

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

December 13, 2010

TO: Persons on the attached mailing list.

RE: Synagro of Texas-CDR, Inc.
Permit No. WQ0004887000; TCEQ Docket No. 2010-0735-IWD

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 the Travis County Agrilife Extension Office, 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/er

Enclosure

MAILING LIST
for
Synagro of Texas-CDR, Inc.
Permit No. WQ0004887000
TCEQ Docket No. 2010-0735-IWD

FOR THE APPLICANT:

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Greg Roque
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PROTESTANTS/INTERESTED
PERSONS:

See attached list.

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FOR OFFICE OF PUBLIC ASSISTANCE
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FOR PUBLIC INTEREST COUNSEL
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FOR THE CHIEF CLERK
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TCEQ PROPOSED PERMIT NO. WQ0004887000

2010 DEC -8 PM 4:08

APPLICATION BY § **BEFORE THE** CHIEF CLERKS OFFICE
§
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 (Response) on the Synagro of Texas-CDR, Inc. application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (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 State Senator Kirk Watson, State Representative Eddie Rodriguez, David E. Rogers and Victoria T. Rogers, Mr. Jon A. White, and Mr. Russell Williams. Timely comments were received at the public meeting from the following persons: Ms. Rosemary Kalina, Mr. Thomas Weber, and Mr. Russell Williams. After a second round of notice, TCEQ received timely written comments from a letter with 61 signatories, hereafter referred to as Group 1. Group 1 consists of the following individuals:

Alfred Biggs, Evelyn Biggs, Maria Cantu, Bobby Fewell, Jose Luis Cardona, Pedro A. Gomez Marquez, John Morales, Hermelinda Reyes, Aquilino Cruz, Frances Camacho, Raymundo Constancio, Indhira Celaya, Eirasema Torres, Lile Valuerde, Silvia Espinoza, Patricia R. Garcia, Rebecca Garcia, Agustin Calderon, Gabriela Vargas, Esther G. Nunez, Tim Helm, Carlos Guzman, Ana Guzman, Brenda Lightford, Jasmin Aguilar, Xiomara Aguilar, Anahi Benitez, Derald Gutierrez, Jose H. Machuca, Reynaldo Reyes, Alicia Beristain, Juana Beristain, Reyna Venegas, Joe Rodriguez, Daniel Rueda, Jose Hernandez, Dinora Hernandez, Blanca Coronado, Jerome Kalin, Thelma Rios, Marcelino Gonzales, Tina Roberson, Patrick Schumacher, Victoria C. Sifuentes, David Ortiz, Jaime Prieto, Felix Rodriguez, Carmelo Reyes, Gerardo Palomares, Guadalupe Tobias, Susana Rojas, Mario N. Periera, Nancy Tobias, Angel Venegas, Robert Barrientel, Jesse Del Toro, Guadalupe Del Toro, Veronica Guel, Felicitas Ramirez, Maria Del Toro, and Donna Maldonado.

This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater 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.

I. BACKGROUND

A. Description of Facility

Synagro of Texas-CDR, Inc. (Applicant) has applied to the TCEQ for a new permit that will authorize the beneficial land application of Class B wastewater treatment sewage sludge at a rate not to exceed 11.08 dry tons per acre 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 into water in the State. The land application site will be located in the drainage basin of Colorado River below Town Lake in Segment No. 1428 of the Colorado Basin. The facility will be located approximately 7 miles east of Austin Bergstrom International Airport off of Richards Drive, 300 feet south of Highway 71, in Travis County, Texas 78617.

B. Procedural Background

The application for a new permit was received on April 3, 2009 and declared administratively complete on May 19, 2009. The Notice of Receipt and Intent to Obtain a Beneficial Land Use Permit (NORI) was published on June 17, 2009 in the *Austin-American Statesman*. The Notice of Application and Preliminary Decision (NAPD) for a Land Application Permit was published on January 6, 2010 in the *Austin-American Statesman*. A public meeting was held on October 1, 2009 in Del Valle, Texas. The Notice of Public Meeting was published on September 1, 2009 in the *Austin-American Statesman*. The public comment period for this round of notice ended on February 5, 2010, and the Executive Director filed a Response to Comments on April 6, 2010.

At the request of the Executive Director, the Applicant published 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 sí!*. The Executive Director requested that the Applicant re-publish notice in order to cure deficiencies relating to compliance with alternative language newspaper notice in the first round of notice. The public comment ended on October 25, 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.

C. Access to Rules, Laws, and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- To access the Secretary of State website: www.sos.state.tx.us;
- For TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select “TAC Viewer” on the right, then “Title 30 Environmental Quality”);
- For Texas statutes: www.capitol.state.tx.us/statutes/statutes.html;
- To access the TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Rules and Rulemaking,” then “Download TCEQ Rules”);
- For Federal rules in Title 40 of the Code of Federal Regulations: www.epa.gov/epahome/cfr40.htm; and
- For Federal environmental laws: www.epa.gov/epahome/laws.htm.

Commission records for this facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk). The permit application, Executive Director’s preliminary decision, and draft permit are also available for viewing and copying at the Travis County Agrilife Extension Office, 1600B Smith Street, Austin, TX.

II. COMMENTS AND RESPONSES

COMMENT 1:

The Honorable Kirk Watson and the Honorable Eddie Rodriguez requested a public meeting to allow their constituents the opportunity to receive information and offer comments for the permit application.

RESPONSE 1:

Under 30 TAC § 55.154 the TCEQ must hold a public meeting when a member of the legislature representing the general area in which the activity is proposed requests that a meeting be held. Accordingly, the TCEQ Office of Public Assistance conducted a public meeting on Thursday, October 1, 2009 at the Del Valle Opportunity Center, Travis County, Texas. Attendees were able to ask questions about the permit application and to provide written or verbal comments.

COMMENT 2:

The Honorable Kirk Watson, the Honorable Eddie Rodriguez, David E. Rogers and Victoria T. Rogers expressed concern that the proposed site will be a wastewater treatment sludge plant or a wastewater treatment plant.

RESPONSE 2:

The proposed activity at the site is a beneficial land application site for Class B sewage sludge, not the operation of a wastewater treatment plant or a wastewater treatment sludge plant. Class B sewage sludge must be treated to meet specific standards set by both the United States Environmental Protection Agency (EPA) and the State of Texas before the stabilized sludge is land applied. The Applicant is required to

apply sludge uniformly over the surface of the land under conditions which prevent runoff of sludge beyond the active application area. The Applicant must also protect the quality of the surface water and the soils in the unsaturated zone. It is also required that sludge be applied 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. The Applicant is required to land apply sludge at rates no greater than the agronomic rates. Agronomic rate is defined 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. If the facility fails to comply with the permit or TCEQ rules, it will be subject to enforcement actions.

COMMENT 3:

David E. Rogers and Victoria T. Rogers commented that the proposed site would be next to schools, close to neighborhoods, and across the street from a church that provides a food bank for people who wait outside. The Honorable Eddie Rodriguez expressed a similar concern regarding odors from the proposed activity impacting the neighborhood in the area. Commenters from Group 1 raised issues regarding nuisance odors as well. These commenters noted that many people in the area are accustomed to outdoor recreation and other activities, and that the odors from the land application would greatly reduce their ability to enjoy these outdoor activities.

RESPONSE 3:

The rules governing the land application of treated sewage sludge and domestic septage do not specify that a beneficial land use site must be located outside of city limits, nor do they consider density of surrounding houses and buildings. See 30 TAC Ch. 312. However, under 30 TAC § 312.44(c)(2), permits must include buffer restrictions that prohibit land application to areas located closer than 750 feet to established schools, businesses, or occupied residential structures. Buffer restrictions also prohibit land application to areas located closer than 50 feet to a public right of way or property boundary.

Furthermore, TCEQ has established management requirements for land application sites that are designed to control nuisance conditions, including odor. The TCEQ Rules establish these management requirements, which are then incorporated into the draft permit in Part VI, Required Management Practices. For instance, 30 TAC § 312.44(j)(3) requires the Applicant to operate the proposed land application site in a manner to prevent public health nuisances. The Applicant must prevent debris from blowing or running off site boundaries or into surface waters. The Applicant must minimize dust migration from the site and access roadways, and also minimize objectionable odors through taking corrective actions.

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 hot line at 888-777-3186. Citizen complaints may also be filed on-

line at <http://www.tceq.state.tx.us/compliance/complaints/>. On a complaint basis, regional investigators will investigate. 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 property.

COMMENT 4:

Commenters from Group 1 raised a concern that the land application would attract flies to the nearby residential areas.

RESPONSE 4:

Class B sludge intended for beneficial land use is required to be treated to reduce its attraction for vectors, such as flies and mosquitoes, (which limits the potential for transmitting diseases) by reducing odors. 30 TAC§312.83 outlines specific requirement methods for vector attraction reduction, such as a reduction of the volatile solids by 38%, Specific Oxygen Uptake Rate (SOUR) Test, injection of the sludge into the soil, incorporation of the sludge into the soil, etc. Additionally, if the site does attract vectors, this problem is considered to be a nuisance condition, which the permit and rules specifically prohibit. Should such a problem occur, the site operator must take an appropriate step to correct it (such as disking the area) within a short time. The sewage sludge must also be treated in order to reduce the attraction of vectors. As shown in Appendix F of the application, this treatment is being done at each of the wastewater treatment plants that are producing sludge that may be used at this site.

COMMENT 5:

David E. Rogers and Victoria T. Rogers noted that the area of the proposed site is located in an economically disadvantaged area that needs resources to support employment and economic development, not the proposed business.

RESPONSE 5:

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 direct applicants towards the use of alternative sites. Beneficial land use permits evaluated by the agency are reviewed without reference to the socioeconomic or racial makeup of the surrounding community. Although there are no TCEQ rules addressing issues such as the location of permitted facilities in areas with minority and low-income populations, disparate exposures of pollutants to minority and low-income populations, or the disparate economic, environmental, and health effect on minority and low-income populations, the TCEQ has made a strong policy commitment to address these issues by creating an environmental equity program within the Office of Public Assistance. This program works to help citizens and neighborhood groups participate in the regulatory process; to ensure that agency programs that may affect human health or the environment operate without discrimination; and to make sure that citizens' concerns are considered thoroughly and are handled in a way that is fair to all. The Office of Public Assistance can be reached at 1-800-687-4040 for further information.

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

Office of Public Assistance
Environmental Equity (MC-108)
Texas Commission on Environmental Quality
P.O. Box 13087 Austin, TX 78711-3087
512-239-4000
512-239-4007 (fax)

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

COMMENT 6:

Group 1 has commented that the proposed site would cause their property values to be diminished.

RESPONSE 6:

Section 26.027 of the Texas Water Code authorizes TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes and coastal waters. The wastewater permitting process is limited to controlling the discharge of pollutants into state waters and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ does not have jurisdiction under the Texas Water Code or its regulations to address or consider property values or the marketability of adjacent property in its determination of whether or not to issue a water quality permit.

COMMENT 7:

The Honorable Eddie Rodriguez commented that his constituents in the Garfield area of Del Valle were concerned about how toxic materials might affect their neighborhood. David E. Rogers and Victoria T. Rogers expressed concern that material associated with wastewater treatment plant sludge would contain toxic compounds. Commenters from Group 1 expressed concerns over health hazards associated with sludge application, particularly asthma and other respiratory problems.

RESPONSE 7:

The Applicant must comply with detailed management practices designed to protect human health and the environment. This includes recordkeeping requirements and monitoring requirements. See 30 TAC §§ 312.46 and 312.47. The draft permit provides that the Applicant must 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 as required by 30 TAC § 312.46(a)(1). The draft permit, as well as 30 TAC § 312.47(a)(4)(A)(ii), requires the Applicant to record such information as the amount of sludge applied, the number of acres to which sludge is applied, and a description of how the management practices are being met.

COMMENT 8:

Commenters from Group 1 expressed concern over flooding. In particular, commenters noted that several parts of the surrounding area are within the 100 year floodplain and are subject to seasonal flooding in certain low-lying areas. Commenters expressed concern that the application areas may also be within the 100 year floodplain, and that a heavy rain will inundate the surrounding areas with sewage sludge.

RESPONSE 8:

Runoff from land application areas are prohibited under the TCEQ regulations and the draft permit. This draft permit does not authorize discharge of waste into the waters of the State of Texas. TCEQ has established management requirements, in accordance with 30 TAC Section 312.44, which are incorporated into the draft permit to protect against sludge runoff beyond the active application area. The Applicant is required to apply sludge uniformly over the surface of the land under conditions which prevent runoff of sludge beyond the active application area. The Applicant is prohibited from applying sludge during rainstorms or during periods in which surface soils are water saturated, frozen, or snow-covered and in areas having topographical slopes in excess of eight percent. This application area has a slope of less than 8%. Also, it is required that sludge be applied at a rate equal to the nitrogen uptake rate of the plants being grown (the agronomic rate), thus ensuring that the nutrients are completely used by the plants and none are available for lateral seepage, or running off, into surface waters. The draft permit requires the Applicant to cease further sludge application if sludge runoff from the active application area is evident until the condition is corrected. If the facility fails to comply with the permit or rules, it will be subject to enforcement actions.

As with any material used in agriculture, it is likely that small amounts of these materials will be carried off site during major rain events. However, the regulations on the materials and amounts used provide sufficient protection for the surrounding areas, and the large dilution factor from such rain events will prevent any significant contamination of adjacent areas. These materials are no more harmful than other materials commonly used in agriculture.

COMMENT 9:

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

- 500 foot setback from the FEMA 100-year flood plain boundary; and
- 1500 foot setback from individual residences

Mr. Thomas Weber of the Natural Resources and Environmental Quality Division for Travis County expressed similar concerns during the public meeting.

RESPONSE 9:

The technical review of the permit application conducted by the Executive Director staff is limited to whether the application complies with all TCEQ rules and regulations. Compliance with certain local regulations is not a prerequisite to a determination that an application is technically complete by the Executive Director. 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 10:

Mr. Jon A. White expressed concern that the application did not indicate appropriate 200-foot buffer zones adjacent to Dry Creek Pass, and that the Applicant does not show a 200-foot buffer from these surface water courses.

RESPONSE 10:

Under 30 TAC § 312.44(c)(1), sludge application sites must maintain a 200-foot buffer zone from surface waters. 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 the 200-foot buffer. The Applicant was then notified by the TCEQ of the requirement and the Applicant amended their application to include buffer zones around the appropriate area. The result was a decrease in the application area and the prohibition of land application of sludge in all buffer areas as indicated on Attachment B of the permit. The land application of sludge in these areas would be a violation of the permit.

COMMENT 11:

Mr. Russell Williams has expressed that he does not see any problems with the land application of sewage sludge to his property and urges the TCEQ to approve the application. Also during the public meeting, Ms. Rosemary Kalina indicated that she supports issuing the permit application.

RESPONSE 11:

The Executive Director acknowledges these comments.

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



Daniel Ingersoll, Staff Attorney
Environmental Law Division

State Bar No. 24062794

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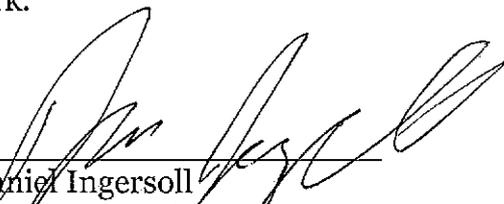
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on December 8, 2010, the "Executive Director's Response to Public Comment" for TCEQ Permit No. WQ0004887000 was filed with the Texas Commission on Environmental Quality's office of the Chief Clerk.



Daniel Ingersoll
Environmental Law Division
State Bar No. 24062794