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Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



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

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 31, 2011

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

**Re: SYNAGRO OF TEXAS-CDR, INC.  
TCEQ DOCKET NO. 2010-0735-IWD**

Dear Ms. Castañuela:

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

Sincerely,

  
Eli Martinez, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**TCEQ DOCKET NO. 2010-0735-IWD**

<b>IN THE MATTER OF THE</b>	<b>§</b>	<b>BEFORE THE</b>
<b>APPLICATION BY</b>	<b>§</b>	
<b>SYNAGRO OF TEXAS-CDR, INC.</b>	<b>§</b>	<b>TEXAS FOR COMMISSION ON</b>
<b>FOR TPDES PERMIT</b>	<b>§</b>	
<b>NO.WQ0004887000</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

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

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

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

**I. INTRODUCTION**

Synagro of Texas-CDR, Inc. (Synagro or Applicant) has applied to the TCEQ for a new permit that will authorize the land application of Class B wastewater treatment sewage sludge at a rate not to exceed 11.08 dry tons per year on Fields 1 and 2, 10.89 dry tons per acre per year on Field 3, 11.68 dry tons per acre per year on Field 4, and 1.65 dry tons per acre per year on Field 5 on 33.6 acres located within approximately 51.82 acres. The draft permit does not authorize the discharge of pollutants in water in the State. The facility will be located approximately 7 miles east of Austin Bergstrom International Airport off Highway 71, south of the intersection of Richard Drive and Highway 71, in Travis County, Texas 78617.

The application for a new permit was received on April 3, 2009, and declared administratively complete on May 19, 2009. The original Notice of Receipt and Intent

to Obtain a Beneficial Land Use Permit (NORI) was published on June 17, 2009 in the *Austin-American Statesman*. A Notice of Public Meeting was published on September 1, 2009 in the *Austin-American Statesman* and the public meeting was held on October 1, 2009 in Del Valle, Texas. The original Notice of Application and Preliminary Decision (NAPD) for a Land Application Permit was published on January 6, 2010 in the *Austin-American Statesman*. The original comment period ended on February 5, 2010. The original Executive Director's Decision and Response to Comments was mailed April 8, 2010. A timely filed hearing request was submitted by David E. and Victoria T. Rogers on June 29, 2009.

Because Applicant failed to publish alternative language notice, Applicant was required to publish a Combined Notice of Receipt of Application and Intent to Obtain a Beneficial Land Use Permit and Notice of Application and Preliminary Decision for Land Application of Sewage Sludge on September 21, 2010 in the *Austin-American Statesman* and on September 23, 2010 in *iahora si!*. The comment period ended on October 25, 2010. An amended Executive Director's Decision and Response to Comments was mailed December 13, 2010. The deadline for requesting a hearing was January 12, 2011. No additional hearing requests were filed.

Based on the information submitted in the request and a review of the information available in the Chief Clerk's file on this application, OPIC recommends that the hearings requests of David E. and Victoria T. Rogers be denied. If the Rogers file a timely hearing request clarifying their relationship to the church and how they would likely be impacted by the regulated activity, OPIC may reconsider its recommendation.

## II. REQUIREMENTS OF APPLICABLE LAW

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

- 1) whether the interest claimed is one protected by the law under which the application will be considered;
- 2) distance restrictions or other limitations imposed by law on the affected interest;
- 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

- 5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- 6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

In addition, Texas Health & Safety Code §361.121(c) and 30TAC §312.13(b)(3)(B) specify that, in the case of a Class B Sludge Permit Application, an owner of land located within one-quarter mile of the proposed land application unit and lives on that land is an affected person. Individuals who do not own land within 1/4 mile of the proposed land application site are not excluded from being considered affected persons.<sup>1</sup>

The Commission shall grant an affected person's timely filed hearing request if:

- (1) the request is made pursuant to a right to hearing authorized by law; and
- (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the commission's decision on the application. 30 TAC §55.211(c).

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

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

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<sup>1</sup> 30 TAC §312.13(b)(3)(B).

### **III. DISCUSSION**

#### **A. Affected Person Analysis**

The Office of the Chief Clerk received a timely filed hearing request from David E. and Victoria T. Rogers. The Rogers raise concerns regarding potential nuisance odors, economic impact on the community, and proximity of the facility to schools, residences, and the Garfield Haynie Chapel United Methodist Church. While sympathetic to the Rogers' concerns, OPIC concludes that the requestors are not affected persons due to the relative distance of their residence from the application site.

The Executive Director has produced a map associated with this application that indicates that the Rogers' home is located over a mile away from the proposed application site. While landowners residing within a quarter mile of the proposed application site are automatic parties, other landowners are not are not precluded from demonstrating that they have a personal justiciable interest. Although the Rogers have expressed material and relevant concerns about potential nuisance conditions and negative impacts to human health at the Garfield Haynie Chapel United Methodist Church, they have not established the nature of their relationship with the church or the likelihood that the regulated activity will personally impact them by virtue of that relationship. As it stands, the concerns raised regarding proximity of the application area to the church, schools, and residences, as well as any potential economic impacts to the area, are interests that are indistinguishable from the concerns of the general public and not properly referable to the State Office of Administrative Hearings (SOAH). OPIC therefore cannot recommend that the Rogers be determined affected persons. If the

Rogers file a timely reply clarifying their relationship to the church and how they would likely be impacted by the regulated activity, OPIC may reconsider its recommendation.

#### IV. CONCLUSION

OPIC finds that David E. and Victoria T. Rogers do not qualify as affected persons because the permitted activities are unlikely to have an impact on the Rogers given the location of their residences relative to the facility and recommends that their hearing requests be denied. If the Rogers file a timely hearing request clarifying their relationship to the church and how they would likely be impacted by the regulated activity, OPIC may reconsider its recommendation.

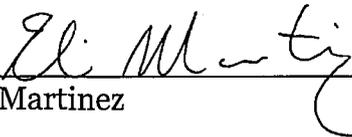
Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2011 the original and seven true and correct copies of the Office of the Public Counsel's Response to Hearing Request were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
\_\_\_\_\_  
Eli Martinez

**MAILING LIST**  
**SYNAGRO OF TEXAS-CDR, INC.**  
**DOCKET NO. 2010-0735-IWD; PERMIT NO. WQ0004887000**

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REQUESTER:

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