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APPLICATION BY DIAMOND BACK § BEFORE THE STATE OFFICE
RECYCLING AND SANITARY § OF
LANDFILL, LP FOR MSW PERMIT § ADMINISTRATIVE HEARINGS
NO. 2404 § STATE OF TEXAS

DIAMOND BACK RECYCLING AND SANITARY LANDFILL, LP'S
REPLY TO PROTESTANT'S EXCEPTIONS

Applicant Diamond Back Recycling and Sanitary Landfill, LP (“Diamond Back” or “Applicant”) files this Reply to Knox Real Property Development, LLC and Jason Harrington’s (“Knox”) Exceptions to the Supplemental Proposal for Decision on Remand (“PFD”), and would respectfully show the following:

I. Introduction

Knox’s Exceptions offer a long-winded rehashing of its closing argument: the same, tired misrepresentations by another name. Knox continues to misrepresent the purpose and results of the Rational Method and the Modified Rational Method, while persistently ignoring evidence that conclusively refutes its arguments. The Administrative Law Judge reached the correct conclusions on remand: existing drainage patterns will not be adversely altered as a result of the proposed landfill development; the evidentiary record supports issuance of the draft permit; and the subject application should be granted. Applicant’s Response to Closing Arguments, which already contains a detailed discussion of the facts refuting Knox’s arguments, is hereby incorporated by reference herein, as if set forth in its entirety. This Reply to Exceptions will briefly cite to the evidence in the record debunking Knox’s claims.

II. Diamond Back’s Comparison of Existing Drainage Patterns to Fully Developed Drainage Patterns is Accurate and Sufficient.

Using topographic data, firsthand observations, and engineering judgment, Diamond

Back's lead engineer, Mr. Todd Stiggins, P.E., followed sound engineering practice and divided the pre-development site into five drainage areas, from which he determined that the predominant discharge from the Applicant's property is via overland flow across the eastern property boundary.¹ Mr. Stiggins utilized the Rational Method² to estimate peak flows from each drainage area,³ which required identifying comparison points,⁴ not to be confused with discharge points.⁵ Pre-development runoff velocities and volumes were determined using standard engineering methods.⁶ Post-development runoff peak flows, velocities, and volumes were analyzed using similar methods.⁷ This comparison fulfills the regulatory requirement to verify that existing drainage will not be adversely altered, and conforms to TCEQ rules and guidance documents. Because the proper comparison was performed, contrary to Knox's claims, this case will not create any new precedent absolving future applicants from conforming to TCEQ guidance.

III. Diamond Back's Detention Ponds Are Properly Sized to Collect and Control Runoff from a 25-year, 24-hour Storm Event.

As Mr. Stiggins explained in the original hearing on the merits, "storms with longer durations have lower intensities, which means they also have lower peak flows."⁸ A 25-year frequency storm with an actual duration of 24 hours is a low intensity rainfall that is incapable of filling up the ponds as designed: "the resulting peak flow rate is 8.8 cfs. Since this flow rate is less than the allowable outflow discharge rate, no stormwater accumulation will occur

¹ Ex. Applicant-2000, pp. 2 & 4; Ex. Applicant-3000, 1:35-36; Tr. Vol. 2, 47:3-10, 16-23.

² As required by 30 Tex. Admin. Code § 330.305(f)(1).

³ Ex. Applicant-2000, p. 1.

⁴ *Id.* at 2-3.

⁵ Knox, in its Exceptions, continues to wrongly conflate "comparison points" with "discharge points." Comparison points represent the intersection between the longest hydraulic flow path in a given watershed, and the property boundary (*see* Ex. Applicant-3000, 2:33-36). Discharge points are locations where storm water runoff actually leaves the permit boundary (*see* Ex. Knox-15, p. 3), in this case, by overland flow across the eastern boundary.

⁶ Ex. Applicant-2000, pp. 5-6.

⁷ *Id.* at 5.

⁸ *See* Tr. of Original Hearing, Vol. 3, p. 124:24 – 125:11.

in the ponds, and no stormwater detention is required.”⁹ Instead of limiting the design to a rainfall event that would produce no accumulation, Mr. Stiggins utilized the approved, accepted Modified Rational Method¹⁰ to account for all possible durations of a 25-year storm, up to and including 24-hours duration, to find the critical stormwater runoff storage volume.¹¹ Knox’s fixation on an event with a duration of precisely 24-hours is transparently specious. The Application contains multiple references to a 25-year, 24-hour rainfall event being utilized to design the ponds.¹² In both the original hearing and the remand hearing, Mr. Stiggins’s pre-filed testimony confirms that a 25-year/24-hour rainfall event was the basis for the pond design.¹³ Again, contrary to Knox’s claims, this case clearly does not create a precedent authorizing improperly designed detention ponds.

IV. Conclusion

The application and the evidence in the record conclusively demonstrate that Diamond Back’s engineers properly compared pre- and post-development conditions, utilizing recognized and accepted hydrologic engineering methodologies. The evidence further demonstrates that post-development stormwater flow from the proposed facility will be controlled by sufficiently sized stormwater ponds and released through broad-crested gabion weirs, such that discharges will leave the property in the same generally eastward direction, and at similar, non-erodible velocities, volumes, and flow rates, as those calculated for pre-development conditions, preventing any adverse alteration of existing drainage patterns. For

⁹ Ex. Applicant-2000, p. 8.

¹⁰ The Modified Rational Method (“MRM”) was developed in 1974 and has found widespread use in engineering practice since the 1970s (see Ex. Applicant-2000, p. 6). The MRM has previously been approved by the Texas Commission on Environmental Quality, and was acceptable for the subject application, according to the Executive Director’s reviewing engineer (see Tr. of Original Hearing Vol. 4, pp. 144-145). Knox’s expert witness admitted that the MRM is an acceptable method used in the state of Texas to calculate stormwater runoff volumes (see Tr. of Original Hearing Vol. 2, 13:11-14).

¹¹ Tr. Vol. 3, p. 52.

¹² Application Vol. 2, pp. III.C-2, C-9, C-10, C-13, & C-15.

¹³ Ex. Applicant-200, p. 18:19-20 (original hearing); Ex. Applicant-2000, p. 7.

these reasons, Diamond Back respectfully requests that the Administrative Law Judge sustain the recommendations in their Proposal for Decision on Remand, including the Findings of Fact and Conclusions of Law, and continue to recommend issuance of Municipal Solid Waste Permit No. 2404 to Diamond Back Recycling and Sanitary Landfill, L.P.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Diamond Back Recycling and Sanitary Landfill, LP's Reply to Protestants' Exceptions was served by email to the following parties on July 17, 2023:

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Reply to Exceptions

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