

261ST DISTRICT COURT

LORA J. LIVINGSTON

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May 14, 2012

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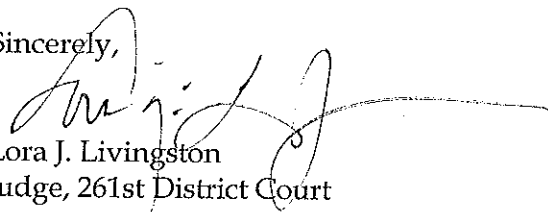
Terry L. Scarborough
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Re: Cause No. D-1-GN-09-000894, *Sierra Club v. Texas Commission on Environmental Quality and Waste Control Specialists, LLC*, in the 201st Judicial District Court of Travis County, Texas

Dear Counsel:

I have received and considered the correspondence from counsel regarding the Order in the above-referenced case, including the request to limit the contested case hearing to the determination of affected person status only. However, the court instructed in *City of Waco v. Tex. Comm'n on Envtl. Quality*, 346 S.W.3d 781, 819 (Tex. App.—Austin 2011, pet filed), that where disputed facts are relevant to both a hearing requestor's standing and the merits of a permit application, it is the requestor's right to have disputed facts material to the merits of claims and defenses determined at a contested case hearing. Accordingly, I have prepared the enclosed Order remanding the case to the TCEQ.

Sincerely,


Lora J. Livingston
Judge, 261st District Court

cc: Ms. Amalia Rodriguez-Mendoza, Travis County District Clerk

CAUSE NO. D-1-GN-09-000894 (Consolidated)

SIERRA CLUB

v.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY AND
WASTE CONTROL SPECIALISTS, LLC

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§
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§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98th JUDICIAL DISTRICT

ORDER

On May 8, 2012, the Court conducted a hearing on the merits in this case. Plaintiff Sierra Club, Defendant Texas Commission on Environmental Quality (TCEQ), and Intervenor Waste Control Specialists, LLC (WCS) appeared through their respective counsel.

After considering the pleadings, briefs, evidence and oral arguments of counsel, the Court hereby finds that the TCEQ erred in denying Sierra Club's Hearing Request regarding WCS's Application for RAW License No. R04100. Accordingly, the Court finds that this matter should be remanded to TCEQ to allow Sierra Club to participate in a contested case hearing.

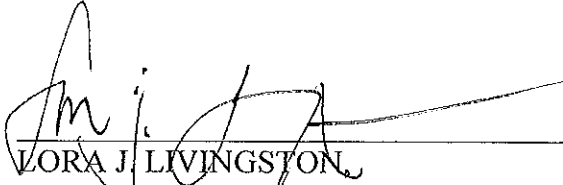
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Final Order issued by the TCEQ on January 20, 2009, is REVERSED and REMANDED to the TCEQ.

IT IS FURTHER ORDERED that costs are to be borne by the party that incurred the cost.

All other relief not expressly granted is DENIED.

This judgment resolves all claims of all parties and is intended to be final and appealable.

SIGNED on May 14, 2012.


LORA J. LIVINGSTON
JUDGE PRESIDING