Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*

Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 31, 2009

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

Re: **SYNAGRO OF TEXAS-CDR, INC.**
TCEQ DOCKET NO. 2009-0681-SLG

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Request in the above-entitled matter.

Sincerely,

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2009-0681-SLG

IN THE MATTER OF THE APPLICATION BY SYNAGRO OF TEXAS CDR, INC. FOR RENEWAL OF PERMIT NO. WQ0004451000	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO HEARING REQUEST

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

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) and files this Response to Hearing Request in the above-referenced matter.

I. INTRODUCTION

Synagro of Texas-CDR, Inc. (Synagro or Applicant) has applied to the TCEQ for a permit renewal that will authorize the land application of wastewater treatment plant (WWTP) sewage sludge for beneficial use on 185.27 acres at an annual rate not to exceed 9.14 dry tons per acre per year on Fields 1, 2 and 5, 5.88 dry tons/acre/year on Field 3, 4.77 dry tons/acre/year on Field 4, 8.06 dry tons/acre/year on Field 6, and 11.32 dry tons/acre/year on Fields 7 and 9.

The land application site is located at near the City of Chesterville, approximately 900 feet west of the intersection of Farm-to-Market Road 2764 and Farm-to-Market Road 1093 in Colorado County, Texas. The land application site is located in the drainage area of the San Bernard River Above Tidal in Segment No. 1302 of the Brazos-Colorado River Basin.

The permit application for the permit renewal was received on August 30, 2007, and declared administratively complete on October 19, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on November 8, 2007, in the *Waller County News Citizen*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on January 28, 2009, in *The Colorado County Citizen*. The Executive Director's Response to Public Comments was mailed April 9, 2009. Since this application was administratively complete after September 1, 1999, it is subject to the procedural requirements of House Bill 801 (76th Legislature, 1999).

II. REQUIREMENTS OF APPLICABLE LAW

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code § 5.556 added by Acts 1999, 76th Leg., ch 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application. 30 TEXAS ADMINISTRATIVE CODE (TAC) § 55.201(d). Under 30 TAC § 55.203(a), 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." This

justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors include:

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) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
5) 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.

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the commission's decision on the application. 30 TAC §55.211(c).

Accordingly, pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

1) whether the requestor is an affected person;
2) which issues raised in the hearing request are disputed;
3) whether the dispute involves questions of fact or law;
4) whether the issues were raised during the public comment period;
5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's response to Comment;
6) whether the issues are relevant and material to the decision on the application; and
7) a maximum expected duration for the contested case hearing.

III. DISCUSSION

A. Right to a Contested Case Hearing

Texas Water Code §26.028(d) and 30 TAC §55.201(i)(5) provide that no right to a hearing exists for certain water quality permits. These authorizations include applications to renew a permit where the applicant is not applying to increase significantly the quantity of waste to be discharged or change materially the pattern of place of discharge, the authorized activities will maintain or improve quality of waste to be discharged, consultation and response to all timely received and significant public comment has been given, and any required opportunity for public meeting has been given. Additionally, the applicant's compliance history for the previous five years must not raise issues regarding the applicant's ability to comply with a material term of the permit.

Under the current application, Applicant would not increase the quantity of waste to be discharged from its existing permit and is in fact applying to decrease the land application area from 242.71 acres to 185.27 as well as the sludge application rate for every remaining active field. The quality of discharge here will be maintained or improved by the more stringent and protective provisions of the draft revised permit. Opportunity for a public meeting was given and the executive director has filed a response to comments that addresses all timely and significant public comment. Furthermore, the applicant's compliance history over the last five years is listed as "average." OPIC therefore finds that no right to a hearing exists on the proposed renewal. If the Commission should find otherwise, OPIC offers the following hearing request analysis.

B. Affected Person Analysis

The Office of the Chief Clerk received a timely filed hearing request from Mr. John J. Schmidt. Mr. Schmidt raises a variety of concerns regarding soil composition and nutrient loading in the area of and around the land application site and potential effects on human, animal, and vegetative life. While OPIC is sympathetic to Mr. Schmidt's concerns regarding the protection of terrestrial life and the environment, OPIC concludes that Mr. Schmidt is not an affected person due to his relative distance from the application site.

The Executive Director has produced a map associated with this application that indicates that Mr. Schmidt's home is located beyond a quarter mile from the application site, and in fact is located over a mile away. Because of his location relative to the facility, OPIC cannot find that the facility would have a likely impact on Mr. Schmidt. OPIC therefore cannot recommend that Mr. Schmidt be determined an affected person.

IV. CONCLUSION

OPIC recommends the Commission find that no right to a hearing exists for the proposed permit renewal. OPIC further finds that Mr. John J. Schmidt does not qualify as an affected person because the facility is unlikely to have an impact on Mr. Schmidt given his location relative to the facility.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By _____
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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2009, the original and seven true and correct copies of the Office of the Public Counsel's Response to Hearing Request were 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.

_____
Eli Martinez

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TCEQ DOCKET NO. 2009-0681-SLG

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