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via electronic filing and regular mail

May 1, 2023

Laurie Gharis
Texas Commission on Environmental Quality
Office of the Chief Clerk
Attn: Agenda Docket Clerk, MC-105
TCEQ P.O. Box 13087
Austin, Texas 78711

RE: USA Waste of Texas Landfills, Inc.; TCEQ Docket No. 2023-0265-MSW; MSW Permit

NO. 2185A

Dear Ms. Gharis,

Enclosed for filing is Hope, Healing, and Hooves, Inc.'s Reply to the Applicant's, Executive Director's, and Office of Public Interest's Responses to Requests for Hearing and Requests for Reconsideration.

Very truly yours,

Ana E. Kadala

Kathleen Cynthia Pickett

N. Kimberly Hoesl

Attorneys for Hope, Healing, and Hooves, Inc.

CC: Mailing List

DOCKET NO. 2023-0265-MSW

§ APPLICATION BY USA **BEFORE THE**

WASTE OF TEXAS

§ § **TEXAS COMMISSION ON** LANDFILLS, INC.

§ FOR MUNICIPAL SOLID

WASTE PERMIT NO. 2185A **ENVIRONMENTAL QUALITY**

HOPE, HEALING, AND HOOVES INC.'S REPLY TO THE APPLICANT'S, EXECUTIVE DIRECTOR'S, AND THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION

To the Members of the Texas Commission on Environmental Quality:

Hope, Healing, and Hooves, Inc. ("Hope, Healing and Hooves") files this Reply to the Responses to Requests for Hearing and Requests for Reconsideration ("Reply") in the abovecaptioned matter and respectfully submits the following.

INTRODUCTION I.

Hope, Healing and Hooves respectfully submits that major amendment application by USA Waste of Texas Landfills, Inc. ("Applicant") for Municipal Solid Waste Permit MSW-2185- A to (a) vertically and laterally expand the Hawthorn Park Landfill ("Landfill"); and (b) authorize the operation of a Type IV municipal solid waste landfill facility at 10550 Tanner Road, Houston, Harris County, Texas 77041 should be denied.

On February 23, 2023, Hope, Healing and Hooves requested a contested case hearing. Additionally, Hope, Healing and Hooves filed comments in this matter on June 28, 2022. The allegations and evidence included in those filings are hereby incorporated by reference into this Reply.

II. HOPE, HEALING AND HOOVES IS AN AFFECTED PERSON

Both the Executive Director ("ED") and the Office of Public Interest Counsel ("OPIC") recommend that the Texas Commission on Environmental Quality ("TCEQ" or "Commission") (1) find Hope, Healing and Hooves to be an affected person with a personal justiciable interest in the application that is not common to members of the general public and with the requisite standing necessary to obtain a contested case hearing; and (2) grant Hope, Healing and Hooves' hearing request. Hope, Healing and Hooves agrees that it qualifies as an affected person with a concrete and particularized stake in the outcome of this matter and has the requisite standing necessary to obtain a contested case hearing and that Hope, Healing and Hooves' request for a contested case hearing should be granted.

Applicant disputes Hope, Healing and Hooves' qualification as an "affected person," but under the applicable statutes and regulations, Hope, Healing and Hooves has properly plead the facts sufficient to establish it as an "affected person" for purposes of this application.

More specifically, Applicant complains that Hope, Healing and Hooves has not established itself as an affected person under the Texas Administrative Code and relies upon the Save Our Springs and the Develo-cepts cases to support its argument that Hope, Healing and Hooves has no personal justiciable interest in this proceeding. However, neither of those cases concerns status as an "affected person" relevant to TCEQ contested case hearings.

The TCEQ defines an "affected person" as one "who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 Tex. Admin. Code §§ 55.103, 55.203(a). "An interest common to members of the general public does not qualify as a personal justiciable interest." Id.

TCEQ rules provide a wide range of non-exhaustive factors to be considered but also require consideration of all factors presented that relate to Hope, Healing and Hooves' personal justiciable interest, including, but not limited to the list provided by 30 Tex. Admin. Code § 55.203(c).

Beyond this list of factors and the requirement that a person demonstrate a "personal justiciable interest ... not common to members of the general public," neither the Water Code nor any Commission rules specify any particular procedure by which the Commission or an ALJ must make the "affected person" determination regarding whether to admit a person as a party when the Commission directly refers a permit application to SOAH for a contested-case hearing on the merits.

Tex. Comm'n on Envtl. Quality v. City of Aledo, No. 03-13-00113-CV, 2015 WL 4196408, at *4 (Tex. App.—Austin July 8, 2015, no pet.).

To require further evidence of "standing" as Applicant would have here, the TCEQ would exceed its statutory authority:

The Commission clearly derived its rule on associational standing from the standard Texas courts apply in analogous circumstances. See Texas Ass'n of Business v. Texas Air Control Bd., 852 S.W.2d 440, 447 (Tex.1993) (setting forth standard for associational standing in court proceedings; standard matches Commission rule almost verbatim). This standard does not require parties to show they will ultimately prevail in their lawsuits; it requires them to show only that they will potentially suffer harm or have a "justiciable interest" related to the proceedings. See Tex. Water Code Ann. § 5.115(a); see also Texas Rivers Protection Ass'n v. Texas Natural Resource Conservation Comm'n, 910 S.W.2d 147, 151, 152 n. 2 (Tex.App.—Austin 1995, writ denied). The Commission's substitute findings suggest that the Commission imposed a much greater burden. In fact, the Commission's findings suggest that the Coalition would have had to prove the merits of its case against HEAT just to have standing to prove them again in a hearing on the merits. Based on the evidence and law detailed above, we conclude that the Commission unreasonably determined that the Coalition failed to meet the first element of associational standing. The findings the Commission substituted for the ALJ's are not supported by substantial evidence. Furthermore, the conclusions that the Commission reached based upon those findings are erroneous. Accordingly, we overrule HEAT's second and third points of error and the Commission's only point of error.

Heat Energy Advanced Tech., Inc. v. W. Dallas Coal. for Envtl. Justice, 962 S.W.2d 288, 295 (Tex. App.—Austin 1998, pet. denied) (bold emphasis added).

Hope, Healing and Hooves provides an equestrian program for children that provides access to horses, equine-related education, and nature and encourages the exploration and enjoyment of respectful and positive relationships with others and the environment. Hope, Healing and Hooves' program has proven effective in: (1) improving the quality of life of the participating children, (2) fostering respect for, and relationships with, the horses they ride, (3) encouraging the children to build positive relationships at home and in school, (4) increasing confidence/self-confidence of children, (5) improving behavioral issues, and (6) improving grades and attendance.

To serve more children and also serve children with disabilities and life-threatening diseases, Hope, Healing and Hooves secured the rights to a 12 acre site at 5610 Crawford Road (the "Property"), which is less than half a mile directly south of the Landfill. Hope, Healing and Hooves' planned expansion includes more horses, stables, a larger riding arena and increased access and exposure to nature for all program participants. Approval of MSW-2185-A could compromise or halt Hope, Healing and Hooves' plans for expanding its programs to the Property.

Hope, Healing and Hooves has a reasonable relationship with Applicant's Permit MSW-2185-A and a concrete and particularized stake in the outcome of this matter. More specifically, Hope, Healing and Hooves will be affected by the proposed vertical and lateral expansion of the Landfill in a manner not common to members of the general public because use and enjoyment of the Property for recreational and business purposes will be specifically and negatively impacted by the resulting degradation in environmental and aesthetic qualities and heightening of safety and health concerns. The Property is less than half a mile from the proposed Landfill expansion – an

expansion that substantially increases the risk of having (1) unsafe emissions; (2) air, water and ground contamination; (3) foul odors; (4) noise pollution; (5) traffic-related issues; (6) windblown debris; and (7) dust, all of which potentially, and likely, will have deleterious effects on Hope, Healing and Hooves' ability to provide its services to its intended constituents, children.

The likely impact of the Landfill expansion, if permitted and carried out in accordance with the draft permit, is that Hope, Healing and Hooves' (1) use and enjoyment of the Property for many activities that rely on high-quality air, water and ground cover and quietude, including recreation, observation of wildlife habitat, artistic endeavors, educational endeavors, restorative measures, and mental health endeavors, will be restricted if not abrogated; (2) water supply and air and ground cover quality will be compromised; and (3) growth opportunities will be stymied. Additionally, the health and safety of Hope, Healing and Hooves' students, trainers, instructors, stable hands, and horses could be adversely impacted.

Contrary to Applicant's arguments in its Response, Hope, Healing and Hooves is not required to prove a legal or vested interest in the real property at issue. Nor is Hope, Healing and Hooves required to prove that it will definitely be negatively impacted. Hope, Healing and Hooves presented the facts that show its unique, personal justiciable interest in the application and is properly an affected person.

III. ISSUES

Applicant asserted various arguments in its Response apparently complaining of the specificity and scope of the issues that the Commission will be considering. However, Applicant's arguments are not clear, nor does Applicant complain about any specific recommendation of either the ED or the OPIC. Accordingly, Hope, Healing and Hooves is unable to rebut any particular complaint raised by Applicant.

To the extent that Applicant is offering the proposed list of issues set forth in Section D of its Response, Hope, Healing and Hooves suggests that the six issues raised by Hope, Healing and Hooves which have been recommended for hearing by the ED and OPIC fall within Applicant's proposed Section D list. To the extent that the Commission is considering excluding any of Hope, Healing and Hooves' six recommended issues, Hope, Healing and Hooves requests that it be permitted an opportunity to address the Commission's concerns given that Applicant fails to specifically identify any such concerns.

Respectfully submitted,

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By: <u>/s/ Ana E. Kadala</u>

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2023, the foregoing document was electronically filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via electronic filing, electronic mail, or by deposit in the U.S. Mail.

/s/ Ana E. Kadala

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Requesters/Interested Persons See attached list.

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MACKEY, DALINDA ROCHELLE 10135 GROVER LN HOUSTONTX 77041-6113 MADDOX, PAT PO BOX 22167 HOUSTON TX 77227-2167 MARTINEZ, JANET 10101 MOROCCO RD HOUSTON TX 77041-7533

MARTINEZ, LUIS IVAN 10234 BAMBOO RD HOUSTON TX 77041-7426

MARTINEZ, MARIANA 11010 MELBA LN HOUSTON TX 77041-5423 MARTINEZ, RUBEN 10234 BAMBOO RD HOUSTON TX 77041-7426 MATTHEWS, JANICE V MCHENRY, BEVERLY ANN MONCADA, RODOLFO PO BOX 41484 **HARRIS** 10226 BAMBOO RD HOUSTON TX 77241-1484 19107 MILL FERRY LN HOUSTON TX 77041-7426 KATY TX 77449-5244 MONCADA, RODOLFO MONCADA, SARAH MONOLA, ANA N 10211 BAMBOO RD 10211 BAMBOO RD 9906 TANGIERS RD HOUSTON TX 77041-7425 HOUSTON TX 77041-7425 HOUSTON TX 77041-7544 MONOLA, GONZALO S MONTENEGRO, LUIS MOORE, CORINE 9906 TANGIERS RD 5437 CLARA RD 5910 FORT SUMTER LN HOUSTON TX 77041-7544 HOUSTON TX 77041-7201 HOUSTON TX 77084-7107 MORALES, ANGEL MORALES, LORENA MORALES, MARCO ANTONIO 10227 BAMBOO RD 10227 BAMBOO RD 10227 BAMBOO RD HOUSTON TX 77041-7425 HOUSTON TX 77041-7425 HOUSTON TX 77041-7425 MORSE, ELEANOR MURRELL. YVONNE MORENO, LEON UNIT B 10115 HARDISON LN 10251 BAMBOO RD 6215 WESTCOTT ST HOUSTON TX 77041-6136 HOUSTON TX 77041-7425 HOUSTON TX 77007-2087 PARK, CHOM S OLSON, KATHRYN NGUYEN, THU-MAI 5002 RAINDROP HOLLOW DR 10302 IVY OAKS LN 7115 LACY HILL DR HOUSTON TX 77041-5489 HOUSTON TX 77041 -7831 HOUSTON TX 77036-5239 PENA, V BLAYRE PECK, AMY PARK, RACHEL HANCE SCARBOROUGH LLP HOUSTON CITY COUNCIL 5002 RAINDROP HOLLOW DR STE 950 1ST FL HOUSTON TX 77041-5489 400 W 15TH ST 900 BAGBY ST AUSTIN TX 78701-1600 HOUSTON TX 77002-2527 PHAN, LINH VYEN V PETE, OTIS & SHARON PENA, V BLAYRE 10107 PORTO RICO RD 10610 IVY OAKS LN STE Bl69 HOUSTON TX 77041-7539 HOUSTON TX 77041-8601 1801 RED BUD LN ROUND ROCK TX 78664-3813 PORTER, DESTINY C PLUMMER, LETITIA PICKETT, KATHLEEN CYNTHIA 10043 HARDISON LN THE PICKETT LAW GROUP PLLC 2006 COVENT GARDEN STA HOUSTON TX 77041-6135 STE 620 HOUSTON TX 77045-2532 3050 POST OAK BLVD HOUSTON TX 77056-6527 RAMBO, DA 4403 LANGTRY LN POWELL. MRS SYREETA PORTER, TIMOTHY L HOUSTON TX 77041-9201 5546 TEAGUE RD 10043 HARDISON LN

HOUSTON TX 77041-7568

HOUSTON TX 77041-6135

RAY, ALLEN & CAROLYN 18510 GLEN BRIAR LN HOUSTON TX 77084-3848 RICHARDS, BEVERLY 9935 PORTO RICO RD HOUSTON TX 77041-7535 RIGDON, ROBERT 4403 LANGTRY LN HOUSTON TX 77041-920 I

RIOS, CARLOS 10231 BAMBOO RD HOUSTON TX 77041-7425 RIVAS, SANDRA 5543 GESSNER RD HOUSTON TX 77041-741I ROBERSON, ALFRED G 10238 PORTO RICO RD HOUSTON TX 77041-7432

ROBERSON, MR DAVID W 10238 PORTO RICO RD HOUSTON TX 77041-7432 ROBERSON, JACKIE & SMITH, REVEREND CALVIN 10122 PORTO RICO RD HOUSTON TX 7704I-7540 ROBERSON, JACKIE & SMITH, REVEREND CALVIN 12102 DOVER MDW HOUSTON TX 77070-5241

ROBERSON, JACQUELINE 12102 DOVER MDW HOUSTON TX 77070-5241 ROBERSON, PAMELA 10267 MOROCCO RD HOUSTON TX 77041-7429 ROBERSON, PAUL 10107 BAMBOO RD HOUSTON TX 77041-7522

ROBERTS, LOIS JEAN 10230 PORTO RICO RD HOUSTON TX 77041-7432 ROBERTS, LOIS JEAN 5546 TEAGUE RD HOUSTON TX 77041-7568 ROBERTS-FOWLER, SHERRON 10230 PORTO RICO RD HOUSTON TX 77041-7432

ROBERTS-FOWLER, SHERRON 5546 TEAGUE RD HOUSTON TX 77041-7568 ROBINSON, DAVID 1ST FL 900 BAGBY ST HOUSTON TX 77002-2527 ROBINSON, JENNIFER 10267 TANNER RD HOUSTON TX 77041-7435

ROLLS, THOMAS 10135 TALLEY LN HOUSTON TX 77041-6129 ROMAN, JOEL 10232 BAMBOO RD HOUSTON TX 77041-7426 ROMAN, LIDUVINA 10232 BAMBOO RD HOUSTON TX 77041-7426

ROMAN, MARIA 10235 BAMBOO RD HOUSTON TX 77041-7425 ROMAN, ZENAIDO 10235 BAMBOO RD HOUSTON TX 77041-7425 ROSS, MARY 10103 PORTO RICO RD HOUSTON TX 77041-7539

SCOTT, THELMA APT 1201 15331 KUYKENDAHL RD HOUSTON TX 77090-41 IO SELMAN, BRIANA 2526 RIATA LN HOUSTON TX 77043-1813 SHAW, THE HONORABLE MORALES STATE REPRESENTATIVE TEXAS HOUSE OF REPRESENTATIVES

DISTRICT 148 STE 210D

10900 NORTHWEST FWY HOUSTON TX 77092-7324

SHAW, THE HONORABLE PENNY MORALES STATE REPRESENTATIVE TEXAS HOUSE OF REPRESENTATIVES DISTRICT 148 PO BOX 2910 AUSTIN TX 78768-2910 SILVA, YVONNE 2502 MONA LEE LN HOUSTON TX 77080-4419 SINGLETARY, KOBY L 10047 HARDISON LN HOUSTON TX 77041-6135 SINGLETARY, MONIQUE J SMITH, BENNIE U SMITH JR, MR CALVIN ST JAMES MISSIONARY BAPTIST 10047 HARDISON LN 10238 MOROCCO RD CHURCH HOUSTON TX 77041-6135 HOUSTON TX 77041-7430 5506 TRI WAY LN HOUSTON TX 77041-7420 SMITH, KIESHA SMITH, CALVIN E SMITH, ERIKA 24610 HIKERS BEND DR 10222 PORTO RICO RD 15325 LEEDS LN KATY TX 77493-1997 HOUSTON TX 77041-7432 JERSEY VILLAGE TX 77040-1338 SOLORZANO, MRS BLANCA SMITH. RUTH L SMITH. RUTH L 4918 TALINA WAY 5510 TRIWAY LN 10222 PORTO RICO RD HOUSTON TX 77041-893 7 HOUSTON TX 77041-7420 HOUSTON TX 77041-7432 TAFT, TONY STEIN, PAUL L SWINNEN, VEERLE 1515 WOODVINE DR 10126 ALGIERS RD 5627 IVORY MIST LN HOUSTON TX 77055-50 I 5 HOUSTON TX 77041-7518 HOUSTON TX 77041-6691 TATES, CYNTHIA ELAINE THOMPSON, ESTER L TETER, KRISTI 10218 TANGIERS RD 9906 GENARD RD 4520 TILSON LN HOUSTON TX 77041-7434 HOUSTON TX 77041-7526 HOUSTON TX 77041-9229 TOLBERT, JACQUELINE TODD, GARY TODD, KAREN FORD PO BOX 801422 9911 ALGIERS RD 9911 ALGIERS RD HOUSTON TX 77041-7513 HOUSTON TX 77280-1422 HOUSTON TX 77041-7513 UTLEY, MS SARAH JANE TONO, DOMINGO TRUGILLO, MARIA HARRIS COUNTY ATTORNEYS 10109 GENARD RD I 0007 ALFRED LN OFFICE HOUSTON TX 77041-7529 HOUSTON TX 77041-610 I FL 15 1019 CONGRESS ST HOUSTON TX 77002-1700 UZOFF, SUZANNE WALKER, CYNTHIA D WALKER, FACHON A 10111 PORTO RICO RD 9715 ALCANTERRA DR 10243 MOROCCO RD HOUSTON TX 77041-7539 HOUSTON TX 77078-3153 HOUSTON TX 77041-7429 WALSH, CHRISTINA WALKER, KATHRYN WALKER, LAURA COMMUNITY LIAISON 10111 TALLEY LN 10243 MOROCCO RD **STE 213** HOUSTON TX 77041-6129 HOUSTON TX 77041-7429 3605 KATY FWY HOUSTON TX 77007-3633

WELLS, VICTORIA

9907 ALGIERS RD

HOUSTON TX 77041-7513

WELCH, RICK

25105 KICKAPOO RD

HOCKLEY TX 77447-6381

WELLS, YOLANDA Y

10258 MOROCCO RD

HOUSTON TX 77041-7430

WEMPLE, CHUCK STE 120 3555 TIMMONS LN HOUSTON TX 77027-6470 WHITE, TENA 16116 TRACEY LANE MISSOURI CITY TX 77489 WHITEING JR, MR LESTER 21506 HAWKSPUR RIDGE ST RICHMOND TX 77406-5259

WHITEING, LESTER & LORDEAN 5602 TEAGUE RD HOUSTON TX 77041-7568

WHITESIDE, MASON 3507 YUPON ST HOUSTON TX 77006-4215 WHITFIELD, MARGIE 17419 KIOWA RIVER LN HOUSTON TX 77095-7005

WHITMIRE, THE HONORABLE JOHN STATE SENATOR THE SENATE OF TEXAS DISTRICT 15 PO BOX 12068 AUSTIN TX 78711-2068 WHITMIRE, THE HONORABLE JOHN STATE SENATOR THE SENATE OF TEXAS DISTRICT 15 803 YALE ST HOUSTON TX 77007-1537 WILKES, DEBORAH APT 214 10777 RICHMOND AVE HOUSTON TX 77042-4914

WILKES, DEBORAH LOCKLEY GREATER MACEDONIA BAPTIST CHURCH 5510 W SAM HOUSTON PKWY N HOUSTON TX 77041-5138 WILLIAMS, BRENDA APT 714 15301 NORTHWEST FWY HOUSTON TX 77040-3009 WOODS, HERMAN 10279 BAMBOO RD HOUSTON TX 77041-7425

WOODWARD, MR MICHAEL L HANCE SCAROROUGH LLP STE 950 400 W 15TH ST AUSTIN TX 78701-1600

WRENN JEFFERSON, MYRA ANN 5417 GESSNER RD HOUSTON TX 77041-7405 WRENN JEFFERSON, MYRA ANN 17518 WAVERLY GROVE DR HOUSTON TX 77084-6322

ZARATE, CLAUDIA 10027 BURNSIDE LN HOUSTON TX 77041-7524