



SOAH DOCKET NO. 582-14-3597
TCEQ DOCKET NO. 2012-0302-MSW

APPLICATION BY PINTAIL § BEFORE THE STATE OFFICE
LANDFILL, LLC FOR NEW §
MUNICIPAL SOLID WASTE § OF
PERMIT NO. 2377 § ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR'S RESPONSE TO CITIZENS AGAINST THE
LANDFILL IN HEMPSTEAD'S AND CITY OF HEMPSTEAD'S JOINT
MOTION FOR SUMMARY DISPOSITION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES (ALJs), STEPHANIE
FRAZEE AND ELIZABETH DREWS, AT THE STATE OFFICE OF ADMINISTRATIVE
HEARINGS (SOAH):

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ), by and through his representative of record in the Environmental Law Division, submits this Executive Director's Response to the Citizen's Against the Landfill in Hempstead (CALH) and The City of Hempstead's Joint Motion for Summary Disposition, as requested by the ALJs' Order No. 17. The Executive Director recommends that the Motion for Summary Disposition be granted in accordance with Commission rules.

I. INTRODUCTION

On July 22, 2015, Pintail Landfill, LLC (Applicant) filed a Motion for Continuance and Stay, requesting that the proceedings in this matter be continued and that all pending deadlines be stayed until further order from the ALJs. The basis for the Applicant's continuance was 1) newly discovered groundwater information that impacts the permit application and 2) the Applicant's contention that CALH had violated discovery rules and procedures. In its Motion for Continuance and Stay, the Applicant also stated that the application no longer satisfies the requirements of TCEQ's permitting rules.

On July 30, 2015, CALH and The City of Hempstead filed a Joint Motion for Summary Disposition requesting denial of the permit application based on the contention that the application does not comply with TCEQ rules found in 30 TAC Chapter 330.

The ALJs issued Order NO. 17 on August 12, 2015, granting the Applicant's Motion for Continuance and staying the procedural schedule until further orders. The ALJs made it clear that their order is not a ruling on whether the Applicant may or may not amend its application, or whether the case should be dismissed or remanded back to the Executive Director. The ALJ's Order states that parties are allowed to file a response to the Motion for Summary Disposition filed by CALH and The City of Hempstead.

The Executive Director's response only addresses the question of whether the Motion for Summary Disposition should be granted *based on the current application* before the ALJs.

II. APPLICABLE TCEQ RULES

30 Texas Administrative Code § 80.137 (c) provides that "Summary Disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response."

In their Motion, CALH and The City of Hempstead have detailed the Applicant's admissions that the Application, as it currently stands, does not meet TCEQ rules, and that the changes that need to be made to the application potentially affect nearly every aspect of the application.

III. CONCLUSION

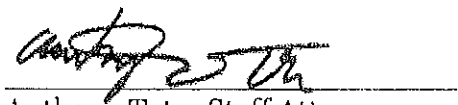
Based on the fact that the current application does not meet TCEQ rule requirements by the Applicant's own admission, the Executive Director recommends that the Motion for Summary Disposition be granted in accordance with 30 TAC § 80.137(c).

Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Robert Martinez, Director
Environmental Law Division

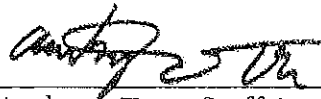


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REPRESENTING THE EXECUTIVE
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2015, a true and correct copy of the foregoing document has been sent via facsimile and first class mail to the persons on the attached Mailing List.



Anthony Tatu, Staff Attorney
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DOCKET NO. 2012-0302-MSW; PERMIT NO. 2377
SOAH DOCKET NO. 582-14-3597

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