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Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 18, 2025

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, TX 78711-3087

Re: In the Matter of The Application by 130 Environmental Park, LLC for A
Limited-Scope Amendment To MSW Permit No. 2383, TCEQ Docket No.
2023-1559-MSW, SOAH Docket No. 582-24-13241

Dear Ms. Gharis:

The Office of Public Interest Counsel (OPIC) has reviewed all the filings, and as stated in our closing brief, we concur with the Proposal for Decision in this case. Please find attached a copy of OPIC's Closing Brief to be included in future Agenda backup materials.

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta
Assistant Public Interest Counsel
Office of Public Interest Counsel

A handwritten signature in cursive script that reads "Josiah Mercer".

Josiah T. Mercer
Assistant Public Interest Counsel
Office of Public Interest Counsel

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2025, the foregoing document was filed with SOAH and the TCEQ Chief Clerk, and all parties listed below were served via email.

A handwritten signature in black ink, reading "Pranjal", with a horizontal line extending to the right.

Pranjal M. Mehta

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

APPLICATION BY 130	§	BEFORE THE STATE OFFICE
ENVIRONMENTAL PARK, LLC FOR	§	OF
A LIMITED-SCOPE AMENDMENT	§	ADMINISTRATIVE HEARINGS
TO MSW PERMIT NO. 2383	§	

**OFFICE OF PUBLIC INTEREST COUNSEL'S
CLOSING ARGUMENT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ or Commission) files this closing argument and would respectfully show as follows:

I. Background

Applicant 130 Environmental Park, LLC (130 Environmental or Applicant) owns and operates 130 Environmental Park, a Type I Municipal Solid Waste (MSW) landfill (Landfill) in Caldwell County. The total disposal capacity of the Landfill, including waste and daily cover, is 33.1 million cubic yards. On December 22, 2021, Applicant submitted a limited-scope amendment application (LSA Application) to authorize the expansion of waste acceptance and operating hours.

The Landfill's current waste acceptance hours are 7:00 a.m. to 7:00 p.m., Monday through Friday, and its operating hours are 5:00 a.m. to 9:00 p.m., Monday through Friday. Applicant's LSA Application would change waste acceptance hours to 5:00 a.m. to 7:00 p.m., Monday through Friday, and would add 6:00 a.m. to 5:00 p.m. on Saturdays. It would also add Saturday from 6:00

a.m. to 6:00 p.m. onto the current operating hours. This change would allow for construction, material delivery, and earthmoving starting at 5:00 a.m. on weekdays and 6:00 a.m. on Saturday.

During the TCEQ Agenda Meeting on December 13, 2023, the Commissioners considered the hearing requests and issues for referral in this proceeding. As outlined in the Interim Order, the Commissioners referred one issue to the State Office of Administrative Hearings (SOAH) for a contested case hearing: Whether 130 Environmental Park has provided an adequate justification for expanding its facility hours beyond those established in 30 TAC § 330.135.

On May 30, 2024, the Administrative Law Judge (ALJ) convened a preliminary hearing in this matter by Zoom videoconference. The following parties appeared through counsel: Applicant; Executive Director (ED) of TCEQ; OPIC; and Environmental Protection in the Interest of Caldwell County, Patton King on behalf of the King Family Trust, Frank Sughrue, Susan Elizabeth Lane, and Claudia Shroyer Brown and Robert Brown (Aligned Protestants). The hearing on the merits was conducted on January 14-15, 2025.

For the reasons stated herein, OPIC finds that Applicant failed to meet its burden of proof on the issue referred for hearing.

II. Burden of Proof

By rule, the burden of proof is on the moving party by a preponderance of the evidence.¹ In a permit hearing, the applicant is the moving party. Therefore, Applicant bears the burden of proof. Regarding the burden of proof in an SB 709

¹ 30 TAC § 80.17(a).

case, 30 Texas Administrative Code (TAC) § 80.117(b) states that an applicant's presentation of evidence to meet its burden of proof may consist solely of the filing with SOAH, and admittance by the ALJ, of the administrative record. However, Section 80.17(c)(2) provides that a party may rebut an applicant's prima facie demonstration by presenting evidence demonstrating that the draft permit violates a specifically applicable state or federal legal or technical requirement. If a rebuttal case is presented, Section 80.17(c)(3) states that the applicant and the ED may present additional evidence to support the ED's draft permit.

III. Whether 130 Environmental Park has provided an adequate justification for expanding its facility hours beyond those established in 30 TAC § 330.135.

In accordance with 30 TAC § 330.135(a) (relating to Facility Operating Hours), an application for a MSW landfill facility must include a site operating plan that specifies the waste acceptance and operating hours of the facility as well as the hours during which the facility will operate heavy equipment. Section 330.135(a) also provides that the waste acceptance hours "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." Additionally, material transportation 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." The MSW rules allow an applicant to request expansion of operating hours beyond those specified in 30 TAC § 330.135 through a limited-scope amendment under 30 TAC § 305.62(j)(2)(B). Under 30

TAC § 305.62(b), an application for any such amendment must describe the reason for the requested changes.

Aligned Protestants relied on the testimonies of several of the individual protestants who own property directly around the Landfill—Susan Elizabeth Lane, Byron Christopher Friedrich, and Patton Spencer King. In their testimonies, each describes the impact the Landfill currently has on their property and their concerns about the possibility of these impacts being expanded on weekdays and into the weekends.

In her testimony, Ms. Lane describes the impact the Landfill has had on her ability to enjoy her once-peaceful property.² She testifies that she and her daughter can smell the Landfill odors from their property.³ She specifies that the noise is only an issue when the Landfill is in operation.⁴ She describes how the odors and noises are stronger when the Landfill is in operation.⁵ Saturdays, she says, are relatively odor- and noise-free—which allows her to do farm chores and enjoy the natural beauty of her property without the distraction of unappealing noises and odors.⁶ She says that she has shared these concerns with many members of the community—including other EPICC members.⁷

Similarly, Mr. Friedrich’s testimony includes a description of the odors and noises generated by the Landfill. He testifies that he experiences odors and

² Prot. Exh. 1, 1:21-23.

³ Prot. Exh. 1, 2:1-15.

⁴ Prot. Exh. 1, 3:4-11.

⁵ Prot. Exh. 1, 2:9-11, 3:4-19.

⁶ Prot. Exh. 1, 2:20 - 3:2, 3:11-19.

⁷ Prot. Exh. 1, 4:8-17.

noises frequently and potentially enough to be an issue for him.⁸ He describes nighttime, early mornings, and the weekend as a respite from the noise and odors.⁹ He also testifies that, since the Landfill has opened, local populations of Rio Grande turkeys and other native birds have decreased, and the populations of feral hogs and buzzards have increased.¹⁰ Extending the hours and allowing operation on Saturday, he says, “will make things so much worse for us and for our neighbors.”¹¹

Finally, Mr. King describes how the expansion of operating hours could affect his family’s property and their long-lasting uses of that property. They operate a cattle ranch, they have orchards, they host Boy Scout troops, and they gather for significant family events and holidays.¹² Mr. King describes the extensive impact that the Landfill has already had on his family’s property—including odors, noise, and dust.¹³ He describes the weekends, early mornings, and evenings as the only time when the area “bears a slight resemblance to what it once was—before the Landfill came in.”¹⁴

Applicant presented evidence countering Protestants’ arguments that the Landfill causes significant odors and noise when in operation. They presented Ted Bowie and Jonathan Ferdinand as expert witnesses to testify about odor and

⁸ Prot. Exh. 2, 2:6-7, 2:16-21.

⁹ Prot. Exh. 2, 2:11-12, 2:21-22

¹⁰ Prot. Exh. 2, 3:20-4:4. *See also* Transcript, 22:7-23:6.

¹¹ Prot. Exh. 2, 3:11-12.

¹² Prot. Exh. 3, 2:1-19.

¹³ Prot. Exh. 3, 3:14-12.

¹⁴ Prot. Exh. 3, 3:6-11.

noise, respectively. Edgar Lozano—the operations manager of the Landfill—also testified.

Mr. Bowie evaluated the testimony provided by the Protestants and performed an odor investigation.¹⁵ He reviewed documents, made a site visit, collected wind data, and did not observe or detect any odors.¹⁶ Mr. Bowie concluded that the odor-related testimony of Ms. Lane, Mr. Friedrich, and Mr. King is not consistent with the frequency, duration, intensity, and offensiveness of the odors he observed at the Landfill.¹⁷

Similarly, Mr. Ferdinand prepared a report describing and providing results of a sound monitoring investigation at the Landfill site.¹⁸ This investigation involved placing sound level monitors around the site, compiling 24-hour sound level averages, and comparing the levels to those in guidelines developed by the Environmental Protection Agency and Department of Housing and Urban Development.¹⁹ He discounted the highest noise levels collected after checking local wind conditions for that day—claiming that the wind was likely the culprit for the higher levels—but did not look at wind data for any other day.²⁰ Mr. Ferdinand concluded that existing noise levels near the Landfill do not exceed noise guidance levels and would not interfere with conversation, sleeping, working, or recreating.²¹

¹⁵ App. Exh. 18, 4:6-8.

¹⁶ *Id* at 4-5.

¹⁷ *Id* at 6:16-40. *See also* Transcript, 92:8-20, 123:12-22

¹⁸ App. Exh. 12, 4:40-41.

¹⁹ *Id* at 5-6.

²⁰ Transcript 2, 10:22-25.

²¹ *Id* at 5:21-28.

In the deposition of David Butler, the general manager overseeing the Landfill, testified that this amendment would be a benefit to the Landfill's customers because it would provide additional operating hours for their customers to bring waste to the facility.²² Mr. Lozano describes how some trucks arrive early in the morning and wait for the Landfill to open.²³ He also describes how being open on Saturday would allow the Landfill to accept waste from trash haulers who work on Saturday and would usually go to a different facility.²⁴ He also describes generally that there have been requests from residents of Lockhart and Caldwell Counties for the Landfill to operate on weekdays and onto the weekend—but Applicant provides no more details on the number or nature of these requests.²⁵ Mr. Lozano describes how the Landfill creates no odor, no dust, and no noise that leaves the boundary of the Landfill.²⁶ However, he also describes how the Landfill has received odor complaints from the local community.²⁷

ED's expert witness, Adam Schnuriger, testified that when the ED staff receive a justification for any landfill hour expansion, they review it alongside the rest of the application.²⁸ As part of the Applicant's LSA Application review, ED assessed whether the justification is provided and if it is sufficient.²⁹ During the review, ED staff did not consider any prior complaints submitted to

²² Prot. Exh. 4, 55:18-24. *See also* Transcript, 57:9-20.

²³ App. Exh. 35 Sub2, 19:12-13, 31:21-25.

²⁴ Transcript, 59:4-11.

²⁵ App. Exh. 35 Sub2, 29:23-30:15, 32:1-11.

²⁶ App. Exh. 35 Sub2, 33:12-24.

²⁷ Transcript, 62:15-24.

²⁸ Transcript, 141:4-5.

²⁹ Transcript, 141:10-12.

the TCEQ regarding this Landfill during the analysis.³⁰ The ED's review was strictly limited to the justification presented in the application.³¹ The ED determined that the justification for the amendment was properly provided and satisfied the regulatory requirements.³²

OPIC's Position

The Applicant's LSA Application seeks to modify waste acceptance and operating hours beyond those established in TCEQ rules and to add an additional operating day that is not currently authorized. Texas Health and Safety Code Chapter 361 lays out TCEQ's authority to manage the disposal of MSW and adopt rules to establish minimum standards of operation for facilities that dispose of MSW.³³ Under this authority, the Commission established rules that clearly set out standard hours for waste acceptance and operating, and required that an amendment expanding these hours describe the reason for the requested changes.³⁴ Additionally, the only issue referred by the Commission was whether the Applicant has "provided an adequate justification for expanding its facility hours beyond those established in 30 TAC § 330.135."

During the TCEQ Agenda Meeting on December 13, 2023, the Commissioners discussed that issues such as odor control, access roads, nuisance prevention, and land use compatibility are outside the scope of this amendment, but these concerns may be relevant as rebuttal evidence on the issue

³⁰ Transcript, 141:13-17.

³¹ Transcript, 141:18-23.

³² ED Exh. ED-1, 00006:37-39. *See* App. Exh. 5, 003.

³³ *See* Texas Health & Safety Code § 361.024(a).

³⁴ *See* 30 TAC § 330.135(a). 30 TAC § 305.62(b)

of whether the extended hours are justified but do not stand as independent issues.³⁵ As previously noted, Aligned Protestants have provided testimonial evidence from several local residents demonstrating that the Landfill currently generates significant odor and noise during operations. They have also raised concerns that expanding the Landfill's hours could intensify existing negative impacts and extend them into previously unaffected periods, including late evenings, early mornings, and weekends.

Applicant presents expert testimony which seems to totally deny the existence of any impactful odors and noise. Mr. Bowie denies that the odors described by Protestants are even possible based on his *two-day* site visit, a wind analysis, and a review of the Landfill's policies.³⁶ Similarly, Mr. Ferdinand concludes that there is no impactful noise pollution from the Landfill based on one week of data, generalized over each 24-hour period. This general data provides no real insight into how much noise the Landfill produces during operating hours. OPIC finds Applicant's experts less convincing than Protestants' testimony—in which several local residents specifically describe frequent odor and noise conditions when the Landfill is in operation. Applicant presents no evidence on how expanded hours would or would not affect these current odor or noise conditions. Based on the preponderance of the evidence, OPIC finds that the expanded hours are likely to disrupt the lives of local residents by expanding

³⁵ A Transcript of TCEQ Agenda Item 5 from the December 13, 2023 Agenda, attached as Attachment 2 to the *Applicant's Motion To Clarify The Scope and Motion in Limine And Request for Hearing On Motion*, submitted on May 29, 2024, in these proceedings.

³⁶ Emphasis added.

Landfill operation into now relatively-peaceful the weekend and early-morning hours.

According to TCEQ rules and the direction of the Commission, Applicant must provide a justification for the expanded hours contemplated by this amendment. In terms of justification for expanded hours, the LSA Application states that due to the Landfill's wide service area and significant haul distances, extended operating hours would accommodate communities, businesses, and customers outside of typical working hours and peak traffic times while also reducing traffic and infrastructure impacts. However, Applicant does not provide specific evidence about the demand for this expansion of hours. OPIC finds that the strength or weakness of this justification must be considered against the potential negative impacts to the community—which the preponderance of the evidence shows are extensive.

Considering the weight of this evidence, OPIC finds that Aligned Protestants' concerns are critical factors in evaluating the justification for expanded hours. If approved, the extension could result in increased environmental and community disruptions without sufficient safeguards. Given these concerns, OPIC is not convinced that the Applicant has provided a compelling or adequate justification demonstrating that additional hours are necessary.

V. Conclusion

For the reasons discussed above, OPIC concludes that Applicant has not met its burden of proof on the issue referred for hearing, and therefore the LSA Application should be denied.

Respectfully submitted,

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