

**SOAH DOCKET NO. 582-24-13241  
TCEQ DOCKET NO. 2023-1559-MSW**

<b>APPLICATION BY 130 ENVIRONMENTAL PARK, LLC FOR A LIMITED SCOPE AMENDMENT TO MUNICIPAL SOLID WASTE PERMIT No. 2383</b>	<b>§ § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGES  
PROPOSAL FOR DECISION**

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**TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:**

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) respectfully submits this Exceptions to the Proposal for Decision (PFD) relating to the application by the 130 Environmental Park LLC (Applicant or 130 EP) for a limited scope amendment to municipal solid waste permit No. 2383. The Executive Director respectfully recommends that the Commission amend the PFD and issue an order approving the limited scope amendment application.

**I. BACKGROUND**

This PFD concerns a limited scope amendment application (LSA application) submitted by 130 EP, pursuant to 30 Texas Administrative Code (TAC) §305.62(j)(2)(B), seeking to expand Applicant's authorized operating hours and waste acceptance hours at the 130 EP municipal solid waste landfill in Caldwell County, Texas, in accordance with 30 TAC §330.135.

The current permit authorizes the acceptance of waste between 7.00 a.m. to 7:00 p.m. and the operation of equipment between 5:00 a.m. and 9.00 p.m. on Monday through Friday. This limited scope amendment seeks to extend the landfill operating hours. Authorized hours for acceptance of waste will be between 5:00 a.m. and 7:00 p.m., Monday through Friday and between 6:00 a.m. and 5:00 p.m. on Saturday. Site operations include construction, material delivery, maintenance, earthmoving, monitoring, transportation of construction materials, heavy equipment operation, and other non-waste acceptance operations.

30 TAC § 330.135(a) provides:

A site operating plan must specify the waste acceptance hours and the facility operating hours when materials will be transported on or off site, and the hours when heavy equipment may operate. The waste acceptance hours of a municipal solid waste facility may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved in the authorization for the facility. Waste acceptance hours within the 7:00 a.m. to 7:00 p.m. weekday span do not require other specific approval. Transportation of materials and heavy equipment operation must not be conducted between the hours of 9:00 p.m. to 5:00 a.m., unless otherwise approved in the authorization for the facility. Operating hours for other activities do not require specific approval.

The application was received on December 22, 2021, and declared Administratively Complete on March 7, 2022. The Executive Director completed the technical review of the Application on May 25, 2022, and a draft limited scope amendment document. The Executive Director's Response to Public Comment was filed on August 4, 2023.

On December 13, 2023, the Commission considered during an open meeting all requests for hearing and/or reconsideration concerning the application of 130 EP for the limited-scope amendment to MSW Permit No. 2383. The requests for hearing and requests for reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 TAC Chapter 55. The Commission considered the Responses to Hearing Requests and requests for reconsideration filed by the Applicant, the Executive Director, and the Office of Public Interest Counsel, along with any replies of protestants to the Responses to Hearing Requests, all timely public comment, and the Executive Director's Response to Comments. After evaluation of relevant filings, the Commission determined that Claudia Shroyer Brown and Robert Brown, Environmental Protection in the Interest of Caldwell County, Patton King, the King Family Trust, Susan Elizabeth Lane, Frank Sughrue, and Dora Gudino Trejo are affected persons under applicable law and that their hearing requests should be granted (Protestants). The remaining hearing requests and requests for reconsideration were denied. Environmental Protection in the Interest of Caldwell County later withdrew

from the matter, and the remaining Protestants were designated as “Aligned Protestants.”

On December 21, 2023, the Commission issued an Interim Order referring the application to the State Office of Administrative Hearings to consider the sole issue of whether the Applicant provided an adequate justification for expanding its hours beyond those established in 30 TAC Section 330.135.

The preliminary hearing was held on May 30, 2024, electronically via Zoom. The Administrative Law Judge (ALJ) found that notice of the hearing was properly noticed and established jurisdiction. The Administrative Record was admitted into evidence during the preliminary hearing without any objections from the parties. The hearing on the merits was held January 14-15, 2025, in person in Austin, Texas.

The Protestants admitted exhibits and prefiled testimony from adjacent landowners Patton King, Susan Lane, and Bryron Friederich. The Applicant submitted exhibits and prefiled testimony from Jonathan Ferdinand, Edgar Lozano, and Ted Bowie. The Executive Director admitted exhibits and prefiled testimony from Adam Schnuriger.

The ALJ issued her PFD on March 19, 2025. In the PFD, the ALJ recommends the application be denied because the Applicant did not provide an adequate justification for expanding its facility hours beyond those established in 30 TAC Section 330.135 and recommends that the Draft Permit not be issued.

## **II. Limited Scope Amendment Rules**

The TCEQ rule addressing limited scope amendments can be found at 30 TAC §305.62(j)(2) and (3), which states in relevant part:

- (2) For all other major amendment applications for MSW facilities, only the portions of the permit and attachments to which changes are being proposed are required to be submitted. The executive director's review and any hearing or proceeding on a major amendment subject to this paragraph shall be limited to the proposed changes, including information requested under paragraph (3) of this subsection. Examples of changes for which less than a full application may be submitted for a major amendment include:

- (A) addition of an authorization to accept a new waste stream (e.g., Class 1 industrial waste);

- (B) changes in waste acceptance and operating hours outside the hours identified in §330.135 of this title (relating to Facility Operating Hours), or authorization to accept waste or operate on a day not previously authorized; and
  - (C) addition of an alternative liner design, in accordance with §330.335 of this title (relating to Alternative Liner Design).
- (3) )The executive director may request any additional information deemed necessary for the review and processing of the application.

Per 30 TAC § 305.62(b), the Limited Scope Permit Amendment Narrative in the application includes a justification describing the reasoning for the requested changes:

The 130 Environmental Park provides waste disposal for individuals, businesses, and communities in Caldwell County and the surrounding counties. The service area for the facility is a wide area with significant haul distances from some of the serviced communities. To better serve those communities, businesses, and customers, expanded operating hours will allow for more efficient waste collection and disposal outside typical working hours and peak traffic times, and reduce traffic and other impacts to infrastructure. The addition of Saturday operating hours will provide available weekend disposal, including for individuals who, for work or other reasons may be unable to get to the landfill on weekdays, and for businesses (restaurants, grocery stores, etc.) needing waste collection and disposal services on Saturday. Authorizing waste acceptance hours to begin at 5 a.m. (6 a.m. on Saturday) will allow vehicles collecting waste in the very early morning hours to get their first loads of the day to the landfill and return to their collection routes before the peak morning traffic times for persons travelling to work, students travelling to schools, and others travelling on area roadways, thereby reducing peak hour traffic on roadways providing access to the landfill.

### **III. BURDEN OF PROOF**

Because the application was received after September 1, 2015, the application is subject to the procedural requirements adopted pursuant to HB 801, 76<sup>th</sup> Legislature (1999) and Senate Bill (SB) 709, 84<sup>th</sup> Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.<sup>1</sup> The Texas Legislature enacted SB 709, effective September 1, 2015, amending the requirements for

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<sup>1</sup> SB 709 was codified in Tex. Gov't. Code § 2003.047.

comments and contested case hearings. This application is subject to those changes in the law. One of the major changes to the contested case hearing process as a result of SB 709 is that the filing of the administrative record with SOAH establishes a prima facie case that the draft permit meets all applicable state and federal legal and technical requirements and, if issued, will protect human health and safety and the environment. According to Commission rules at 30 TAC §80.118(c), the administrative record includes: the application submitted by the applicant, including any revisions to the original application; the executive director's final draft permit, including any special provisions or conditions; the executive director's preliminary decision, or the executive director's decision on the permit application, if applicable; the summary of the technical review of the permit application; the compliance summary of the applicant; copies of the public notices relating to the permit application, as well as affidavits regarding public notices; and any agency document determined by the executive director to be necessary to reflect the administrative and technical review of the application.

The statute further provides that a party may rebut the prima facie case by presenting evidence relating to one of the issues referred by the Commission and demonstrating that the draft permit violates an applicable state or federal requirement.<sup>2</sup> The statute also provides that the Applicant and the Executive Director may present additional evidence to support the draft permit.<sup>3</sup>

#### **IV. DISCUSSION**

30 TAC §80:17(c)(2) and the Governmental Code set forth the requirements for rebuttal of a contested case prima facie demonstration.

The presumption established by the prima facie demonstration of 30 TAC §80:17(c)(1) may be rebutted by a protesting party presenting evidence regarding the referred issue as per 30 TAC §80:17(c)(2), which in this case is whether Applicant has provided a sufficient justification for modification of the facility's operating hours.

During the contested case hearing Protestants offered testimony by adjacent landowners which focused on complaints about odor and noise. This testimony did not relate to the proposed changes to the permit as required by 30 TAC §305.62(j)(2). The

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<sup>2</sup> Tex. Gov't. Code § 2003.047(i-2).

<sup>3</sup> Tex. Gov't. Code § 2003.047(i-3).

testimony also did not demonstrate that a provision in the draft permit prepared by the Executive Director violates a specific state or federal requirement. By not offering evidence of whether the Applicant has or has not provided adequate justification for the amendment to the draft permit, the Protestants have failed to meet the 30 TAC §80:17(c)(2) burden of proof for a rebuttal case. Further, there has been no evidence introduced by the Protestants that the amended permit provision violates a specifically applicable state or federal legal or technical requirement. Protestants have not rebutted the presumption established by 30 TAC 80:17(c)(2) on the issue referred to SOAH.

The ALJ was persuaded by the Protestants testimony that noise and/or odor at the facility are at levels that violate the law; however, there are no noise or odor violations pending at the facility nor have there been in the past. During the Executive Director's review of the limited scope amendment application a compliance history was generated, and the facility is classified as "high."<sup>4</sup>

There is testimony in the record from the Applicant that addresses the concerns about odor and noise raised by the Protestants. The Applicant introduced additional evidence in accordance with 30 TAC 80:17(c)(3). The Applicant introduced expert testimony from two different professionals in the separate fields of noise and odor, Mr. Ferdinand and Mr. Bowie, respectively, to address the complaints in the testimony of Aligned Protestants. In addition to expert opinions, the Applicant also introduced testimony of those who work at the site each day, which provided accounts contradicting those of the Protestants' witnesses regarding conditions at the site.

The Applicant's expert witnesses in the fields of commercial noise and odor who visited the 130 EP landfill and the surveys they conducted at the site did not correspond with the testimony offered by Protestants. Applicant's witnesses were qualified experts in their respective fields of commercial/ industrial noise and odor investigation, having performed noise and odor level testing and surveys throughout their careers, examined readings in their work, and provided their observations, data collected, and reports regarding the conditions at the landfill.

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<sup>4</sup> App Ex. 5 page 6

In addition, the Applicant submitted documentation of support from both the Capital Area Council of Governments (CAPCOG) and from Caldwell County. CAPCOG made a finding of conformance with their Regional Solid Waste Management Plan and Caldwell County adopted a resolution in support of the application.<sup>5</sup>

Protestants did not show a violation of a specifically applicable state or federal legal or technical requirement in the draft permit provision(s) at issue. Protestants have not rebutted the prima facie demonstration that the Executive Director's draft permit meets all state and federal technical and legal requirements, as supported by the administrative record in combination with the additional evidence offered by the Applicant.

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<sup>5</sup> App Ex. 7

## V. CONCLUSION

The Executive Director disagrees with the ALJs' findings and recommendations as discussed above. Based on reviewing the application and considering all the evidence and arguments, the Executive Director concludes that all regulatory requirements for the limited scope amendment have been met. The Executive Director stands by the preliminary decision to issue the amended MSW permit and respectfully recommends that the Commission overturn the PFD and issue an order approving the permit application and the issuance of the amended permit.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel  
Executive Director

Phillip Ledbetter, Director  
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### CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2025, the "Executive Director's Exceptions to the Administrative Law Judge Proposal for Decision" was served electronically, and by either first class mail or hand delivered.

A handwritten signature in black ink, appearing to read "Anthony Tatu", positioned above a horizontal line.

Anthony Tatu, Staff Attorney  
TCEQ's Environmental Law Division  
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