FBH&H

FRITZ, BYRNE, HEAD & HARRISON, PLLC

Attorneys at Law

OPA

June 10, 2011

JUN 13 2011

By

VIA FACSIMILE NO. 239-3311
- and -
U.S. FIRST CLASS MAIL

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2011 JUN 13 AM 10:30
CHIEF CLERKS OFFICE

Re: Micro Dirt, Inc. d/b/a Texas Organic Recovery; Proposed Permit No. 2361

Dear Ms. Chao:

Enclosed are an original and one (1) copy of a Request for Contested Case Hearing on TCEQ Permit No. 2361 which we respectfully request be filed among the other papers in the above-referenced proceeding. Please return a file-stamped copy to me in the self-addressed, postage prepaid envelope provided for your convenience.

Thank you for your assistance in this matter.

Very truly yours,

FRITZ, BYRNE, HEAD & HARRISON, PLLC

By: Ann M. Devers

Ann M. Devers
Assistant to J. D. Head

JDH/amd
Enclosures

OPA
JUN 13 2011
By

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

MICRO DIRT, INC. d/b/a	§	**BEFORE THE**
TEXAS ORGANIC RECOVERY	§	**TEXAS COMMISSION ON**
PROPOSED MSW PERMIT NO. 2361	§	**ENVIRONMENTAL QUALITY**

CHIEF CLERKS OFFICE

REQUEST FOR CONTESTED CASE HEARING ON TCEQ PERMIT NO. 2361

COMES NOW, H. Philip Whitworth, Jr., Ann Whitworth Messer, Julie Moore, Juli Phillips, M. D. Thomson, representing the Thomson Family Limited Partnership, Joe Gunn, Dorothy Gunn, Jay Gunn and Corinna Gunn ("Requestors"), all represented by the undersigned legal counsel, and files this their Request for a Contested Case Hearing on the application of Micro Dirt, Inc. d/b/a Texas Organic Recovery for Texas Commission on Environmental Quality's ("TCEQ") proposed MSW Permit No. 2361 which would authorize operation of a Type V liquid waste processing and compost facility located at 15500 Goforth Road, Creedmoor, Texas 78610.

A. Request for a Contested Case Hearing by H. Philip Whitworth, Ann Whitworth Messer, Julie Moore and Juli Phillips

H. Philip Whitworth, Ann Whitworth Messer, and Julie Moore own a tract of land consisting of approximately 223 acres located within one mile of the Micro Dirt, Inc. facility. Ms. Juli Phillips resides on the property. The land owned by Mr. Whitworth, Ms. Messer and Ms. Moore is delineated on **Attachment 1** which clearly indicates the property is within one mile of the facility. Mr. Whitworth's mailing address and phone number are c/o Scott, Douglass & McConnico, L.L.P., 600 Congress Ave., Suite 1500, Austin, TX 78701, TEL: 512/495-6300. Ann Whitworth Messer's mailing address and phone number are 7700 Nolan Bluff Rd., Belton, TX 76513, TEL: 254/939-1994. Julie Moore's mailing address and phone number are 502 Spiller Ln., Austin, TX 78746, TEL: 512/476-2245. Juli Phillips resides at 7800 Williamson Road, Kyle, Texas 78640. Her phone number is 512/507-6501.

Mr. Whitworth, Ms. Messer, Ms. Moore and Ms. Phillips were all previously named parties and found to have a justiciable interest in the prior proceeding regarding

Texas Organic Recovery, TCEQ Docket No. 2005-1510-MSW, SOAH Docket No. 582-06-0839. In that proceeding, the TCEQ Commissioners denied Texas Organic Recovery's application for a permit to compost grease trap waste on the same tract Micro Dirt is currently seeking proposed Permit No. 2361. Mr. Whitworth, Ms. Messer and Ms. Moore also objected to MSW Registration No. 42016 issued to Texas Organic Recovery in 1998.

Mr. Whitworth, Ms. Messer, Ms. Moore and Ms. Phillips all have a personal justiciable interest in the application of Micro Dirt, Inc. for MSW Permit No. 2361. The land owned by Mr. Whitworth, Ms. Messer and Ms. Moore is within one mile of the proposed grease trap facility. Ms. Phillips resides on the same property located within one mile of the grease trap facility. Mr. Whitworth, Ms. Messer, Ms. Moore and Ms. Phillips are concerned that the proposed facility will have adverse impacts on groundwater and surface water, will create traffic problems and further deteriorate Williamson and Goforth Road, will create odor and noise nuisance conditions, will propagate vectors, will cause air pollution and thus will adversely affect their interests in a manner not common to the general public. These Requestors are also concerned over the Applicant's prior compliance record. Mr. Whitworth, Ms. Messer, Ms. Moore and Ms. Phillips specifically request a contested case hearing.

B. Request for Contested Case Hearing by the Thomson Family Limited Partnership

The Thomson Family Limited Partnership owns approximately 176 acres directly adjacent to the existing facility. The landowners map and mailing list submitted with the application indicate that the Thomson Family Limited Partnership property is located adjacent to the facility's easternmost permitted boundary. See, **Attachment 2.** Mr. M. D. Thomson, manager of the limited liability corporation which is the general partner of the Thomson Family Limited Partnership was named a party by the TCEQ Commissioners in the prior permit proceeding concerning Texas Organic Recovery, TCEQ Docket No. 2005-1510-MSW, SOAH Docket No. 582-06-0839. The Thomson Family Limited Partnership also objected to MSW Registration No. 42016 issued to Texas Organic Recovery in 1998.

The Thomson Family Limited Partnership's address is 7409 South Congress Ave., Austin, TX 78745-6630. The partnership can be contacted through Mr. M. D. Thomson at 512/422-8709.

The Thomson Family Limited Partnership has a personal justiciable interest and is entitled to party status as an adjacent landowner to the facility requesting MSW Permit No. 2361 to process and compost grease trap waste. The Thomson Family Limited

Partnership is concerned with nuisance odors from the facility, air pollution, surface water contamination, groundwater contamination, proliferation of vectors, the delivery of unauthorized or prohibited materials to the facility, the inclusion of prohibited substances in the feed stock, pre- processed materials, or processed materials. The Thomson Family Limited Partnership also is concerned with regard to noise pollution from the facility, adverse impacts on the road fronting its property, inadequate financial assurance for closure and the Applicant's poor compliance history. The Thomson Family Limited Partnership's interest in surface and groundwater protection and concerns regarding odor, vectors, the roads and noise pose a reasonable relationship to the potential effects of the composting activities and are interests not shared by the general public. A reasonable relationship exists between the interests claimed and the activity regulated. The Thomson Family Limited Partnership specifically requests a contested case hearing.

C. Request for Contested Case Hearing of Mr. and Mrs. Joe Gunn and Mr. and Mrs. Jay Gunn

Mr. Joe Gunn and Mrs. Dorothy Gunn live on property located at 6506 Williamson Road, Creedmoor, TX 78610. The Gunn's phone number is 512/243-6222. As indicated on Attachment 1, the residence of Mr. and Mrs. Gunn is within one mile of the facility property boundary. Mr. Jay Gunn and Mrs. Corinna Gunn own the property where Mr. Joe Gunn and Mrs. Dorothy Gunn reside, plus the adjoining tract, both within one (1) mile of the facility. Jay and Corinna Gunn's address and phone number are 141 Wildhorse Creek, Buda, TX 78610, 512/312-9609. The Gunn families' have a personal justiciable interest and are entitled to party status as landowners and persons who reside within one (1) mile of the Micro Dirt facility. They are requesting party status due to concerns regarding odor nuisance, noise nuisance, proliferation of vectors, groundwater and surface water contamination, impacts on local roads from the heavy truck traffic, and the Applicant's poor compliance record. These are interests not common to the general public. Mr. and Mrs. Joe Gunn and Mr. and Mrs. Jay Gunn specifically request a contested case hearing.

Comments of Requestors

On December 2, 2010, the Requestors submitted written comments on the application of Micro Dirt, Inc. d/b/a Texas Organic Recovery for a proposed MSW Permit No. 2361 to authorize operation of a Type V liquid waste processing and composting facility. The comments are attached hereto as **Attachment 3**. The Requestors' comments were as follows:

1. Concerns regarding the transportation route and deleterious impacts on the roads to the Micro Dirt facility.

2. The application documents contained insufficient means to restrict prohibited materials from entering the facility.

3. Concerns over nuisance odors.

4. The application contains insufficient designs for noise pollution control.

5. The Application does not provide for appropriate surface water protection.

6. The groundwater monitoring wells proposed for the facility are inadequate to detect groundwater contamination.

7. Micro Dirt has a poor compliance record as evidenced by the ongoing TCEQ enforcement action related to unauthorized receipt of 123 loads of grease trap waste.

8. Concerns that the proposed facility will create adverse air quality impacts.

9. Concerns that the proposed operations do not comply with TCEQ rules to protect groundwater.

10. Concerns that the proposed operations will not comply with end-use product testing and standards.

11. The subsurface investigation report and groundwater investigation report are flawed.

12. Concerns that proposed operations will attract vectors and there is inadequate vector control.

13. The application does not include provisions for adequate fire protection.

14. The proposed amount of financial assurance for closure is insufficient.

The Requestors re-urge all of the previously submitted comments as relevant and material disputed issues of fact.

Disputes With Executive Director's Response to Comments

30 T.A.C. § 55.201(d)(4) states 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 responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy. Inasmuch as a contested case hearing has not been ordered by the Commission and Requestors have not retained expert witnesses, it is not practicable to expect the Requestors to marshal all their evidence at this stage of the proceeding. However, set forth below are Requestors disputes to the Executive Director's response to comments:

Comment 1: Requestors disagree with the Executive Director that Applicant has provided a valid liner plan that meets the TCEQ rules. Borings in the application, which were included in the prior application which was denied by this Commission, failed the sieve test and showed subsurface structures which the TCEQ Liner Handbook state are not appropriate for an in situ liner. Moreover, TCEQ rules require that even perched groundwater be protected and the liner at a depth of nine (9) feet will not protect perched water above the liner. The installation of a groundwater monitoring system is dependent upon proper subsurface investigation and Requestors do not believe a proper subsurface investigation has been conducted. With respect to the surface impoundment, the Applicant lined the surface impoundment after the contested case hearing in 2008 and Requestors have not had the opportunity to investigate whether the liner was properly constructed.

Comment 2: In the 2008 hearing, the original permit application filed by the Applicant had an insufficiently sized surface impoundment. Despite this fact, the TCEQ staff in 2008 opined in Response to Comments that the pond was properly sized. With all due respect to the TCEQ staff, Requestors reserve the right to challenge the sizing of the impoundment in a contested case hearing to ensure the calculations are accurate.

Comment 3: Requestors do not have sufficient information at this time to address the Executive Director's response to this comment.

Comment 4: The Executive Director relies on borings in the Application in its response to Comment 4. Requestors would note that some of the thirty (30) foot borings used to characterize the site are the same borings that were found insufficient in the prior hearing. All the additional borings conducted for this Application were less than the required thirty (30) foot depth deeper than the elevation of the deepest excavation on site. In addition, the Applicant did not receive a waiver for conducting a deep bore into the uppermost aquifer in violation of TCEQ rules. Finally, the thirty (30) foot borings included in the Application show primary and secondary structures which are not suitable for an in situ liner in accordance with the TCEQ's Liner Handbook.

Comment 5: Because Requestors do not believe the in situ liner is sufficient, Requestors disagree with the Executive Director's response to comment that the facility will adequately protect groundwater.

Comment 6: Requestors disagree with the Executive Director's comment inasmuch as Requestors are not convinced that the surface impoundment was properly lined. In addition, if there is worst case spill, Requestors are not convinced that the in situ liner proposed by the facility would be sufficient to protect groundwater prior to the grease trap waste reaching the impoundment.

Comment 7: The cost estimate used for disposal of liquid waste materials in the permit application were rejected as too low by the TCEQ staff in its response to comments to pending registration Application No. 43024. Requestors disagree that the financial assurance is sufficient because Micro Dirt in its application used disposal cost estimates which have now been rejected by the TCEQ for disposal of liquids.

Comment 8: Requestors disagree with the TCEQ's comments. Requestors believe that the compost windrows are spaced too close together to allow for fire trucks. In addition, due to drought conditions, there may be inadequate water in the surface impoundment to utilize it for fire protection purposes.

Comments 9 & 10: Requestors disagree with the Executive Director's response to comments on compliance history. There is currently a notice of enforcement and contested case hearing ongoing before SOAH wherein the TCEQ alleges that Micro Dirt accepted 123 loads of grease trap waste after its permit was denied in 2008 thereby disallowing it to accept grease trap waste. The TCEQ is seeking over $140,000 in penalty fines for this violation. While the Micro Dirt registration stated in response to admissions that it never composted the grease trap waste, on the stand the witness for the applicant recanted his admission and stated that Micro Dirt did, in fact, compost this grease trap waste which it illegally received.

Comments 11 & 12: Requestors disagree with the response to comment by the Executive Director. Requestors would point out that odor, nuisance and vector problems are common with grease trap waste facilities and take no solace in the fact that once the permit is issued, the TCEQ can bring enforcement action for nuisance conditions. Improper C/N ratios can cause objectionable odors from compost. Requestors are aware of no circumstance where the TCEQ has ever revoked a permit for a facility for nuisance problems.

Comment 13: Requestors disagree with the Executive Director's response to comment. The response to comment notes an investigation found flies present at the facility "but no more than a typical composting facility." Requestors do not believe they should be subjected to excessive flies just because such a condition is common to a composting facility.

Comment 14: Requestors disagree with the response to comment by the Executive Director. The grinding and crushing of materials used in composting and turning of windrows will require heavy and loud equipment. A fifty (50) foot buffer zone is not sufficient to contain such noise.

Comment 15: Requestors disagree with Executive Director's comments. Requestors dispute that Goforth Road is twenty-one (21) feet wide and capable of withstanding heavy truck traffic. Based on

observations both Williamson Road and Goforth Road have multiple potholes and are in poor condition. Requestors believe this is attributable to heavy truck traffic to and from the facility.

Comment 16: Requestors disagree with the Executive Director's response to comment. The Application contains no information establishing that the facility meets the air quality standard permit in Chapter 332.

Comment 17: Requestors disagree with the Executive Director's response to comment. Requestors point out that a visual inspection of the material, i.e., placing ones head inside a tanker truck, will not evidence whether prohibited material is in the tanker truck. In addition, sampling the material one time a year is insufficient and if the samples reveal that prohibited materials are in the samples, this just memorializes that the facility has been accepting unauthorized materials.

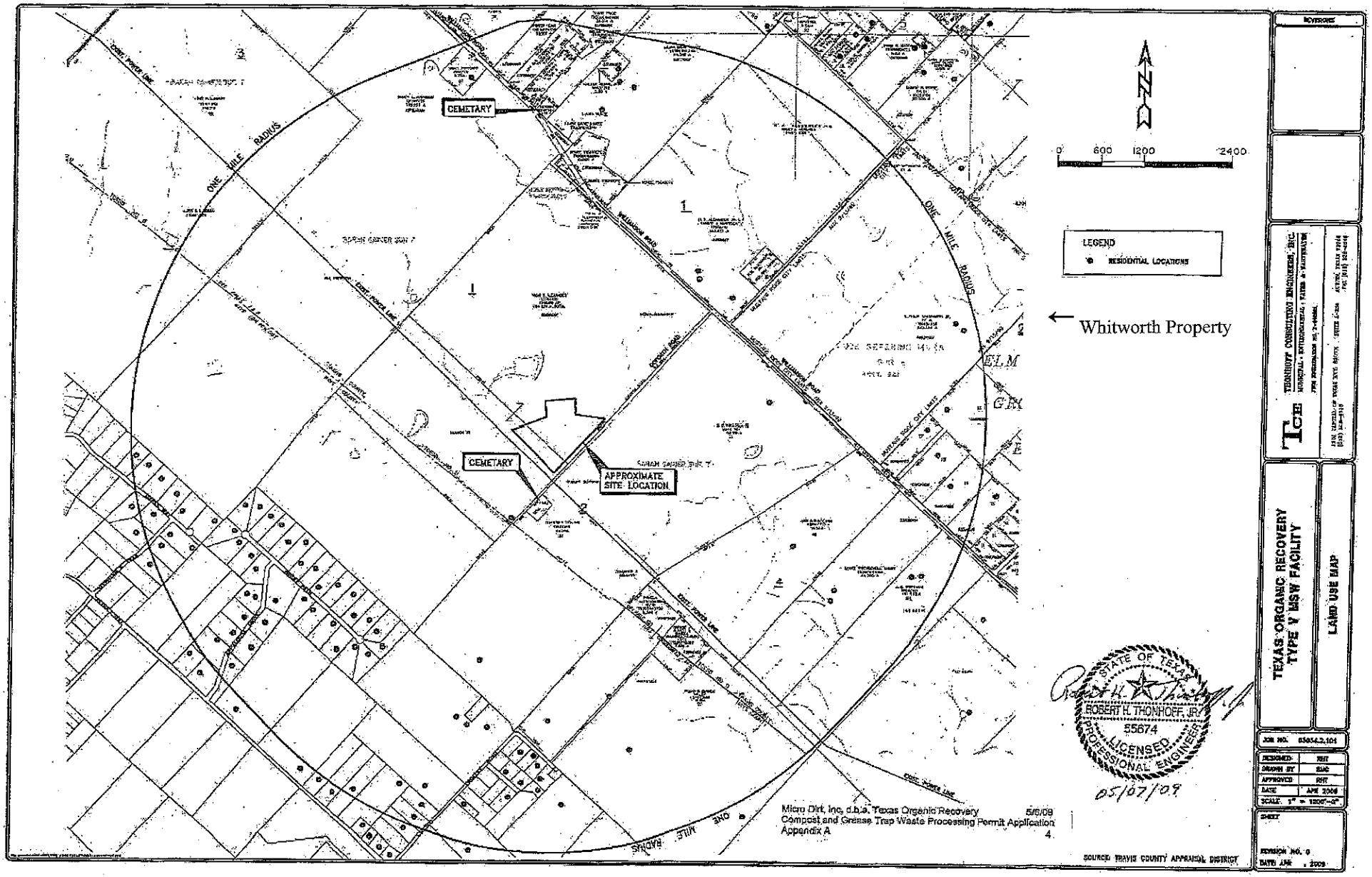
Respectfully submitted this 10th day of June, 2011.

FRITZ, BYRNE, HEAD & HARRISON, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701
TEL: 512/476-2020
FAX: 512/477-5267

By: _____
J. D. Head
State Bar No. 09322400

ATTORNEY FOR REQUESTORS H. PHILIP WHITWORTH, JR., ANN WHITWORTH MESSER, JULIE MOORE, JULI PHILLIPS, M. D. THOMSON (THOMSON FAMILY LIMITED PARTNERSHIP), JOE GUNN, DOROTHY GUNN, JAY GUNN and CORINNA GUNN

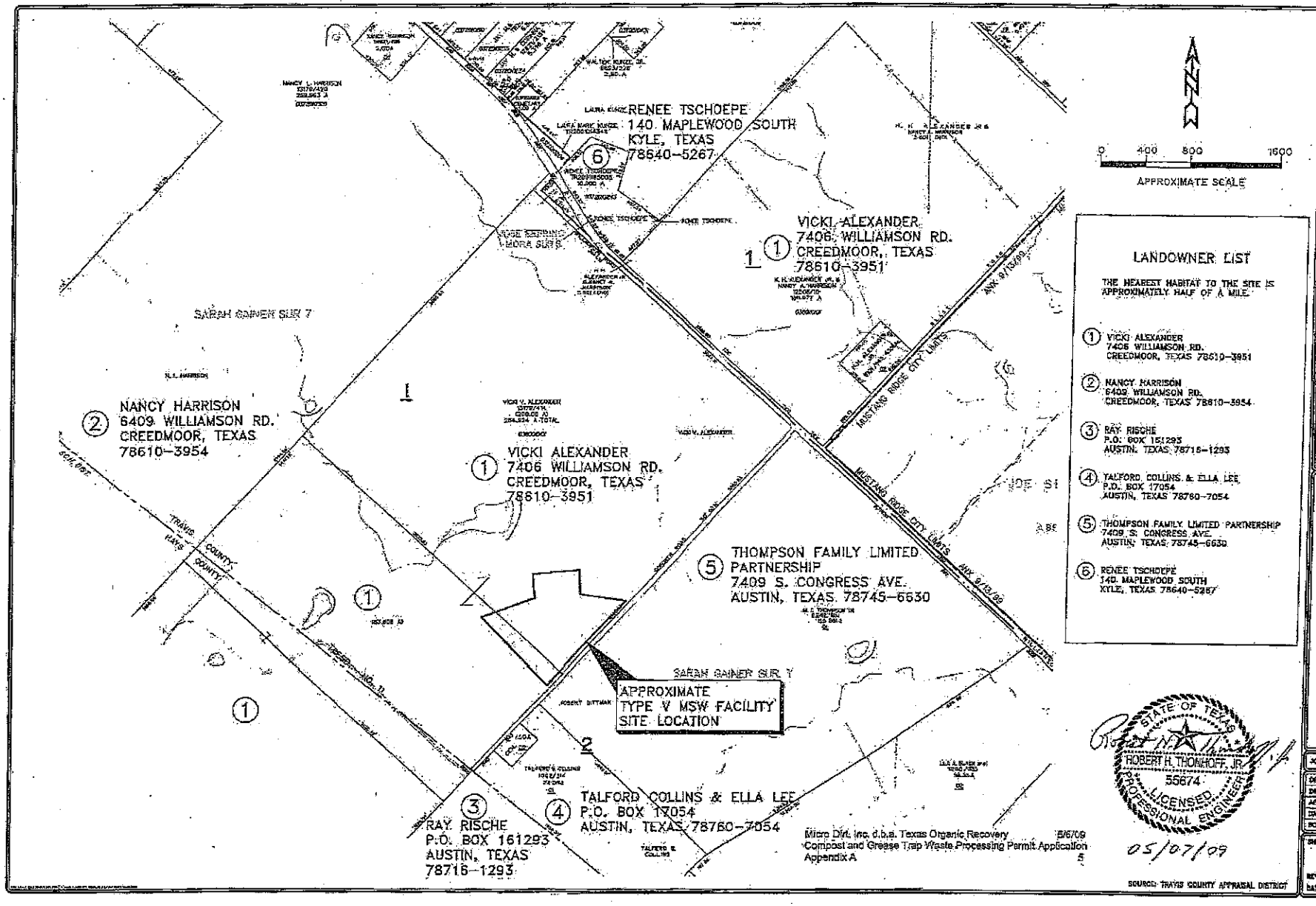
ATTACHMENT 1



Micro Dirt, Inc. d.b.a. Texas Organic Recovery
Compost and Grease Trap Waste Processing Permit Application
Appendix A

5/6/09

ATTACHMENT 2



LANDOWNER LIST

THE NEAREST HABITAT TO THE SITE IS APPROXIMATELY HALF OF A MILE.

1. VICKI ALEXANDER
   7406 WILLIAMSON RD.
   CREEDMOOR, TEXAS 78610-3951
2. NANCY HARRISON
   6409 WILLIAMSON RD.
   CREEDMOOR, TEXAS 78610-3954
3. RAY RISCHE
   P.O. BOX 161293
   AUSTIN, TEXAS 78716-1293
4. TALFORD COLLINS & ELLA LEE
   P.O. BOX 17054
   AUSTIN, TEXAS 78760-7054
5. THOMPSON FAMILY LIMITED PARTNERSHIP
   7409 S. CONGRESS AVE.
   AUSTIN, TEXAS 78745-6630
6. RENEE TSCHOEPE
   140 MAPLEWOOD SOUTH
   KYLE, TEXAS 78640-5267

ROBERT H. THONHOFF, JR.
55674
LICENSED
PROFESSIONAL ENGINEER
STATE OF TEXAS
05/07/09

Micro Dirt, Inc. d.b.a. Texas Organic Recovery 5/6/09
Compost and Grease Trap Waste Processing Permit Application
Appendix A
5

SOURCE: TRAVIS COUNTY APPRAISAL DISTRICT

REVISIONS

TCE
TSCHOEPE ENGINEERING, INC.
CIVIL • ENVIRONMENTAL • WATER & WASTEWATER
TBPE REGISTRATION NO. F-1446
1101 CAPITAL OF TEXAS HWY. SOUTH, BUILDING C-200, AUSTIN, TEXAS 78746
(512) 306-0115 FAX (512) 306-0116

TEXAS ORGANIC RECOVERY TYPE V MSW FACILITY

LANDOWNER PROPERTY BOUNDARY MAP

JOB NO.	03034.2.101
DESIGNED	RHT
DRAWN BY	DMC
APPROVED	RHT
DATE	APR 2009
SCALE	1" = 800'-0"

SHEET

REVISION NO. 0
DATED APR. , 2009

ATTACHMENT 3

MICRO DIRT, INC. d/b/a	§	**BEFORE THE**
TEXAS ORGANIC RECOVERY	§	**TEXAS COMMISSION ON**
PROPOSED MSW PERMIT NO. 2361	§	**ENVIRONMENTAL QUALITY**

PUBLIC COMMENT, REQUEST TO BE ADDED TO MAILING LIST AND REQUEST FOR PUBLIC MEETING ON PROPOSED TCEQ MSW PERMIT NO. 2361

COMES NOW, H. Philip Whitworth, Ann Whitworth Messer, Julie Moore, Juli Phillips, M. D. Thomson, representing the Thomson Family Limited Partnership, Joe Gunn, Dorothy Gunn, Jay Gunn and Corinna Gunn (hereinafter referred to as "Commenters"), all represented by the undersigned legal counsel, and files this their comments on the application of Micro Dirt, Inc. d/b/a Texas Organic Recovery for Texas Commission on Environmental Quality's ("TCEQ") proposed MSW Permit No. 2361 which would authorize operation of a Type V liquid waste processing and compost facility located at 15500 Goforth Road, Creedmoor, Texas 78610. Commenters request to be added to the mailing list and request a public meeting on the above-referenced application.

1. Comments on the Application of Micro Dirt, Inc. d/b/a Texas Organic Recovery for a Proposed MSW Permit No. 2361 to Authorize Operation of a Type V Liquid Waste Processing and Composting Facility

   a. Commenters are concerned regarding the transportation route to the Micro Dirt, Inc. facility. Commenters submit that prior and existing transportation of materials in heavy trucks on Williamson Road and Goforth Road to the facility has caused, and will continue to cause, structural damage to the roads. Moreover, Commenters submit that because Goforth Road is so narrow and in such poor condition, the large trucks utilizing the road to deliver materials to Micro Dirt, Inc.'s facility create a hazardous traffic condition vis-a-vis other users of the road. In addition, Commenters are concerned regarding the debris left on Williamson and Goforth Road from trucks transporting materials to the Micro Dirt, Inc. facility.

   b. Commenters submit the description of operations in the application contains insufficient means to restrict prohibited materials from entering the facility. The application also contains insufficient screening processes to determine if unprocessable, prohibited or unauthorized materials are accepted at the site. The operations at the

Micro Dirt, Inc. facility will not be conducted in a manner to ensure that no unauthorized or prohibited materials are processed at the facility.

c. Commenters are concerned that the facility will create nuisance odors. The material authorized to be accepted (i.e., grease trap waste, septage, municipal sludge, and dead animals) all have unpleasant odors. The Applicant's description of odor control measures in the application is insufficient.

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

e. Commenters submit that the application does not provide for appropriate surface water protection. The proposed operations at Micro Dirt, Inc. will cause the discharge of material or the pollution of surface water in violation of applicable TCEQ rules. The lack of erosion control and vegetative cover will cause excess sediment pollution, through erosion, and surface water contamination.

f. Commenters submit that the groundwater monitoring wells proposed for the facility are inadequate to detect groundwater contamination.

g. Commenters submit that Micro Dirt, Inc. d/b/a Texas Organic Recovery has a poor compliance history which is not reflected in the Compliance History Report. A notice of violation was issued April 27, 2005 for violation of the Site Operating Plan. Another notice of violation was issued based on an investigation on May 8, 2006 for failure to prevent a discharge of material to or the pollution of surface water or groundwater in accordance with the Texas Water Code. A notice of enforcement was issued to Texas Organic Recovery on December 4, 2008, based on an investigation on August 8, 2008 where the TCEQ documented that Texas Organic Recovery accepted approximately 123 loads of grease trap waste between July 15, 2008 and August 8, 2008 without the proper authorization to compost grease trap waste. The TCEQ is currently seeking approximately $140,000 in penalties for the unauthorized receipt of grease trap waste after Texas Organic Recovery's permit application to compost grease trap waste was denied in 2008. The matter is set for an evidentiary hearing at SOAH in February 2011.

h. Commenters submit that the proposed operations at the facility will create adverse air quality impacts and the proposed operations do not adequately control airborne emissions.

i. Commenters submit that the proposed operations of Micro Dirt, Inc. do not comply with TCEQ rules to protect groundwater.

j. Commenters submit that Micro Dirt, Inc.'s proposed operations will not comply with end product testing and standards.

k. Commenters submit that the Subsurface Investigation Report and Groundwater Investigation Report in the Micro Dirt, Inc. application are flawed and not in accordance with TCEQ regulations.

l. Commenters submit that the proposed operations at the facility will attract vectors and there is inadequate vector control.

m. Commenters submit the application of Micro Dirt, Inc. does not include provisions for adequate fire protection.

n. Commenters submit the amount of closure financial assurance proposed is insufficient.

2. Request to Be Added to Mailing List for Application of Micro Dirt, Inc. for TCEQ Proposed MSW Permit No. 2361

The following Commenters wish to be added to the above-referenced mailing list.

Mr. H. Philip Whitworth, Jr.
c/o Scott, Douglass & McConnico, L.L.P.
600 Congress Ave., Suite 1500
Austin, TX 78701-3234

Ms. Ann Whitworth Messer
7700 Nolan Bluff Rd.
Belton, TX 76513

Ms. Julie Moore
502 Spiller Ln.
Austin, TX 78746

Ms. Juli Phillips
7800 Williamson Rd.
Kyle, TX 78640

*Thomson Family Limited Partnership
c/o Mr. M. D. Thomson
7409 S. Congress Ave.
Austin, TX 78745

Joe and Dorothy Gunn
6507 Williamson Rd.
Creedmoor, TX 78610

Jay and Corinna Gunn
141 Wildhorse Creek
Buda, TX 78610

**Mr. J. D. Head
Fritz, Byrne, Head & Harrison, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701

All of the above-referenced Commenters either own property or reside within the one mile radius of the Micro Dirt, Inc. facility on Goforth Road in Creedmoor, Texas as delineated on land use maps in the application for TCEQ MSW Permit No. 2361.

3. Request for Public Meeting

The Commenters request a public meeting on the application of Micro Dirt, Inc. for proposed MSW Permit No. 2361.

---

* Already on mailing list.

** Attorney for Commentors.

4. Commenters, pursuant to 30 T.A.C. § 55.201(a), reserve the right to request a contested case hearing within thirty (30) days after receipt of the Executive Director's written Response to Comments.

Respectfully submitted this 2nd day of December, 2010.

FRITZ, BYRNE, HEAD & HARRISON, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701
TEL: 512/476-2020
FAX: 512/477-5267

By: _____
J. D. Head
State Bar No. 09322400

ATTORNEY FOR COMMENTERS H. PHILIP WHITWORTH, JR., ANN WHITWORTH MESSER, JULIE MOORE, JULI PHILLIPS, M. D. THOMSON (THOMSON FAMILY LIMITED PARTNERSHIP), JOE GUNN, DOROTHY GUNN, JAY GUNN and CORINNA GUNN

FBH&H

FRITZ, BYRNE, HEAD & HARRISON, PLLC

Attorneys at Law

OPA
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By

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CHIEF CLERKS OFFICE

VIA FACSIMILE NO. 239-3311
- and -
U.S. FIRST CLASS MAIL

MSW 69059

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

Re: Micro-Dirt, Inc. d/b/a Texas Organic Recovery; Proposed Permit No. 2361

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Thank you for your assistance in this matter.

Very truly yours,

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By: Ann M. Devers
Ann M. Devers
Assistant to J. D. Head

JDH/amd
Enclosures

mw

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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The Thomson Family Limited Partnership owns approximately 176 acres directly adjacent to the existing facility. The landowners map and mailing list submitted with the application indicate that the Thomson Family Limited Partnership property is located adjacent to the facility's easternmost permitted boundary. See, **Attachment 2.** Mr. M. D. Thomson, manager of the limited liability corporation which is the general partner of the Thomson Family Limited Partnership was named a party by the TCEQ Commissioners in the prior permit proceeding concerning Texas Organic Recovery, TCEQ Docket No. 2005-1510-MSW, SOAH Docket No. 582-06-0839. The Thomson Family Limited Partnership also objected to MSW Registration No. 42016 issued to Texas Organic Recovery in 1998.

The Thomson Family Limited Partnership's address is 7409 South Congress Ave., Austin, TX 78745-6630. The partnership can be contacted through Mr. M. D. Thomson at 512/422-8709.

The Thomson Family Limited Partnership has a personal justiciable interest and is entitled to party status as an adjacent landowner to the facility requesting MSW Permit No. 2361 to process and compost grease trap waste. The Thomson Family Limited

Partnership is concerned with nuisance odors from the facility, air pollution, surface water contamination, groundwater contamination, proliferation of vectors, the delivery of unauthorized or prohibited materials to the facility, the inclusion of prohibited substances in the feed stock, pre- processed materials, or processed materials. The Thomson Family Limited Partnership also is concerned with regard to noise pollution from the facility, adverse impacts on the road fronting its property, inadequate financial assurance for closure and the Applicant's poor compliance history. The Thomson Family Limited Partnership's interest in surface and groundwater protection and concerns regarding odor, vectors, the roads and noise pose a reasonable relationship to the potential effects of the composting activities and are interests not shared by the general public. A reasonable relationship exists between the interests claimed and the activity regulated. The Thomson Family Limited Partnership specifically requests a contested case hearing.

C. Request for Contested Case Hearing of Mr. and Mrs. Joe Gunn and Mr. and Mrs. Jay Gunn

Mr. Joe Gunn and Mrs. Dorothy Gunn live on property located at 6506 Williamson Road, Creedmoor, TX 78610. The Gunn's phone number is 512/243-6222. As indicated on Attachment 1, the residence of Mr. and Mrs. Gunn is within one mile of the facility property boundary. Mr. Jay Gunn and Mrs. Corinna Gunn own the property where Mr. Joe Gunn and Mrs. Dorothy Gunn reside, plus the adjoining tract, both within one (1) mile of the facility. Jay and Corinna Gunn's address and phone number are 141 Wildhorse Creek, Buda, TX 78610, 512/312-9609. The Gunn families' have a personal justiciable interest and are entitled to party status as landowners and persons who reside within one (1) mile of the Micro Dirt facility. They are requesting party status due to concerns regarding odor nuisance, noise nuisance, proliferation of vectors, groundwater and surface water contamination, impacts on local roads from the heavy truck traffic, and the Applicant's poor compliance record. These are interests not common to the general public. Mr. and Mrs. Joe Gunn and Mr. and Mrs. Jay Gunn specifically request a contested case hearing.

Comments of Requestors

On December 2, 2010, the Requestors submitted written comments on the application of Micro Dirt, Inc. d/b/a Texas Organic Recovery for a proposed MSW Permit No. 2361 to authorize operation of a Type V liquid waste processing and composting facility. The comments are attached hereto as **Attachment 3**. The Requestors' comments were as follows:

1. Concerns regarding the transportation route and deleterious impacts on the roads to the Micro Dirt facility.

2. The application documents contained insufficient means to restrict prohibited materials from entering the facility.

3. Concerns over nuisance odors.

4. The application contains insufficient designs for noise pollution control.

5. The Application does not provide for appropriate surface water protection.

6. The groundwater monitoring wells proposed for the facility are inadequate to detect groundwater contamination.

7. Micro Dirt has a poor compliance record as evidenced by the ongoing TCEQ enforcement action related to unauthorized receipt of 123 loads of grease trap waste.

8. Concerns that the proposed facility will create adverse air quality impacts.

9. Concerns that the proposed operations do not comply with TCEQ rules to protect groundwater.

10. Concerns that the proposed operations will not comply with end-use product testing and standards.

11. The subsurface investigation report and groundwater investigation report are flawed.

12. Concerns that proposed operations will attract vectors and there is inadequate vector control.

13. The application does not include provisions for adequate fire protection.

14. The proposed amount of financial assurance for closure is insufficient.

The Requestors re-urge all of the previously submitted comments as relevant and material disputed issues of fact.

Disputes With Executive Director's Response to Comments

30 T.A.C. § 55.201(d)(4) states 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 responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy. Inasmuch as a contested case hearing has not been ordered by the Commission and Requestors have not retained expert witnesses, it is not practicable to expect the Requestors to marshal all their evidence at this stage of the proceeding. However, set forth below are Requestors disputes to the Executive Director's response to comments:

Comment 1: Requestors disagree with the Executive Director that Applicant has provided a valid liner plan that meets the TCEQ rules. Borings in the application, which were included in the prior application which was denied by this Commission, failed the sieve test and showed subsurface structures which the TCEQ Liner Handbook state are not appropriate for an in situ liner. Moreover, TCEQ rules require that even perched groundwater be protected and the liner at a depth of nine (9) feet will not protect perched water above the liner. The installation of a groundwater monitoring system is dependent upon proper subsurface investigation and Requestors do not believe a proper subsurface investigation has been conducted. With respect to the surface impoundment, the Applicant lined the surface impoundment after the contested case hearing in 2008 and Requestors have not had the opportunity to investigate whether the liner was properly constructed.

Comment 2: In the 2008 hearing, the original permit application filed by the Applicant had an insufficiently sized surface impoundment. Despite this fact, the TCEQ staff in 2008 opined in Response to Comments that the pond was properly sized. With all due respect to the TCEQ staff, Requestors reserve the right to challenge the sizing of the impoundment in a contested case hearing to ensure the calculations are accurate.

Comment 3: Requestors do not have sufficient information at this time to address the Executive Director's response to this comment.

Comment 4: The Executive Director relies on borings in the Application in its response to Comment 4. Requestors would note that some of the thirty (30) foot borings used to characterize the site are the same borings that were found insufficient in the prior hearing. All the additional borings conducted for this Application were less than the required thirty (30) foot depth deeper than the elevation of the deepest excavation on site. In addition, the Applicant did not receive a waiver for conducting a deep bore into the uppermost aquifer in violation of TCEQ rules. Finally, the thirty (30) foot borings included in the Application show primary and secondary structures which are not suitable for an in situ liner in accordance with the TCEQ's Liner Handbook.

Comment 5: Because Requestors do not believe the in situ liner is sufficient, Requestors disagree with the Executive Director's response to comment that the facility will adequately protect groundwater.

Comment 6: Requestors disagree with the Executive Director's comment inasmuch as Requestors are not convinced that the surface impoundment was properly lined. In addition, if there is worst case spill, Requestors are not convinced that the in situ liner proposed by the facility would be sufficient to protect groundwater prior to the grease trap waste reaching the impoundment.

Comment 7: The cost estimate used for disposal of liquid waste materials in the permit application were rejected as too low by the TCEQ staff in its response to comments to pending registration Application No. 43024. Requestors disagree that the financial assurance is sufficient because Micro Dirt in its application used disposal cost estimates which have now been rejected by the TCEQ for disposal of liquids.

Comment 8: Requestors disagree with the TCEQ's comments. Requestors believe that the compost windrows are spaced too close together to allow for fire trucks. In addition, due to drought conditions, there may be inadequate water in the surface impoundment to utilize it for fire protection purposes.

Comments 9 & 10: Requestors disagree with the Executive Director's response to comments on compliance history. There is currently a notice of enforcement and contested case hearing ongoing before SOAH wherein the TCEQ alleges that Micro Dirt accepted 123 loads of grease trap waste after its permit was denied in 2008 thereby disallowing it to accept grease trap waste. The TCEQ is seeking over $140,000 in penalty fines for this violation. While the Micro Dirt registration stated in response to admissions that it never composted the grease trap waste, on the stand the witness for the applicant recanted his admission and stated that Micro Dirt did, in fact, compost this grease trap waste which it illegally received.

Comments 11 & 12: Requestors disagree with the response to comment by the Executive Director. Requestors would point out that odor, nuisance and vector problems are common with grease trap waste facilities and take no solace in the fact that once the permit is issued, the TCEQ can bring enforcement action for nuisance conditions. Improper C/N ratios can cause objectionable odors from compost. Requestors are aware of no circumstance where the TCEQ has ever revoked a permit for a facility for nuisance problems.

Comment 13: Requestors disagree with the Executive Director's response to comment. The response to comment notes an investigation found flies present at the facility "but no more than a typical composting facility." Requestors do not believe they should be subjected to excessive flies just because such a condition is common to a composting facility.

Comment 14: Requestors disagree with the response to comment by the Executive Director. The grinding and crushing of materials used in composting and turning of windrows will require heavy and loud equipment. A fifty (50) foot buffer zone is not sufficient to contain such noise.

Comment 15: Requestors disagree with Executive Director's comments. Requestors dispute that Goforth Road is twenty-one (21) feet wide and capable of withstanding heavy truck traffic. Based on

observations both Williamson Road and Goforth Road have multiple potholes and are in poor condition. Requestors believe this is attributable to heavy truck traffic to and from the facility.

Comment 16: Requestors disagree with the Executive Director's response to comment. The Application contains no information establishing that the facility meets the air quality standard permit in Chapter 332.

Comment 17: Requestors disagree with the Executive Director's response to comment. Requestors point out that a visual inspection of the material, i.e., placing ones head inside a tanker truck, will not evidence whether prohibited material is in the tanker truck. In addition, sampling the material one time a year is insufficient and if the samples reveal that prohibited materials are in the samples, this just memorializes that the facility has been accepting unauthorized materials.

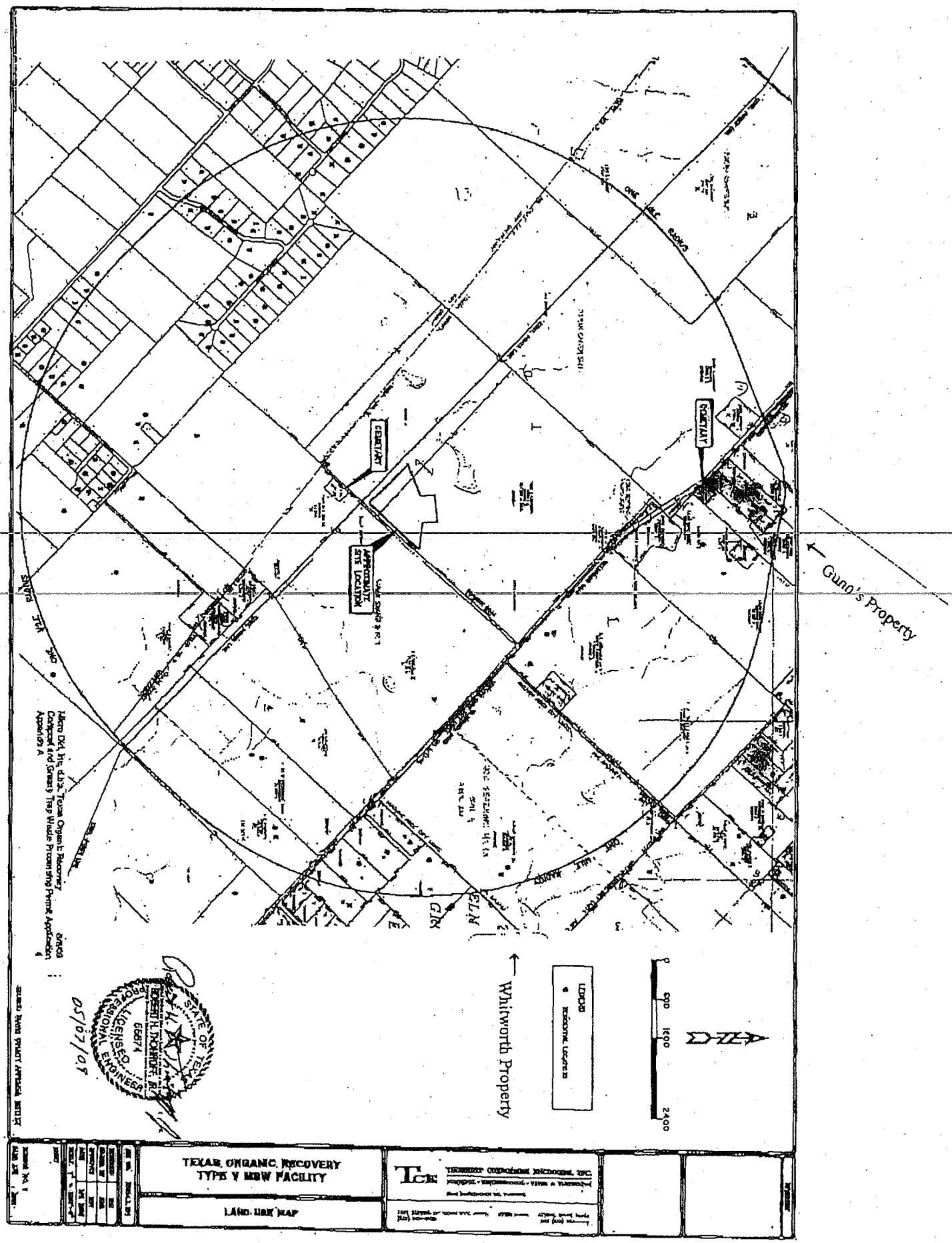
Respectfully submitted this 10th day of June, 2011.

FRITZ, BYRNE, HEAD & HARRISON, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701
TEL: 512/476-2020
FAX: 512/477-5267

By: _____
J. D. Head
State Bar No. 09322400

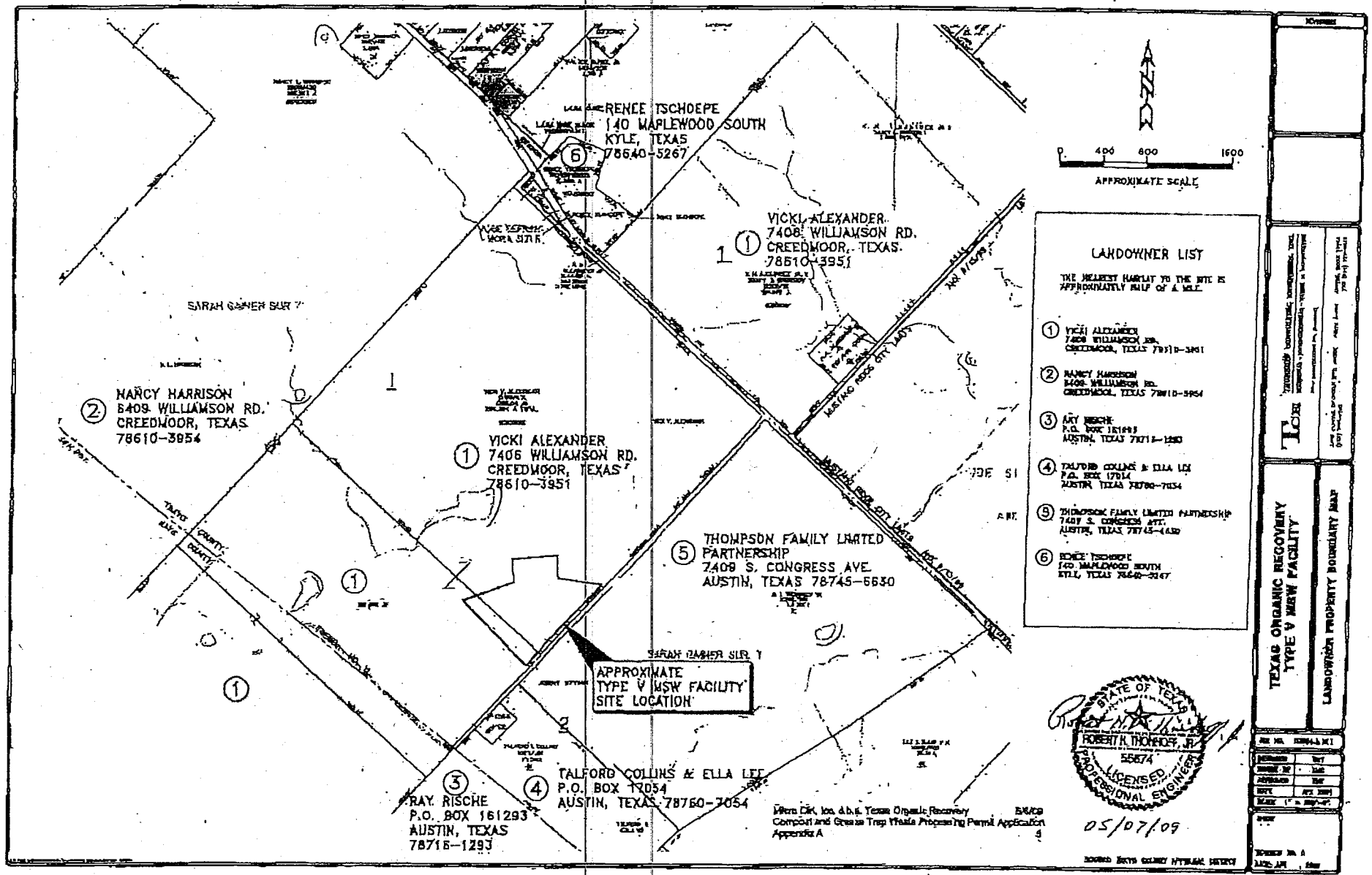
ATTORNEY FOR REQUESTORS H. PHILIP WHITWORTH, JR., ANN WHITWORTH MESSER, JULIE MOORE, JULI PHILLIPS, M. D. THOMSON (THOMSON FAMILY LIMITED PARTNERSHIP), JOE GUNN, DOROTHY GUNN, JAY GUNN and CORINNA GUNN

ATTACHMENT 1


CEMETARY
CEMETARY
APPROXIMATE SITE LOCATION
Gunn's Property
Whitworth Property
LEGEND
0
600
1200
2400
STATE OF TEXAS
ROBERT H. THORNOFF, JR.
66874
LICENSED
PROFESSIONAL ENGINEER
05/07/08
TEXAS ORGANIC RECOVERY
TYPE V MSW FACILITY
LAND USE MAP
TCE

ATTACHMENT 2

Received: 06/10/2011 11:06 FAX. Jun 10 2011 11:03am 014/020



ATTACHMENT 3

MICRO DIRT, INC. d/b/a	§	**BEFORE THE**
TEXAS ORGANIC RECOVERY	§	**TEXAS COMMISSION ON**
PROPOSED MSW PERMIT NO. 2361	§	**ENVIRONMENTAL QUALITY**

PUBLIC COMMENT, REQUEST TO BE ADDED TO MAILING LIST AND REQUEST FOR PUBLIC MEETING ON PROPOSED TCEQ MSW PERMIT NO. 2361

COMES NOW, H. Philip Whitworth, Ann Whitworth Messer, Julie Moore, Juli Phillips, M. D. Thomson, representing the Thomson Family Limited Partnership, Joe Gunn, Dorothy Gunn, Jay Gunn and Corinna Gunn (hereinafter referred to as "Commenters"), all represented by the undersigned legal counsel, and files this their comments on the application of Micro Dirt, Inc. d/b/a Texas Organic Recovery for Texas Commission on Environmental Quality's ("TCEQ") proposed MSW Permit No. 2361 which would authorize operation of a Type V liquid waste processing and compost facility located at 15500 Goforth Road, Creedmoor, Texas 78610. Commenters request to be added to the mailing list and request a public meeting on the above-referenced application.

1. Comments on the Application of Micro Dirt, Inc. d/b/a Texas Organic Recovery for a Proposed MSW Permit No. 2361 to Authorize Operation of a Type V Liquid Waste Processing and Composting Facility

   a. Commenters are concerned regarding the transportation route to the Micro Dirt, Inc. facility. Commenters submit that prior and existing transportation of materials in heavy trucks on Williamson Road and Goforth Road to the facility has caused, and will continue to cause, structural damage to the roads. Moreover, Commenters submit that because Goforth Road is so narrow and in such poor condition, the large trucks utilizing the road to deliver materials to Micro Dirt, Inc.'s facility create a hazardous traffic condition vis-a-vis other users of the road. In addition, Commenters are concerned regarding the debris left on Williamson and Goforth Road from trucks transporting materials to the Micro Dirt, Inc. facility.

   b. Commenters submit the description of operations in the application contains insufficient means to restrict prohibited materials from entering the facility. The application also contains insufficient screening processes to determine if unprocessable, prohibited or unauthorized materials are accepted at the site. The operations at the

Micro Dirt, Inc. facility will not be conducted in a manner to ensure that no unauthorized or prohibited materials are processed at the facility.

c. Commenters are concerned that the facility will create nuisance odors. The material authorized to be accepted (i.e., grease trap waste, septage, municipal sludge, and dead animals) all have unpleasant odors. The Applicant's description of odor control measures in the application is insufficient.

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

e. Commenters submit that the application does not provide for appropriate surface water protection. The proposed operations at Micro Dirt, Inc. will cause the discharge of material or the pollution of surface water in violation of applicable TCEQ rules. The lack of erosion control and vegetative cover will cause excess sediment pollution, through erosion, and surface water contamination.

f. Commenters submit that the groundwater monitoring wells proposed for the facility are inadequate to detect groundwater contamination.

g. Commenters submit that Micro Dirt, Inc. d/b/a Texas Organic Recovery has a poor compliance history which is not reflected in the Compliance History Report. A notice of violation was issued April 27, 2005 for violation of the Site Operating Plan. Another notice of violation was issued based on an investigation on May 8, 2006 for failure to prevent a discharge of material to or the pollution of surface water or groundwater in accordance with the Texas Water Code. A notice of enforcement was issued to Texas Organic Recovery on December 4, 2008, based on an investigation on August 8, 2008 where the TCEQ documented that Texas Organic Recovery accepted approximately 123 loads of grease trap waste between July 15, 2008 and August 8, 2008 without the proper authorization to compost grease trap waste. The TCEQ is currently seeking approximately $140,000 in penalties for the unauthorized receipt of grease trap waste after Texas Organic Recovery's permit application to compost grease trap waste was denied in 2008. The matter is set for an evidentiary hearing at SOAH in February 2011.

h. Commenters submit that the proposed operations at the facility will create adverse air quality impacts and the proposed operations do not adequately control airborne emissions.

i. Commenters submit that the proposed operations of Micro Dirt, Inc. do not comply with TCEQ rules to protect groundwater.

j. Commenters submit that Micro Dirt, Inc.'s proposed operations will not comply with end product testing and standards.

k. Commenters submit that the Subsurface Investigation Report and Groundwater Investigation Report in the Micro Dirt, Inc. application are flawed and not in accordance with TCEQ regulations.

l. Commenters submit that the proposed operations at the facility will attract vectors and there is inadequate vector control.

m. Commenters submit the application of Micro Dirt, Inc. does not include provisions for adequate fire protection.

n. Commenters submit the amount of closure financial assurance proposed is insufficient.

2. Request to Be Added to Mailing List for Application of Micro Dirt, Inc. for TCEQ Proposed MSW Permit No. 2361

The following Commenters wish to be added to the above-referenced mailing list.

Mr. H. Philip Whitworth, Jr.
c/o Scott, Douglass & McConnico, L.L.P.
600 Congress Ave., Suite 1500
Austin, TX 78701-3234

Ms. Ann Whitworth Messer
7700 Nolan Bluff Rd.
Belton, TX 76513

Ms. Julie Moore
502 Spiller Ln.
Austin, TX 78746

Ms. Juli Phillips
7800 Williamson Rd.
Kyle, TX 78640

*Thomson Family Limited Partnership
c/o Mr. M. D. Thomson
7409 S. Congress Ave.
Austin, TX 78745

Joe and Dorothy Gunn
6507 Williamson Rd.
Creedmoor, TX 78610

Jay and Corinna Gunn
141 Wildhorse Creek
Buda, TX 78610

**Mr. J. D. Head
Fritz, Byrne, Head & Harrison, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701

All of the above-referenced Commenters either own property or reside within the one mile radius of the Micro Dirt, Inc. facility on Goforth Road in Creedmoor, Texas as delineated on land use maps in the application for TCEQ MSW Permit No. 2361.

3. Request for Public Meeting

The Commenters request a public meeting on the application of Micro Dirt, Inc. for proposed MSW Permit No. 2361.

---

* Already on mailing list.

** Attorney for Commentors.

4. Commenters, pursuant to 30 T.A.C. § 55.201(a), reserve the right to request a contested case hearing within thirty (30) days after receipt of the Executive Director's written Response to Comments.

Respectfully submitted this 2nd day of December, 2010.

FRITZ, BYRNE, HEAD & HARRISON, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701
TEL: 512/476-2020
FAX: 512/477-5267

By: _____
J. D. Head
State Bar No. 09322400

ATTORNEY FOR COMMENTERS H. PHILIP WHITWORTH, JR., ANN WHITWORTH MESSER, JULIE MOORE, JULI PHILLIPS, M. D. THOMSON (THOMSON FAMILY LIMITED PARTNERSHIP), JOE GUNN, DOROTHY GUNN, JAY GUNN and CORINNA GUNN

FBH

FRITZ, BYRNE, HEAD & HARRISON, PLLC
Attorneys at Law

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2011 JUN 10 AM 11:09
CHIEF CLERKS OFFICE

TELECOPY COVER PAGE
TRANSMITTAL INFORMATION

DATE: June 10, 2011

TO: Ms. Melissa Chao (Telephone: 239-3300)

FAX NO. 239-3311

FROM: Mr. J. D. Head

RE: Micro-Dirt, Inc. d/b/a Texas Organic Recovery; Proposed Permit No. 2361

CLIENT #: 15181.01

NUMBER OF PAGES: 20, including this cover page

ADDITIONAL INFORMATION

ATTACHED: Request for Contested Case Hearing on TCEQ Permit No. 2361

MESSAGE: Original (in color) will follow by U. S. First Class mail

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.

If you have any questions, or problems concerning this transmission please call (512) 476-2020, and ask for Copy Center.

K:\DIR15\15151\01\FAX-COVERS\CLERK-TCEQ.wpd

IP 386663
(2)

TCEQ Public Meeting Form
February 22, 2011

Micro Dirt, Inc. d.b.a. Texas Organic Recovery
Proposed Municipal Solid Waste Permit No. 2361

PLEASE PRINT

Name: J. D. HEAD

Mailing Address: 98 San Jacinto Blvd ST 2000

Physical Address (if different): _____

City/State: Austin **Zip:** 78701

****This information is *subject to public disclosure under the Texas Public Information Act*****

Email: jdhead@fbhh.com ✓

Phone Number: (512) 476-2020

- Are you here today representing a municipality, legislator, agency, or group? ☑ Yes ☐ No

  If yes, which one? _____

☑ **Please add me to the mailing list.** ✓

☑ **I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.**

☐ **I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.**

(Written comments may be submitted at any time during the meeting)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2011 FEB 24 AM 10:53
CHIEF CLERKS OFFICE

Please give this form to the person at the information table. Thank you.

MW

From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 12/3/2010 8:25 AM
Subject: Fwd: Public comment on Permit Number 2361
Place: PUBCOMMENT-OCC2
Attachments: Comments #23611.pdf

PM

MSW 69059

>>> PUBCOMMENT-OCC 12/2/2010 4:41 PM >>>

>>> <jdhead@fbhh.com> 12/2/2010 4:33 PM >>>

REGULATED ENTY NAMETEXAS ORGANIC RECOVERY
RN NUMBER:RN101287548
PERMIT NUMBER:2361
DOCKET NUMBER:
COUNTY:TRAVIS
PRINCIPAL NAME:MICRO DIRT INC
CN NUMBER:CN602441610
FROM
NAME:J.D. Head
E-MAIL:jdhead@fbhh.com
COMPANY: Fritz, Byrne, Head & Harrison, PLLC
ADDRESS:98 SAN JACINTO BLVD Suite 2000
AUSTIN TX 78701-4082
PHONE:5124762020
FAX:5124775267
COMMENTS: Please find attached Public Comment, Request to Be Added to Mailing List and Request for Public Meeting on Proposed TCEQ MSW Permit No. 2361 (by Commenters, H. Philip Whtworth, Ann Whitworth Messer, Julie Moore, Juli Phillips, M.D. Thomson (Thomson Famility Limited Partnership), Joe Gunn, Dorothy Gunn, Jay Gunn and Corinna Gunn). We ask that all Commenters listed on the attached (Section 2) be added to the mailing list for proposed MSW Permit No. 2361.

MW

MICRO DIRT, INC. d/b/a	**§**	**BEFORE THE**
TEXAS ORGANIC RECOVERY	**§**	**TEXAS COMMISSION ON**
PROPOSED MSW PERMIT NO. 2361	**§**	**ENVIRONMENTAL QUALITY**

PUBLIC COMMENT, REQUEST TO BE ADDED TO MAILING LIST AND REQUEST FOR PUBLIC MEETING ON PROPOSED TCEQ MSW PERMIT NO. 2361

COMES NOW, H. Philip Whitworth, Ann Whitworth Messer, Julie Moore, Juli Phillips, M. D. Thomson, representing the Thomson Family Limited Partnership, Joe Gunn, Dorothy Gunn, Jay Gunn and Corinna Gunn (hereinafter referred to as "Commenters"), all represented by the undersigned legal counsel, and files this their comments on the application of Micro Dirt, Inc. d/b/a Texas Organic Recovery for Texas Commission on Environmental Quality's ("TCEQ") proposed MSW Permit No. 2361 which would authorize operation of a Type V liquid waste processing and compost facility located at 15500 Goforth Road, Creedmoor, Texas 78610. Commenters request to be added to the mailing list and request a public meeting on the above-referenced application.

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   a. Commenters are concerned regarding the transportation route to the Micro Dirt, Inc. facility. Commenters submit that prior and existing transportation of materials in heavy trucks on Williamson Road and Goforth Road to the facility has caused, and will continue to cause, structural damage to the roads. Moreover, Commenters submit that because Goforth Road is so narrow and in such poor condition, the large trucks utilizing the road to deliver materials to Micro Dirt, Inc.'s facility create a hazardous traffic condition vis-a-vis other users of the road. In addition, Commenters are concerned regarding the debris left on Williamson and Goforth Road from trucks transporting materials to the Micro Dirt, Inc. facility.

   b. Commenters submit the description of operations in the application contains insufficient means to restrict prohibited materials from entering the facility. The application also contains insufficient screening processes to determine if unprocessable, prohibited or unauthorized materials are accepted at the site. The operations at the

Micro Dirt, Inc. facility will not be conducted in a manner to ensure that no unauthorized or prohibited materials are processed at the facility.

c. Commenters are concerned that the facility will create nuisance odors. The material authorized to be accepted (i.e., grease trap waste, septage, municipal sludge, and dead animals) all have unpleasant odors. The Applicant's description of odor control measures in the application is insufficient.

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

e. Commenters submit that the application does not provide for appropriate surface water protection. The proposed operations at Micro Dirt, Inc. will cause the discharge of material or the pollution of surface water in violation of applicable TCEQ rules. The lack of erosion control and vegetative cover will cause excess sediment pollution, through erosion, and surface water contamination.

f. Commenters submit that the groundwater monitoring wells proposed for the facility are inadequate to detect groundwater contamination.

g. Commenters submit that Micro Dirt, Inc. d/b/a Texas Organic Recovery has a poor compliance history which is not reflected in the Compliance History Report. A notice of violation was issued April 27, 2005 for violation of the Site Operating Plan. Another notice of violation was issued based on an investigation on May 8, 2006 for failure to prevent a discharge of material to or the pollution of surface water or groundwater in accordance with the Texas Water Code. A notice of enforcement was issued to Texas Organic Recovery on December 4, 2008, based on an investigation on August 8, 2008 where the TCEQ documented that Texas Organic Recovery accepted approximately 123 loads of grease trap waste between July 15, 2008 and August 8, 2008 without the proper authorization to compost grease trap waste. The TCEQ is currently seeking approximately $140,000 in penalties for the unauthorized receipt of grease trap waste after Texas Organic Recovery's permit application to compost grease trap waste was denied in 2008. The matter is set for an evidentiary hearing at SOAH in February 2011.

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i. Commenters submit that the proposed operations of Micro Dirt, Inc. do not comply with TCEQ rules to protect groundwater.

j. Commenters submit that Micro Dirt, Inc.'s proposed operations will not comply with end product testing and standards.

k. Commenters submit that the Subsurface Investigation Report and Groundwater Investigation Report in the Micro Dirt, Inc. application are flawed and not in accordance with TCEQ regulations.

l. Commenters submit that the proposed operations at the facility will attract vectors and there is inadequate vector control.

m. Commenters submit the application of Micro Dirt, Inc. does not include provisions for adequate fire protection.

n. Commenters submit the amount of closure financial assurance proposed is insufficient.

2. Request to Be Added to Mailing List for Application of Micro Dirt, Inc. for TCEQ Proposed MSW Permit No. 2361

The following Commenters wish to be added to the above-referenced mailing list.

Mr. H. Philip Whitworth, Jr.
c/o Scott, Douglass & McConnico, L.L.P.
600 Congress Ave., Suite 1500
Austin, TX 78701-3234

Ms. Ann Whitworth Messer
7700 Nolan Bluff Rd.
Belton, TX 76513

Ms. Julie Moore
502 Spiller Ln.
Austin, TX 78746

Ms. Juli Phillips
7800 Williamson Rd.
Kyle, TX 78640

*Thomson Family Limited Partnership
c/o Mr. M. D. Thomson
7409 S. Congress Ave.
Austin, TX 78745

Joe and Dorothy Gunn
6507 Williamson Rd.
Creedmoor, TX 78610

Jay and Corinna Gunn
141 Wildhorse Creek
Buda, TX 78610

**Mr. J. D. Head
Fritz, Byrne, Head & Harrison, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701

All of the above-referenced Commenters either own property or reside within the one mile radius of the Micro Dirt, Inc. facility on Goforth Road in Creedmoor, Texas as delineated on land use maps in the application for TCEQ MSW Permit No. 2361.

3. Request for Public Meeting

The Commenters request a public meeting on the application of Micro Dirt, Inc. for proposed MSW Permit No. 2361.

---

* Already on mailing list.

** Attorney for Commentors.

4. Commenters, pursuant to 30 T.A.C. § 55.201(a), reserve the right to request a contested case hearing within thirty (30) days after receipt of the Executive Director's written Response to Comments.

Respectfully submitted this 2nd day of December, 2010.

FRITZ, BYRNE, HEAD & HARRISON, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701
TEL: 512/476-2020
FAX: 512/477-5267

By:_____
J. D. Head
State Bar No. 09322400

ATTORNEY FOR COMMENTERS H. PHILIP WHITWORTH, JR., ANN WHITWORTH MESSER, JULIE MOORE, JULI PHILLIPS, M. D. THOMSON (THOMSON FAMILY LIMITED PARTNERSHIP), JOE GUNN, DOROTHY GUNN, JAY GUNN and CORINNA GUNN

TCEQ Public Meeting Form

September 2, 2010

Micro Dirt, Inc. dba Texas Organic Recovery
Proposed MSW Registration No. 43024 and Permit No. 2361

PLEASE PRINT

Name: Bob Renbarger

Mailing Address: 98 San Jacinto Blvd, Ste 2000

Physical Address (if different): _____

City/State: Austin, TX **Zip:** 78701

****This information is *subject to public disclosure under the Texas Public Information Act*****

Email: _____

Phone Number: (512) 476-2020

- Are you here today representing a municipality, legislator, agency, or group? ☑ Yes ☐ No

  If yes, which one? landowners

☑ **Please add me to the mailing list for Registration 43024.**

☑ **Please add me to the mailing list for Permit 2361.**

☑ **I wish to provide formal *ORAL COMMENTS* for Registration 43024.** ✓ (1)

☑ **I wish to provide formal *ORAL COMMENTS* for Permit 2361.** ✓ (1)

☐ **I wish to provide formal *WRITTEN COMMENTS* for Registration 43024.**

☐ **I wish to provide formal *WRITTEN COMMENTS* for Permit 2361.**

Please give this form to the person at the information table. Thank you.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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MW

OPA RECEIVED
AUG 02 2010
AT PUBLIC MEETING

MICRO DIRT, INC. D/B/A TEXAS ORGANIC RECOVERY

APPLICATION FOR A NEW MUNICIPAL SOLID WASTE GREASE TRAP WASTE PROCESSING FACILITY REGISTRATION NO. 43024
AND
AN APPLICATION FOR NEW MUNICIPAL SOLID WASTE PERMIT NO. 2361

CONTACT INFORMATION FOR HEARING REQUESTS

✓ Ms. Julie W. Moore
c/o Occidental Petroleum Corporation
604 West 14th
Austin, TX 78701

✓ Ms. Ann Messer
7700 Nolan Bluff Rd.
Belton, TX 76513

✓ Mr. H. Philip Whitworth, Jr.
Scott, Douglass & McConnico, L.L.P.
600 Congress Ave., Suite 1500
Austin, TX 78701-3234

✓ Ms. Juli Phillips
7800 Williamson Rd.
Kyle, TX 78640

✓ Mr. M. D. Thomson
(Thomson Family Limited Partnership)
7409 S. Congress Ave.
Austin, TX 78745

On behalf of my clients, please add these names for all future mailings on both applications.

Bob Rentz
Attorney for the named persons on this list

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2010 SEP -9 PM 3:27
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