

TCEQ DOCKET NO. 2010-2063-MSW

IN THE MATTER OF THE	§	BEFORE THE TEXAS COMMISSION
APPLICATION OF MICRO	§	
DIRT, INC D/B/A TEXAS	§	
ORGANIC RECOVERY FOR	§	ON
GREASE TRAP WASTE	§	
PROCESSING AND	§	
RECYCLING REGISTRATION	§	
NO. 43024, IN TRAVIS	§	ENVIRONMENTAL QUALITY
COUNTY, TEXAS	§	
	§	

THE EXECUTIVE DIRECTOR'S RESPONSE TO THOMSON FAMILY LIMITED PARTNERSHIP, H. PHILIP WHITWORTH, JR., ANN MESSER, AND JULIE MOORE'S MOTION TO OVERTURN

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

COMES NOW, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission), and files this Response to Thomson Family Limited Partnership, H. Philip Whitworth, Jr., Ann Messer, and Julie Moore's (Movants) Motion to Overturn (MTO) the Executive Director's issuance of a Type V Municipal Solid Waste (MSW) grease trap waste processing and recycling Registration No. 43024 to Micro Dirt, Inc. d/b/a Texas Organic Recovery (Micro Dirt).

I. BACKGROUND

A. Registration No. 43024

On August 7, 2009, Micro Dirt submitted an application to store, transfer, process and recover or recycle material from grease trap waste pursuant to 30 Texas Administrative Code (TAC) Chapter 330. Notice of the application was published in English in the *Austin American Statesman*, a newspaper of general circulation in Travis County and all adjacent counties, on August 27, 2009. Notice of the application was published in Spanish in the *El Mundo Newspaper*, a Spanish-language newspaper of general circulation in Travis County and all adjacent counties, on September 3, 2009.

Applicant submitted revisions to the application on January 14, 2010, and again on April 13, 2010.

Notice of a public meeting regarding Registration No. 43024 was published in English in the *Austin American Statesman*, a newspaper of general circulation in Travis County and all adjacent counties, on August 12, 19, and 26, 2010. Notice of the public meeting was published in Spanish in *iAhora Si!*, a Spanish-language newspaper of general circulation in Travis County and all adjacent counties, also on August 12, 19, and 26, 2010. A public meeting was held in Creedmoor, Texas on September 2, 2010. Comments from the public were received regarding the application at the public meeting and during the processing of the application.

After reviewing all of the information and comments from the public, the Executive Director determined that Micro Dirt's application met all registration requirements and approved the registration on November 22, 2010. On December 2, 2010, the Executive Director sent the Notice of Registration, informal response to comments, and instructions on filing an MTO to interested parties. MSW Registration No. 43024 authorizes the processing of grease trap waste to separate out liquids from municipal, commercial, and Class 2 industrial food preparation facilities. The storage capacity authorized by Registration No. 43024 is 144,000 gallons with a maximum storage limit of 72 hours for processed and unprocessed grease trap waste. Registration No. 43024 authorizes the use of eight 18,000 gallon tanks.

The Movants filed a timely MTO on December 22, 2010.

B. Previous Authorizations Issued to Micro Dirt

On December 4, 1998, the TCEQ issued Micro Dirt MSW Registration No. 42016. The registration authorized Micro Dirt to compost grease trap waste, septage, sewer sludge, paper, vegetative waste, brush, wood, and grease trap waste. See Exhibit A. MSW Processing Registration No. 43024 is located inside of the area authorized by the composting facility.

House Bill 1971 of the Seventy-Eighth Texas Legislature, 2003, changed Texas law by requiring a permit to compost grease trap waste. See Texas Health and Safety Code §§ 361.428(d) and (e). In response to the change in law, Micro Dirt filed Proposed

MSW Permit No. 2320 in January of 2004. After a contested case hearing, the TCEQ issued an order on May 23, 2008, denying the permit.

On August 7, 2002, the TCEQ issued Micro Dirt MSW Registration No. MSW-40184TL. This registration authorizes Micro Dirt to transfer and temporarily store grease trap waste, grit trap waste, septage, or other similar liquid wastes from municipal sources. The registration authorizes Micro Dirt to store the waste in tanks that are located inside of the facility authorized by MSW Composting Registration No. 42016. Four of the eight tanks authorized by MSW Processing Registration No. 43024 are also authorized under this storage registration.

II. WORST CASE SPILL OR RELEASE

A. Micro Dirt is not Complying with the Worst Case Spill or Release Rules

MSW Processing Registration No. 43024 authorizes the processing of grease trap waste. Grease trap processing facilities must meet rules regarding the containment of a worst case spill or release in compliance with 30 TAC §§ 330.63(d)(1)(B) and 330.227. These rules require facilities that store, process, and transfer wastes, such as Micro Dirt, to be designed "...to control and contain a worst case spill or release from the unit." Although "worst case spill or release" is not defined in the TCEQ rules, federal rules regulating hazardous waste define a worst case spill as the release of the total contents of the largest tank or of 10% of total capacity, whichever is greatest. See 40 Code of Federal Regulations 112.20. Applying this standard to the processing facility would translate into a requirement that 18,000 gallons of material be controlled and contained.

The design of the processing facility submitted in the application shows that a containment area that can hold a portion of the 18,000 gallons would be installed. However, as this containment area alone is insufficient to contain the worst case spill or release, Micro Dirt proposed to direct the excess materials from a spill to the composting facility's contaminated water surface impoundment authorized under existing MSW Composting Registration No. 42016. At the time of the processing registration's approval, the submitted plans were found to have met the worst case spill or release requirements.

Upon further review of the designs, the ED realized that there was a deficiency in the approved plan. The ED found that containment of the worse case spill should not rely on the existing surface impoundment as the contaminated water from that impoundment is used for moisture conditioning of compost and cannot contain grease trap waste. Therefore, the proposed containment area did not comply with the requirements of § 33063(d)(1)(B).

After the processing registration was issued, Micro Dirt proposed to cure this deficiency by modifying its registration to increase the capacity of the containment area around the processing tanks. Micro Dirt submitted the attached plan on January 20, 2011, to contain an 18,000 gallon spill without having to rely on the collection pond for the composting registration. *See Exhibit D.* The plan includes installing berms around the eight liquid waste storage units. The worst case spill would then be conveyed from the previously proposed sumps, through an interconnected pipe, to a dedicated lined containment structure. This proposal would prevent material from escaping the containment area. The ED finds that the proposed plan is an acceptable option to contain a worst case spill or release and that the requested modification should be approved. The ED has not acted on this application to modify the processing registration because of the pending MTO. The ED recommends that the commission approve the modification or direct the ED to act on the modification.

III. TECHNICAL REQUIREMENTS

A. Compliance with 30 TAC Chapters 328 and 332

Movants incorrectly argue that Micro Dirt was required to comply with the rules in 30 TAC §§ 332.34(15) and 328.5(c)-(e) for this processing registration. These rules, regarding financial assurance requirements for facilities that stockpile combustibles, are inapplicable to the authorization at hand, because MSW Registration No. 43024 was issued pursuant to 30 TAC Chapter 330 and its requirements for financial assurance. The rules in 30 TAC Chapter 328 deal with facilities that recycle nonputrescible source separated recyclable material and the rules in 30 TAC Chapter 332 deal with composting facilities. MSW Processing Registration No. 43024 does not authorize Micro Dirt to conduct these composting or waste minimization recycling activities. Therefore, Micro Dirt is not required to comply with the requirements cited by the Movants.

Micro Dirt is required to comply with the financial assurance rules in 30 TAC Chapter 330, Subchapter K and 30 TAC Chapter 37 by providing a financial assurance to close the processing facility. Micro Dirt has provided \$10,000 in financial assurance to close the processing facility, and the ED determined that amount would be adequate to close the facility.

B. Micro Dirt Has an Adequate Fire Protection Plan

Movants argue that the ED erred in approving the Fire Protection Plan in the application inasmuch as there was no evidence of an adequate supply of water under pressure for firefighting in the retention pond in violation of 30 TAC § 330.221. 30 TAC § 330.221(a) requires that MSW storage facilities have “an adequate supply of water under pressure...available for firefighting purposes.”

The registration application states that an adequate supply of water under pressure for firefighting purposes will be provided via the retention pond, water recycling pumps, fire hose connections, and available portable fire hoses. The site layout map also shows the location of the fire hose connection. The ED found that the Fire Protection Plan submitted by Micro Dirt met the requirements of 30 TAC § 330.221. Therefore, the ED did not err in issuing MSW Processing Registration No. 43024.

C. MSW Registration No. 43024 Does Not Authorize Micro Dirt to Compost the Effluent from Grease Trap Waste

Movants argue that MSW Processing Registration No. 43024 authorizes Micro Dirt to compost the liquid effluent resulting from the grease trap waste processing operations. Movants also argue that the registration was issued in error because the conditions of registration include no protections to ensure the “effluent is appropriate for composting purposes¹.” Finally, Movants argue that Micro Dirt failed to meet its burden of proving that the composting of the liquid resulting from MSW Registration No. 43024 was protective of groundwater.

MSW Processing Registration No. 43024 does not authorize the composting of any material. MSW Processing Registration No. 43024 exclusively authorizes the

¹ MTO, p.6.

processing of grease trap waste and the recovery of 10% of the waste for recycling off-site in compliance with 30 TAC §330.9(g)(1). This registration only authorizes a physical and thermal separation of grease trap waste from the water portion of the waste. Whether Micro Dirt is authorized to use the process water in its composting operation is governed by its composting registration, and it is not relevant whether the processing registration complies with the rules.

However, if the Commission determines that it is appropriate to consider Movants' claim in this proceeding, the ED has determined that the process water removed from the grease trap waste may be used under the composting registration. The water that results from the processing of the grease trap waste is proposed to be used for moisture conditioning of the compost operation conducted under existing MSW Composting Registration No. 42016. There are no express environmental criteria requirements for the use of the effluent resulting from grease trap processing in composting. General feedstock and product criteria and operating standards are set forth in Chapter 332 and include prohibited substances detailed in 30 TAC §§ 332.23(3), 332.37(10) and 332.45(10). These end product standards apply to all composting operations independent of the feedstock used. In addition to general operational standards, there are end product standards for compost derived from feedstocks accepted under a registration or a permit. The end product standards are detailed in Subchapter G of the compost rules and apply to all registered and permitted compost operations regardless of the composition of the waste or feedstocks used. The Executive Director's technical staff determined that, based on Micro Dirt's application, the liquid resulting from MSW Registration No. 43024 can be composted and does not present any potential harm to the environment or human health.

D. The Existing Liner at the Facility Issue is Moot

Movants argue that the TCEQ should overturn MSW Processing Registration No. 43024, because Micro Dirt does not have an authorized liner for the facility. The rules do not require a liner for the processing facility. Rules 30 TAC §§ 330.63(d)(1)(B) and 330.227 do require that the processing registration include provisions to control and contain spills as discussed in the beginning of this response

In addition, Movants argue that Micro Dirt provided false and misleading information in its application for the processing facility by stating that Micro Dirt has an existing liner approved by the TCEQ. Movants argue that the engineer who sealed the application for Processing MSW Processing Registration No. 43024 could not produce evidence that Micro Dirt had an *in situ* liner² approved by the TCEQ in the permit hearing. Movants also argue that Mr. Van Sickle, Micro Dirt's representative at the permit hearing, testified that he "had no personal knowledge of a liner constructed at the facility in accordance with the TCEQ Liner Handbook³." Finally, the Movants argue that the TCEQ has no record of approving any liner for the Micro Dirt facility. Movants argue that, based on the arguments above, Micro Dirt falsely and misleadingly stated in its application that its facility had an existing liner that had been approved by the TCEQ, and that Registration No. 43024 should be denied pursuant to 30 TAC § 305.66(f)(3). 30 TAC § 305.66(f)(3) authorizes the TCEQ to deny, suspend, or revoke an authorization if the "applicant made a false or misleading statement in connection with an original or renewal application."

The Movants arguments do not merit denying the processing registration because the liner at issue is required for the composting facility and not for the processing facility.

Movants incorrectly argue that the ED has no record of approving a liner for the Micro Dirt facility. Existing MSW Composting Registration No. 42016—which authorizes Micro Dirt to compost municipal sewer sludge, septage, brush, and wood among other materials—was granted in part because the TCEQ found that Micro Dirt's *in situ* liner complied with the liner requirements in 30 TAC Chapter 332. See Exhibit A, p.1. Under the existing rules in place when the authorization was issued, Micro Dirt was required to protect groundwater under 30 TAC § 332.37(2). This rule required facilities that compost municipal sewer sludge, like Micro Dirt, to demonstrate that the facility "is designed so as to protect the existing groundwater quality from degradation." This protection includes "the protection of perched water or shallow surface infiltration." Micro Dirt met this requirement. In the "Construction Plans and

² An *in situ* liner is a liner that is in place by natural or original position. See 30 TAC 330.3(70).

³ MTO, p.4.

Specifications” of Micro Dirt’s application for existing MSW Composting Registration No. 42016, which is incorporated by reference in the processing registration, Micro Dirt references a document prepared by HBC Engineering, Inc. which verifies that the existing site soils under the Micro Dirt facility are adequately impermeable to prevent contamination of groundwater. *See Exhibit B, p.14.*

The soil testing report submitted by HBC Engineering, Inc. and signed by Registered Professional Engineer James G. Bierschwale, shows that the soils sampled “at three locations within the composting area,” met the requirements of 30 TAC § 332.37(2)(A) by demonstrating that “more than 30% passing a number 200 sieve, have a liquid limit greater than 30% and a plasticity index greater than 15.” *See Exhibit C, p. 1-2.* The Movants incorrectly argue that the TCEQ has no record of approving any liner for Micro Dirt’s existing facility.

Furthermore, Movants incorrectly argue that because Micro Dirt’s witnesses in the proposed MSW Composting Permit No. 2320 hearing failed to demonstrate that an adequate liner existed for the application, Micro Dirt provided false and misleading information for this processing application. The Movants’ argument fails to make an argument that merits the denial of MSW Processing Registration No. 43024.

E. Micro Dirt has Adequate Financial Assurance as it is Not Storing Combustibles

Movants incorrectly argue that Micro Dirt failed to meet 30 TAC § 330.505 because it did not provide financial assurance for its stockpiles of combustibles. Micro Dirt’s MSW Registration No. 43024 does not authorize storing or processing combustible materials outdoors. Combustible materials are not defined in TCEQ rules. However, 30 TAC § 330.129 gives examples of combustible materials such as “solidification basins, brush collection areas, construction or demolition waste areas, composting areas, mulching areas, shredding areas, and used oil storage areas...” The processing of grease trap waste in enclosed tanks does not fall into the examples of combustible materials described above. Therefore, Movants are incorrect in arguing that Micro Dirt should comply 30 TAC § 330.505 for storing combustible material outdoors; Micro Dirt has provided sufficient financial assurance for the activities authorized by MSW Registration No. 43024 by complying with the financial assurance

rules in 30 TAC Chapter 330, Subchapter K and 30 TAC Chapter 37 by providing a financial assurance instrument in an amount of \$10,000 for closure.

F. Micro Dirt is Meeting the Applicable Closure Rules

Movants correctly argue that Micro Dirt must comply with 30 TAC §§ 330.459(a) and (b) relating to closure requirements for MSW storage and processing units. These rules require Micro Dirt, at the time of closure, to send all waste on their property to an authorized facility and to decontaminate all processing units that have been in contact with the waste either by dismantling and removing them off-site or by decontaminating them on-site. Micro Dirt must meet these requirements at the time of closure. Page 6 of MSW Registration No. 43024 states the requirement that Micro Dirt comply with the rules in 30 TAC § 330.459.

Movants, however, incorrectly argue that Micro Dirt is required to comply with 30 TAC § 330.459(d). 30 TAC § 330.459(d) only applies to facilities that store combustible materials outdoors. As explained in the section before, the activity authorized by MSW Registration No. 43024 does not authorize Micro Dirt to store combustible materials outdoors. Therefore, there is no requirement for Micro Dirt to comply with the 30 TAC § 330.459(d) closure rule. Micro Dirt has provided sufficient financial assurance for MSW Registration No. 43024.

IV. HISTORY OF DISREGARDING TCEQ REGULATION REGARDING ACCEPTANCE OF WASTE

A. Pending Enforcement Proceedings do not Affect Authorization Proceedings

Movants state that Micro Dirt has a history of disregarding TCEQ regulations regarding acceptance of waste. Movants argue that the ED acted arbitrarily and capriciously in issuing Registration No. 43024 when there is a pending enforcement action against Micro Dirt for the illegal receipt of 123 loads of grease trap waste and when there are claims that Micro Dirt has allegedly continued to illegally accept grease trap waste.

The Executive Director did not err in issuing MSW Registration No. 43024 because an enforcement action for a prior violation of TCEQ rules is handled separately from and concurrently with the processing of applications. The TCEQ is unable to delay

an authorization process pending the resolution of a related enforcement proceeding as neither state law nor TCEQ rules authorize the TCEQ to do so. However, the TCEQ works to ensure that any authorization that is granted will be protective of human health and the environment. If it is determined that Micro Dirt has violated the TCEQ's rules, the violation will be reflected in the compliance history, which may then affect future permitting, renewals, and facility investigations.

V. RES JUDICATA

A. *The Registration is Not Barred by Res Judicata*

The Movants argue that the ED is barred by the doctrine of *Res Judicata* from issuing a registration because the Commission ruled, in a previous permitting case, that Micro Dirt's liner was insufficient to protect groundwater, and that nothing in Micro Dirt's registration application changes that.

The doctrine of *Res Judicata* applies to "an issue that has been definitively settled by judicial decision."⁴ It is "an affirmative defense barring the same parties from litigating a second lawsuit on the same claim."⁵ There are three essential elements to *Res Judicata*: an earlier decision on the issue, a final judgment on the merits, and involvement of the same parties.⁶

Even if the doctrine applies to administrative authorizations, Movants have failed to fulfill the first element of a valid *Res Judicata* defense: an earlier decision on the issue. Here, the Movants argue that the Commission's finding in a previous permit case for a composting authorization should bar the Commission from granting a registration for the processing authorization. The requirements for these authorizations are different and the applications are different, so the ED was not barred from issuing the processing registration.

VI. CONCLUSION

MSW Registration No. 43024 is not compliant with all of the requirements of law. Micro Dirt currently does not meet the worst case spill or release requirements.

⁴ Restatement Second of Judgments, Sec. 17n24.

⁵ *Id.*

⁶ *Id.*

Micro Dirt has submitted a proposed plan to cure this deficiency. The ED finds that the proposed plan is an acceptable plan to contain a worst case spill or release.

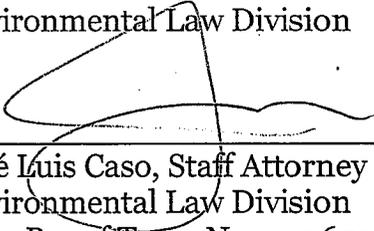
As explained above, the ED believes that there is no merit to the rest of the arguments raised by the Movants. Therefore, the ED recommends that the commission either grant the proposed change by Micro Dirt or direct the ED to act on the modification.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.
Executive Director

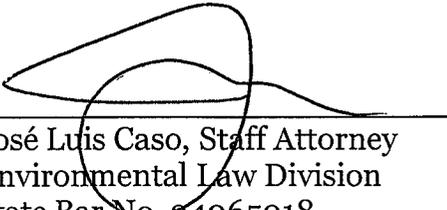
Robert Martinez, Director
Environmental Law Division

By 
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Austin, Texas 78711-3087

REPRESENTING THE
EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on January 20, 2010, the "Executive Director's Response to Thomson Family Limited Partnership, H. Philip Whitworth, Jr., Ann Messer, and Julie Moore's Motion to Overturn" was transmitted by regular mail, electronic mail, facsimile, electronic filing, or hand-delivery to all persons on the attached mailing list.



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

Mailing List

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Whitworth, Jr., Ann Messer, and Julie Moore's Motion to Overturn
TCEQ Docket No. 2010-2063-MSW

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Registration No. 42016



*CMSW
Comp / 42016 / CO*

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 *Lorena Castellano*

Jeffrey...
For the Commission

RECEIVED

EXHIBIT
tabbies
A

AUG 14 2006
TCEQ
CENTRAL FILE ROOM

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Texas Organic Recovery
Registration N° 42016

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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.

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.

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

MSW 42016

BY:

ROY EUGENE DONALDSON II

SOUTH OF CREEDMOOR

TRAVIS COUNTY,

TEXAS

JULY, 1998

EXHIBIT

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

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.

EXHIBIT Q

TEXAS ORGANIC RECOVERY

GIVEN: CAD CALC OF CONTOUR AREAS

RETENTION POND AS-BUILT VOLUME CALCULATIONS

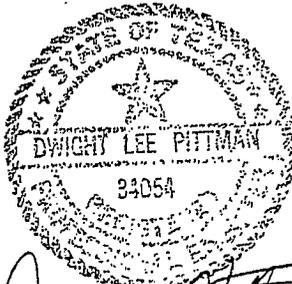
ELEVATION	AREA S.F.	VOLUME C.F.	VOLUME AC. FT.	TOTAL STORED AC.FT.
96	91,467			9.74 SPILLWAY LEVEL
		84,490	1.940	
95	77,512			7.80
		216,126	4.962	
92	66,572			2.84
		61,264	1.406	
91	55,956			1.44
		39,336	0.903	
90	22,717			0.53
		16,748	0.384	
89	10,780			0.15
		6,439	0.148	
88	2,099			0.00
TOTAL USEABLE		424,403	9.74	

RETENTION POND TOPOGRAPHIC SURVEY BY:

CANALES, MARTINEZ & NASH SURVEYING CO
 9027 NORTHGATE BLVD, SUITE 141
 AUSTIN, TX 78758
 PHONE (512) 834-1500

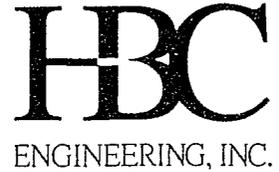
RETENTION POND VOLUME CALCULATIONS BY:

DWIGHT L. PITTMAN, P.E. TX REG # 34054
 PITTMAN ENGINEERING & DEVELOPMENT CO., INC.
 PO BOX 9589
 AUSTIN, TX 78766
 PHONE (512) 454-6377



Dwight L. Pittman 7/23/98

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:

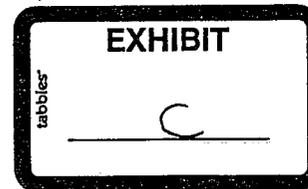
As requested, we sampled the detention pond bottom for the above referenced project to check the competency of the subgrade for compliance with the requirements of a soil liner as stated in Chapter 332 of the Texas Natural Resource Conservation Commission (TNRCC) Regulations regarding composting. The 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)

||jdox\corr\62-2762.97.jgbwpd.wpd



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.

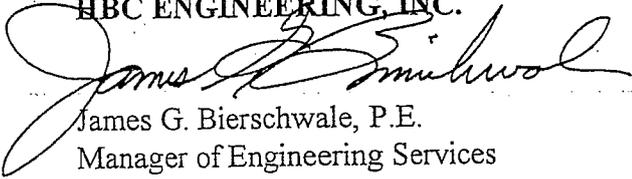
Sample	Sample Description	Liquid Limit, %	Plasticity Index, %	Percent Passing No. 200 Sieve, %
C-1	Yellowish Brown Clay	66	49	65
C-2	Tan Clay	80	59	85
C-3	Yellowish Tan Clay	73	53	90

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

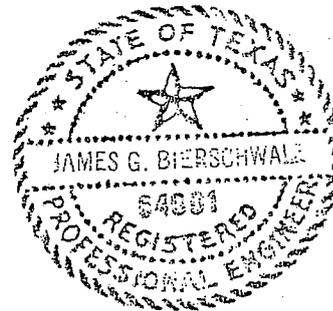
We trust that the enclosed information meets your needs. Please contact us if you have any questions or if we can be of further assistance.

Sincerely,

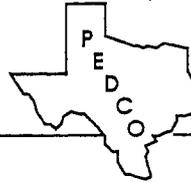
HBC ENGINEERING, INC.


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

JGB/sch



PITTMAN ENGINEERING & DEVELOPMENT CO., INC.



P.O. BOX 9589
8140 BURNET ROAD, SUITE 103
AUSTIN, TEXAS 78766
(512) 454-6377

DWIGHT L. PITTMAN, P.E., R.P.L.S.

October 29, 1998

Nevzat Turan
TNRCC- Solid Waste Permits
PO Box 13087
Austin, Texas 78711-3087

Re: Texas Organic Recovery, 15,500 GoForth Road
Registration # 42016

Dear Mr. Turan:

This is to certify that I inspected the above referenced site on October 28, 1998 and found the facility to be constructed as designed and in general compliance with the applicable TNRCC regulations.

Please feel free to call me if you have any questions.

Sincerely

Dwight L. Pittman, P.E.
DLP:msl



cc: Texas Organic Recovery
6703 Breezy Pass
Austin, Texas 78749



THONHOFF CONSULTING ENGINEERS, INC.
MUNICIPAL • ENVIRONMENTAL • WATER & WASTEWATER

January 20, 2011

Richard C. Carmichael, Ph.D., P.E., CIH
Texas Commission on Environmental Quality
Waste Permits Division, MC 126
P.O. Box 13087
Austin, Texas 78711-3087

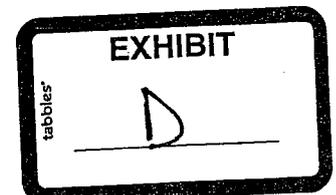
Re: Texas Organic Recovery – Travis County
Municipal Solid Waste (MSW) – Registration 43024

Dear Dr. Carmichael,

In their Motion to Overturn MSW Registration 43024 issued by the Executive Director, Movants erroneously claim that there are insufficient controls to contain a worst case spill at the site. As you know, 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 primary 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.

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

The enclosed 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 should tank failure occur. The diversion areas will drain to sumps from which pipes will drain to a lined containment pond. The containment pond 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. The containment will have a minimum of 1-foot of freeboard and a berm height of approximately 1-1.5 feet to prevent any on site runoff from entering the pond. The pond will contain the necessary volumes of the design storm and largest tank failure, and facility pumper trucks will maintain the pond in an empty condition for proper function.



Richard C. Carmichael, Ph.D., P. E., CIH
January 20, 2011
Page 2

Surface Area = Process Area 1 + Process Area 2 + Containment Pond Area
= 2,412 sf + 1,548 sf + 5,040 sf = 9,000 sf

Design Storm Depth = 8/12 ft = 0.67 ft
Design Storm Volume = (0.67 ft) (9,000 sf) = 6,000 cf = 45,110 gal

Largest Tank Volume = 18,000 gal = 2,406 cf

Minimum Containment Pond Volume = Design Storm Volume + Largest Tank Volume
= 6,000 cf + 2,406 cf = 8,406 cf

Proposed Containment Pond Volume Below Freeboard = 9,400 cf = 70,321 gal

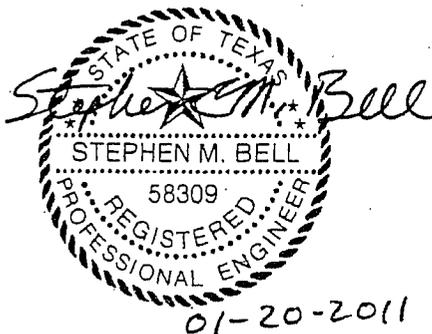
Proposed Surplus Containment Pond Volume = 9,400 cf - 8,406 cf = 994 cf = 7,436 gal

The containment pond berm minimum height of 1.0 ft is sufficient to prevent any on site runoff drainage into the pond.

Designed flow entering the pond will be removed by pumper truck and returned to another tank for processing or disposed of at a facility authorized by TCEQ to receive such material. The pond will be maintained in an empty state to provide the necessary containment volume in a ready state.

If you have any questions or need additional information, please contact me at smb-tce@swbell.net or (512) 328-6736.

Sincerely,
THONHOFF CONSULTING ENGINEERS, INC.



Stephen M. Bell, P.E.

Enclosures (Bentomat CL Liner Specifications, Proposed Containment Facility Drawing)

cc: Mr. Mark Van Sickle, Texas Organic Recovery
Mr. Eric Beller, TCEQ
Mr. Guy Henry, TCEQ

**BENTOMAT® CL CERTIFIED PROPERTIES**

MATERIAL PROPERTY	TEST METHOD	TEST FREQUENCY ft ² (m ²)	REQUIRED VALUES
Bentonite Swell Index ¹	ASTM D 5890	1 per 50 tonnes	24 mL/2g min.
Bentonite Fluid Loss ¹	ASTM D 5891	1 per 50 tonnes	18 mL max.
Bentonite Mass/Area ²	ASTM D 5993	40,000 ft ² (4,000 m ²)	0.75 lb/ft ² (3.6 kg/m ²) min
GCL Tensile Strength ³	ASTM D 6768	200,000 ft ² (20,000 m ²)	45 lbs/in (78 N/cm) MARV
GCL Peel Strength ³	ASTM D 6496	40,000 ft ² (4,000 m ²)	3.5 lbs/in (4.4 N/cm) min
GCL Index Flux ⁴	ASTM D 5887	Periodic	.1 x 10 ⁻⁹ m ³ /m ² /sec max
GCL Hydraulic Conductivity ⁴	ASTM D 5887	Periodic	5 x 10 ⁻¹⁰ cm/sec max
GCL Hydrated Internal Shear Strength ⁵	ASTM D 5321 ASTM D 6243	Periodic	500 psf (24 kPa) typical

Bentomat CL is a reinforced GCL consisting of a layer of granular sodium bentonite between two geotextiles, which are needlepunched together and laminated to a thin flexible membrane liner.

Notes

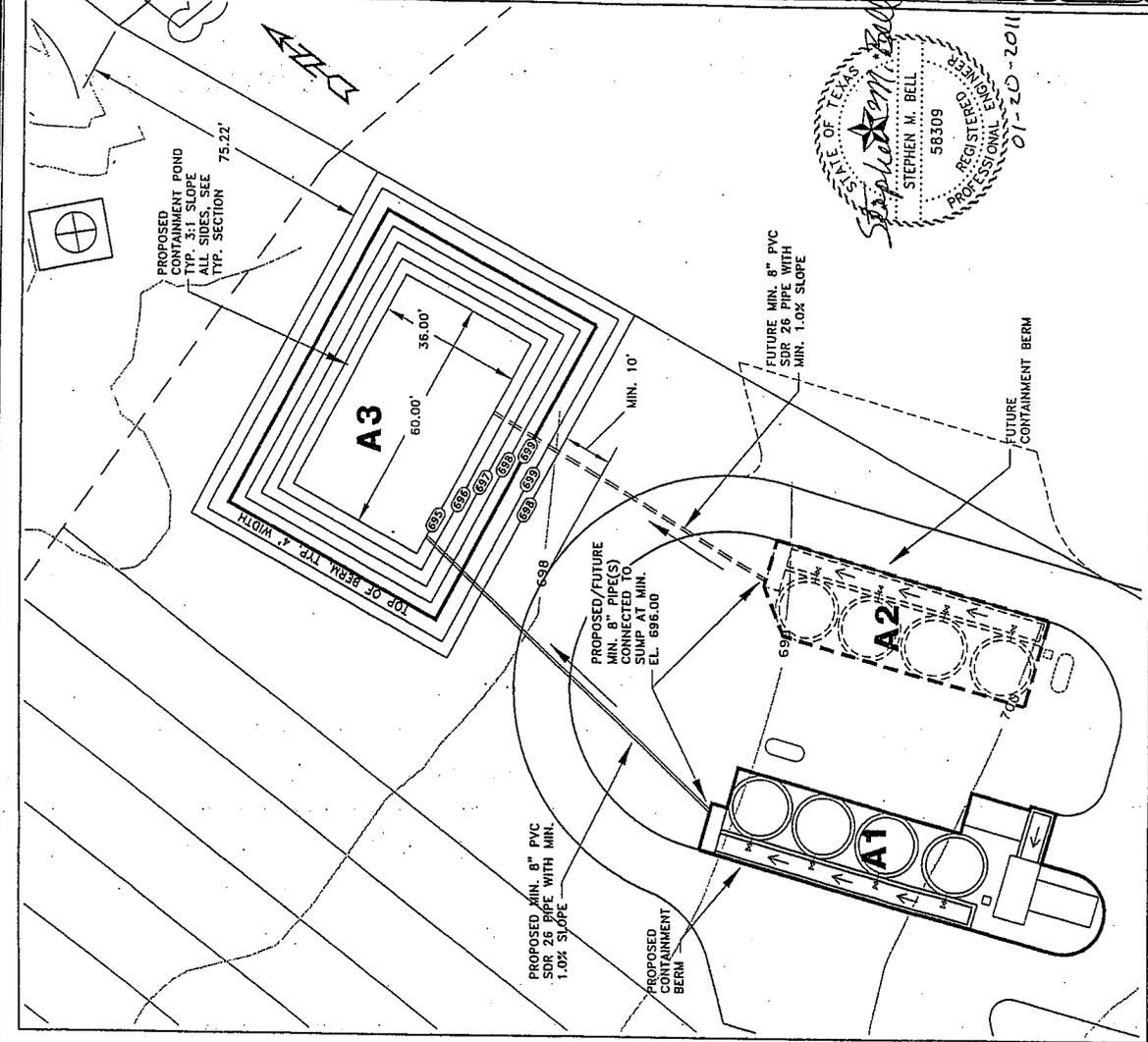
¹ Bentonite property tests performed at a bentonite processing facility before shipment to CETCO's GCL production facilities.

² Bentonite mass/area reported at 0 percent moisture content.

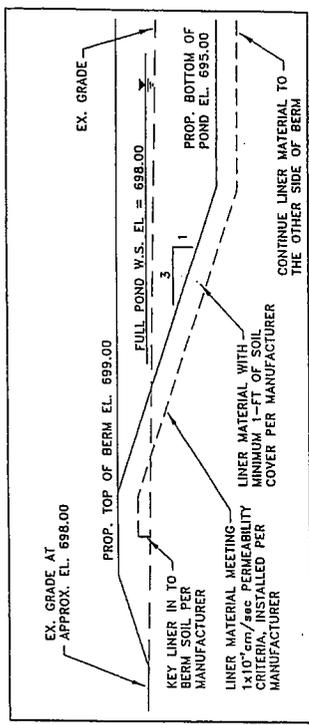
³ All tensile strength testing is performed in the machine direction using ASTM D 6768. All peel strength testing is performed using ASTM D 6496. Upon request, tensile and peel results can be reported per modified ASTM D 4632 using 4 inch grips.

⁴ ASTM D5887 Index flux and hydraulic conductivity testing with deaired distilled/deionized water at 80 psi (551 kPa) cell pressure, 77 psi (531 kPa) headwater pressure and 75 psi (517 kPa) tailwater pressure. Reported value is equivalent to 92 gal/acre/day. This flux value is equivalent to a permeability of 5x10⁻¹⁰ cm/sec for typical GCL thickness. ASTM D 5887 testing is performed only on a periodic basis because the membrane is essentially impermeable.

⁵ Peak value measured at 200 psf (10 kPa) normal stress for a specimen hydrated for 48 hours. Site-specific materials, GCL products, and test conditions must be used to verify internal and interface strength of the proposed design.



ENLARGED SITE PLAN - TREATMENT UNIT AND CONTAINMENT POND
 SCALE: 1" = 30'



Stage-Storage Table
Containment Pond

WS/EI (elev)	Surface Area (sq-ft)	Area (ac)	Incremental Volume (cu-ft)
695.00	2,160.00	0.0496	1154.25
695.50	2,457.00	0.0564	1307.25
696.00	2,772.00	0.0636	1469.25
696.50	3,105.00	0.0713	1640.25
697.00	3,456.00	0.0793	1820.25
697.50	3,825.00	0.0878	2009.25
698.00	4,212.00	0.0967	2207.25
Total Volume			9400.5 cu-ft

Calculation of Required Containment Volume

Label	Area/Volume/Depth	Remark
A1	2412.11 sq-ft	Area of A1
A2	1548.39 sq-ft	Area of A2
A3	5040.00 sq-ft	Max Area on Containment Pond, A3
Total Area	9,000.50 sq-ft	
Rainfall Depth	8.00 in	25 YR., 24 HR Storm Event
Total Volume from Rainfall	6,000.33 cu-ft	
Total Volume from One Storage Tank	2,406.26 cu-ft	18,000 Gal. Storage Tank
Total Volume Required Containment Volume	8,406.59 cu-ft	
Total Volume Provided	9,400.50 cu-ft	
Conclusion:	Total Volume Provided is larger than Total Required Containment Volume	