

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*

July 11, 2011

Melissa Chao, Acting Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Micro Dirt, Inc. d.b.a. Texas Organic Recovery  
TCEQ Docket No. Docket No. 2011-0935-MSW  
Proposed MSW Permit No. 2361  
Executive Director's Response to Hearing Requests

Dear Ms. Chao:

Enclosed for filing, please find an original and 7 copies of the "*Executive Director's Response to Hearing Requests relating to the application of Micro Dirt d.b.a. Texas Organic Recovery for Permit No. 2361.*" I have also attached the following exhibit to assist the Commission in the resolution of this matter:

Attachment A – Technical Summary and Draft Permit  
Attachment B – Executive Director's Response to Public Comment  
Attachment C – Compliance History  
Attachment D – GIS Map & Landowners List

If you have any questions, please do not hesitate to contact me at (512) 239-4309.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose L. Caso".

Jose L. Caso, Staff Attorney  
Environmental Law Division

**TCEQ PROPOSED PERMIT NO. 2361**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>MICRO DIRT, INC., D.B.A.</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>TEXAS ORGANIC RECOVERY</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

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**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

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**I. Introduction**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests (Response) on the application of Micro Dirt, Inc., d.b.a. Texas Organic Recovery (Micro Dirt or Applicant), for a new Municipal Solid Waste Permit Number 2361.

Attached for Commission consideration are the following:

- Attachment A – Technical Summary and Draft Permit
- Attachment B – Executive Director's Response to Public Comment
- Attachment C – Compliance History
- Attachment D – GIS Map & Landowners List

One petition requesting a contested case hearing was received by the TCEQ's Office of the Chief Clerk on June 10, 2011. The petition, which was submitted by attorney J.D. Head, contains the names and addresses of the persons in the following three groups, and will be known as **Petition 1**. The requestors are organized into these groups based on either owning or residing on one of three tracts of land as reflected below and on Attachment D.

**Group 1:**

- Ann Whitworth Messer (owner)
- Julie Moore (resident)
- Juli Phillips (owner)
- H. Philip Whitworth (owner)

**Group 2:**

- Thomson Family Limited Partnership (owner)

**Group 3:**

Corinna Gunn (owner)  
Dorothy Gunn (resident)  
Jay Gunn (owner)  
Joe Gunn (resident)

## **II. Description of the Facility**

The Applicant has applied to the TCEQ for a new permit that would authorize a Type V municipal solid waste composting and liquid waste processing facility in Travis County, Texas.

The total permitted facility will include a lined area of 15.23 acres of land. The waste acceptance rate is expected to average approximately 3,000 tons per day. If the Commission issues the draft permit, the proposed composting facility will compost "...feedstocks which 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 as detailed in 30 TAC § 332.4(10)." See Attachment A, Draft Permit No. 2361, Section II(B). No other wastes can be accepted at the Micro Dirt facility for composting or other processing purposes. Regarding the liquid waste processing facility, a heating vessel and eight 18,000 gallon tanks with a total capacity of 144,000 gallons would be authorized to receive and process liquid waste materials. Unprocessed liquids in the units could be stored for a maximum of 72 hours. The liquids in the tanks would be utilized as moisturizing agents in composting operations. The heating vessel could be used to heat grease trap waste to separate fats, oils, and food solids from water. Grease trap waste received by Micro Dirt is expected to predominantly come from businesses, commercial, institutional, and industrial sources in the Austin metropolitan and central Texas areas, but may come from other cities and counties.

If the Commission issues the draft permit, the facility will be located at 15500 Goforth Road, on the west side of Goforth Road, within the city limits of Creedmoor, in Travis County. The land within one mile of the proposed facility is mostly undeveloped or agricultural. There are no schools, day-care facilities, or hospitals within one mile of the proposed facility. Two cemeteries are within one mile of the proposed facility. Three rural residential type areas are located approximately one mile southwest of the facility site.

## **III. Procedural Background**

On December 4, 1998, the TCEQ issued MSW Registration 42016 to Micro Dirt. This registration allowed Micro Dirt to compost septage, sewer sludge, paper, vegetative waste, brush, wood, and grease trap waste. HB 1971 of the Seventy-Eight Legislature, 2003, changed Texas law by requiring composting facilities to have a permit in order to compost grease trap waste. See Tex. Health and Safety Code §§ 361.428(d) and (e). In

response to this change in the law, Micro Dirt filed Proposed MSW Permit No. 3220 in January of 2004 in order to obtain authorization for its grease-trap composting operation. The case was referred to SOAH for a contested case hearing on December 5, 2005. After the hearing, the TCEQ commissioner's issued an order on May 23, 2008, denying the permit because the applicant had failed to demonstrate that the proposed liner would be protective of groundwater (TCEQ Docket No. 2005-1510-MSW; SOAH Docket No. 582-06-0839).

The application for Proposed MSW Permit No. 2361 was submitted on May 13, 2009. An Administrative Notice of Deficiency (NOD) was issued on June 1, 2009, and the application was declared administratively complete on July 6, 2009. The Notice of Receipt of Application and Intent to Obtain Permit was published in English on November 10, 2009, in the *Austin American-Statesmen* and in Spanish on July 16, 2009, in the *¡Ahora Si! Spanish Newspaper*, Travis County, Texas. The ED issued its First Technical NOD on August, 28, 2009, and the Applicant submitted a response to the NOD on January 25, 2010. The ED issued its Second Technical NOD on March 22, 2010, and the Applicant submitted a response to the NOD on May 18, 2010. A public meeting was held on September 2, 2010. The Applicant published notice of the public meeting on August, 12, 2010, August 19, 2010, and August 26, 2010, in the *Austin American-Statesmen* and in the *¡Ahora Si! Spanish Newspaper*, Travis County, Texas. The ED completed the technical review of the application on October 18, 2010, and prepared a draft permit. The Notice of Application and Preliminary Decision was published in English on November 5, 2010, in the *Austin American-Statesmen* and in Spanish on November 11, 2010, in the *¡Ahora Si! Spanish Newspaper*, Travis County, Texas. A second public meeting was held on February 22, 2011. The Applicant published notice of the public meeting on February, 3, 2011, February 10, 2011, and February 17, 2011, in the *Austin American-Statesmen* and in the *¡Ahora Si! Spanish Newspaper*, Travis County, Texas. Several oral and written comments were submitted by members of the public. The ED prepared the Response to Comments (RTC) on May 10, 2011. The ED Decision Letter, with instructions on how to request a contested case hearing, and the RTC were mailed on May 13, 2011. Petition 1 was received in response on June 10, 2011, requesting a contested case hearing.

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, 76<sup>th</sup> Legislature, 1999.

#### **IV. Access to Rules, Laws, and Records**

The Commission's current rules may be accessed online by using the Texas Administrative Code (TAC) viewer feature on the Texas Secretary of State website at: [www.sos.state.tx.us](http://www.sos.state.tx.us) (Select "State Rules & Open Meetings," then "Texas Administrative Code," and then "TAC Viewer").

The current rules in 30 TAC Chapter 330, Municipal Solid Waste, and 30 TAC Chapter 332, Composting, were utilized to review this application. The rules are available through

the TCEQ's website at [www.tceq.texas.gov](http://www.tceq.texas.gov) (Select "Rules," then "Current Rules and Regulations").

Texas statutes may be accessed through the Texas Legislative Council's website at: <http://www.tlc.state.tx.us> (Select "Internet Resources," then "Texas Statutes").

General information about the TCEQ can be found at our website at: [www.tceq.texas.gov](http://www.tceq.texas.gov) (For downloadable rules in Adobe PDF format, select "Rules," then "Current Rules and Regulations, and then "Download TCEQ Rules").

Federal statutes and regulations may be accessed through the Environmental Protection Agency (EPA) website at: [www.epa.gov](http://www.epa.gov) (Select "Laws & Regulations").

Commission records for this facility are currently available for review and copying during regular business hours at the TCEQ's Office of the Chief Clerk, Building F, 12100 Park 35 Circle, Austin, TX. 78753. A copy of the application and draft permit are currently available for review and copying at the City of Creedmoor, City Hall, 12513 FM 1625, Creedmoor, Travis County, Texas; and will remain there until either the TCEQ acts on the application, or the application is referred to the State Office of Administrative Hearings (SOAH) for hearing.

## **V. The Evaluation Process for Hearing Requests**

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. The applications were declared administratively complete on July 6, 2009; therefore, they are subject to House Bill 801 requirements. The Commission implemented House Bill 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55.

### **A. Response to Request**

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;
- 2) whether issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of 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.

30 TAC § 55.209(e).

## **B. Hearing Request Requirements**

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

“A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided...and may not be based on an issue that was 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.”

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible fax number, who shall be responsible for receiving all official communications and documents for the group;
- 2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a matter not common to members of the general public;
- 3) request a contested case hearing;
- 4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's response to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- 5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

### **C. “Affected Person” Status**

In order to grant a contested case hearing, the Commission must determine that a requestor is an “affected person.” Section 55.203 sets out who may be considered an affected person.

- a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.
- b) Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, 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;
  - 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 the 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.

30 TAC § 55.203.

### **D. Additional Requirements if Requestor is a Group or Association**

A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- 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.

30 TAC § 55.205.

### **E. Referral to the State Office of Administrative Hearings (SOAH)**

When the Commission grants a request for a contested case hearing, they are required to issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing. 30 TAC § 50.115(b). Subsection 50.115(c) of 30 TAC sets out the test for determining whether an issue may be referred to SOAH. “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: 1) involves a disputed question of fact; 2) was raised during the public comment period; and 3) is relevant and material to the decision on the application.” 30 TAC § 50.115(c).

## **VI. Analysis of the Requests**

### **A. Analysis of the Hearing Requests**

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, who qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

#### **1. Whether the Requestors Complied with 30 TAC § 55.201**

##### **a.) Group 1**

Group 1’s written hearing request was filed with the TCEQ’s Office of the Chief Clerk before the June 13, 2011, deadline to request a Contested Case Hearing, and was based on issues raised during the public comment period. Group 1’s hearing request provided the requestors’ names and addresses, identified their personal justiciable interest affected by the application, contained an explanation of the requestors’ locations and distances relative to the proposed facility, requested a contested case hearing, and listed relevant and material disputed issues of fact that were raised during the comment period. Specifically, Group 1 raised issues dealing with groundwater and surface water protection as well as several nuisance issues. Furthermore, all of Group 1’s members were named parties to the prior contested case hearing for the same facility.

The Executive Director recommends that the Commission find that Group 1’s hearing requests substantially complied with the requirements of 30 TAC §§ 55.201(c) and (d).

##### **b.) Group 2**

Group 2’s written hearing request was filed with the TCEQ’s Office of the Chief Clerk before the June 13, 2011, deadline to request a Contested Case Hearing, and was based on issues raised during the public comment period. Group 2’s hearing requests provided the requestor’s name and address, identified its personal justiciable interest affected by the application, contained an explanation of the requestor’s location and distance relative to the proposed facility, requested a contested case hearing, and listed relevant and material disputed issues of fact that were raised during the comment period. Specifically, Group 2 raised issues dealing with groundwater and surface water protection; nuisances; and waste-acceptance policies. Furthermore, the general partner of the Thomson Family

Limited Partnership, Mr. M.D. Thomson, was named a party to the prior contested case hearing for the same facility.

The Executive Director recommends that the Commission find that Group 2's hearing requests substantially complied with the requirements of 30 TAC § 55.201(c) and (d).

a) Group 3

Group 3's written hearing request was filed with the TCEQ's Office of the Chief Clerk before the June 13, 2011, deadline to request a Contested Case Hearing, and was based on issues raised during the public comment period. Group 3's hearing request provided the requestors' names and addresses, identified their personal justiciable interest affected by the application, contained an explanation of the requestors' locations and distances relative to the proposed facility, requested a contested case hearing, and listed relevant and material disputed issues of fact that were raised during the comment period. Specifically, Group 3 raised issues dealing with groundwater and surface water protection; nuisances; and issues related to Micro Dirt's compliance record.

The Executive Director recommends that the Commission find that Group 3's hearing requests substantially complied with the requirements of 30 TAC §§ 55.201(c) and (d).

## **2. Whether the Requestors are Affected Persons**

Neither the applicable statutes nor the MSW rules impose a distance restriction or limitation on a hearing requestor's affected interest. However, the Executive Director has determined that it is unlikely that the operation of the proposed Type V MSW composting and liquid waste processing facility will adversely impact the health, safety, or property use of those requestor's whose property is located more than one mile from the proposed facility. This determination is consistent with MSW rules, which require an applicant to provide maps, aerial photography, land use compatibility information, and traffic information within one mile of the proposed facility. *See* 30 TAC §§ 330.61 and 332.47.

a.) Group 1:

The Executive Director recommends that the Commission find that Ann Whitworth Messer, Julie Moore, Juli Phillips, and H. Philip Whitworth, all of whom live or own property located .42 miles to the northeast of the proposed facility, are affected persons under 30 T.A.C. § 55.203. These requestors raised issues that are related to the TCEQ's regulation of this type of facility. The facility has the potential to impact the requestors based on their location.

b.) Group 2:

The Executive Director recommends that the Commission find that the Thomson Family Limited Partnership, which manages property that is immediately adjacent to the

southeast of the proposed facility, is an affected persons under 30 T.A.C. § 55.203. This requestor raised issues that are related to the TCEQ's regulation of this type of facility. The facility has the potential to impact the requestor based on their location.

c.) Group 3:

The Executive Director recommends that the Commission find that Corinna Gunn, Dorothy Gunn, Jay Gunn, and Joe Gunn, all of whom live or own property located .77 miles to the northwest of the proposed facility, are affected persons under 30 TAC § 55.203. These requestors raised issues that are related to the TCEQ's regulation of this type of facility. The facility has the potential to impact the requestors based on their location.

Issues Raised by Hearing Requestors:

Hearing requestors listed 14 issues, and the ED has analyzed those issues and divided some of them into separate issues resulting in a total of 20 issues listed below.

- 1. Whether the Applicant's proposed composting facility will adequately prevent groundwater pollution in compliance with agency rules including 30 TAC § 332.47(6)(C).**
- 2. Whether the Applicant's proposed composting facility has an adequate groundwater monitoring system in compliance with agency rules including 30 TAC § 332.47(6)(C).**
- 3. Whether the Applicant's proposed composting facility will adequately prevent surface water pollution in compliance with agency rules including 30 TAC § 332.47(6)(A).**
- 4. Whether the Application for the proposed composting facility contains an adequate Groundwater Investigation Report in compliance with agency rules including 30 TAC § 332.47(6)(B)(v).**
- 5. Whether the Application for the proposed composting facility contains an adequate Subsurface Investigation Report in compliance with agency rules including 30 TAC § 332.47(6)(B)(iv).**
- 6. Whether the Applicant's proposed liquid waste processing facility will adequately prevent surface water and groundwater pollution in compliance with agency rules including 30 TAC §§ 330.63(d) and 330.207.**
- 7. Whether the Applicant's proposed facility will be able to contain a worst case spill or release from the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(B) and 330.227.**

8. Whether the amount of the financial assurance for the proposed facility is sufficient in compliance with agency rules including 30 TAC §§ 330.505 and 332.47(9).
9. Whether the Application includes provisions for adequate fire protection in compliance with agency rules including 30 TAC §§ 330.221 and 332.47(7)(E).
10. Whether the Applicant's Compliance History has been adequately considered in compliance with agency rules including 30 TAC Chapter 60.
11. Whether the Application adequately provides for odor control for the proposed composting facility in compliance with agency rules including 30 TAC §§ 332.47(7)(I) and (J).
12. Whether the facility will create adverse air quality impacts.
13. Whether the Application adequately provides for vector control for the proposed composting facility in compliance with agency rules including 30 TAC § 332.47(7)(G).
14. Whether the Application adequately provides for odor control for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(A) and 330.209.
15. Whether the Application adequately provides for vector control for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(A), 330.209, and 330.243.
16. Whether the Application adequately provides for noise pollution control.
17. Whether the Application adequately addresses traffic concerns in compliance with agency rules including 30 TAC §§ 330.61(i) and 332.47(5).
18. Whether the Application provides an adequate waste acceptance plan for the proposed composting facility in compliance with agency rules including 30 TAC § 332.47(7).
19. Whether the Application provides an adequate waste analysis plan for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC § 330.203.
20. Whether the Application provides adequate end-product testing, sampling, and analysis procedures for the proposed composting facility in compliance with agency rules including 30 TAC §§ 332.43, and 332.71, and 332.72.

#### **Executive Director's Recommendations on Issues**

- 1. Whether the Applicant's proposed composting facility will adequately prevent groundwater pollution in compliance with agency rules including 30 TAC § 332.47(6)(C).**

This issue was raised and addressed in Response Number 1 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to the State Office of Administrative Hearings (SOAH).

- 2. Whether the Applicant's proposed composting facility has an adequate groundwater monitoring system in compliance with agency rules including 30 TAC § 332.47(6)(C).**

This issue was raised and addressed in Response Number 1 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

- 3. Whether the Applicant's proposed composting facility will adequately prevent surface water pollution in compliance with agency rules including 30 TAC § 332.47(6)(A).**

This issue was raised and addressed in Response Number 2 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

- 4. Whether the Application for the proposed composting facility contains an adequate Groundwater Investigation Report in compliance with agency rules including 30 TAC § 332.47(6)(B)(v).**

This issue was raised and addressed in Response Number 3 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

- 5. Whether the Application for the proposed composting facility contains an adequate Subsurface Investigation Report in compliance with agency rules including 30 TAC § 332.47(6)(B)(iv).**

This issue was raised and addressed in Response Number 4 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

- 6. Whether the Applicant's proposed liquid waste processing facility will adequately prevent surface water and groundwater pollution in compliance with agency rules including 30 TAC §§ 330.63(d) and 330.207.**

This issue was raised and addressed in Response Number 5 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

- 7. Whether the Applicant's proposed facility will be able to contain a worst case spill or release from the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(B) and 330.227.**

This issue was raised and addressed in Response Number 6 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

- 8. Whether the amount of the financial assurance for the proposed facility is sufficient in compliance with agency rules including 30 TAC §§ 330.505 and 332.47(9).**

This issue was raised and addressed in Response Number 7 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

- 9. Whether the Application includes provisions for adequate fire protection in compliance with agency rules including 30 TAC §§ 330.221 and 332.47(7)(E).**

This issue was raised and addressed in Response Number 8 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

**10. Whether the Applicant's Compliance History has been adequately considered in compliance with agency rules including 30 TAC Chapter 60.**

This issue was raised and addressed in Response Numbers 9 and 10 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

**11. Whether the Application adequately provides for odor control for the proposed composting facility in compliance with agency rules including 30 TAC §§ 332.47(7)(I) and (J).**

This issue was raised and addressed in Response Number 12 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn. The ED discussed the requirements of 30 TAC § 332.8(e) in the RTC. Micro Dirt's compliance with this rule entitles it to an air quality permit and also supports compliance with 30 TAC § 332.47(7)(J). Compliance with 30 TAC § 332.8(e) is not required to obtain the composting permit and is not referred as part of this issue.

The Executive Director recommends that the Commission refer this issue to SOAH.

**12. Whether the facility will create adverse air quality impacts.**

This issue was raised and addressed in Response Number 16 of the Executive Director's RTC. The composting rules in Chapter 332 do not require the issuance of an air quality standard permit in order to issue a composting permit. In his hearing request, J.D. Head comments that "the application contains no information establishing that the facility meets the air quality standard permit in Chapter 332." Rule 30 TAC § 332.8(e) provides that a composting operation is entitled to an air quality standard permit if certain requirements are met. However, meeting the provisions in the rule is not a prerequisite for obtaining a composting permit. Micro Dirt is subject to obtaining an applicable air authorization independent of obtaining a waste composting authorization. Therefore, this issue is not relevant and material to TCEQ's decision on this permit application.

The Executive Director recommends that the Commission **not** refer this issue to SOAH.

**13. Whether the Application adequately provides for vector control for the proposed composting facility in compliance with agency rules including 30 TAC § 332.47(7)(G).**

This issue was raised and addressed in Response Number 13 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

**14. Whether the Application adequately provides for odor control for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(A) and 330.209.**

This issue was raised and addressed in Response Number 11 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

**15. Whether the Application adequately provides for vector control for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(A), 330.209, and 330.243.**

This issue was raised and addressed in Response Number 11 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

**16. Whether the Application adequately provides for noise pollution control.**

This issue was raised and addressed in Response Number 14 of the Executive Director's RTC. The TCEQ does not have specific rules addressing noise at composting or liquid waste processing facilities. This issue is not relevant and material to TCEQ's decision on this permit application.

The Executive Director recommends that the Commission **not** refer this issue to SOAH.

**17. Whether the Application adequately addresses traffic concerns in compliance with agency rules including 30 TAC §§ 330.61(i) and 332.47(5).**

This issue was raised and addressed in Response Number 15 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's

decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

**18. Whether the Application provides an adequate waste acceptance plan for the proposed composting facility in compliance with agency rules including 30 TAC § 332.47(7).**

This issue was raised and addressed in Response Number 17 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

**19. Whether the Application provides an adequate waste analysis plan for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC § 330.203.**

This issue was raised and addressed in Response Number 17 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

**20. Whether the Application provides adequate end-product testing, sampling, and analysis procedures for the proposed composting facility in compliance with agency rules including 30 TAC §§ 332.43, and 332.71, and 332.72.**

This issue was raised and addressed in Response Number 17 of the Executive Director's RTC. This issue is within TCEQ's jurisdiction and is relevant and material to TCEQ's decision on the permit application. The issue involves a question of fact, is disputed, was raised during the comment period, and was not withdrawn.

The Executive Director recommends that the Commission refer this issue to SOAH.

### **VI. Duration of the Contested Case Hearing**

Should the Commission decide to refer the case, the Executive Director recommends that the duration for a contested case hearing on this matter between the preliminary hearing and the presentation of a proposal for decision before the Commission be nine months.

### **VII. Executive Director's Recommendations**

The Executive Director recommends the following actions by the Commission:

- a) Find that the following requestors are affected persons:

Group 1

Ann Whitworth Messer  
Julie Moore  
Juli Phillips  
H. Philip Whitworth

Group 2

Thomson Family Limited Partnership

Group 3

Corinna Gunn  
Dorothy Gunn  
Jay Gunn  
Joe Gunn

- b) Should the Commission find that any of the requestors are affected persons, the following issues should be referred to SOAH for a Contested Case Hearing for a duration of nine months:
1. Whether the Applicant's proposed composting facility will adequately prevent groundwater pollution in compliance with agency rules including 30 TAC § 332.47(6)(C).
  2. Whether the Applicant's proposed composting facility has an adequate groundwater monitoring system in compliance with agency rules including 30 TAC § 332.47(6)(C).
  3. Whether the Applicant's proposed composting facility will adequately prevent surface water pollution in compliance with agency rules including 30 TAC § 332.47(6)(A).
  4. Whether the Application for the proposed composting facility contains an adequate Groundwater Investigation Report in compliance with agency rules including 30 TAC § 332.47(6)(B)(v).
  5. Whether the Application for the proposed composting facility contains an adequate Subsurface Investigation Report in compliance with agency rules including 30 TAC § 332.47(6)(B)(iv).

6. Whether the Applicant's proposed liquid waste processing facility will adequately prevent surface water and groundwater pollution in compliance with agency rules including 30 TAC §§ 330.63(d) and 330.207.
7. Whether the Applicant's proposed facility will be able to contain a worst case spill or release from the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(B) and 330.227.
8. Whether the amount of the financial assurance for the proposed facility is sufficient in compliance with agency rules including 30 TAC §§ 330.505 and 332.47(9).
9. Whether the Application includes provisions for adequate fire protection in compliance with agency rules including 30 TAC §§ 330.221 and 332.47(7)(E).
10. Whether the Applicant's Compliance History has been adequately considered in compliance with agency rules including 30 TAC Chapter 60.
11. Whether the Application adequately provides for odor control for the proposed composting facility in compliance with agency rules including 30 TAC §§ 332.47(7)(I) and (J).
12. Whether the Application adequately provides for vector control for the proposed composting facility in compliance with agency rules including 30 TAC § 332.47(7)(G).
13. Whether the Application adequately provides for odor control for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(A) and 330.209.
14. Whether the Application adequately provides for vector control for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC §§ 330.63(d)(1)(A), 330.209, and 330.243.
15. Whether the Application adequately addresses traffic concerns in compliance with agency rules including 30 TAC §§ 330.61(i) and 332.47(5).
16. Whether the Application provides an adequate waste acceptance plan for the proposed composting facility in compliance with agency rules including 30 TAC § 332.47(7).
17. Whether the Application provides an adequate waste analysis plan for the proposed liquid waste processing facility in compliance with agency rules including 30 TAC § 330.203.

18. Whether the Application provides adequate end-product testing, sampling, and analysis procedures for the proposed composting facility in compliance with agency rules including 30 TAC §§ 332.43, and 332.71, and 332.72.

Respectfully submitted,  
Texas Commission on Environmental  
Quality

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

By   
Jose Caso, Staff Attorney  
Environmental Law Division  
State Bar No. 24065018  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-4309

REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY

# Attachment A

# **TECHNICAL SUMMARY**

**Micro Dirt, Inc. d.b.a. Texas Organic Recovery  
Texas Organic Recovery  
Municipal Solid Waste (MSW)  
MSW Permit Application Number 2361  
Travis County, Texas**

October 2010

Prepared by

Municipal Solid Waste Permits Section  
Waste Permits Division  
Texas Commission on Environmental Quality

## 1.0 General Information

Applicant: Micro Dirt, Inc. d.b.a. Texas Organic Recovery  
15500 Goforth Road, Creedmoor, Texas, 78610

Facility: Texas Organic Recovery  
Type V Liquid Waste Processing and Composting Facility

### 1.1 Purpose of Permit Application

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to operate a liquid waste processing and composting facility which is a Type V municipal solid waste facility in Travis County, Texas. This application was submitted on May 13, 2009, in accordance with Title 30 of the Texas Administrative Code (30 TAC) Section 305.62. The total permitted facility boundary is approximately 30.0 acres with approximately 15.23 acres used for waste processing and composting.

### 1.2 Wastes

#### Wastes Authorized to be Accepted:

This facility is authorized to accept municipal solid waste and compost feedstocks which 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 as detailed in §332.4(10).

#### Wastes Not Authorized to be Accepted:

Any other waste which is prohibited or not authorized may not be accepted. Waste not authorized for acceptance include mixed municipal solid waste as defined in §332.2, grit trap waste, other special wastes as defined in 30 TAC §330.3, painted or treated wood, and portable chemical toilet waste.

## 2.0 Application Review

This application is under review for compliance with the applicable requirements of 30 TAC Chapters 281, 305, and 330. On July 6, 2006, the application was determined to be administratively complete. The application is currently being technically reviewed by the Municipal Solid Waste Permits Section to determine its compliance with the applicable requirements in 30 TAC Chapters 305, 330 and 332. Chapters 330 and 332 contain the minimum regulatory criteria for municipal solid waste processing and composting facilities. When it is determined that the information in this permit application demonstrates compliance with these regulatory requirements, a draft permit can be prepared and the application can be

declared technically complete. A Notice of Application and Preliminary Decision will be issued when the technical review is completed.

### **3.0 Location and Size**

#### **3.1 Location**

The Texas Organic Recovery facility is located in Travis County, at 15500 Goforth Road, in Creedmoor, Texas. The location is illustrated in Attachment 1 (General Location Map) of this Application Summary.

Elevation and Coordinates of Current Permanent Benchmark:

Latitude:	30° 03' 24" N
Longitude:	97° 41' 27" W
Elevation:	700 feet above mean sea level (msl)

#### **3.2 Size**

The total area within the permit boundary is approximately 30.0 acres with approximately 15.23 acres used for waste processing and composting. The site layout is illustrated in Attachment 2 (Site Layout Plan) of this Technical Summary.

### **4.0 Waste Management Units and Operations Authorized**

The facility consists of a site entrance with appropriate security fencing, all-weather access roads, surface drainage and storm water run-on and runoff control structures, eight 18,000 gallon liquid waste storage and processing tanks, an approximately 2.2 acre surface impoundment with an approximate capacity of 17.96 acre-feet, and composting, processing, and feedstock storage areas.

### **5.0 Facility Design and Construction**

The construction of this facility will include the addition of a side wall liner around the composting areas, the addition of spill controls and four 18,000 gallon liquid waste processing and storage tanks. The construction of this facility is in addition to existing structures and units authorized under the facilities current MSW Registration.

### **6.0 Land Use**

Land use in the vicinity of the site was evaluated in accordance with 30 TAC §330.61(g).

#### **6.1 Zoning**

The Texas Organic Recovery Facility is located in the corporate city limits of the city of Creedmoor and is subject to city zoning ordinances.

## 6.2 Surrounding Area Land Use

Land use within a one-mile radius of the site is primarily rural pastureland with sparse rural residential areas.

## 6.3 Growth Trends

The growth trend in the vicinity of this facility is mainly along the I-35 corridor which is approximately eight miles west of the site with some growth in the Creedmoor area.

## 6.4 Residences and Businesses

There are approximately 94 residences and no businesses within a one-mile radius of the site.

## 6.5 Schools and Churches

There are no known schools and churches within one mile of the site.

## 6.6 Cemeteries

There two known cemeteries within one mile of the site.

## 6.7 Historical Sites

No historical properties will be affected by the site.

## 7.0 Location Restrictions

Location restrictions for municipal solid waste facilities are set forth in 30 TAC Chapter 330 Subchapter M [30 TAC §§330.541 - 330.563].

### 7.1 Floodplains

The Texas Organic Recovery facility is located outside of the 100-year floodplain as defined by Federal Emergency Management Agency (FEMA). The facility is considered to be in compliance with 30 TAC §330.547.

### 7.2 Wetlands

A determination of jurisdictional waters of the United States was performed and no wetlands were identified. There is no proposed development in jurisdictional waters of the United States. Therefore, the facility is considered to be in compliance with 30 TAC §330.553.

## **8.0 Site Development and Operation**

The Site Development Plan (SDP) is Part III of the permit application and sets forth the engineering design and other technical aspects of the facility. The Site Operating Plan (SOP) is Part IV of the permit application. The SOP provides operating procedures for the site management and the site operating personnel for the daily operation of the facility. The SOP also provides guidance to maintain the facility in compliance with the engineering design and applicable regulatory requirements. These documents become part of the permit.

## **9.0 Protection of Endangered Species**

Based on correspondence from the Texas Parks and Wildlife Department (TPWD), the Wildlife Habitat Assessment Program does not anticipate significant adverse impacts to fish or wildlife resources. Therefore, the facility is considered in compliance with 30 TAC §330.551 and §330.61(n) which states, in part, that the facility shall not result in the destruction or adverse modification of critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

## **10.0 Financial Assurance**

Financial assurance must be maintained for the facility in accordance with 30 TAC Chapter 37 (Financial Assurance) and 30 TAC Chapter 330 Subchapter K for closure and post-closure care.

## **11.0 Attachments**

Two attachments from the permit application are included with this technical summary. These attachments are as follows:

- Attachment 1 - General Location Map
- Attachment 2 - Site Layout Plan

## **12.0 Public Participation Process**

The process through which the public is allowed to participate in the final decision on the issuance of a municipal solid waste permit is outlined as follows.

- a. The TCEQ will hold a public meeting if the Executive Director determines that there is substantial public interest in the application or if requested by a local legislator. During this meeting the Commission accepts formal comments on the application. There is also an informal question and answer period.
- b. After technical review of the application is completed, the application is declared technically complete and a draft permit is prepared. The draft

permit, the public notice language, and the technical summary are sent to the Chief Clerk's office for processing.

- c. The "Notice of Application and Preliminary Decision" is sent to the applicant and published in the newspaper. This notice provides a 30-day period from the date of publication for the public to make comments about the application or draft permit. The notice also allows the public to request a public meeting for the proposed facility.
- d. After the 30-day comment period has ended, a "Response to Comments" (RTC) is prepared for all comments received through the mail and at a public meeting. The RTC is sent to all persons who commented on the application. Persons who receive the comments have a 30-day period after the RTC is mailed in which to request a public hearing.
- e. After the 30-day period to request a hearing is complete, the matter is placed on an agenda meeting for the TCEQ Commissioners to make a determination to grant any of the hearing requests and refer the matter to the State Office of Administrative Hearings for a public hearing.
- f. A public hearing is a formal process in front of an Administrative Law Judge (ALJ) who conducts the hearing. The applicant and protestant(s) present witnesses and testimony to support or dispute information contained in the application. When the evidentiary portion of the hearing is completed, the ALJ will issue a Proposal for Decision (PFD). The PFD is placed on an agenda meeting of the TCEQ Commissioners for consideration of issuance or denial of a permit.
- g. After the approval or denial of an application has been made, a request to overturn the decision may be made by a party that does not agree with the decision. The request to overturn must be made within a 20-day period after the decision is sent to the applicant. These requests are considered within a 25-day period after the end of the 20-day request period. The matter could be set on another agenda meeting for reconsideration, or allowed to remain in effect without any action after the 25-day period is complete.
- h. Applications for which no comments are received or no one requests a public hearing are considered uncontested matters after the initial 30-day comment period. The matter is placed on the Executive Director's signature docket and a permit is issued. The motion to overturn or reconsider is also applicable in this situation.

### **13.0 Additional Information**

For information regarding this application, contact the Municipal Solid Waste Permits Section:

Mr. Eric Beller, P.G., Work Leader  
MSW Permits Section (MC-124)  
Waste Permits Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711  
(512) 239-1177

To request a copy of the Site Development Plan, contact the consulting engineer:

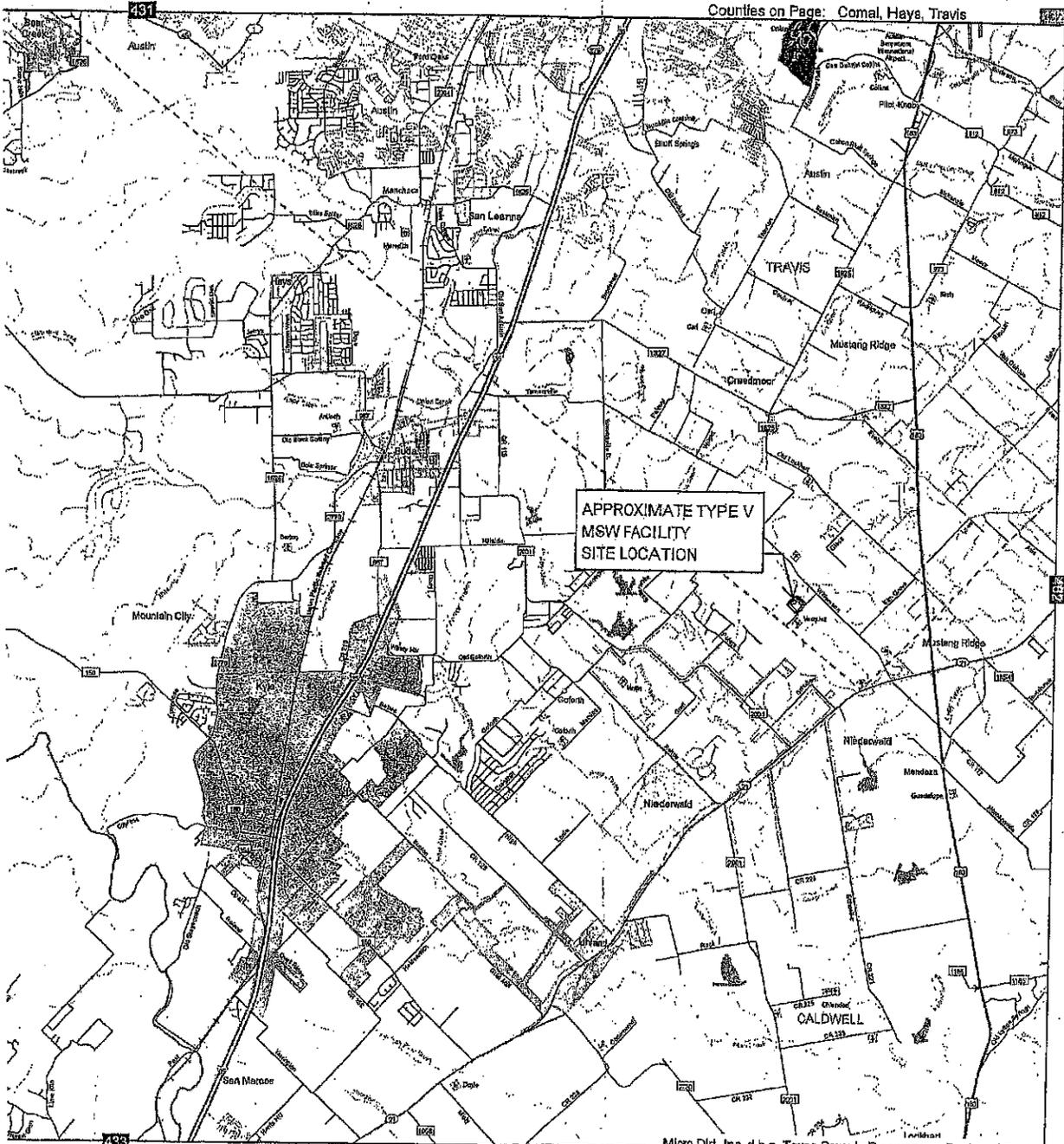
Mr. Robert H. Thonhoff, Jr., P.E.  
Thonhoff Consulting Engineers, Inc.  
1301 Capital of Texas Highway South, Suite A-236  
(512) 328-6736

For information concerning public participation in the public hearing process, contact the TCEQ's Office of the Public Interest Counsel:

Office of Public Interest Counsel (MC-103)  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-6363

For information concerning public hearing procedures for municipal solid waste permits, contact Mr. Bill Newchurch, Director, at:

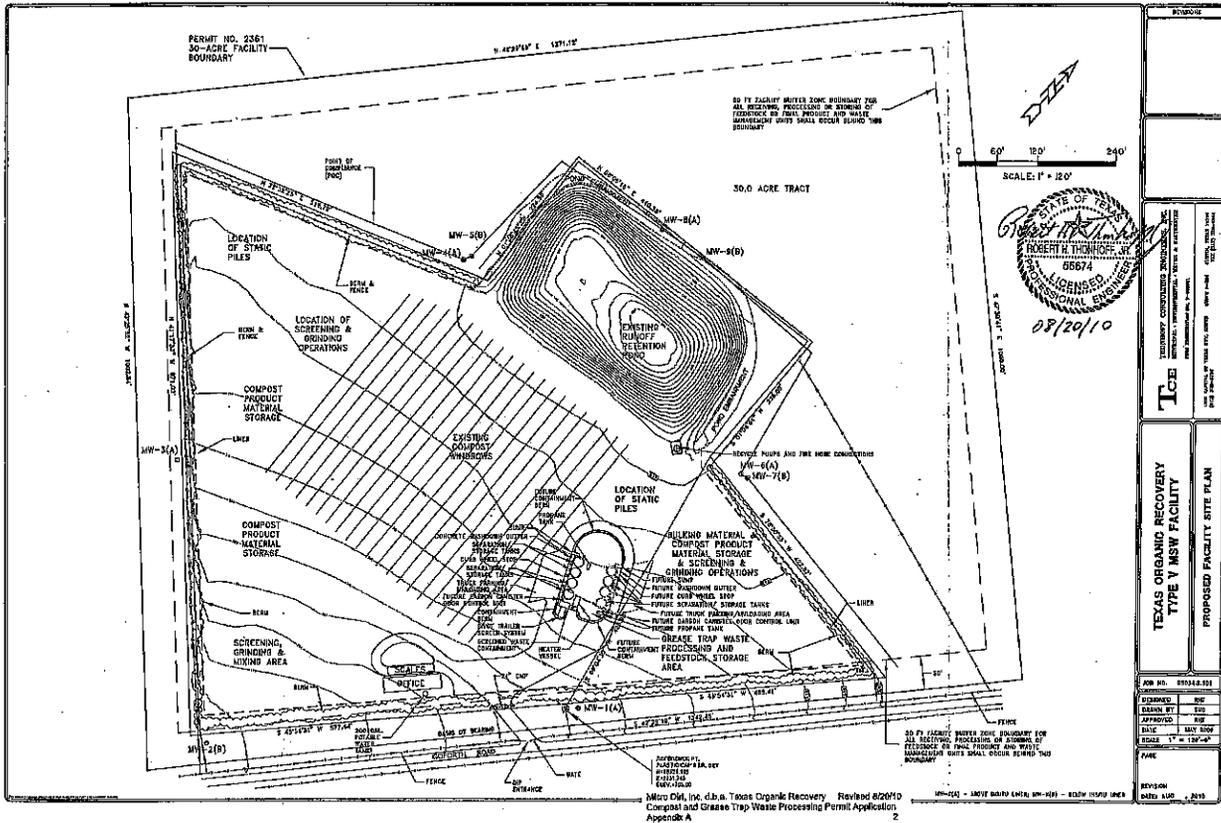
State Office of Administrative Hearings  
Natural Resource Division  
300 W. 15th Street, Room 504  
Austin, TX 78701  
(512) 475-3445



Counties on Page: Comal, Hays, Travis

Technical Summary  
 Texas Organic Recovery - MSW Permit No. 2361

Attachment 2  
 Site Layout Plan



PROPOSED FACILITY SITE PLAN
TEXAS ORGANIC RECOVERY TYPE V MSW FACILITY PROPOSED FACILITY SITE PLAN
JOB NO. 070412.02 DESIGNED BY DRAWN BY APPROVED BY DATE SCALE 1" = 100'-0" PAGE
08/29/10 DATE



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PERMIT FOR MUNICIPAL  
SOLID WASTE (MSW) MANAGEMENT SITE  
Issued under provisions of Texas  
Health & Safety Code  
Chapter 361

MSW Permit No.: 2361

Name of Site Operator/Permittee: Micro Dirt, Inc., d.b.a. Texas Organic Recovery  
15500 Goforth Road, Creedmoor, Texas, 78610

Operator: Micro Dirt, Inc., d.b.a. Texas Organic Recovery

Property Owner: Ms. Vicki Alexander  
7406 Williamson Road, Creedmoor, Texas, 78610-3951

Facility Name: Texas Organic Recovery

Facility Address: 15500 Goforth Road, Creedmoor, Texas, 78610

Classification of Site: MSW Type V Liquid Waste Processing and Composting  
Facility

The permittee is authorized to store, process, transfer and compost waste and to recycle recovered materials in accordance with the limitations, requirements, and other conditions set forth herein. This permit is granted subject to the rules and Orders of the Commission and laws of the State of Texas. Nothing in this permit exempts the permittee from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality. This permit will be valid until canceled, amended, or revoked by the Commission.

APPROVED, ISSUED AND EFFECTIVE in accordance with Title 30 Texas Administrative Code (30 TAC) Chapters 330 and 332.

ISSUED DATE:

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For the Commission

TABLE OF CONTENTS  
Micro Dirt, Inc., d.b.a. Texas Organic Recovery  
Texas Organic Recovery  
MSW Permit No. 2361

<b>Signature Sheet</b> .....	1
<b>Table of Contents</b> .....	2
<b>I. Size and Location of Facility</b> .....	3
<b>II. Waste Management Units and Operations Authorized</b> .....	3
<b>III. Facility Design, Construction, and Operation</b> .....	4
<b>IV. Financial Assurance</b> .....	5
<b>V. Facility Closure</b> .....	6
<b>VI. Standard Permit Conditions</b> .....	6
<b>VII. Incorporated Regulatory Requirements</b> .....	7
<b>VIII. Special Permit Provisions</b> .....	7
<b>IX. ATTACHMENT A</b> .....	7
The Permit Application	
<b>X. ATTACHMENT B</b> .....	7
Minor or Limited Scope Amendments, Modifications, Temporary Authorizations and Corrections to MSW Permit No. 2361	

**I. Size and Location of Facility**

- A. This MSW Type V Liquid Waste Processing and Composting Facility is located at 15500 Goforth Road, in Creedmoor, Travis County, Texas, 78610. The facility contains approximately 30.0 acres with approximately 15.23 acres used for waste processing and composting.
- B. The legal description is contained in Appendix B of the application.
- C. Coordinates and Elevation of Site Permanent Benchmark:  

Latitude:	30° 03' 24" N
Longitude:	97° 41' 27" W
Elevation:	700 feet above mean sea level (msl)

**II. Waste Management Units and Operations Authorized**

- A. Days and Hours of Operation  

The operating hours of this municipal solid waste facility will be between 5:00 a.m. and 9:00 p.m., Monday through Friday, and between 8:00 a.m. and 5:00 p.m., Saturday. The waste acceptance hours of the facility shall be between 7:00 a.m. and 7:00 p.m., Monday through Friday, and between 8:00 a.m. and 5:00 p.m., Saturday. The waste acceptance hours correspond to the hours that the facility is open to the public for the receipt of waste. The operator shall post the actual operating hours on the site sign.
- B. Wastes Authorized at this Facility  

This facility is authorized to accept municipal solid waste and compost feedstocks which 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 as detailed in §332.4(10).
- C. Wastes Prohibited at This Facility  

Any other waste which is prohibited or not authorized may not be accepted. Wastes not authorized for acceptance include mixed municipal solid waste as defined in §332.2, grit trap waste, other special wastes as defined in 30 TAC §330.3, painted or treated wood, and portable chemical toilet waste.

D. Waste Acceptance Rate

Liquid waste may be accepted for processing and composting at this facility at a daily maximum rate of 60,000 gallons per day each of municipal sludge, septage grease trap waste or other authorized liquid wastes for a total of 180,000 gallons per day of liquid waste. Other municipal or industrial wastes identified in §332.4(10)(A), (F) and (G) may be accepted at a daily maximum rate of 440 cubic yards. No daily limit is set for composting carbon feedstocks such as paper, cardboard, or clean wood including municipal or industrial wastes identified in §332.4(10)(B) through (E) and (I).

E. Maximum Volume Available for Storage

The total available liquid waste storage capacity of this facility is 144,000 gallons with a maximum storage limit of 72 hours for unprocessed liquid waste materials. The total available storage capacity for combustible materials stored on-site is 20,000 cubic yards based on available financial assurance. The total available surface impoundment storage for contaminated water is 17.96 acre feet based on available financial assurance and maintenance of adequate freeboard.

F. Waste Management Units Authorized

The facility consists of a site entrance with appropriate security fencing, all-weather access roads, surface drainage and storm water run-on and runoff control structures, eight 18,000 gallon liquid waste storage and processing tanks, an approximately 2.2 acre surface impoundment with an approximate capacity of 17.96 acre-feet, and compost processing and feedstock storage areas. The compost processing area is limited to the lined 15.23 acre area noted on the Site Layout Plan in Appendix A of this permit application.

G. Changes, Additions, or Expansions

Any proposed facility changes must be authorized in accordance with TCEQ rules in 30 TAC Chapter 330 (Municipal Solid Waste) and 30 TAC Chapter 305 (Consolidated Permits).

**III. Facility Design, Construction, and Operation**

- A. Facility design, construction, and operation must comply with this permit, Commission Rules, including 30 TAC §§330.59, 330.61, 330.63, 330.65, and Subchapter E, 30 TAC 332 Subchapters A and D, the Special Provisions contained in this permit, and the permit application.
- B. For facilities located in the 100-year floodplain, the entire waste management facility shall be designed, constructed, operated, and maintained to prevent the release and migration of any waste, contaminant, or pollutant, and to prevent inundation or discharge from the areas surrounding the facility components. This site must be designed, constructed and maintained to collect spills and incidental precipitation in such a manner as to:

1. preclude the release of any contaminated runoff or spills; and
  2. prevent washout of any waste by a 100-year storm.
- C. The site shall be designed and operated so as not to cause a violation of:
1. the requirements of the Texas Water Code, §26.121;
  2. any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, §402 as amended; and/or the Texas Pollutant Discharge Elimination System (TPDES), as amended;
  3. the requirements under the Federal Clean Water Act, §404, as amended; and
  4. any requirement of an area wide or statewide water quality management plan that has been approved under the Federal Clean Water Act, §208 or §319, as amended.
- D. All facility employees and other persons involved in facility operations shall be qualified, trained, and experienced to perform their duties so as to achieve compliance with this permit. The permittee shall further ensure that personnel are familiar with safety procedures, contingency plans, the requirements of the Commission's rules, and this permit, commensurate with their levels and positions of authority.

#### **IV. Financial Assurance**

- A. General. Authorization to operate the facility is contingent upon compliance with provisions contained in this permit and maintenance of financial assurance in accordance with 30 TAC Chapter 330 Subchapter L and 30 TAC Chapter 37.
- B. Closure Financial Assurance. The amount of financial assurance posted for closure shall be provided annually in current dollars in an amount equal to closing the entire facility pursuant to 30 TAC §330.505(a). The owner and/or operator shall annually adjust the closure cost estimate and the dollar amount of the financial assurance for inflation within 60 days prior to the anniversary date of the permit pursuant to 30 TAC §37.8021.
- C. Closure Financial Assurance Amount. Within 60 days after the date of permit issuance or prior to the initial receipt of waste, the permittee shall provide financial assurance instrument(s) for demonstration of closure in an amount equal to but not less than \$301,500 for closure in 2010 dollars. The amount of financial assurance to be posted annually shall be determined as described in Section IV.B. of this permit.
- D. Closure Plan Modifications. If the facility's closure plan is modified, the permittee shall provide new cost estimates in current dollars, which meet the requirements 30 TAC Chapter 37 and 30 TAC §330.505. Modifications shall be made pursuant to 30

TAC §305.70. The amount of the financial assurance mechanism shall be adjusted within 20 days after the modification is approved. Adjustments to the cost estimates and/or financial assurance instrument to comply with any financial assurance regulation that is adopted by the TCEQ subsequent to the issuance of this permit shall be initiated as a modification within 30 days after the effective date of the new regulation.

## V. Facility Closure

Closure shall commence:

- A. Upon direction by the Executive Director of the TCEQ for failure to comply with the terms and conditions of this permit or violation of state or federal regulations.

The Executive Director is authorized to issue emergency orders to the permittee in accordance with §5.501 and §5.512 of the Texas Water Code regarding this matter after considering whether an emergency requiring immediate action to protect the public health and safety exists;

- B. Upon abandonment of the site;
- C. Upon direction of the Executive Director for failure to secure and maintain adequate financial assurance as required; or
- D. Upon permittee's notification to the TCEQ that the facility will no longer operate.

## VI. Standard Permit Conditions

- A. This permit is based on and the site owner/operator shall follow the permit application submittals dated May 7, 2009, and revised January 25, May 18, August 31, and September 30, 2010. These application submittals are hereby approved subject to the terms of this permit, the rules and regulations, and any orders of the TCEQ. These application materials are incorporated into this permit by reference in Attachment A as if fully set out herein. Any and all revisions to these elements shall become conditions of this permit upon the date of approval by the Commission. The permittee shall maintain the application and all supporting documentation at the facility and make them available for inspection by TCEQ personnel.
- B. Attachment B, consisting of minor amendments, modifications, and corrections to this permit, is hereby made a part of this permit.
- C. The permittee shall comply with all conditions of this permit. Failure to comply with any condition may constitute a violation of the permit, the rules of the Commission, and the Texas Solid Waste Disposal Act and is grounds for an enforcement action, revocation, or suspension.
- D. Inspection and entry onto the site by authorized personnel shall be allowed during the site operating life.

- E. The provisions of this permit are severable. If any permit provision or the application of any permit provision to any circumstance is held invalid, the remainder of this permit shall not be affected.
- F. Regardless of the specific designs contained in the permit application, the permittee shall be required to meet all performance standards in the permit, the application, or as required by local, state, and federal laws.
- G. If differences arise between the rules, regulations, and permit provisions and the incorporated application materials, then the rules, regulations, and permit provisions shall prevail.
- H. The permittee shall comply with the requirements of the air permit exemption in 30 TAC §106.534, if applicable, and the applicable requirements of 30 TAC chapters 106 and 116.

**VII. Incorporated Regulatory Requirements**

- A. The permittee shall comply with all applicable federal, state, and local regulations and shall obtain any and all other required permits prior to the beginning of any operation authorized by this permit.
- B. To the extent applicable to the activities authorized by this permit, the requirements of 30 TAC Chapters 37, 281, 305, 330 and 332, and future revisions are adopted by reference and are hereby made provisions and conditions of this permit.

**VIII. Special Permit Provisions**

This permit shall supersede previous authorizations granted to the Permittee for the same location defined by the metes and bounds in Appendix B of this permit application. Upon issuance of this permit, the Executive Director revokes MSW Compost Registration No. 42016, MSW Compost Notification No. 47006, and MSW Liquid Waste 10% Recycling Registration No. 43024 in accordance with 30 TAC §305.67(b).

**IX. ATTACHMENT A**

The Permit Application.

**X. ATTACHMENT B**

Minor or Limited Scope Amendments, Modifications, Temporary Authorizations and Corrections to MSW Permit No. 2361.

# Attachment B

**TCEQ MUNICIPAL SOLID WASTE PERMIT NO. 2361**

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<b>APPLICATION BY</b>	§	<b>BEFORE THE</b>
<b>MICRO DIRT, INC., D.B.A.</b>	§	<b>TEXAS COMMISSION ON</b>
<b>TEXAS ORGANIC RECOVERY</b>	§	<b>ENVIRONMENTAL QUALITY</b>
<b>FOR MSW PERMIT NO. 2361</b>	§	

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***Executive Director's Response to Public Comment***

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The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Micro Dirt, Inc., d.b.a. Texas Organic Recovery (Micro Dirt or Applicant), for a new Municipal Solid Waste Permit Number 2361. As required by 30 Texas Administrative Code (TAC) Section 55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comments from the Honorable Eddie Rodriguez, Texas House of Representatives; H. Philip Whitworth, Jr., Ann Witworth Messer, Julie W. Moore, Juli Phillips, M.D. Thomson, representing the Thomson Family Limited Partnership, Joe Gunn, Dorothy Gunn, Jay Gunn, and Corinna Gunn, all represented by Bob Renbarger and J.D. Head; Jon White representing Travis County; Robin Schneider representing Texas Campaign for the Environment; Edwin E. Benner representing Creedmoor Grocery; Carter Mayfield representing SOS Liquid Waste Haulers; Phillip McCowan; and William Rogers. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the municipal solid waste 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.gov](http://www.tceq.state.gov).

## **I. Background**

### ***A. Description of Facility***

Micro Dirt is applying for a permit that would authorize it to operate a composting facility and a liquid waste processing facility. Attachment A shows a diagram of the proposed facility.

Micro Dirt is seeking authorization to operate within a lined area of 15.23 acres. A liner is a continuous, protective layer beneath and on the sides of a facility to restrict the downward or horizontal migration of pollutants. The liner system proposed by

Micro Dirt consists of an in-situ, clay liner at a depth of approximately 9 feet below ground surface and a constructed sidewall liner that extends from the bottom liner to three feet above the surface. Permeability is the measure of a material's ability to transmit fluids. The TCEQ has found that a material with a permeability of  $1 \times 10^{-7}$  centimeters per second or less will be protective of the environment and human health as it will prevent seepage of pollutants. The liner system Micro Dirt is proposing for the facility is designed to have a permeability of  $1 \times 10^{-7}$  centimeters per second or better, which will be sufficient to prevent any pollutants, polluted liquids, or materials from exiting the facility via the subsurface.

Furthermore, Micro Dirt proposes to operate a surface impoundment with a capacity to hold up 5.85 million gallons. The surface impoundment is located at the lowest point of the Micro Dirt facility. Therefore, all of the liquids on the site, including the liquids that are released by the compost windrows, will drain to the surface impoundment, as can be observed in Attachment B. The surface impoundment is lined in the same way as the other portions of the facility. Therefore, liquids will not be able to escape from the surface impoundment via the subsurface. Furthermore, the surface impoundment will be maintained with sufficient capacity to handle runoff from the 24-hour, 25-year storm event of 2.78 million gallons of water.

### **Composting Operations**

Regarding the composting facility, Micro Dirt must comply with the provisions in 30 TAC Chapter 332, which regulate composting facilities. Micro Dirt is seeking to compost "...feedstocks which 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 as detailed in 30 TAC § 332.4(10)." See Draft Permit 2361, Section II(B). No other wastes can be accepted at the Micro Dirt facility for composting purposes.

The composting operations are limited to the lined 15.23 acres sought by Micro Dirt to operate its facility on.

### **Processing Facility**

Regarding the processing facility, Micro Dirt must comply with the provisions in 30 TAC Chapter 330, which regulate municipal solid waste processing units. Under Proposed MSW Permit 2361, a heating vessel and eight 18,000 gallon tanks with a total capacity of 144,000 gallons would be authorized to receive and process liquid waste materials. Unprocessed liquids in the units could be stored for a maximum of 72 hours. The liquids in the tanks would be utilized as moisturizing agents in composting operations. The heating vessel could be used to heat grease trap waste to separate fats, oils, and food solids from water.

### **Compliance with Permit**

If Micro Dirt is granted the permit, Micro Dirt will be required to comply with the provisions in it. In addition to its specific provisions, the permit incorporates the provisions of Micro Dirt's permit application and the rules of 30 TAC Chapters 330 and 332 into the permit. See Cover of Draft Permit and Section IX of Draft Permit. Under Texas Water Code § 7.002, the TCEQ is granted the authority to institute legal proceedings to compel compliance with rules and permits. Micro Dirt, therefore, must comply with the provisions in the permit, in the rules, and in its application.

If Micro Dirt fails to follow its permit specifications or the criteria established by the TCEQ, the TCEQ 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, and the TCEQ can suspend Micro Dirt's operations until the it complies with the permit specifications or the criteria established by the TCEQ. Members of the public that detect potential permit violations are encouraged to contact the local TCEQ regional office to report the potential permit violations so the cause of the problem may be determined and addressed.

## ***B. Procedural Background***

The application was submitted on May 13, 2009. An Administrative Notice of Deficiency (NOD) was issued on June 1, 2009, and the application was declared administratively complete on July 6, 2009. The Notice of Receipt of Application and Intent to Obtain Permit was published in English on November 10, 2009, in the *Austin American-Statesmen* and in Spanish on July 16, 2009, in the *iAhora Si! Spanish Newspaper*, Travis County, Texas. The ED issued its First Technical NOD on August, 28, 2009, and the applicant submitted a response to the NOD on January 25, 2010. The ED issued its Second Technical NOD on March 22, 2010, and the applicant submitted a response to the NOD on May 18, 2010. A public meeting was held on September 2, 2010. The applicant published notice of the public meeting on August, 12, 2010, August 19, 2010, and August 26, 2010, in the *Austin American-Statesmen* and in the *iAhora Si! Spanish Newspaper*, Travis County, Texas. The ED completed the technical review of the application on October 18, 2010, and prepared a draft permit. The Notice of Application and Preliminary Decision was published in English on November 5, 2010, in the *Austin American-Statesmen* and in Spanish on November 11, 2010, in the *iAhora Si! Spanish Newspaper*, Travis County, Texas. A second public meeting was held on February 22, 2011. The applicant published notice of the public meeting on February, 3, 2011, February 10, 2011, and February 17, 2011, in the *Austin American-Statesmen* and in the *iAhora Si! Spanish Newspaper*, Travis County, Texas. 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, 76<sup>th</sup> 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](http://www.sos.state.tx.us);

for TCEQ rules in Title 30 of the Texas Administrative Code: [www.sos.state.tx.us/tac/](http://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](http://www.capitol.state.tx.us/statutes/statutes.html);

to access the TCEQ website: [www.tceq.state.tx.us](http://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](http://www.epa.gov/epahome/cfr40.htm); and

for Federal environmental laws: [www.epa.gov/epahome/laws.htm](http://www.epa.gov/epahome/laws.htm).

Commission records on the Micro Dirt application are available for viewing and copying at the City of Creedmoor, City Hall, 12405 FM 1625, Creedmoor, Travis County, Texas 78610.

## **II. Comments and Responses**

### **Comment 1: (Groundwater Protection of Composting Operations)**

Commenters submit that the proposed composting facility will fail to manage and dispose of liquids generated, and that this will result in groundwater pollution. Commenters also submit that the groundwater monitoring plan proposed for the facility is inadequate to detect groundwater contamination.

### **Response 1:**

The Executive Director reviewed the application for the composting operation for compliance with the agency's rules for protecting groundwater. The Chapter 332 rules require Micro Dirt to provide and follow a groundwater protection plan for the composting operation.

Rule § 332.47(6)(C) establishes the requirements for the groundwater protection plan. In order to satisfy this rule, the applicant has the burden of demonstrating that the facility "...is designed so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation." The groundwater protection plan must include a liner system and a groundwater monitor system.

### **Liner**

A liner is a continuous, protective layer beneath and on the sides of a facility to restrict the downward or horizontal migration of pollutants. Rule § 332.47(6)(C)(i)

requires that all areas that will be used in the composting operation "...shall be located on a surface which is adequately lined to control seepage." Micro Dirt proposes to operate all of its composting activities within a lined area of 15.23 acres. Rule § 332.47(6)(C)(i) requires that the liner have a permeability of  $1 \times 10^{-7}$  centimeters per second or less. Permeability is the measure of a material's ability to transmit fluids. The TCEQ has found that a material with a permeability of  $1 \times 10^{-7}$  centimeters per second or less will be protective of the environment and human health as it will prevent seepage of pollutants.

The liner system that is being proposed by Micro Dirt consists of an in-situ clay liner that is located at a depth of approximately 9 feet below ground surface and a constructed sidewall liner that extends from the bottom liner to three feet above the surface. This liner system is designed to have a permeability of  $1 \times 10^{-7}$  centimeters per second or less as required by the TCEQ rules. In effect, Micro Dirt is proposing to create a "bathtub" in the subsoil which will prevent pollutants from escaping the facility. After a thorough review of the submission, MSW Permits Section staff determined that the applicant provided a valid liner plan that meets the TCEQ rules.

### **Groundwater Monitoring System**

Rule § 332.47(6)(C)(ii) requires the groundwater monitoring system to be designed to "...reasonably assure detection of any contamination of the groundwater before it migrates beyond the boundaries of the site." A groundwater monitoring system will detect perched groundwater and pollutants that present a risk prior to groundwater migrating beyond the boundaries of the site. Rule § 332.47(6)(C)(ii) requires the monitoring system to be based on the information obtained from the Groundwater investigation report. Please refer to comment 3, below, to obtain more information on the report.

Rule § 332.47(6)(C)(ii) requires that details of monitor well construction and placement of monitor wells be shown on the site plan. The groundwater monitoring system consists of nine groundwater monitoring wells encompassing the facility at depths above and below the bottom liner. Attachment A shows the placement of the nine proposed monitoring wells, just outside the perimeter of the 15.23 acres. Attachment C shows the monitoring well design and construction.

Rule § 332.47(6)(C)(ii)(II) requires Micro Dirt to adopt a groundwater sampling program that includes four background groundwater samples from all monitor wells within 24 months from the date of the issuance of the permit. Thereafter, under § 332.47(6)(C)(ii)(II)(-c-), Micro Dirt is required to submit testing samples for certain constituents at a minimum of 12-month intervals. The sampling plan proposed by Micro Dirt requires the establishment of background concentration for sampling parameters and then annual sampling and comparison with established background concentrations as required by the rules presented above. The groundwater monitoring system design and sampling plan meet the TCEQ rules to ensure detection, if a release occurs. The applicant'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).

## **Surface Impoundment**

Micro Dirt proposes to operate a surface impoundment with a capacity of 5.85 million gallons. The surface impoundment will serve two main purposes for the Micro Dirt's composting operations. First, it will provide moisturizing liquids to be applied to the compost windrows. Second, it will serve as the drainage point for all storm water or contaminated water runoff from the surface.

The surface impoundment is located within the 15.23 acres of the Micro Dirt facility at the lowest point of the facility. Therefore, all of the liquids on the site, including the liquids resulting from a tank rupture and liquids that are released by the compost windrows, will drain to the surface impoundment. Attachment B shows the natural contours of the facility and which shows that liquids will naturally flow to the surface impoundment.

The surface impoundment is lined in the same manner as the rest of the facility as discussed in the **Liner** section above. Therefore, liquids from the surface impoundment are expected to be contained and not allowed to escape from the Micro Dirt facility via the subsurface.

## **Conclusion**

Micro Dirt's proposed plans for protecting groundwater meet the TCEQ rules and are expected to prevent groundwater contamination.

## **Comment 2: (Surface Water Protection of Composting Operations)**

Commenters submit that the proposed composting facility will fail to manage and dispose of liquids generated, and that this will result in surface water pollution.

## **Answer 2:**

The TCEQ rules in 30 TAC § 332.47(6)(A) requires the applicant to provide a surface water protection plan that includes controls for storm water run-on and storm water and leachate runoff. Drainage controls must account for the 25 year, 24-hour storm event and must include drainage calculations. The applicant is also required to provide a floodplain and wetlands map. Finally, the plan shall show erosion control features on-site.

Rule § 332.47(6)(A)(iv)(I) requires Micro Dirt to provide surface water drainage calculations by using an approved calculation method. Micro Dirt provided the calculations by using the rational calculation method as required by the rule. Micro Dirt's drainage calculations are presented on pages 2.1 and 9.1 of their application. Furthermore, rule § 332.47(6)(A)(iv)(III) requires Micro Dirt to provide calculations for sizing containment facilities for leachate. Micro Dirt submitted a calculation worksheet by determining the mass balance of leachate and by taking into account the facility's proposed leachate disposal method.

Micro Dirt provided a surface water protection plan in Appendix H of the application. Pages 1 and 2 of the plan show the topography in and around the site and the flow of surface water from noted offsite drainage areas. Pages 6 and 7 of the plan

show on-site drainage patterns which demonstrate that all runoff is captured by the lined surface impoundment. In addition, there will be an above-surface, three-foot berm that will surround the 15.23 acre facility that will prevent pollutants from escaping through the surface. In its permit application, Micro Dirt states that it will install a berm in the perimeter of the facility to provide protection against surface water pollution. Micro Dirt adds that a protective vegetative cover will be installed on the berm in the facility's perimeter to minimize the erosion of the berm. Furthermore, Micro Dirt states that the perimeter berm will be maintained in a stable vegetated condition and will be monitored to identify any possible deterioration of the berm. *See Permit Application, p. 37.*

The applicant's proposed surface water protection plan is properly designed to prevent releases of pollutants in compliance with the TCEQ rules in Chapter 332.

### **Comment 3: (Groundwater Investigation Report)**

Commenters submit that the Groundwater Investigation Report is flawed and not in accordance with TCEQ regulations.

### **Response 3:**

Rule § 332.47(6)(B)(v) requires the applicant to submit a Groundwater Investigation Report to establish the "...groundwater flow characteristics at the site which shall include groundwater elevation, gradient, and direction of flow." The rule requires that six monitoring wells be installed for a facility of 15.23 acres. Furthermore, the rule requires the report to show water flows in both narrative and graphic format.

Micro Dirt's Groundwater Investigation Report, by Michael Thornhill, P.G., dated September 30, 2004, is in Appendix I, pages 13 through 21 of Mirco Dirt's application. The findings of the report are based on the data obtained from six monitoring wells and from elevations obtained from a United States Geological Survey Digital Elevation Model. The report shows water flow directions in both narrative and graphic format. The applicant drilled six monitoring wells as required by the rules and identified the groundwater flow characteristics including groundwater elevation, gradient, and direction of flow in both narrative and graphic format.

During technical review of this information, MSW staff had concerns regarding the accuracy of the location of the "B" set of on-site borings. In response, the applicant provided an updated report utilizing the surveyed "A" set of borings, pages 27.1 through 27.5 in Appendix I. The updated report shows water flow directions in both narrative and graphic format. The updated report concluded that groundwater would likely be located at the top of the Taylor Navarro formation.

The information provided in the application meets the requirements of the cited rules by documenting the groundwater flow characteristics at the site.

### **Comment 4: (Subsurface Investigation Report)**

Commenters submit that the Subsurface Investigation Report is flawed and not in accordance with TCEQ regulations.

#### **Response 4:**

Rule § 332.47(6)(B)(iv) requires the applicant to submit a Subsurface Investigation Report that includes detailed boring logs showing materials encountered, the elevation of all contacts between soil and rock layers, a description of each layer using the Unified Soil Classification, and color of the materials encountered. The rule requires the applicant to test boring samples for soil properties such as degree of compaction and moisture content. The report shall also include a site map drawn to scale showing the surveyed locations and elevations of the boring.

Micro Dirt provided a Subsurface Investigation Report that included logs for two sets of on-site borings and six groundwater monitoring well boring logs. The borings are presented as logs showing the lithology of the underlying formation using the Unified Soil Classification and are located in Appendix I, pages 15 through 20, 36 through 41, and 50 through 69. A site map, page 1 of Appendix I, was provided showing the surveyed location and elevation of the "A" set of borings. Select A boring samples were sent to a laboratory to obtain soil properties. Tests were run on boring samples for moisture content, Atterberg Limits, percent of material passing the number 200 sieve, and hydraulic conductivity. Laboratory test results are provided in the report on pages 71 through 80.

Rule § 332.47(6)(B)(iv)(I) requires a sufficient number of borings based on facility size. The rule indicates that three borings plus one boring for each additional five acres or fraction thereof is required. For a 15.23 acre site, six borings would be required.

Micro Dirt provided boring log information for six "B" borings, 20 "A" preliminary borings, and six groundwater monitoring well borings. The information provided was sufficient to characterize the 15.23 acre site.

Rule § 332.47(6)(B)(iv)(II) requires the borings to be sufficiently deep to allow identification of the uppermost aquifer and underlying hydraulically interconnected aquifers. The rule requires borings to be at least 30 feet deeper than the elevation of the deepest excavation on site. A soil boring plan was properly submitted by Micro Dirt in accordance with TCEQ rules.

Rule § 332.47(6)(B)(iv)(III) and (IV) requires borings to be conducted in accordance with established field exploration methods and the installation, abandonment, and plugging of the boring be performed in accordance with the rule.

Micro Dirt hired Thornhill Group, Inc. and HOLT to conduct the on-site borings. The reports indicate that a licensed well driller was used and the reports were signed and sealed by either a licensed Professional Geoscientist or a licensed Professional Engineer. These reports and borings were conducted using established field exploration methods.

Rule § 332.47(6)(B)(iv)(V) requires Micro Dirt to submit a cross-section based on the information obtained from the borings. Micro Dirt submitted a cross-section based on the "B" set of borings and the groundwater monitoring well borings. See Page 9, Appendix I. Micro Dirt also submitted a cross-section based on the "A" set of borings. See Page 27.3, Appendix I.

Rule § 332.47(6)(B)(iv)(VI) requires a summary of the investigator's interpretations of the subsurface stratigraphy based upon the field investigation. The subsurface investigation report in Appendix I provides a summary of the investigation

findings both textually and graphically in the form of boring logs. The information provided in the application meets the requirements of the cited rules by providing a subsurface investigation report meeting the requirements of the cited rules.

**Comment 5: (Surface Water and Groundwater Protection from Processing Operations)**

Commenters submit that the proposed processing facility will fail to manage and dispose of liquids generated in a manner that will not cause surface water and groundwater pollution.

**Response 5:**

The Executive Director reviewed the application for the processing operation's compliance with the agency's rules for protecting surface water and groundwater. The 30 TAC Chapter 330 rules require Micro Dirt to provide and follow a surface water and groundwater protection plan for the processing operation.

Rule § 330.207 establishes the contaminated water management plan requirements for processing units. In order to satisfy this plan, the applicant has the burden of demonstrating that "...liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution." See 30 TAC § 330.207(a). The liquids received at the facility will be off-loaded from the storage trucks using a hose which is attached to the initial receiving storage/processing tanks. All of the contents in the tanks of the processing facility will move through pipes and hoses. Furthermore, the tanks are enclosed and there will be a concrete layer beneath the tank ports capable of containing minor spills. In case of a spill, under Micro Dirt's Facility Inspections and Maintenance Plan, the spilled materials will be captured, cleaned up and pumped back into the tanks. See Standard Operating Procedures (SOP), p.7. Under Micro Dirt's proposed SOP, the processing area will be cleaned in the case of spillage and all of the equipment will be washed twice a week or as needed. If there is total tank failure, then the information in Comment 6 below applies.

The wastes that are stored in the processing facility will be used as moisture conditioning agents for the compost windrows. As explained in the comments above, the Micro Dirt facility has been designed to have a liner and a groundwater monitoring system to prevent pollutants escaping the Micro Dirt facility via the subsurface. In addition, there will be an above-surface, three-foot berm that will surround the 15.23 acre facility that will prevent pollutants from escaping over the surface as runoff.

Based on the above information, Micro Dirt's surface water and groundwater protection plan for the processing facility meets the TCEQ rules and is adequate to protect groundwater and surface water.

**Comment 6: (Worst Case Spill or Release)**

Commenters are concerned about Micro Dirt's ability to contain a worst case spill or release from the processing tanks.

**Response 6:**

The proposed permit will authorize the processing of liquid waste and solid waste materials such as municipal sludge, septage, and grease trap waste. Processing facilities must meet rules regarding the containment of a worst case spill or release in compliance with rules §§ 330.63(d)(1)(B) and 330.227. These rules require facilities that store, process, and transfer wastes, such as Micro Dirt, to be designed "...to control and contain a worst case spill or release from the unit." Although "worst case spill or release" is not defined in the TCEQ rules, federal rules regulating hazardous waste define a worst case spill as the release of the total contents of the largest tank or of 10% of total capacity, whichever is greatest. *See* 40 Code of Federal Regulations 112.20 and 30 TAC Chapter 335. Applying this standard to the proposed processing facility would translate into a requirement that 18,000 gallons of material be controlled and contained representing the full capacity of one of the eight tanks.

The design of the facility submitted in the application proposes a containment berm and sidewall liner around the 15.23 acre processing area and a 5.85 million gallon (MG) surface impoundment. As can be seen in Attachment B, the natural contours of the Micro Dirt facility will guide the released liquids to the 5.85 MG surface impoundment. The design of the facility submitted in the application shows that the surface impoundment, with a capacity of 5.85 million gallons, and a freeboard, or excess capacity, of 2.78 million gallons. Therefore, the surface impoundment will have sufficient capacity to adequately contain all of the material from all eight tanks, which amounts to 144,000 gallons. As mentioned in the Background Section above, the land under the processing facility and the surface impoundment will be lined and there will be a berm around the perimeter of the facility to prevent any of the spilled or released materials from exiting the facility either via the surface or via the subsurface.

The facility design for the worst case spill or release meets the requirements of 30 TAC §§ 330.63(d)(1)(B) and 330.227.

#### **Comment 7: (Financial Assurance)**

Commenters submit that the amount of financial assurance proposed is insufficient.

#### **Response 7:**

Micro Dirt will be required to provide \$301,500 in financial assurance to the TCEQ. This amount of financial assurance was accepted as being sufficient and in compliance with TCEQ rules.

#### **Processing Facility**

Under 30 TAC § 330.505, relating to financial assurance for processing units, Micro Dirt is required to provide a written cost estimate showing the cost of hiring a third party to close the processing facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. The rules require the calculations to be based on a per cubic yard and/or short ton measure for collection and disposition costs. The cost estimate is based on removing the maximum inventory

of liquid from the eight liquid waste storage tanks. In addition, Micro Dirt is required to provide financial assurance for either removal or decontamination of equipment and units such as tanks, heating vessels, screens, and the concrete spill containment unit.

### **Composting Facility**

Under 30 TAC § 332.47(9), relating to financial assurance for composting facilities, Micro Dirt is required to provide financial assurance to the TCEQ for cost of closure based on the disposal by a third party of all compost piles, waste materials, and feedstock; all contaminated water; and all contaminated soil. The cost estimate is based on the maximum inventory of material on-site, including the maximum allowable volume of contaminated water stored in the on-site surface impoundment.

### **Conclusion**

Considering the maximum amount of material authorized to be on site, Micro Dirt calculated that they would need to dispose of up to 20,000 yards of unprocessed, partially processed, and processed materials. Micro Dirt estimated transportation costs of \$70/Load at 40 yds/Load and disposal at a landfill for \$10/yd. In addition, the contents of the surface impoundment would need to be disposed. This would amount to 17.96 acre-ft at \$3/1000 gallons. The total cost for these activities is estimated to be \$252,588. In addition, Micro Dirt will provide financial assurance for decontamination costs of equipment, process unit clean up, equipment and contaminated soil removal, the installation of a vegetative cover, and the consulting services by a third party to ensure closure costs is completed correctly, and a 10% contingency in excess of the cost estimate for a total of \$301,500.

The closure plan and associated cost estimate for financial assurance meet the requirements of the cited rules, and the amount of financial assurance required will be sufficient to properly close the Micro Dirt facility.

### **Comment 8: (Fire Protection)**

Commenters state that Micro Dirt's application does not include provisions for adequate fire protection.

### **Response 8:**

#### **Composting Operations**

Under 30 TAC § 332.47(7)(E), Micro Dirt is required to establish a fire prevention and control plan that complies with the local fire code, provisions for fire-fighting equipment, and special training requirements for fire-fighting personnel.

Under Micro Dirt's proposed Facility Inspections and Maintenance of its SOP, employees will inspect for water pressure and availability on a weekly basis. *See* SOP, p.7. Furthermore, any spilled materials will be captured, cleaned up, and pumped back into the tanks. To comply with these rules, Micro Dirt proposes the following actions:

1. Micro Dirt has proposed a plan whereby the local fire department will be informed of the location and the processes used at the facility. In addition, in case of a fire, staff will be available to guide emergency personnel through the facility to help them respond.
2. Although not required by the Chapter 332 rules, Micro Dirt has submitted information regarding the facility to Travis County Fire Rescue. Travis County Fire Rescue is the fire department serving southeast Travis County, where the Micro Dirt facility is located.
3. Micro Dirt will install Type ABC handheld fire extinguishers near the entrances of the composting areas.
4. The Fire Protection Plan requires all employees to be trained for fire protection purposes. Employees will be trained at the time of hire and with monthly updates as needed in fire prevention, fire protection, fire extinguisher use, and emergency response activities. *See SOP, p. 7.*
5. Micro Dirt will supply water under pressure for firefighting purposes via the retention pond, water recycling pumps, fire hose connections, and available portable fire hoses.
6. Micro Dirt also proposes to train their employees to prevent fires in the following manner:
  - a) Employees will be alert for signs of burning waste such as smoke, steam, or heat being released from incoming waste loads.
  - b) Employees will routinely clean equipment used to move waste with high pressure water or steam cleaners. The high pressure water or steam cleaning will remove combustible waste and caked material which can cause equipment overheating and increase fire potential.
  - c) Employees will prohibit smoking in the facility.
  - d) Employees will keep work areas clean and uncluttered.
  - e) Employees will keep all flammable materials in the appropriate areas.
  - f) Employees will become familiar with the Material Safety Data Sheets of process chemicals used at the facility.
  - g) Employees will immediately clean up of any grease type spills.
  - h) If a fire hazards exists, employees shall take immediate actions to abate such a nuisance.

### **Processing Operations**

Under 30 TAC § 330.221, which establishes the fire protection standards for solid waste processing units, Micro Dirt is required to provide an adequate supply of water under pressure for firefighting purposes, firefighting equipment, training for employees to deal with fire issues, and to comply with local fire codes. Micro Dirt meets these requirements, as can be seen in the discussion above. In addition, all tanks and containers storing wastes and recovered material at the site will be enclosed or covered so that they do not constitute a fire hazard. *See SOP, p.28.* Although materials received for processing do contain grease products, the grease received is not volatile and is not considered flammable. The auto-ignition temperatures for cooking oils/greases are greater than 376°C, thereby negating the potentiality for any type of fire hazard. *Id.*

## **Conclusion**

Based upon the above information Micro Dirt's fire protection plan meets the requirements of the TCEQ rules.

### **Comment 9:**

Commenters are concerned about Micro Dirt's compliance history. Commenters requested that the TCEQ take Micro Dirt's prior alleged violations into consideration when processing the application. Commenters stated that if Micro Dirt violated the TCEQ's rules, Micro Dirt should be deemed ineligible for the permit. Commenters state that Micro Dirt has a poor compliance history which is not reflected in the compliance history report.

### **Response 9:**

The TCEQ processes permit applications by determining whether applicants are in compliance with all relevant TCEQ rules and by considering their compliance history. Rule § 60.3 requires the TCEQ 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." Compliance history ratings below 0.10 mean that a facility complies with environmental regulations extremely well, ratings between 0.10–45.00 mean that a facility generally complies with environmental regulations, and ratings ranging from 45.01 or greater mean that a facility fails to comply with a significant portion of the relevant environmental regulations. The compliance history report that is being used by the Executive Director in the analysis of Micro Dirt's permit application complies with all of the requirements in 30 TAC Chapter 60, which establishes the TCEQ's compliance history procedures.

When the Executive Director makes a finding that a facility has operated in violation of the TCEQ rules, it issues either a Notice of Violation (NOV) or a Notice of Enforcement (NOE). Rule 30 TAC § 60.1(c)(7) mandates lowering a facility's compliance history when an NOV is issued. However, the rules do not authorize lowering of a facility's compliance history when an NOE is issued. An NOV was not issued in the pending enforcement proceeding against Micro Dirt regarding the unauthorized acceptance of 123 loads of grease trap waste. Instead, a Notice of Enforcement (NOE) was issued. Therefore, the compliance history for Micro Dirt will not reflect this alleged violation until there is a final order finding that Micro Dirt violated the TCEQ's rules. If there is a final order finding that Micro Dirt violated the TCEQ's rules, Micro Dirt's compliance history average will decreased according to the rules in Chapter 60.

### **Comment 10:**

Commenters state that Micro Dirt had an order issued against it in 2008, ordering Micro Dirt to cease composting grease trap waste, which it failed to meet until TCEQ initiated an enforcement action against Micro Dirt. Commenters state that the mere fact that Micro Dirt has ceased composting grease trap waste is no reason to cease

enforcement actions against it. Commenters state that all considerations of Micro Dirt's registration and permit applications should cease until the enforcement action is settled. Commenter states that Micro Dirt may have continued to receive grease trap waste at its facility after the enforcement proceedings began.

**Response 10:**

No order was issued against Micro Dirt in 2008. Instead, as discussed in the previous comment, an NOE was filed for the purported acceptance of 123 loads of grease trap waste. Furthermore, enforcement proceedings for a purported violation of the TCEQ's rules are handled separately from and concurrently with the processing of a permit application. Therefore, the TCEQ is proceeding with an enforcement action against Micro Dirt for its purported violation. Likewise, the TCEQ will proceed with the pending permit application. If it is determined that Micro Dirt violated the TCEQ's rules, the violation will be reflected in the compliance history which may then affect future permitting, renewals, and facility investigations. If a final order is issued in the pending enforcement case before a final decision is made on this application, the TCEQ could consider that order in deciding what action to take on the application. The Enforcement Division of the TCEQ is aware of the information regarding the allegations that Micro Dirt received grease trap waste at its facility after the pending enforcement action began, and the Enforcement Division is considering whether to initiate a new enforcement proceeding against Micro Dirt.

**Comment 11: (Odor and Vector Control for Processing Operation)**

Commenters are concerned of odors and vectors coming from the processing facility.

**Response 11:**

The TCEQ rules for processing facilities in 30 TAC §§ 330.63(d)(1)(A) and 330.209 requires Micro Dirt to design and operate the facility in a manner to avoid causing nuisances such as odors and vectors. Vectors are agents such as insects, snakes, rodents, or other animals capable of mechanically or biologically transferring a pathogen from one organism to another. Under 30 TAC § 330.63(d)(1)(A), Micro Dirt is required to provide features for waste storage that will prevent the creation of nuisances, including odors and vectors. Under 30 TAC § 330.209, Micro Dirt is required to maintain liquid in an enclosed building, vessel, or container to control odors and vectors.

As part of their SOP, Micro Dirt states that all eight vessels will be totally enclosed and that the "...vent on top of the unit will be able to adapt a piping manifold to convey vented gases through an organic odor control unit process." See SOP, p. 29-30. The odor control unit will be utilized only when necessary to mitigate malodorous vent gases." Because all of the liquid waste in the processing units will be transferred to tanks by hoses, there is little likelihood that the materials will cause odor or attract vectors. However, under Micro Dirt's proposed Facility Inspections and Maintenance, if some liquid waste is spilled, the spills will be captured, cleaned up and pumped back

into the tanks. *See* SOP, p. 7. Furthermore, the processing area will be cleaned in case of spillage and all of the equipment will be washed twice a week or as needed. Finally, under the same plan, Micro Dirt employees will inspect the facility daily for odors. Micro Dirt's Site Operating Plan states that the facility will have a 50 foot buffer zone and a vegetative barrier which will serve to prevent odor and vector release. If a vector problem develops, a pest control service will be consulted and actions will be taken to eliminate any problem. *See* SOP, p. 28.

The applicant's proposed odor and vector control plans for the processing facility comply with 30 TAC §§ 330.63(d)(1)(A) and 330.209 and will provide protection against odors and vectors.

If Micro Dirt fails to follow its permit specifications or the rules, the TCEQ 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 and rules, and the TCEQ can suspend Micro Dirt's operations. TCEQ regional office inspectors have only received one complaint regarding nuisance odors coming from the existing Micro Dirt facility since 2006. During the investigations conducted on October 23, 2006, the investigators did not detect odors off site. TCEQ regional office inspectors have only conducted one investigation in response to a vector complaint since 2006. On November 4, 2008, TCEQ investigators conducted an on-site complaint investigation and found that some flies were present at the facility, but no more than at a typical composting facility. If members of the public detect unpleasant odors or vectors coming from the facility, they should contact the local TCEQ regional office so the source of the problem may be determined and addressed.

### **Comment 12: (Odor Control for Composting Operation)**

Commenters are concerned about odors coming from the composting facility.

### **Response 12:**

The TCEQ rules in 30 TAC §§ 332.8(e) and 332.47(7) establish the odor control standards for composting facilities. Under 30 TAC § 332.8(e)(6), Micro Dirt is required to conduct all activities which could result in increased odor emissions, such as turning of compost piles, in a manner that does not create nuisance conditions. Under 30 TAC § 332.47(7)(J), Micro Dirt is required to establish its operation guidelines for the minimization of odor in its SOP.

To comply with these rules, Micro Dirt proposes to accept all liquids that may create nuisance odors into the eight tanks and only extract them from the tanks when wood chips and 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. *See* Micro Dirt Permit Application, p. 46. Micro Dirt also proposes to turn compost piles that are producing odors with a large front-end loader to eliminate odor. *See* Micro Dirt Permit Application, p. 47. Under Micro Dirt's SOP's Facility Inspections and Maintenance, Micro Dirt employees will inspect the facility daily for odors. *See* SOP, p.7. Micro Dirt's

SOP also states that the facility will have a 50-foot buffer zone and a vegetative barrier which will reduce the possibility of potential odors exiting the facility.

Furthermore, under 30 TAC § 332.8(e)(2), Micro Dirt is required to mix materials with a high odor potential such as, but not limited to, dairy material feedstocks, sewage sludge, meat, fish, oil and grease feedstocks, 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.

If Micro Dirt fails to follow its permit specifications or the rules, the TCEQ can initiate an enforcement action against Micro Dirt. As a consequence of an enforcement action, the TCEQ can assess administrative penalties against Micro Dirt, require Micro Dirt to comply with its permit specifications, and suspend Micro Dirt's operations until the nuisance is abated. TCEQ regional office inspectors have only received one complaint regarding nuisance odors coming from the existing Micro Dirt facility since 2006. During the investigations conducted on October 23, 2006, the investigators did not detect odors off site. If members of the public detect unpleasant odors or vectors coming from the facility, they should contact the local TCEQ regional office so the source of the problem may be determined and addressed.

After a thorough review of the submission, MSW Permits Section staff determined that the applicant's proposed odor control plans for the composting facility comply with 30 TAC §§ 332.8(e) and 332.47(7) and will provide protection against odors.

### **Comment 13: (Vector Control for Composting Operation)**

Commenters are concerned of vectors coming from the composting facility.

### **Response 13:**

Under 30 TAC § 332.47(7)(G), Micro Dirt is required to establish its operation guidelines for the control of vectors in its SOP. To comply with these rules, Micro Dirt proposes the following actions. First, if a vector problem develops, a pest control service will be consulted and actions will be taken to eliminate the problem. *See* SOP, p. 28. Second, if the facility receives waste quantities that cannot be processed within such time as will preclude insect breeding or the harborage of other vectors, additional waste will not be accepted until the problem conditions are abated. *See* SOP, p. 45. Third, piles of compost will be turned with a front-end loader on a regular basis to prevent flies and other insects from laying their eggs in the surface of the compost piles and to prevent any attraction of vectors.

TCEQ regional office inspectors have only conducted one investigation in response to a vector complaint at the existing facility. On November 4, 2008, TCEQ investigators conducted an on-site complaint investigation and found that some flies were present at the facility, but no more than at a typical composting facility. If members of the public detect unpleasant odors or vectors coming from the facility, they should contact the local TCEQ regional office so they can determine the source of the problem and work toward addressing it. If Micro Dirt fails to follow its permit specifications or rules, the TCEQ 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, the TCEQ can suspend Micro Dirt's operations.

After a thorough review of Micro Dirt's submission for vector control, MSW Permits Section staff determined that the plan provided by Micro Dirt meets the requirements of the cited rule.

#### **Comment 14: (Noise)**

Commenters state that the application contains insufficient designs for noise pollution control.

#### **Response 14:**

The TCEQ's rules do not provide for considering noise pollution when determining whether to approve or deny a permit application for a liquid waste processing facility or for a composting facility.

Micro Dirt's SOP states that the facility is isolated as it has a 50 foot buffer zone and a vegetative barrier. Furthermore, Micro Dirt claims that the pumping of fluids is not very noisy and that the trucks entering and exiting the facility are expected to produce no more than typical vehicular sounds. *See* SOP, p. 31.

#### **Comment 15: (Traffic)**

Commenters state that they are concerned that traffic generated by the Micro Dirt facility will cause structural damage to the roads, create hazardous traffic conditions, and will leave debris on the roads.

#### **Response 15:**

The rules require the TCEQ to consider the following traffic patterns as part of its determination regarding whether to issue permits for municipal solid waste processing facilities and composting facilities.

#### **Processing Facility**

Rule § 330.61(i) establishes the traffic information to be provided by applicants to be considered by the TCEQ. Under 30 TAC § 330.61(i)(1), Micro Dirt is required to provide data on the availability and adequacy of roads that will be used to access the site. In Part I of Micro Dirt's application, Micro Dirt states that the facility can be accessed via Williamson Road, which turns onto Goforth Road. Williamson Road is a two lane, 23 foot wide paved road designed to withstand heavy truck traffic. Goforth Road is a two-lane, 21-foot-wide paved road also capable of withstanding heavy truck traffic. Under 30 TAC § 330.61(i)(2), Micro Dirt is required to provide data on the volume of vehicular traffic on access roads within one mile of the proposed facility. Micro Dirt provided traffic counts performed by the Texas Department of Transportation (TxDOT) in 2004 and 2005 for the relevant area. On average, a total of about 250 to 500 vehicles per day travel on Williamson Road. However, only about 10

vehicles per day travel on Goforth Road, the road by the Micro Dirt facility site. Under 30 TAC § 330.61(i)(3), Micro Dirt is required to project the volume of traffic expected to be generated by the facility within one mile of the proposed facility. The additional traffic that would be generated by the proposed facility for composting and grease trap waste processing is considered insignificant and calculations indicate a maximum increase in traffic load of 6 to 10 vehicles per day, if the facility reaches full operating potential. Under 30 TAC § 330.61(i)(4), Micro Dirt is required to provide documentation of coordination with TxDOT. In a letter dated July 3, 2009, TxDOT stated that the traffic counts used in the application submitted to the TCEQ are considered reasonable and that projected traffic impacts from the facility are expected to be negligible. Although Micro Dirt's operation is not subject to 30 TAC § 330.61(i)(5), which applies to landfills, Micro Dirt contacted the Federal Aviation Administration (FAA) for compliance with airport location restrictions. A letter from the FAA, dated June 17, 2009, stated that FAA had no objections to the facility's operations.

### **Composting Facility**

Rule § 332.47(5) establishes the traffic information to be provided by composting applications to be considered by the TCEQ. Under 30 TAC § 332.47(5)(A), Micro Dirt is required to provide data on the availability and adequacy of roads that will be used to access the site. Please refer to the discussion regarding 30 TAC § 330.61(i)(1) above for Micro Dirt's answer. Under 30 TAC § 332.47(5)(B), Micro Dirt is required to submit data on the volume of traffic within one mile of the proposed facility. Please refer to the discussion regarding 30 TAC § 330.61(i)(2) above for Micro Dirt's answer. Under 30 TAC § 332.47(5)(C), Micro Dirt is required to provide an analysis of the impact the facility will have on the area roadway system. Micro Dirt has indicated that the additional traffic that would be generated by the proposed facility is considered insignificant and TxDOT, in a letter dated July 3, 2009, agreed that projected traffic impacts from the facility are expected to be negligible. Under 30 TAC § 332.47(5)(D), Micro Dirt was required to submit an access roadway map showing all area roadways within a mile of the facility. This document is in Appendix A, Access Roadway Map, of Micro Dirt's application.

### **Conclusion**

Micro Dirt's permit application provides the information required by the TCEQ's rules. The application identifies traffic patterns as well as the pertinent access roads, weight capacities, and their size. In addition, in compliance with 30 TAC § 330.235, which regulates materials along the route to the facility and accidental spillage, Micro Dirt will perform once-per-day cleanups of waste materials spilled along and within the right of way of public access roads serving the facility for a distance of two miles in either direction from any entrances used to deliver materials to the facility. Furthermore, vehicles hauling waste to the facility shall be enclosed or provide other means to effectively secure the load in order to prevent the escape of any part of the load. Finally, each manifested load will be checked to compare the amount of waste unloaded to the amount listed on the manifest. Micro Dirt will report the violators that

provide manifests that do not match. They will be reported to the TCEQ and other appropriate law enforcement department(s). *See* SOP, p. 42.

Based upon the above information, TCEQ staff determined that Micro Dirt submitted adequate details of traffic patterns related to the facility and has established a satisfactory plan to remove debris left on the roads. The traffic information provided indicates that the access roads are adequate to handle traffic from the facility.

**Comment 16:**

Commenters submit that the proposed operations at the facility will create adverse air quality impacts.

**Response 16:**

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 rules in Chapter 332 authorize issuing an air quality standard permit if the requirements of 30 TAC § 332.8(e) are met. Likewise, the rules in Chapter 330 authorize issuing an air quality standard permit if the requirements of 30 TAC § 330.245 are met.

Micro Dirt will be required to demonstrate compliance with the requirements of §§ 332.8(8)(e) and 330.245 in order to operate its facility under the permit. If Micro Dirt cannot meet the requirements of §§ 332.8(8)(e) and 330.245, Micro Dirt will need to obtain an air permit authorization under permits by rule (Chapter 106) for minor sources (less than 25 ton per year of VOC) or New Source Review permits under Chapter 116 for sources greater than 25 tons per year. Therefore, Micro Dirt is subject to obtaining an applicable air authorization independent of obtaining a waste composting authorization.

**Comment 17: (Waste Acceptance)**

Commenters state the waste acceptance plan will be insufficient to restrict prohibited materials from entering the facility and that Micro Dirt's proposed operations will not comply with end-product testing standards.

**Response 17:**

Micro Dirt will be limited to accept 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 as detailed in 30 TAC § 332.4(10)." *See* Draft Permit 2361, Section II(B). Rule § 332.4(10) authorizes the composting of nonhazardous dead animal carcasses, clean wood material, vegetative material, paper, manure (including paunch manure), meat feedstocks, fish feedstocks, dairy material feedstocks, yard trimmings, and oils and greases. *Id.*

Under 30 TAC §§ 332.47(7)(A), (B), and (D), the waste acceptance rules for composting facilities, Micro Dirt is required to establish its operational guidelines for personnel to screen for unprocessable or unauthorized material and operate the facility in conformance with the design and operational standards established by the permit. Under 30 TAC § 330.203, the waste acceptance rules for processing facilities, Micro Dirt is required to “identify the sources and characteristics of wastes (e.g., residential, commercial, grease trap, grit trap, sludges, septage, special wastes, Class 1, Class 2, or Class 3 industrial solid wastes, compost feedstocks) proposed to be received for storage or processing.”

Under Section II(B) and (C) of Micro Dirt’s Draft Permit 2361, Micro Dirt is prohibited from accepting any other wastes besides those listed in paragraph 1, above. Micro Dirt proposes several procedures and safeguards in its SOP and Waste Acceptance Plan to meet the rule requirements above and properly screen and reject prohibited materials from the Micro Dirt facility by enacting the following procedures: First, staff will be instructed to refuse incoming loads if it is suspected or confirmed of containing an unauthorized, unknown, or hazardous waste. *See* Application, p. 26. Second, staff will be instructed to deny unloading of any trucks if discrepancies are found on the waste manifest. *Id.* To find these discrepancies, Micro Dirt is planning to assess a random sample program that will include testing of the pH of the waste to determine if the pH of the truck’s material is consistent with the type of waste that is listed on the manifest. In addition, Micro Dirt will verify that the volume of waste in the truck is consistent with the volume specified on the accompanying manifest. *Id.* Furthermore, staff will be trained to inspect the wastes for unusual odor and other characteristics indicating the presence of materials such as solvents. Staff will be trained to reject those loads. *See* SOP, p. 49.

Facility personnel will be trained to inspect vehicles and identify regulated hazardous waste, polychlorinated biphenyl (PCB) waste, and other prohibited wastes. At a minimum, the attendant and equipment operators will be trained in inspection procedures for prohibited waste. Facility personnel will be trained on an on-the-job basis by their supervisors. Records of employee training on prohibited waste control procedures will be maintained in the facility operating record. Facility personnel will be trained to look for the indications of prohibited waste such as:

- Yellow hazardous waste or PCB labels
- DOT hazard placards or markings
- Liquids with strong chemical odors
- 55-gallon drums
- 85-gallon over-pack drums
- Powders or dusts
- Odors or chemical fumes
- Bright or unusual colored wastes
- Sludges
- Radioactive wastes
- Unidentifiable wastes
- Regulated Hazardous Waste
- Do it yourself used motor vehicle oil
- Medical Wastes - treated or untreated

Personnel have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges, or have the unauthorized material removed by on-site personnel and otherwise properly managed by the facility. See SOP, p. 23.

### **Waste Analysis**

Under 30 TAC § 330.203(c)(2), the waste analysis rules for processing facilities, Micro Dirt is required to perform annual analyses of wastes received for benzene, lead, and total petroleum hydrocarbons (TPH). At a minimum, effluent from the facility must be analyzed annually for TPH, fats, oil and grease, and pH. Records of each analysis shall be maintained at the facility for a minimum of three years. All sampling and analysis shall be done according to EPA-approved methods. Micro Dirt plans to comply with this by analyzing the waste in the tanks annually by taking samples of grease from the processing tanks to test for benzene, lead, TPH, oil and grease, pH, and other agents. Furthermore, the sampling and analysis will be done according to EPA-approved methods. Records of these tests will be retained for three years. See SOP, p. 49.

Under 30 TAC §§ 332.71 and 332.72, the waste analysis rules for composting facilities, requires Micro Dirt to test the final compost in accordance with the Solvita Compost Maturity Test, which is capable of classifying compost into the following maturity grades: Grade 1, Grade 2 and Waste Grade Compost on a monthly basis. Micro Dirt's proposed product sampling and analysis plan in Appendix G details the use of the Solvita Compost Maturity Test. The plan specifies a monthly sampling protocol that has to be submitted to the Executive Director on a monthly basis as required by 30 TAC §§ 332.43 and 332.71(j)(1). If the proposed facility does not meet the requirements described above, Micro Dirt will be in violation of TCEQ's rules and subject to enforcement.

### **Conclusion**

Based on the above information, TCEQ staff determined that Micro Dirt's waste acceptance plan and end-product testing standards are adequate to screen the materials to prevent the receipt of unauthorized materials.

### **Comment 18:**

Commenter commends Micro Dirt for composting waste that would otherwise have to be disposed of in a municipal solid landfill or be treated in a wastewater plant, since some of the waste from such wastewater plant would allegedly be released into the Colorado River. Likewise, commenter commended Micro Dirt for composting used wood pieces rather than burning them, which would create more carbon dioxide.

### **Response 18:**

The TCEQ acknowledges the statements from the commenter. The TCEQ agrees that properly regulated composting activities provide environmental benefits.

**Comment 19:**

Commenter states his belief that local and state elected representatives either do not know or do not have sufficient incentives to care about the problems posed by Micro Dirt. Commenter encourages the public to become more aware of local issues, to become active in their communities, and to mail letters to their representatives and senators voicing opposition to Micro Dirt's application.

**Response 19:**

State law and TCEQ rules require notice of a permit application to be mailed to local and state officials. The mayor, the county judge, the state representative, and the state senator representing the area where the facility is located received multiple notices regarding this permit application. The TCEQ encourages public participation in all of its facility authorization processes and welcomes the participation of all affected and interested persons in the TCEQ's administrative, technical, and deliberative review processes.

**Comment 20:**

Commenters are concerned that the constant public meetings that Micro Dirt has had to host are due to a competitor's attempt to prevent Micro Dirt from obtaining a permit to compost grease trap waste.

**Response 20:**

The TCEQ acknowledges the comment.

**Comment 21: (Surface Impoundment Berm)**

Commenters are concerned about the integrity of the surface impoundment's berm.

**Response 21:**

Rules §§ 330.207 and 332.47(6)(A), cited in comments 5 and 2 regarding the prevention of groundwater pollution for the processing operations and composting operations, require Micro Dirt to preserve the integrity of the surface impoundment's berm. This means that Micro Dirt must maintain the integrity of the berms, or surface perimeter of the surface impoundment as it is designed in the application. Micro Dirt must preserve the surface impoundment's total capacity of 5.85 million gallons, its freeboard capacity of 2.78 million gallons, and its design parameters. To do this, Micro Dirt must prevent the silting and erosion of the berm surrounding the surface impoundment.

The design, function, and capacity of the surface impoundment must be maintained to ensure that contaminated water does not overtop the sidewall liner embankment. Erosion or a breach in the surface impoundment's perimeter is

considered a violation under 30 TAC §§ 330.207 and 332.47(6)(A). In its permit application, Micro Dirt states that the berm surrounding the site provides protection against surface water pollution. Micro Dirt adds that a protective vegetative cover will be installed on the berm along the facility's perimeter to minimize erosion of the berm. Furthermore, Micro Dirt states that the perimeter berm will be maintained in a stable vegetated condition and will be monitored to identify any possible deterioration of the berm. See Permit Application, p. 37.

If Micro Dirt fails to follow its permit specifications or the criteria established by the TCEQ rules and Micro Dirt's application, the TCEQ 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, and the TCEQ can suspend Micro Dirt's operations. If members of the public detect surface water leaking from the Micro Dirt facility, they should contact the local TCEQ regional office so they can determine the source of the problem and work toward remediating the problem.

After a thorough review of the submission, MSW Permits Section staff determined that the applicant's berm control plan for the surface impoundment of the processing facility and composting facility comply with 30 TAC §§ 330.207 and 332.47(6)(A) and, if followed properly, will provide protection against surface water pollution.

### **III. Changes In Draft Permit**

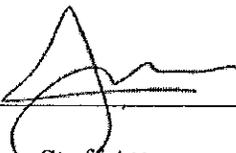
No changes were made to the Draft Permit in Response to Comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division



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Jose Caso, Staff Attorney  
Environmental Law Division

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Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## Certificate of Service

I certify that on May 10, 2011, the "Executive Director's Response to Public Comment" for Municipal Solid Waste Permit No. 2361 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

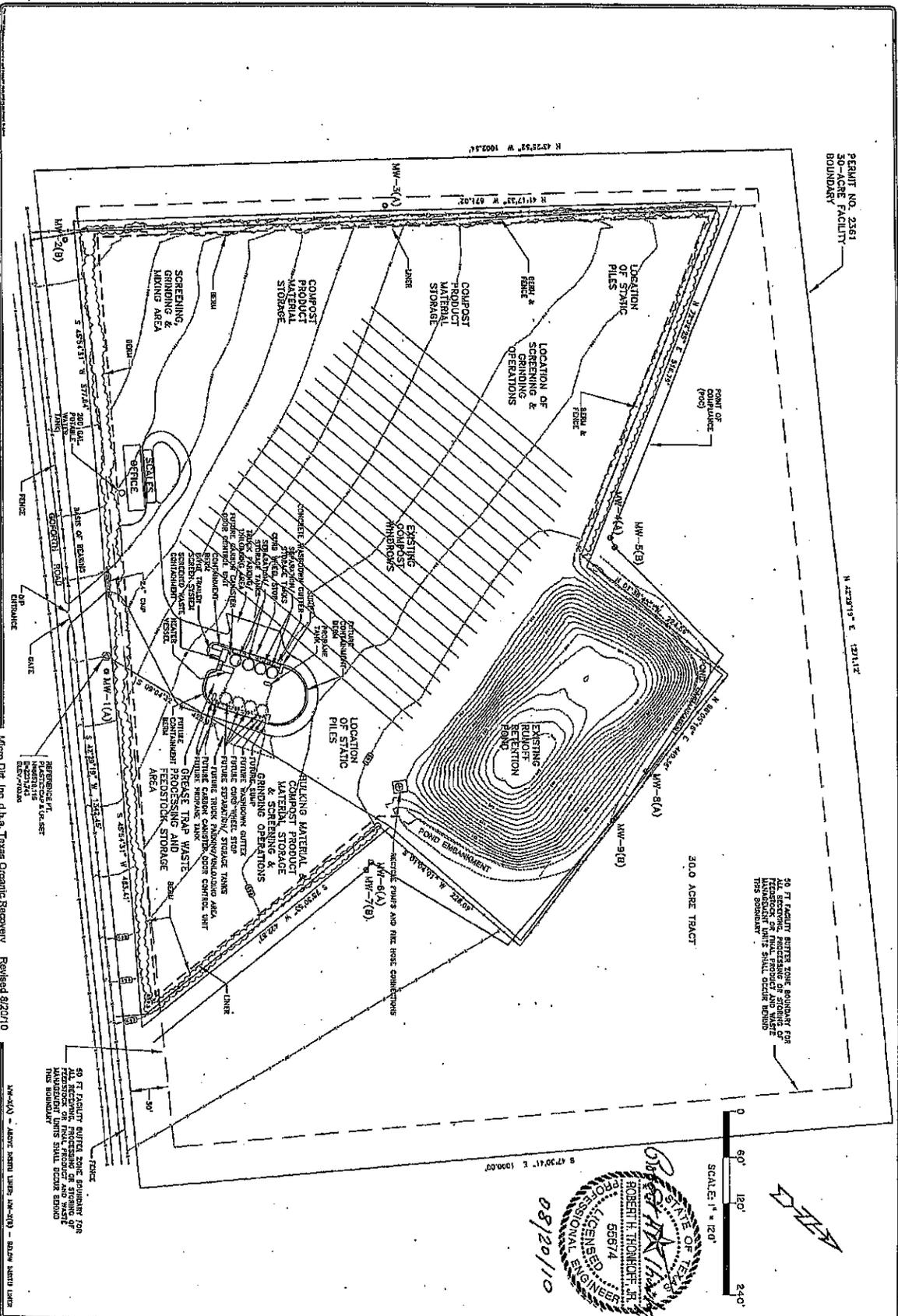


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Austin, Texas 78711-3087  
Phone (512) 239-4309  
Fax: (512) 239-0606

# Attachment A

Proposed Facility Site Plan  
Appendix G, Page 3



PERMIT NO. 2361  
30-ACRE FACILITY  
BOUNDARY

50 FT FACILITY BUFFER ZONE BOUNDARY FOR ALL RECEIVING, PROCESSING OR STORAGE OF MANUFACTURED UNITS SHALL CIRCLE BUFFER THIS BOUNDARY

30.0 ACRE TRACT

SCALE: 1" = 120'



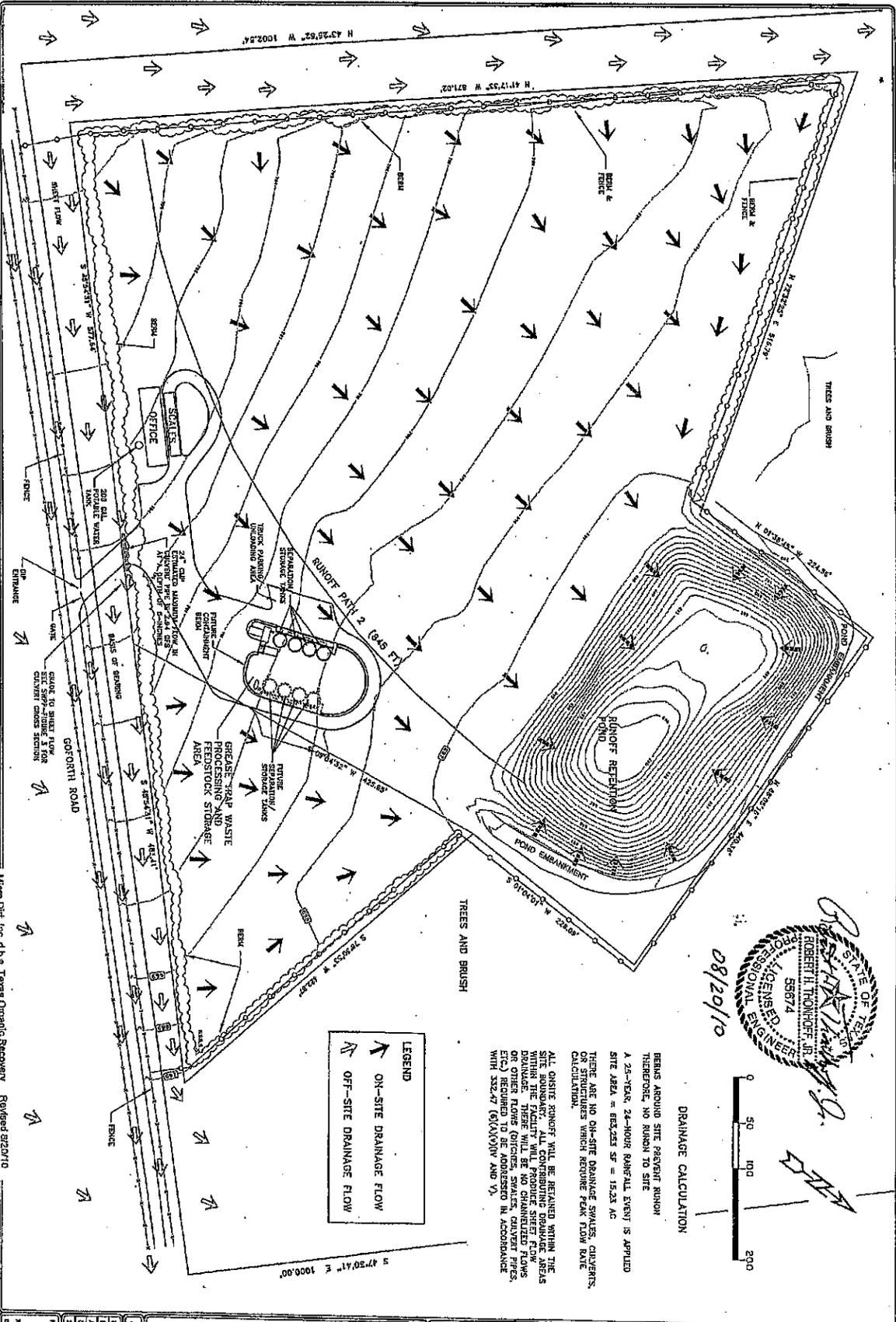
Metro Ditch, Inc. d/b/a Texas Organic Recovery - Revised 8/20/10  
Compost and Grease Trap Waste Processing Permit Application  
Appendix G

<p><b>FIGURE III - 3</b> <b>TEXAS ORGANIC RECOVERY</b> <b>TYPE V MSW FACILITY</b></p>	<p><b>PROPOSED FACILITY SITE PLAN</b></p>	<p><b>TCE</b> THONHOFF CONSULTING ENGINEERS, INC. MUNICIPAL • ENVIRONMENTAL • WATER &amp; WASTEWATER PERMITS CONTRACTOR NO. P-066211</p>	<p>1201 CAPITAL OF TEXAS BLVD. SUITE 200 • DALLAS, TEXAS 75241 (214) 522-2222</p>
<p>DATE: NOV 2009 SCALE: 1" = 120'-0"</p>	<p>DATE: NOV 2009 SCALE: 1" = 120'-0"</p>	<p>DATE: NOV 2009 SCALE: 1" = 120'-0"</p>	<p>DATE: NOV 2009 SCALE: 1" = 120'-0"</p>

# Attachment B

On-Site Drainage Map

Appendix H, Page 7



08/20/10

**DRAINAGE CALCULATION**

BEINGS AROUND SITE PREVENT RUNOFF THEREFROM, NO RUNOFF TO SITE  
 A 25-YEAR, 24-HOUR RAINFALL EVENT IS APPLIED  
 SITE AREA = 68,233 SF = 1.523 AC  
 THERE ARE NO ON-SITE DRAINAGE SWALES, CURBENTS, OR OTHER FEATURES WHICH REQUIRE PEAK FLOW RATE CALCULATION.  
 ALL ON-SITE RUNOFF WILL BE RETAINED WITHIN THE SITE BOUNDARY. ALL CONTRIBUTING DRAINAGE AREAS WITHIN THE FACILITY WILL BE PROVIDED SLOPED SWALES OR OTHER FLOW CHANNELS, SWALES, CHANNELS, ETC.) REQUIRED TO BE ADDRESSED IN ACCORDANCE WITH 352.47 (6)(A)(V)(i) AND (v)).

**LEGEND**

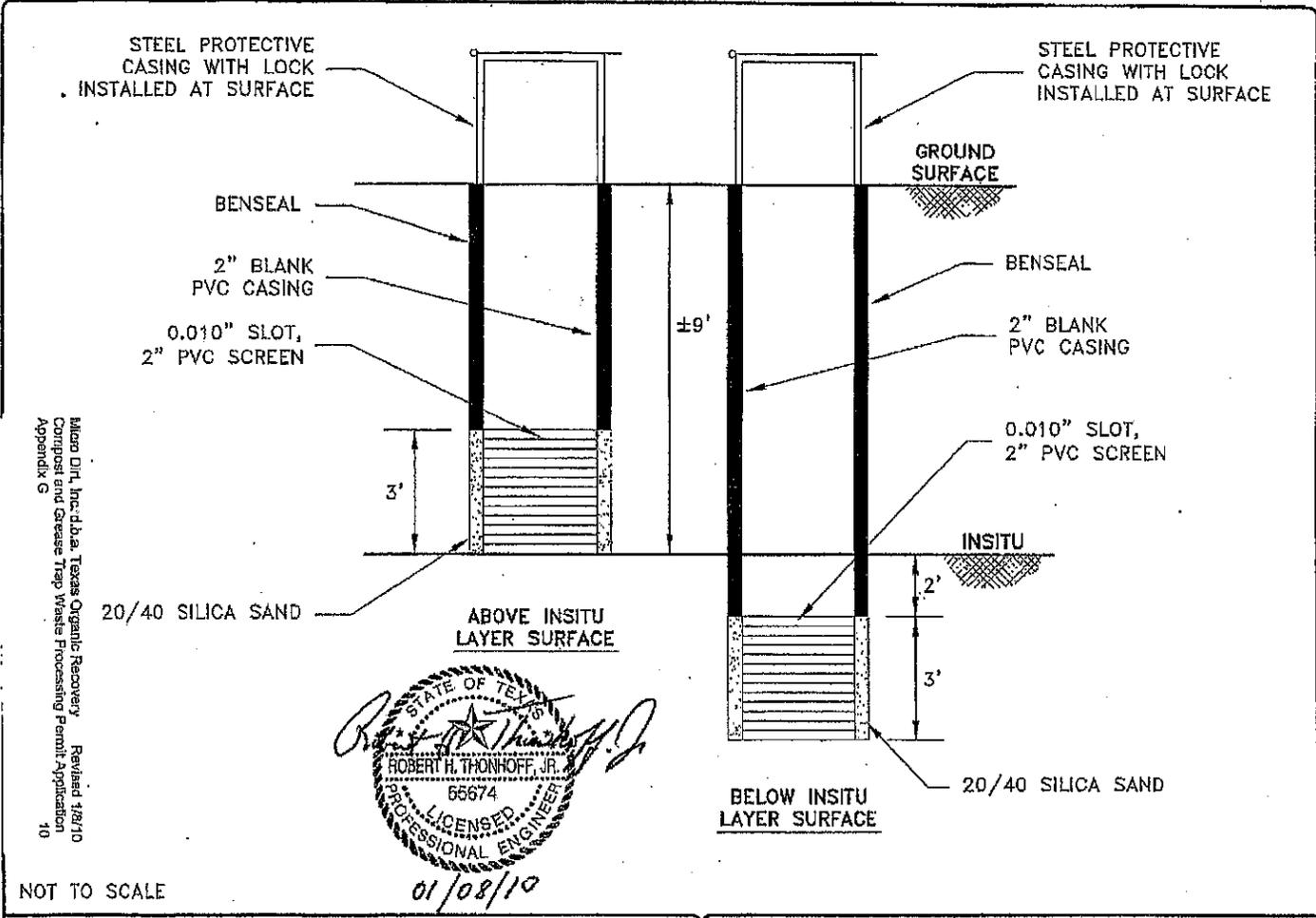
- ON-SITE DRAINAGE FLOW
- OFF-SITE DRAINAGE FLOW

Micro Dht, Inc. d/b/a Texas Organic Recovery - Revised 02/20/10  
 Compost and Grease Trap Waste Processing Permit Application  
 Appendix H

<p><b>TEXAS ORGANIC RECOVERY COMPOST FACILITY</b></p> <p>SWPP - FIGURE 5B  <b>ON-SITE DRAINAGE MAP (POST CONSTRUCTION)</b></p>		<p><b>THOMPSON CONSULTING ENGINEERS, INC.</b>          MUNICIPAL, INDUSTRIAL, WATER &amp; WASTEWATER          1101 CAPITAL OF TEXAS BLVD. SUITE 4-200 AUSTIN, TEXAS 78701          (512) 476-1111</p>	
<p>DATE: 08/20/10</p> <p>SCALE: 1" = 100'-0"</p>	<p>PROJECT NO.: 02004-101</p> <p>DATE: 08/20/10</p> <p>SCALE: 1" = 100'-0"</p>	<p>DATE: 08/20/10</p> <p>SCALE: 1" = 100'-0"</p>	<p>DATE: 08/20/10</p> <p>SCALE: 1" = 100'-0"</p>

# Attachment C

Monitoring Well Design  
Appendix G, Page 10



Milano Dir, Inc. d.b.a. Texas Organic Recovery Revised 1/28/10  
 Compost and Grease Trap Waste Processing Permit Application  
 Appendix G 10

NOT TO SCALE

**FIGURE III - 8**  
**TEXAS ORGANIC RECOVERY**  
**TYPE V MSW FACILITY**  
**MONITORING WELL DESIGN**

**TCE** **THONHOFF CONSULTING ENGINEERS, INC.**  
 MUNICIPAL • ENVIRONMENTAL • WATER & WASTEWATER  
 FIRM REGISTRATION NO. F-002621

# Attachment C

## Compliance History

Customer/Respondent/Owner-Operator:	CN602441610 Micro Dirt, Inc.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN100628288 TEXAS ORGANIC RECOVERY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	MUNICIPAL SOLID WASTE PROCESSING REGISTRATION		42016
	MUNICIPAL SOLID WASTE PROCESSING REGISTRATION		40184
Location:	15500 GOFORTH RD, CREEDMOOR, TX, 78610		
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	June 24, 2011		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	June 01, 1991 to June 24, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	BOBBIE ROGANS	Phone:	239 - 6197

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator?

OWN	Texas Organic Recovery
OPR	Micro Dirt, Inc.
OPR	Roy E. Donaldson
4. If Yes, who was/were the prior owner(s)/operator(s)?

OWN	Roy E. Donaldson VI
-----	---------------------
5. When did the change(s) in owner or operator occur?

02/10/2003	OWN	Roy E. Donaldson VI
------------	-----	---------------------
6. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- |   |            |          |
|---|------------|----------|
| 1 | 09/19/2003 | (248416) |
| 2 | 10/23/2003 | (252085) |
| 3 | 11/21/2003 | (255544) |
| 4 | 08/19/2004 | (279924) |
| 5 | 07/12/2006 | (486145) |
| 6 | 11/03/1998 | (61371)  |
| 7 | 04/16/2009 | (742600) |

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	09/10/2003 (248416)	CN602441610
Self Report?	NO	Classification: Major
Citation:	30 TAC Chapter 330, SubChapter E 330.66	
Description:	Failure to obtain required authorization to operate a liquid waste transfer station prior to beginning operation.	
Date:	07/14/2006 (481826)	CN602441610
Self Report?	NO	Classification: Moderate

Citation: 30 TAC Chapter 332, SubChapter A 332.4(1)  
Description: Failure to prevent a discharge of material to or the pollution of surface water or groundwater in accordance with provision of the Texas Water Code

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

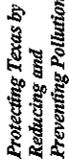
N/A

Sites Outside of Texas

N/A

# Attachment D

**Micro Dirt, Inc., d.b.a. Texas Organic Recovery  
Hearing Request - TCEQ Proposed MSW Permit No. 2361  
Map Requested by TCEQ Office of Legal Services**



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

July 5, 2011



Projection: Texas Statewide Mapping System  
(TSMSS)  
Scale 1:22,366

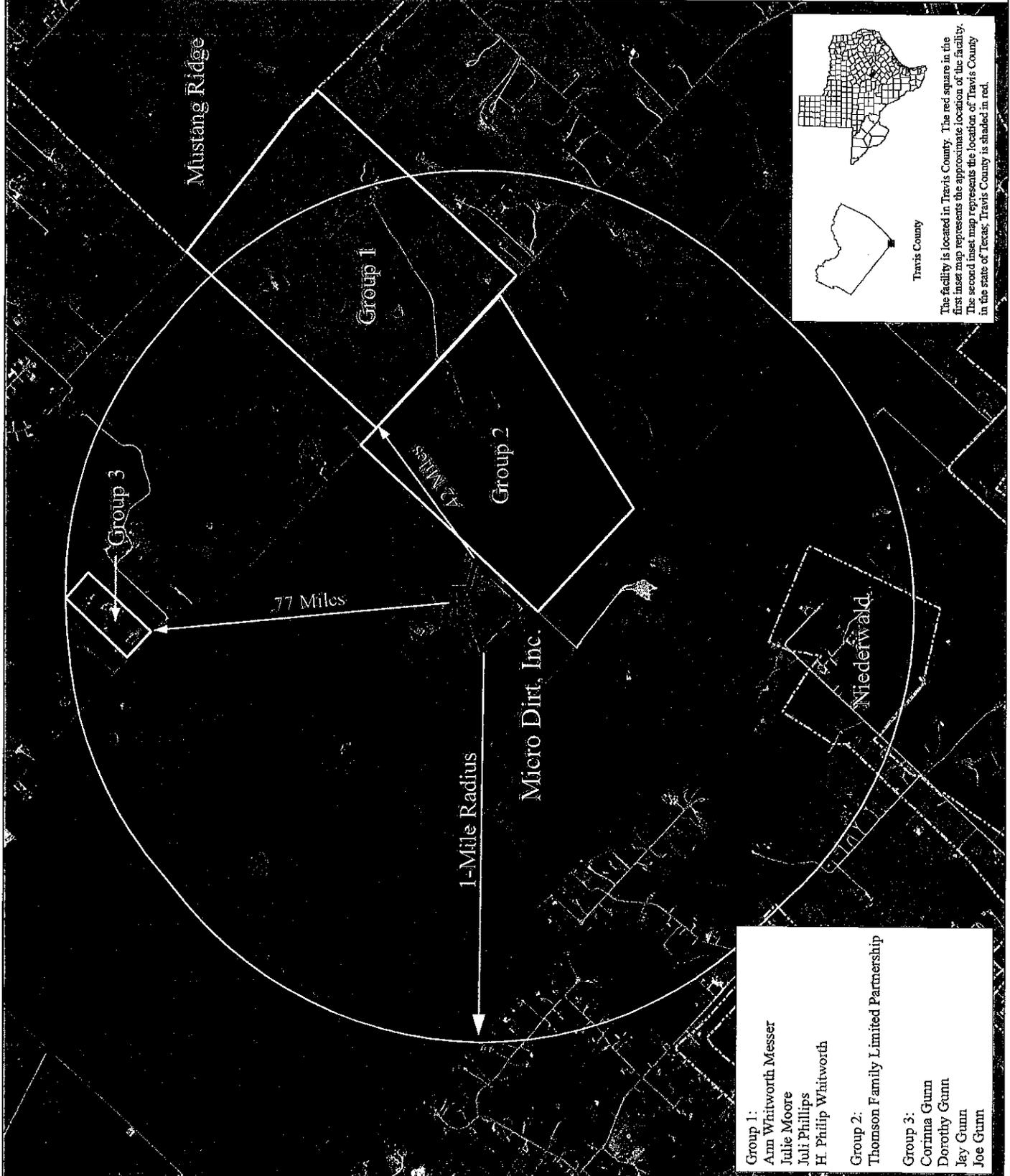
**Legend**  
Requestor Groups  
□ Facility

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The vector data are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a one-half meter photograph from the 2008 Texas Orthoregistry Project.

This map depicts the following:  
(1) The approximate location of the facility. This is labeled "Micro Dirt, Inc."  
(2) Circle and arrow depicting 1-mile radius. This is labeled "1-Mile Radius".  
(3) Polygons representing requestor groups.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resources Division at (512) 239-0800.

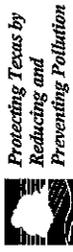
MMedDeneigh CRF-352623



- Group 1:**  
Ann Whitworth Messer  
Julie Moore  
Jui Phillips  
H. Philip Whitworth
- Group 2:**  
Thomson Family Limited Partnership
- Group 3:**  
Corinna Gunn  
Dorothy Gunn  
Jay Gunn  
Joe Gunn

The facility is located in Travis County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Travis County in the state of Texas. Travis County is shaded in red.

**Micro Dirt, Inc., d.b.a. Texas Organic Recovery**  
**Hearing Request - TCEQ Proposed MSW Permit No. 2361**  
**Map Requested by TCEQ Office of Legal Services**



Texas Commission on Environmental Quality  
 GIS Team (Mail Code 197)  
 P.O. Box 13087  
 Austin, Texas 78711-3087

July 5, 2011



Projection: Texas Statewide Mapping System (TSMS)  
 Scale 1:22,366

- Legend**
- Requestor Groups
  - Facility

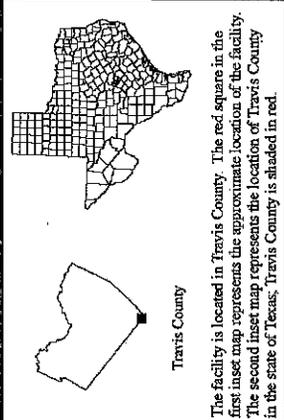
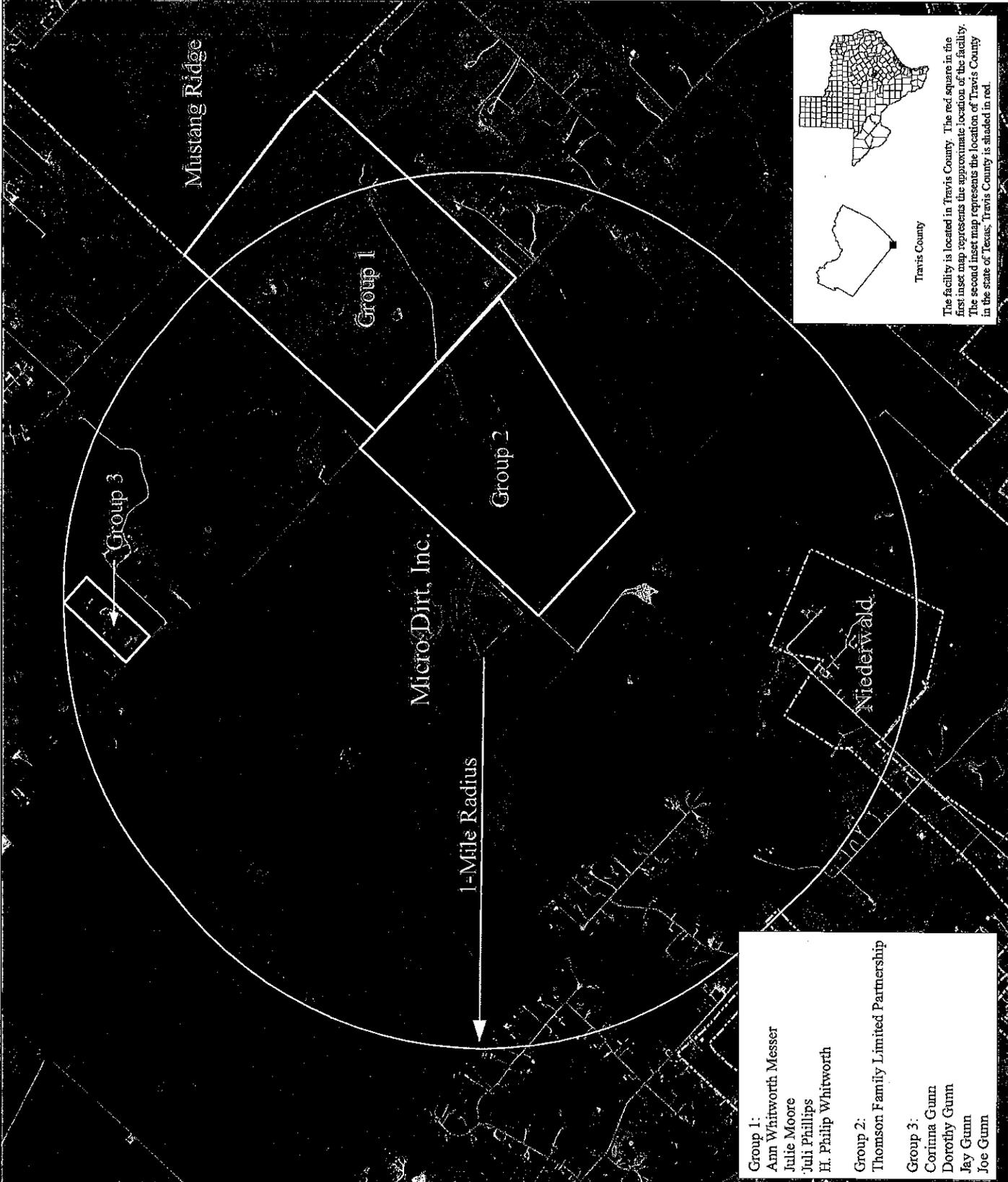
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M. McDonough CRF-352622



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- Group 1:**  
 Ann Whitworth Messer  
 Julie Moore  
 Juli Phillips  
 H. Philip Whitworth
- Group 2:**  
 Thomson Family Limited Partnership
- Group 3:**  
 Corinna Gunn  
 Dorothy Gunn  
 Jay Gunn  
 Joe Gunn

**CERTIFICATE OF SERVICE**

I certify that on July 11, 2011, an original and seven copies of the "Executive Director's Response to Hearing Requests" relating to the application of Micro Dirt d.b.a. Texas Organic Recovery for Permit No. 2361 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, or hand-delivery to all persons on the attached mailing list.



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Jose Caso, Staff Attorney  
Environmental Law Division  
State Bar No. 24065018