

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 7, 2008

TO: Persons on the attached mailing list.

RE: Darling International, Inc.
Permit No. 2353

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Houston the Public Library McCrane-Kashmere Gardens Branch at 5411 Pardee Street, Houston, Harris County, Texas, 77026.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

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

Processing of Requests.

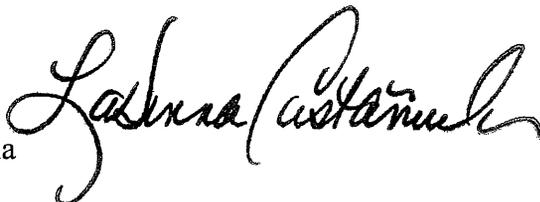
Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk



LDC/lg

Enclosures

MAILING LIST
for
Darling International, Inc.
Permit No. 2353

FOR THE APPLICANT:

John Bohannon, Vice President
Darling International, Inc.
251 O'Connor Ridge Boulevard, Suite 300
Irving, Texas 75035-6535

Brian Dudley, P.E.
Cook-Joyce, Inc.
812 West 11th Street
Austin, Texas 78701-2000

INTERESTED PERSONS:

Mary Wimish
Downstream Environmental, LLC
2222 Bissonnet Street, Suite 103
Houston, Texas 77005-1510

FOR THE EXECUTIVE DIRECTOR:

Shana Horton, Staff Attorney
Texas Commission on Environmental Quality
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Austin, Texas 78711-3087

Alayna M. Goetsch, Technical Staff
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FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
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P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

Proposed New TCEQ MSW Permit No. 2353

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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
	www.tceq.state.tx.us
TCEQ rules, codified in	and
Title 30, Texas Administrative Code	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
Office of Legal Services



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

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

Environmental Law Division

State Bar No. 24041131

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