

TCEQ DOCKET NO. 2023-1559-MSW

APPLICATION BY 130	§	BEFORE THE
ENVIRONMENTAL PARK, LLC FOR	§	TEXAS COMMISSION ON
LIMITED-SCOPE AMENDMENT TO	§	ENVIRONMENTAL QUALITY
PERMIT NO. 2383	§	
	§	

**ENVIRONMENTAL PROTECTION IN THE INTEREST OF CALDWELL COUNTY
AND KING FAMILY TRUST’S REPLY TO RESPONSES TO HEARING REQUESTS**

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

Environmental Protection in the Interest of Caldwell County (“EPICC”) and the King Family Trust (collectively, “Requesters”) hereby submit this Reply to the Responses to Hearing Requests filed by the Applicant 130 Environmental Park, LLC (“130EP”), Executive Director (“ED”) and the Office of Public Interest Counsel (“OPIC”). Requesters have satisfied all the criteria to demonstrate that they are affected persons entitled to a contested case hearing regarding the Application by 130 Environmental Park, LLC for Limited-Scope Amendment to Permit No. 2383. In addition, Jodie and Byron Friedrich (the “Friedrichs,” members of EPICC) also submitted sufficient information to support their request for a contested case hearing, and their request should be granted as well. The Commission should refer all issues raised in the Requesters’ hearing requests and comments, as recommended by OPIC. For support, Requesters respectfully offer the following:

I. The Friedrichs satisfy the requirements for “affected person” status.

The Friedrichs timely filed comments and hearing requests. Byron Friedrich was previously determined to be an affected person when he sought party status in opposition

to 130EP's application for a landfill permit. And it is undisputed that the Friedrichs own property adjacent to the facility. Yet, the ED recommends denying the Friedrichs' request for a contested case hearing. Denial of their request is unwarranted.¹

The ED does not deny that the Friedrichs possess a property interest (*i.e.*, a personal justiciable interest) nor that the property interest is adjacent to the 130EP landfill. Yet, the ED recommends denial of their hearing request because the ED contends that they did not comply with the requirements of Rule 55.201(d)(2). That rule provides that a hearing request must *substantially* comply with the following: "identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public." 30 Tex. Admin. Code § 55.201(d)(2).

As explained above, the Friedrichs own property (a personal justiciable interest) adjacent to the landfill. The proximity of their property to the landfill renders them vulnerable to any and all adverse impacts resulting from the construction and operation of the landfill. Members of the general public are not subject to the adverse impacts of the

¹ 130EP also recommends denying the Friedrichs' hearing request. In fact, 130EP recommends denying all hearing requests—irrespective of whether the hearing requesters possess a personal justiciable interest that will be adversely affected by the requested permit amendment. This is because 130EP does not believe that any of the issues raised by the hearing requesters are valid. 130EP's response to hearing requests should be denied, because 130EP's subjective opinions regarding the validity of the concerns raised by its landfill neighbors is not a valid justification for denial of hearing requests by persons who otherwise satisfied TCEQ's rules regarding "affected person" status.

landfill operations in the same manner or to the same degree as the Friedrichs. There is simply no valid legal reason for determining that their hearing request should be denied; they satisfy the requirements of Rule 55.201(d)(2).

II. The issues raised by the Requesters should be referred to SOAH for a hearing.

The Requesters explained, in their comments and hearing requests, why the issues they raised are relevant and should be referred for a contested case hearing. OPIC concurred with the Requesters. But the ED has only recommended referring one of the requested issues to SOAH—whether 130EP has presented a valid justification for its request to expand “its site operations and its operating hours.” The ED has not explained why the other issues raised by Requesters are outside the scope of 130EP’s application for a permit amendment.

The issues that the ED claims are outside the scope of the permit amendment application are issues related to how expanding the landfill’s operations and operating hours will impact the nearby community. *See, e.g., ED’s Revised Response to Hearing Requests*, p. 15 (characterizing the following issue as outside the scope of the amendment application: “Whether 130 Environmental Park’s request for expanded site operations and operation hours should be denied, because of the adverse impacts it would have on the surrounding community”). Notably, the ED recommended denying the Friedrichs’ hearing request because they did not sufficiently describe how they would be affected by the permit amendment application, while also recommending that the hearing be limited to *avoid*

addressing any issues regarding how the proposal to expand operations will affect the nearby residents.

Requesters' comments and hearing requests raised issues regarding how the proposed permit amendment would adversely affect them. The contested-case hearing should, therefore, provide them the opportunity to present evidence regarding those issues. And any decision regarding the permit amendment application should be based on thoughtful consideration of any evidence presented regarding how the permit amendment would adversely affect the Requesters.

III. Conclusion

For the reasons stated above, Requesters respectfully pray that the Commission grant their hearing requests, as well as the Friedrichs' hearing request, and refer all issues raised by the Requesters to the State Office of Administrative Hearings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on December 4, 2023, a true and correct copy of the foregoing Reply to Responses to Hearing Requests was electronically filed with the Chief Clerk of TCEQ, and that copies were served upon the following parties via deposit in the U.S. mail or e-mail.

/s/ Marisa Perales
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