

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 JUN 11 PM 4:32

**TCEQ DOCKET NO. 2007-1302-MSW**

CHIEF CLERKS OFFICE

**APPLICATION BY  
IESI TX LANDFILL LP  
FOR MSW PERMIT NO. 2332**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**TWO BUSH COMMUNITY ACTION GROUP'S REPLY TO EXCEPTIONS TO  
THE PFD**

**TO THE HONORABLE COMMISSIONERS OF THE TCEQ:**

Protestant Two Bush Community Action Group ("Two Bush" or "Protestant") submits this Reply to Exceptions regarding Proposal for Decision and Proposed Order.

**I. INTRODUCTION**

IESI has proposed a landfill with the potential to impact two valuable groundwater resources in Jack County: the Pennsylvanian Aquifer, and the Trinity Aquifer. Yet, IESI has performed an analysis that ignores, discounts or misinterprets available information related to the Pennsylvanian aquifer. IESI failed to identify and consider the numerous wells completed into the Pennsylvanian circling the landfill site. This has resulted in a groundwater monitoring system that is inadequately protective the aquifer from which the majority of the wells in Jack County draw their water. Given this failure, it is not surprising that at this point neither the Office of the Public Interest Counsel, nor the Executive Director support issuance of the permit.

**II. WELLS AND SPRINGS**

The evidence in this case conclusively establishes that IESI failed to adequately identify groundwater wells in the vicinity of the proposed landfill. This is not simply an

issue of the *completeness* of the materials provided, but also an issue of the *accuracy* of the materials provided, which the Commission is not simply allowed to consider, but must consider.

IESI mischaracterizes the ALJ's finding as a decision on the technical completeness of the application. Neither the ALJ, nor protestant, questions the Executive Director's previous finding that IESI's application included information regarding surrounding groundwater wells. A declaration of "technical completeness" is simply a conclusion that facts have been provided, not a judgment that these facts are correct. The ED staff in this case explicitly admitted this:

Q(Humphries): I think you told [Ms. Perales] that you don't tell professionals how to obtain the information about the number of wells, you just leave it to them to do that; is that correct?

A(Baker): That's correct.

Q: Do you – **how do you verify that their information is correct?**

A: **Basically, we are taking what they are providing us as complete and accurate information as the rule requires the applicant to provide.**<sup>1</sup>

The TCEQ lacks the resources to independently verify the accuracy of every such statement included in an application.

The hearing provided an opportunity to go beyond acceptance of IESI's representations, to actually evaluate the accuracy of the information presented by IESI. The evidence presented during the hearing established that IESI's application provided

<sup>1</sup> Tr. V. 7, p. 34, l. 7 – 17 (Testimony of Gale Baker, TCEQ Geoscientist).

inaccurate information to TCEQ regarding the existence and character of local groundwater wells that IESI knew was contradicted by the obvious facts on the ground.

IESI's argument regarding technical completeness places the Commission in an absurd catch-22 never intended by any statute. First, IESI would have the ED's mere decision on technical completeness be treated as a final judgment on the accuracy of the materials in the application, even though the ED at that point has no means to judge the accuracy of the factual information contained in the application. Then, IESI would prohibit the Commission from considering the accuracy of the materials contained in the application after the Commission has had the opportunity to gather information through a contested case hearing that is specifically intended to develop information on disputed questions of fact presented by the application. This "Heads I win, tails you lose" approach renders the contested case hearing process meaningless.

The administrative law judge properly evaluated the overwhelming evidence in the record to conclude that IESI had grossly under-represented the number of nearby groundwater wells. Evidence establishing the presence of water wells in the vicinity of the landfill excluded by IESI included direct testimony from several area landowners regarding their own wells,<sup>2</sup> IESI's own information regarding the location of nearby houses,<sup>3</sup> IESI's own admissions regarding the reasonable expectation that these houses used groundwater,<sup>4</sup> state well reports,<sup>5</sup> a field survey,<sup>6</sup> and a map of area wells compiled

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<sup>2</sup> Ex. P-1 (Testimony of Marjorie Anderson), p. 2; Ex. P-3 (Testimony of Lanna Moxley), p. 1-3; Ex. P-6 (Testimony of Dr. James Henderson), p. 3

<sup>3</sup> TR. V. 2, p. 34, l. 8 – 12 (Testimony of IESI expert Michael Snyder).

<sup>4</sup> TR. V. 2, p. 34, l. 25 – p. 35, l. 3.

<sup>5</sup> Ex. P-8I.

by the Texas Water Development Board (which is not hearsay).<sup>7</sup> IESI has the burden of proof, and IESI's witnesses did not dispute the presence of these wells.<sup>8</sup>

IESI repeatedly references "windshield reconnaissance" supposedly performed by Mr. Snyder. Such reconnaissance would be appropriate, and could have yielded important information in this case. Mr. Snyder's "windshield" search did not involve looking past his dashboard, however. Had Mr. Snyder actually peered through his windshield, he would have noticed the existence of windmills, and residences whose water virtually surely came from groundwater wells. He did not perform any search that could be reasonably described as visual reconnaissance in the area.

Requiring that IESI provide the TCEQ with accurate information will not result in the parade of horrors conjured by IESI, the City of Jacksboro, and others. IESI could have largely corrected its description of the regional aquifers by properly considering the information contained in documents from the Water Development Board such as Report 308, and published references such as *Springs of Texas*. Further, IESI could have been apprised that its groundwater well count was wrong based on public information regarding the absence of public water supply systems to serve the numerous houses in the area. TCEQ has never intimated that a groundwater well is less important simply because it is not registered with the state. IESI can complain about requiring it to obtain accurate information regarding a large number of water wells, but IESI chose to take on this responsibility when it knowingly selected a site with so many nearby residences.

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<sup>6</sup> Ex. P-8H.

<sup>7</sup> Ex. P-8E (Figure 14 in Texas Water Development Board Report 308).

<sup>8</sup> Tr. V. 2, p. 42, l. 8 ("I'm not disputing that they are there. I am just saying that I don't have personal knowledge of it.") (Testimony of Michael Snyder).

IESI may object that actually communicating with residents would compromise the secrecy of its plans, and IESI may feel comfortable implying that rural Texans are violent by nature, but the TCEQ's long-term public interest in ensuring that a permit is based on accurate information outweighs any short-term private interest IESI may have in hiding its intentions from the public. Furthermore, the existence of a well can fairly simply be confirmed by viewing a hole in the ground, and the well records and/or reworking reports many citizens would possess are no more hearsay documents than the information IESI relied on in this case for the well inventory it presented.

As noted in Protestant's exceptions, IESI's failure to identify these wells is not simply a technicality. These wells provided key information regarding the presence and characteristics of the Pennsylvanian aquifer that must be considered in designing a protective groundwater monitoring system at the proposed site. Because IESI did not include these wells, and consider the information they show, IESI wrongly assumed that groundwater flow will be uniformly to the northeast, and would be in the Trinity formation. Yet, when the site-specific data is viewed in the context of this information from numerous area wells it is clear that the Pennsylvanian is not an aquiclude. Instead, the Pennsylvanian is an aquifer present around and beneath the site, and a component of the groundwater flow beneath the site will be within this formation towards the west.<sup>9</sup>

Likewise, IESI's exceptions reduce the presence of the Benson Springs within 1000 feet of the landfill site to a debate of whether this is truly a "spring" or merely a "seep." This is based on nothing more than one off-hand musing by Mr. Snyder that he could not

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<sup>9</sup> Tr. V. 6, p. 192 (Testimony of Dr. Lauren Ross); Ex. P-7, p. 13, l. 23-26 (Testimony of Pierce Chandler).

himself say whether they were seeps or springs, without ever having viewed them himself. More to the point, the fact that water is flowing out of the ground under natural conditions provides important information regarding the hydrologic conditions at that location, whether at any particular time it is best called a seep, a spring, or a fountain.

This is consistent with the ALJ's observation that "If Applicant's search had been more thorough, Applicant would have gathered valuable information about those aquifers."<sup>10</sup> And the ALJ later observed that "Clearly, there are usable amounts of groundwater in the Pennsylvanian formations....Report 308 designates the Pennsylvanian as having the most important water-bearing units in the county...For these reasons, the ALJ finds that Applicant did not adequately describe regional aquifers within the landfill's vicinity based on published and open file sources."<sup>11</sup> It seems clear that the ALJ was not merely concerned about a clerical omission, but rather about the fact that the landfill design considered only the Trinity Twin Mountains aquifer, and completely ignored the Pennsylvanian aquifer.

The City's exceptions question the qualifications of Dr. Ross. Dr. Ross holds B.S., M.S., and Ph.D. degrees in Civil Engineering, and is a Registered Professional Engineer. Among her primary areas of expertise, and the area of her Ph. D. advanced education, are Water Quality Protection, Groundwater and Soil Pollution Transport, and Solid and Hazardous Waste Management and Disposal. One could hardly be qualified in more appropriate areas to examine issues of whether this landfill design is adequately

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<sup>10</sup> Proposal for Decision, at p. 11.

<sup>11</sup> PFD at p. 19.

protective of the environment, especially regarding possible contamination of the groundwater. She has previous experience teaching courses regarding Water Quality Protection, Groundwater Regulation, and Statistics for Environmental Monitoring. Since 1994, she has been the municipal engineer responsible for all water quality design, review, inspection, rules, and ordinances for the City of Sunset Valley, Texas. She also has a background knowledge of the site, since she served as an expert witness regarding a Contested Case Hearing [Oil & Gas Docket No. 09-0246532, July 19, 2006] before the Railroad Commission of Texas for a Centralized Landfarm Facility Permit [Application Control No. 0274], for a site located only about 3 miles northeast of this proposed landfill site. The ALJ was more than justified in relying on her testimony in evaluating the evidence.

IESI specifically objects to Findings of Fact 126, & 128 – 137 regarding wells and springs. Each of these findings involves basic, underlying facts in this matter. Through Texas Health & Safety Code § 361.0832(c), the legislature has significantly restricted the Commission's ability to reject such findings.<sup>12</sup> The legislature has imposed this restriction in large part out of recognition that the ALJ had opportunities to judge the evidence that the Commission does not. For example, IESI makes light of the fact that Mr. Snyder changed his testimony on the stand at the hearing to retract his testimony that no springs existed in Jack County to the opposite claim that springs existed in Jack County, but not in the area of the landfill. This was Mr. Snyder's core testimony on a fundamental issue in the case. Had this indeed been a typographical error, IESI could

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<sup>12</sup> *Hunter Industrial Facilities v. TNRCC*, 910 S.W.2d 96, 103 (Tex. App. – Austin, 1995)

have, and should have, easily corrected it with an errata to alert the parties that Mr. Snyder did not stand behind this fundamental piece of his testimony. If Mr. Snyder did not notice this "error" until the day of his testimony, then his attention to the details in this case is highly questionable. In truth, it was not a typographical error, but instead the pre-filed testimony reflected Mr. Snyder's poor review of the relevant references, which Protestant's experts had called him to account for. After this manipulation of his testimony, the remainder of Mr. Snyder's live testimony consisted largely of a bob-and-weave act wherein he denied that windmills might indicate the presence of groundwater wells, he said he didn't know where people got their water, and he made an odd argument that the TCEQ was not interested in well information from Texas Water Development Board if it was contained in studies focused on Jack County since such reports in his mind were "local" instead of "regional" nor "site-specific."<sup>13</sup>

### III. REGIONAL AQUIFER

The thrust of IESI's exceptions seem to be that what it called the Pennsylvanian Aquifer is not relevant to the protectiveness of the landfill. To be clear, **IESI characterized the Pennsylvanian as an *aquiclude*, and a barrier to groundwater movement.**<sup>14</sup> IESI interpreted the site specific data based on this assumption, and the design of IESI's groundwater monitoring system was based on this assumption. This assumption that the Pennsylvanian is an aquiclude was the basis of IESI's assumption in

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<sup>13</sup> Tr. V. 2, p. 27, l. 21 – p. 29, l. 22.

<sup>14</sup> See, e.g. Direct testimony of Michael Snyder at p. 12, l. 19-21 ("These [Pennsylvanian] formations are not known to yield significant quantities of potable groundwater and serve as an aquiclude to the overlying Cretaceous Sands.")

designing its groundwater monitoring system that all groundwater beneath the site would move to the east, with no water moving to the west in the Pennsylvanian. Whether an applicant has described a formation as a non-water bearing barrier to water movement, versus properly recognized the formation as an aquifer, certainly goes towards a determination of whether an applicant's groundwater monitoring system is technically justified.

Recognition that the Pennsylvanian is a regional aquifer, instead of an aquiclude, has significant consequences in evaluating the consequences of granting IESI's application. In 1988, Philip Nordstrom compiled a report for the Texas Water Development Board entitled, "Occurrence and Quality of Ground Water in Jack County, Texas."<sup>15</sup> While this report would seem relevant, IESI's expert failed to use it in evaluating the presence of regional aquifers, dismissed it as virtually irrelevant since they considered it "local" instead of "site-specific" or "regional."<sup>16</sup> In this report, the wells mapped in Jack County were predominantly completed into the Pennsylvanian aquifer. In fact, the evidence showed wells to the east, west, north, and south of the site completed into the Pennsylvanian aquifer.<sup>17</sup> It would have hardly endangered the well-being of IESI's experts to have considered this public report. The Pennsylvanian and the Trinity formation both underly the landfill site in what Applicant has described as "Stratum II." To agree with IESI that the characterization of the Pennsylvanian as a regional aquifer is

<sup>15</sup> Ex. P-8E.

<sup>16</sup> Tr. V. 2, p. 27, l. 21 - p. 29, l. 22.

<sup>17</sup> See Attachment A to this Brief, Ex. P-8 (Figure 14 from Texas Water Development Board Report 308: Occurrence and quality of groundwater in Jack County, Texas) Protestants note that such information is legally *not* considered hearsay. See also testimony of Pierce Chandler, "I am saying that the fact that there are numerous wells in the Pennsylvanian and all sides of the site, the Pennsylvanian appears to be the aquifer - the aquifer that most of the surrounding area relies on."

a minor detail without substantive consequence, it is necessary to conclude that a formation serving as a source of groundwater everywhere else in the county magically transforms into a barrier to groundwater movement underneath the landfill site.

The exceptions filed by the City of Jacksboro and IESI continue to mischaracterize the information contained in the available references. The City in its Exceptions has misquoted and misconstrued the Nordstrom report in several respects. The City first repeats a partial quotation [Nordstrom, p. 63] that "overall quality of groundwater for domestic use is fairly poor." But this quotation referred to the Pennsylvanian Canyon Group formations over the entirety of Jack County. The preceding unquoted sentence stated that "About 43 percent of the samples exceeded the upper recommended limit of 1,000 mg/l for domestic purposes." Of course, this means that 57% of the samples were of acceptable quality. And if Nordstrom's Figure 23 is examined, all of the Canyon Group samples taken from wells in the southeastern part of Jack County, near the landfill site, had dissolved-solids content of either 0-500 mg/l or else 501-1,000 mg/l, so that the water from all of these nearby wells were acceptable for domestic use.

The City then goes on to misquote Nordstrom that "groundwater from the Canyon Group is not suitable for extensive irrigation practices." The City omitted the qualifier "Generally," at the beginning of Nordstrom's sentence. As before, this analysis by Nordstrom applied to the entire Jack County, while the southeastern portion of the county near the landfill site happens to lie where the minority of Canyon Group water is suitable for irrigation. (On p. 67, Nordstrom reports that based upon residual sodium carbonate, only 62% of the countywide samples were above 2.5 mg/l and unsuitable for irrigation.)

The City then goes on to misquote Nordstrom's quote of Bill Dennis, stating "that because of the poor quality of the groundwater in the Canyon Group, Jack County was settled late or not at all." What was actually said was "several areas within Jack County were settled late or not at all due to poor quality of natural ground water." The distinction is large, because southeastern Jack County was not one of the areas with poor quality groundwater, and as a result, it was settled early. Protestants can only wish that Applicant had done proper due diligence when the proposed landfill site was selected, to choose a site that truly had poor groundwater, instead of this site, situated in the recharge zone of the Trinity and Pennsylvanian aquifers.

Finally, the City goes on to assert that "Nordstrom concluded that Pennsylvanian formation water should not be used for domestic purposes or for irrigation purposes." Protestants can locate no such statement from Nordstrom. On the cited page, Nordstrom is discussing the Cisco Group, which is generally not relevant near the landfill.

Protestants would observe, since this seems to have escaped the City and IESI, that the reason that the Pennsylvanian Canyon aquifer water is of higher quality in southeastern Jack County than it is elsewhere in the County, is because in this part of the county the Pennsylvanian is overlain by the Cretaceous (Trinity aquifer) sediments, from which they may be recharged. This is why it is so serious that Applicant completely ignored the Pennsylvanian aquifer, and neglected to delineate the recharge areas within five miles of the landfill site, and neglected to determine the hydraulic connections which must exist between the Trinity aquifer and the Pennsylvanian aquifer. And this, in

essence, is why the ALJ is completely correct in judging these omissions as serious enough to warrant denial of the landfill permit.

The ALJ's Findings of Fact No. 139 to 142 regarding the importance of the Pennsylvanian formation as a source of groundwater in the region, and as to the failure of the Applicant to identify it as a regional aquifer, is well supported in the Record. Nordstrom's Texas Water Development Board report supports Findings 139 and 140. Protestant's investigation supports findings number 139 and 141. In fact, among the very few water wells identified by IESI, both of the wells with Tracking Nos. 1957404 and 1957405 were completed into the Pennsylvanian, according to the TWDB Database, although only the former well is so noted in the application.

IESI implies that Protestant's experts Dr. Ross, and Mr. Chandler, approved of Mr. Snyder's reliance of the publication *Aquifers of Texas* as his sole resource in determining regional aquifers. In fact, both of these witnesses stressed that this document was only one of several references that should be consulted in determining the presence of a regional aquifer.<sup>18</sup>

The Commission has never treated Texas Water Development Board's publication *Aquifers of Texas* as limiting the formations eligible to be considered regional aquifers. If this were the case, 30 TAC § 330.56(d)(4) would merely make reference to this document, instead of requesting a range of information related to this determination. The listing of an aquifer in that publication is certainly an indication that that formation is an aquifer, but this does not exclude other formations. The TCEQ has even gone so far as

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<sup>18</sup> Tr. V. 6, p. 100 (Ross); Tr. V. 5, p. 111 (Chandler).

to recently rule that a formation listed in that publication as an aquifer is *not* a regional aquifer.<sup>19</sup> It would be absurd to take the position that an applicant is allowed to question the delineations of this document when it will result in less protection for the environment, but prohibit protestants from supplementing the information in this document to demonstrate the existence of additional aquifers either warranting protection or altering the hydrogeology in an area.

The site-specific data is more consistent with Protestant's conclusion that the landfill is underlain by both the Trinity and Canyon groups, than with IESI's theory. The deeper Stratum II sands probably straddle the interface between the Trinity Twin Mountains formation and the Pennsylvanian formation.<sup>20</sup> This interface would then be above the Stratum III aquiclude. IESI assumes a relatively uniform flow of groundwater in Stratum II towards the northeast, consistent with Stratum II being entirely in the Trinity formation. Yet, some of the highest potentiometric readings are located at the southeastern corner of the site.<sup>21</sup> IESI's assumption that groundwater flow is to the east is flatly contradicted by these high potentiometric readings in piezometers installed on the eastern edge of the site, and the consistently lower potentiometric reading at well D-20 on the southern border of the site.<sup>22</sup> In this manner, IESI's justification for its groundwater monitoring system requires it not only to discard the status of the Pennsylvanian as an

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<sup>19</sup> In the Matter of the Application of Regional Land Management Services, Ltd. for Permit No. MSW-2286; TCEQ Docket No. 2003-0729-MSW.

<sup>20</sup> Tr. V. 6, p. 180, l. 14 - 19:

Q(Perales): So would Stratum II - would you say that's part of the group formation or layer, or does it include more than one group or formation or layer?

A(Ross): I think if you look at their boring logs, you would have to conclude that it straddles the Twin Mountains and the Pennsylvanian.

<sup>21</sup> Tr. V. 6, p. 191, l. 2 - 5.

<sup>22</sup> Tr. V. 6, p. 191, l. 17 - 24.

aquifer, but also to simply discard the data from boring D-20, one of only five piezometers providing information on Stratum II.

#### IV. PROTECTIVENESS OF GROUNDWATER MONITORING SYSTEM

IESI's has not adequately characterized the underlying geology at the site to design an adequately protective groundwater monitoring system. As discussed above, IESI's assumption that groundwater beneath the entire site will flow to the northeast is inconsistent with the nature of the Pennsylvanian as an aquifer, and inconsistent with the groundwater flow patterns revealed by the site-specific potentiometric readings. IESI repeatedly asserts that its permit should be granted because it is protective of groundwater, even though the information forming the basis of its groundwater monitoring system design was wrong. The ALJ's finding that IESI met its burden of proof with regard to the groundwater monitoring system is a stark *non sequitur* to the ALJ's findings regarding IESI's failure to properly evaluate area groundwater wells, and IESI's total mischaracterization of the Pennsylvanian as an *aquiclude*, when it is in fact an *aquifer*. Finding of Fact 65, concluding that groundwater in Stratum II flows generally to the northeast, is inconsistent with the site-specific data which reflects a varied groundwater flow regime, and the regional geologic setting, which indicates that the proposed landfill site is located above both the Pennsylvanian and the Trinity aquifers. The potential for groundwater contamination to leave the site by flowing to the west in the Pennsylvanian materials clearly exists, and many residents draw their water from the Pennsylvanian aquifer to the west of the site. Yet, IESI has only one monitoring well on the western side of the site which it intends to use as a background well. With so little monitoring on the western side of the site, it cannot be said that IESI has developed an adequately protective groundwater monitoring system.

The ALJ seems to concede that IESI's proposed monitoring system fails to address the potential for the migration of contaminants in Layer IA, saying that this problem can be addressed "if the permit is granted." An applicant has the burden to demonstrate during the permitting process that it has developed a protective groundwater monitoring system. It is not sufficient to simply assume that the applicant will develop a proper monitoring system after a permit is issued.

Only three piezometers were installed to characterize the shallow sands of Stratum IA for the entire 275 acre site. Groundwater levels in these three shallow piezometers were constant over time throughout the duration of the measurements taken. This data is consistent with the existence of the many shallow water wells located on neighboring properties at depths corresponding to the Stratum IA sands.

Without adequate evidence, the Application dismisses the shallow Stratum IA sands as "discontinuous", however the Applicant collected insufficient data regarding these shallow water sands, and no contaminant monitoring of these sands is proposed within the Application. The boring data do not support a conclusion that the IA sands are discontinuous, and Protestant's expert Dr. Ross testified that it is equally consistent with the data that the Stratum IA sands are in fact connected across the site, though not necessarily in rigid planar strata. Contrary to IESI's position that there is no evidence of a significant amount of groundwater in the Stratum IA sands, many surrounding water wells were completed into sands consistent with the depths of Stratum IA. Again, this is information IESI initially missed by failing to accurately characterize area groundwater wells. IESI also claims that the IA sands are not of concern because they will be excavated, but this ignores the fact that IA sands will still be present at the interface with the sidewalls of the landfill, extending to areas off-site such as those into which several area

groundwater wells are completed. It will also be possible for contaminants to move undetected across the permit boundary in the IA sands, and then move vertically into lower stratum.

Protestants emphasize that practically no useful data has been collected by Applicant regarding the Stratum IA sands, upon which one might even design an adequate monitoring system for these sands. Therefore, at this point in time, it is impossible for Applicant to design an environmentally protective groundwater monitoring system.

#### **V. EXECUTIVE DIRECTOR'S SUGGESTION OF REMAND**

Protestant's object to the Executive Director's suggestion that the case be referred back to SOAH for further consideration. In a MSW application, the Applicant should be given a reasonable time in the beginning to perform competent due diligence and achieve an application which is technically complete and which is adequately protective of the environment. If Protestants then discover and can demonstrate a reasonable possibility that the Application has flaws, and is not protective of the environment, they should be granted a Contested Case Hearing to explore these issues. If Protestants are successful in convincing the SOAH judge that the Application is deficient, and if the ALJ recommends that the Application should be denied, then absent an extraordinary reason to overturn the recommendation, the Commissioners should deny the Application and bring finality to the process.

The immediate case is little different from the Commission's consideration of the Application of Adobe Eco-Systems, Ltd. for Permit No. MSW-2253, wherein the applicant attempted at the 11<sup>th</sup> hour to amend its permit application to address a deficiency revealed by the contested case hearing. In that matter, the Commission denied

this amendment request, and denied the permit.<sup>23</sup> IESI's immediate application was submitted in April of 2005, and underwent several revisions prior to the deadline for Applicant's pre-filed testimony in July of 2008, which IESI was even allowed to supplement in September of 2008. Protestants over the past several years have expended significant effort and resources to review and respond to IESI's ever-changing application and substantive positions. After the filing of an applicant's direct case, TCEQ has consistently held that an applicant must be judged on the merits of its case, with additional material limited only to appropriate rebuttal evidence. If applicants are provided never-ending opportunities to supplement and revise their applications, then applications will be granted merely because an applicant has finally forced the public to drain its resources evaluating an ever-changing application, and not because the eventual application is any better.

## VI. PRAYER

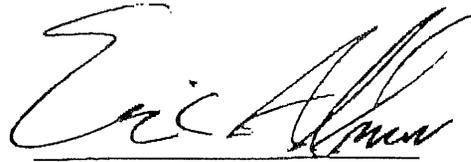
For these reasons, Protestant prays that the Commission adopt the ALJ's recommendations regarding the identification of wells and springs, as well as IESI's failure to properly identify regional aquifers, and deny the permit application. Protestant further prays that the Commission correct the ALJ's findings regarding scavenging to reflect TCEQ's policy that scavenging includes mammalian scavenging, and conclude that the permit should also be denied on this basis.

Respectfully Submitted,

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<sup>23</sup> In the Matter of the Application of Adobe Eco-Systems, Ltd. for Permit No. MSW-2253; TCEQ Docket No. 97-0807-MSW.

By:



Eric Allmon  
State Bar No. 24031819

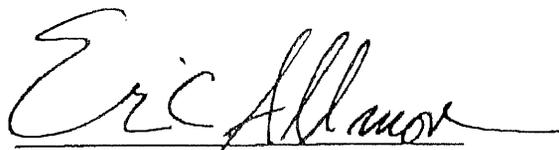
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FOR THE TWO BUSH COMMUNITY  
ACTION GROUP

**CERTIFICATE OF SERVICE**

By my signature below I certify that on the 11th day of June, 2009 a copy of **Two Bush Community Action Group's Reply to Exceptions to the Proposal for Decision** was served upon the parties identified below via facsimile transmission, electronic mail, hand delivery and/or U.S. Postal Mail.

  
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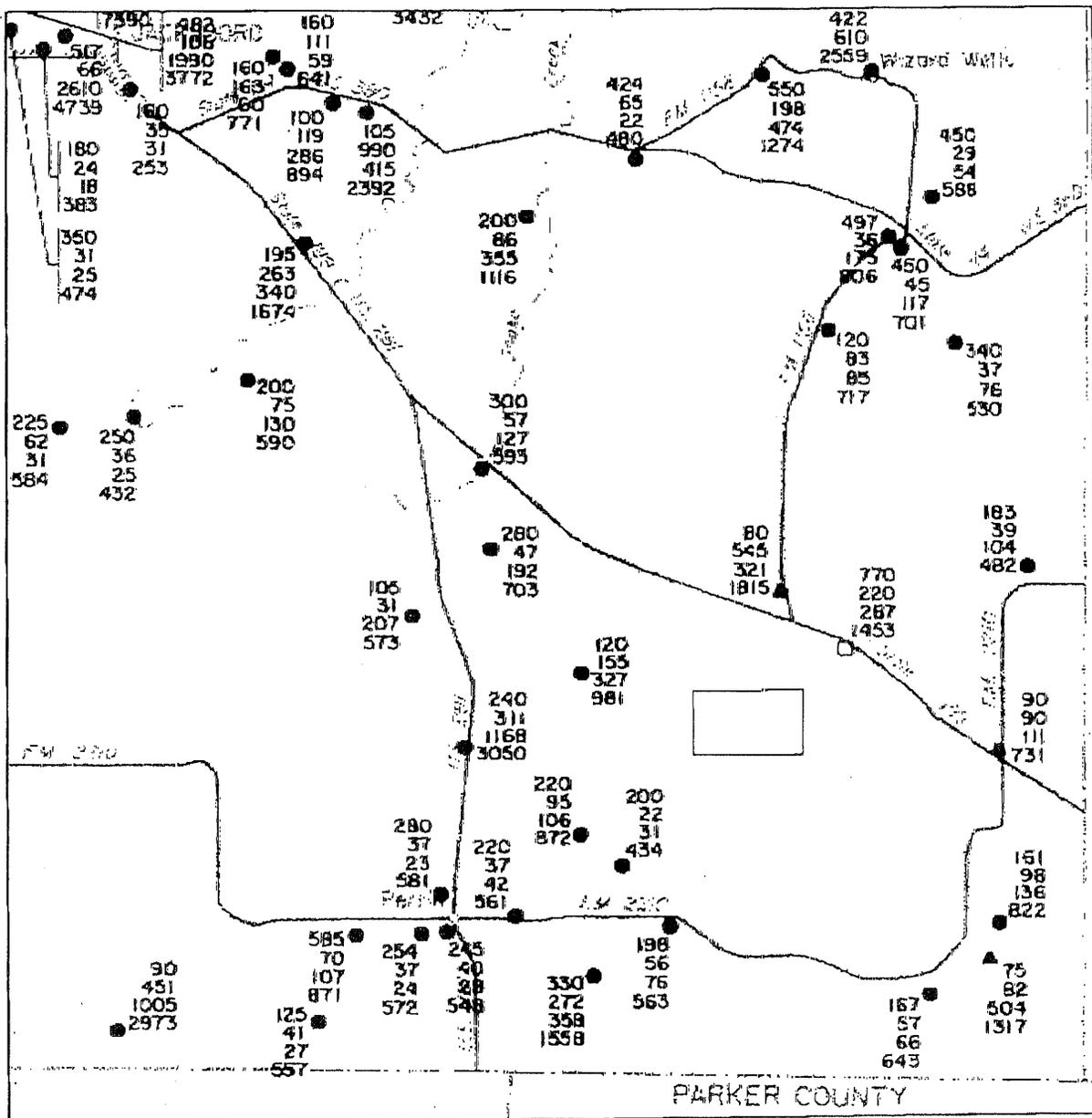
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P. 21/22

# Attachment A

### Exhibit 8E Map of Jack County Wells in the Vicinity of the Landfill



Based on Nordstrom, Figure 14.  
 Rectangle is approximate  
 proposed landfill location.



- EXPLANATION**
- Source of Water
- ▲ Alluvium
  - Trinity Group
  - Pennsylvanian, undivided
  - Cret. Group
  - Canyon Group
  - Sierran Group
- Sampled Well
- 100 Well depth, in feet
  - 101 Sulfate concentration
  - 102 Chloride concentration
  - 103 Dissolved-solids concentration
- Chemical concentrations are in milligrams per liter

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ON ENVIRONMENTAL  
QUALITY

### FAX COVER SHEET

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<b>To: Honorable Judge Ramos</b>	(512) 475-4994
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**From: Eric Allmon and Marisa Perales**  
**Date: June 11, 2009**

DOCUMENTS	NUMBER OF PAGES (not including cover pg.)
Two Bush's Reply to Exceptions to the Proposal for Decision	

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