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January 10, 2011

Ms. LaDonna Castañuela
Office of the Chief Clerk
Texas Commission on Environmental Quality
PO Box 13087, MC-105
Austin, Texas 78711-3087
(512) 239-3311 (FAX)

via facsimile transmission and deposit in the U.S. mail

Re: Motion to Overturn Executive Director's October 28, 2010 decision regarding the scrap tire permit issued to Genan, Inc.; Registration No. 6200673; TCEQ Docket No. 2010-1886-MIS.

Dear Ms. Castañuela:

Please find enclosed for filing, Citizens for Responsible Recycling's Reply to Responses to Motion for Rehearing and/or Motion to Overturn regarding issuance of Scrap Tire Storage Facility Registration No. 6200673 to Genan, Inc. An original and seven copies have also been deposited in the U.S. mail for filing.

Thank you for your attention to this matter.

Sincerely,

Marisa Perales

Marisa Perales

Enclosure

cc: Service List

IN THE MATTER OF THE APPLICATION OF GENAN, INC. FOR SCRAP TIRE STORAGE FACILITY REGISTRATION NO. 6200673	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CRR'S REPLY TO RESPONSES TO MOTION FOR REHEARING AND/OR MOTION TO OVERTURN REGARDING ISSUANCE OF SCRAP TIRE STORAGE FACILITY REGISTRATION NO. 6200673 TO GENAN, INC.

TO THE HONORABLE TCEQ COMMISSIONERS:

Citizens for Responsible Recycling ("Movant" or "CRR") submits this Reply to the Responses to its Motion for Rehearing and/or Motion to Overturn the Executive Director's October 28, 2010 decision to issue Tire Registration No. 6200673 to Genan, Inc. for a scrap tire storage facility. Movant CRR respectfully requests that its Motion be granted, and for support, offers the following:

I. INTRODUCTION

A review of the Commission's website reveals that only the Executive Director ("ED") and the Office of Public Interest Counsel ("OPIC") timely submitted Responses to CRR's Motion. The Executive Director recommended denial of the Motion, while OPIC recommended granting the Motion to allow Genan an opportunity to provide proper notice.

CRR will reply to the responses below.[1]

[1] Although TCEQ's website does not reflect that Genan submitted a response to CRR's motion, Genan did mail a copy of a response to counsel for CRR. Many of the arguments included in its response are similar or identical to those made by the ED.

II. CRR HAS STANDING TO CHALLENGE THE LICENSE

The ED argues that CRR has not shown it has standing to challenge the license because it has not identified a member of the organization with a justiciable interest.

CRR has at least one member who resides within about a mile from the proposed facility and who runs a school within half-a-mile of the proposed facility. Pastor Charlie Tutt resides at 16831 Burton St.[2] and runs a school at 17522 Beaumont Highway.[3] Pastor Charlie, as he is affectionately known, is the Executive Director of the Triple E Workshop—a non-profit workshop that contracts with school districts, such as Sheldon Independent School District, and provides teaching services to students with disabilities over the age of 16. The workshop teaches the students employment skills and workplace behavior, with the goal of assisting the students in finding employment upon completion of the program. The Triple E Workshop has been at this same location for about 6 years.

Although the Workshop is not directly adjacent to the proposed facility, it is quite close to the proposed facility, and there are no significant obstructions between the Workshop and the proposed facility.

Pastor Charlie has several concerns regarding the proposed facility—concerns related to how the facility will impact his work, his Workshop, and his students. First, Pastor Charlie is concerned about impacts the facility will have on surface water drainage. Over the years, Pastor Charlie has witnessed several rain events that have

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[2] *See* Attachment A.

[3] *See* Attachment B.

created drainage problems in the area. When these rain events occur, they result in drainage problems on the roads near the proposed facility as well as on the San Jacinto River, which is about one-half-mile from the facility.

Moreover, Pastor Charlie often travels to the nearby town of Crosby, as it is the closest town to his home and Workshop and much easier to access than Houston. Pastor Charlie travels to Crosby for shopping, lunch, coffee, purchasing supplies, among other activities. In order to reach Crosby, Pastor Charlie must travel on Old Highway 90, which is adjacent to the proposed facility. This highway already has a history of poor drainage whenever there is a somewhat significant rain event. Sometimes, the highway is inaccessible because of poor drainage. Pastor Charlie is concerned that the proposed facility will exacerbate this problem, particularly since Genan's application does not thoroughly address the drainage issues.

Pastor Charlie has other concerns as well. He is also concerned about impacts to water quality and air quality. In particular, he is concerned about the constituents that are likely to be found in the run-off—constituents that are common in these types of tire facilities. For instance, run-off from tire facilities is often full of iron, has a high carbon content, as well as cadmium and asbestos. The processing of the tires may also result in emissions that will negatively impact the air quality.

Pastor Charlie's students are sensitive to chemical constituents; many suffer from asthma, for instance. Indeed, Sheldon ISD changed its cleaning product supplies to ensure that they are all fragrance-free and "green," in an effort to minimize any adverse effects the products might have on Pastor Charlie's students. Pastor Charlie's school is

downwind from the proposed facility. Thus, he and his students will be impacted by the proposed facility.

Fires are also a significant concern of Pastor Charlie's. Pastor Charlie's Workshop is close enough to the proposed facility that if a fire should occur, he and his students will need to evacuate. There is no way to put out a fire involving whole tires. Water is not effective. And so, if the tires catch fire, the operator will have no choice but to let it burn. This could go on for days or even weeks. And the fire would result in adverse air quality impacts.

Pastor Charlie is also concerned about impacts to his property value. His home is just outside a sub-division known as Sheldon Woods that consists of about 450 homes. A new tire facility, with impacts to surface water drainage, water quality, and air quality, will reduce the value of his property.

For the foregoing reasons, Pastor Charlie is an individual who has a justiciable interest in the issuance of this license; his interests are not common to the general public. He has standing to challenge the ED's decision to issue Genan a license.

III. FAILURE TO COMPLY WITH NOTICE REQUIREMENTS

The ED's response to this issue is two-fold. First, the ED argues that the application was never "returned" to Genan, and so, there was no need for new notice when Genan submitted its original revised application. Second, the ED argues that Genan made no major changes to the substantive technical requirements initially included in the application, and thus, no new notice was required. But neither of these arguments are supported by the application documents and correspondence in the TCEQ files.

By letter dated February 26, 2010, Mr. Samuel L. Barrett, Waste Section Manager for the DFW Region Office, sent a letter to Genan, advising that Genan's application was incomplete and returning the original application and attachments to allow Genan "to submit an application that is complete." Although the ED may characterize this letter as a notice of deficiency, it is clear from this letter that Genan had not even filed a complete application at the time it published notice. Significant pieces of information were either missing from the application or were so deficient that they were useless.[4] Genan should not be allowed to essentially submit a few pieces of paper that utterly fail to address TCEQ's requirements and then maintain that its "application" is available for public review and input. What was available for public review and input at the time that Genan published notice of its application was not an "application." It was more akin to a conceptual plan for putting together an application. It should thus have re-published notice once it had submitted a complete application and advised the public that the application—one that included engineer's seals and usable maps—was available for public review.

In addition, contrary to the ED's arguments, the revised application indeed included major changes to substantive technical requirements. In some instances, Genan had not even addressed some of the technical requirements in its initial application. So,

[4] For instance, one of TCEQ's comments in its notice of deficiency was that Genan had not provided a landownership map demonstrating the location of affected owners within 500 feet of the boundary of the site that had been certified by a professional engineer—one of the most basic application requirements.

the revised application included new pieces of information that had not been available in the initial application.

One of the most basic pieces of information required by TCEQ's rules is a general location map. TCEQ states that location maps shall be all or a portion of county maps prepared by TxDOT. At least one general location map shall be at a scale of one-half inch equals one mile. And they should include a North arrow. In its initial application, Genan included a single location map. But this map did not bear any sort of engineer's seal, did not reference TxDOT as its source, did not include a scale of one-half inch equals one mile, and did not include a North arrow. It did not even include a date; so one could not tell how current the map was.

Similarly, TCEQ's rules require a topographic map. The topographic map included with Genan's application again included no engineer's seal. The proposed facility was drawn onto the map, but it was not clear who drew the facility onto the map. Again, the map included no North arrow.

Yet another example of the deficient information included in the application was the Site Layout Plan. TCEQ's rules require that the Plan include the location of buildings and the location and description of processing equipment. And it must be signed and dated by the fire marshal. But the Site Layout Plan included in the initial application bore the disclaimer: "Approval is for tire storage layout and site plan concept only, *not buildings or stuructors are approved at this time.*"

Nearby residents, such as Pastor Charlie, are particularly concerned about the potential for fires at this facility. Yet, in the initial application, the Fire Plan failed to

include basic information required by the rules. For instance, it did not include letters from the various emergency response entities, acknowledging receipt of a copy of the Fire Plan and agreement to participate. And the map, depicting various emergency response entities did not show the best route for the emergency response teams to take to the site location.

The above are but a few examples of the serious deficiencies in Genan's initial application. When an application does not even include an adequate general location map, site layout plan, or information about emergency response, it deprives the public of the very information that it needs to meaningfully review the application, consider the impacts it may have on the surrounding community, and submit comments to assist in addressing those concerns. Thus, Genan's initial submission was not really an "application," as TCEQ's rules contemplate. Subsequent revisions to it were indeed substantial, as significant information was missing from Genan's initial application. And thus, the public should have been alerted with proper notice when Genan finally submitted an application that at least attempted to address all of the requirements in TCEQ's rules.

IV.INADEQUATE INFORMATION IN DRAINAGE PLAN

Attached herewith is an expert report from Lawrence Dunbar, P.E., outlining the deficiencies in the Detention Pond Study and drainage plan, to the extent there is a drainage plan included in the application. Below is some background regarding the information relied upon by Mr. Dunbar and by CRR.

Genan's revised application did not include a drainage plan or detention pond study. The "drainage plan" relied on by Genan, and presumably by the ED, consisted of a figure that only very generally showed directions of surface water flow. But it consisted of no useful drainage information, such as discharge points or peak flow rates.

CRR submitted comments regarding the revised application and pointed out that no drainage plan was included in the application. Genan submitted to the ED a letter responding to CRR's comments, and stated that a detention pond study would be provided to CRR upon request. So, CRR requested the detention pond study, and it was provided, but it did not include many of the attachments and exhibits referenced in that study. Presumably, this study had not been provided to the ED along with the revised application, as the study bears a stamp indicating that the DFW Region received the study on October 14, 2010—after CRR requested it. Genan presumably did not consider the detention pond study (or a drainage plan) an essential element of the application.

This detention pond study indicates that it was revised in February 2010. But the engineer's seal bears the date "10/19/09." So, it is unclear who prepared the revisions to the detention pond study. What is clear is that no engineer is claiming responsibility for the representations in the revised study.

Finally, it is worth noting that contrary to Genan's representations to the ED, Genan did *not* obtain approval of its drainage plan from the Harris County Flood Control District. This is reflected in Attachment 29 of the application and in subsequent correspondence between the District and Genan.

Additional comments are included in Mr. Dunbar's report, which are incorporated herein.

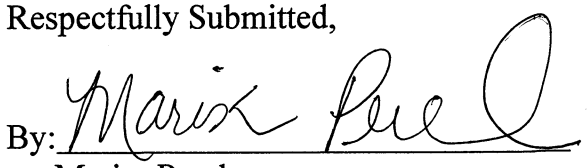
V. NONCOMPLIANCE WITH FINANCIAL ASSURANCE REQUIREMENTS

The Financial Assurance information is deficient. For example, the closure cost estimate documents are sealed by two different engineers—one on each page. The financial assurance mechanism does not comply with TCEQ's rules. For instance, the irrevocable standby letter of credit is not accompanied by a letter from the facility owner or operator, as required by Chapter 37 of TCEQ's rules. And the irrevocable letter of credit does not include the title of the official who issued the letter of credit, nor the date of signature. The Certificate of Insurance also fails to comply with Chapter 37 of TCEQ's rules, as does the Dunn & Bradstreet Report. The ED should therefore have denied the application for failure to include adequate financial assurance information.

VI. CONCLUSION & PRAYER

For the reasons set forth above and in CRR's motion for rehearing and/or motion to overturn, it was improper for the ED to issue Scrap Tire Storage Facility Registration No. 6200673 to Genan, Inc. because the Applicant failed to comply with a number of TCEQ's regulatory requirements. The Commission should therefore overturn the ED's decision. Genan should be required to submit a new, complete application, with all of the required information, and provide new notice, advising the public of the new application submittal.

Respectfully Submitted,

By: 
Marisa Perales

LOWERRE, FREDERICK, PERALES, ALLMON & ROCKWELL
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Phone: (512) 469-6000
Facsimile: (512) 482-9346

CERTIFICATE OF SERVICE

By my signature, below, I hereby certify that on January 10, 2011, the forgoing document was electronically filed with the Chief Clerk of the TCEQ. The original and seven copies were also filed with the Chief Clerk via deposit in the United States Mail. True and correct copies were served upon all parties listed below via hand delivery, facsimile transmission, email, and/or by deposit in the United States Mail.

Marisa Perales

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Mr. Bob Renbarger
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Attachment A

Google Earth

File Edit View Tools Add Help

Search

Fly To | Find Businesses | Directions

From e.g., SYR

18038 Beaumont Highway, Harris County, Texas

To e.g., Chadwicks, NY

17522 Beaumont Highway, Harris County, Texas

18038 Beaumont Hwy, Houston, TX 77049 to 17522 Be
Printable view

Head southwest on US-90 BUS W toward Vrana Rd
go 0.5 mi

Arrive at: 17522 Beaumont Hwy, Houston, TX 7704

Route
Distance: 0.5 mi (about 46 secs)
Map data ©2010 Google

18038 Beaumont Hwy, Houston, TX 77049 to 16832 Bu
Printable view

18038 Beaumont Hwy, Houston, TX 77049 to 17522 Be
Printable view

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Attachment B

Google Earth

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Search

Fly To | Find Businesses | Directions

From e.g., SYR

18038 Beaumont Highway, Harris County, Texas

To e.g., Chadwicks, NY

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Printable view

Places

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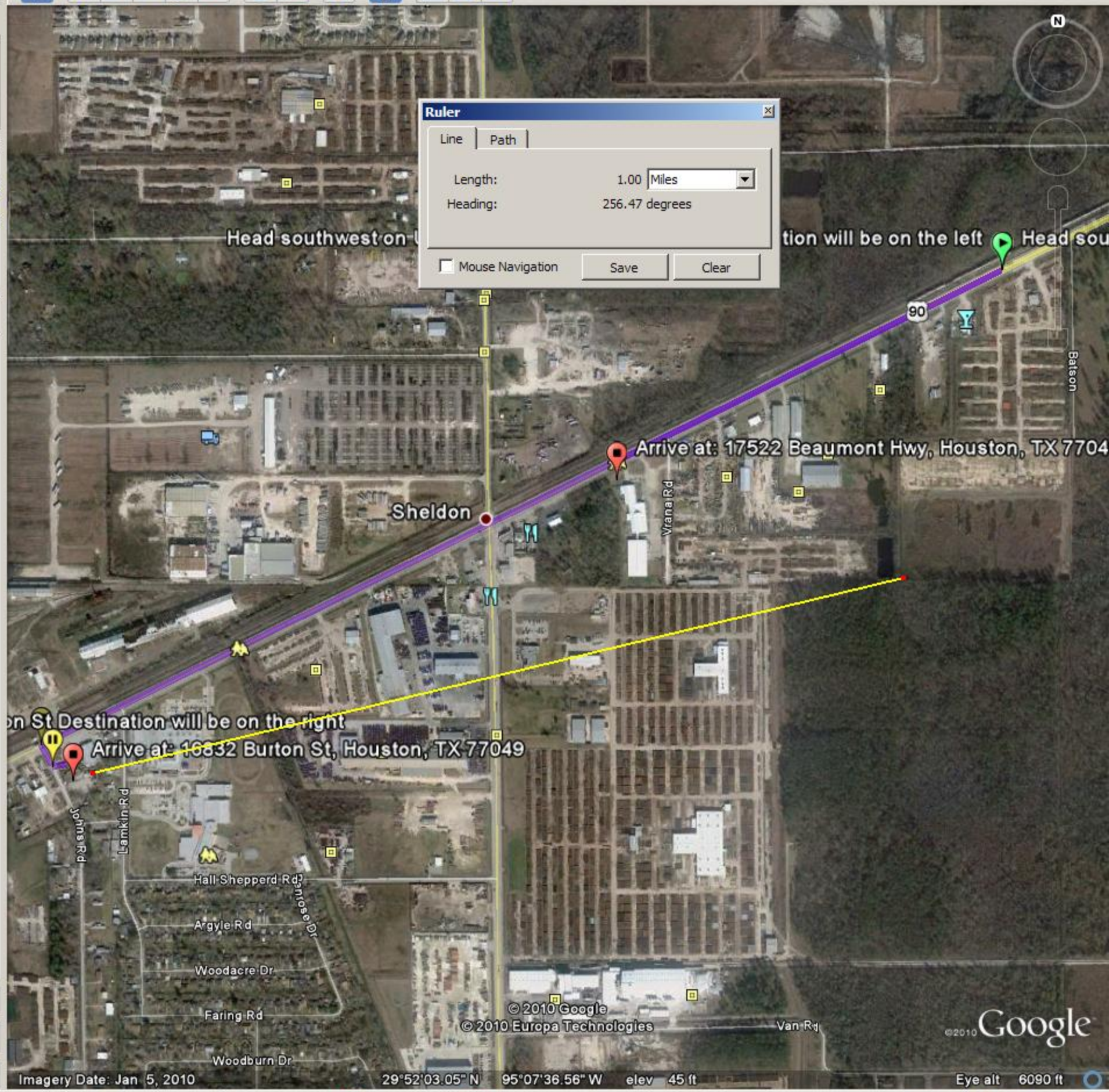

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Attachment C

LAWRENCE G. DUNBAR, P.E.
WATER RESOURCES & ENVIRONMENTAL ENGINEER/CONSULTANT
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Ms. Marisa Perales January 10, 2011
LOWERRE, FREDERICK, PERALES,
ALLMON & ROCKWELL
707 Rio Grande, Ste. 200
Austin, TX 78701

Re: Expert Report on the Application of Genan, Inc. for Scrap Tire Storage Facility Registration No. 6200673

Dear Ms. Perales:

As requested, I have reviewed some of the information regarding the above-referenced matter and provide the following Expert Report summarizing my comments and opinions regarding drainage issues associated with the referenced application:

EXPERT REPORT

I. Documents reviewed

In reaching the opinions and comments that I have expressed herein, I primarily reviewed pertinent portions of the following documents:

- The Application submitted in September 2010 by Genan, Inc. for Scrap Tire Storage Facility Registration No. 6200673; and
- The (incomplete) Detention Pond Study dated October 2009, revised February 2010, prepared by Provident Engineers, Inc. for Genan, Inc.

II. Summary of Opinions

Having reviewed the aforementioned documents, the following is a summary of my opinions:

A. The application does not include a drainage analysis;

B. The Detention Pond Study demonstrates that peak flow rates will be significantly altered as a result of this proposed facility;

C. The Detention Pond Study lacks pertinent information;

D. Neither the Application nor the Detention Pond Study adequately describes how the detention pond will effectively serve as a wet pond for fire fighting and a detention pond to address the increase in peak flow rates;

E. The revised Detention Pond Study was not signed or sealed by a professional engineer; and

F. The application misrepresents that it contains an approval letter for the proposed project from the Harris County Flood Control District.

III. Discussion of Opinions

A. The Application does not include a drainage analysis.

Section 328.60(b)(10)(B) of the Commission rules requires a drainage plan showing drainage flow throughout the scrap tire storage site area and calculations showing that normal drainage patterns will not be significantly altered. Moreover, that rule provides that if the executive director determines that significant alteration will occur, the owner/operator shall design and provide additional surface water drainage controls, which shall be designed and provided to mitigate the effects of the altered watershed.

Genan's application does not include a drainage plan with calculations showing whether drainage patterns will be significantly altered. And although an "excavation and fill overall" figure was included in the application, presumably to show how drainage will flow throughout the scrap tire storage site area, it does not clearly show how surface water will be routed off the site and into the detention

pond. It also fails to show where the outfall from the detention pond will be located, and how the outflow from the pond will get into the roadside ditch. It also does not reveal how the detention pond is designed to mitigate the effects to the altered watershed.

In sum, the materials included in the Genan Application do not comply with TCEQ's requirements. There is simply no information regarding normal drainage patterns, how those drainage patterns will be altered as a result of the proposed facility, and whether such alterations will have adverse impacts off-site.

B. The "Detention Pond Study" demonstrates that peak flow rates will be significantly altered as a result of this proposed facility.

A separate document, entitled "Detention Pond Study", does not appear to have been included in the Application. Also, the copy provided to me appears to be incomplete, as it does not include all of the attachments/exhibits referenced in the Study.

A review of this Study reveals that the existing/normal drainage patterns were not identified or shown for the 40-acre project site, such that it is impossible to determine if they will be significantly altered by the proposed facility. The only calculations included in the Study relate to the peak flow rate, and show that for the "10-Year **Pre**-Development Condition" the peak flow rate is 41.94 cfs, as compared to the "10-Year **Post**-Development Condition" shown as 124.82 cfs. Likewise, the "100-Year **Pre**-Development Condition" has a peak flow rate shown as 69.20 cfs, while the "100-Year **Post**-Development Condition" has a rate reported as 187.49 cfs. I have not verified these numbers, as the referenced Exhibits were not included in the Detention Pond Study. However, this study does not explain where these peak flow rates being reported are leaving the site, both under pre-development conditions as well as post-development conditions, nor whether there are more than one discharge point since only one peak flow rate is being calculated for the entire 40-acre site. Also, these peak flow rates are simply

being calculated for a typical 40-acre site, using standard runoff curves for Harris County as if the entire site drains to a common discharge point. Yet the topography of the site shows otherwise.

I also have no way of reviewing the total volume for each hydrograph used, as the referenced Exhibit 6, which purportedly includes a hydrograph calculating the total volume, is not in the Detention Pond Study I reviewed. I therefore cannot tell if the proposed facility will significantly alter the volumes of surface water runoff leaving the site, as compared to the volumes leaving the site in the existing/pre-development condition. It is expected, however, that runoff volumes will increase as a result of the proposed development.

Also, since the peak flow rates for undeveloped and developed acreage as provided in the Detention Pond Study are not tied to any particular drainage point, it is not possible to determine whether the proposed detention pond will adequately address and mitigate the increase in peak flow rates leaving the site at whatever discharge points exist currently.

C. The Detention Pond Study lacks pertinent information

The Detention Pond Study (revised Feb. 2010) that I reviewed does not include any of the referenced exhibits in order to determine if the study is adequate. For example, there is no map showing the existing drainage patterns to determine the direction of runoff throughout the site and where it leaves the site. Likewise, there is no map showing the proposed drainage patterns, to determine if and how the runoff will get into the proposed detention pond, and where the pond will discharge its water. For example, the revised report states that the pond will have two discharge points, one to the east and another to the west. Yet, the roadside ditch that is the ultimate discharge location for the runoff from this site is to the north, so it is unclear how the water to be pumped from the detention pond to the east and to the west will find its way to the northern roadside ditch.

The Study also does not provide the documentation of the runoff volumes for both pre- and post-development conditions in order to determine if there will be any significant alteration of this component of natural drainage patterns.

D. Neither the Application nor the Detention Pond Study adequately describes how the detention pond will effectively serve as a wet pond for fire fighting and a detention pond to address the increase in peak flow rates

The application states that the detention pond will serve as a source of water for fire-fighting purposes; however, a detention pond is to be emptied in a short period of time (usually within a day or two) so as to have the capacity to accept additional runoff in the event of a subsequent rain event. In the Detention Pond Study, it is stated that the pond will be emptied in 90 hours (although this calculation is incorrect, as discussed below). If this is true, then the pond will not have water in it for use in fire fighting. If the pond is not intended to be fully emptied, so as to leave enough water in it at all times for fire fighting, then where is the calculation showing that the pond will still have sufficient capacity to handle the runoff during a 100-year event?

The Detention Pond Study states that the Required Detention Volume needed is only 22.65 acre-feet; however, this was calculated using the Harris County criteria for a pond that would discharge directly into a HCFCD ditch. Since this is not the case here, the required detention volume is dependent on the capacity of the outlet system (i.e. the roadside ditch in this case). As such, the applicant contacted TxDOT and found that the discharge rate into the roadside ditch for Beaumont Highway was much less than the HCFCD would allow into one of its ditches. Thus, the "required detention volume" is actually much greater than the 22.65 acre-feet shown in the study; it is closer to about 40 acre-feet (which is what the applicant is proposing to provide). Given this larger "required detention volume" being about the same as is being proposed by the applicant,

then there is no additional volume capacity being provided to handle the water to be reserved for fire fighting.

E. The revised Detention Pond Study was not signed or sealed by a professional engineer.

The Detention Pond Study that was provided to me to review is dated October 2009, with a revision date of February 2010. The study shows it was signed and sealed by Michael Baldwin on October 20, 2009. However, there is no signature or seal associated with the revised report, as the revision is dated Feb. 2010 and there is no signature or seal purporting to reflect that date. Therefore, it is unclear as to who revised Mr. Baldwin's original report, and whether it was revised even by a professional engineer. This is of concern as there are numerous errors in the revised report without any professional engineer willing to take responsibility for it.

F. The application misrepresents that it contains an approval letter for the proposed project from the Harris County Flood Control District.

The applicant has stated that Attachment 29 contains an approval letter from the Harris County Flood Control District for the proposed project. However, a review of that letter dated Nov. 15, 2009 reveals that the District did NOT approve the project, but rather stated that its approval was not needed. Instead, the HCFCD referred the applicant to Harris County Permitting Department and/or the TxDOT for possible approvals that may need to be obtained. Therefore, there is no County approval of the proposed Detention Pond Study or drainage plan for this project. Also, the TxDOT letter dated Oct. 2010 that refers to the Detention Pond Study is also not an approval letter, but rather a letter of No Objection to the

proposed project, in part based on the representation by the applicant's engineer that the Study was signed and sealed by a professional engineer, as stated in the TxDOT letter. However, as discussed above, the revised report that I reviewed did not have a professional engineer's signature or seal on it for the report as revised dated Feb. 2010.

In addition, the proposed detention pond is intended to be emptied via a pump system. However, at the proposed maximum outflow rate of less than 4 cfs, it will take at least 5 days for the pond to be emptied, which is longer than Harris County criteria allows. The Detention Pond Study states that it will take only 90 hours to empty the pond, but this is not correct based on a maximum outflow rate of 4 cfs and a pond having 40 acre-feet of water in it.

The above comments and opinions are subject to reconsideration if new information is provided for my review.

Respectfully submitted,

Lawrence G. Dunbar, P.E.

01-10-11