

**TCEQ DOCKET NO. 2011-0935-MSW**

**IN THE MATTER OF THE  
APPLICATION OF MICRO DIRT,  
INC. d.b.a. TEXAS ORGANIC  
RECOVERY FOR TCEQ PERMIT  
NO. 2361**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**MICRO DIRT, INC.'S  
RESPONSE TO HEARING REQUESTS**

COMES NOW, Micro Dirt, Inc. d.b.a. Texas Organic Recovery (“Micro Dirt” or the “Applicant”) and files this, its Response to Hearing Requests in the above-referenced matter:

**I.  
SUMMARY**

Micro Dirt respectfully asks that the Texas Commission on Environmental Quality (the “Commission” or “TCEQ”) deny the Hearing Request of the Protesters for the following reasons:

- A. H. Philip Whitworth, Ann Whitworth Messer, Julie Moore, and Juli Phillips are not affected persons and each failed to express a justiciable interest that would be harmed by the operation of the Micro Dirt facility in compliance with the Executive Director’s (“E.D.’s”) proposed permit;
- B. The Thomson Family Limited Partnership is not an affected person and it failed to express a justiciable interest that would be harmed by the operation of the Micro Dirt facility in compliance with the E.D.’s proposed permit;
- C. Joe and Dorothy Gunn and Jay and Corinna Gunn are not affected persons and each failed to express a justiciable interest that would be harmed by the operation of the Micro Dirt facility in compliance with the Executive Director’s (“E.D.’s”) proposed permit;
- D. All of the protesters’ general concerns regarding possible impact to ground and surface water; potential traffic problems; prospective odor and noise nuisance; possible vectors; potential air pollution; would-be delivery of prohibited substances for composting; and alleged compliance issues fail to rise above the concerns of the general public, and thus fail to rise to a level for which the Commission should grant a public hearing;

For these reasons, Micro Dirt respectfully requests that the Commission deny all hearing requests and issue Permit No. 2361.

## **II.** **INTRODUCTION**

Micro Dirt submitted its Application for its TCEQ Permit No. 2361 on May 13, 2009, to authorize the operation of a grease composting facility in Travis County, Texas (“Composting Facility”). The application seeks authorization to renew its composting of used cooking oil (i.e., grease trap waste), which the Commission had previously authorized under TCEQ Registration No. 42016. The Commission currently authorizes Micro Dirt to compost sewer sludge, septic tank wastes, vegetable wastes, brush, wood, paper, and yard wastes at the same facility under the same registration, still in effect.

In a decision dated May 13, 2011 (“E.D.’s Decision”),<sup>1</sup> the E.D. found that the Application met all applicable statutory and regulatory requirements and that the Commission should issue the permit. The E.D. Decision also indicated that an “affected person” that “raise[s] disputed issues of fact that are relevant and material to the commission’s decision on this application” could request a contested case hearing.

## **III.** **APPLICABLE LAW FOR EVALUATING HEARING REQUESTS**

The standing requirement is a fundamental, procedural hurdle for a protester to formally contest a regulatory agency’s reasoned decision on the merits of a license or permit application. It ensures that the applicant and the regulatory agency are not forced to exhaust additional time, effort, and resources defending the application and the decision of the agency unless there is a substantial purpose for further scrutiny. Contested hearings are strictly for purposes of developing necessary information and reasonable claims by individuals and entities that will be directly and measurably aggrieved by the proposed activity beyond that of the general public. The right to a contested hearing does not exist to frustrate agency actions or applicants by those who do not like the permissions to conduct legal activities on private property or the general concepts underlying the legal activities. Therefore, the standing requirement is a mechanism for distinguishing an aggrieved person’s justified right to a hearing from those hearing requests that are arbitrary, without merit, or that do not involve a legally protected interest.

The E.D. declared this application administratively complete after September 1, 1999. Therefore, this application is subject to the requirements of Section 5.556 of the Texas Water Code, added by Act 1999, 76<sup>th</sup> Leg., ch. 1350 (commonly known as “House Bill 801”). Under the applicable statutory and regulatory requirements, a request for a public hearing must substantially comply with the following requirements:

- 1) be in writing;
- 2) be filed timely;
- 3) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- 4) 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;
- 5) 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
- 6) provide any other information specified in the public notice of the application.<sup>2</sup>

Under Section 55.203(a) of the Commission's Rules, 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.<sup>3</sup> Thus, the affected person must show that its legal right, duty, privilege, power, or economic interest that is within the Commission's regulatory authority will be affected by the permit or permit amendment application to be considered, not just an interest common to members of the public. Relevant factors that the Commission will consider in determining whether a person is affected include the following:

- 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;

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<sup>1</sup> Letter from Melissa Chao, Acting Chief Clerk, to Mailing List of interested parties (May 13, 2011).

<sup>2</sup> 30 TEXAS ADMIN. CODE ("TAC") § 55.201(d).

<sup>3</sup> *Id.*

- 4) likely impact of the regulated activity on the health, safety, and 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.<sup>4</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.<sup>5</sup>

The Commission has also set forth specific criteria for evaluating whether the Commission should consider a group or organization to be an "affected person." Section 55.205(a) of the TCEQ Rules states that a group or association may request a hearing if:

- 1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- 2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- 3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Finally, applicable case law additionally requires that a person's affected status must be demonstrated by more than unfounded predictions and unsupported assumptions. To qualify as an affected person, a person must demonstrate more than a bald assertion of potential harm. In *Collins v. Tex. Nat. Resource Cons. Comm'n*, the Court ruled in regard to a waste disposal application that a protester's predictions of groundwater contamination and the inadequacy of an in-situ clay liner were insufficient to show a personal, justiciable interest.<sup>6</sup> The Court rejected Collins' appeal because his allegations of noxious odors and groundwater contamination would **occur only if the applicant violated the permit it was seeking.**<sup>7</sup>

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<sup>4</sup> 30 TAC § 55.203(c).

<sup>5</sup> 30 TAC § 55.211(c).

<sup>6</sup> 94 S.W.3d 876, 883 (Tex. App.—Austin 2002, no writ).

<sup>7</sup> *Id.*

To possess standing under these principles with regard to a permit application, the protesters must establish:

- 1) an “injury in fact” from the issuance of the permit as proposed -- an invasion of a “legally protected interest” that is (a) “concrete and particularized” and (b) “actual or imminent, not conjectural or hypothetical”;
- 2) the injury must be “fairly traceable” to the issuance of the permit as proposed, as opposed to the independent actions of third parties or other alternative causes unrelated to the permit; and
- 3) it must be likely, and not merely speculative, that the injury will be redressed by a favorable decision on its complaints regarding the proposed permit (i.e., refusing to grant the permit or imposing additional conditions).<sup>8</sup>

The Commission shall grant a request for a contested case hearing from an affected person only if the request:

- 1) complies with the requirements of Section 55.251 of the Commission rules (relating to Requests for Contested Case Hearings);
- 2) is timely filed with the chief clerk; and
- 3) is pursuant to a right to hearing authorized by law.<sup>9</sup>

#### IV.

#### **RESEPNSE TO HEARING REQUEST OF H. PHILIP WHITWORTH, ANN WHITWORTH MESSER, JULIE MOORE, AND JULI PHILLIPS**

##### **A. H. Phillip Whitworth not an Affected Person, No Justiciable Interest**

Mr. Whitworth lives in Pemberton Heights, at 2605 Wooldridge Drive, Austin, Texas 78703, which is over 17 miles from the Micro Dirt facility. While he states that he owns a portion of a 223-acre property within one-mile of the Micro Dirt facility, he fails to identify 1) how he uses the property, 2) how often he visits the property, or 3) how Micro Dirt’s operation in compliance with the E.D.’s proposed permit will cause actual harm to Mr. Whitworth’s use of the property (i.e., the *Collins* and *Waco* standards). As the Commission know, mere ownership of property does not demonstrate a justiciable interest that the issued permit will adverse impact. Without further information, the

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<sup>8</sup> See *City of Waco v. Tex. Comm’n on Env. Quality*, No. 03-09-00005-CV, 2011 Tex. App. (Tex. App.—Austin June 17, 2011, no pet. h.).

<sup>9</sup> 30 TEX. ADMIN. CODE § 55.255 (b).

Commission cannot determine whether his unknown use of this non-residential property located within a one-mile radius of the Micro Dirt facility will be impacted by this facility operated in compliance with its permit. Furthermore, Mr. Whitworth failed to comply with Section 55.203 of the Commission's rules, as he failed to state 1) whether his interest is one protected by the law; 2) whether a reasonable relationship exists between his claimed interest and the activity regulated; 3) the likely impact of the regulated activity on his use of property; or 4) the likely impact of the regulated activity on his use of any impacted natural resource.

Micro Dirt recognizes that Mr. Whitworth will have an opportunity to respond to this Response to Hearing Requests and, in that response, he may provide the missing information regarding his use of his property and his justiciable interest that could be impacted by compliance with the E.D.'s proposed permit; however, Micro Dirt will object to that information as untimely and, in the alternative, will request the Commission to give Micro Dirt an opportunity to respond to any new information. For these reasons, the Commission should deny Mr. Whitworth's request for a contested case hearing.

#### **B. Ann Whitworth Messer not an Affected Person, No Justiciable Interest**

Ms. Messer lives at 7700 Nolan Bluff Road, Belton, Texas 76513, which is over 70 miles from the Micro Dirt facility. While she states that she, too, owns a portion of the same 223-acre property within one-mile of the Micro Dirt facility, she also fails to identify 1) how she uses the property, 2) how often she visits the property, or 3) how Micro Dirt's operation in compliance with the E.D.'s proposed permit will cause actual harm to Ms. Messer's use of the property (i.e., the *Collins* and *Waco* standards). Furthermore, Ms. Messer failed to comply with Section 55.203 of the Commission's rules, as she failed to state 1) whether her interest is one protected by the law; 2) whether a reasonable relationship exists between her interest claimed and the activity regulated; 3) the likely impact of the regulated activity on her use of property; or 4) the likely impact of the regulated activity on her use of any impacted natural resource.

Micro Dirt recognizes that Ms. Messer will also have an opportunity to respond to this Response to Hearing Request and, in that response, she may provide the missing information regarding her use of her property and the potential impact of complying with the E.D.'s proposed permit; however, Micro Dirt will object to that information as untimely and, in the alternative, will request the Commission to give Micro Dirt an opportunity to respond to any new information. For these reasons, the Commission should deny Ms. Messer's request for a contested case hearing.

#### **C. Julie Moore not an Affected Person, No Justiciable Interest**

Ms. Moore lives in Westlake Hills, at 502 Spiller Lane, Austin, Texas 78746, which is nearly 18 miles from the Micro Dirt facility. She also states that she owns a portion of the 223-acre property within one-mile of the Micro Dirt facility, but fails to identify 1) how she uses the property, 2) how often she visits the property, or 3) how Micro Dirt's operation in compliance with the E.D.'s proposed permit will cause actual harm to her use of the property (i.e., the *Collins* and *Waco* standards).

Furthermore, Ms. Moore failed to comply with Section 55.203 of the Commission's rules, as she failed to state 1) whether her interest is one protected by the law; 2) whether a reasonable relationship exists between her interest claimed and the activity regulated; 3) the likely impact of the regulated activity on her use of property; or 4) the likely impact of the regulated activity on her use of any impacted natural resource.

Micro Dirt also recognizes that Ms. Moore will have an opportunity to respond to this Response to Hearing Request and, in that response, she may provide the missing information regarding her use of her property and how Micro Dirt's compliance with the permit could impact her use of her property; however, Micro Dirt will object to that information as untimely and, in the alternative, will request the Commission to give Micro Dirt an opportunity to respond to any new information. For these reasons, the Commission should deny Ms. Moore's request for a contested case hearing.

#### **D. Juli Phillips in not an Affected Person, No Justiciable Interest**

Ms. Phillips resides in a farm house located on the 223-acre property, which house is more than one-mile from the Micro Dirt facility. Ms. Phillips fails to identify how Micro Dirt's operation in compliance with the E.D.'s proposed permit will cause actual harm to Ms. Phillips' use of the property (i.e., the *Collins* and *Waco* standards). Without further information, the Commission cannot determine whether the Micro Dirt facility operated in compliance with the E.D.'s proposed permit and located more than a mile from her residence will impact her interests. Furthermore, Mr. Whitworth failed to comply with Section 55.203 of the Commission's rules, as she failed to state 1) whether her interests are protected by the law; 2) whether a reasonable relationship exists between her interest claimed and the activity regulated; 3) the likely impact of the regulated activity on her use of property; or 4) the likely impact of the regulated activity on her use of any impacted natural resource.

Again, Micro Dirt recognizes that Ms. Phillips will have an opportunity to respond to this Response to Hearing Request and, in that response, she may provide the missing information regarding her request for hearing; however, Micro Dirt will object to that information as untimely and, in the alternative, will request the Commission to give Micro Dirt an opportunity to respond to any new information. For these reasons, the Commission should deny Ms. Phillips' request for hearing.

### **V.**

#### **RESPONSE TO HEARING REQUEST OF THOMSON FAMILY LIMITED PARTNERSHIP**

In its Request for Contested Case Hearing, the Thomson Family Limited Partnership failed to establish that one or more members of the partnership would otherwise have standing to request a hearing on their own and failed to show that the request for a public hearing was to protect an interest of the partnership germane to the purpose of the organization. The June 10, 2011 request is essentially devoid of any information regarding

the partnership. Specifically, with respect to the Thomson Family Limited Partnership, the request merely states that it is a partnership and that Mr. M.D. Thomson is the manager of the partnership's general partner. The request does not provide any specific information regarding where Mr. Thomson lives (i.e., over eight (8) miles from the Applicant's facility, at 9130 Nuckols Crossing Rd, Austin, Texas 78744) or where the other partners live or work, of how they will be "directly affected" by Micro Dirt's compliance with the proposed permit, much less how they might be affected any differently than members of the general public. Accordingly, the request fails to demonstrate that any of the partners are affected persons. Instead, the partnership merely lists general concerns regarding the application, which are no different from the public's concerns and are addressed later in this brief.

The proposed facility is not near Mr. Thomson's home. Actually, Mr. Thomson's home is closer to the Waste Management, Inc. landfill in Creedmoor, Texas than to the Applicant's proposed site. Mr. Thomson's home is substantially farther away from the Applicant's site than the Commission's one-mile standard for determining if a proposed facility will affect a person.

The partnership failed to identify how Micro Dirt's operation in compliance with the E.D.'s proposed permit will cause actual harm to the partnership's use of the property (i.e., the *Collins* and *Waco* standards). Without further information, the Commission cannot determine whether the Micro Dirt facility operated in compliance with the E.D.'s proposed permit will impact the partnership's interests. Furthermore, the partnership failed to comply with Section 55.203 of the Commission's rules, as it failed to state 1) whether its interests are protected by the law; 2) whether a reasonable relationship exists between its interest claimed and the activity regulated; 3) the likely impact of the regulated activity on its use of property; or 4) the likely impact of the regulated activity on its use of any impacted natural resource.

Micro Dirt recognizes that the partnership will have an opportunity to respond to this Response to Hearing Request and, in that response, it may provide the missing information regarding its request for hearing; however, Micro Dirt will object to that information as untimely and, in the alternative, will request the Commission to give Micro Dirt an opportunity to respond to any new information. For these reasons, the Commission should deny the Thomson Family Limited Partnership's request for a contested case hearing.

## VI.

### **RESPONSE TO HEARING REQUESTS OF JOE AND DOROTHY GUNN AND JAY AND CORINNA GUNN**

#### **A. Joe and Dorothy Gunn not Affected Persons, No Justiciable Interests**

Joe and Dorothy Gunn live on property located slightly less than one-mile from the Micro Dirt

facility. However, Joe and Dorothy Gunn failed to identify how Micro Dirt's operation in compliance with the E.D.'s proposed permit will cause actual harm to their use of the property (i.e., the *Collins* and *Waco* standards). Without further information, the Commission cannot determine whether the Micro Dirt facility operated in compliance with the E.D.'s proposed permit and located slightly less than a mile from their residence will impact their interests. Furthermore, Joe and Dorothy Gunn failed to comply with Section 55.203 of the Commission's rules, as they failed to state 1) whether their interests are protected by the law; 2) whether a reasonable relationship exists between their interest claimed and the activity regulated; 3) the likely impact of the regulated activity on their use of property; or 4) the likely impact of the regulated activity on their use of any impacted natural resource.

Joe and Dorothy Gunn will also have an opportunity to respond to this Response to Hearing Request and, in that response, they may provide the missing information regarding their request for hearing; however, Micro Dirt will object to that information as untimely and, in the alternative, will request the Commission to give Micro Dirt an opportunity to respond to any new information. For these reasons, the Commission should deny Joe and Dorothy Gunn's request for a hearing.

**B. Jay and Corinna Gunn not Affected Persons, No Justiciable Interest**

Jay and Corinna Gunn live at 141 Wildhorse Creek, Buda, Texas 78610, which is over nine (9) miles from the Micro Dirt facility. While they state that they own an approximately 11-acre property within one-mile of the Micro Dirt facility, they fails to identify 1) how they use the property, 2) how often they visit the property, or 3) how Micro Dirt's operation in compliance with the E.D.'s proposed permit will cause actual harm to their use of the property (i.e., the *Collins* and *Waco* standards). Without further information, the Commission cannot determine whether their unknown use of this non-residential property located within a one-mile radius of the Micro Dirt facility will be impacted by this facility operated in compliance with its permit. Furthermore, Jay and Corinna Gunn failed to comply with Section 55.203 of the Commission's rules, as they failed to state 1) whether their interest is one protected by the law; 2) whether a reasonable relationship exists between their claimed interest and the activity regulated; 3) the likely impact of the regulated activity on their use of property; or 4) the likely impact of the regulated activity on their use of any impacted natural resource.

Jay and Corinna Gunn will have an opportunity to respond to this Response to Hearing Requests and, in that response, they may provide the missing information regarding their use of this property and their justiciable interest that could be impacted by compliance with the E.D.'s proposed permit; however, Micro Dirt will object to that information as untimely and, in the alternative, will request the Commission to give Micro Dirt an opportunity to respond to any new information. For these reasons, the Commission should deny Jay and Corinna Gunn's request for a hearing.

**VII.**  
**RESPONSE TO PROTESTERS' GENERAL CONCERNS**

Each of the above protesters included a list of general concerns regarding the proposed permit:

- 1) possible impact to ground and surface water;
- 2) potential traffic problems;
- 3) prospective odor and noise nuisance
- 4) possible vectors
- 5) potential air pollution;
- 6) would-be delivery of prohibited substances for composting; and
- 7) alleged compliance issues.

As discussed above, under *Collins* and *Waco*, the protester's predictions of groundwater and surface water contamination, the alleged inadequacy of an in-situ clay liner, allegations of odor and vector problems if an applicant violated the permit, or acceptance of substances prohibited by the permit is insufficient to show a personal, justiciable interest. The protesters' concern regarding noise pollution is over an issue in which the Commission lacks jurisdiction, as the Commission's rules do not regulate noise; thus, this concern fails to meet the requirements of the Commission's rules regarding issues ripe for consideration during a contested case hearing. Regarding Micro Dirt's alleged compliance issues, those issues are simply that – alleged, and neither the State Office of Administrative Hearings nor the Commission have found that Micro Dirt has violated any Commission rule or State law. In other words, the alleged violations are simply a red herring meant to frustrate agency actions and Micro Dirt by those who do not like the permissions to conduct legal activities on private property.

As previously discussed, none of the protesters stated how Micro Dirt's compliance with the proposed permit would adverse 1) impact their groundwater or surface water, 2) impact traffic patterns in such a way as to preclude the protester's use of their property, 3) pose odor conditions that would preclude the protester's use of their property, 4) create additional issues of vectors that would preclude the protester's use of their property, 5) impact the air quality such that protesters would be prevented from using their property, or 6) that acceptance of feed stocks for composting in compliance with the permit would adversely impact the protesters' ability to use their property. Each of their concerns fails to rise above the general concerns of the general public, and thus each

is deficient in terms of requesting a contested case hearing.

For these reasons, the Commission should deny all requests for a contested case hearing.

### **A. General Concern Regarding Groundwater and Surface Water**

The E.D. reviewed Micro Dirt's application to ensure compliance with the Commission's rules for protecting groundwater, and those rules require Micro Dirt to provide and follow a groundwater protection plan for the composting operation. To satisfy this rule, Micro Dirt demonstrated to the E.D. that the facility is ". . . so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation."<sup>10</sup> Micro Dirt's groundwater protection plan includes a liner system and a groundwater monitor system.

Micro Dirt's operation activities are within a lined area of 1.5.23 acres that includes a liner with a permeability of  $1 \times 10^{-7}$  centimeters per second or less, and the Commission has already determined that a material with a permeability of  $1 \times 10^{-7}$  centimeters per second or less is protective of the environment and human health as it will prevent seepage of pollutants. The protesters failed to show how Micro Dirt's compliance with this requirement will cause contamination of the protesters' groundwater.

Micro Dirt's groundwater monitoring system is designed to ". . . reasonably assure detection of any contamination of the groundwater before it migrates beyond the boundaries of the site."<sup>11</sup> Micro Dirt's groundwater monitoring system will detect perched groundwater and pollutants that present a risk prior to groundwater migrating beyond the boundaries of the site, and it is based on the information obtained from the Groundwater investigation report. According to the E.D., Micro Dirt's ". . . proposed groundwater monitoring system design and sampling plan will ensure detection if a release occurs in compliance with the TCEQ rules in Chapter 332. If a release were to occur, Micro Dirt 'would be required to perform corrective action in accordance with Rule 332.45(13).'"<sup>12</sup> Again, the protesters failed to show how Micro Dirt's compliance with the groundwater monitoring requirements will cause harm to the protesters' interest.

Micro Dirt's surface water protection plan includes controls for storm water run-on and storm water and leachate runoff that account for the 25 year, 24-hour storm event. The facility's drainage patterns demonstrate that all runoff is captured by Micro Dirt's lined surface impoundment. In addition, Micro Dirt has included an above-surface, three-foot berm that surrounds the 15.23-acre facility and prevents pollutants from escaping the property through surface runoff. Finally, Micro Dirt added a protective vegetative cover on

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<sup>10</sup> 30 TEX. ADMIN. CODE § 332.47(6)(C).

<sup>11</sup> *Id.* at §332.47(6)(C)(ii).

<sup>12</sup> E.D. RESPONSE TO COMMENTS, May 10, 2011, at 5.

the berm to minimize erosion. As the E.D. has noted, Micro Dirt’s surface water protection plan “. . . is properly designed to prevent releases of pollutants in compliance with the TCEQ rules in Chapter 332.”<sup>13</sup> The protesters have again failed to demonstrate how Micro Dirt’s compliance with the proposed permit will cause harm to their interests through surface water runoff.

For these reasons, the Commission should deny all protesters’ request for a public hearing regarding groundwater and surface water protection issues.

### **B. General Concerns Regarding Traffic**

The E.D. reviewed Micro Dirt’s application to ensure compliance with all Commission rules regarding traffic. Commission rules required Micro Dirt to provide traffic information as part of the application process. In accordance with Commission rules, Micro Dirt provided data on the availability and adequacy of roads that will be used to access the site. Micro Dirt also provided data on the volume of vehicular traffic on access roads within one mile of the proposed facility. Micro Dirt also provided projections of the volume of traffic expected to be generated by the facility within one mile of the proposed facility. According to the E.D., the additional traffic that Micro Dirt’s facility is expected to generate is “. . . insignificant and calculations indicate a maximum increase in traffic load of 6 to 10 vehicles per day, if the facility reaches full operating potential.”<sup>14</sup> Micro Dirt also provided documentation that it had coordinated with TxDOT, and TxDOT stated that the traffic counts used in the application submitted to the TCEQ were reasonable and that projected traffic impacts from the facility were negligible.

Protesters failed to demonstrate how Micro Dirt’s compliance with the Commission’s rules and the proposed permit would adversely impact the use of their property. Therefore, the Commission should deny all requests for a public hearing regarding traffic issues.

### **C. General Concerns Regarding Odor and Noise Nuisance**

The E.D. reviewed Micro Dirt’s application to ensure compliance with all odor control provisions in the Commission’s rules. As previously noted, the Commission lacks any jurisdiction over any noise issues. Under the provisions of the Commission’s rules and the proposed permit, Micro Dirt must conduct all activities that could result in increased odor emissions, such as turning of compost piles, in a manner that does not create nuisance conditions. Micro Dirt has established its operation guidelines for the minimization of odor in its Standard Operating Procedures (“SOP”). Moreover, Micro Dirt will accept all liquids that may create nuisance odors into the eight tanks and only extract them from the tanks when wood chips and

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<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* at 17-18.

other feedstock mixture are in a pile ready to accept liquids. Furthermore, tipping areas, where the composting materials are placed, will be inspected and cleaned every day to ensure cleanliness and odor control. Under Micro Dirt's SOP Facility Inspections and Maintenance, Micro Dirt employees will inspect the facility daily for odors. Under the SOP, Micro Dirt will maintain a 50-foot buffer zone and a vegetative barrier, which will reduce the possibility of potential odors exiting the facility. Furthermore, Micro Dirt is required to mix materials with a high odor potential such as, but not limited to, dairy material feedstock, sewage sludge, meat, fish, oil and grease feedstock, grease trap waste, and municipal solid waste with an adequate volume of bulking material to blend with or cover the material in a manner that prevents nuisances.

Protesters failed to demonstrate how Micro Dirt's compliance with the Commission's rules and the proposed permit would adversely impact the use of their property. Therefore, the Commission should deny all requests for a public hearing regarding odor and noise issues.

#### **D. General Concerns Regarding Vectors**

Under Commission rules and provisions of the proposed permit, Micro Dirt is required to establish its operation guidelines for the control of vectors in its SOP. As the E.D. noted, if Micro Dirt fails to follow its permit specifications or rules, the Commission “. . . can initiate an enforcement action against Micro Dirt. As a consequence of an enforcement action, the TCEQ can assess administrative penalties against Micro Dirt, the TCEQ can require Micro Dirt to comply with its permit specifications or rules, and the TCEQ can suspend Micro Dirt's operations.”<sup>15</sup> Finally, the E.D. concluded that after a thorough review of Micro Dirt's vector control plan, “. . . the plan provided by Micro Dirt meets the requirements of the [Commission's] rule.”

The protesters have again failed to demonstrate how Micro Dirt's compliance with the proposed permit will cause harm to their justiciable interests through an increase in vectors on their property. For these reasons, the Commission should deny all protesters' request for a public hearing regarding vectors.

#### **E. General Concerns Regarding Air Pollution**

Micro Dirt is required to obtain an air quality authorization in order to compost grease trap waste and process liquid wastes under this permit. The Commission has already authorized the issuance of an air quality standard permit if an applicant complies with Rules 332.8(e) and 330.245. If Micro Dirt cannot meet the requirements for a standard permit, then Micro Dirt will have to obtain a separate New Source Review permits under Chapter 116 for sources greater than 25 tons per year. Micro Dirt is subject to obtaining an applicable air authorization independent of obtaining a waste composting authorization.

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<sup>15</sup> *Id.* at 16-17.

The protesters have again failed to demonstrate how Micro Dirt's compliance with the proposed permit and the Commission's standard permit will cause harm to their justiciable interests through a decrease in air quality at their property. For these reasons, the Commission should deny all protesters' request for a public hearing regarding air quality issues.

#### **F. General Concern Regarding Acceptance of Prohibited Substances**

Under the proposed permit, Micro Dirt can accept only those wastes that are authorized by the permit. The authorized wastes are limited to “. . . municipal sludge, septage, grease trap waste, source separated yard and tree trimmings, wood chips, paper, cardboard, clean wood, positively-sorted organic material, source separated organic material, agricultural waste and materials, dead animals, expired food wastes, dairy materials, manure and vegetative food waste including class 2 industrial food preparation waste and non-hazardous industrial solid waste. Under provisions of the permit and Commission rules, Micro Dirt must establish operational guidelines for personnel to screen for un-processable or unauthorized material and operate the facility in conformance with the design and operational standards established by the permit. Micro Dirt must identify the sources and characteristics of wastes (e.g., residential, commercial, grease trap, grit trap, sludge, septage, special wastes, Class 1, Class 2, or Class 3 industrial solid wastes, compost feedstock) proposed to be received for storage or processing.” Furthermore, Micro Dirt has granted personnel with the authority and responsibility to reject unauthorized loads, to require the transporter to remove unauthorized material, to remove unauthorized material, and otherwise properly manage the facility.

The protesters have failed to demonstrate how Micro Dirt's compliance with the proposed permit and the Commission's standard permit will cause harm to their justiciable interests through Micro Dirt's acceptance of “unauthorized material.” For these reasons, the Commission should deny all protesters' request for a public hearing regarding waste acceptance issues.

#### **G. General Concern Regarding Alleged Compliance Issues**

Under the Texas Water Code and Commission rules, the Commission must determine whether applicants are in compliance with relevant Commission rules and by considering their compliance history. Rule 60.3 requires the Commission to consider a facility's compliance history when deciding whether to issue a permit.

Micro Dirt has a compliance history rating of 3.01 and a classification of “average.” Its compliance history rating is far below the 45.01 or greater for a facility fails to comply with a significant portion of the relevant environmental regulations. The E.D.’s compliance history report used in analyzing Micro Dirt’s permit application complies with all of the requirements in Chapter 60, which establishes the TCEQ’s compliance history procedures.

Regarding Micro Dirt’s alleged compliance issues, those issues are simply that – alleged, and neither the State Office of Administrative Hearings nor the Commission have found that Micro Dirt has violated any Commission rules or State law.

The protesters have failed to demonstrate how Micro Dirt’s compliance with the proposed permit and the Commission’s standard permit will cause harm to their justiciable interests. For these reasons, the Commission should deny all protesters’ request for a public hearing.

**V.**  
**CONCLUSION**

Micro Dirt hereby prays that the Commission deny all hearing requests, not modify the permit based upon the comments of protesters, and issue Permit No. 2361 as proposed by the Executive Director.

Respectfully submitted,

Randall B. Wilburn, Attorney at Law  
3000 South IH 35, Suite 150  
Austin, Texas 78704  
Telephone: (512) 326-3200  
Telecopier: (512) 326-8228



By: \_\_\_\_\_  
Randall B. Wilburn

**ATTORNEY FOR MICRO DIRT, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2011, I provide the requisite copies of Micro Dirt's Response to Hearing Requests with the Office of 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, Intra-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



By: \_\_\_\_\_

Randall B. Wilburn

**MAILING LIST  
MICRO DIRT, INC., TCEQ DOCKET 2011-0935-MSW**

**FOR THE EXECUTIVE DIRECTOR:**

Jose Caso, Staff Attorney  
Tex. Comm. on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512)239-0606

**FOR THE CHIEF CLERK:**

Melissa Chao, Acting Chief Clerk  
Tex. Comm. on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512)239-3311

**FOR PROTESTERS:**

Mr. J.D. Head  
Fritz, Byrne, Head & Harrison, PLLC  
98 San Jacinto Blvd., Suite 2000  
Austin, Texas 78701-4082  
Tel: (512) 476-2020  
Fax: (512) 477-5267

**FOR OFFICE OF PUBLIC**

**ASSISTANCE:**

Bridget Bohac, Director  
Tex. Comm. on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512)239-4007

**FOR ALTERNATIVE DISPUTE**

**RESOLUTION:**

Kyle Lucas  
Tex. Comm. on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3 087  
Tel: (512)239-4010  
Fax: (512)239-4015