

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

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582-22-0844  
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STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
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November 10, 2022

ACCEPTED  
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11/10/2022 2:16:09 pm  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Pegah Nasrollahzadeh, CLERK

Garrett Arthur, TCEQ

VIA EFILE TEXAS

Eric Allmon, Knox Real Property Development, LLC

VIA EFILE TEXAS

David Mangal, Diversity Trucking

VIA EFILE TEXAS

Michael L. Woodward, Diamond Back Recycling  
and Sanitary Landfill, LP

VIA EFILE TEXAS

**RE: Docket Number 582-22-0844.TCEQ; Texas Commission on  
Environmental Quality No. 2021-1000-MSW; Application by  
Diamond Back Recycling and Sanitary Landfill, LP for MSW  
Permit No. 2404**

Dear Parties:

On September 13, 2022, Administrative Law Judge (ALJ) Megan Johnson issued a Proposal for Decision (PFD) and Proposed Order (PO) in this matter. On October 3, 2022, the Executive Director of the Texas Commission on Environmental Quality (ED), Applicant Diamond Back Recycling and Sanitary Landfill, LP (Applicant) and Protestants<sup>1</sup> filed exceptions. Protestants timely filed a

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<sup>1</sup> The Protestants that filed exceptions and responses are Knox Real Property Development, LLC and Jason Harrington (collectively, Protestants).

response to exceptions on October 13, 2022, followed by Applicant's timely response on October 17, 2022. OPIC filed a letter indicating that it had no exceptions or response to exceptions.

### **ED's Exceptions**

The ED did not recommend any changes to the PFD. Instead, the ED outlined his disagreement with the ALJ's conclusions and analysis regarding the Surface Water Drainage Report and sizing of the ponds. The ED maintains that the Rational Method was correctly used by Applicant to calculate peak flows and that the Modified Rational Method was correctly used in calculating detention pond sizes. Moreover, the ED argues that because the application states that the perimeter drainage system channels and ponds are designed to accommodate peak runoff for a 25-year, 24-hour rainfall event, it meets TCEQ requirements. The ED also argues that Mr. Stiggins's testimony at trial that he did not use a 25-year, 24-hour rainfall event only pertained to a particular hydrography, not the entire analysis.

### **Applicant's Exceptions**

Applicant argues that the ALJ's analysis regarding the Surface Water Drainage Report led to erroneous findings of fact and conclusions of law. Applicant maintains that its Surface Water Drainage Report meets all applicable regulatory standards and argues that the ALJ improperly favored Protestants' expert's opinions.

The ALJ disagrees that the evidence presented in the prima facie demonstration and at the hearing did not support the findings and conclusions in the Proposed Order. The arguments raised by Applicant in its exceptions were previously briefed at length in closing argument, and the ALJ addressed each argument in the PFD. Accordingly, the ALJ recommends against amending the PFD or Proposed Order based on Applicant's exceptions.

### **Protestant's Exceptions**

While Protestants agree with the ALJ's recommendation of permit denial based upon deficiencies with regard to the surface water drainage report requirements, Protestants argue that the ALJ failed to make additional findings and conclusions regarding Applicant's deficiencies regarding compatible land use and protection of groundwater. Protestants also except to the ALJ's recommended allocation of transcript costs.

First, Protestants maintain that Applicant has failed to demonstrate the landfill is a compatible land use by making the following arguments:

1. The ALJ committed legal error in concluding that Protestants had not rebutted the prima facie presumption and erroneously imposed a burden of proof upon Protestants, rather than a burden of production.
2. Protestants met their burden to produce evidence that the proposed facility is not a compatible land use.

3. The PFD misstates the Commission's rules regarding submission of information relating to oil and gas activities.

Next, Protestants contend that the ALJ's conclusion that the landfill will be protective of groundwater is contrary to TCEQ rules and, in support, argue that the ALJ's conclusion regarding seasonal variation is contrary to the regulatory context because Applicant has failed to provide a thorough characterization of seasonal and temporal fluctuations of groundwater flow.

Finally, Protestants except to the ALJ's recommended allocation of transcript costs based on the following:

1. The recommendation makes no consideration of whether Applicant requested that the transcript be expedited.
1. The ALJ fails to accurately characterize the relative benefit of the transcript to the parties.
2. The allocation is contrary to Commission precedent by imposing assessment of transcript costs on the public.

The ALJ disagrees that the evidence presented in the prima facie demonstration and at the hearing did not support the findings and conclusions in the Proposed Order. The arguments raised by Protestants in their exceptions were previously briefed at length in closing argument, and the ALJ addressed each argument in the PFD. Accordingly, the ALJ recommends against amending the PFD or Proposed Order based on Protestants' exceptions.

**Summary**

The ALJ recommends the Commission overrule all exceptions.



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Megan Johnson  
Presiding Administrative Law Judge

CC: Service List

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