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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 26, 2010

TO: Persons on the attached mailing list.

RE: Synagro of Texas – CDR, Inc.
TPDES Permit No. WQ0004888000

Decision of the Executive Director.

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

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Travis County AgriLife Extension, 1600B Smith Street, Austin, Texas

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

How To Request a Contested Case Hearing.

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

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:
   (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
   (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

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

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

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

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

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

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at http://www.tceq.state.tx.us/about/comments.html or by mail to the following address:

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

Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosures

MAILING LIST
for
Synagro of Texas – CDR, Inc.
TPDES Permit No. WQ0004888000

FOR THE APPLICANT:

Rosemary White Kalina
Synagro of Texas – CDR, Inc.
15309 Richards Drive
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The Honorable Samuel T. Biscoe
Travis County
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Austin, Texas 78701-2112

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR OFFICE OF PUBLIC ASSISTANCE
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FOR THE CHIEF CLERK
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ PERMIT NO. WQ0004888000

2010 MAR 23 PM 4:35
CHIEF CLERKS OFFICE

APPLICATION BY	§	BEFORE THE
	§	
SYNAGRO OF TEXAS – CDR, INC.	§	TEXAS COMMISSION ON
	§	
	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on Synagro of Texas – CDR, Inc.'s (Applicant) application and on the Executive Director's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from the following persons: Hon. Eddie Rodriguez, State Representative for House District 51, Ms. Rosemary W. Kalina, Mr. David E. Rogers, Ms. Victoria T. Rogers, Mr. Jon A. White, Mr. Tom Weber, and Mr. Russell V. Williams. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or TCEQ's permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant has applied to the TCEQ for a new permit that would authorize the beneficial land application of Class B sewage sludge at a rate not to exceed 10.62 dry tons per acre per year on Field 1, 6.14 dry tons per acre per year on Field 2, and 10.16 dry tons per acre per year on Field 3. The draft permit does not authorize the discharge of pollutants into water in the State. The land application fields are located on a total of 137.7 acres within the 189.68 acre site. The land application site is located approximately seven miles east of Austin Bergstrom International Airport, off of Richards Drive, 300 feet south of Highway 71, in Travis County, Texas. The land application site is located in the drainage area of the Colorado River Below Town Lake in Segment No. 1428 of the Colorado River Basin.

Procedural Background

The permit application was received on April 3, 2009, and declared administratively complete on May 19, 2009. The Notice of Receipt and Intent to Obtain a Water Quality

Permit (NORI) was published on June 17, 2009 in the *Austin-American Statesman.* Notice of a Public Meeting was published on September 1, 2009 in the *Austin-American Statesman.* A public meeting was held on October 1, 2009 in the Del Valle Opportunity Center in Del Valle, Texas. The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published on December 23, 2009 in the *Austin-American Statesman.* The public comment period ended on January 22, 2010. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801 (76th Legislature, 1999).

COMMENTS AND RESPONSES

COMMENT 1: (Public Meeting)

Hon. Eddie Rodriguez requested a public meeting so that his constituents in the Garfield area of Del Valle had the opportunity to share their concerns about the permit application and provide input prior to any decision being made by the TCEQ.

RESPONSE 1:

In order to determine whether a public meeting should be held, the Executive Director considers the factors set out in 30 TAC § 55.154. 30 TAC § 55.154 requires that a public meeting be held if: (1) the Executive Director determines that there is a substantial or significant degree of public interest in an application; (2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; or (3) when a public meeting is otherwise required by law.

The Executive Director and TCEQ's Office of Public Assistance held a public meeting on October 1, 2009, in the Del Valle Opportunity Center in Del Valle, Texas. At the meeting, both the Applicant and Executive Director staff provided a brief presentation regarding the permit application and the proposed site. Attendees were able to ask questions of both the Applicant and Executive Director staff, and provide written and verbal comments.

COMMENT 2: (Wastewater Treatment Plant and Nuisance Odor)

Hon. Eddie Rodriguez, Mr. David E. Rogers, and Ms. Victoria T. Rogers expressed their concern regarding nuisance odor emanating from a wastewater treatment plant or a wastewater treatment sludge plant being built in such close proximity to neighborhood schools, churches, and a food bank.

RESPONSE 2:

The draft permit would authorize the beneficial land application of Class B sewage sludge, not the operation of a wastewater treatment plant. Class B sewage sludge must be

treated to meet specific standards set by both the Environmental Protection Agency and the State of Texas before the stabilized sludge may be land applied. 30 TAC § 312.44 requires the Applicant to apply sludge uniformly over the surface of the land, under conditions that prevent runoff of sludge beyond the active applications area. The Applicant must also protect the surface water and soils in the unsaturated zone. The Applicant may only apply sludge at a rate equal to the nitrogen uptake rate of the plants being grown (the agronomic rate), thus ensuring that the nutrients are fully utilized by the plant and none are available for horizontal seepage into groundwater or lateral seepage into surface water bodies. 30 TAC § 312.8 defines the agronomic rate as the whole sludge application rate (dry weight basis) designed to provide the amount of nitrogen needed by the crop or vegetation grown on the land, and to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

Section 312.44(j) of TCEQ rules requires the Applicant to control nuisance odor. Under 30 TAC § 312.44(j) "a land application site location must be selected and the site operated in a manner to prevent public health nuisances; sewage sludge debris must be prevented from blowing or running off site boundaries or into surface waters; [i]f necessary or when significant nuisance conditions occur, the operator shall: (A) minimize dust migration from the site and access roadways; and (B) minimize objectionable odors through incorporation of sewage sludge into the soil or by taking some other type of corrective action."

The management practices in Section VI of the draft permit require the Applicant to comply with 30 TAC § 312.44(h) as it relates to a sludge application:

> "Sludge must be applied by a method and under conditions that prevent runoff of sewage sludge beyond the active application area and protect the quality of the surface water and the soils in the unsaturated zone. In addition the following conditions must be met:
>
> 1. Sludge must be applied uniformly over the surface of the land.
> 2. Sludge must not be applied to areas where permeable surface soils are less than 2 feet thick.
> 3. Sludge must not be applied during rainstorms or during periods in which surface soils are water-saturated.
> 4. Sludge must not be applied to any areas having a slope in excess of 8%.
> 5. Where runoff from the active application area is evident, the operator must cease further sludge application until the condition is corrected.
> 6. The site operator must prevent public health nuisances. Sludge debris must be prevented from leaving the site. Where nuisance conditions exist, the operator must eliminate the nuisance as soon as possible..."

Additionally, 30 TAC § 312.44(c) has buffer zone requirements that the Applicant must meet in order to protect surface water, private and public water wells, schools, businesses, occupied residential structures, and public right-of-ways, etc. These practices

are mandated to protect human health, public safety, and the environment. If the Applicant operates the facility consistent with TCEQ rules and the provisions of the draft permit, the schools, neighborhood, and individuals using the food bank at the church in the area outside of the required buffer zones are not expected to be impacted by activities at the site.

If members of the public experience nuisance conditions from the application area, they may contact the TCEQ Regional Office at (512) 339-2929 or call the toll free 24-hour complaints hotline at 888-777-3186. Citizen complaints may also be filed online at http://www.tceq.state.tx.us/compliance/complaints. On a compliant basis, regional investigators will investigate the site. If the regional investigator documents a violation of TCEQ regulations or the permit, then appropriate action may be taken, which may include referral for an enforcement action. In addition, the draft permit does not limit the ability to seek legal remedies regarding any potential nuisance or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of the property.

COMMENT 3: (Alternative Location and Environmental Equity)

Mr. David E. Rogers and Ms. Victoria T. Rogers commented that the proposed site is located in an economically disadvantaged area in southwest Travis County; and that the neighborhood needs employment support/life skills services and training rather than a waste plant.

RESPONSE 3:

The TCEQ's jurisdiction is established by the Legislature, and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have the authority to mandate that applicants choose alternative sites.

While the TCEQ and EPA collaborate on the cumulative impacts from permitting activities, rules, and policies of both agencies, the TCEQ continues to actively manage a State Environmental Equity Program. Low-income and minority communities often believe that they are burdened with a disproportionate share of environmental risks. Hostilities can develop between these communities and the industries or facilities involved, making good-faith efforts to resolve disputes, address concerns, and seek solutions ineffective. The TCEQ's Environmental Equity Program was established in 1993 to help counter this trend by improving communication between government, local communities, and neighboring industries. The goals of the Environmental Equity Program are to:

- Help citizens and neighborhood groups participate in regulatory processes;
- Serve as the agency contact to address allegations of environmental injustice;
- Serve as a link for communications between the community, industries, and the government; and
- Thoroughly consider all citizens' concerns and handle them fairly.

Individuals may raise environmental equity or environmental justice concerns with TCEQ staff through a toll-free number, 1-800-687-4040, or at the following address, phone and fax numbers:

Environmental Equity
Texas Commission on Environmental Quality
P.O. Box 13087, MC 108
Austin, Texas 78711-3087
Tel: 512-239-4000
Fax: 512-239-4007

Additional information on environmental equity can be found at the following TCEQ website: http://www.tceq.state.tx.us/comm_exec/opa/envequ.html.

COMMENT 4: (Toxic Materials)

Hon. Eddie Rodriguez commented that his constituents in the Garfield area of Del Valle were concerned about how toxic materials might affect their neighborhood. Attached to Mr. David E. Rogers and Ms. Victoria T. Rogers's comment letter was a flyer stating that sewage sludge may be inadvertently contaminated with toxic compounds.

RESPONSE 4:

The draft permit requires the Applicant to comply with detailed management practices designed to protect human health and the environment. The draft permit requires the Applicant to monitor the sewage sludge for ten metals (arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc) as well as reduce pathogens and vector attraction pursuant to 30 TAC § 312.46(a)(1). The Applicant is required to comply with all applicable vector reduction requirements in 30 TAC § 312.83, pathogen reduction requirements in 30 TAC § 312.82, and the metal limits, concentrations and loading rate requirements in 30 TAC § 312.43. The draft permit requires the Applicant to record the amount of sludge applied, the number of acres to which sludge is applied, and a description of how the site management practices are being met.

COMMENT 5: (Buffer Zones)

Mr. Jon A. White, Director of the Natural Resources and Environmental Quality Division for Travis County, and Mr. Thomas Weber, Environmental Quality Program Manager of the Natural Resources and Environmental Quality Division for Travis County expressed concern that the proposed permit includes land application areas located in the tributaries of Dry Creek pass, but the applicant does not show a 200-foot buffer from these surface water courses.

RESPONSE 5:

On August 19, 2009, the TCEQ conducted a site assessment that included inspections and verification of all proposed buffer zones as they pertain to 30 TAC § 312.44. Since it is a surface water course, it was concluded that the area surrounding Dry Creek pass did require a 200-foot buffer. The Applicant was notified by the TCEQ of the requirement and the Applicant amended their application, indicating the buffer zones would be located in the appropriate areas. This resulted was a decrease in the application area and the prohibition of land application of sludge all buffer areas as indicated on Attachment B of the draft permit. Land application of sludge in these areas would be a violation of the permit.

COMMENT 6: (Travis County Ordinance)

Mr. Jon A. White, Director of the Natural Resources and Environmental Quality Division for Travis County, provided comments regarding inconsistency between the proposed land application areas and Travis County Code, Chapter 62, relating to the sititng of solid waste management facilities; specifically, the location of the proposed land application areas within the:

- 500 foot setback from the Federal Emergency Management Agency (FEMA) 100-year flood plain boundary; and
- 1,500 foot setback from individual residences.

Mr. Thomas Weber, Environmental Quality Program Manager of the Natural Resources and Environmental Quality Division for Travis County expressed similar concerns in his electronic comment and during the October 1, 2009 public meeting.

RESPONSE 6:

The technical review of the permit application conducted by Executive Director staff is limited to whether the application complies with all applicable TCEQ rules and regulations. Compliance with certain local regulations is not a prerequisite to Executive Director staff determining that permit application is technically complete. The draft permit does not authorize any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to ensure compliance with all local regulations.

COMMENT 7: (Support for Issuance of the Draft Permit)

Ms. Rosemary Kalina expressed her support for the issuance of the draft permit. Mr. Russell Williams commented that he did not see any problems with the land application of sewage, and also supported issuance of the draft permit.

RESPONSE 7:

The Executive Director acknowledges these comments.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

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

Respectfully submitted,

Texas Commission on Environmental Quality

Mark Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By _____
Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0969
REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 23, 2010, the "Executive Director's Response to Public Comment" for TCEQ Permit No. WQ0004888000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

_____
Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069

2010 MAR 23 PM 4:35
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY