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Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

CHIEF CLERKS OFFICE

January 17, 2008

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
Austin, Texas 78711

**Re: City of Port Arthur
TCEQ Docket No. 2007-0599-MSW-E
Executive Director's Response to Motion to Overturn**

Dear Ms. Castañuela:

Enclosed for filing is the Executive Director's Response to Motion to Overturn in the above referenced matter.

Please file stamp documents and return a copy to Steve Shepherd, Staff Attorney, Environmental Law Division, MC 173.

If you have any questions, please contact me at (512) 239-0464.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Shepherd".

Steve Shepherd
Staff Attorney
Environmental Law Division

Cc: service list

TCEQ DOCKET NO. 2007-0599-MSW

MOTION TO OVERTURN THE	§	BEFORE THE TEXAS
EXECUTIVE DIRECTOR'S	§	
TEMPORARY AUTHORIZATION	§	COMMISSION ON
TO USE ALTERNATIVE DAILY	§	
COVER AT THE PORT ARTHUR	§	ENVIRONMENTAL QUALITY
LANDFILL	§	

**EXECUTIVE DIRECTOR'S
RESPONSE TO MOTION TO OVERTURN**

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

The Executive Director ("ED") of the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") files this response to Texas Campaign for the Environment and Community In-Power and Development Association Inc.'s ("Movant") Motion to Overturn ("MTO") the ED's November 28, 2007, Temporary Authorization regarding alternative daily cover ("ADC"). The Temporary Authorization authorized the Port Arthur MSW landfill to use earthen materials containing concentrations in excess of 1500 mg/kg of total petroleum hydrocarbons ("TPH") as ADC.

I. INTRODUCTION

The City of Port Arthur holds MSW Permit 1815A which authorizes the operation of its Type I MSW landfill located in Jefferson County on State Highway 73, approximately 1.1 miles southwest of the bridge over Taylor Bayou. The permit authorizes disposal of household waste, yard waste, commercial waste, Class 2 nonhazardous industrial waste, Class 3 nonhazardous

industrial waste and construction/demolition waste. (Permit 1815A Provision II B.)

The permit requires that waste be covered with earthen material on a daily basis, and the City applied to use ADC consisting of earthen materials produced from oil and gas exploration in the Gulf of Mexico mixed with fly ash. The ED mailed a notice of deficiency letter to the City identifying 25 deficiencies in the application. The City then provided a written response to address the deficiencies. The ED was satisfied with the response and issued the Temporary Authorization on November 28, 2007.

The ED considered the request in accordance with 30 TAC §330.165(d) which requires the applicant to provide various information specified in the rule. The City provided data indicating that the material contained more than 1,500 (mg/kg) of TPH, so the City was required to make a demonstration under 30 TAC §330.165(d)(4)(B) regarding the risk to human health and the environment. The ED was generally satisfied with the demonstration that use of the material would not pose a significant risk to the public or the environment.

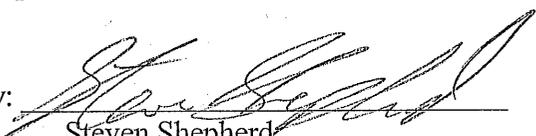
The ED also considered whether the application complied with 30 TAC §330.165(d)(5) which provides that ADC "...must not exceed constituent limitation imposed on waste authorized to be disposed at the facility." The ED's review focused on confirming that the material did not exceed the limits for the constituents listed in Table I in 30 TAC §335.521(a)(1), and not on whether the concentration of TPH was intended to be an independent "constituent limitation" under 30 TAC §330.165(d)(5). After reviewing the briefs filed in this matter, the ED now concludes that 30 TAC §330.165(d)(5) was intended as a limit independent of the demonstration required for TPH material under 30 TAC §330.165(d)(4)(B).

The City is prohibited from disposing of Class 1 nonhazardous waste by Permit 1815A, Provision II C. If the proposed ADC material were to be disposed of as waste, it would be considered Class 1 industrial waste that is not authorized to be disposed in this landfill. The ED supports granting the MTO, because contaminated soils that are not authorized to be disposed at the landfill should not be authorized to be used as ADC.

IV CONCLUSION

For these reasons, the ED respectfully requests that the Commission overturn the Temporary Authorization issued by the ED on November 28, 2007.

Respectfully submitted,

By: 

Steven Shepherd
Texas Bar No. 18224200
Attorney for Executive Director

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2008, the original and eleven true and correct copies of the Executive Director's Response to Motion to Overturn was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.


Steven Shepherd

**MAILING LIST
CITY OF PORT ARTHUR
TCEQ DOCKET NO. 2007-0599-MSW**

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RESOLUTION:

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