

# Travis County Commissioners Court

**RON DAVIS**  
Commissioner, Pct. 1

**SAMUEL T. BISCOE**  
County Judge



*IWD*  
*68523*

**SARAH ECKHARDT**  
Commissioner, Pct. 2

**KAREN L. HUBER**  
Commissioner, Pct. 3

**MARGARET J. GÓMEZ**  
Commissioner, Pct. 4

Travis County Administration Building, 314 W. 11<sup>th</sup>, Commissioners Courtroom, 1st Floor, Austin, Tx 78701

January 27, 2011

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

*RFR* **OPA**  
*H* **JAN 28 2011**  
BY *HP*

2011 JAN 27 PM 4:20  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RE: Synagro of Texas--CDR, Inc. Application for Beneficial Land Use of Class B Sewage Sludge near Richards Drive and Highway 71, Travis County; Proposed TCEQ Permit No. WQ0004888000

Dear Ms. Castañuela:

On January 25, 2011, the Travis County Commissioners Court voted for me to submit the following comments on the Court's behalf regarding the permit application cited above. Travis County strongly opposes this project due to conflicts with adopted ordinances, technical deficiencies of the site, and existing and inevitable future land use problems at the site.

Specifically, Travis County requests the executive director to reconsider his decision and deny the permit or, in the alternative, issue the permit with a requirement that Synagro not land apply sewage sludge in any area where it is not allowed by Chapters 62 and 64, Travis County Code. Travis County further requests that the Commission direct a contested case hearing be held on the applicability of §§361.069 and 361.089, Health & Safety Code, to Permit No. WQ0004888000.

### Synagro's Use of This Site Would Be an Inappropriate Land Use

First, the Travis County Commissioners Court has received comments in opposition to Synagro's proposed operation from more than fifty families who live

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on Navarro Creek Road. All of these families live within about a mile from the proposed application site, and some of these families live within 1500 feet from the proposed site. Similarly, TCEQ's mailing list relating to Synagro's permit application includes listings for fifty residents with addresses on Navarro Creek Road who oppose Synagro's proposal to apply sewage sludge near their homes.

When the Travis County Commissioners Court held its first public hearing on August 31, 2010 regarding a request for variances from Chapters 62 and 64, Travis County Code, that Synagro had submitted to Travis County, residents who live near the proposed application site expressed concerns regarding the potential negative impacts on the health and safety on themselves and their families from Synagro's proposed operations, including the potential harmful effects on air quality and water quality. The residents also testified that they must already contend with offensive odors and that Synagro's proposed operations would only compound the existing odor problems. A representative from Synagro acknowledged that the sewage sludge that Synagro wants to apply has a "slight" odor and that Synagro does not "have anything to control the odor" but the odor "usually dissipates within a couple of days." However, as one of the residents pointed out, the Synagro representative does not live in the vicinity of the proposed site and would not have to contend with the offensive odors or its potential harmful effects.

Even assuming flawless operation by Synagro, the proximity of the site to these family residences is a recipe for endless conflict for neighbors, the public, the applicant, TCEQ, and Travis County, and we believe that the solid waste disposal activities Synagro will engage in at this site are an inappropriate land use for this area.

Second, this site is in or near the Federal Emergency Management Agency's (FEMA) designated 100-year floodplain of Dry Creek. On September 26, 2008, Travis County adopted Subchapter G, Chapter 64, Travis County Code, under §16.315, Water Code (copy enclosed). This ordinance prohibits the location of solid waste management or disposal facilities (note that the County's definition of "facility" includes the type of activity for which Synagro has filed its TCEQ application) within 500 feet of a 100-year floodplain. Much of this site does not comply with the ordinance. While the ordinance does contain a variance provision, and Synagro applied to Travis County for such a variance, Travis County denied the request because Synagro did not meet the requirements for a variance.

Third, Travis County has also adopted Chapter 62, Travis County Code (copy enclosed). The site that is the subject of Synagro's application violates several requirements established in this ordinance for the siting of solid waste facilities, including restrictions against siting a facility less than 1500 feet from all individual residences. Travis County asserts that TCEQ is legally obligated under §363.112(d) of the Health & Safety Code to deny this application because it

violates Chapter 62, Travis County Code. Synagro requested a variance from the prohibition against locating a solid waste facility less than 1500 feet from individual residences, and Travis County denied the request because Synagro did not meet the requirements for a variance.

As a result of denial of the variances, the part of Synagro's site upon which sewage sludge can be land applied in compliance with Chapters 62 and 64, Travis County Code, is significantly smaller than the part of Synagro's site upon which TCEQ's permit would allow land application. In other words, Synagro would have one boundary limit for land application under the permit it must obtain from Travis County, but a different boundary limit for land application under its TCEQ permit. If the TCEQ permit is issued, the executive director should eliminate this difference by requiring Synagro to comply with the more stringent of the two boundaries, which is the County's boundary.

Traditionally, land use matters are left to local governments rather than the state. It is no different in Texas. Under the overall statutory scheme of solid waste regulation set out by Chapters 361, 363, and 364, Health & Safety Code, the suitability of solid waste disposal from a land use perspective is guided by criteria enunciated at the local level. In some cases [i.e. §§363.112(d) or 364.012(f), Health & Safety Code], the statutory scheme mandates that TCEQ honor those local criteria; such is the case regarding Synagro's application. Even in those cases where it is not mandated, however, TCEQ retains the discretion to honor those criteria [i.e. §361.089, Health & Safety Code].

Absent the two ordinances adopted by Travis County, TCEQ would clearly have the discretion under §361.089, Health & Safety Code, to deny this permit on land use grounds. Therefore, if TCEQ determines that it is not required under Section 363.112(d) of the Health and Safety Code to deny Synagro's application, Travis County requests TCEQ to take into account both the characteristics of the area surrounding the site and local choices regarding land use as reflected by the two ordinances and deny this permit on land use grounds, or in the alternative issue the permit with a condition that Synagro is limited to the boundary limits for land application set by Travis County's local land use ordinances.

### Floodplain

As stated above, much of this site is within or near a floodplain. Quite apart from either the FEMA designation or the Travis County ordinance mentioned above, this area simply cannot be viewed as having suitable technical characteristics for the placement of approximately 1760 tons of dry tons of sewage sludge per year. The placement of the sludge in such quantities will undoubtedly have a filling effect, which will increase the grade of the ground at the site over time and displace floodwaters onto downstream properties. This is a recipe for long-term

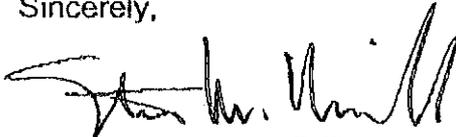
problems with increased flooding and environmental degradation downstream from the site.

### Summary

Proposed MSW WQ0004888000 should be denied outright. Synagro's use of the proposed site would be an inappropriate land use. Much of the proposed site is too close to individual residences and is prone to flooding, and it violates local ordinances. Travis County requests denial of Synagro's application, and in the alternative, if Synagro's application is not denied, Travis County requests that the permit be issued only on the condition that Synagro not land apply sewage sludge in any area where it is prohibited by Chapters 62 and 64, Travis County Code. Travis County further requests that a public hearing followed by a full evidentiary hearing on the issue of application of §§361.069 and 361.089 to the proposed permit. Travis County respectfully points out that the Commission specifically recognized the validity and merit of this legal issue regarding these types of permits (see enclosed copy of interim order in TCEQ Docket No. 2005-0199-SLG). Finally, Travis County would support TCEQ's holding a separate land use compatibility hearing under §361.069, Health & Safety Code, because sufficient grounds exist for denying the permit on land use grounds only, separate and apart from other grounds.

Thank you for your consideration of Travis County's comments. We look forward to a positive and sensible outcome.

Sincerely,



Steven M. Manilla, P.E.

Executive Manager

Travis County Transportation and Natural Resources Department

(512) 854-9383

#### Attachments:

Chapter 64, Travis County Code

Chapter 62, Travis County Code

Interim Order in TCEQ Docket No. 2005-0199-SLG

#### Cc:

The Honorable Sam Biscoe, Travis County Judge

The Honorable Ron Davis, Travis County Commissioner for Precinct 1

The Honorable Sarah Eckhardt, Travis County Commissioner for Precinct 2

The Honorable Karen Huber, Travis County Commissioner for Precinct 3

The Honorable Margaret Gómez, Travis County Commissioner for Precinct 4

## **SUBCHAPTER G. SOLID WASTE MANAGEMENT OR DISPOSAL FACILITIES IN OR NEAR FLOODPLAINS**

### **§ 64.221. Definitions.**

Unless the context clearly requires otherwise, in this subchapter:

"Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste.

"Executive Manager" means the Executive Manager of the Travis County Transportation and Natural Resources Department.

"Management" means the systematic control of the activities of generation, source separation, collection, storage, transportation, processing, treatment, composting, recycling, beneficial use, resource recovery, land application, or other handling of solid waste.

"FEMA One Hundred Year Floodplain" means an area identified as a one hundred year floodplain on flood insurance rate maps or flood boundary and floodway maps published by the Federal Emergency Management Agency.

"Solid waste" means solid, liquid, semisolid, or contained gaseous waste resulting from or incidental to municipal, community, commercial, industrial, institutional, agricultural, mining, or recreational activities, including sludge, garbage, rubbish, refuse, ashes, street cleanings, dead animals, abandoned automobiles, and other discarded material. The term does not include either solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code, or soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

"Solid waste management or disposal facility" means land, structures, appurtenances, and other improvements on land, used for management or disposal of solid waste, including any incinerator, landfill, transfer station, or land application, beneficial use, or composting site. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

### **§ 64.222. Prohibition**

- (a) A person may not construct, locate, or operate a solid waste management or disposal facility either in, or within five hundred feet of the boundary of, a one hundred year floodplain.

(b) The prohibition in this section applies only

(i) outside the corporate limits of any municipality, and

(ii) to solid waste management or disposal facilities not fully permitted and operating in compliance with all regulatory requirements on the effective date of this ordinance.

Item 34

FILED FOR RECORD

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ORDER OF THE TRAVIS COUNTY COMMISSIONERS COURT

DANA HERRINGTON  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

**WHEREAS**, solid waste facilities are critical to public health, safety, and welfare in Travis County because they facilitate the collection, handling, transportation, storage, processing, and disposal of the increasing volume of solid waste generated by the growing population of the county;

**WHEREAS**, constructing, locating, or operating solid waste facilities in certain areas can be detrimental to public health, safety, and welfare because:

- (i) solid waste and the pathogens and other contaminants it contains can be carried from such facilities to the air, nearby land, surface water, and ground water and thereby subject nearby residents and the general public to exposure through means including direct and indirect contact with contaminated soil or water, airborne transport, or disease vectors;
- (ii) traffic, trash, odors, vermin, unsightliness, and other undesirable byproducts of solid waste facilities may adversely impact adjacent land and environmental resources and thus make such facilities an incompatible use of land in close proximity to lakes and streams, suburban and rural residences and neighborhoods, parks and other recreational areas, historically significant places, airports, and other land features and uses;
- (iii) solid waste facilities that are improperly sited, design, or operated may impair the character of and quality of life in rural and suburban neighborhoods; and

**WHEREAS**, Travis County's growing population is creating siting conflicts by simultaneously creating a demand in unincorporated areas of Travis County both for more solid waste facilities and for more suburban and rural residences and neighborhoods, parks, schools, places of worship, health care facilities, and other competing land uses; and

**WHEREAS**, the Texas Commission on Environmental Quality (TCEQ) approves solid waste facilities based primarily on facility design, operation, or other engineering-based criteria, with more limited consideration given to siting criteria or land use impacts; and

**WHEREAS**, the Texas Health & Safety Code authorizes local governments to adopt ordinances or orders governing where certain solid waste facilities may and may not be located; and

**WHEREAS**, especially in cases where TCEQ will not give thorough consideration to land use, it is appropriate for Travis County to supplement TCEQ's requirements for solid waste facilities by adopting reasonable, non-exclusionary, and locally appropriate criteria for the siting of solid waste facilities in unincorporated areas of Travis County; and

**WHEREAS**, the Travis County Commissioners Court finds that the attached ordinance, while placing a greater demand on solid waste facility operators to be more selective both in locating and acquiring land for new sites and operating and expanding existing sites, will allow for the continued processing and disposal of solid waste in Travis County, as required by law; and

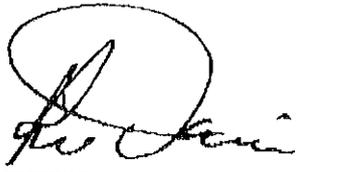
WHEREAS, the Travis County Commissioners Court has published notice of a proposed ordinance and held a public hearing, as required by law; and

WHEREAS, because solid waste facilities and population growth go hand in hand, the Travis County Commissioners Court strongly encourages every citizen of Travis County to recycle every object that may go into the waste stream, so that citizens residing in areas where solid waste facilities are or will be located are not overburdened, and so that the community is not overdependent on disposal as its method of solid waste management;

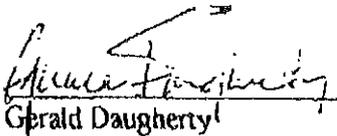
WHEREAS, the Travis County Commissioners Court wishes to reaffirm and ratify Subchapter C, Chapter 64, Travis County Code, as adopted on October 2, 2001;

NOW, THEREFORE, the Travis County Commissioners Court adopts Chapter 62, Travis County Code, which is attached hereto and incorporated herein and which is effective immediately, and ratifies the adoption under the Health & Safety Code of Subchapter C, Chapter 64, Travis County Code, as adopted on October 2, 2001.

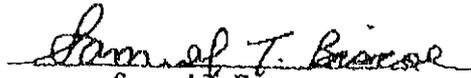
APPROVED THIS 22d day of July, 2003, by the Commissioners Court of Travis County, Texas



Ron Davis  
Commissioner, Precinct 1



Gerald Daugherty  
Commissioner, Precinct 3



Samuel T. Biscoe  
County Judge



Karen Sonleitner  
Commissioner, Precinct 2



Margaret Gomez  
Commissioner, Precinct 4

Siting of Solid Waste Facilities  
Chapter 62, Travis County Code

§62.001. Definitions.

Unless the context clearly requires otherwise, in this subchapter:

- (a) "Airport" means an airport that is open to the general public for the landing or takeoff of aircraft with or without a prior request to use the airport.
- (b) "Executive Manager" means the Executive Manager of the Travis County Transportation and Natural Resources Department.
- (c) "Health care facility" means a hospital, a nursing home, or overnight facility that provides medical care or treatment under the direction of a licensed physician to four or more persons unrelated to the proprietor or operator of the facility.
- (d) "Individual residence" means any structure intended to serve as the primary residence of, and is actually inhabited by, a human being. A structure is presumed to be an individual residence if it is designed for human residential habitation and is connected to water and electrical utilities.
- (e) "Minor facility" means a transfer station or recycling facility.
- (f) "Major Facility" means any solid waste processing and disposal facility other than a minor facility
- (g) "Neighborhood" means any manufactured or mobile home development, apartment or condominium complex, subdivision, or community having a total of nine or more individual residences or residential units and an overall average density of one residential unit or more per acre
- (h) "Place of worship" means an enclosed structure that is owned by a religious institution or organization and that is used primarily as a place of regular group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.
- (i) "Processing and disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, placing, collection, handling, transportation, storage, or processing of solid waste, including the systematic control of the activities of generation, source separation, treatment, composting, recycling beneficial use, resource recovery, or land application.
- (j) "Public park or historic facility" means real property owned or operated, or a facility officially designated as historic pursuant to express statutory authority, by a unit of federal,

state, or local government that is used for the primary purpose of public congregation or visitation for recreation or historical or scientific education.

- (k) "Public water well" means a water well that is owned or operated by a utility subject to regulation by the TCEQ and that presently supplies or is capable of supplying potable water.
- (l) "Receptor" means a public water well, school or day-care center, place of worship, health care facility, public park or historic facility, individual residence, or neighborhood.
- (m) "Recycling facility" means a solid waste processing and disposal facility where paper, plastic, glass, or metal materials that are scrapped, discarded, used, surplus, or obsolete or have served their intended use are collected, separated, or processed and returned to use in the form of raw materials in the production of new products rather than being permanently disposed of at the facility.
- (n) "School or day-care center" means a public or private facility, other than a home school, attendance at which satisfies the compulsory school attendance requirements of §§25.085 and 25.086, Education Code, as they existed on the effective date of this chapter, or a day-care center as defined in §42.002(3), Human Resources Code, as it existed on the effective date of this chapter.
- (o) "Solid waste" means solid, liquid, semisolid, or contained gaseous waste resulting from or incidental to municipal, community, commercial, industrial, institutional, agricultural, mining, or recreational activities, including sludge, garbage, rubbish, refuse, ashes, street cleanings, dead animals, abandoned automobiles, and other discarded material. The term does not include (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code, (ii) or soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements, (iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substances or material regulated by the Railroad Commission of Texas under §91.101, Natural Resources Code, or (iv) hazardous waste.
- (p) "Solid waste processing and disposal facility" means land, structures, appurtenances, and other improvements on land, used for management or disposal of solid waste, including any incinerator, landfill, transfer station, or land application, beneficial use, or composting site. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.
- (q) "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.

- (r) "Transfer station" means a fixed facility used solely to facilitate the transfer of solid waste from collection vehicles to long-haul vehicles for transport to another solid waste processing and disposal facility for further or final processing and disposal.
- (s) "Unit" means a discrete area of land or an excavation or a building where solid waste is actually processed or disposed of, that may be smaller than the facility within which it is located, and that does not include land, structures, appurtenances, and other improvements on land that are beyond that area in which solid waste is actually processed or disposed of

**§62.002. Application of Ordinance.**

- (a) Processing and disposal of solid waste in areas not meeting the requirements of §§62.003 through 62.006 is declared to be an inappropriate land use and is prohibited, unless Travis County issues a variance pursuant to §62.007.
- (b) This chapter does not apply to:
  - (1) landfills that are classified as Type I, II, III, or IV by TCEQ rules at 30 TEX. ADMIN. CODE §330.41, as it existed on the effective date of this chapter
  - (2) areas inside the corporate limits of any municipality;
  - (3) an area for which an application for a permit or other authorization under Chapter 361, Health & Safety Code, has been filed with and is pending before the TCEQ prior to the effective date of this chapter;
  - (4) an area for which a permit or other authorization under Chapter 361, Health & Safety Code, has been issued by the TCEQ prior to the effective date of this chapter;
  - (5) an area to which §361.090, Health & Safety Code, applies;
  - (6) processing and disposal of biosolids at a municipally-owned municipal wastewater treatment and biosolids facility; or
  - (7) any activity that otherwise qualifies as solid waste processing and disposal, but constitutes a *de minimis* activity, including collection stations for household hazardous waste or citywide or roadside cleanups; composting and land application of source-separated yard trimmings, clean wood material, vegetative material, manure, and paper; mulching operations; agricultural operations that compost and use agricultural materials onsite; and disposal of litter or other solid waste generated by an individual on that individual's own land for other than commercial purposes not exceeding 2000 pounds per year; a minor change to the pattern or place of processing and disposal within the outermost perimeter of a facility's footprint that does not increase the maximum height or overall volumetric capacity of the facility, or any similar activity that the Executive Manager determines to be *de minimis*.

- (c) Where this chapter requires solid waste to be processed and disposed of at certain distances from a receptor, those distances shall be measured from the edge of each individual unit in which solid waste processing and disposal is to be permitted to the edge of the area lying within 100 feet of a receptor that existed the date the application for the permit or other authorization in question is filed. No requirement to process or dispose of solid waste at a certain distance from an individual residence, school or day-care center, place of worship, health care facility, public park or historic facility shall apply if the owner has filed with the Executive Manager and in the Travis County Real Property Records written consent to the processing or disposal of solid waste at a distance closer than that specified by this chapter.
- (d) Unless otherwise required by state or federal law, no department, official, or employee under the supervision of the Travis County Commissioners Court may issue a county permit or other approval for a solid waste management or disposal facility that does not meet the requirements of this chapter. Any permit issued based on false, incorrect, or incomplete information produced in association with the permit application is voidable.

**§62.003. Siting Criteria for Minor Facilities.**

Solid waste may be processed and disposed of at a minor facility only if it is located at least 350 feet from all:

- (a) public water wells;
- (b) schools or day-care centers;
- (c) places of worship;
- (d) health care facilities;
- (e) public parks or historic facilities; and
- (f) individual residences.

**§62.004. Siting Criteria for Major Facilities.**

Solid waste may be processed and disposed of at a major facility only if:

- (a) it is located at least 1500 feet from all:
  - (1) public water wells;
  - (2) schools or day-care centers;
  - (3) places of worship,

- (4) health care facilities;
  - (5) public parks and historic facilities; and
  - (6) individual residences;
- (b) it is located at least 5280 feet from all neighborhoods;
- (c) it is located at least 500 feet from the recharge zone of the Colorado River Alluvial Aquifer, including associated terrace deposits, as depicted by the Geologic Atlas of Texas, Qal and Ct Map Units, Austin Sheet, University of Texas at Austin Bureau of Economic Geology, 1974 (reprinted 1995);
- (d) it is located outside the recharge and contributing zones of the Barton Springs and Northern segments of the Edwards Aquifer, as mapped by TCEQ under 30 TEX. ADMIN. CODE §213 and housed at TCEQ's Region 11 Office, and the Trinity Aquifer recharge zone as depicted by Aquifers of Texas, Ashworth, J.B. and Hopkins, J., Report No. 345, Texas Water Development Board (1995);
- (e) it is located at least 3000 feet from Lake Travis, Lake Austin, or any other public surface drinking water reservoir; and
- (f) it is located where the major facility will take its primary vehicular access from a road that is or will prior to commencement of operations at the facility be capable of withstanding a minimum of 2,000,000 18-kip single axle loads for a 20-year period assuming 750 trucks per day.

**§62.005. Special Siting Criteria: Airports.**

Putrescible solid waste may be processed and disposed of only in an area:

- (a) greater than 10,000 feet from the runway ends of any airport at which jet aircraft take off and land; and
- (b) greater than 5000 feet from the runway ends of any other airport.

**§62.006. Special Siting Criteria: Floodplains.**

Solid waste may be processed and disposed of only in an area that complies with the requirements of §64.071, Travis County Code.

**962.007. Variances.**

- (a) If all requirements of this section are met to Travis County's satisfaction, Travis County shall issue a variance for the processing and disposal of solid waste in an area where it is otherwise declared inappropriate and prohibited under §62.002(a).
- (b) A person seeking a variance shall submit to the Executive Manager the following information. The amount and detail of the information shall be commensurate with the volume of and potential for adverse impacts from the proposed processing and disposal activities, as determined by the Executive Manager,
- (1) Satisfactory evidence of the impracticability of locating or having located a facility in an area described in §§62.003-.006.
  - (2) Satisfactory assurances that the facility operator will comply with all necessary conditions and employ all necessary measures to protect public health, safety, and welfare by mitigating any adverse impacts on adjacent property, natural resources, and persons who reside, work, or recreate adjacent to the facility.
  - (3) Satisfactory evidence of the degree to which the proposed facility or expansion will contribute to meeting the solid waste management needs of the Capitol Area Planning Council region.
  - (4) Copies of the notices of violation, notices of enforcement, final judicial or administrative orders, agreed orders or settlements, and all other compliance history information required under Subchapter Q, Chapter 5, Water Code, and the rules adopted thereunder, for the facility in question and any other facility in the State of Texas under the control of the same operator, supplemented by copies of any notices, of violation, notices of enforcement, citations, indictments, final judicial or administrative orders, agreed orders or settlements, and other compliance history information issued or produced after the date of the foregoing Subchapter Q, Chapter 5, Water Code, information.
  - (5) A certification that written notice of the variance request, including a request that written comments be submitted to Travis County within 30 days, was both posted prominently at the site of the facility and mailed to all property owners either within 350 feet of the facility if it is a minor facility, or within 1500 feet of the facility if it is a major facility and to any homeowners association of any neighborhood if a major facility is proposed within 5280 feet of the neighborhood. Property ownership shall be determined by reference to records of the Travis Central Appraisal District.
- (c) Within 30 days after the end of the written comment period, the Executive Manager shall issue a written determination of whether to issue the variance under Subsection (d) below and post it on the Travis County web site. Persons entitled to mailed notice under §62.007(b)(5) or the person requesting the variance may file a written appeal to the Commissioners Court within 30 days of an adverse determination by the Executive Manager. If an appeal is filed, at the earliest

practicable date the Commissioners Court shall hold a public hearing and determine whether to issue the variance under Subsection (d) below.

(d) Travis County shall issue a variance order authorizing, and specially designating as an appropriate land use, the processing and disposal of solid waste in the area if the following requirements are met.

- (1) The County finds that it is impracticable to process and dispose of the solid waste at a facility located in an area described in §§62.003-.006.
- (2) Taking into account the information described in §62.007(b)(4) and any other significant and reliable information obtained by the County, the County finds that there are adequate assurances that the operator will comply with all necessary conditions and employ all necessary measures to protect the public health, safety, and welfare by mitigating any adverse impacts on persons, property, and natural resources adjacent to the facility, and that the operator has agreed to an adequate remediation plan that the operator shall be obligated to implement in the event of any release of pollutants or waste from the facility.
- (3) The County finds that the facility will provide an overall public benefit in light of the solid waste management needs of the Capitol Area Planning Council region.

**§62.008. Severability.**

If this ordinance is declared partially void or unenforceable by an order of a court of competent jurisdiction, the remaining parts of this ordinance shall be construed as remaining in effect to the full degree allowed by that order.

**§62.009. No Implied Determinations.**

The exemption from this chapter of any solid waste processing and disposal facility, or the failure of this chapter to prohibit processing and disposal of solid waste in any particular area, does not constitute the County's determination that either such a facility or the disposal and processing of solid waste in such an area is an appropriate land use. The County reserves the right to participate fully in administrative and legal proceedings regarding such areas and facilities, including but not limited to land use compatibility hearings under 5331.60, TEX. ADMIN. CODE, and to base its positions in such proceedings on the individual circumstances of the facility or area in question, including but not limited to a position that a permit should be amended or denied on the basis of land use as provided by 5361.089, Health & Safety Code.

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN INTERIM ORDER** concerning the application by Magna-Flow International, Inc. for Permit No. WQ0004484000; TCEQ Docket No. 2005-0199-SLG.

On April 27, 2005, the Texas Commission on Environmental Quality (Commission) during its public meeting evaluated the timely hearing requests and requests for reconsideration submitted by the Travis County Commissioners Court, Park Springs Neighborhood Association, and Manville Water Supply Corporation regarding the application by Magna-Flow International, Inc. (Applicant) for Permit No. WQ0004484000 to authorize the beneficial land application of sewage sludge and water treatment sludge. The requests for hearing and requests for reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 TAC Chapters 50 and 55. The Commission also considered all timely public comment, the Executive Director's Response to Public Comment, and all other timely filings in this matter.

After evaluation of all relevant filings and the answers to questions during its meeting, the Commission determined that the Travis County Commissioners Court and Park Springs Neighborhood Association are affected persons as provided by applicable law. The Commission noted that Manville Water Supply Corporation may request standing from the State Office of Administrative Hearings (SOAH) Administrative Law Judge, but that the Commission did not have sufficient information to grant its request. The Commission also determined whether the requests for hearing raised disputed issues of fact that were raised during the comment period which are relevant and material to its decision on the application. The Commission determined that the following issues raised by the requestors are disputed facts, raised during the comment period, and are relevant and material to its decision on the application and directed that they be referred to SOAH for a contested case hearing with first a referral for 4-6 weeks to formal mediation with the Commission's Alternative Dispute Resolution (ADR) staff.

- (1) Whether land application at the site will, or has, caused contamination of surface water, including the alluvial aquifer of Gilcland Creek and the Colorado River, and groundwater including contamination of water wells;
- (2) Whether the permit should be denied due to the Applicant's compliance history;
- (3) Whether the facility meets the buffer zone requirements in 30 TAC Chapter 312;
- (4) Whether more stringent buffer zone requirements are appropriate under 30 TAC §312.6;
- (5) Whether the permit sets the appropriate agronomic rate for the site;
- (6) Whether soil nutrient parameters should be tested more often than once yearly, metals more often than once every five years, and metals tested only to a depth of six inches;
- (7) Whether the proposed permit will create, or perpetuate, a nuisance condition in violation of applicable rules;
- (8) Whether the site meets the seasonal groundwater table requirements in applicable rules;
- (9) Whether the clay soils at the site are conducive to safe beneficial land application of sludge;
- (10) Whether the Applicant meets the requirements to achieve Class B sludge status in accordance with applicable rules;
- (11) Whether application of sludge at the site will restrict the flow of a 100-year flood in violation of 30 TAC §312.64(b); and
- (12) Whether the site is located within the 100-year floodway.

The Commission specified that the maximum duration of the contested case hearing shall be nine months from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH. The Commission also determined to deny all of the requests for reconsideration.

In addition, the Commission invited the Executive Director, Office of Public Interest Counsel, Applicant, and the hearing requesters to submit briefs analyzing the applicability of TEX. HEALTH & SAFETY CODE ANN. §§361.069 and 361.089 to permits authorized under TEX. HEALTH & SAFETY CODE ANN. §361.121. The parties' briefs must be filed with the Office of the Chief Clerk no later than 5:00 p.m. on Friday, May 20, 2005, and any reply briefs from those parties must be filed with the Office of the Chief Clerk no later than 5:00 p.m. on Wednesday, June 8, 2005. Filings should include an original and eleven (11) copies, reference TCEQ Docket No. 2005-0199-SLG and be sent to the attention of the Agenda Docket Clerk in the Office of the Chief Clerk. Finally, the Commission determined to consider the briefs and reply briefs at its public meeting scheduled on

Wednesday, June 29, 2005, beginning at 1:00 p.m. The meeting will take place in Room 201S, Building E, 12118 N. Interstate 35, Austin, Texas.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- (1) This contested matter is first referred to ADR for formal mediation for a period of four weeks; if the ADR staff determines by May 25, 2005, that additional time is required, then the mediation period may be extended by two weeks to June 8, 2005.
- (2) If mediation does not result in full settlement, the Commission's Chief Clerk shall refer the case to SOAH for hearing on the application as ordered below.
- (3) The Travis County Commissioners Court and Park Springs Neighborhood Association are affected persons and their hearing requests are hereby granted with regard to the issues identified in Ordering Provision No. 5.
- (4) All hearing requests not identified in Ordering Provision No. 3 are hereby denied.
- (5) The Chief Clerk shall refer to SOAH the following issues for a contested case hearing on the application:
  - (a) Whether land application at the site will, or has, caused contamination of surface water, including the alluvial aquifer of Gilleland Creek and the Colorado River, and groundwater including contamination of water wells;
  - (b) Whether the permit should be denied due to the Applicant's compliance history;
  - (c) Whether the facility meets the buffer zone requirements in 30 TAC Chapter 312;
  - (d) Whether more stringent buffer zone requirements are appropriate under 30 TAC §312.6;
  - (e) Whether the permit sets the appropriate agronomic rate for the site;
  - (f) Whether soil nutrient parameters should be tested more often than once yearly, metals more often than once every five years, and metals tested only to a depth of six inches;
  - (g) Whether the proposed permit will create, or perpetuate, a nuisance condition in violation of applicable rules;
  - (h) Whether the site meets the seasonal groundwater table requirements in applicable rules;
  - (i) Whether the clay soils at the site are conducive to safe beneficial land application of sludge;
  - (j) Whether the Applicant meets the requirements to achieve Class B sludge status in accordance with applicable rules;

- (k) Whether application of sludge at the site will restrict the flow of a 100-year flood in violation of 30 TAC §312.64(b); and
- (l) Whether the site is located within the 100-year floodway.
- (6) All issues not identified as being referred to SOAH in Ordering Provision No. 5 are hereby denied, with the exception of the following issue to be considered at the Commission's June 29, 2005, public meeting: whether continued application of sludge is incompatible with surrounding land uses.
- (7) The maximum duration of the hearing is set at nine months from the first day of the preliminary hearing to the date the proposal for decision is issued by the State Office of Administrative Hearings.
- (8) All of the requests for reconsideration are hereby denied.

Issue date: MAY 05 2005.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Kathleen Hartnett White*  
 Kathleen Hartnett White, Chairman

DAVID A. ESCAMILLA  
COUNTY ATTORNEY

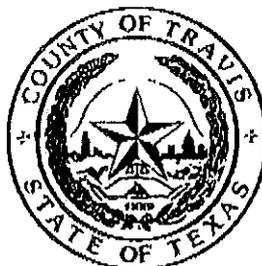
STEPHEN H. CAPELLE  
FIRST ASSISTANT

JAMES W. COLLINS  
EXECUTIVE ASSISTANT

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GRANGER BLDG., SUITE 420  
AUSTIN, TEXAS 78701

P. O. BOX 1748  
AUSTIN, TEXAS 78767

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LAND USE DIVISION

TOM NUCKOLS, DIRECTOR\*

JULIE JOE

CHRISTOPHER GILMORE\*\*

\*Board Certified  
Commercial Real Estate Law  
Texas Board of Legal Specialization  
\*\*Board Certified  
Farm & Ranch Real Estate Law  
Texas Board of Legal Specialization

FACSIMILE COVER SHEET

CHIEF CLERKS OFFICE

2011 JAN 27 PM 4:20

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Company: Ms. LaDonna Castanuela, Texas Commission on Environmental Quality

Fax No.: 239-3311 Date: 01/27/11

From: Steve Manilla

Secretary Responsible: Melinda Watts (512) 854-9878

In the event you have problems receiving this transmission, please call the responsible secretary listed above.

Number of Pages (including cover sheet): 20

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12  
RFR

OPA

JAN 31 2011

BY

*[Signature]*

# Travis County Commissioners Court

**SAMUEL T. BISCOE**  
County Judge

*IWD*  
*685a3*

**RON DAVIS**  
Commissioner, Pct. 1

**SARAH ECKHARDT**  
Commissioner, Pct. 2

**KAREN L. HUBER**  
Commissioner, Pct. 3

**MARGARET J. GÓMEZ**  
Commissioner, Pct. 4



Travis County Administration Building, 314 W. 11<sup>th</sup>, Commissioners Courtroom, 1st Floor, Austin, Tx 78701

January 27, 2011

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

RE: Synagro of Texas--CDR, Inc. Application for Beneficial Land Use of Class  
B Sewage Sludge near Richards Drive and Highway 71, Travis County;  
Proposed TCEQ Permit No. WQ0004888000

2011 JAN 31 AM 10:40  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Dear Ms. Castañuela:

On January 25, 2011, the Travis County Commissioners Court voted for me to submit the following comments on the Court's behalf regarding the permit application cited above. Travis County strongly opposes this project due to conflicts with adopted ordinances, technical deficiencies of the site, and existing and inevitable future land use problems at the site.

Specifically, Travis County requests the executive director to reconsider his decision and deny the permit or, in the alternative, issue the permit with a requirement that Synagro not land apply sewage sludge in any area where it is not allowed by Chapters 62 and 64, Travis County Code. Travis County further requests that the Commission direct a contested case hearing be held on the applicability of §§361.069 and 361.089, Health & Safety Code, to Permit No. WQ00044888000.

### Synagro's Use of This Site Would Be an Inappropriate Land Use

First, the Travis County Commissioners Court has received comments in opposition to Synagro's proposed operation from more than fifty families who live

*[Handwritten signature]*

on Navarro Creek Road. All of these families live within about a mile from the proposed application site, and some of these families live within 1500 feet from the proposed site. Similarly, TCEQ's mailing list relating to Synagro's permit application includes listings for fifty residents with addresses on Navarro Creek Road who oppose Synagro's proposal to apply sewage sludge near their homes.

When the Travis County Commissioners Court held its first public hearing on August 31, 2010 regarding a request for variances from Chapters 62 and 64, Travis County Code, that Synagro had submitted to Travis County, residents who live near the proposed application site expressed concerns regarding the potential negative impacts on the health and safety on themselves and their families from Synagro's proposed operations, including the potential harmful effects on air quality and water quality. The residents also testified that they must already contend with offensive odors and that Synagro's proposed operations would only compound the existing odor problems. A representative from Synagro acknowledged that the sewage sludge that Synagro wants to apply has a "slight" odor and that Synagro does not "have anything to control the odor" but the odor "usually dissipates within a couple of days." However, as one of the residents pointed out, the Synagro representative does not live in the vicinity of the proposed site and would not have to contend with the offensive odors or its potential harmful effects.

Even assuming flawless operation by Synagro, the proximity of the site to these family residences is a recipe for endless conflict for neighbors, the public, the applicant, TCEQ, and Travis County, and we believe that the solid waste disposal activities Synagro will engage in at this site are an inappropriate land use for this area.

Second, this site is in or near the Federal Emergency Management Agency's (FEMA) designated 100-year floodplain of Dry Creek. On September 26, 2008, Travis County adopted Subchapter G, Chapter 64, Travis County Code, under §16.315, Water Code (copy enclosed). This ordinance prohibits the location of solid waste management or disposal facilities (note that the County's definition of "facility" includes the type of activity for which Synagro has filed its TCEQ application) within 500 feet of a 100-year floodplain. Much of this site does not comply with the ordinance. While the ordinance does contain a variance provision, and Synagro applied to Travis County for such a variance, Travis County denied the request because Synagro did not meet the requirements for a variance.

Third, Travis County has also adopted Chapter 62, Travis County Code (copy enclosed). The site that is the subject of Synagro's application violates several requirements established in this ordinance for the siting of solid waste facilities, including restrictions against siting a facility less than 1500 feet from all individual residences. Travis County asserts that TCEQ is legally obligated under §363.112(d) of the Health & Safety Code to deny this application because it

violates Chapter 62, Travis County Code. Synagro requested a variance from the prohibition against locating a solid waste facility less than 1500 feet from individual residences, and Travis County denied the request because Synagro did not meet the requirements for a variance.

As a result of denial of the variances, the part of Synagro's site upon which sewage sludge can be land applied in compliance with Chapters 62 and 64, Travis County Code, is significantly smaller than the part of Synagro's site upon which TCEQ's permit would allow land application. In other words, Synagro would have one boundary limit for land application under the permit it must obtain from Travis County, but a different boundary limit for land application under its TCEQ permit. If the TCEQ permit is issued, the executive director should eliminate this difference by requiring Synagro to comply with the more stringent of the two boundaries, which is the County's boundary.

Traditionally, land use matters are left to local governments rather than the state. It is no different in Texas. Under the overall statutory scheme of solid waste regulation set out by Chapters 361, 363, and 364, Health & Safety Code, the suitability of solid waste disposal from a land use perspective is guided by criteria enunciated at the local level. In some cases [i.e. §§363.112(d) or 364.012(f), Health & Safety Code], the statutory scheme mandates that TCEQ honor those local criteria; such is the case regarding Synagro's application. Even in those cases where it is not mandated, however, TCEQ retains the discretion to honor those criteria [i.e. §361.089, Health & Safety Code].

Absent the two ordinances adopted by Travis County, TCEQ would clearly have the discretion under §361.089, Health & Safety Code, to deny this permit on land use grounds. Therefore, if TCEQ determines that it is not required under Section 363.112(d) of the Health and Safety Code to deny Synagro's application, Travis County requests TCEQ to take into account both the characteristics of the area surrounding the site and local choices regarding land use as reflected by the two ordinances and deny this permit on land use grounds, or in the alternative issue the permit with a condition that Synagro is limited to the boundary limits for land application set by Travis County's local land use ordinances.

### Floodplain

As stated above, much of this site is within or near a floodplain. Quite apart from either the FEMA designation or the Travis County ordinance mentioned above, this area simply cannot be viewed as having suitable technical characteristics for the placement of approximately 1760 tons of dry tons of sewage sludge per year. The placement of the sludge in such quantities will undoubtedly have a filling effect, which will increase the grade of the ground at the site over time and displace floodwaters onto downstream properties. This is a recipe for long-term

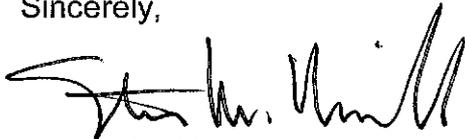
problems with increased flooding and environmental degradation downstream from the site.

### **Summary**

Proposed MSW WQ0004888000 should be denied outright. Synagro's use of the proposed site would be an inappropriate land use. Much of the proposed site is too close to individual residences and is prone to flooding, and it violates local ordinances. Travis County requests denial of Synagro's application, and in the alternative, if Synagro's application is not denied, Travis County requests that the permit be issued only on the condition that Synagro not land apply sewage sludge in any area where it is prohibited by Chapters 62 and 64, Travis County Code. Travis County further requests that a public hearing followed by a full evidentiary hearing on the issue of application of §§361.069 and 361.089 to the proposed permit. Travis County respectfully points out that the Commission specifically recognized the validity and merit of this legal issue regarding these types of permits (see enclosed copy of interim order in TCEQ Docket No. 2005-0199-SLG). Finally, Travis County would support TCEQ's holding a separate land use compatibility hearing under §361.069, Health & Safety Code, because sufficient grounds exist for denying the permit on land use grounds only, separate and apart from other grounds.

Thank you for your consideration of Travis County's comments. We look forward to a positive and sensible outcome.

Sincerely,



Steven M. Manilla, P.E.  
Executive Manager  
Travis County Transportation and Natural Resources Department  
(512) 854-9383

#### **Attachments:**

Chapter 64, Travis County Code  
Chapter 62, Travis County Code  
Interim Order in TCEQ Docket No. 2005-0199-SLG

#### **Cc:**

The Honorable Sam Biscoe, Travis County Judge  
The Honorable Ron Davis, Travis County Commissioner for Precinct 1  
The Honorable Sarah Eckhardt, Travis County Commissioner for Precinct 2  
The Honorable Karen Huber, Travis County Commissioner for Precinct 3  
The Honorable Margaret Gómez, Travis County Commissioner for Precinct 4

## **SUBCHAPTER G. SOLID WASTE MANAGEMENT OR DISPOSAL FACILITIES IN OR NEAR FLOODPLAINS**

### **§ 64.221. Definitions.**

Unless the context clearly requires otherwise, in this subchapter:

"Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste.

"Executive Manager" means the Executive Manager of the Travis County Transportation and Natural Resources Department.

"Management" means the systematic control of the activities of generation, source separation, collection, storage, transportation, processing, treatment, composting, recycling, beneficial use, resource recovery, land application, or other handling of solid waste.

"FEMA One Hundred Year Floodplain" means an area identified as a one hundred year floodplain on flood insurance rate maps or flood boundary and floodway maps published by the Federal Emergency Management Agency.

"Solid waste" means solid, liquid, semisolid, or contained gaseous waste resulting from or incidental to municipal, community, commercial, industrial, institutional, agricultural, mining, or recreational activities, including sludge, garbage, rubbish, refuse, ashes, street cleanings, dead animals, abandoned automobiles, and other discarded material. The term does not include either solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code, or soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

"Solid waste management or disposal facility" means land, structures, appurtenances, and other improvements on land, used for management or disposal of solid waste, including any incinerator, landfill, transfer station, or land application, beneficial use, or composting site. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

### **§ 64.222. Prohibition**

- (a) A person may not construct, locate, or operate a solid waste management or disposal facility either in, or within five hundred feet of the boundary of, a one hundred year floodplain.

(b) The prohibition in this section applies only

(i) outside the corporate limits of any municipality, and

(ii) to solid waste management or disposal facilities not fully permitted and operating in compliance with all regulatory requirements on the effective date of this ordinance.

2003 JUL 30 AM 11: 04

ORDER OF THE TRAVIS COUNTY COMMISSIONERS COURT

DANA MEEBAUGH  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

**WHEREAS**, solid waste facilities are critical to public health, safety, and welfare in Travis County because they facilitate the collection, handling, transportation, storage, processing, and disposal of the increasing volume of solid waste generated by the growing population of the county;

**WHEREAS**, constructing, locating, or operating solid waste facilities in certain areas can be detrimental to public health, safety, and welfare because:

- (i) solid waste and the pathogens and other contaminants it contains can be carried from such facilities to the air, nearby land, surface water, and ground water and thereby subject nearby residents and the general public to exposure through means including direct and indirect contact with contaminated soil or water, airborne transport, or disease vectors;
- (ii) traffic, trash, odors, vermin, unsightliness, and other undesirable byproducts of solid waste facilities may adversely impact adjacent land and environmental resources and thus make such facilities an incompatible use of land in close proximity to lakes and streams, suburban and rural residences and neighborhoods, parks and other recreational areas, historically significant places, airports, and other land features and uses;
- (iii) solid waste facilities that are improperly sited, design, or operated may impair the character of and quality of life in rural and suburban neighborhoods; and

**WHEREAS**, Travis County's growing population is creating siting conflicts by simultaneously creating a demand in unincorporated areas of Travis County both for more solid waste facilities and for more suburban and rural residences and neighborhoods, parks, schools, places of worship, health care facilities, and other competing land uses; and

**WHEREAS**, the Texas Commission on Environmental Quality (TCEQ) approves solid waste facilities based primarily on facility design, operation, or other engineering-based criteria, with more limited consideration given to siting criteria or land use impacts; and

**WHEREAS**, the Texas Health & Safety Code authorizes local governments to adopt ordinances or orders governing where certain solid waste facilities may and may not be located; and

**WHEREAS**, especially in cases where TCEQ will not give thorough consideration to land use, it is appropriate for Travis County to supplement TCEQ's requirements for solid waste facilities by adopting reasonable, non-exclusionary, and locally appropriate criteria for the siting of solid waste facilities in unincorporated areas of Travis County; and

**WHEREAS**, the Travis County Commissioners Court finds that the attached ordinance, while placing a greater demand on solid waste facility operators to be more selective both in locating and acquiring land for new sites and operating and expanding existing sites, will allow for the continued processing and disposal of solid waste in Travis County, as required by law; and

WHEREAS, the Travis County Commissioners Court has published notice of a proposed ordinance and held a public hearing, as required by law; and

WHEREAS, because solid waste facilities and population growth go hand in hand, the Travis County Commissioners Court strongly encourages every citizen of Travis County to recycle every object that may go into the waste stream, so that citizens residing in areas where solid waste facilities are or will be located are not overburdened, and so that the community is not overdependent on disposal as its method of solid waste management;

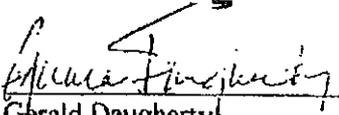
WHEREAS, the Travis County Commissioners Court wishes to reaffirm and ratify Subchapter C, Chapter 64, Travis County Code, as adopted on October 2, 2001;

NOW, THEREFORE, the Travis County Commissioners Court adopts Chapter 62, Travis County Code, which is attached hereto and incorporated herein and which is effective immediately, and ratifies the adoption under the Health & Safety Code of Subchapter C, Chapter 64, Travis County Code, as adopted on October 2, 2001.

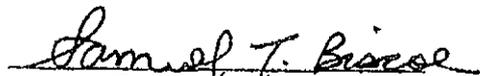
APPROVED THIS 22d day of July, 2003, by the Commissioners Court of Travis County, Texas



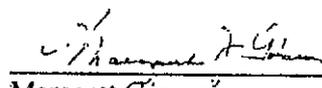
Ron Davis  
Commissioner, Precinct 1



Gerald Daugherty  
Commissioner, Precinct 3

  
Samuel T. Biscoe  
County Judge

Karen Sonleitner  
Commissioner, Precinct 2



Margaret Gomez  
Commissioner, Precinct 4

Siting of Solid Waste Facilities  
Chapter 62, Travis County Code

§62.001. Definitions.

Unless the context clearly requires otherwise, in this subchapter:

- (a) "Airport" means an airport that is open to the general public for the landing or takeoff of aircraft with or without a prior request to use the airport.
- (b) "Executive Manager" means the Executive Manager of the Travis County Transportation and Natural Resources Department.
- (c) "Health care facility" means a hospital, a nursing home, or overnight facility that provides medical care or treatment under the direction of a licensed physician to four or more persons unrelated to the proprietor or operator of the facility.
- (d) "Individual residence" means any structure intended to serve as the primary residence of, and is actually inhabited by, a human being. A structure is presumed to be an individual residence if it is designed for human residential habitation and is connected to water and electrical utilities.
- (e) "Minor facility" means a transfer station or recycling facility.
- (f) "Major Facility" means any solid waste processing and disposal facility other than a minor facility
- (g) "Neighborhood" means any manufactured or mobile home development, apartment or condominium complex, subdivision; or community having a total of nine or more individual residences or residential units and an overall average density of one residential unit or more per acre
- (h) "Place of worship" means an enclosed structure that is owned by a religious institution or organization and that is used primarily as a place of regular group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.
- (i) "Processing and disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, placing, collection, handling, transportation, storage, or processing of solid waste, including the systematic control of the activities of generation, source separation, treatment, composting, recycling beneficial use, resource recovery, or land application.
- (j) "Public park or historic facility" means real property owned or operated, or a facility officially designated as historic pursuant to express statutory authority, by a unit of federal,

- state, or local government that is used for the primary purpose of public congregation or visitation for recreation or historical or scientific education.
- (k) "Public water well" means a water well that is owned or operated by a utility subject to regulation by the TCEQ and that presently supplies or is capable of supplying potable water.
  - (l) "Receptor" means a public water well, school or day-care center, place of worship, health care facility, public park or historic facility, individual residence, or neighborhood.
  - (m) "Recycling facility" means a solid waste processing and disposal facility where paper, plastic, glass, or metal materials that are scrapped, discarded, used, surplus, or obsolete or have served their intended use are collected, separated, or processed and returned to use in the form of raw materials in the production of new products rather than being permanently disposed of at the facility.
  - (n) "School or day-care center" means a public or private facility, other than a home school, attendance at which satisfies the compulsory school attendance requirements of §§25.085 and 25.086, Education Code, as they existed on the effective date of this chapter, or a day-care center as defined in §42.002(3), Human Resources Code, as it existed on the effective date of this chapter.
  - (o) "Solid waste" means solid, liquid, semisolid, or contained gaseous waste resulting from or incidental to municipal, community, commercial, industrial, institutional, agricultural, mining, or recreational activities, including sludge, garbage, rubbish, refuse, ashes, street cleanings, dead animals, abandoned automobiles, and other discarded material. The term does not include (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code, (ii) or soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements, (iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substances or material regulated by the Railroad Commission of Texas under §91.101, Natural Resources Code, or (iv) hazardous waste.
  - (p) "Solid waste processing and disposal facility" means land, structures, appurtenances, and other improvements on land, used for management or disposal of solid waste, including any incinerator, landfill, transfer station, or land application, beneficial use, or composting site. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.
  - (q) "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.

- (r) "Transfer station" means a fixed facility used solely to facilitate the transfer of solid waste from collection vehicles to long-haul vehicles for transport to another solid waste processing and disposal facility for further or final processing and disposal.
- (s) "Unit" means a discrete area of land or an excavation or a building where solid waste is actually processed or disposed of, that may be smaller than the facility within which it is located, and that does not include land, structures, appurtenances, and other improvements on land that are beyond that area in which solid waste is actually processed or disposed of

**§62.002. Application of Ordinance.**

- (a) Processing and disposal of solid waste in areas not meeting the requirements of §§62.003 through 62.006 is declared to be an inappropriate land use and is prohibited, unless Travis County issues a variance pursuant to §62.007.
- (b) This chapter does not apply to:
  - (1) landfills that are classified as Type I, II, III, or IV by TCEQ rules at 30 TEX. ADMIN. CODE §330.41, as it existed on the effective date of this chapter
  - (2) areas inside the corporate limits of any municipality;
  - (3) an area for which an application for a permit or other authorization under Chapter 361, Health & Safety Code, has been filed with and is pending before the TCEQ prior to the effective date of this chapter;
  - (4) an area for which a permit or other authorization under Chapter 361, Health & Safety Code, has been issued by the TCEQ prior to the effective date of this chapter;
  - (5) an area to which §361.090, Health & Safety Code, applies;
  - (6) processing and disposal of biosolids at a municipally-owned municipal wastewater treatment and biosolids facility; or
  - (7) any activity that otherwise qualifies as solid waste processing and disposal, but constitutes a *de minimis* activity, including collection stations for household hazardous waste or citywide or roadside cleanups; composting and land application of source-separated yard trimmings, clean wood material, vegetative material, manure, and paper; mulching operations; agricultural operations that compost and use agricultural materials onsite; and disposal of litter or other solid waste generated by an individual on that individual's own land for other than commercial purposes not exceeding 2000 pounds per year; a minor change to the pattern or place of processing and disposal within the outermost perimeter of a facility's footprint that does not increase the maximum height or overall volumetric capacity of the facility, or any similar activity that the Executive Manager determines to be *de minimis*.

- (c) Where this chapter requires solid waste to be processed and disposed of at certain distances from a receptor, those distances shall be measured from the edge of each individual unit in which solid waste processing and disposal is to be permitted to the edge of the area lying within 100 feet of a receptor that existed the date the application for the permit or other authorization in question is filed. No requirement to process or dispose of solid waste at a certain distance from an individual residence, school or day-care center, place of worship, health care facility, public park or historic facility shall apply if the owner has filed with the Executive Manager and in the Travis County Real Property Records written consent to the processing or disposal of solid waste at a distance closer than that specified by this chapter.
- (d) Unless otherwise required by state or federal law, no department, official, or employee under the supervision of the Travis County Commissioners Court may issue a county permit or other approval for a solid waste management or disposal facility that does not meet the requirements of this chapter. Any permit issued based on false, incorrect, or incomplete information produced in association with the permit application is voidable.

**§62.003. Siting Criteria for Minor Facilities.**

Solid waste may be processed and disposed of at a minor facility only if it is located at least 350 feet from all:

- (a) public water wells;
- (b) schools or day-care centers;
- (c) places of worship;
- (d) health care facilities;
- (e) public parks or historic facilities; and
- (f) individual residences.

**§62.004. Siting Criteria for Major Facilities.**

Solid waste may be processed and disposed of at a major facility only if:

- (a) it is located at least 1500 feet from all:
  - (1) public water wells;
  - (2) schools or day-care centers;
  - (3) places of worship,

- (4) health care facilities;
  - (5) public parks and historic facilities; and
  - (6) individual residences;
- (b) it is located at **least** 5280 feet from all neighborhoods;
- (c) it is located at least 500 feet from the recharge zone of the Colorado River Alluvial Aquifer, including associated terrace deposits, as depicted by the Geologic Atlas of Texas, Qal and Qt Map Units, Austin Sheet, University of Texas at Austin Bureau of Economic Geology, 1974 (reprinted 1995);
- (d) it is located outside the recharge and contributing zones of the Barton Springs and Northern segments of the Edwards Aquifer, as mapped by TCEQ under 30 TEX. ADMIN. CODE §213 and housed at TCEQ's Region 11 Office, and the Trinity Aquifer recharge zone as depicted by Aquifers of Texas, Ashworth, J.B. and Hopkins, J., Report No. 345, Texas Water Development Board (1995);
- (e) it is located at least 3000 feet from Lake Travis, Lake Austin, or any other public surface drinking water reservoir; and
- (f) it is located where the major facility will take its primary vehicular access from a road that is or will prior to commencement of operations at the facility be capable of withstanding a minimum of 2,000,000 18-kip single axle loads for a 20-year period assuming 750 trucks per day.

**§62.005. Special Siting Criteria: Airports.**

Putrescible solid waste may be processed and disposed of only in an area:

- (a) greater than 10,000 feet from the runway ends of any airport at which jet aircraft take off and land; and
- (b) greater than 5000 feet from the runway ends of any other airport.

**§62.006. Special Siting Criteria: Floodplains.**

Solid waste may be processed and disposed of only in an area that complies with the requirements of §64.071, Travis County Code.

962.007. Variances.

- (a) If all requirements of this section are met to Travis County's satisfaction, Travis County shall issue a variance for the processing and disposal of solid waste in an area where it is otherwise declared inappropriate and prohibited under §62.002(a).
- (b) A person seeking a variance shall submit to the Executive Manager the following information. The amount and detail of the information shall be commensurate with the volume of and potential for adverse impacts from the proposed processing and disposal activities, as determined by the Executive Manager,
  - (1) Satisfactory evidence of the impracticability of locating or having located a facility in an area described in §§62.003-.006.
  - (2) Satisfactory assurances that the facility operator will comply with all necessary conditions and employ all necessary measures to protect public health, safety, and welfare by mitigating any adverse impacts on adjacent property, natural resources, and persons who reside, work, or recreate adjacent to the facility.
  - (3) Satisfactory evidence of the degree to which the proposed facility or expansion will contribute to meeting the solid waste management needs of the Capitol Area Planning Council region.
  - (4) Copies of the notices of violation, notices of enforcement, final judicial or administrative orders, agreed orders or settlements, and all other compliance history information required under Subchapter Q, Chapter 5, Water Code, and the rules adopted thereunder, for the facility in question and any other facility in the State of Texas under the control of the same operator, supplemented by copies of any notices, of violation, notices of enforcement, citations, indictments, final judicial or administrative orders, agreed orders or settlements, and other compliance history information issued or produced after the date of the foregoing Subchapter Q, Chapter 5, Water Code, information.
  - (5) A certification that written notice of the variance request, including a request that written comments be submitted to Travis County within 30 days, was both posted prominently at the site of the facility and mailed to all property owners either within 350 feet of the facility if it is a minor facility, or within 1500 feet of the facility if it is a major facility and to any homeowners association of any neighborhood if a major facility is proposed within 5280 feet of the neighborhood. Property ownership shall be determined by reference to records of the Travis Central Appraisal District.
- (c) Within 30 days after the end of the written comment period, the Executive Manager shall issue a written determination of whether to issue the variance under Subsection (d) below and post it on the Travis County web site. Persons entitled to mailed notice under §62.007(b)(5) or the person requesting the variance may file a written appeal to the Commissioners Court within 30 days of an adverse determination by the Executive Manager. If an appeal is filed, at the earliest

practicable date the Commissioners Court shall hold a public hearing and determine whether to issue the variance under Subsection (d) below.

- (d) Travis County shall issue a variance order authorizing, and specially designating as an appropriate land use, the processing and disposal of solid waste in the area if the following requirements are met.
- (1) The County finds that it is impracticable to process and dispose of the solid waste at a facility located in an area described in §§62.003-.006.
  - (2) Taking into account the information described in §62.007(b)(4) and any other significant and reliable information obtained by the County, the County finds that there are adequate assurances that the operator will comply with all necessary conditions and employ all necessary measures to protect the public health, safety, and welfare by mitigating any adverse impacts on persons, property, and natural resources adjacent to the facility, and that the operator has agreed to an adequate remediation plan that the operator shall be obligated to implement in the event of any release of pollutants or waste from the facility.
  - (3) The County finds that the facility will provide an overall public benefit in light of the solid waste management needs of the Capitol Area Planning Council region.

**§62.008. Severability.**

If this ordinance is declared partially void or unenforceable by an order of a court of competent jurisdiction, the remaining parts of this ordinance shall be construed as remaining in effect to the full degree allowed by that order.

**§62.009. No Implied Determinations.**

The exemption from this chapter of any solid waste processing and disposal facility, or the failure of this chapter to prohibit processing and disposal of solid waste in any particular area, does not constitute the County's determination that either such a facility or the disposal and processing of solid waste in such an area is an appropriate land use. The County reserves the right to participate fully in administrative and legal proceedings regarding such areas and facilities, including but not limited to land use compatibility hearings under 5331.60, TEX. ADMIN. CODE, and to base its positions in such proceedings on the individual circumstances of the facility or area in question, including but not limited to a position that a permit should be amended or denied on the basis of land use as provided by 5361.089, Health & Safety Code.

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN INTERIM ORDER** concerning the application by Magna-Flow International, Inc., for Permit No. WQ0004484000; TCEQ Docket No. 2005-0199-SLG.

On April 27, 2005, the Texas Commission on Environmental Quality (Commission) during its public meeting evaluated the timely hearing requests and requests for reconsideration submitted by the Travis County Commissioners Court, Park Springs Neighborhood Association, and Manville Water Supply Corporation regarding the application by Magna-Flow International, Inc. (Applicant) for Permit No. WQ0004484000 to authorize the beneficial land application of sewage sludge and water treatment sludge. The requests for hearing and requests for reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 TAC Chapters 50 and 55. The Commission also considered all timely public comment, the Executive Director's Response to Public Comment, and all other timely filings in this matter.

After evaluation of all relevant filings and the answers to questions during its meeting, the Commission determined that the Travis County Commissioners Court and Park Springs Neighborhood Association are affected persons as provided by applicable law. The Commission noted that Manville Water Supply Corporation may request standing from the State Office of Administrative Hearings (SOAH) Administrative Law Judge, but that the Commission did not have sufficient information to grant its request. The Commission also determined whether the requests for hearing raised disputed issues of fact that were raised during the comment period which are relevant and material to its decision on the application. The Commission determined that the following issues raised by the requestors are disputed facts, raised during the comment period, and are relevant and material to its decision on the application and directed that they be referred to SOAH for a contested case hearing with first a referral for 4-6 weeks to formal mediation with the Commission's Alternative Dispute Resolution (ADR) staff:

- (1) Whether land application at the site will, or has, caused contamination of surface water, including the alluvial aquifer of Gilleland Creek and the Colorado River; and groundwater including contamination of water wells;
- (2) Whether the permit should be denied due to the Applicant's compliance history;
- (3) Whether the facility meets the buffer zone requirements in 30 TAC Chapter 312;
- (4) Whether more stringent buffer zone requirements are appropriate under 30 TAC §312.6;
- (5) Whether the permit sets the appropriate agronomic rate for the site;
- (6) Whether soil nutrient parameters should be tested more often than once yearly, metals more often than once every five years, and metals tested only to a depth of six inches;
- (7) Whether the proposed permit will create, or perpetuate, a nuisance condition in violation of applicable rules;
- (8) Whether the site meets the seasonal groundwater table requirements in applicable rules;
- (9) Whether the clay soils at the site are conducive to safe beneficial land application of sludge;
- (10) Whether the Applicant meets the requirements to achieve Class B sludge status in accordance with applicable rules;
- (11) Whether application of sludge at the site will restrict the flow of a 100-year flood in violation of 30 TAC §312.64(b); and
- (12) Whether the site is located within the 100-year floodway.

The Commission specified that the maximum duration of the contested case hearing shall be nine months from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH. The Commission also determined to deny all of the requests for reconsideration.

In addition, the Commission invited the Executive Director, Office of Public Interest Counsel, Applicant, and the hearing requesters to submit briefs analyzing the applicability of TEX. HEALTH & SAFETY CODE ANN. §§361.069 and 361.089 to permits authorized under TEX. HEALTH & SAFETY CODE ANN. §361.121. The parties' briefs must be filed with the Office of the Chief Clerk no later than 5:00 p.m. on Friday, May 20, 2005, and any reply briefs from those parties must be filed with the Office of the Chief Clerk no later than 5:00 p.m. on Wednesday, June 8, 2005. Filings should include an original and eleven (11) copies, reference TCEQ Docket No. 2005-0199-SLG and be sent to the attention of the Agenda Docket Clerk in the Office of the Chief Clerk. Finally, the Commission determined to consider the briefs and reply briefs at its public meeting scheduled on

Wednesday, June 29, 2005, beginning at 1:00 p.m. The meeting will take place in Room 201S, Building E, 12118 N. Interstate 35, Austin, Texas.

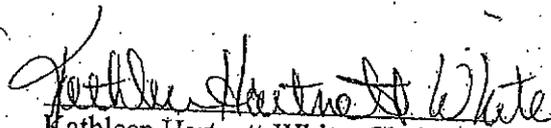
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- (1) This contested matter is first referred to ADR for formal mediation for a period of four weeks; if the ADR staff determines by May 25, 2005, that additional time is required, then the mediation period may be extended by two weeks to June 8, 2005.
- (2) If mediation does not result in full settlement, the Commission's Chief Clerk shall refer the case to SOAH for hearing on the application as ordered below.
- (3) The Travis County Commissioners Court and Park Springs Neighborhood Association are affected persons and their hearing requests are hereby granted with regard to the issues identified in Ordering Provision No. 5.
- (4) All hearing requests not identified in Ordering Provision No. 3 are hereby denied.
- (5) The Chief Clerk shall refer to SOAH the following issues for a contested case hearing on the application:
  - (a) Whether land application at the site will, or has, caused contamination of surface water, including the alluvial aquifer of Gilleland Creek and the Colorado River, and groundwater including contamination of water wells;
  - (b) Whether the permit should be denied due to the Applicant's compliance history;
  - (c) Whether the facility meets the buffer zone requirements in 30 TAC Chapter 312;
  - (d) Whether more stringent buffer zone requirements are appropriate under 30 TAC §312.6;
  - (e) Whether the permit sets the appropriate agronomic rate for the site;
  - (f) Whether soil nutrient parameters should be tested more often than once yearly, metals more often than once every five years, and metals tested only to a depth of six inches;
  - (g) Whether the proposed permit will create, or perpetuate, a nuisance condition in violation of applicable rules;
  - (h) Whether the site meets the seasonal groundwater table requirements in applicable rules;
  - (i) Whether the clay soils at the site are conducive to safe beneficial land application of sludge;
  - (j) Whether the Applicant meets the requirements to achieve Class B sludge status in accordance with applicable rules;

- (k) Whether application of sludge at the site will restrict the flow of a 100-year flood in violation of 30 TAC §312.64(b); and
- (l) Whether the site is located within the 100-year floodway.
- (6) All issues not identified as being referred to SOAH in Ordering Provision No. 5 are hereby denied, with the exception of the following issue to be considered at the Commission's June 29, 2005, public meeting: whether continued application of sludge is incompatible with surrounding land uses.
- (7) The maximum duration of the hearing is set at nine months from the first day of the preliminary hearing to the date the proposal for decision is issued by the State Office of Administrative Hearings.
- (8) All of the requests for reconsideration are hereby denied.

Issue date: MAY 05 2005

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Kathleen Hartnett White, Chairman

DAVID A. ESCAMILLA  
COUNTY ATTORNEY, TRAVIS COUNTY  
P.O. BOX 1748  
AUSTIN, TEXAS 78767

REWARDING AND ADDRESS CORRECTION REQUESTED

PRESORTED  
FIRST CLASS



UNITED STATES POSTAGE  
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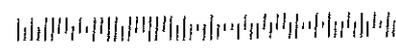
TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

MS. LADONNA CASTANUELA  
CHIEF CLERK (MC-105)  
TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY  
P. O. BOX 13087  
AUSTIN, TX 78711-3087

RECEIVED

JAN 31 2011

TCEQ MAIL CENTER  
JH



**From:** PUBCOMMENT-OCC  
**To:** PUBCOMMENT-OPA  
**Date:** 1/28/2011 3:41 PM  
**Subject:** Fwd: Public comment on Permit Number WQ0004888000  
**Place:** PUBCOMMENT-OPA  
**Attachments:** Travis County comments on Synagro application2.pdf

*IWD*  

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*68523*

>>> <[julie.joe@co.travis.tx.us](mailto:julie.joe@co.travis.tx.us)> 1/28/2011 3:38 PM >>>

**REGULATED ENTY NAME** RICHARD-ROSEMARY TRACT  
**RN NUMBER:** RN105716898  
**PERMIT NUMBER:** WQ0004888000  
**DOCKET NUMBER:** 2010-0651-IWD  
**COUNTY:** TRAVIS  
**PRINCIPAL NAME:** SYNAGRO OF TEXAS-CDR INC  
**CN NUMBER:** CN601307630

**FROM**

**NAME:** Julie Joe  
**E-MAIL:** [julie.joe@co.travis.tx.us](mailto:julie.joe@co.travis.tx.us)  
**COMPANY:** Travis County  
**ADDRESS:** PO BOX 1748  
 AUSTIN TX 78767-1748  
**PHONE:** 5128549415

**FAX:**

**COMMENTS:** Dear Ms. Castanuela, Please find attached Travis County's comments regarding pending permit application number WQ0004888000. Sincerely, Julie Joe Assistant County Attorney Travis County Attorney's Office

*mw*

# Travis County Commissioners Court

**SAMUEL T. BISCOE**  
County Judge

**RON DAVIS**  
Commissioner, Pct. 1

**SARAH ECKHARDT**  
Commissioner, Pct. 2

**KAREN L. HUBER**  
Commissioner, Pct. 3



**MARGARET J. GÓMEZ**  
Commissioner, Pct. 4

Travis County Administration Building, 314 W. 11<sup>th</sup>, Commissioners Courtroom, 1st Floor, Austin, Tx 78701

January 27, 2011

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

RE: Synagro of Texas--CDR, Inc. Application for Beneficial Land Use of Class B Sewage Sludge near Richards Drive and Highway 71, Travis County: Proposed TCEQ Permit No. WQ0004888000

Dear Ms. Castañuela:

On January 25, 2011, the Travis County Commissioners Court voted for me to submit the following comments on the Court's behalf regarding the permit application cited above. Travis County strongly opposes this project due to conflicts with adopted ordinances, technical deficiencies of the site, and existing and inevitable future land use problems at the site.

Specifically, Travis County requests the executive director to reconsider his decision and deny the permit or, in the alternative, issue the permit with a requirement that Synagro not land apply sewage sludge in any area where it is not allowed by Chapters 62 and 64, Travis County Code. Travis County further requests that the Commission direct a contested case hearing be held on the applicability of §§361.069 and 361.089, Health & Safety Code, to Permit No. WQ0004888000.

### **Synagro's Use of This Site Would Be an Inappropriate Land Use**

First, the Travis County Commissioners Court has received comments in opposition to Synagro's proposed operation from more than fifty families who live

on Navarro Creek Road. All of these families live within about a mile from the proposed application site, and some of these families live within 1500 feet from the proposed site. Similarly, TCEQ's mailing list relating to Synagro's permit application includes listings for fifty residents with addresses on Navarro Creek Road who oppose Synagro's proposal to apply sewage sludge near their homes.

When the Travis County Commissioners Court held its first public hearing on August 31, 2010 regarding a request for variances from Chapters 62 and 64, Travis County Code, that Synagro had submitted to Travis County, residents who live near the proposed application site expressed concerns regarding the potential negative impacts on the health and safety on themselves and their families from Synagro's proposed operations, including the potential harmful effects on air quality and water quality. The residents also testified that they must already contend with offensive odors and that Synagro's proposed operations would only compound the existing odor problems. A representative from Synagro acknowledged that the sewage sludge that Synagro wants to apply has a "slight" odor and that Synagro does not "have anything to control the odor" but the odor "usually dissipates within a couple of days." However, as one of the residents pointed out, the Synagro representative does not live in the vicinity of the proposed site and would not have to contend with the offensive odors or its potential harmful effects.

Even assuming flawless operation by Synagro, the proximity of the site to these family residences is a recipe for endless conflict for neighbors, the public, the applicant, TCEQ, and Travis County, and we believe that the solid waste disposal activities Synagro will engage in at this site are an inappropriate land use for this area.

Second, this site is in or near the Federal Emergency Management Agency's (FEMA) designated 100-year floodplain of Dry Creek. On September 26, 2008, Travis County adopted Subchapter G, Chapter 64, Travis County Code, under §16.315, Water Code (copy enclosed). This ordinance prohibits the location of solid waste management or disposal facilities (note that the County's definition of "facility" includes the type of activity for which Synagro has filed its TCEQ application) within 500 feet of a 100-year floodplain. Much of this site does not comply with the ordinance. While the ordinance does contain a variance provision, and Synagro applied to Travis County for such a variance, Travis County denied the request because Synagro did not meet the requirements for a variance.

Third, Travis County has also adopted Chapter 62, Travis County Code (copy enclosed). The site that is the subject of Synagro's application violates several requirements established in this ordinance for the siting of solid waste facilities, including restrictions against siting a facility less than 1500 feet from all individual residences. Travis County asserts that TCEQ is legally obligated under §363.112(d) of the Health & Safety Code to deny this application because it

violates Chapter 62, Travis County Code. Synagro requested a variance from the prohibition against locating a solid waste facility less than 1500 feet from individual residences, and Travis County denied the request because Synagro did not meet the requirements for a variance.

As a result of denial of the variances, the part of Synagro's site upon which sewage sludge can be land applied in compliance with Chapters 62 and 64, Travis County Code, is significantly smaller than the part of Synagro's site upon which TCEQ's permit would allow land application. In other words, Synagro would have one boundary limit for land application under the permit it must obtain from Travis County, but a different boundary limit for land application under its TCEQ permit. If the TCEQ permit is issued, the executive director should eliminate this difference by requiring Synagro to comply with the more stringent of the two boundaries, which is the County's boundary.

Traditionally, land use matters are left to local governments rather than the state. It is no different in Texas. Under the overall statutory scheme of solid waste regulation set out by Chapters 361, 363, and 364, Health & Safety Code, the suitability of solid waste disposal from a land use perspective is guided by criteria enunciated at the local level. In some cases [i.e. §§363.112(d) or 364.012(f), Health & Safety Code], the statutory scheme mandates that TCEQ honor those local criteria; such is the case regarding Synagro's application. Even in those cases where it is not mandated, however, TCEQ retains the discretion to honor those criteria [i.e. §361.089, Health & Safety Code].

Absent the two ordinances adopted by Travis County, TCEQ would clearly have the discretion under §361.089, Health & Safety Code, to deny this permit on land use grounds. Therefore, if TCEQ determines that it is not required under Section 363.112(d) of the Health and Safety Code to deny Synagro's application, Travis County requests TCEQ to take into account both the characteristics of the area surrounding the site and local choices regarding land use as reflected by the two ordinances and deny this permit on land use grounds, or in the alternative issue the permit with a condition that Synagro is limited to the boundary limits for land application set by Travis County's local land use ordinances.

#### Floodplain

As stated above, much of this site is within or near a floodplain. Quite apart from either the FEMA designation or the Travis County ordinance mentioned above, this area simply cannot be viewed as having suitable technical characteristics for the placement of approximately 1760 tons of dry tons of sewage sludge per year. The placement of the sludge in such quantities will undoubtedly have a filling effect, which will increase the grade of the ground at the site over time and displace floodwaters onto downstream properties. This is a recipe for long-term

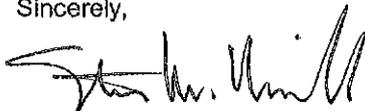
problems with increased flooding and environmental degradation downstream from the site.

### Summary

Proposed MSW WQ0004888000 should be denied outright. Synagro's use of the proposed site would be an inappropriate land use. Much of the proposed site is too close to individual residences and is prone to flooding, and it violates local ordinances. Travis County requests denial of Synagro's application, and in the alternative, if Synagro's application is not denied, Travis County requests that the permit be issued only on the condition that Synagro not land apply sewage sludge in any area where it is prohibited by Chapters 62 and 64, Travis County Code. Travis County further requests that a public hearing followed by a full evidentiary hearing on the issue of application of §§361.069 and 361.089 to the proposed permit. Travis County respectfully points out that the Commission specifically recognized the validity and merit of this legal issue regarding these types of permits (see enclosed copy of interim order in TCEQ Docket No. 2005-0199-SLG). Finally, Travis County would support TCEQ's holding a separate land use compatibility hearing under §361.069, Health & Safety Code, because sufficient grounds exist for denying the permit on land use grounds only, separate and apart from other grounds.

Thank you for your consideration of Travis County's comments. We look forward to a positive and sensible outcome.

Sincerely,



Steven M. Manilla, P.E.  
Executive Manager  
Travis County Transportation and Natural Resources Department  
(512) 854-9383

Attachments:  
Chapter 64, Travis County Code  
Chapter 62, Travis County Code  
Interim Order in TCEQ Docket No. 2005-0199-SLG

Cc:  
The Honorable Sam Bliscoe, Travis County Judge  
The Honorable Ron Davis, Travis County Commissioner for Precinct 1  
The Honorable Sarah Eckhardt, Travis County Commissioner for Precinct 2  
The Honorable Karen Huber, Travis County Commissioner for Precinct 3  
The Honorable Margaret Gómez, Travis County Commissioner for Precinct 4

**SUBCHAPTER G. SOLID WASTE MANAGEMENT OR DISPOSAL FACILITIES  
IN OR NEAR FLOODPLAINS**

**§ 64.221. Definitions.**

Unless the context clearly requires otherwise, in this subchapter:

"Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste.

"Executive Manager" means the Executive Manager of the Travis County Transportation and Natural Resources Department.

"Management" means the systematic control of the activities of generation, source separation, collection, storage, transportation, processing, treatment, composting, recycling, beneficial use, resource recovery, land application, or other handling of solid waste.

"FEMA One Hundred Year Floodplain" means an area identified as a one hundred year floodplain on flood insurance rate maps or flood boundary and floodway maps published by the Federal Emergency Management Agency.

"Solid waste" means solid, liquid, semisolid, or contained gaseous waste resulting from or incidental to municipal, community, commercial, industrial, institutional, agricultural, mining, or recreational activities, including sludge, garbage, rubbish, refuse, ashes, street cleanings, dead animals, abandoned automobiles, and other discarded material. The term does not include either solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code, or soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

"Solid waste management or disposal facility" means land, structures, appurtenances, and other improvements on land, used for management or disposal of solid waste, including any incinerator, landfill, transfer station, or land application, beneficial use, or composting site. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

**§ 64.222. Prohibition**

- (a) A person may not construct, locate, or operate a solid waste management or disposal facility either in, or within five hundred feet of the boundary of, a one hundred year floodplain.

(b) The prohibition in this section applies only

(i) outside the corporate limits of any municipality, and

(ii) to solid waste management or disposal facilities not fully permitted and operating in compliance with all regulatory requirements on the effective date of this ordinance.

VS U'1-22-2003  
Item 34 FILED FOR RECORD

2003 JUL 30 AM 11: 04

ORDER OF THE TRAVIS COUNTY COMMISSIONERS COURT

DANA McRAVIER  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

**WHEREAS**, solid waste facilities are critical to public health, safety, and welfare in Travis County because they facilitate the collection, handling, transportation, storage, processing, and disposal of the increasing volume of solid waste generated by the growing population of the county;

**WHEREAS**, constructing, locating, or operating solid waste facilities in certain areas can be detrimental to public health, safety, and welfare because:

- (i) solid waste and the pathogens and other contaminants it contains can be carried from such facilities to the air, nearby land, surface water, and ground water and thereby subject nearby residents and the general public to exposure through means including direct and indirect contact with contaminated soil or water, airborne transport, or disease vectors;
- (ii) traffic, trash, odors, vermin, unsightliness, and other undesirable byproducts of solid waste facilities may adversely impact adjacent land and environmental resources and thus make such facilities an incompatible use of land in close proximity to lakes and streams, suburban and rural residences and neighborhoods, parks and other recreational areas, historically significant places, airports, and other land features and uses;
- (iii) solid waste facilities that are improperly sited, design, or operated may impair the character of and quality of life in rural and suburban neighborhoods; and

**WHEREAS**, Travis County's growing population is creating siting conflicts by simultaneously creating a demand in unincorporated areas of Travis County both for more solid waste facilities and for more suburban and rural residences and neighborhoods, parks, schools, places of worship, health care facilities, and other competing land uses; and

**WHEREAS**, the Texas Commission on Environmental Quality (TCEQ) approves solid waste facilities based primarily on facility design, operation, or other engineering-based criteria, with more limited consideration given to siting criteria or land use impacts; and

**WHEREAS**, the Texas Health & Safety Code authorizes local governments to adopt ordinances or orders governing where certain solid waste facilities may and may not be located; and

**WHEREAS**, especially in cases where TCEQ will not give thorough consideration to land use, it is appropriate for Travis County to supplement TCEQ's requirements for solid waste facilities by adopting reasonable, non-exclusionary, and locally appropriate criteria for the siting of solid waste facilities in unincorporated areas of Travis County; and

**WHEREAS**, the Travis County Commissioners Court finds that the attached ordinance, while placing a greater demand on solid waste facility operators to be more selective both in locating and acquiring land for new sites and operating and expanding existing sites, will allow for the continued processing and disposal of solid waste in Travis County, as required by law; and

43892-14 163.000

WHEREAS, the Travis County Commissioners Court has published notice of a proposed ordinance and held a public hearing, as required by law; and

WHEREAS, because solid waste facilities and population growth go hand in hand, the Travis County Commissioners Court strongly encourages every citizen of Travis County to recycle every object that may go into the waste stream, so that citizens residing in areas where solid waste facilities are or will be located are not overburdened, and so that the community is not overdependent on disposal as its method of solid waste management;

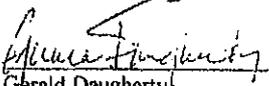
WHEREAS, the Travis County Commissioners Court wishes to reaffirm and ratify Subchapter C, Chapter 64, Travis County Code, as adopted on October 2, 2001;

NOW, THEREFORE, the Travis County Commissioners Court adopts Chapter 62, Travis County Code, which is attached hereto and incorporated herein and which is effective immediately, and ratifies the adoption under the Health & Safety Code of Subchapter C, Chapter 64, Travis County Code, as adopted on October 2, 2001.

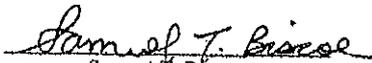
APPROVED THIS 22d day of July, 2003, by the Commissioners Court of Travis County, Texas



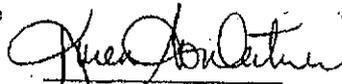
Ron Davis  
Commissioner, Precinct 1



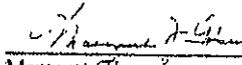
Gerald Daugherty  
Commissioner, Precinct 3



Samuel T. Biscoe  
County Judge



Karen Sonleitner  
Commissioner, Precinct 2



Margaret Gomez  
Commissioner, Precinct 4

Siting of Solid Waste Facilities  
Chapter 62, Travis County Code

§62.001. Definitions.

Unless the context clearly requires otherwise, in this subchapter:

- (a) "Airport" means an airport that is open to the general public for the landing or takeoff of aircraft with or without a prior request to use the airport.
- (b) "Executive Manager" means the Executive Manager of the Travis County Transportation and Natural Resources Department.
- (c) "Health care facility" means a hospital, a nursing home, or overnight facility that provides medical care or treatment under the direction of a licensed physician to four or more persons unrelated to the proprietor or operator of the facility.
- (d) "Individual residence" means any structure intended to serve as the primary residence of, and is actually inhabited by, a human being. A structure is presumed to be an individual residence if it is designed for human residential habitation and is connected to water and electrical utilities.
- (e) "Minor facility" means a transfer station or recycling facility.
- (f) "Major Facility" means any solid waste processing and disposal facility other than a minor facility
- (g) "Neighborhood" means any manufactured or mobile home development, apartment or condominium complex, subdivision; or community having a total of nine or more individual residences or residential units and an overall average density of one residential unit or more per acre
- (h) "Place of worship" means an enclosed structure that is owned by a religious institution or organization and that is used primarily as a place of regular group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.
- (i) "Processing and disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, placing, collection, handling, transportation, storage, or processing of solid waste, including the systematic control of the activities of generation, source separation, treatment, composting, recycling beneficial use, resource recovery, or land application.
- (j) "Public park or historic facility" means real property owned or operated, or a facility officially designated as historic pursuant to express statutory authority, by a unit of federal,

- state, or local government that is used for the primary purpose of public congregation or visitation for recreation or historical or scientific education.
- (k) "Public water well" means a water well that is owned or operated by a utility subject to regulation by the TCEQ and that presently supplies or is capable of supplying potable water.
- (l) "Receptor" means a public water well, school or day-care center, place of worship, health care facility, public park or historic facility, individual residence, or neighborhood.
- (m) "Recycling facility" means a solid waste processing and disposal facility where paper, plastic, glass, or metal materials that are scrapped, discarded, used, surplus, or obsolete or have served their intended use are collected, separated, or processed and returned to use in the form of raw materials in the production of new products rather than being permanently disposed of at the facility.
- (n) "School or day-care center" means a public or private facility, other than a home school, attendance at which satisfies the compulsory school attendance requirements of §§25.085 and 25.086, Education Code, as they existed on the effective date of this chapter, or a day-care center as defined in §42.002(3), Human Resources Code, as it existed on the effective date of this chapter.
- (o) "Solid waste" means solid, liquid, semisolid, or contained gaseous waste resulting from or incidental to municipal, community, commercial, industrial, institutional, agricultural, mining, or recreational activities, including sludge, garbage, rubbish, refuse, ashes, street cleanings, dead animals, abandoned automobiles, and other discarded material. The term does not include (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code, (ii) or soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements, (iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substances or material regulated by the Railroad Commission of Texas under §91.101, Natural Resources Code, or (iv) hazardous waste.
- (p) "Solid waste processing and disposal facility" means land, structures, appurtenances, and other improvements on land, used for management or disposal of solid waste, including any incinerator, landfill, transfer station, or land application, beneficial use, or composting site. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.
- (q) "TCEQ" means the Texas Commission on Environmental Quality or any successor agency.

- (r) "Transfer station" means a fixed facility used solely to facilitate the transfer of solid waste from collection vehicles to long-haul vehicles for transport to another solid waste processing and disposal facility for further or final processing and disposal.
- (s) "Unit" means a discrete area of land or an excavation or a building where solid waste is actually processed or disposed of, that may be smaller than the facility within which it is located, and that does not include land, structures, appurtenances, and other improvements on land that are beyond that area in which solid waste is actually processed or disposed of

**§62.002. Application of Ordinance.**

- (a) Processing and disposal of solid waste in areas not meeting the requirements of §§62.003 through 62.006 is declared to be an inappropriate land use and is prohibited, unless Travis County issues a variance pursuant to §62.007.
- (b) This chapter does not apply to:
- (1) landfills that are classified as Type I, II, III, or IV by TCEQ rules at 30 TEX. ADMIN. CODE §330.41, as it existed on the effective date of this chapter
  - (2) areas inside the corporate limits of any municipality;
  - (3) an area for which an application for a permit or other authorization under Chapter 361, Health & Safety Code, has been filed with and is pending before the TCEQ prior to the effective date of this chapter;
  - (4) an area for which a permit or other authorization under Chapter 361, Health & Safety Code, has been issued by the TCEQ prior to the effective date of this chapter;
  - (5) an area to which §361.090, Health & Safety Code, applies;
  - (6) processing and disposal of biosolids at a municipally-owned municipal wastewater treatment and biosolids facility; or
  - (7) any activity that otherwise qualifies as solid waste processing and disposal, but constitutes a *de minimis* activity, including collection stations for household hazardous waste or citywide or roadside cleanups; composting and land application of source-separated yard trimmings, clean wood material, vegetative material, manure, and paper; mulching operations; agricultural operations that compost and use agricultural materials onsite; and disposal of litter or other solid waste generated by an individual on that individual's own land for other than commercial purposes not exceeding 2000 pounds per year; a minor change to the pattern or place of processing and disposal within the outermost perimeter of a facility's footprint that does not increase the maximum height or overall volumetric capacity of the facility, or any similar activity that the Executive Manager determines to be *de minimis*.

- (c) Where this chapter requires solid waste to be processed and disposed of at certain distances from a receptor, those distances shall be measured from the edge of each individual unit in which solid waste processing and disposal is to be permitted to the edge of the area lying within 100 feet of a receptor that existed the date the application for the permit or other authorization in question is filed. No requirement to process or dispose of solid waste at a certain distance from an individual residence, school or day-care center, place of worship, health care facility, public park or historic facility shall apply if the owner has filed with the Executive Manager and in the Travis County Real Property Records written consent to the processing or disposal of solid waste at a distance closer than that specified by this chapter.
- (d) Unless otherwise required by state or federal law, no department, official, or employee under the supervision of the Travis County Commissioners Court may issue a county permit or other approval for a solid waste management or disposal facility that does not meet the requirements of this chapter. Any permit issued based on false, incorrect, or incomplete information produced in association with the permit application is voidable.

**§62.003. Siting Criteria for Minor Facilities.**

Solid waste may be processed and disposed of at a minor facility only if it is located at least 350 feet from all:

- (a) public water wells;
- (b) schools or day-care centers;
- (c) places of worship;
- (d) health care facilities;
- (e) public parks or historic facilities; and
- (f) individual residences.

**§62.004. Siting Criteria for Major Facilities.**

Solid waste may be processed and disposed of at a major facility only if:

- (a) it is located at least 1500 feet from all:
  - (1) public water wells;
  - (2) schools or day-care centers;
  - (3) places of worship,

- (4) health care facilities;
  - (5) public parks and historic facilities; and
  - (6) individual residences;
- (b) it is located at least 5280 feet from all neighborhoods;
- (c) it is located at least 500 feet from the recharge zone of the Colorado River Alluvial Aquifer, including associated terrace deposits, as depicted by the Geologic Atlas of Texas, Qal and Qd Map Units, Austin Sheet, University of Texas at Austin Bureau of Economic Geology, 1974 (reprinted 1995);
- (d) it is located outside the recharge and contributing zones of the Barton Springs and Northern segments of the Edwards Aquifer, as mapped by TCEQ under 30 TEX. ADMIN. CODE §213 and housed at TCEQ's Region 11 Office, and the Trinity Aquifer recharge zone as depicted by Aquifers of Texas, Ashworth, J.B. and Hopkins, J., Report No. 345, Texas Water Development Board (1995);
- (e) it is located at least 3000 feet from Lake Travis, Lake Austin, or any other public surface drinking water reservoir; and
- (f) it is located where the major facility will take its primary vehicular access from a road that is or will prior to commencement of operations at the facility be capable of withstanding a minimum of 2,000,000 18-kip single axle loads for a 20-year period assuming 750 trucks per day.

**§62.005. Special Siting Criteria: Airports.**

Putrescible solid waste may be processed and disposed of only in an area:

- (a) greater than 10,000 feet from the runway ends of any airport at which jet aircraft take off and land; and
- (b) greater than 5000 feet from the runway ends of any other airport.

**§62.006. Special Siting Criteria: Floodplains.**

Solid waste may be processed and disposed of only in an area that complies with the requirements of §64.071, Travis County Code.

962.007. Variances.

- (a) If all requirements of this section are met to Travis County's satisfaction, Travis County shall issue a variance for the processing and disposal of solid waste in an area where it is otherwise declared inappropriate and prohibited under §62.002(a).
- (b) A person seeking a variance shall submit to the Executive Manager the following information. The amount and detail of the information shall be commensurate with the volume of and potential for adverse impacts from the proposed processing and disposal activities, as determined by the Executive Manager.
- (1) Satisfactory evidence of the impracticability of locating or having located a facility in an area described in §§62.003-.006.
  - (2) Satisfactory assurances that the facility operator will comply with all necessary conditions and employ all necessary measures to protect public health, safety, and welfare by mitigating any adverse impacts on adjacent property, natural resources, and persons who reside, work, or recreate adjacent to the facility.
  - (3) Satisfactory evidence of the degree to which the proposed facility or expansion will contribute to meeting the solid waste management needs of the Capitol Area Planning Council region.
  - (4) Copies of the notices of violation, notices of enforcement, final judicial or administrative orders, agreed orders or settlements, and all other compliance history information required under Subchapter Q, Chapter 5, Water Code, and the rules adopted thereunder, for the facility in question and any other facility in the State of Texas under the control of the same operator, supplemented by copies of any notices, of violation, notices of enforcement, citations, indictments, final judicial or administrative orders, agreed orders or settlements, and other compliance history information issued or produced after the date of the foregoing Subchapter Q, Chapter 5, Water Code, information.
  - (5) A certification that written notice of the variance request, including a request that written comments be submitted to Travis County within 30 days, was both posted prominently at the site of the facility and mailed to all property owners either within 350 feet of the facility if it is a minor facility, or within 1500 feet of the facility if it is a major facility and to any homeowners association of any neighborhood if a major facility is proposed within 5280 feet of the neighborhood. Property ownership shall be determined by reference to records of the Travis Central Appraisal District.
- (c) Within 30 days after the end of the written comment period, the Executive Manager shall issue a written determination of whether to issue the variance under Subsection (d) below and post it on the Travis County web site. Persons entitled to mailed notice under §62.007(b)(5) or the person requesting the variance may file a written appeal to the Commissioners Court within 30 days of an adverse determination by the Executive Manager. If an appeal is filed, at the earliest

practicable date the Commissioners Court shall hold a public hearing and determine whether to issue the variance under Subsection (d) below.

(d) Travis County shall issue a variance order authorizing, and specially designating as an appropriate land use, the processing and disposal of solid waste in the area if the following requirements are met.

(1) The County finds that it is impracticable to process and dispose of the solid waste at a facility located in an area described in §§62.003-.006.

(2) Taking into account the information described in §62.007(b)(4) and any other significant and reliable information obtained by the County, the County finds that there are adequate assurances that the operator will comply with all necessary conditions and employ all necessary measures to protect the public health, safety, and welfare by mitigating any adverse impacts on persons, property, and natural resources adjacent to the facility, and that the operator has agreed to an adequate remediation plan that the operator shall be obligated to implement in the event of any release of pollutants or waste from the facility.

(3) The County finds that the facility will provide an overall public benefit in light of the solid waste management needs of the Capitol Area Planning Council region.

**§62.008. Severability.**

If this ordinance is declared partially void or unenforceable by an order of a court of competent jurisdiction, the remaining parts of this ordinance shall be construed as remaining in effect to the full degree allowed by that order.

**§62.009. No Implied Determinations.**

The exemption from this chapter of any solid waste processing and disposal facility, or the failure of this chapter to prohibit processing and disposal of solid waste in any particular area, does not constitute the County's determination that either such a facility or the disposal and processing of solid waste in such an area is an appropriate land use. The County reserves the right to participate fully in administrative and legal proceedings regarding such areas and facilities, including but not limited to land use compatibility hearings under 5331.60, TEX. ADMIN. CODE, and to base its positions in such proceedings on the individual circumstances of the facility or area in question, including but not limited to a position that a permit should be amended or denied on the basis of land use as provided by 5361.089, Health & Safety Code.

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN INTERIM ORDER** concerning the application by Magna-Flow International, Inc., for Permit No. WQ0004484000; TCEQ Docket No. 2005-0199-SLG.

On April 27, 2005, the Texas Commission on Environmental Quality (Commission) during its public meeting evaluated the timely hearing requests and requests for reconsideration submitted by the Travis County Commissioners Court, Park Springs Neighborhood Association, and Manville Water Supply Corporation regarding the application by Magna-Flow International, Inc. (Applicant) for Permit No. WQ0004484000 to authorize the beneficial land application of sewage sludge and water treatment sludge. The requests for hearing and requests for reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 TAC Chapters 50 and 55. The Commission also considered all timely public comment, the Executive Director's Response to Public Comment, and all other timely filings in this matter.

After evaluation of all relevant filings and the answers to questions during its meeting, the Commission determined that the Travis County Commissioners Court and Park Springs Neighborhood Association are affected persons as provided by applicable law. The Commission noted that Manville Water Supply Corporation may request standing from the State Office of Administrative Hearings (SOAH) Administrative Law Judge, but that the Commission did not have sufficient information to grant its request. The Commission also determined whether the requests for hearing raised disputed issues of fact that were raised during the comment period which are relevant and material to its decision on the application. The Commission determined that the following issues raised by the requestors are disputed facts, raised during the comment period, and are relevant and material to its decision on the application and directed that they be referred to SOAH for a contested case hearing with first a referral for 4-6 weeks to formal mediation with the Commission's Alternative Dispute Resolution (ADR) staff:

- (1) Whether land application at the site will, or has, caused contamination of surface water, including the alluvial aquifer of Gilleland Creek and the Colorado River; and groundwater including contamination of water wells;
- (2) Whether the permit should be denied due to the Applicant's compliance history;
- (3) Whether the facility meets the buffer zone requirements in 30 TAC Chapter 312;
- (4) Whether more stringent buffer zone requirements are appropriate under 30 TAC §312.6;
- (5) Whether the permit sets the appropriate agronomic rate for the site;
- (6) Whether soil nutrient parameters should be tested more often than once yearly, metals more often than once every five years, and metals tested only to a depth of six inches;
- (7) Whether the proposed permit will create, or perpetuate, a nuisance condition in violation of applicable rules;
- (8) Whether the site meets the seasonal groundwater table requirements in applicable rules;
- (9) Whether the clay soils at the site are conducive to safe beneficial land application of sludge;
- (10) Whether the Applicant meets the requirements to achieve Class B sludge status in accordance with applicable rules;
- (11) Whether application of sludge at the site will restrict the flow of a 100-year flood in violation of 30 TAC §312.64(b); and
- (12) Whether the site is located within the 100-year floodway.

The Commission specified that the maximum duration of the contested case hearing shall be nine months from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH. The Commission also determined to deny all of the requests for reconsideration.

In addition, the Commission invited the Executive Director, Office of Public Interest Counsel, Applicant, and the hearing requesters to submit briefs analyzing the applicability of TEX. HEALTH & SAFETY CODE ANN. §§361.069 and 361.089 to permits authorized under TEX. HEALTH & SAFETY CODE ANN. §361.121. The parties' briefs must be filed with the Office of the Chief Clerk no later than 5:00 p.m. on Friday, May 20, 2005, and any reply briefs from those parties must be filed with the Office of the Chief Clerk no later than 5:00 p.m. on Wednesday, June 8, 2005. Filings should include an original and eleven (11) copies, reference TCEQ Docket No. 2005-0199-SLG and be sent to the attention of the Agenda Docket Clerk in the Office of the Chief Clerk. Finally, the Commission determined to consider the briefs and reply briefs at its public meeting scheduled on

Wednesday, June 29, 2005, beginning at 1:00 p.m. The meeting will take place in Room 201S, Building E, 12118 N. Interstate 35, Austin, Texas.

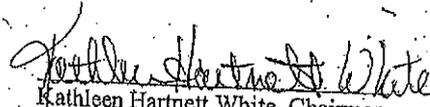
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- (1) This contested matter is first referred to ADR for formal mediation for a period of four weeks; if the ADR staff determines by May 25, 2005, that additional time is required, then the mediation period may be extended by two weeks to June 8, 2005.
- (2) If mediation does not result in full settlement, the Commission's Chief Clerk shall refer the case to SOAH for hearing on the application as ordered below.
- (3) The Travis County Commissioners Court and Park Springs Neighborhood Association are affected persons and their hearing requests are hereby granted with regard to the issues identified in Ordering Provision No. 5.
- (4) All hearing requests not identified in Ordering Provision No. 3 are hereby denied.
- (5) The Chief Clerk shall refer to SOAH the following issues for a contested case hearing on the application:
  - (a) Whether land application at the site will, or has, caused contamination of surface water, including the alluvial aquifer of Gilleland Creek and the Colorado River, and groundwater including contamination of water wells;
  - (b) Whether the permit should be denied due to the Applicant's compliance history;
  - (c) Whether the facility meets the buffer zone requirements in 30 TAC Chapter 312;
  - (d) Whether more stringent buffer zone requirements are appropriate under 30 TAC §312.6;
  - (e) Whether the permit sets the appropriate agronomic rate for the site;
  - (f) Whether soil nutrient parameters should be tested more often than once yearly, metals more often than once every five years, and metals tested only to a depth of six inches;
  - (g) Whether the proposed permit will create, or perpetuate, a nuisance condition in violation of applicable rules;
  - (h) Whether the site meets the seasonal groundwater table requirements in applicable rules;
  - (i) Whether the clay soils at the site are conducive to safe beneficial land application of sludge;
  - (j) Whether the Applicant meets the requirements to achieve Class B sludge status in accordance with applicable rules;

- (k) Whether application of sludge at the site will restrict the flow of a 100-year flood in violation of 30 TAC §312.64(b); and
- (l) Whether the site is located within the 100-year floodway.
- (6) All issues not identified as being referred to SOAH in Ordering Provision No. 5 are hereby denied, with the exception of the following issue to be considered at the Commission's June 29, 2005, public meeting: whether continued application of sludge is incompatible with surrounding land uses.
- (7) The maximum duration of the hearing is set at nine months from the first day of the preliminary hearing to the date the proposal for decision is issued by the State Office of Administrative Hearings.
- (8) All of the requests for reconsideration are hereby denied.

Issue date: MAY 05 2005

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Kathleen Hartnett White, Chairman

Date: 6-25-09

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

To:  
TCEQ  
Office of the Chief Clerk, M.C. 105  
P.O. Box 13087  
Austin, Tx 78711-3087

2009 JUN 29 AM 10:22

CHIEF CLERKS OFFICE

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JUN 29 2009  
BY QB

IWD  
68524  
68523

From:  
Names and  
signatures [Signature] DAVID E. Rogers

Victoria J. Rogers Victoria T. Rogers

Addresses 3919 Caldwell Ln.

Del Valle, Tx 78617

Phone #s 512 202 5694 (h)

512 934 1239 (c)

Requesting public hearing: Permit # WQ0004887000 & WQ0004888000 Synagro of Texas - CDR, Inc. Wastewater treatment sludge plant

Garfield is a small community, that for years has strived to become a viable place of residency, located in poor, southeast Travis County, which is incorporated by Austin, into Del Valle. There is already a waste treatment plant, which was next to the old Del Valle schools across from the airport. The smell, everyday, we lived with it and the children lived with it. We do not want to go through that again. The schools have moved, the Southeast Wellness Center will move also, we do not want this plant next to the schools again, nor closer to our neighborhood.

Garfield Haynie Chapel United Methodist Church, 16309 Greenwood Dr., serves over 100 people every Tuesday, gives them food, in partnership with Capital Area Food Bank. They stand outside and wait every week, on Tuesday morning, and every Monday volunteers are at the church stocking and preparing for Tuesdays. Plus our regular Sunday services, Fall Fest and other worship activities, Vacation Bible School is coming up in August. This plant would practically be across the street, with all its ugly byproducts, we do not want that. We want resources and businesses that help us develop our community, such as grocery stores, not this wastepant.

We are requesting a public hearing. We are a small, poor community that has been here too many years, and continues to work very hard, without infrastructure and support to make this a viable neighborhood. We would appreciate resources to help build facilities for employment support/life skills services and training, not this wastepant in our neighborhood.

We appreciate your attention and consideration to this matter.

*[Handwritten signature]*

# Garfield Against Sludge

## Who:

Synagro of Texas-CDR, Inc.  
1002 Village Square, Suite C  
Tomball, TX 77375  
Contact: Aaron L. Dorger at 281-516-0305 ext 112

Permit # WQ0004887000 – 45 acres  
Permit #WQ0004888000 – 146.3 acres

## What:

Land applications for wastewater treatment sludge plant.

Wikipedia definition: the process of removing contaminants from wastewater household sewage, both runoff and domestic. It includes physical, chemical, and biological processes to remove physical, chemical and biological contaminants. Its objective is to produce a waste stream (or treated effluent and a solid waste or sludge suitable for discharge or reuse back into the environment. This material is often inadvertently contaminated with many toxic compounds.

## When:

First application of sludge, subject to issuance of permits, is September 1, 2009. Permit requests were published in Austin Statesman on June 17, 2009. There is now less than 30 days from 6/17 to get TCEQ hearing.

## Where:

7 miles east of airport off of Hwy 71, south of the intersection of Richard Drive and Hwy 71.

## What We Must Do:

1. We must get a public meeting before the 30 days – needs to be requested by a local legislator. Contact all legislators on list.
2. We must show the Executive Director of the Texas Commission on Environmental Quality (TCEQ) a significant degree of public interest regarding the specific permits (TV, radio, newspaper coverage). The Director can also request a hearing.
3. We must send comments to TCEQ via the mail, email, or in person:
  - a. via email: <http://www10.tceq.state.tx.us/epic/ecmnts>
  - b. in person: Office of the Chief Clerk, TCEQ, 12100 Park 35 Circle, Bldg F, Austin, TX 78753
  - c. via mail: Office of the Chief Clerk, MC 105, TCEQ, PO Box 13087, Austin, TX 78711-3087
4. If we can get a hearing, we may need an attorney.