~~

~~Finding of Fact No. 142. Applicant not adequately described regional aquifers within the landfill’s vicinity based on published and open file sources.~~

**4. Applicant did not describe the effect dewatering will have on nearby wells or springs.**

The City excepts to the following Finding of Fact as proposed by the ALJ:

Finding of Fact No. 138. Applicant’s planned dewatering and excavation of Stratum I and IA may cause local springs and wells to dry up.

There seems to be a clear mistake of law on this issue. The Rule of Capture in Texas gives a property owner the right to extract any amount of groundwater for a beneficial use without liability to a nearby property owner, even if the extraction depletes a well or spring.

Commission landfill permit regulations do not address this legal issue. Commission regulations only require that an applicant identify areas of recharge within five miles of the site.<sup>30</sup> An applicant need not provide any information or analysis on the effect landfill dewatering, construction, or operation may have on nearby wells or springs. Such analysis is not required by Commission regulations because there is no underlying statutory authority to support such a regulation. Commission regulations governing landfill permit applications are designed to protect the environment from contamination, not to prevent an applicant from exercising a property right in regard to its groundwater.

The evidentiary record establishes that the Applicant owns the proposed landfill site. There is no evidence in the record, or otherwise, to indicate there is a groundwater conservation district in this area. Therefore, the Applicant has the right to remove whatever groundwater it deems necessary to construct and operate the landfill without regard to its impact on neighboring wells or springs, if such even exist. Even Dr. Ross acknowledges this right. While the ALJ and Dr. Ross may not agree with the Rule of Capture, this proceeding is not the proper legal forum to address the issue.

Because the evidence does not support the Finding of Fact as described above, the City hereby suggests deleting Finding of Fact No. 138.

~~Finding of Fact No. 138. Applicant's planned dewatering and excavation of Stratum I and IA may cause local springs and wells to dry up.~~

For the reasons stated above, the City also excepts to the following Conclusions of Law and Ordering Paragraphs:

Conclusion of Law No. 4. Applicant did not submit a complete permit application, as required by Tex. Health & Safety Code Ann. §§ 361.066 and 361.068 and 30 TAC §§ 330.4(m) and 330.51(b)(1).

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<sup>30</sup> 30 TEX. ADMIN. CODE § 330.56(d)(4)(I).

Conclusion of Law No. 6. The Application does not meet all requirements of the Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 and 30 TAC Ch. 330.

Conclusion of Law No. 7. Transcript costs should be assessed 50% to Applicant, 25% to the City, and 25% to Protestant.

Conclusion of Law No. 8. Based on the foregoing Findings of Fact and Conclusions of Law, the TCEQ Permit No. 2332 for a municipal solid waste landfill should be denied.

Ordering Paragraph No. 1. The Application of IESI TX Landfill L.P. for Permit No. MSW-2332 is denied.

Ordering Paragraph No. 2. Transcript costs will be paid 50% by Applicant, 25% by the City, and 25% by Protestant.

### III. CONCLUSION

The evidentiary record in this proceeding clearly demonstrates that the Applicant has satisfied all statutory and regulatory requirements for a municipal solid waste permit to be granted for this site.

Because the evidence does not support the Conclusions of Law and Ordering Paragraphs as described above, the City hereby suggests the following changes to Conclusions of Law Nos. 4, 6-8, and Ordering Paragraphs Nos. 1-2.

Conclusion of Law No. 4. Applicant ~~did not~~ submitted a complete permit application, as required by Tex. Health & Safety Code Ann. §§ 361.066 and 361.068 and 30 TAC §§ 330.4(m) and 330.51(b)(1).

Conclusion of Law No. 6. The Application ~~not~~ meets all requirements of the Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 and 30 TAC Ch. 330.

Conclusion of Law No. 7. Transcript costs should be assessed 50% to Applicant, ~~25% to the City,~~ and ~~25~~50% to Protestant.

Conclusion of Law No. 8. Based on the foregoing Findings of Fact and Conclusions of Law, TCEQ Permit No. 2332 for a municipal solid waste landfill should be ~~denied~~granted.

Ordering Paragraph No. 1. The Application of IESI TX Landfill L.P. for Permit No. MSW-2332 is ~~denied~~granted.

Ordering Paragraph No. 2. Transcript costs will be paid 50% by Applicant, ~~25%~~  
by the City, and ~~25~~50% by Protestant.

The City of Jacksboro respectfully requests that the Commissioners confirm through appropriate Findings of Fact and Conclusions of Law that IESI's Application meets or exceeds all statutory and regulatory requirements and issue the requested municipal solid waste permit to IESI.

Respectfully submitted,

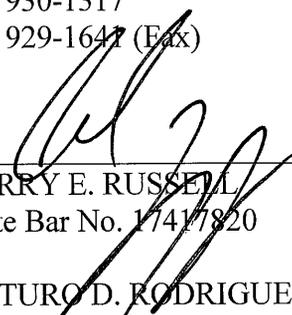
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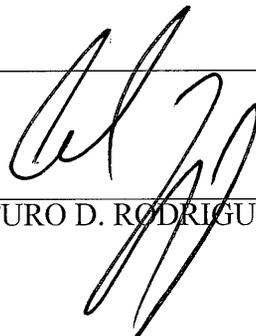
**ATTORNEYS FOR THE CITY OF  
JACKSBORO, TEXAS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of June, 2009, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel or party representatives of record:

<p>Honorable Sarah Ramos          Administrative Law Judge          300 West 15<sup>th</sup> Street          Austin, Texas 78701          Fax: 475-4994</p>	<p>Mr. Scott Humphrey, Attorney          Office of Public Interest Counsel          TCEQ - MC 103          P.O. Box 13087          Austin, Texas 78711-3087          Fax: 239-6377</p>
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ARTURO D. RODRIGUEZ, JR.



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