

TCEQ Docket No. 200 - \_\_\_\_\_ -MSW

2007 DEC 27 PM 1:20

**MOTION TO OVERTURN  
EXECUTIVE DIRECTOR'S  
APPROVAL OF ALTERNATIVE  
DAILY COVER BY REPUBLIC  
WASTE SERVICES OF TEXAS LTD**

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**BEFORE THE**

**CHIEF CLERKS OFFICE**

**TEXAS COMMISSION ON**

**ENVIRONMENTAL QUALITY**

**TEXAS CAMPAIGN FOR THE ENVIRONMENT AND COMMUNITY IN-  
POWER AND DEVELOPMENT ASSOCIATION INC.'S MOTION TO  
OVERTURN EXECUTIVE DIRECTOR'S NOVEMBER 28, 2007 TEMPORARY  
AUTHORIZATION FOR ACCEPTANCE OF NEWPARK WASTE AS  
ALTERNATE DAILY COVER BY CITY OF PORT ARTHUR LANDFILL**

**I. INTRODUCTION**

Comes now, Texas Campaign for the Environment ("TCE") and Community In-  
power and Development Association, Inc. ("CIDA") and files with the Texas  
Commission on Environmental Quality (TCEQ) this, their Motion to Overturn the  
Executive Director's (ED) November 28, 2007 Temporary Authorization for Acceptance  
of Newpark Waste as Alternate Daily Cover by City of Port Arthur Landfill. TCE is a  
state-wide organization focusing on issues of solid waste management in the state of  
Texas. CIDA is an organization of over 100 citizens in the Port Arthur area which seeks  
to foster and promote a safe, healthy and pollution-free community for the citizens of  
Port Arthur.

In amending the municipal solid waste (MSW) rules in 2004, the Texas  
Commission on Environmental Quality sought to address the use of inappropriate  
material as alternate daily cover. Those rules provide at 30 TAC § 330.165(d)(4) that  
alternative daily cover must not be hazardous waste, PCB wastes, material with a total  
petroleum hydrocarbon content above 1500 mg/kg, or exceed the limitations placed on

the material that would otherwise be acceptable at a facility as waste. If a material contains over 1500 mg/kg total petroleum hydrocarbons, the owner may attempt to submit a demonstration that acceptance of the material will not endanger human health or the environment.

In adding these conditions to the rules, the Commissioners explicitly discussed in public meeting that these rules were intended to put an end to the use of substances such as Newpark waste as alternative daily cover. The requirement that a waste not contain more than 1500 mg/kg of total petroleum hydrocarbons was placed into the rules with the specific aim of preventing the use of oil & gas waste as alternative daily cover. When adopting the current rules, the Commission's intent that Newpark type material not be used as alternative daily cover could not have been more clear.

Newpark material is waste from oil and gas operations, composed of the cuttings and spoils from drilling activities that are too contaminated by hydrocarbons or other constituents to be re-deposited into the environment at the wellsite. It is not unusual for such material to contain harmful constituents in such concentrations as to render the material hazardous waste. Such material also often contains naturally occurring radioactive material at substantially high levels, and thus often qualifies as radioactive waste (NORM waste). Because such material is derived from multiple drill sites, it can be highly variable, and include crude oil.

## II. ARGUMENT

On November 28, 2007, the Executive Director (ED) of the TCEQ acted in direct contravention of the Commission's rules and issued an authorization for the acceptance of Newpark waste at the City of Port Arthur Landfill (MSW Permit No. 1815A) for

“alternate daily cover.”<sup>1</sup> The authorization issued by the ED does not include the limitations now included in 30 TAC § 330.165. For example, the 1500 mg/kg total petroleum hydrocarbon limit contained in the rules is not made applicable to the authorization. Without these limitations, the City of Port Arthur is able to circumvent the intent of the new rules.

The authorization includes an ineffective sampling requirement, ostensibly intended to determine if the material is hazardous waste or other material prohibited. The sampling, however, is not required at any frequency, or even required more than once. Given the extreme variability of the waste involved, sampling on a single occasion does not address the potential for the authorization to result in the deposition of hazardous waste into a municipal solid waste landfill.

The limitation on material used as alternative daily cover as only that with total petroleum hydrocarbons in concentrations of less than 1,500 mg/kg was a key limitation in the eyes of the commission. The Commission explicitly noted in the preamble to the adoption of the rules as that this limitation was among those was being adopted, “to ensure that the composition of the alternative daily cover is appropriate for the wastes being covered within the landfill unit.”<sup>2</sup> The petroleum hydrocarbon limitation adopted with Newpark type material specifically in mind. The authorization issued by the ED does not include this limitation, rendering the authorization ineffective at addressing the concerns the Commission had in mind when adopting the current rules.

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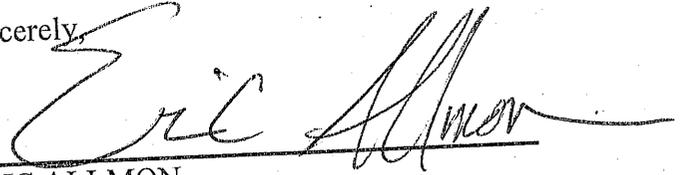
<sup>1</sup> Attachment A, November 28<sup>th</sup>, 2007 letter from Executive Director to Mr. John A. Comeux, P.E.

<sup>2</sup> 31 Tex. Reg. 2514 (March 24, 2006).

### III. PRAYER

For the reasons stated above, TCE and CIDA respectfully request that the Texas Commission on Environmental Quality overturn the Executive Director's November 28, 2007 authorization for the use of Newpark waste at the City of Port Arthur Landfill.

Sincerely,



ERIC ALLMON

State Bar No. 24031819

**LOWERRE & FREDERICK**

44 East Avenue, Suite 100

Austin, Texas 78701

(512) 469-6000 phone

(512) 482-9346 facsimile

ATTORNEYS FOR TEXAS CAMPAIGN  
FOR THE ENVIRONMENT AND  
COMMUNITY IN-POWER AND  
DEVELOPMENT ASSOCIATION, INC.

CC: Service List

**ATTACHMENT A**  
**EXECUTIVE DIRECTOR'S NOVEMBER 28, 2007 AUTHORIZATION FOR**  
**ACCEPTANCE OF NEWPARK WASTE AT CITY OF PORT ARTHUR**  
**LANDFILL**

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 28, 2007

Mr. John A. Comeaux, P.E.  
Director of Public Works  
City of Port Arthur  
444 Fourth Street  
Port Arthur, TX 77640

Re: Municipal Solid Waste (MSW) - Jefferson County  
City of Port Arthur Landfill - MSW Permit No. 1815A  
Temporary Authorization: Alternative Daily Cover (ADC)  
WWC No. 11911579; RN100225390/CN600132021

Dear Mr. Comeaux:

We have reviewed your request dated October 8, 2007 and received by the MSW Permits Section on the same day for a temporary authorization to revise your permit to use the Newpark material as ADC at the referenced facility. Our evaluation indicates that the information presented is sufficient to allow a temporary change to the permit for the temporary use of the Newpark ADC, for a term not to exceed 180 days in accordance with Title 30 of the Texas Administrative Code, Section 305.70(m)(1). This trial period will enable the City of Port Arthur Landfill to continue working with the TCEQ to obtain full authorization to use the alternate daily cover on a permanent basis.

Enclosed is a copy of the referenced temporary authorization which should be maintained in your files. The documentation prepared and submitted to support the temporary authorization request is considered requirements of the permit.

If you have any questions concerning this matter, please contact Mr. Frank Zeng at (512) 239-1132. When addressing written correspondence, please use Mail Code 124 (MC 124).

This action is taken under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

Sincerely,

A handwritten signature in black ink that reads "Richard C. Carmichael".

Richard C. Carmichael, Ph.D., P.E.  
Manager, Municipal Solid Waste Permits Section  
Waste Permits Division

RCC/FZ/ff

Enclosure

**ATTACHMENT B**  
**TEMORARY AUTHORIZATION TO MUNICIPAL SOLID WASTE PERMIT**  
**NO. 1815A, CITY OF PORT ARTHUR LANDFILL TO ACCEPT NEWPARK**  
**WASTE**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## TEMPORARY AUTHORIZATION TO MUNICIPAL SOLID WASTE PERMIT NO. 1815A CITY OF PORT ARTHUR LANDFILL

Municipal Solid Waste Permit No. 1815A is hereby authorized as follows:

### Description of change(s):

City of Port Arthur Landfill is hereby authorized to temporarily use the Newpark material as an Alternative Material Daily Cover (ADC). The material is hereby approved to be used on a temporary-trial basis only, subject to the following conditions.

1. The source of Newpark material used for ADC shall be limited to the single dedicated stockpile located at Newpark's facility. Newpark shall use a third party contractor to sample stormwater generated from that stockpile for each discharge event prior to entering the detention pond and commingling with stormwater from other sources. Samples shall be analyzed for pH, total metals, and total organic carbon. The results of the analysis shall be submitted with written status reports required by Item 7 below.
2. As required by Title 30 of the Texas Administrative Code (30 TAC), Section (§)335.510, Newpark shall document that the material shipped to the City's landfill does not exceed the concentrations listed in Table 1, Constituents of Concern and Their Maximum Leachable Concentrations, located in §335.521(a)(1) using the analytical and sampling methods required by §335.509. Concentrations of Total Petroleum Hydrocarbons (TPH) shall be determined using Texas Commission on Environmental Quality Method 1005.
3. A maximum seven day supply of the Newpark material may be stockpiled within the active working face and applied only on the landfill working face as ADC. Newpark material shall not be stockpiled or applied at any other location at the City's landfill. All stormwater contacting the stockpile shall be considered contaminated water and shall be managed as such. The Newpark material stockpile shall be managed such that dust and odors do not create nuisance conditions in the surrounding area.
4. A minimum thickness of six (6) inches of Newpark material shall be applied as ADC and shall be applied only to landfill areas that are lined with a Subtitle D composite liner system that provides for leachate collection and removal.
5. The City of Port Arthur shall sample leachate generated at the landfill a minimum of once per month during the temporary authorization period and analyze the samples for constituents specified in §330.419.
6. Use of ADC is limited to a 24-hour period after which either waste or daily cover as defined in §330.165(a) must be placed.

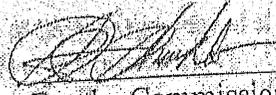
7. A written status report must be submitted on a two-month basis to the executive director during the trial period. The reports shall contain information describing the effectiveness of the alternative material, any problems that may have occurred, and any corrective action required as a result of such problems. The report shall also include the results of the analysis required in item 1 above.

The documentation prepared and submitted to support the temporary authorization request shall be considered as requirements of the permit.

APPROVED, ISSUED, AND EFFECTIVE in accordance with 30 TAC, §305.70(m)(1) for 180 days.

ISSUED DATE:

NOV 28 2007

  
For the Commission

Certificate of Service

I, Eric Allmon, hereby state that a true and correct copy of the foregoing Motion to Overturn the Executive Director's (ED) November 28, 2007 Temporary Authorization for Acceptance of Newpark Waste as Alternate Daily Cover by City of Port Arthur Landfill has been sent on this day, the 21<sup>st</sup> day of December, 2007, by U.S. first-class mail and/or facsimile transmission to those listed below.

  
Eric Allmon

For the TCEQ Chief Clerk:

LaDonna Castanuela  
Chief Clerk, TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-3311 (fax)

For the Executive Director:

Guy Henry  
Legal Division  
Texas Commission on Environmental  
Quality  
MC-173  
P.O. Box 13087  
Austin, Texas 78711  
(512) 239-0606 (Fax)

For the Public Interest Counsel:

Vic McWherter  
Office of the Public Interest Counsel  
Texas Commission on Environmental  
Quality  
MC-103  
P.O. Box 13087  
Austin, Texas 78711  
(512) 239-6363  
(512) 239-6377 (fax)

For the Applicant:

Mr. John A. Comeux, P.E.  
Director of Public Works  
City of Port Arthur  
  
444 Fourth Street  
Port Arthur, TX 77640