

TCEQ DOCKET NO. 2010-2063-MSW

IN THE MATTER OF THE	§	BEFORE THE TEXAS
APPLICATION OF MICRO DIRT,	§	
INC. d/b/a/ TEXAS ORGANIC	§	COMMISSION ON
RECOVERY FOR REGISTRATION	§	
NO. 43024	§	ENVIRONMENTAL QUALITY

**RESPONSE OF MICRO DIRT, INC.
TO MOTION TO OVERTURN THE EXECUTIVE DIRECTOR'S APPROVAL
OF MICRO DIRT, INC.'S REGISTRATION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW Micro Dirt, Inc. ("Micro Dirt") and files this Response to the Motion to Overturn ("Motion") filed by the Thomson Family Limited Partnership, H. Phillip Whitworth, Jr., Ann Messer, and Julie Moore (the "Movants") in response to the Executive Director's November 22, 2010 approval of the above-referenced registration authorizing grease trap waste processing at Micro Dirt's Creedmoor facility. Micro Dirt requests that the Texas Commission on Environmental Quality ("TCEQ" or "Commission") deny the Motion and affirm the Executive Director's approval of the Registration, because this application satisfies all applicable legal requirements.

**I.
SUMMARY**

The Commission should deny the Movants' Motion to Overturn and Affirm the Executive Director's approval of the Registration No. 43024, because Micro Dirt's plan satisfies all applicable legal requirements.

1. The doctrine of Res Judicata does not bar the Executive Director or the Commission from issuing Registration No. 43024, because Registration No. 43024 does not allow Micro Dirt to compost grease trap waste at the facility. The prior Commission action that Movants refer, the Commission's denial of a permit, relates to a prior application to compost grease trap waste.

2. Micro Dirt's application did not contain any "false and misleading statement" regarding an in situ liner. Most important, for a system that uses storage tanks for waste, a liner is not required under Commission rules.
3. Micro Dirt's application included the necessary financial assurance for Micro Dirt's new process. More important, the Executive Director included the requirement for financial assurance in the registration.
4. Movants' argument regarding any pending enforcement action against Micro Dirt is premature. Micro Dirt has denied the allegations raised in the Notice of Enforcement ("NOE"), and due process requires that Micro Dirt have a full and adequate opportunity to respond to the NOE and the Executive Director's allegation. Denying an application on mere allegations would force the Commission to consider the merits of an enforcement case for which no administrative record has been developed, inconsistent with applicable law and the Commission's typical practice.
5. Micro Dirt's application includes provisions for holding all waste in storage tanks. Under the Commission's rules, storage tank facilities are not required to provide a liner. More important, there is not any Commission rule that requires a tank system to line the ground beneath the tanks. Finally, the Commission previously approved the liner at the facility as part of its approval of the existing registration.
6. The Commission should not be swayed by Movants attempt to confuse the Commission about the process authorized under this registration. This registration does NOT authorize Micro Dirt to compost grease trap waste. Micro Dirt has not requested authority to compost under this registration, and the Registration No. 43024 does not authorize Micro Dirt to compost grease trap waste.
7. Micro Dirt's registration application provides a clear description of the amount of water available under pressure for firefighting. Movants claim that there is not any evidence of an adequate supply of water under pressure for firefighting is simply unsubstantiated.
8. Under the current design, Micro Dirt has proposed engineering controls well beyond the minimum requirements set out in the Commission's rules.
9. The evidence clearly shows that the Executive Director made his decision after careful review of the Commission's rules and the requirements of Chapter 361. Movants fail to point to any evidence that the Executive Director acted arbitrarily and capriciously.

For these reasons, Micro Dirt requests that the Commission deny the Movants' Motion to

Overturn and affirm the Executive Director's approval of Registration No. 43024. Micro Dirt's registration application satisfies all applicable legal requirements.

II. GENERAL BACKGROUND

This matter concerns the application of Micro Dirt for authorization to add a new process to its existing grease trap processing facility located at 15500 Goforth Road, Creedmoor, Texas, which Micro Dirt submitted for review and approval on or around August 7, 2009. Micro Dirt is the operator of an existing grease trap process facility authorized by the Commission under Registration No. 42016. Micro Dirt also composts other waste materials at the same site under this existing registration. These operations have existed at this site since later 1998, when the Commission, then the Texas Natural Resource Conservation Commission, issued the existing registration. Micro Dirt's existing registration, Registration No. 42016, authorizes Micro Dirt to store, process, and accept wastes from grease traps, municipal sludge, septage, paper, vegetative matter, brush, and wood as well as waste from yards. This new registration, Registration No. 43024, allows Micro Dirt to add a new process for treating grease trap waste. Despite Movants' claims otherwise, **neither registration authorizes the composting of grease trap waste**, which would require a separate application for a permit.

Micro Dirt has sought and received various authorizations to operate this waste recycling facility since 1998, including the existing registration (Registration No. 42016), the registration at issue in this matter (Registration No. 43024), as well as a new permit recently proposed by the Executive Director to authorize composting of grease trap waste (Proposed Permit No. 2361).

Micro Dirt is proposing to add a new grease trap process to the existing authorization to process grease trap waste at the waste recycling facility. Under this new process, 7,500-gallon vacuum trucks will transport the grease trap waste to the site. The pumping unit on the truck will pump the grease trap waste into a separation and processing tank. As part of the separation process, the fats, oils, and grease will rise to the top of the separation and processing tank. Remaining water and vegetative, organic, and other wastes settles to the lower portion of the tank. After removal of the recoverable oils and grease, the remaining material is removed from the separation processing tank and transported to the three-section screening unit, which separates the solids from the remaining water. Micro Dirt transports the separated screened solid waste to an authorized MSW facility for disposal. Once the grease layer in the separation processing tank has achieved adequate quantity for final processing, a vacuum truck evacuates the grease layer from the separation tank and transports this material to the heat processing tank. The heat processing tank utilizes heat to melt the grease and further separate the grease and water layers. The grease layer is decanted off the top of this tank and pumped into a contained haul truck for transport to an oil recycling facility or for final disposal at an authorized MSW facility. The water portion returns to the separation processing tanks for further processing.

Micro Dirt is **NOT** proposing to compost grease trap waste under this new registration, which is the type of activity for which the Legislature now requires the Commission to issue a permit. Instead, Micro Dirt is merely proposing to expand its existing authorization to process and recycle grease trap waste. Nevertheless, Micro Dirt filed a registration application in an abundance of caution to ensure the Commission

authorized this new process. TCEQ staff applied the rules to this unique set of circumstances as they have in other cases. Despite that, Movants insist on a strained and contorted reading of the rules and a continuing misrepresentation of the facts.

Unlike the prior application for Permit No. 2320, Micro Dirt is **NOT** proposing to compost grease trap waste under this new registration. At the Micro Dirt site, previously authorized under the 1998 registration, Micro Dirt is already authorized 1) to compost municipal sewer sludge, septage, paper, vegetative waste matter, brush, wood, and yard waste and 2) to store, process, and accept grease trap waste.

Micro Dirt is **NOT** proposing to compost grease trap waste under this registration.

III. RESPONSE TO ISSUES RAISED BY MOVANTS

Throughout the Factual and Procedural Background section of their Motion, Movants make misrepresentations regarding the Micro Dirt operations and facilities, the Commission's authorization under the existing registration and new registration, and the requirements that an applicant must meet under the Commission's rules. For example, in paragraph 11, Movants erroneously claim that Micro Dirt is not authorized to accept grit or grease trap waste, which is counter to the authorization in Micro Dirt's Registration No. 42016.

This Response is to the alleged Errors of the Executive Director that the Movants included in Section V of their Motion. The paragraph numbers below relate directly to the paragraph numbers that Movants included in their Motion regarding the alleged errors of the Executive Director.

(19) Movants argue erroneously that the doctrine of Res Judicata bars the Commission from issuing Registration No. 43024, because Registration No. 43024 would allow Micro Dirt to compost grease trap waste at the facility for which the Commission previously denied a permit.

As stated previously, Micro Dirt does not propose to compost grease trap waste under this registration. Instead, page 1 of this registration states clearly that Micro Dirt may only store, transfer, process, and recover or recycle material from grease trap waste in accordance with the limitations, requirements, and other conditions set out in the registration. Throughout their Motion to Overturn, the Movants attempt to confuse or misdirect the Commission by claiming that the registration authorizes Micro Dirt to compost grease trap waste.

The doctrine of *res judicata* bars a party from attempting to re-litigate a claim or cause of action that a competent tribunal has finally adjudicated.¹ For *res judicata* to apply, the following elements must be present: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) the same parties or those in privity with them; and (3) a second action based on the same claims as the parties raised or could have been raised in the first action.² Certainly in courts of law, a claimant generally cannot pursue one remedy to an unfavorable conclusion and then pursue the same remedy in another proceeding before the same or a different tribunal. *Res judicata* bars the re-litigation of claims that the tribunal has adjudicated to finality or that the parties could have litigated in the prior action.³

The application for this registration is different from the previous application, which asked the Commission to authorize the continued composting of grease trap waste.

¹ *Ingersoll-Rand Co. v. Valero Energy Corp.*, 997 S.W.2d 203, 206 (Tex. 1999).

² *Igal v. Brightstar Info. Tech. Group, Inc.*, 250 S.W.3d 78, 86 (Tex. 2008).

³ *See Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 628 (Tex. 1992).

This application asks the Commission to authorize Micro Dirt to store, transfer, process, and recover or recycle material from grease trap waste, but does not request authorization to compost grease trap waste. The prior application for a permit requested authorization to compost grease trap waste. Clearly, these two applications are not requesting the same authorization from the Commission, and the doctrine of *res judicata* does not apply.

(20) Movants argue erroneously that the Commission should reconsider the Executive Director’s approval of the registration due to the application containing a “false and misleading statement” regarding an *in situ* liner, ignoring the fact that a liner is not required under the Commission’s rules.

Movants’ arguments on this point reflect their general confusion or lack of understanding of general engineering principles and the Commission’s rules, specifically as those principles relate to grease trap processing facilities. Logically, the Commission’s rules do not require a liner for a processing facility that uses tanks for storage and processing, as Micro Dirt never places the grease trap waste upon the ground. As stated above, Micro Dirt pumps the grease trap waste from the vacuum trucks directly into **TANKS**, which store the grease trap waste. Specifically, Section 330.207 (b) of the Commission’s rules states, “[c]ontaminated water and leachate shall be collected and contained until properly managed. Collection units **other than storage tanks** shall have a clay or synthetic liner. ...”⁴ On page 4 of the registration, the Commission authorizes Micro Dirt to store the grease trap waste in eight 18,000-gallon tanks.⁵

While not required, the Commission has previously found that the *in situ* liner meets the Commission’s liner requirements. Despite the Movants’ claims otherwise, the existing registration issued by the Commission included the following statement:

⁴ 30 TEX. ADMIN. CODE § 330.207(b)(emphasis added).

⁵⁵ See **Attachment A**, MICRO DIRT, INC. DBA TEXAS ORGANIC RECOVERY, TCEQ MSW Registration No. 43204, issued November 22, 2010 (hereinafter NEW REGISTRATION), at p. 4

Results of test conducted by HBC Engineering, Inc. on the pond liner and on soils underlying the compost area verify that the existing site soils are adequately impermeable to prevent contamination of area groundwater.⁶

Table S of the Commission-issued registration includes the test results for the property,⁷ which demonstrate that the soil meets or exceeds the Commission's requirements for *in-situ* liners. Thus, after finding that the *in situ* liner met Commission requirements, the Commission issued the existing registration in December 1998.

(21) Movants argue erroneously that the Commission should reconsider the Executive Director's approval of the registration because the Commission failed to require financial assurance for Micro Dirt's new process.

Movants have clearly not reviewed the application. Micro Dirt has included a cost estimate for closure and post-closure costs for the new process in accordance with the Commission's rules. As shown in Attachment C, the total cost estimate for closure and post-closure care for the new process is \$10,000.⁸ In accordance with the Commission's rules, the Executive Director has included that Closure Financial Assurance amount in the new registration.⁹

Moreover, the application for the existing registration included its own closure and post-closure calculation, and Micro Dirt has provided the Commission with necessary financial assurance for that registration as well.

(22) Movants argue erroneously that the Commission should reconsider the Executive Director's approval of the registration because the Executive Director has brought a pending enforcement action against Micro Dirt.

The Motion puts Micro Dirt and the Commission in an untenable position, because the issue raised is part of a pending enforcement issue. Moreover, the

⁶ See **Attachment B**, TEXAS ORGANIC RECOVERY, TNRCC Registration No. 42016, issued December 4, 1998 (hereinafter EXISTING REGISTRATION), p. 14.

⁷ *Id.* p. 14, Exhibit S.

⁸ See **Attachment C**, Application for TCEQ MSW Registration No. 43204 (hereinafter Application), p. 43.

⁹ See **Attachment A**, NEW REGISTRATION, at p. 5.

Commission's rules require the Commission to consider a facility's compliance history when determining whether to grant an authorization,¹⁰ and the Commission may lower a facility's compliance history when the Executive Director issues a Notice of Violation.¹¹ Finally, Movants falsely state the allegation in their Motion. The Executive Director has alleged that Micro Dirt composted grease trap waste after the Commission denied the 2008 composting permit, not, as Movants' claim, that Micro Dirt improperly accepted grease trap waste.

While Micro Dirt generally denies the allegations raised in the Notice of Enforcement ("NOE"), due process requires that Micro Dirt have a full and adequate opportunity to respond to the NOE and the Executive Director's allegation. Most important, the Executive Director must prove his allegation. To short-circuit this standard process by forcing Micro Dirt to waive its rights and respond prematurely to the enforcement issues raised by the Motion violates basic notions of due process. Additionally, Movants are trying to force the Commission to consider the merits of an enforcement case for which SOAH has not developed any administrative record, inconsistent with applicable law and the Commission's typical practice.

Accordingly, Micro Dirt has carefully constructed its response to reply *only* to those issues that relate to the "permitting" portion of the registration and not the Movants' mischaracterized enforcement issues. Micro Dirt requests that the Commission view the Movants' Motion and Micro Dirt's Response in that light. The Commission

¹⁰ 30 TEX. ADMIN. CODE § 60.3.

¹¹ *Id.* § 60.1(c)(7).

should also consider the fact that Micro Dirt remains authorized to store, process, and accept grease trap waste under the existing registration.¹²

(23) Movants argue erroneously that the Commission acted arbitrarily and capriciously in issuing the registration because the Commission allegedly determined that the facility does not have a liner that is protective of groundwater.

This issue is a repeat of the allegations made above in paragraph 20 of the Motion, simply repackaged by the Movants. Again, there is not any Commission rule that requires a tank system to line the ground beneath the tanks. As this registration is for processing grease trap waste, the issues raised in the prior permit to compost grease trap waste are not applicable. Finally, as discussed above, the Commission previously approved the liner at the facility as part of its approval of the existing registration.¹³

(24) Movants argue erroneously that the Commission should reconsider the Executive Director's approval of the registration because the registration did not include "specifications for processed material to meet before it could be composted under a registration."

Movants are attempting to confuse the Commission on this point and rehash arguments from the prior permitting case regarding composting. Again, as previously stated, this registration does **NOT** authorize Micro Dirt to compost grease trap waste. Under a separate permit application, Proposed Permit No. 2361, Micro Dirt is requesting authorization to compost grease trap waste, but not under this registration. Micro Dirt has not requested authority to compost under this registration, and the Registration No. 43024 does not authorize Micro Dirt to compost grease trap waste.

(25) Movants argue erroneously that the Commission erred in the application because there is not any evidence of an adequate supply of water under pressure for firefighting in the retention pond.

¹² See Attachment B, EXISTING REGISTRATION.

¹³ See Attachment B, EXISTING REGISTRATION, p. 14 & p. 14, Exhibit S.

Micro Dirt's registration application provides a clear description of the amount of water available under pressure for firefighting. As shown in Figure 9 of the SWPP in the Application, the retention pond's base, or lowest, volume of water is 100,352 cubic feet of water, or over 750,000 gallons of water.¹⁴ Even at 100 gpm, that is more than sufficient water to fight a fire for over **FIVE** days. Given the information included in the registration application, the Movants claim that there is not any evidence of an adequate supply of water under pressure for firefighting is simply ridiculous.

(26) Movants argue erroneously that the Commission erred in approving the application because there are insufficient engineering controls to contain a worst case spill.

Again, the Movants have apparently not bothered to read the application. Under the current design, Texas Organic Recovery has proposed a bermed, emergency containment area to collect the grease trap waste in the event of a tank rupture. Moreover, the facility's pumper trucks are available to pump out and transfer any material from any leaking tank. Finally, if any amount of non-hazardous, food-based grease trap waste would somehow overflow the emergency containment area, then the site's secondary containment pond would act as a safe guard to any release of grease trap waste from the site. There are more the sufficient engineering controls in place to contain a worst-case spill

However, out of an abundance of caution and to alleviate any concerns of the Movants, Texas Organic Recovery has decided on its own volition to enlarge the emergency containment area. While this change is not required under the Commission's rules or Registration 43024, Texas Organic Recovery is willing to make this revision for

¹⁴ See **Attachment D**.

the benefit of its neighbors. The design consists of a bermed runoff diversion area around each grease trap processing zone to capture design storm rainfall within that runoff zone plus the volume of the largest processing tank. The emergency containment area's liner will meet or exceed the required 1×10^{-7} cm/sec permeability requirement by using an installed geosynthetic clay liner material (Bentomat CL is proposed – see enclosed manufacturer information) with a minimum 1.0 ft of protective cover soil.

Micro Dirt's engineering controls go well beyond the minimum requirements set out in the Commission's rules.

(27) Movants argue erroneously that the Commission erred because the \$10,000 in financial assurance for items covered in the application is insufficient.

Movants' argument is simply a rehash of the arguments presented in Movants' paragraph 21. Micro Dirt has included a cost estimate for closure and post-closure costs for the new process in accordance with the Commission's rules. The total cost estimate for closure and post-closure care for the new process is \$10,000. The Executive Director has included that Closure Financial Assurance amount in the new registration.¹⁵ Movants' argument is a red herring.

(28) Movants argue erroneously that the Commission erred in determining that Micro Dirt complied with all regulatory requirements for Type V liquid processing facilities.

Movants' argument is simply a conclusory statement not supported by any information. Moreover, Movants' argument appears to simply repeat the allegations regarding the Executive Director's pending enforcement action. While the Commission's rules require the Commission to consider a facility's compliance history, nothing in Micro Dirt's compliance history would justify the Executive Director or the Commission

¹⁵ See **Attachment A**, NEW REGISTRATION, at p. 5.

in denying this registration. Movants are asking the Commission to short-circuit the enforcement process, attempting to force Micro Dirt to waive its rights and respond prematurely to unproven enforcement issues. Additionally, to deny the registration on this basis, Movants would force the Commission to consider the merits of an enforcement case for which no administrative record has been developed, inconsistent with applicable law and the Commission's typical practice.

(29) Movants argue erroneously that the Commission's decision in approving the application and issuing the registration violated Chapter 361 of the Texas Health & Safety Code and the Commission's applicable rules.

Again, Movants' argument is simply a conclusory statement not supported by any factual information.

(30) Movants argue erroneously that the Commission made its decision to approve the registration arbitrarily and capriciously, under an unlawful procedure characterized by an abuse of discretion.

Movants' argument is simply a conclusory statement not supported by any factual information. The evidence clearly shows that the Executive Director made his decision after careful review of the Commission's rules and the requirements of Chapter 361. Movants fail to point to any evidence that the Executive Director acted arbitrarily and capriciously. The term "arbitrary and capricious" means that an absence of a rational connection must exist between the facts found and the choice made.¹⁶ There must be a clear error of judgment -- an action not based upon consideration of relevant factors -- which the decision is made without observance of any procedure required by law.

In this matter, the Executive Director has clearly reviewed the application and made numerous requests for amendments to the proposed design to ensure compliance

¹⁶ *Natural Resources. v. U.S.*, 966 F.2d 1292, 97, (9th Cir.'92).

with the Commission's rules. Clearly, the Executive Director's decision was neither arbitrary nor capricious.

**IV.
PRAYER**

WHEREFORE PREMISES CONSIDERED, Micro Dirt prays that the Commission deny the Motion and affirm the Executive Director's approval of the registration, because the application and the registration satisfy all applicable legal requirements.

Respectfully submitted,

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By: 

Randall B. Wilburn

ATTORNEYS FOR MICRO DIRT, INC.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of Micro Dirt's Response to the Motion to Overturn the Executive Director's Approval of Micro Dirt, Inc.'s Registration No. 43024 has been served by facsimile, U.S. First Class Mail, electronic mail, or hand delivery on all parties whose names appear below, on this 20th day of January 2010.

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Randall B. Wilburn

ATTACHMENT "A"



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

MSW Registration No.: 43024

Name of Registrant/Site Operator: Micro Dirt, Inc. dba Texas Organic Recovery
15500 Goforth Road, Creedmoor, TX 78610

Property Owner: Ms. Vicki Alexander

Facility Name: Texas Organic Recovery

Facility Address: 15500 Goforth Road, Creedmoor, TX 78610

Classification of Site: MSW Type V Grease Trap Processing Facility

The registrant is authorized to store, transfer, process and recover or recycle material from grease trap waste in accordance with the limitations, requirements, and other conditions set forth herein. This registration is granted subject to the rules and Orders of the Commission and laws of the State of Texas. Nothing in this registration exempts the registrant from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality. This registration 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) Chapter 330.

ISSUED DATE: **NOV 22 2010**


For the Commission

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Texas Organic Recovery
MSW Registration No. 43024

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ATTACHMENT "A"

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I. Size and Location of Facility

- A. This Type V grease trap processing facility is located at 15500 Goforth Road, in the City of Creedmoor, Travis County, Texas, 78610. The facility contains of 30 acres.
- B. The legal description is contained in Appendix B of the registration application.
- C. Coordinates and Elevation of Site Permanent Benchmark:
 - Latitude: 30° 03' 24" N
 - Longitude: 97° 41' 27" W
 - Benchmark Elevation: 700 feet above Mean Sea Level

II. Waste Management Units and Operations Authorized

A. Days and Hours of Operation

This facility is authorized to accept waste from 7:00 a.m. to 7:00 p.m., Monday through Friday and from 8:00 a.m. to 5:00 p.m. on Saturday. The operating hours will be 5:00 a.m. to 9:00 p.m., Monday through Friday and from 8:00 a.m. to 5:00 p.m. on Saturday for operating heavy equipment and for transporting materials on and off site. The operator shall post the operating hours and waste acceptance hours on the site sign.

B. Wastes Authorized at this Facility

The registrant is authorized to store, transfer, process and recover or recycle materials from grease trap waste. The grease trap waste may be municipal, commercial, or Class 2 industrial from food preparation facilities.

C. Wastes Prohibited at this Facility

All liquid waste and solid waste not authorized in Provision II.B.

D. Waste Acceptance Rate

Grease trap waste may be accepted for storage, transfer, and processing at this facility at a maximum rate of 60,000 gallons-per-day.

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E. Maximum Volume Available for Storage

Total available waste storage capacity of this facility is 144,000 gallons with a maximum storage limit of 72 hours for processed and unprocessed grease trap waste except for the aqueous recovered phase which may be added to the compost operation conducted within the same metes and bounds and authorized under MSW Registration No. 42016.

F. Waste Management Units Authorized

The registrant is authorized to operate the waste management units related to the processing, storage, and transfer of the waste authorized, which shall include eight 18,000 gallons tanks and the concrete spill containment structure surrounding the tanks as described in the registration application. Facility operations for units other than the tanks are authorized under MSW Registration No. 42016, issued to the same registrant. These units and facility features include the on-site contaminated water surface impoundment utilized for secondary containment of the tanks, the in-situ liner beneath all on-site units, access controls, all weather roads, personnel and equipment.

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 registration, the registration application as incorporated by reference in Attachment A, and the regulations in 30 TAC Chapter 330.
- B. 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.

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- 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; or Texas Pollutant Discharge Elimination System requirements;
 - 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 registration. The registrant shall further ensure that personnel are familiar with safety procedures, contingency plans, the requirements of the Commission's rules, and this registration, 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 registration and maintenance of financial assurance in accordance with 30 TAC Chapter 330 Subchapter K 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. 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 registration pursuant to 30 TAC Chapter 37 Subchapter B. Continuous financial assurance coverage for closure must be provided until closure certification has been completed and accepted and the site is determined to be closed in writing by the executive director.
- C. Closure Financial Assurance Amount. Within 60 days after the date of registration issuance or prior to the initial receipt of waste, the registrant shall provide financial assurance instrument(s) for demonstration of closure in an amount equal to but not less than \$10,000 for closure in [2009] dollars. The amount of financial assurance to

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be posted annually shall be determined as described in Provisions IV.A. and IV.B of this registration and 30 TAC Chapter 37.

- D. Closure Plan Modifications. If the facility's closure plan is modified, the registrant shall provide new cost estimates in current dollars, which meet the requirements 30 TAC Chapter 37 and 30 TAC Chapter 330, Subchapter K as applicable. 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 registration shall be initiated as a modification within 30 days after the effective date of the new regulation.

V. Facility Closure

Closure shall commence:

1. Upon direction by the Executive Director of the TCEQ for failure to comply with the terms and conditions of this registration or violation of State or Federal regulations.

The Executive Director is authorized to issue emergency orders to the registrant 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;

2. Upon abandonment of the site;
3. Upon direction of the Executive Director for failure to secure and maintain adequate financial assurance as required; or
4. Upon registrant's notification to the TCEQ that the facility will no longer operate.
5. Site Completion Requirements:

The facility shall be completed and closed in accordance with the facility Closure Plan and Closure Cost Estimates located in Part III of the registration application and 30 TAC §330.21 – Closure, 30 TAC §330.451 – Applicability, 30 TAC §330.459 - Closure Requirements for Municipal Solid Waste Storage and Processing Units and 30 TAC §330.461 - Certification of Final Facility Closure.

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VI. Standard Registration Conditions

- A. This registration is based on and the site owner/operator shall follow the registration application submittals dated August 7, 2009, and revised January 12, and April 13, 2010. These application submittals are hereby approved subject to the terms of this registration, the rules and regulations, and any orders of the TCEQ. These application materials are incorporated into this registration by reference in Attachment A as if fully set out herein. Any and all revisions to these elements shall become conditions of this registration upon the date of approval by the Commission. The registrant 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 registration, is hereby made a part of this registration.
- C. The registrant shall comply with all conditions of this registration. Failure to comply with any condition may constitute a violation of the registration, 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 registration are severable. If any registration provision or the application of any registration provision to any circumstance is held invalid, the remainder of this registration shall not be affected.
- F. Regardless of the specific designs contained in the registration application, the registrant shall be required to meet all performance standards in the registration, the application, or as required by local, State, and Federal laws.
- G. If differences arise between these registration provisions and the Application, these registration provisions shall prevail.
- H. The registrant 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.

ATTACHMENT "A"

Mirco Dirt, Inc. dba Texas Organic Recovery
MSW Registration No. 43024
Page 8

VII. Incorporated Regulatory Requirements

- A. The registrant 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 registration.
- B. To the extent applicable to the activities authorized by this registration, the requirements of 30 TAC Chapters 37, 281, 305, and 330, and future revisions are adopted by reference and are hereby made provisions and conditions of this registration.

VIII. Special Registration Provisions

The solid phase recovered from grease trap waste accepted under this registration shall not be composted on-site under the current compost registration, Registration No. 42016. The registrant must obtain an MSW compost permit before the recovered solid phase of accepted grease trap waste or any other grease trap from other facilities may be composted on-site.

IX. ATTACHMENT A

The Registration Application.

X. ATTACHMENT B

Amendments, Modifications, and Corrections to MSW Registration No. 43024.

ATTACHMENT "B"

Registration No. 42016



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

REGISTRATION FOR A
BIO-SOLIDS COMPOST FACILITY
Issued under provisions of Texas
Health & Safety Code Ann.
Chapter 361 (Vernon)

Name of Registrant and Site Owner: ROY EUGENE DONALDSON II
7101 HIGHWAY 290 WEST, SUITE #325
AUSTIN, TEXAS 78736

Facility Name: TEXAS ORGANIC RECOVERY

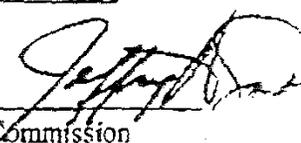
Classification of Site: REGISTERED COMPOST FACILITY No. 42016

Wastes to be Accepted: municipal sewer sludge, septage, grease trap, paper, vegetative waste matter, brush, wood & yard waste.

The registrant is authorized to store, process, and market materials in accordance with the limitations, requirements, and other conditions set forth herein. This registration is granted pursuant to 30 Texas Administrative Code Chapter 332 and is subject to the rules and orders of the Commission and laws of the State of Texas. Nothing in this registration exempts the permittee from compliance with other applicable rules and regulations of the Texas Natural Resource Conservation Commission. This registration will be valid until canceled, amended, or revoked by the Commission, or until the site is closed in accordance with the provisions of this registration.

APPROVED, ISSUED AND EFFECTIVE this 4th day of December 1998

ATTEST



For the Commission

ATTACHMENT "B"

Texas Organic Recovery
Travis County, Compost Facility: Registration № 42016

Page 2

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ATTACHMENT "B"

Texas Organic Recovery
Travis County, Compost Facility: Registration № 42016

Page 3

I. Size and Location of Facility

- A. The proposed facility is located in Travis County, Texas. The facility is designed to operate on 30 acre track located 3.5 miles south east of Creedmoor, and on Goforth Road 0.6 miles from the intersection of Williamson Road (County Road 177) and Goforth Road.
- B. The legal description is contained on page 8 and 9 of the Site Development Plan
- C. Coordinates and Elevation of Site Permanent Benchmark:
 - Latitude: 45° 54' 31" N
 - Longitude: 41° 17' 33" W
 - Elevation: 700 feet above Mean Sea Level

II. Facilities and Operations Authorized

- A. Wastes, Feedstocks and Materials Authorized for Processing at this Facility.
 - 1. The registrant is authorized to receive, process and distribute septage, grease trap, paper, municipal sewer sludge resulting from or incidental to municipal, wastewater treatment.
 - 2. The registrant is authorized to receive, process and distribute source separated brush, wood, yard waste and vegetative food matter.
- B. Unauthorized and Prohibited Materials.
 - 1. Municipal sewage sludge with mixed municipal solid wastes and or solid wastes are specifically excluded as feedstocks and delivery of these materials is prohibited.
 - 2. Listed hazardous materials, including fungicides, herbicides, insecticides or other pesticides are not to be applied to or incorporated into the feedstock, processing or processed material.
 - 3. No petroleum contaminated materials, radioactive waste, mixed municipal solid waste, or special waste from health care related facilities are authorized to be accepted, stored, processed, or disposed of at this site.
 - 4. Wastes, feedstocks or materials found on this site that are not authorized to be processed at this registered compost facility shall be transported and disposed of in accordance with the applicable State and Federal regulations.

ATTACHMENT "B"

III. Final Product-Testing, Frequency of Monitoring, Recordkeeping and Reporting.

A. Final Product Testing.

1. The sampling and analysis of the final product shall be in accordance with the provisions of 30 TAC §312.7(c).
2. The final product shall be tested for the concentration of each metal listed in Table 3 in 30 TAC§312.43(b). The concentration of each metal in the final product shall not exceed the concentration for the metal in Table 3 of 30 TAC §312.43(b).
3. The final product shall meet the Class A pathogen requirements in accordance with the provisions of §312.82(a).
4. The final product shall meet one of the vector attraction reduction requirements in accordance with the provisions of 30 TAC §312.83(b)(1)-(8).

B. Frequency of Monitoring.

The frequency of monitoring the final product shall be in accordance with the provisions of 30 TAC 312.46(a)(1).

C. Recordkeeping.

1. The registrant shall maintain records in accordance with the provisions of 30 TAC §312.47(a)(1).
2. The registrant shall maintain a copy of the records required in 30 TAC §312.47(a)(1) on-site for a period of five years and make them available to TNRCC inspectors upon request.

D. Reporting

The registrant shall comply with the reporting provisions of 30 TAC §312.48.

IV. Site Development Plan

The "Registration Application for Texas Organic Recovery" including all sections and attachments is the Site Development Plan and is incorporated herein by reference.

ATTACHMENT "B"

**REGISTRATION APPLICATION
FOR
TEXAS ORGANIC RECOVERY
COMPOST FACILITY**

BY:

ROY EUGENE DONALDSON II

SOUTH OF CREEDMOOR

TRAVIS COUNTY,

TEXAS

JULY, 1998

**RECEIVED
SEP 17 98
TRRC
CENTRAL RECORDS**

ATTACHMENT "B"

CONSTRUCTION PLANS AND SPECIFICATIONS

The facility is intended to allow composting operations consistent with Provisions of 332.37 including:

1. Protection of surface water
2. Protection of ground water
3. Unauthorized and Prohibited Materials
4. Access
5. Nuisance conditions
6. Aerobic composting
7. Site sign
8. Access road
9. Authorization required for significant changes
10. Prohibited substances
11. End-product standards
12. Compost operator

Most of these items have been discussed as a part of the Site Operation Plan. However, some items, due to their relationship to site design, are discussed below.

Protection of Surface Water:

The composting site is designed to assure that rainfall runoff from the composting and material storage areas are directed to a retaining pond. The retaining pond is sized to retain all rainfall runoff from the compost area produced by a 25 year-24 hour rainfall of 8.0 inches. The compost drainage area is surrounded by a perimeter berm (3 ft. tall), which excludes outside drainage and prevents discharge of on-site runoff. Drainage calculations and pond volume calculations are presented in Exhibit Q. The surveyed contour lines of the retaining pond is attached as Exhibit R.

Protection of Ground Water:

Results of tests conducted by HBC Engineering, Inc. on the pond liner and on soils underlying the compost area verify that the existing site soils are adequately impermeable to prevent contamination of area groundwater. Plasticity Indices

ATTACHMENT "B"

range from 35 to 67 indicating soils which should have permeability's in the range of 1×10^{-8} to 1×10^{-9} cm/sec.

The soil test results are presented in Exhibit S.

Site Sign:

A site sign will be clearly installed displaying the name of the facility, address, operating hours, TNRCC # and emergency #'s.

The access roads and process area are designed as all-weather roads. It is understood that periodic maintenance may be required to keep all areas of the site accessible.

ATTACHMENT "B"

EXHIBIT S



July 6, 1998

Mr. Mark Hall
Texas Organic Recovery
7101 Highway 290 West, Suite 325
Austin, Texas 78735

Re: Composting Facility
15500 Goforth
Travis County, Texas
HBC Project No. 62-3385.98

Dear Mr. Hall:

As requested, we sampled the detention pond bottom for the above referenced project to check the competency of the subgrade for compliance with the requirements of a soil liner as stated in Chapter 332 of the Texas Natural Resource Conservation Commission (TNRCC) Regulations regarding composting. The pond was sampled to a depth of about 2 feet at five locations across the pond bottom. Atterberg limits and sieve analyses were performed on the recovered samples. The results of the laboratory testing on these samples is tabulated below.

Sample	Sample Description	Liquid Limit, %	Plasticity Index, %	Percent Passing No. 200 Sieve, %
P-1	Tan Clay	55	35	96
P-2	Yellowish Brown Clay	77	57	79
P-3	Yellowish Brown Clay	72	54	83
P-4	Dark Gray Clay	68	51	87
P-5	Dark Brown Clay	84	67	87

All of the above indices exceed those indicated by the TNRCC (liquid limit greater than 30, plasticity index greater than 15, and percent passing the No. 200 Sieve of at least 30). In our opinion, for this application, the in-place clay materials are equivalent to a two-foot compacted clay liner with the properties indicated by the TNRCC.

(1 of 2)

(\\dax\cnr\02-2762-97\gwp\l.wpd

Page 14 Ex. S

Houston Office
2213 W. Sam Houston Pkwy. S.W.
Houston, Texas 77058

Dallas Office
11111 Preston Road, Suite 1000
Dallas, Texas 75242

Austin Office
11111 Preston Road, Suite 1000
Dallas, Texas 75242

ATTACHMENT "B"



Mr. Mark Hall
July 6, 1998
Page 2 of 2

We were also asked to sample the subgrade soils existing beneath the upper dark brown surficial soils at three locations within the composting area. The test results from these samples are tabulated below.

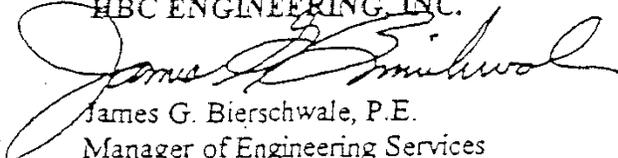
Sample	Sample Description	Liquid Limit, %	Plasticity Index, %	Percent Passing No. 200 Sieve, %
C-1	Yellowish Brown Clay	66	49	65
C-2	Tan Clay	80	59	85
C-3	Yellowish Tan Clay	73	53	90

These soils appear to be similar to those observed in the detention pond area.

We trust that the enclosed information meets your needs. Please contact us if you have any questions or if we can be of further assistance.

Sincerely,

HBC ENGINEERING, INC.


James G. Bierschwale, P.E.
Manager of Engineering Services

JGB/sch



(2 of 2)

(G:\data\corr\62-2762-97\jgbsch\wpd)

ATTACHMENT "C"

The Closure Plan will entail removal of all the grease trap waste and components (grease, water, and solids) through off-site sales, recycling, or appropriate authorized disposal. All processing equipment and containment devices (separation tanks, pivot trailer screen system, screened waste containment basin, heater vessel, propane tank, curb wheel stops, concrete gutter channel(s), wash down gutters and sump(s), etc.) will be removed as needed for alternate uses, salvage, and/or appropriate disposal or decontaminated as necessary and re-commissioned for use as appropriate for other authorized activities. Any waste contaminated soil will be completely removed to an authorized disposal destination. Containment berms will be leveled out to match the natural land contours and prevent ponding, if they are not incorporated into other authorized uses. A vegetative cover will be established to prevent erosion unless other authorized uses prevent this activity. These closure actions will be completed within 180 days of the most recent acceptance of grease trap waste materials. Certification of completion of the closure plan signed by an independent licensed professional engineer will be provided to TCEQ within 10 days of closure completion. Financial assurance coverage for closure will be provided until TCEQ accepts the facility closure in writing.

(i) Post-closure plan. The facility post-closure care plan shall be prepared in accordance with Subchapter K of this chapter.

N/A Post-closure activities are not applicable to this type of facility, however, the owner or operator is prepared to carry out any necessary activities.

(j) Cost estimate for closure and post-closure care. The owner or operator shall submit a cost estimate for closure and post-closure care in accordance with Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates). For an existing facility, the owner or operator shall also submit a copy of the documentation required to demonstrate financial assurance as specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). For a new facility, a copy of the required documentation shall be submitted 60 days prior to the initial receipt of waste.

Activity	Estimated Cost (\$)	
Closure disposal of grease trap waste, byproducts, and wash water	144,000 g @ \$0.03/g 30 hrs. @ \$150/hr.	\$ 8,820
Closure removal / salvage or re-commission of tanks, screens, heater unit, and sump	4 loads @ \$70/load 2 hrs. @ \$80/hr.	440
Closure removal / disposal of soil and washdown troughs	6 loads @ \$70/load 4 hrs. @ \$80/hr.	740
Total Cost Estimate		\$10,000

ATTACHMENT "C"

330.63 (j) Cost estimate for closure (background information).

In regard to costs estimated for removal of grease trap waste and any wash water, calls were made to waste disposal entities out of the City of Austin phone book to provide a basis for closure disposal costs. An estimate was provided for disposal of grease trap waste at \$3.00/1,000 gallons when that volume was involved plus approximately 30 man-hours at \$150.00/hour.

$(\$0.03 / \text{gal}) (144,000 \text{ gal}) = \$ 4,320$

$(30 \text{ hours}) (\$150 / \text{hour}) = \$ 4,500$

Total disposal of grease trap waste, by products, and wash water = \$ 8,820

ATTACHMENT "D"

12/31/2008

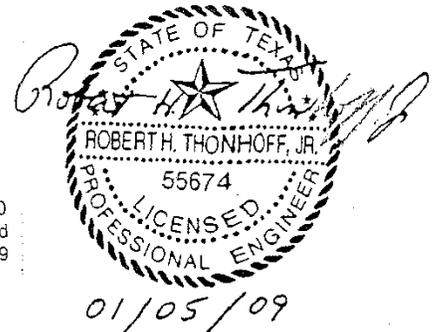
SWPP - Figure 9 Texas Organic Recovery - New Pond Volumes

Contributing Area	15.23 acres
	<u>25-yr 24-hr</u> <u>100-yr 24-hr</u>
Depth of Runoff, in.	6.72 9.16
Volume of Runoff, cf	371,255 506,074
Base Volume, cf	100,352
Base Volume + 25-yr 24-hr Runoff, cf	471,607
Base Volume + 100-yr 24-hr Runoff, cf	606,426
Maximum Volume of New Pond, cf	782,182

NEW POND STAGE - STORAGE TABLE

	WSEL (elev)	Depth (ft)	Interval Volume (cy)	Cumulative Volume (cy)	Cumulative Volume (cf)
	679.06	0.00	0.00	0.00	0
	680.06	1.00	48.28	48.28	1,304
	681.06	2.00	170.70	218.98	5,912
	682.06	3.00	292.60	511.58	13,813
	683.06	4.00	434.21	945.79	25,536
	684.06	5.00	643.38	1,589.17	42,908
	685.06	6.00	933.99	2,523.16	68,125
Base Volume (100,352 cf)	686.06	7.00	1,113.72	3,636.88	98,196
	687.06	8.00	1,257.67	4,894.55	132,153
	688.06	9.00	1,439.40	6,333.95	171,017
	689.06	10.00	1,581.63	7,915.58	213,721
	690.06	11.00	1,732.28	9,647.86	260,492
	691.06	12.00	1,880.86	11,528.72	311,275
25-yr 24-hr Runoff (371,255 cf)	692.06	13.00	2,048.37	13,577.09	366,581
	693.06	14.00	2,244.10	15,821.19	427,172
Base Volume + 25-yr 24-hr Runoff (471,607 cf)	694.06	15.00	2,370.38	18,191.57	491,172
100-yr 24-hr Runoff (506,074 cf)	695.06	16.00	2,554.19	20,745.76	560,136
Base Volume + 100-yr 24-hr Runoff (606,426 cf)	696.06	17.00	2,784.57	23,530.33	635,319
	697.06	18.00	3,138.27	26,668.60	720,052
Top of New Pond Embankment (782,182 cf)	697.62	19.00	2,301.10	28,969.70	782,182

Micro Dirt, Inc. d.b.a. Texas Organic Recovery
Grease Trap Waste Processing Registration Application - Revised
4/8/10
25.9



ATTACHMENT "D"

7.0 FIRE PROTECTION PLAN §330.221

The local fire department will be informed of the location and the process used as the facility. Staff will be available to guide emergency personnel through the facility to help familiarize them with the process and system. The facility and Fire Protection Plan will comply with local fire codes.

In an emergency, the local fire department can be reached by dialing 911. Neighboring and/or cell phone can be used in the event of a landline phone system failure. Type ABC handheld fire extinguishers will be located near entrances to the processing areas/building and will be readily available for use.

This Fire Protection Plan requires that all employees shall be trained in its contents and use. This fire protection plan shall comply with local fire codes. See Table 3, Protective and Emergency Equipment and Training Schedule, for the list of training times and fire protection equipment / measures.

An adequate supply of water under pressure for fire fighting purposes will be provided via the retention pond, water recycling pumps, fire hose connections, and available portable fire hoses.

The following steps are taken regularly at the facility by designated personnel to prevent fires:

- Operators will be alert for signs of burning waste such as smoke, steam, or heat being released from incoming waste loads.
- Equipment used to move waste will be routinely cleaned through the use of 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.
- Smoking is not permitted near waste management areas.
- Keep all work areas clean and uncluttered.
- Keep all flammable materials in the appropriate areas.
- Familiarity with the Material Safety Data Sheets of process chemicals used at the facility.
- Immediate clean up of any grease / oil type of spills.

7.1 Procedures in the Event of a Fire

Staff will take the following steps if a fire is discovered:

- Alert other facility personnel.
- Do not attempt to fight the fire alone.
- Assess extent of fire / ability for fire to spread / alternatives for its extinguishment.
- If the fire can be safely fought with fire fighting devices (fire extinguishers, recycling pumps, and fire hoses), attempt to contain or extinguish the fire.

ATTACHMENT "D"

- Contact the Local Fire Department by calling 911, if needed.
- Upon arrival of Fire Department personnel, direct and provide assistance as appropriate.
- Do not attempt to fight the fire without adequate personal protective equipment.
- Be familiar with the use and limitations of firefighting equipment available onsite.

The fire prevention and fire control procedures for the facility will be revisited following the occurrence of a significant fire to determine if modifications are warranted.