

Barbara Hoffman
1051 Hoffman Road
Alleyton, Texas 78935
979-234-2816

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February 15, 2006

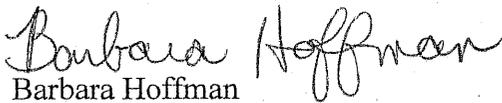
Ms LaDonna Castañuela
TCEQ Chief Clerk
12015 Park 35 Circle
Building F, 1st Floor
Austin, TX 78767

Re: Permit No. 04674

Dear Ms. Castañuela:

Enclosed please find the original and eleven copies of Barbara Hoffman, Alfred and Belita Hoffman, and Kenneth Witte's Petition to Suspend and Revoke TCEQ Permit No. 04674 for review by the Executive Director. Thank you for your time and assistance with this matter.

Sincerely,


Barbara Hoffman

Enclosure
cc: Service List

TCEQ PERMIT AUTHORIZATION NO. 04674

IN THE MATTER OF THE	§	BEFORE THE
AUTHORIZATION OF SYNAGRO	§	TEXAS COMMISSION
OF TEXAS-CDR, INC. TO LAND	§	ON ENVIRONMENTAL
APPLY CLASS B SEWAGE SLUDGE	§	QUALITY

**PETITION BY BARBARA HOFFMAN, ALFRED AND BELITA HOFFMAN,
AND KENNETH WITTE TO SUSPEND AND REVOKE SYNAGRO'S
AUTHORIZATION TO LAND APPLY CLASS B SEWAGE SLUDGE UNDER
TCEQ PERMIT NO. 04674**

COMES NOW BARBARA HOFFMAN, ALFRED AND BELITA HOFFMAN AND KENNETH WITTE and petitions the Texas Commission on Environmental Quality ("TCEQ") and it's Executive Director to suspend and revoke the authority of Synagro of Texas-CDR, Inc. (Synagro) to land apply Class B sewage sludge and the facility's specific Permit No. 04674, and in support thereof would respectfully show the following:

I. AUTHORITY

The Executive Director has the authority and the duty, under 30 TAC §§ 305.66 & 305.68 to suspend and revoke Synagro's permit for the violations, misrepresentations, and other reasons described in this Petition.

Barbara Hoffman, and Alfred and Belita Hoffman, and Kenneth Witte as "affected parties" (as described below) have the right to file this Petition to Suspend and Revoke under 30 TAC § 305.66(d) and (e) and under their constitutional right to petition an agency of the state to do its duty and comply with the law. Texas Constitution, Article I, § 7.

II. STANDING AS "AFFECTED PARTIES"

Barbara Hoffman is an "affected person" that is adversely affected by the TCEQ's authorization of Synagro's Permit No. 04674. Barbara Hoffman's permanent residence and physical address is 1051 Hoffman Road, Eagle Lake, Texas which is within one quarter of a mile of the permit site.

Alfred and Belita Hoffman are "affected persons" that are adversely affected by the TCEQ's authorization of Synagro's Permit No. 04674. Alfred and Belita Hoffman's permanent residence and physical address is 1001 Hoffman Road, Eagle Lake, Texas which is directly across the road and within fifty feet of the permit site.

Kenneth Witte is an "affected person" that is adversely affected by the TCEQ's authorization of Synagro's Permit No. 04674. Kenneth Witte's permanent residence and physical address is 1146 Pecan Valley Road, Eagle Lake, Texas which is one half mile from the permit site.

III. CIRCUMSTANCES GIVING RISE TO PETITION

In August of 2003, Synagro submitted three similar applications to the TCEQ for consideration. All three applications involve the same landowner, two applications are located in Colorado County, Texas and the third is located in Wharton County, Texas. All three permit applications have been vigorously protested throughout the permitting process. As a result of these protests and the ensuing investigations into the validity of these applications, one of the Colorado County permit applications has been withdrawn by the applicant prior to the Hearing on the Merits conducted by the Administrative Law

Judge. The protestants involved in the Wharton County permit application requested and were granted a contested case and are currently awaiting a Commission hearing for a final decision on the application. The other Colorado County permit, Permit No. 04674, was mediated by a group of protestants and the applicant prior to the discovery of the information that forms the basis of this Petition. As a result of the problems that were discovered with two of these applications and an investigation into the application submitted for Permit No. 04674, which identified the exact same discrepancies, this Petition is being filed with the Executive Director for review.

IV. VIOLATIONS CONSTITUTING CAUSE FOR SUSPENSION AND REVOCATION OF PERMIT

The following violations of law were committed in Synagro's submittal of its permit application and in the Executive Director's authorization for land application on Class B sewage sludge based upon it:

There are blank lines in the agronomic rate calculation pages for each of the four fields, indicating that the applicant did not subtract the amount of plant available nitrogen in the soil from the amount of nitrogen recommended to achieve their specific yield goal.¹ This miscalculation will result in an excess of nitrogen on the site which cannot be utilized by the crop. If the plant cannot use this nitrogen, it will either run off the site or leach into the groundwater causing contamination of the nearby Colorado River and the aquifer below the site from which each "affected party" draws their household water. The applicant acknowledged this agronomic rate miscalculation recently in a motion they filed regarding the Wharton County permit application.

¹ See Exhibit A

The applicant has not submitted a Nutrient Management Plan as established by the Natural Resource Conservation Service under Code 590. Texas NRCS Code 590 nutrient management practices require that the maximum field size for soil sampling purposes be no larger than forty acres. The field sizes in Permit No. 04674 are 176.21 acres, 85.27 acres, 62.65 acres, and 72.5 acres. That is a total acreage of 396.63 and there should have been a minimum of nine soil samples taken for the entire site. The application includes information for only seven soil samples.

The yield goals submitted by the applicant are unrealistic. In a non-irrigated coastal Bermuda pasture in Colorado County, an optimistic yield goal is five tons per acre per year in three cuttings. The applicant submitted a yield goal of nine tons per acre for all four fields. This elevated yield goal enables the applicant to request a fertilizer recommendation for a crop yield that is unattainable and will be another cause of excess nitrogen and other nutrients on the permit site.

Under 305.66(a)(4), a permit can be revoked due to “the permittee’s failure in the application or hearing process to disclose fully all relevant facts, or the permittee’s misrepresentation of relevant facts at any time.” Also, under 305.66(a)(5), a permit can be revoked due to “a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm.”

V. REQUEST FOR RELIEF

Therefore, Barbara Hoffman, Alfred and Belita Hoffman, and Kenneth Witte request that they be afforded the following relief:

1. The Executive Director should immediately suspend authorization for Synagro to land apply Class B sewage sludge under Permit No. 04674.
2. The Executive Director should order Synagro to immediately cease all operations of Permit No. 04674.
3. Following any necessary public hearing, the TCEQ should revoke Synagro's authorization to land apply Class B sewage sludge under Permit No. 04674.

Respectfully submitted,

Barbara Hoffman 2-15-06
Barbara Hoffman Date

Alfred Hoffman 2-15-06
Alfred Hoffman Date

Belita Hoffman Feb. 15, 2006
Belita Hoffman Date

Kenneth Witte 2-15-06
Kenneth Witte Date

CERTIFICATE OF SERVICE

By our signatures above, we certify that on February 15, 2006, a copy of Barbara Hoffman, Alfred and Belita Hoffman and Kenneth Witte's Petition to Suspend and Revoke TCEQ Permit No. 04674 was sent by email, fax and/or mail to the following as indicated below:

Docket Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax 512-239-3311

Scott Humphrey
Office of the Public Interest Council – MC 103
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Fax 512-239-5533

EXHIBIT A

EXHIBIT A

Exhibit A

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Step 2 - Soil Test Analysis and Fertilizer Recommendations

Note: Please include a fertilizer recommendation from the local County Extension Service for determining the nutrient needed by the specified crop(s).

Intended Crop(s): COASTAL BERMUDA HAY PRODUCTION

Yield Goal (s): 9 TONS IN 3 CUTTINGS pH: 5.98 N (lbs./acre)

A. Nutrient needed by crop for specific yield goal ** _____

B. Nutrient available in soil [=2 x NO₃-N(ppm)(0-6" soil depth)+6 x NO₃-N(ppm)(6-24" soil depth)] 8.67

C. Nutrient amount still needed [=Nutrient needed-Nutrient available]
(enter this amount in Step 4A.) _____

**Please provide the means of determining these values.
Refer to Lab Analysis of Certified Lab Company

Step 3 - Calculate the Plant Available Nitrogen (PAN) Provided by the Sludge

(Use the values for Total N, NH₄-N and NO₃-N from Step 1)

A. Organic Nitrogen = Total N - (NH₄-N) - (NO₃-N) = 4.50-0.54-0.23=3.73 X 20=74.60 74.60
(Multiply the percent values in Appendix C for PAN) x 30% 0.30
22.38

B. Ammonium Nitrogen (NH₄-N) x V= _____ + 5.40
Use Volatization factor (V) = 0.5 if sludge is left on soil surface:
Use Volatization factor (V) = 1.0 if sludge is worked into soil.

C. Nitrate Nitrogen (NO₃-N) = _____ + 4.60

D. 3A + 3B + 3C = (enter this amount in Step 4B.) Total PAN 32.380

Step 4 - Calculate Maximum Sludge Application Rate Based on Crop Nitrogen Needs (SAR_N)

A. Enter the amount from Step 2. Nitrogen amount still needed. 315 lbs/acre/year

B. Enter amount from Step 3D. Total PAN in sludge: 32.380 lbs/ton

C. Sludge Application Rate (SAR_N) = A ÷ B = 315 ÷ 32.380 = 9.73 tons/acre/year

FIELD 1

Sample	Nitrates	Avg	Initial	Top Dress	Cuttings	lbs of N
1	10		105	105	3	315
2	8	8.67	105	105	3	315
3	8		105	105	3	315

Step 2 - Soil Test Analysis and Fertilizer Recommendations

Note: Please include a fertilizer recommendation from the local County Extension Service for determining the nutrient needed by the specified crop(s).

Intended Crop(s): COASTAL BERMUDA HAY PRODUCTION

Yield Goal (s): 9 TONS IN 3 CUTTINGS pH: 6.68

N (lbs./acre)

A. Nutrient needed by crop for specific yield goal ** _____

B. Nutrient available in soil [$=2 \times \text{NO}_3\text{-N}(\text{ppm})(0\text{-}6'' \text{ soil depth}) + 6 \times \text{NO}_3\text{-N}(\text{ppm})(6\text{-}24'' \text{ soil depth})$] 46

C. Nutrient amount still needed [$=\text{Nutrient needed}-\text{Nutrient available}$] _____
(enter this amount in Step 4A.)

**Please provide the means of determining these values.
Refer to Lab Analysis of Certified Lab Company

Step 3 - Calculate the Plant Available Nitrogen (PAN) Provided by the Sludge

(Use the values for Total N, NH₄-N and NO₃-N from Step 1)

A. Organic Nitrogen = Total N - (NH₄-N) - (NO₃-N) = 4.50 - 0.54 - 0.23 = 3.73 X 20 = 74.60 74.60
(Multiply the percent values in Appendix C for PAN) x 30% 0.30
22.38

B. Ammonium Nitrogen (NH₄-N) x V = _____ + 5.40
Use Volatization factor (V) = 0.5 if sludge is left on soil surface:
Use Volatization factor (V) = 1.0 if sludge is worked into soil.

C. Nitrate Nitrogen (NO₃-N) = _____ + 4.60

D. 3A + 3B + 3C = (enter this amount in Step 4B.) Total PAN 32.380

Step 4 - Calculate Maximum Sludge Application Rate Based on Crop Nitrogen Needs (SAR_N)

A. Enter the amount from Step 2. Nitrogen amount still needed. 315 lbs/acre/year

B. Enter amount from Step 3D. Total PAN in sludge: 32.380 lbs/ton

C. Sludge Application Rate (SAR_N) = A ÷ B = _____ ÷ _____ = 9.73 tons/acre/year

FIELD 2

Sample	Nitrates	Avg	Initial	Top Dress	Cuttings	lbs of N
4	10		105	105	3	315
5	32	21	105	105	3	315

Step 2 - Soil Test Analysis and Fertilizer Recommendations

Note: Please include a fertilizer recommendation from the local County Extension Service for determining the nutrient needed by the specified crop(s).

Intended Crop(s): COASTAL BERMUDA HAY PRODUCTION

Yield Goal (s): 9 TONS IN 3 CUTTINGS pH: 7.85 N (lbs./acre)

A. Nutrient needed by crop for specific yield goal ** _____

B. Nutrient available in soil [=2 x NO₃-N(ppm)(0-6" soil depth)+6 x NO₃-N(ppm)(6-24" soil depth)] _____ 46

C. Nutrient amount still needed [=Nutrient needed-Nutrient available] _____
(enter this amount in Step 4A.)

**Please provide the means of determining these values.
Refer to Lab Analysis of Certified Lab Company

Step 3 - Calculate the Plant Available Nitrogen (PAN) Provided by the Sludge

(Use the values for Total N, NH₄-N and NO₃-N from Step 1)

A. Organic Nitrogen = Total N - (NH₄-N) - (NO₃-N) = 4.50-0.54-0.23=3.73 X 20=74.60 _____ 74.60
(Multiply the percent values in Appendix C for PAN) x 30% _____ 0.30
_____ 22.38

B. Ammonium Nitrogen (NH₄-N) x V= _____ + _____ 5.40
Use Volatization factor (V) = 0.5 if sludge is left on soil surface:
Use Volatization factor (V) = 1.0 if sludge is worked into soil.

C. Nitrate Nitrogen (NO₃-N)= _____ + _____ 4.60

D. 3A + 3B + 3C = (enter this amount in Step 4B.) Total PAN _____ 32.380

Step 4 - Calculate Maximum Sludge Application Rate Based on Crop Nitrogen Needs (SAR_N)

A. Enter the amount from Step 2. Nitrogen amount still needed. _____ 315 lbs/acre/year

B. Enter amount from Step 3D. Total PAN in sludge: _____ 32.380 lbs/ton

C. Sludge Application Rate (SAR_N) = A ÷ B = _____ ÷ _____ = _____ 9.73 tons/acre/year

FIELD 3

Sample	Nitrates	Avg	Initial	Top Dress	Cuttings	lbs of N
6	38	38	105	105	3	315

Step 2 - Soil Test Analysis and Fertilizer Recommendations

Note: Please include a fertilizer recommendation from the local County Extension Service for determining the nutrient needed by the specified crop(s).

Intended Crop(s): COASTAL BERMUDA HAY PRODUCTION

Yield Goal (s): 9 TONS IN 3 CUTTINGS pH: 6.45

N (lbs./acre)

A. Nutrient needed by crop for specific yield goal **

B. Nutrient available in soil [=2 x NO₃-N(ppm)(0-6" soil depth)+6 x NO₃-N(ppm)(6-24" soil depth)] 46

C. Nutrient amount still needed [=Nutrient needed-Nutrient available]
(enter this amount in Step 4A.)

**Please provide the means of determining these values.
Refer to Lab Analysis of Certified Lab Company

Step 3 - Calculate the Plant Available Nitrogen (PAN) Provided by the Sludge

(Use the values for Total N, NH₄-N and NO₃-N from Step 1.)

A. Organic Nitrogen = Total N - (NH₄-N) - (NO₃-N) = 4.50-0.54-0.23=3.73 X 20=74.60 74.60
(Multiply the percent values in Appendix C for PAN) x 30% 0.30
22.38

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Use Volatization factor (V) = 0.5 if sludge is left on soil surface:
Use Volatization factor (V) = 1.0 if sludge is worked into soil.

C. Nitrate Nitrogen (NO₃-N) = 4.60

D. 3A + 3B + 3C = (enter this amount in Step 4B.) Total PAN 32.380

Step 4 - Calculate Maximum Sludge Application Rate Based on Crop Nitrogen Needs (SAR_N)

A. Enter the amount from Step 2. Nitrogen amount still needed. 315 lbs/acre/year

B. Enter amount from Step 3D. Total PAN in sludge: 32.380 lbs/ton

C. Sludge Application Rate (SAR_N) = A ÷ B = 315 ÷ 32.380 = 9.73 tons/acre/year

FIELD 4

Sample	Nitrates	Avg	Initial	Top Dress	Cuttings	lbs of N
7	8	8	105	105	3	315