MS. J
58751

DOWNSTREAM ENVIRONMENTAL, LLC
2222 Bissonnet, Ste. 103
Houston, TX 77005

marywww@flash.net

(713)520-8113
Fax: (713)520-0138

September 4, 2008

LaDonna Castañuela,
Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, TX 78711-3087

H
RFR

OPA
SEP 08 2008
BY

RE: Darling International, Inc.; MSW Permit Application No. 2353

Dear Ms. Castañuela:

Enclosed please find Downstream Environmental's Request for Oral Hearing and Request for Reconsideration of the Executive Director's August 7, 2008 Decision regarding the above-referenced Permit application.

This Request is hereby timely filed by:

Downstream Environmental, LLC
2222 Bissonnet, Ste. 103
Houston, TX 77005-1510
(713) 520-8113
(713) 520-0138 FAX

An additional copy is enclosed, which we request you file-stamp and return to us in the self-addressed, stamped envelope enclosed for this purpose.

Thank you for your attention to this matter.

Sincerely,

Mary Wimbish

Mary Wimbish, C.E.O.

MW:gs
Encl.

MW

REQUEST FOR ORAL HEARING
And
REQUEST FOR RECONSIDERATION
Of
Proposed New TCEQ MSW
Permit No. 2353

2008 SEP -5 AM 11:09
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

COMES NOW, Downstream Environmental, LLC, and files this Request for Reconsideration of the Application by Darling International, Inc. for proposed new TCEQ MSW Permit No. 2353 pending before the Texas Commission on Environmental Quality.

Downstream Environmental requests an oral hearing and requests reconsideration as follows:

The Executive Director of the Texas Commission on Environmental Quality "TCEQ" filed a response to public comment on the application by Darling International, Inc. for proposed new TCEQ Municipal Solid Waste (MSW), Permit No. 2353.

The Executive Director responded to written comments filed by Downstream Environmental, LLC. After considering said comments, the Executive Director does not recommend denial of the permit.

I.

COMES NOW, Downstream Environmental, LLC, an effected person and files this Request for Reconsideration as follows:

In order to request a contested case hearing, a person must be an effected person.

For any application, an effected 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. A group or association must meet the following requirements to request a contested case hearing:

A. One or more members must otherwise have standing to request a hearing in their own right and the interest the organization seeks to protect must be germane to the organization's purpose, and

B. Neither the claim asserted nor the relief requested requires additional members to participate in the case.

A hearing request must specifically address; (1) whether the requestor is an effected person; (2) whether the issues in dispute involve questions of law or fact; (3) whether the issues in the request were raised during the public comment period; and (4) whether the issues in the request are relevant and material to the decision on the application.

II.

Downstream Environmental, LLC hereby submits a written request for hearing and a written request for reconsideration of the Executive Director's ruling to NOT recommend denial of Permit No. 2353 as follows:

1. **Compliance History –** Darling has a terrible compliance history with the City of Houston Health Department. Specifically, the Darling facility in question has a gag level of odors that have permeated the area for years.

2. **Process Description –** Downstream raises concerns that the application doesn't include adequate detail as to how the waste will be processed at the facility as required by 30 T.A.C. §330.65(c)(4)(a). Specifically, how will the odors be controlled at the point of offload? Downstream Environmental submits that the point of offloading of trucks is so close to neighboring property and there is no way to control odors.

3. **Wastewater Discharge –** Downstream raises the issue as to whether Darling has violated its wastewater discharge agreements with the City of Houston in the past. Darling operated a Type V facility at the same location. Problems with the City caused the facility to be voluntarily closed.

4. **Closure Bond Estimates –** Downstream raises the concern that Darling's closure bond estimate is not an adequate amount.

5. **History of MSW Type V Facility Operated at the Same Location –** Darling has permitted this same property in the past and operated a Type V facility for the purpose of processing grease and grit at the same address. That facility was sanctioned multiple times by the City of Houston Health Department for terrible odors and a filthy facility. Why would the State allow an operator to reopen, who has been a bona fide nuisance in the past? The compliance history of this operator does not merit the permit requested. The same operator was in trouble with the local authorities for excessive and continuous odors and poor water quality.

III.

DOWNSTREAM IS AN EFFECTED PERSON

Downstream is a Texas limited liability company. Downstream's facility is 20 miles away from Darling's proposed facility. A reasonable relationship exists between the economic interest of Downstream Environmental and the determination of the application of Darling. Darling's plant is on the east side of Houston, Downstream Environmental's plant is on the west side. Both companies will serve the same customer base and be competitors.

The requestor, Downstream identifies that the impact to its business is unique and distinguishable from the impact that Darling's permit will have on other waste industries. Specifically, Downstream Environmental attempted to permit a site located at 1657 Oak Tree Drive, Houston, Texas. The site had an existing warehouse that was 10 feet from the property line on one side. Adequate buffer zones existed on all other sides of the building. Downstream had a pre-filing meeting with the TCEQ to determine if the warehouse should in fact be moved on the same piece of property to create 50 foot buffer zones on all four sides. Downstream's processing was to be contained within the warehouse. Downstream was told that it was unnecessary to move the warehouse. So long as all processing equipment was inside the warehouse, an exception would be made to the 50 foot rule. Downstream proceeded with its application.

In November 2000, after Downstream was affirmatively led by the TCEQ to believe that the 50 foot buffer zone on one side of its warehouse would not be required, Downstream received word that the permit was granted by the Executive Director. After the Executive Director granted the permit, he sent the permit draft to a local senator, Beverly Woolley. Shortly thereafter, his decision to grant the permit was reversed. Throughout the long and drawn out permit process, Downstream was continuously led to believe by the TCEQ and by the examiner, Mike Greaber, that the permit would be granted by the regulatory agency. Downstream made substantial improvements to the property, purchased equipment and planned to go into business as soon as the permit was authorized. Much to Downstream's dismay, the decision to give Downstream the permit was reversed by the Executive Director who responded to political pressure by Beverly Woolley, Sheila Jackson Lee and Carol Browner.

Since that time, two applications have been sent to the agency requesting permits whereby equipment will be placed inside a warehouse that is located 10 feet or less from a property line. A-Affordable and Darling have both been granted permits without a 50 foot buffer zone on all four sides of their building.

It appears that Type V waste treatment plants can be located inside buildings within 10 feet of a fence. The only reason stated for the denial of Downstream's permit application was that the 50 foot buffer zone requirement between the building and the fence had not been met. Downstream offered to remedy the problem and move their building, to no avail.

The agency's rulings on permits are political and therefore capricious and arbitrary. The Executive Director is simply no longer accountable to members of the various industries that are under the TCEQ's regulation. Fairness and consistency are of no import to the Executive Director.

The United States Constitution guarantees fairness and prohibits actions that are capricious or arbitrary. Yet, with the buffer zone requirement, Downstream Environmental is the only applicant that has not been given an exception to the rule that there must be a 50 foot buffer zone between the facility and the property line. The impact of the Executive Director's decision on Downstream Environmental has been economically devastating. Specifically, Downstream Environmental lost several hundred thousand dollars on the Oak Tree project.

Downstream Environmental complains that the same standards are not being used throughout Texas and that some competitors are given advantages while others are not.

Lastly, Downstream Environmental is a woman-owned business and Downstream Environmental claims that there has been intentional discrimination by the agency by holding a woman-owned business to much higher standards in an industry controlled by males that are rogue operators for the most part, and/or operating without permits. Downstream's owner, Mary Wimbish, has challenged the agency repeatedly for incompetency and failure to enforce the laws, especially the permit requirements. Ms. Wimbish has been a whistle blower and suffered retaliation as a result.

Downstream Environmental and its owner, Mary Wimbish, have a personal and justiciable interest that is not common to the members of the general public, or common to the members of the same industry.

Downstream Environmental and Mary Wimbish pray that an oral hearing be granted and that Darling's application for a permit be denied.

Respectfully submitted,

DOWNSTREAM ENVIRONMENTAL, LLC

By: Mary Wimbish

Mary Wimbish, C.E.O. 9/4/08

MSW
58751

DOWNSTREAM ENVIRONMENTAL, LLC

2044 Bissonnet
Houston, TX 77005
marywww@flash.net

(713)520-8113
Fax: (713)520-0138

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 MAY 21 AM 9: 23
CHIEF CLERKS OFFICE

April 30, 2008

msw 2353

Mr. Jeff Holderread
Waste Permits Division - MSW Permits Section
MC-124, P.O. Box 13087
Austin, TX 78711-3087

OPA
1pt MAY 21 2008
BY KY

RECEIVED
MAY 19 2008
WASTE PERMITS DIVISION
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
LLH

RE: Darling International Type V Registration; 3701 Schalker Drive, Houston, Texas 77026

Dear Mr. Holderread:

Please put Downstream Environmental on the mailing list with regard to all matters pertaining to the permitting or registration of Darling International's site at 3701 Schalker Drive, Houston, Texas 77026.

Please be advised that there is no 50 foot buffer zone. Downstream Environmental was denied a permit at 1657 Oak Tree Drive, Houston, Texas 77080, eight years ago for failure to have a 50 foot buffer zone between a building and fence.

Please be advised that according to the City of Houston Health Department, there have been frequent complaints by the neighbor over terrible odor coming from Darling International's site at 3701 Schalker Drive, when they operated under a Type V Registration. Now I understand that they are seeking a Type V Permit. In view of the fact that there is no 50 foot buffer zone and a history of terrible odor documented by the City's Health Department, I respectfully request that this application for a Type V Permit be denied.

Thank you very much for your attention to this matter.

Sincerely,

Mary Wimbish

Mary Wimbish, C.E.O.

MW:gs

DUE DATE_____

WWC#_____

PM_____

TEAM ☐ I ☐ II

MW