

DOCKET NO. 2008-1446-MSW
TCEQ MSW PERMIT NO. 2353

2009 JAN 30 AM 11: 17

CHIEF CLERKS OFFICE

APPLICATION BY	§	BEFORE THE
DARLING INTERNATIONAL, INC.	§	TEXAS COMMISSION
FOR	§	ON
MSW PERMIT NO. 2353	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this response to a hearing request on the application by Darling International, Inc. (Applicant) for a new Municipal Solid Waste (MSW) Permit No. 2353. The Executive Director received a timely hearing request and Motion for Reconsideration from Downstream Environmental, LLC (Downstream).

The Executive Director has attached the following items to this response:

Attachment A	Draft Permit
Attachment B	Technical Summary and Executive Summary
Attachment C	Compliance History of the Applicant
Attachment D	Executive Director's Response to Public Comment
Attachment E	Map of the site (provided in application)

The Executive Director has provided a copy of this response to the hearing requestor.

I. Description of Application and Procedural Background

Darling International, Inc. proposes to locate a facility for processing of grease trap waste at 3701 Schalker Street, 850 feet south of Cavalcade Street, in Houston, Harris County, Texas. Elevation and Coordinates of Current Permanent Benchmark: Latitude: 29° 48' 4.75" N, Longitude: 95° 20' 47.24" W, Elevation: 49 feet above mean sea level (msl). The total area within the proposed permit

boundary is approximately 0.77 acres. The permitted area would lie within a larger tract owned by the Applicant which currently contains its offices and its rendering plant. The proposed facility would consist of a site entrance gate, security fencing, paved all-weather access to the site, a concrete-paved yard and parking area, an office/lab building, a grease processing building, waste receiving, treatment, and discharge units consisting of concrete sumps and pits, steel tanks, roll-off containers and curbed concrete slab foundations, and surface drainage and storm water run-on/runoff control structures.

This permit, if approved, would authorize the proposed facility to accept, store, and process grease trap waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational and industrial activities.

On March 9, 2007, TCEQ received this application for proposed new Type V-GG Municipal Solid Waste Permit No. 2353. On April 30, 2007, the Executive Director declared the application administratively complete. On June 6, 2007 the Notice of Receipt of Application and Intent to Obtain a Type V Municipal Solid Waste Permit for this application was published in Spanish in *La Voz de Houston*, a newspaper published primarily in Spanish and generally circulated in the county in which the facility is proposed to be located. On June 7, 2007, the Notice of Receipt of Application and Intent to Obtain a Type V Municipal Solid Waste Permit for this application was published in English in *The Houston Chronicle*, the newspaper of largest circulation in the county in which the facility is proposed to be located.

On April 14, 2008, the Executive Director completed the technical review of the application and prepared a draft permit. On May 7, 2008 the Notice of Application and Preliminary Decision for Municipal Solid Waste Permit for this application was published in Spanish in *La Voz de Houston*, a newspaper published primarily in Spanish and generally circulated in the county in which the facility is proposed to be located. On May 8, 2008, the Notice of Application and Preliminary Decision for Municipal Solid Waste Permit for this application was published in English in *The Houston Chronicle*, the newspaper of largest circulation in the county in which the facility is proposed to be located. On June 9, 2008, the public comment period ended. The TCEQ Chief Clerk's Office mailed the Executive Director's Response to Comments on August 7, 2008. The time period for requesting a contested case hearing closed on September 8, 2008.

Because this application was declared administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted under House Bill 801.¹

1 Tex. H.B. 801, 76th Leg., R.S. (1999).

II. Evaluation of Hearing Requests

The regulations governing requests for contested case hearings are found at Title 30, Texas Administrative Code, Chapter 55. Sections 55.201(c) and (d) require that a request for contested case hearing:

- 1) be in writing;
- 2) be timely filed;
- 3) ask for a contested case hearing;
- 4) provide the name, address, daytime telephone number, and fax number, if possible, of the person who files the request;
- 5) provide any other information specified in the public notice of the application; and
- 6) raise disputed issues.

In addition to requesting a contested case hearing, a person must be an *affected person* as that term is defined in 30 Tex. Admin. Code § 55.203(a).

For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

30 Tex. Admin. Code § 55.203(c) lists factors to consider in determining whether a person is an affected person, including the following:

- 1) whether the interest claimed is one protected by the law under which the application will be considered,
- 2) distance restrictions or other limitations imposed by law on the affected interest,
- 3) whether a reasonable relationship exists between the interest claimed and the activity regulated,
- 4) the likely impact of the regulated activity on the health and safety of the person and on the use of the property of the person,
- 5) the likely impact of the regulated activity on use of the impacted natural resource by the person, and
- 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

If the Commission determines that the hearing request is timely and that the requestor is an affected person, the Commission applies the following test to the issues raised to determine if any of the issues should be referred to the State Office of Administrative Hearings for a contested case hearing.

- 1) Does the issue involve a disputed question of fact, not questions strictly of law or

- policy?
- 2) Was the issue raised during the public comment period?
 - 3) Is the issue relevant and material to the Commission's decision on the application?

III. Analysis of Hearing Request

A. Was the request for a contested case hearing in this matter timely and in proper form?

Yes. The hearing request submitted by Downstream was made in writing, timely filed, requests a contested case hearing, provides the proper contact information, and raises disputed fact issues.

B. Is Downstream an "affected person"?

Downstream identifies itself as a competitor of the Applicant and asserts that its economic interest as a competitor serving the same customer base is a justiciable interest that qualifies the requestor as an affected person. Downstream asserts that the impact to its business is unique and distinguishable from other waste industries because Downstream was previously denied a permit to operate a similar facility on Oak Tree Drive, resulting in a loss of several hundred thousand dollars.

While some interests asserted by Downstream include issues that are protected by the Texas Solid Waste Disposal Act and TCEQ's municipal solid waste rules, no reasonable relationship exists between Downstream's interests and the facility because Downstream's facility is twenty (20) miles from the Applicant's proposed facility and because Downstream did not demonstrate how a determination on this application would redress the alleged economic impact. Thus, the Executive Director concludes Downstream is not an affected person as that term is defined in the rules.

A Downstream is not an affected person would be consistent with a prior ruling by the Commission. At its August 20, 2008 agenda (Item No. 3), the Commission denied Downstream's similar hearing request regarding U.S. Oil Recovery LP's application for a permit for an the same type of permit.

C. Which issues raised by hearing requestors should be referred to the State Office of Administrative Hearings for a contested case hearing?

If the commission determines that Downstream is an affected person, the commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks:

1. Whether the issues involve disputed questions of fact;
2. Whether the issues were raised during the public comment period; and

3. Whether the issues are relevant and material to the decision on the permit application.

Downstream raised the following issues in its comments and hearing request:

1. Buffer Zone: Does the fact that the Applicant's proposed facility lacks the 50-foot buffer zone between a building and the fence warrant denial of the application?
2. Odor: Will the Applicant be able to adequately control odors?
3. Compliance History: Does the Applicant's compliance history with the City of Houston Health Department warrant denial of the application?
4. Process Description: Does the application include adequate detail as to how the waste will be processed at the facility, and specifically, as to how odors will be controlled at the point of offload?
5. Wastewater Discharge: Will the Applicant be able to comply with wastewater discharge agreements?
6. Financial Assurance: Is the amount of financial assurance adequate?
7. Is the Executive Director's preliminary decision arbitrary and capricious in that standards are unfairly or inconsistently applied to different applicants?
8. Is the Executive Director's decision the result of intentional sex discrimination by the TCEQ by holding a woman-owned business to a higher standard than others?
9. Is the Executive Director's decision retaliatory against the requestor or its Chief Executive Officer for whistle-blowing and/or repeated prior challenges of actions by the TCEQ and its Executive Director?

1. Does the issue involve a disputed question of fact?

The Executive Director finds that all of the issues listed above are disputed issues of fact except for Issue No. 7, whether the ED's preliminary decision is arbitrary and capricious in that standards are unfairly or inconsistently applied to different applicants. This is a question of law, specifically, the constitutionality of the ED's action, and not a question of fact.

2. Were the issues raised during the public comment period?

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain a Municipal Solid Waste Permit. The date on which the public comment period ends varies under the rules. In this case, the public comment period began on June 7, 2007, and ended on June 9, 2008, 30 days after the last publication of the Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit.

Only Issues 1, 2 and 3 were raised during the public comment period. The remaining issues were only raised in Downstream's Request for Hearing and Request for Reconsideration, filed after the close of the comment period. Thus, Issues 4 – 9 are not timely and should not be referred to SOAH.

3. Are the issues relevant and material to the decision on the application?

The ED finds that all of the issues listed above are relevant and material to the decision on the application, except for the following:

3. Compliance History: Does the Applicant's compliance history with the City of Houston Health Department warrant denial of the application?

The TCEQ's jurisdiction is limited by the Texas Solid Waste Disposal Act (Tex. Health & Safety Code Chapter 361 and rules promulgated thereunder. 30 Tex. Admin. Code Section 60.1(c) prescribes the components of the compliance history that may be considered. Under this rule, the TCEQ compliance history does not include complaints reported only to other agencies, such as the City of Houston Health Department. Therefore, the TCEQ is not authorized to deny the permit application based on the applicant's compliance history with the City of Houston Health Department. Thus, this issue is not relevant and material to the decision on the application and should not be referred to SOAH.

7. Is the TCEQ's decision arbitrary and capricious in that standards are unfairly or inconsistently applied to different applicants?

Downstream's comment asks whether the TCEQ exercised its authority in an unconstitutional manner by making an arbitrary and capricious decision to issue this permit. This question is not appropriate for referral to SOAH because it relates to a broad question regarding the constitutionality of the TCEQ's action, not a question about whether the instant permit application complies with any law or TCEQ rule requirement for a grease trap processing facility. Questions regarding the constitutionality of a TCEQ action are not properly addressed in administrative hearings.

8. Is the TCEQ's decision the result of intentional sex discrimination by the TCEQ by holding a woman-owned business to a higher standard than others?

Downstream raises concerns that the TCEQ's decision results from intentional sex discrimination by the TCEQ against Downstream, a woman-owned business. This comment seems to be raised in this context because Downstream was denied a similar permit by the TCEQ and is a woman-owned business. Whether the TCEQ discriminated against a woman-owned business by awarding a permit to a competitor is not relevant or material to the decision on this application. The TCEQ assesses each application independently of others and does not take into consideration the sex of the applicant. Further, this question is not appropriate for referral to SOAH because it relates to a broad question regarding the legality of the TCEQ's action, not a question about whether the instant permit application complies with any law or TCEQ rule requirement for a grease trap processing facility. Questions

regarding the legality of a TCEQ action are not properly addressed in administrative hearings.

9. Is the TCEQ's decision retaliatory against the requestor, Downstream, or its Chief Executive Officer, Mary Wimbish, for whistle-blowing and/or repeated prior challenges of actions by the TCEQ and its Executive Director?

Downstream states that its owner, Mary Wimbish, has "challenged the agency repeatedly for incompetency and failure to enforce the laws, especially the permit requirements." It contends that Ms. Wimbish "has been a whistle blower and suffered retaliation as a result." This comment seems to be raised in this context because Downstream was denied a similar permit by the TCEQ. This question is not appropriate for referral to SOAH because it relates to a broad question regarding the legality of the TCEQ's action, not a question about whether the instant permit application complies with any law or TCEQ rule requirement for a grease trap processing facility. Questions regarding the legality of a TCEQ action are not properly addressed in administrative hearings.

IV. Duration of the Contested Case Hearing

Should the Commission grant the hearing request, the Executive Director recommends that the duration for a contested case hearing on this matter, from preliminary hearing to the presentation of a proposal for decision before the Commission, be no more than nine months.

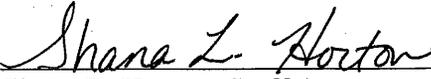
V. Executive Director's Recommendation

The Executive Director respectfully recommends that the Commission deny the hearing request by Downstream Environmental, LLC because it is not an affected person and either grant the permit or remand the permit application to the Executive Director for processing as an uncontested matter.

If the Commission grants the hearing request, the Executive Director recommends that only Issues 1 and 2, related to the required buffer zone and odor control, be referred to SOAH.

The Executive Director further recommends that the Motion for Reconsideration included with the hearing request be denied.

Respectfully submitted,



Shana L. Horton, Staff Attorney
Environmental Law Division
State Bar No. 24041131
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
(512) 239-1088

Representing the Executive Director of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on January 30, 2009, the original and seven copies of the Executive Director's Response to Hearing Request for the application by Darling International, Inc. for MSW Permit No. 2353 were filed with the Office of the Chief Clerk at the Texas Commission on Environmental Quality, and a complete copy was mailed to all persons on the mailing list, below.

Shana L. Horton

Shana L. Horton

Mailing List

John Bohannon
Darling International, Inc.
251 O'Connor Ridge Blvd., Ste. 300
Irving, Texas 75038-6510

Brian Dudley
Cook Joyce Inc.
812 W. 11th St.
Austin, Texas 78701-2053

Mary Wimbish
Downstream Environmental, LLC
2222 Bissonnet St., Ste. 103
Houston, Texas 77005-1510

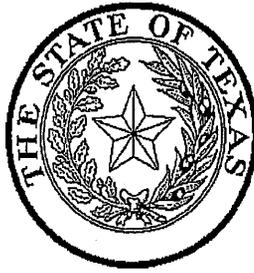
Blas Coy, Jr.
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CHIEF CLERKS OFFICE

2009 JAN 30 AM 11:17

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Attachment A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PERMIT FOR MUNICIPAL
SOLID WASTE (MSW) MANAGEMENT SITE
Issued under provisions of Texas
Health & Safety Code
Chapter 361

MSW Permit No.: 2353

Name of Permittee: Darling International Inc
251 O'Conner Ridge Blvd., Suite 300
Irving, Texas 75038-6535

Operator: Darling International Inc.
251 O'Conner Ridge Blvd., Suite 300
Irving, Texas 75038-6535

Facility Name: Schalker St Grease Trap Waste Processing Facility

Classification of Site: Type V Grease Trap Processing Facility

Wastes to be Accepted: Grease Trap Waste Only

The permittee is authorized to store and process wastes and to recycle recovered materials in accordance with the limitations, requirements, and other conditions set forth herein. This permit is granted subject to the rules and Orders of the Commission and laws of the State of Texas. Nothing in this permit exempts the permittee from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality. This permit will be valid until canceled, amended, or revoked by the Commission.

APPROVED, ISSUED AND EFFECTIVE in accordance with the Texas Health & Safety Code Chapter 361 and Title 30 Texas Administrative Code (30 TAC) Chapter 330.

ISSUED DATE:

For the Commission

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Darling International, Inc
Schalker St. Grease Trap Waste Processing Facility
MSW Permit No. 2353

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I. Size and Location of Facility

A. This Type V Grease Processing site is located at 3701 Schalker St, in Houston, Harris County, Texas. The facility contains 0.7735 acres.

B. The legal description is contained in Appendix 1-2 of the application.

C. Coordinates and Elevation of Site Permanent Benchmark:

Latitude: 29° 48' 4.75" N

Longitude: 95° 20' 47.24" W

Benchmark Elevation: 43.059 feet above Mean Sea Level

II. Facilities and Operations Authorized

A. Days and Hours of Operation

The operating hours of this municipal solid waste facility will be 24 hours per day, 7 days a week. The business hours correspond to the hours that the facility is open to the public for the receipt of waste. The operator shall post the actual operating hours on the site sign.

B. Wastes Authorized at this Facility

The permittee is authorized to store and process grease trap waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities under the proposed permit.

C. Wastes Prohibited at This Facility

Any other liquid waste or solid waste from another municipal or industrial source. Other wastes which may not be accepted at the site include hazardous wastes; wastes regulated by the Toxic Substances Control Act (TSCA); radioactive wastes; hydrophoric and polyphoric wastes; explosive and shock sensitive materials; infectious, biological, etiological, or pathogenic wastes; pressurized gases, gas cylinders, or aerosol cans.

D. Waste Acceptance Rate

Liquid waste may be accepted for processing at this facility at a rate of up to 42,000 gallons-per-day of grease trap waste.

E. Maximum Volume Available for Storage

Total available liquid waste storage capacity of this facility is 80,000 gallons for untreated waste with a maximum storage limit of 72 hours for unprocessed waste materials and processed waste materials.

F. Facilities Authorized

The permittee is authorized to operate the facilities related to the processing and storage of the wastes authorized, and related to the recycling of the recovered materials, which shall include units, structures, appurtenances, or improvements as described in the permit application.

G. Changes, Additions, or Expansions

Any proposed facility changes must be authorized in accordance with TCEQ rules in 30 TAC Chapter 330 (Municipal Solid Waste) and 30 TAC Chapter 305 (Consolidated Permits).

III. Facility Design, Construction, and Operation

A. Facility design, construction, and operation must comply with this permit, Commission Rules, including 30 TAC §§330.53-330.73, and 330.201-249, and Special Provisions contained in this permit, and the permit application.

B. The entire waste management facility shall be designed, constructed, operated, and maintained to prevent the release and migration of any waste, contaminant, or pollutant, and to prevent inundation or discharge from the areas surrounding the facility components. This site must be designed, constructed and maintained to collect spills and incidental precipitation in such a manner as to:

1. preclude the release of any contaminated runoff or spills; and
2. prevent washout of any waste by a 100-year storm.

C. The site shall be designed and operated so as not to cause a violation of:

1. the requirements of the Texas Water Code, §26.121;
2. any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, §402 as amended;
3. the requirements under the Federal Clean Water Act, §404, as amended; and

4. any requirement of an area wide or statewide water quality management plan that has been approved under the Federal Clean Water Act, §208 or §319, as amended.

- D. All facility employees and other persons involved in facility operations shall be qualified, trained, and experienced to perform their duties so as to achieve compliance with this permit. The permittee shall further ensure that personnel are familiar with safety procedures, contingency plans, the requirements of the Commission's rules, and this permit, commensurate with their levels and positions of authority.

IV. Financial Assurance

- A. General. Authorization to operate the facility is contingent upon compliance with provisions contained in this permit and maintenance of financial assurance in accordance with 30 TAC Chapter 330 Subchapter K and 30 TAC Chapter 37.
- B. Closure Financial Assurance. The amount of financial assurance posted for closure shall be provided annually in current dollars in an amount equal to closing the entire facility pursuant to 30 TAC §330.282(a). The owner and/or operator shall annually adjust the closure cost estimate and the dollar amount of the financial assurance for inflation within 60 days prior to the anniversary date of the permit pursuant to 30 TAC §330.282.
- C. Closure Financial Assurance Amount. Within 60 days after the date of permit issuance or prior to the initial receipt of waste, the permittee shall provide financial assurance instrument(s) for demonstration of closure in an amount equal to but not less than \$33,194.00 for closure in 2007 dollars. The amount of financial assurance to be posted annually shall be determined as described in Section IV.B. of this permit.
- D. Closure Plan Modifications. If the facility's closure plan is modified, the permittee shall provide new cost estimates in current dollars, which meet the requirements 30 TAC Chapter 37 and 30 TAC §§330.282. Modifications shall be made pursuant to 30 TAC §305.70. The amount of the financial assurance mechanism shall be adjusted within 20 days after the modification is approved. Adjustments to the cost estimates and/or financial assurance instrument to comply with any financial assurance regulation that is adopted by the TCEQ subsequent to the issuance of this permit, shall be initiated as a modification within 30 days after the effective date of the new regulation.

V. Facility Closure

Closure shall commence:

- A. Upon direction by the Executive Director of the TCEQ for failure to comply with the terms and conditions of this permit or violation of state or federal regulations.

The Executive Director is authorized to issue emergency orders to the permittee in accordance with §§5.501 and 5.512 of the Texas Water Code regarding this matter after considering whether an emergency requiring immediate action to protect the public health and safety exists;

- B. Upon abandonment of the site;
- C. Upon direction of the Executive Director for failure to secure and maintain adequate financial assurance as required; or
- D. Upon permittee's notification to the TCEQ that the facility will no longer operate.

VI. Standard Permit Conditions

- A. This permit is based on and the site owner/operator shall follow the permit application submittals dated March 9, 2007, and revised March 30, 2007, August 23, 2007, October 25, 2007, January 4, 2008, and January 30, 2008. These application submittals are hereby approved subject to the terms of this permit, the rules and regulations, and any orders of the TCEQ. These application materials are incorporated into this permit by reference in Attachment A as if fully set out herein. Any and all revisions to these elements shall become conditions of this permit upon the date of approval by the Commission. The permittee shall maintain the application and all supporting documentation at the facility and make them available for inspection by TCEQ personnel.
- B. Attachment B, consisting of minor amendments, modifications, and corrections to this permit, is hereby made a part of this permit.
- C. The permittee shall comply with all conditions of this permit. Failure to comply with any condition may constitute a violation of the permit, the rules of the Commission, and the Texas Solid Waste Disposal Act and is grounds for an enforcement action, revocation, or suspension.
- D. Inspection and entry onto the site by authorized personnel shall be allowed during the site operating life.
- E. The provisions of this permit are severable. If any permit provision or the application of any permit provision to any circumstance is held invalid, the remainder of this permit shall not be affected.
- F. Regardless of the specific designs contained in the permit application, the permittee shall be required to meet all performance standards in the permit, the application, or as required by local, state, and federal laws.

- G. If differences arise between the rules, regulations, and permit provisions and the incorporated application materials, then the rules, regulations, and permit provisions shall prevail.
- H. The permittee shall comply with the requirements of the air permit exemption in 30 TAC §106.534, if applicable, and the applicable requirements of 30 TAC chapters 106 and 116.

VII. Incorporated Regulatory Requirements

- A. The permittee shall comply with all applicable federal, state, and local regulations and shall obtain any and all other required permits prior to the beginning of any operation authorized by this permit.
- B. To the extent applicable to the activities authorized by this permit, the requirements of 30 TAC Chapters 37, 281, 305, and 330, and future revisions are adopted by reference and are hereby made provisions and conditions of this permit.

VIII. Special Permit Provisions

- A. As required by Texas Department of Transportation (TxDOT), the permittee required to remove all litter from the highway rights of way attributable to operation of the facility, the standards, and at the frequencies to be determined by TxDOT, and that provisions be taken to prevent the tracking of mud onto the highway.
- B. The facility will not be within 1,000 feet of any highway that is subject to control under the Highway Beautification provisions of the Texas Litter Abatement Act.

IX. ATTACHMENT A

The Permit Application.

X. ATTACHMENT B

Minor Amendments, Modifications, and Corrections to MSW Permit No. 2353.

Attachment B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXECUTIVE SUMMARY

March 31, 2008

DESCRIPTION OF APPLICATION

Applicant: Darling International Inc.
Municipal Solid Waste (MSW) Permit Application No. 2353

Type: Type V Facility – Grease Trap Processing Facility

Request: To issue a permit, MSW Permit No. 2353, to authorize Darling International Inc. to operate a Municipal Solid Waste Grease Trap Processing Facility.

Authority: Texas Commission on Environmental Quality rules, 30 TAC Chapters 305 and 330.

STAFF RECOMMENDATION

Issue permit as requested.

TECHNICAL INFORMATION

General: The Schalker Street Grease Trap Processing Facility is located in Harris County at 3701 Schalker Street in the city of Houston, Texas. The facility will be authorized to accept and process up to 42,000 gallons per day of grease trap waste only.

The permit application meets the requirements of the Commission's rules and provides the proper safeguards to protect the public health and safety, and the environment.

Conditions: Conditions of the permit are set forth in the permit document.

CONTACT Ms. Alayna M. Goetsch at 239-2353
Municipal Solid Waste Permits Section

Attachment C

Compliance History

Customer/Respondent/Owner-Operator:	CN600480826 Darling International Inc.	Classification: AVERAGE	Rating: 1.80
Regulated Entity:	RN100871995 DARLING INTERNATIONAL SCHALKER STREET GREASE TRAP WASTE PROCESSING FACILITY	Classification: AVERAGE	Site Rating: 2.00
ID Number(s):	AIR NEW SOURCE PERMITS PERMIT 15090 AIR NEW SOURCE PERMITS ACCOUNT NUMBER HG0693W AIR NEW SOURCE PERMITS PERMIT 18687 AIR NEW SOURCE PERMITS AFS NUM 4820100119 PETROLEUM STORAGE TANK REGISTRATION 4624 REGISTRATION STORMWATER PERMIT TXR050646 MUNICIPAL SOLID WASTE PROCESSING PERMIT 2353		
Location:	3701 SCHALKER DR, HOUSTON, TX, 77026	Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	February 13, 2008		
Agency Decision Requiring Compliance History:	Permit - issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	February 13, 2003 to February 13, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	SAIDAT ILO	Phone:	512-239-6605

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 10/25/2007 ADMINORDER 2007-0239-AIR-E
 Classification: Moderate
 Citation: 30 TAC Chapter 101, SubChapter A 101.4
 5C THC Chapter 382, SubChapter D 382.085(a)
 5C THC Chapter 382, SubChapter D 382.085(b)

Description: Failed to take necessary measures to prevent the release of odors which are in such concentration and of such duration as are or may be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- | | | |
|---|------------|----------|
| 1 | 10/30/2003 | (148808) |
| 2 | 11/07/2004 | (336072) |
| 3 | 10/05/2007 | (595735) |
| 4 | 12/11/2007 | (811517) |

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/20/2003 (112733)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.4

Description: Failure to prevent odors capable of causing a nuisance condition from leaving the

regulated entity's property.
Date: 08/10/2004 (278297)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4
Description: On June 16, 2004, Darling International was in violation of General Rule 101.4 for Nuisance.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

Attachment D

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Proposed New TCEQ MSW Permit No. 2353

2008 AUG -5 PM 4: 09

CHIEF CLERKS OFFICE

Application by	§	
DARLING	§	Before the
INTERNATIONAL,	§	
INC.	§	TEXAS COMMISSION
for proposed new	§	ON
TCEQ MSW	§	ENVIRONMENTAL
Permit No. 2353	§	QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) files this Response to Public Comment on the application by Darling International, Inc. ("Applicant" or "the applicant"), for proposed new TCEQ Municipal Solid Waste (MSW) Permit Number 2353 and on the Executive Director's preliminary decision on the application.

Before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments.¹ TCEQ'S Office of the Chief Clerk timely received a comment letter from Mary Wimbish, C.E.O. of Downstream Environmental, LLC. This response to public comment addresses all timely public comments received, whether or not withdrawn.

If you would like more information about this application or the permitting process, please call TCEQ's Office of Public Assistance at (800) 687-4040. General information about TCEQ can be found on our Web site at www.tceq.state.tx.us.

1 30 TEX. ADMIN. CODE § 55.156 (2007).

I. Description of Facility

Darling International, Inc. proposes to locate a facility for processing of grease trap waste at 3701 Schalker Street, 850 feet south of Cavalcade Street, in Houston, Harris County, Texas. Elevation and Coordinates of Current Permanent Benchmark: Latitude: 29° 48' 4.75" N, Longitude: 95° 20' 47.24" W, Elevation: 49 feet above mean sea level (msl). The total area within the proposed permit boundary is approximately 0.77 acres. The permitted area would lie within a larger tract owned by the Applicant which currently contains its offices and its rendering plant. The proposed facility would consist of a site entrance gate, security fencing, paved all-weather access to the site, a concrete-paved yard and parking area, an office/lab building, a grease processing building, waste receiving, treatment, and discharge units consisting of concrete sumps and pits, steel tanks, roll-off containers and curbed concrete slab foundations, and surface drainage and storm water run-on/runoff control structures.

This permit, if approved, would authorize the proposed facility to accept, store, and process grease trap waste resulting from, or incidental to, municipal, community, commercial, institutional, recreational and industrial activities.

The permit application was prepared and submitted in accordance with Title 30, Texas Administrative Code, Chapter 305, Subchapter C.

II. Procedural History

On March 9, 2007, TCEQ received this application for proposed new Type V-GG Municipal Solid Waste Permit No. 2353. On April 30, 2007, the Executive Director declared the application administratively complete. On June 6, 2007 the Notice of Receipt of Application and Intent to Obtain a Type V Municipal Solid Waste Permit for this application was published in Spanish in *La Voz de Houston*, a newspaper published primarily in Spanish and generally circulated in the county in which the facility is proposed to be located. On June 7, 2007, the Notice of Receipt of Application and Intent to Obtain a Type V Municipal Solid Waste Permit for this application was published in English in *The Houston Chronicle*, the newspaper of largest circulation in the county in which the facility is proposed to be located.

On April 14, 2008, the Executive Director completed the technical review of the application and prepared a draft permit. On May 7, 2008 the Notice of Application and Preliminary Decision for

Municipal Solid Waste Permit for this application was published in Spanish in *La Voz de Houston*, a newspaper published primarily in Spanish and generally circulated in the county in which the facility is proposed to be located. On May 8, 2008, the Notice of Application and Preliminary Decision for Municipal Solid Waste Permit for this application was published in English in *The Houston Chronicle*, the newspaper of largest circulation in the county in which the facility is proposed to be located.

On June 9, 2008, the public comment period ended.

Because this application was declared administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted under House Bill 801.²

III. Rules, Law, and Records

The following Web sites contain rules, statutory law, and other information that applies to this application.

Texas statutes	http://www.state.tx.us
TCEQ rules, codified in Title 30, Texas Administrative Code	www.tceq.state.tx.us and www.sos.state.tx.us/tac
Secretary of State	www.sos.state.tx.us
Federal statutes and rules	http://www.epa.gov

The administratively complete application is available for viewing and copying at the TCEQ's Houston Regional Office at 5425 Polk Ave., Ste. H, Houston, TX 77023-1452. The application has also been available for review and copying at the Houston Public Library (McCrane-Kashmere Gardens Branch), at 5411 Pardee Street in Houston, Texas since the application was first submitted to the TCEQ, and the technical summary and draft permit have also been available at that

2 Tex. H.B. 801, 76th Leg., R.S. (1999).

location since publication of the Notice of Application and Preliminary Decision. The application is also available on the internet at the following address:

<http://cookjoyce.com/?module=page&p=Permit%20Documents>.

Additional TCEQ records on this application are available at the TCEQ Central File Room (Building E) and in the MSW Permits Section (Building F), 12100 Park 35 Circle, Austin, Texas 78753.

IV. Comments and Responses

COMMENT 1

Mary Wimbish commented that there is no 50-foot buffer zone between a building and the fence and that Downstream Environmental was denied a permit eight years ago for failure to have a 50-foot buffer zone.

RESPONSE 1

Under 30 TAC Section 330.543(b)(1), an MSW processing facility must maintain a 50-foot buffer zone. However, 30 TAC Section 330.543(b)(1) further provides that the Executive Director may approve an alternative to the 50-foot buffer zone for such facilities.

The facility proposed includes processing areas within an enclosed building. Three sides of the building would be bounded by a 50-foot buffer zone. On the fourth side, the building is ten (10) feet from the permit boundary and is adjacent to the public access road. In accordance with 30 TAC Section 330.543(b)(1), the applicant requested the executive director to consider an alternative to the buffer zone requirements for the fourth side of the building. The Executive Director determines the adequacy of an alternative buffer zone based on a number of criteria, including site-specific details relating to location restrictions, local land use, access, and the current applicable rules. The rule states that a buffer zone shall not be narrower than necessary to provide safe passage fire fighting and other emergency vehicles, which the buffer zone for this facility meets. The applicant demonstrated that the public street provides the required access and thus meets the requirements of the rule.

COMMENT 2

Mary Wimbish commented that there have been frequent complaints reported by the neighbor to the City of Houston Health Department regarding terrible odors coming from the Applicant's site.

RESPONSE 2

TCEQ's MSW permit application review process requires that a compliance history of the owner and the operator of the proposed facility be searched for violations, such as nuisance odors, and compiled. The compliance history for the application will be forwarded with the draft permit and other applicable documents to either the Executive Director, in the case of an uncontested application, or to the commissioners, in the case of a contested application, and may be taken into account in the decision whether to issue the permit. Compliance history information may be also taken into account if the application comes under the jurisdiction of the State Office of Administrative Hearings.

Under 30 Tex. Admin. Code Section 60.1(b), the compliance history period included in the review of a permit application is comprised of the five years prior to the date the permit application is received by the Executive Director. 30 Tex. Admin. Code Section 60.1(c) prescribes the components of the compliance history. Under this rule, the TCEQ compliance history does not include complaints regarding odor reported only to other agencies, such as the City of Houston Health Department. The Applicant currently operates a rendering plant under an Air Permits authorization on the site. The plant is not included in the permitted boundary of this Type V MSW Permit application and will not be regulated by the proposed permit. According to the compliance history prepared for this application, on October 10, 2007, the commission approved an Agreed Order citing the Applicant for nuisance odors at the plant. An Agreed Order does not constitute an admission of the violations alleged. Additionally, TCEQ issued notices of violations for nuisance odors resulting from investigations of the rendering plant dated July 23, 2003 and August 10, 2004. Based on these entries, the Applicant's compliance history is classified as "Average". As previously stated, this compliance history will be forwarded to the final decision-maker for consideration in the decision whether to issue the permit.

30 TAC Section 330.15(a)(2) requires that the proposed facility be operated in a way that prevents the occurrence of nuisance odor conditions. 30 TAC Section 330.245(d) requires that the facility be designed to prevent nuisance odors from leaving the boundary of the facility. This rule further provides that the facility operator may be required to suspend operations if nuisance odors are found to be passing the facility boundary. Finally, under 30 TAC Section 330.245(f), the owner of operator of a processing facility must use one of the following methods of odor control: air scrubber units; on-site buffer zones; additional handling, storage and cleanup procedures when accepting putrescible waste; or alternative ventilation and odor control measures.

The Applicant's facility design provides that the processing operations would be in an enclosed building with all liquid and solid waste stored in odor-retaining containers and vessels. The building would also have an air scrubber system installed to provide adequate ventilation for odor control and employee safety. This information can be found in the application at Part IV, Site Operating Plan, Page 4-19.

The Executive Director has determined that this application complies with the rules designed to prevent nuisance odors. If nuisance odors occur, the TCEQ may take enforcement action. Complaints about nuisance odors should be reported to the TCEQ Region 12 Office at 713-767-3500 or 5425 Polk Ave., Ste. H, Houston, TX 77023-1452. For information on TCEQ odor complaint investigation procedures, interested persons are encouraged to visit the following webpage: http://www.tceq.state.tx.us/compliance/complaints/protocols/odor_protodef.html.

COMMENT 3

Citing the lack of a 50-foot buffer zone and a history of odor complaints, Mary Wimbish requested that the permit application be denied.

RESPONSE 3

The Executive Director acknowledges receipt of this comment. Based on staff's review of the proposed facility, and further explained in the two previous responses, the Executive Director finds that the application complies with all applicable laws and rules. Therefore, the Executive Director does not recommend denial of this permit.

V. Changes Made in Response to Comments

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark Vickery
Executive Director

Stephanie Bergeron Perdue, Deputy Director
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CERTIFICATE OF SERVICE

I certify that on August 5, 2008, the "Executive Director's Response to Public Comment" for MSW Permit No. 2353 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Shana L. Horton

Shana L. Horton, Staff Attorney
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Attachment E

