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September 12, 2006

VIA HAND-DELIVERY

Agenda Docket Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Bldg. F – 1st Floor
Austin, Texas 78753

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 SEP 12 PM 4:53
CHIEF CLERK'S OFFICE

Re: Motion to Revoke Synagro of Texas-CDR, Inc.
Permit No. WQ0004674000; TCEQ Docket No. 200-0324-SLG

Dear Docket Clerk:

Enclosed for filing in the above-referenced matter please find an original and 11 copies of Synagro of Texas-CDR, Inc.'s Response to Petition to Suspend and Revoke filed by Protestants, Barbara Hoffman, Alfred and Belita Hoffman, and Kenneth Witte.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Chesley N. Blevins
Attorney for Synagro

CNB/ry
1584\00\ltr060912

Enclosures

cc: Mailing List

Mailing List
Synagro of Texas-CDR, Inc.
Permit No. WQ0004674000 - TCEQ Docket No. 200-0324-SLG

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF OF STATE OFFICE

IN THE MATTER OF SYNAGRO
OF TEXAS-CDR, INC. FOR
PERMIT NO. WQ0004674000

§
§
§

BEFORE THE STATE OFFICE
OF ADMINISTRATIVE HEARINGS

**RESPONSE TO PETITION TO SUSPEND AND REVOKE
FILED BY PROTESTANTS, BARBARA HOFFMAN,
ALFRED AND BELITA HOFFMAN, AND KENNETH WITTE**

COMES NOW, Permittee, Synagro of Texas-CDR, Inc. ("Synagro", "Permittee" or "Applicant") by and through its attorneys and files its Response to Petition to Suspend and Revoke Filed by Protestants, Barbara Hoffman, Alfred and Belita Hoffman, and Kenneth Witte. In support thereof, Permittee respectfully shows the following:

I.
INTRODUCTION AND BACKGROUND

Synagro submitted an application on August 20, 2003. The application was determined to be administratively complete on August 29, 2003. Technical review was completed on April 26, 2004. A request for hearing was submitted by several individuals and, on February 15, 2005, the Texas Commission on Environmental Quality ("TCEQ," or the "Commission") issued an Interim Order determining that Danny Novak, Betty and James H. Hoffman, James W. Hoffman and Sharon Witte were affected persons as provided by applicable law. Prior to referral of the matter to the State Office of Administrative Hearings, the matter was referred to the Commission's Alternative Dispute Resolution staff for mediation. Mediation was held on March 10, 2005 and a Settlement Agreement was entered on that date. Signatories to that Settlement Agreement included the Applicant, the Executive Director (as witness), the Office of Public Interest Counsel (as witness), Betty Hoffman, James H. Hoffman, James W. Hoffman, and Sharon Witte. Based on the Settlement Agreement, Betty Hoffman, James H. Hoffman, James W. Hoffman, and Sharon Witte

withdrew their hearing requests. (*Attachment A.*) The permit was signed and issued on August 3, 2005.

Petitioners, who did not participate in the earlier proceeding, now seek to reopen the entire matter for review. While the rules allow a petition to be filed in very limited situations, the burden of proof is on the Petitioners to support their allegations. These Petitioners have not and, therefore, the petition should be rejected.

II. **ARGUMENT**

On February 15, 2006, Barbara Hoffman, Alfred and Belita Hoffman and Kenneth Witte ("Protestants" or "Petitioners") filed a petition with the Commission to suspend and revoke Permit No. 04674 issued to Synagro. In support of their petition, Protestants raised four issues, as follows: (1) Applicant miscalculated the agronomic rate; (2) Applicant did not submit a Nutrient Management Plan; (3) Applicant did not obtain the appropriate number of soil samples; and (4) the yield goals are "unrealistic." Based on these factors, Protestants believe that the Commission should revoke Synagro's permit pursuant to 30 TAC §305.66(a)(4), ("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"), and also 30 TAC §305.66(a)(5) ("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").

Even though the TCEQ rules allow a petition to be filed, it is clear that permit revocation is an extreme remedy to be used only where the Commission can make the affirmative findings set out in 30 TAC § 305.66(g). Those findings would be unsupported in this case. In fact, the uncontroverted record evidence is to the contrary.

On March 6, 2006, Synagro filed its Response to the Motion to Revoke. Synagro maintained

that Protestants' petition should be rejected or refused to be accepted for filing as (1) Protestants had not complied with applicable notification requirements; and (2) Protestants had not demonstrated the conditions precedent to support Commission revocation of the subject permit; namely, they did not as required by 30 TAC § 305.66(g) demonstrate that the violation(s) were significant **and** that Applicant did not make a substantial attempt to correct the violations. Specifically, Synagro timely submitted a minor amendment application to address the deficiency that was the primary basis of the petition to revoke; that is, to correct the soil nitrate input in the calculation of the agronomic loading rate and to reduce the agronomic loading rate on Field 3 based on the revised calculations. Field 3 is currently permitted to receive 8.3 tons/acre/year of biosolids. Synagro is seeking to amend its permit to reduce the allowable amount to 8.12 tons/acre/year. The revised calculations indicate no need to revise the agronomic loading rates for Fields 1, 2, or 4 as the newly calculated amounts are higher than those currently permitted. The amendment was filed well within fifteen days from when Synagro was first provided notice of the requestors' filing or intent to file a petition to revoke. Furthermore, the initial error was unintentional and the deficiency was so insignificant that the revised information results in no change to the relevant limiting parameter on three out of four fields, and only a minor change (a reduction of 0.18 tons/acre/year) to the fourth field. Moreover, no land-application has taken place at this site on any of the fields. In accordance with §305.66, therefore, the petition to revoke is inappropriate and should not be accepted for filing or, in the alternative, the petition should be denied. (*Attached hereto as Attachment B, and incorporated herein, as if included in full, is Applicant's March 6, 2006 filing.*)

To address one specific matter, even though Synagro inadvertently utilized incorrect soil nitrate input in the calculations used in the original application, the result was insignificant both for the reason that the calculations in the original application are historic and the actual land-application

will occur at rates based on new calculations using current soil analyses, and on the determination previously mentioned that the contested calculations resulted in only one very minor change in the acceptable agronomic rate for one field. Specifically, §312.48(2)(B)(vii) of the TCEQ rules requires permittees to submit a revised "suggested agronomic application rate for the Class B sewage sludge" on a quarterly basis. Also, a Special Provision in the permit issued to Synagro requires that agronomic loading rates be recalculated on a regular basis to ensure that nutrient balances are not exceeded. Thus, the actual application rate will be calculated based on new soil analyses and calculations and the permitted rate will become a mere ceiling number. Synagro could only apply at the maximum permitted rate if loading rate calculations based on current soil test data yielded a rate at or higher than the permitted rate. This safeguard ensures that no potential for overloading the sites exists and further minimizes the significance of the error made in good faith reliance on information from the lab.

With respect to Protestants' claim that Synagro did not submit a Nutrient Management Plan, Synagro submits that a Nutrient Management Plan was not required to be submitted at the time that Synagro applied for and obtained its permit. There is no violation of applicable law.

Protestants also claim that an improper number of soil samples were obtained at the site. They claim that soil samples are required to be obtained for every 40 acres. Protestants are wrong. The Commission's regulations require that soil samples be obtained to accurately show soil conditions and be taken at a spatial distribution of at least one composite sample per every 80 acres or less. 30 TAC §312.11(d). Synagro has complied with applicable regulations pertaining to the taking of soil samples.

Finally, Protestants claim that the yield goals submitted by the Applicant are "unrealistic." Protestants have failed to provide any support for this contention, and there is no evidence in the

record supporting this claim. Just the contrary, the record evidence supports the application, TCEQ review and permit as issued.

III.
CONCLUSION AND PRAYER

The Commission should make it clear to these Petitioners and others with an interest in permits that they will not be allowed to use the petition to revoke process to revisit already issued permits except in very specific circumstances; that broad unsubstantiated allegations as in this petition will not suffice.

To send any other message will only encourage broad after-the-fact attacks on already issued permits. Every permit issued by this Commission will be subject to unending collateral attacks outside of the normal review and hearing process. The drain on your Staff, time and resources, and those of others, is not warranted.

WHEREFORE PREMISES CONSIDERED, Synagro respectfully requests that Protestants' petition be rejected or denied. Protestants have wholly failed to demonstrate any good cause or evidence supporting revocation of Synagro's permit. They have failed to make even a prime facie showing to support their petition, certainly failing to meet their burden of proof.

Respectfully submitted,

LLOYD GOSSELINK BLEVINS
ROCHELLE & TOWNSEND, P.C.
816 Congress Ave., Suite 1900
Austin, Texas 78701
(512) 322-5809
(512) 472-0532 (Fax)

By: 
CHESLEY N. BLEVINS
State Bar No. 02487500

ATTORNEYS FOR SYNAGRO

CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of September, 2006 a true and correct copy of the foregoing document has been sent via facsimile, first class mail, Federal Express overnight delivery, or hand delivery to the following:

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Austin, Texas 78711-3087

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Belita & Alfred Hoffman
1001 Hoffman Lane
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Kimon Lymberry
Synagro of Texas – CDR, Inc.
4512 Brittmoore
Houston, Texas 77041

Susan Wilkerson
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Rock Island, Texas 77470

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Chesley N. Blevins

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 23, 2005

Ms. LaDonna Castanuela
Office of the Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Tx 78711-3087

via hand delivery

Re: TCEQ DOCKET NO. 2004-2038-SLG; Application of Synagro of Texas CDR, Inc. (Duncan Ranch 4) for Permit No. 4674

Ms. Castanuela:

On behalf of the ADR program of the Texas Commission on Environmental Quality, I conducted a mediation on the above-referenced matter on March 10, 2005. An agreement was reached between the Applicant and four of the five Protestants whose hearing requests were granted by the Commission in its Interim Order dated February 15, 2005, which resulted in the withdrawal of the four of the five pending hearing requests. I have attached a copy of the agreement and the withdrawal forms to this letter. Mediation efforts with the remaining parties are ongoing. Should you have any questions, please call me at 512/239-2941.

Sincerely,

A handwritten signature in cursive script that reads "Todd C. Burkey".

Todd Burkey, Attorney-Mediator
Alternative Dispute Resolution Program, Office of General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087, MC-222
Austin, Texas 78711-3087
512/239-2941 FAX 512/239-4015

Attachments

cc: attached ADR mailing list
Duncan Norton (Office of General Counsel)

Attachment A

IN RE:	§	BEFORE THE
APPLICATION BY	§	
SYNAGRO OF TEXAS CDR, INC. §	§	TEXAS COMMISSION ON
(DUNCAN RANCH 4)	§	
FOR PERMIT NO. 4674		ENVIRONMENTAL QUALITY

PROPOSED SETTLEMENT AGREEMENT

To avoid litigating the application of Synagro of Texas CDR, Inc. (Duncan Ranch 4) ("Applicant") for Texas Commission on Environmental Quality ("TCEQ" or "Commission") for Permit No. 4674 in a Commission contested case hearing, Applicant, the Executive Director of the Commission ("ED"), the Commission's Office of Public Interest Counsel ("OPIC"), and Betty & James H. Hoffman, James W. Hoffman and Sharon Witte as Protestants (collectively "Protestants") mediated their dispute and have proposed to agree to the following:

A. Applicant agrees:

1. To modify this pending application to reflect a reduction in the allowable application amounts from 9.73 to 8.3 dry tons per acre per year;
2. To allow the owner(s) of the application site to request discontinuance of applications on the site at any time;
3. To modify this pending application to reflect that Applicant is prohibited from land applying during the months of April, May, June and September (with an understanding by all parties that Applicant may not be able to incorporate applications during the months of July and August);
4. To provide notice, as soon as practicable, of intentions to make land applications. Such notice shall be provided via email to Sharon Witte, with a cc to James W. Hoffman;
5. To modify its application to reflect a 750 foot buffer around Danny Novak's place of business, located on Hwy 90A, and work in good faith with Mr. Novak with respect to the timing and application of biosolids;
6. To conduct water quality testing on the water well currently existing on Ann Wells Duncan Trust property, results of which shall be provided via email to Sharon Witte, with a cc to James W. Hoffman. First testing shall occur prior to the first application, then annually subsequent to the first testing;

B. All parties agree that provisions A1, A3, and A5 shall be made pursuant to modifications to Applicant's pending draft permit. Applicant agrees to provide the Executive Director with a revised map reflecting the buffer modification contemplated in Provision A5 above within 10 business days.

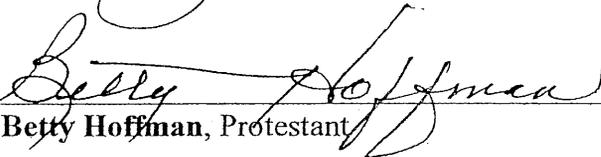
Settlement Agreement
Application of Synagro of Texas CDR, Inc. (Duncan Ranch 4)

- C. Applicant and Protestants agree to act in good faith to resolve any disagreement regarding the implementation of this Agreement.
- D. This Proposed Agreement is a legal contract between Applicant and Protestants, is enforceable by any party against another in a court of competent jurisdiction, and is effective as of the date the last party executes this Agreement.
- E. In consideration of the provisions listed above and actions to be taken by Applicant, Protestants propose to agree to withdraw their hearing requests on this matter. The signed withdrawal has been attached to this Proposed Agreement, as "Exhibit A".

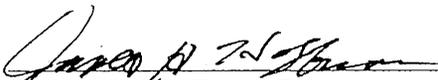

Applicant Representative

MATT BOCHAT
[print name]

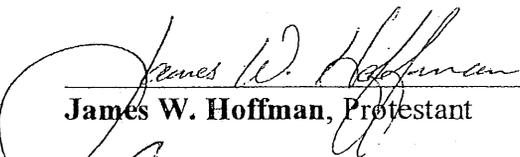
3-10-05
Date


Betty Hoffman, Protestant

3-10-05
Date


James H. Hoffman, Protestant

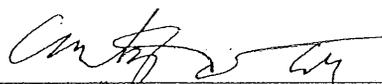
3/10/05
Date


James W. Hoffman, Protestant

3/10/05
Date

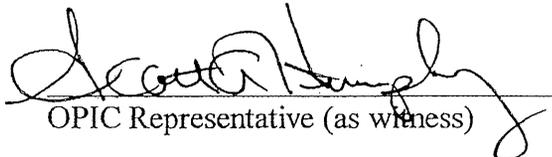

Sharon Witte, Protestant

3/10/05
Date


Executive Director Representative (as witness)

Anthony Taty
[print name]

3/10/05
Date


OPIC Representative (as witness)

SCOTT HUMPHREY
[print name]

3/10/05
Date

Ms. LaDonna Castanuela
Office of the Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2004-2038-SLG; Application of Synagro of Texas CDR, Inc.
(Duncan Ranch 4) for Permit No. 4674

Ms. Castanuela,

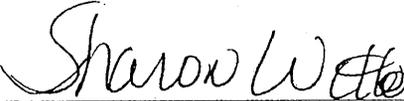
We hereby withdraw our hearing requests filed on the above-referenced permit application and no longer wish to protest this application.

Sincerely,



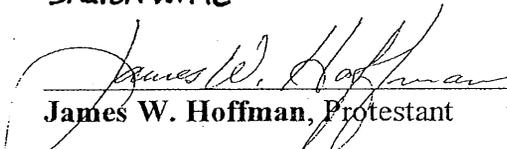
Betty Hoffman, Protestant

3-10-05
Date



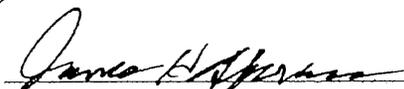
~~James H. Hoffman~~, Protestant
Sharon Witte

3/10/05
Date



James W. Hoffman, Protestant

3/10/05
Date



Sharon Witte, Protestant
James W. Hoffman

3/10/05
Date

Synagro of Texas CDR, Inc. (Duncan Ranch 4)
Application for Permit No. 4674
TCEQ DOCKET NO. 2004-2038-SLG

ADR MAILING LIST

FOR THE APPLICANT

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James W. Hoffman
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Betty & James H. Hoffman
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FOR THE EXECUTIVE DIRECTOR:

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Anthony Tatu, Staff Attorney
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Sharon Witte
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FAX: 979/234-6869

Tassie Fish
TCEQ Region 9
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254/751-0335 FAX: 254/772-9241

FOR PUBLIC INTEREST COUNSEL

Scott Humphrey
Office of Public Interest Counsel, MC-103
TCEQ
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Austin, Texas 78711-3087
512/239-6363 FAX: 512/239-6377

HEARING REQUESTERS
with granted hearing requests

Danny Novak
P.O. Box 397
Eagle Lake, Texas 77434

Ms. Fink's Direct Line: (512) 322-5867
Email: rfink@lglawfirm.com

March 6, 2006

VIA HAND DELIVERY

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

Re: Response to Motion to Revoke Synagro of Texas-CDR, Inc. Permit
No. WQ0004674000

Dear Ms. Castañuela:

Synagro of Texas-CDR (Synagro) respectfully requests that the Texas Commission on Environmental Quality (TCEQ) affirmatively reject or simply refuse to accept for filing the petition to revoke the above-referenced permit. The TCEQ may refuse to accept the petition for filing for the reason that notice to the applicant was not provided as required by §305.66 of the TCEQ's rules. That section requires that the permit-holder be given fifteen days notice before a petition to revoke can be filed. Upon the conclusion of the fifteen day notice period, a petition to revoke is only appropriate if the alleged violation is significant and the permit-holder has not taken substantial steps to correct the alleged violation. The intent of that fifteen day notice period is to provide the permit-holder time to take action to correct whatever deficiency is alleged and therein to forestall the filing of the revocation petition. If the permit-holder acts to correct the deficiency within that fifteen day period, then the basis of the petition to revoke is mooted and the petition should not be filed or accepted for filing by the TCEQ.

In this case, Synagro has submitted a minor amendment application to address the deficiency that was the basis of the petition to revoke; that is, to correct the soil nitrate input in the calculation of the agronomic loading rate and to reduce the agronomic loading rate on Field 3 based on the revised calculations. Field 3 is currently permitted to receive 8.3 tons/acre/year of biosolids. Synagro is seeking to amend its permit to reduce the allowable amount to 8.12 tons/acre/year. The revised calculations indicate no need to revise the agronomic loading rates for Fields 1, 2, or 4 as the newly calculated amounts are higher than those currently permitted. The amendment was filed well within fifteen days from when Synagro was first provided notice of the requestors' filing or intent to file a petition to revoke. In accordance with §305.66, therefore, the petition to revoke is inappropriate and should not be accepted for filing.

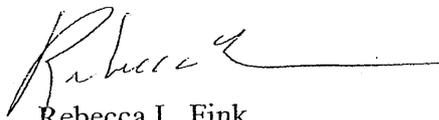
Attachment B

Section 305.66(g) of the TCEQ's rules provides in relevant part that "[b]efore denying, suspending, or revoking a permit under this section, the commission must find: (1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations...." In this case, neither of these conditions precedent are met. In addition to the fact that Synagro has already addressed the deficiency that was the basis of the petition to revoke by applying for a minor amendment, the deficiency was insignificant. First, the deficiency was so insignificant that the revised information results in no change to the relevant limiting parameter on three out of four fields and only a minor change (a reduction of 0.18 tons/acre/year) to the fourth field. Moreover, no land-application has taken place at this site on any of the fields.

The incorrect soil nitrate input in the calculations used in the original application is also insignificant for the reason that the calculations in the original application are historic and the actual land-application will occur at rates based on new calculations using current soil analyses. Specifically, §312.48(2)(B)(vii) of the TCEQ rules requires permittees to submit a revised "suggested agronomic application rate for the Class B sewage sludge" on a quarterly basis. Also, a Special Provision in the permit issued to Synagro requires that agronomic loading rates be recalculated on a regular basis to ensure that nutrient balances are not exceeded. Thus, the actual application rate will be calculated based on new soil analyses and calculations and the permitted rate will become a mere ceiling number. The only way Synagro would actually ever apply at the permitted rate is if loading rate calculations based on current soil test data yielded a rate at or higher than the permitted rate. This safeguard ensures that no potential for overloading the sites exists and further minimizes the significance of the error.

For the reasons explained herein and in accordance with the TCEQ's rules concerning petitions to revoke, Synagro requests that the TCEQ affirmatively reject or simply refuse to accept for filing the petition to revoke for the reason that the alleged deficiency has been addressed within the required notice period and therein mooted the petition. Additionally, Synagro reasserts that the erroneous input identified in the petition was insignificant and, therefore, not an appropriate basis for revocation.

Sincerely,



Rebecca L. Fink
Attorney for Synagro

cc: Service List

SERVICE LIST
Permit No. WQ0004674000

PARTIES	REPRESENTATIVE
Texas Commission on Environmental Quality	John E. Williams Staff Attorney - MC-173 Texas Commission on Environmental Quality 12005 Park 35 Circle, Bldg. A P.O. Box 13087 Austin, Texas 78711-3087 Phone 512/239-0600 Fax 512/239-3434 or 512/239-0606
Office of Public Interest Counsel of Texas Commission on Environmental Quality	Scott Humphrey Office of the Public Interest Counsel – MC 103 Texas Commission on Environmental Quality 12100 Park 35 Circle, Bldg. F – 4 th Floor P.O. Box 13087 Austin, Texas 78711-3087 Phone 512/239-0574 Fax 512/239-6377
Docket Clerk Texas Commission on Environmental Quality	Office of the Chief Clerk Texas Commission on Environmental Quality 12100 Park 35 Circle, Bldg. F – 1 st floor P.O. Box 13087 Austin, Texas 78711-3087 Phone 512/239-3300 Fax 512/239-3311
Barbara Hoffman	Barbara Hoffman 1051 Hoffman Road Alleyton, Texas 78935 Phone 979/234-2816