

Mr. Castleberry's Direct Line: (512) 322-5856
Email: bcastleberry@lglawfirm.com

July 5, 2012

Ms. Bridget C. Bohac
Office of the Chief Clerk (MC-105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA HAND DELIVERY

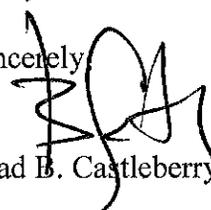
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
JUL - 5 PM 4:47
CHIEF CLERKS OFFICE

Re: In the Matter of Domestic Septage Registration No. 710921
Childress Outhouses, LLC and Robert Lee Childress
(2465-1)

Dear Ms. Bohac:

Enclosed please find for filing the original and seven (7) copies of a Motion to Overturn in the above-referenced matter. Please file stamp one additional copy of this document and return it to me via my messenger. Thank you for your attention to this matter.

Sincerely,


Brad B. Castleberry

BBC/edz
ENCLOSURES

cc: Mr. Charles Shell, General Manager
Central Texas Groundwater Conservation District

CERTIFICATE OF SERVICE

I, hereby certify that on this 5th day of July, 2012, a true and correct copy of the foregoing document was transmitted as follows:

Bridget C. Bohac, Chief Clerk
TCEQ
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Via hand delivery

Robert Lee Childress, Applicant
Childress Outhouses, LLC
605 County Road 121
Marble Falls, Texas 78654
Via mail

Brian Christian, Director
TCEQ
Small Business and Environmental Assistance
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Via mail

Blas J. Coy, Jr.
TCEQ
Office of Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Via mail

Celia Castro, Staff Attorney
TCEQ
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Via mail

Capital Aggregates
P.O. Box 1206
Marble Falls, Texas 78654
Via mail

Brian Sierant, Technical Staff
TCEQ
Water Quality Division MC 148
P.O. Box 13087
Austin, Texas 78711-3087
Via mail

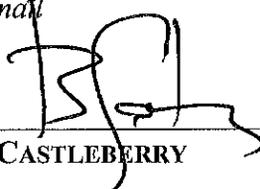
Capital Metro
Attn: Vincent Sandoval
2910 E. 5th St.
Austin, Texas 78702
Via mail

Herb Darling
Burnet County Environmental Services
220 S. Pierce Street
Burnet, Texas 78611-2200
Via mail

Jimmy & Joy Stanley
P.O. Box 386
Marble Falls, Texas 78654-0386
Via mail

Susan Meckel
LCRA
P.O. Box 220
Austin, Texas 78767-0220
Via mail

Stan Collier/Collier Material Inc.
P.O. Box 86
Marble Falls, Texas 78654
Via mail



BRAD B. CASTLEBERRY

IN THE MATTER OF DOMESTIC SEPTAGE REGISTRATION NO. 710921 ISSUED TO CHILDRESS OUTHOUSES, LLC AND ROBERT LEE CHILDRESS	§ § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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MOTION TO OVERTURN

COMES NOW, the Central Texas Groundwater Conservation District (the "District"), through the undersigned counsel, and hereby files this motion to overturn the June 6, 2012 approval by the Executive Director ("ED") of Domestic Septage Registration No. 710921 issued to site operator Childress Outhouses, LLC, and landowner Robert Lee Childress (the "Registration"). This motion is filed pursuant to the provisions of 30 TEX. ADMIN. CODE § 50.139.

I. **BACKGROUND**

The District is a groundwater conservation district created under and essential to accomplish the purposes of Section 59, Article XVI of the Texas Constitution, and with a legislative directive to conserve, preserve, protect, and recharge the groundwater resources of Burnet County, Texas, and to prevent waste and degradation of the quality of those groundwater resources.

The Registration authorizes the beneficial land application of domestic septage at a rate not to exceed 122,308 gallons per acre per year (gallons/acre/years) on 30 acres located within an approximate 45.79 acre-tract at 605 County Road 121, Marble Falls, Burnet County, Texas 78654 (SIC Code 4952).

The Texas Commission on Environmental Quality ("TCEQ") received the Registration application ("Application") on October 21, 2011, and declared it administratively complete on

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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 CHIEF CLERK'S OFFICE

December 12, 2011. Notice was mailed as required by 30 TEX. ADMIN. CODE § 312.13(c) on December 21, 2011.

The General Manager of the District timely filed written comments on January 18, 2012, noting concerns that the land application site was in the recharge zone of the Granite Gravel Aquifer, which serves an estimated 2,000 to 3,000 households as a sole source of drinking water, and that the aquifer was vulnerable to contamination due to the porous formation and shallow depth of the water table. Additionally the District expressed serious concern regarding a gravel quarry immediately adjacent to the site location, which has already exposed the aquifer during its operations. The Board of Directors of the District voted unanimously to oppose the Application as allowing the application of septage to this land would be an unacceptable risk to the quality of the groundwater. Also enclosed with the comments was a hydrogeologic assessment of the Granite Gravel Aquifer commissioned by the District.

The public comment period for the Application closed on January 20, 2012. The ED completed his technical review of the Application and prepared the preliminary decision and draft registration on May 8, 2012. The ED filed a response to public comment on May 23, 2012, making no changes to the draft registration in response to public comment.

In response to the District's comments, the ED stated that the proposed septage application area is located immediately north of the defined recharge zone of the Granite Gravel aquifer, and that although the gravel quarry activities adjacent to and just south of the proposed application area may have exposed the Granite Gravel aquifer, the Registration contains provisions to prevent septage from running off site and from entering ground and surface water.

The ED approved the Registration on June 6, 2012, and the TCEQ mailed notice of the signed approval on June 12, 2012.

II. ARGUMENTS

The Application is flawed in many respects, and the ED has failed to sufficiently acknowledge the District's concerns regarding the likely impact to groundwater if the Registration is not overturned and the Application denied. To further explain the District's concerns, it retained David Price, P.E. to evaluate the Application, including local site specific conditions, and prepare a report ("Report") for the ED's review and consideration. Attached hereto as Exhibit 1 is a copy of the Report, which identifies numerous reasons why the Registration should be overturned and the Application denied. Below is a general summary of the Report, but the District requests the ED review and consider the Report in its entirety given the seriousness of his decision in this matter.

A. *Application Contains Errors and Inaccuracies*

The Application filed with the TCEQ and relied upon by staff in its evaluation and approval of the Registration contains erroneous information and inaccuracies that prove to be misleading and unclear. The ED relied upon erroneous and inaccurate information supplied in the Application in his approval of the Registration; therefore the approval should be invalidated.

B. *Failure to Properly Identify Site and Provide Sufficient Mapping*

The maps provided in the Application do not accurately depict detailed locations of existing homes and wells in the area, and are incomplete. Although the Application does contain maps, the maps are insufficient to perform a detailed evaluation of the potential impacts of such an operation, especially considering the close proximity of the quarry and exposed aquifer.

C. *Existing Soil Conditions of the Site were Incorrectly Characterized*

The soil conditions provided in the Application appear to be incorrect. The lack of proper and sufficient soils overlying the site is an issue that should have been sufficient to deny the Application. Furthermore, soil data that is furnished in the Application is not reliable, and tests submitted with the Application document exceptions to testing, which could impact results.

D. *Failure to Consider Close Proximity to Exposed Aquifer*

The existence of an exposed aquifer and groundwater in close proximity of the site was not properly disclosed and examined during the ED's review of the Application. The potential for direct runoff from the site into the aquifer is extremely high and the risk of contamination will magnify during rainfall. The sensitive nature of the aquifer as the sole source of potable water for over 2,000 people raises the level of consideration under which the Application should have been considered. The buffers required in the Registration, should it be issued, are not sufficient to ensure continuous and adequate protection of groundwater.

E. *Special Provisions of Registration are Insufficient*

The special provisions in the Registration do not provide enough local site-specific protection. Childress Outhouses, LLC not only pumps and hauls chemical toilet waste, but also non-domestic sewage. The provisions of this Registration do not address all operational considerations.

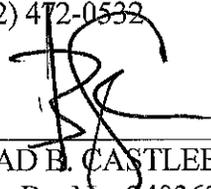
III. RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, the District has reviewed the ED's determination regarding this matter and respectfully disagrees that the Registration should be issued for the reasons stated herein. By this motion, the District requests that the Commissioners overturn the ED's approval of the Registration, and grant any other administrative or judicial

relief that may be warranted, and to which the District may be entitled, including but not limited to denying the Application.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue
Suite 1900
Austin, Texas 78701
(512) 322-5856
FAX: (512) 472-0532

By: 

BRAD E. CASTLEBERRY
State Bar No. 24036339

**ATTORNEY FOR CENTRAL TEXAS
GROUNDWATER CONSERVATION
DISTRICT**

AusTex Development I, Ltd.

Land Development + Engineering + Construction TBPE F-5636

P.O. Box 26523

Austin, TX 78755

(512)-698-7676

July 3, 2012

Mr. Brad Castleberry
Lloyd Gosselink Firm
816 Congress Ave., Suite 1900
Austin, TX 78701

Re: Request for Motion to Overturn Information
Childress Outhouses LLC
RN 710921

Dear Mr. Castleberry:

Enclosed, please find information regarding the referenced RN 710921 permit issued to Childress Outhouses, LLC.

Our firm was engaged by Mr. Charles Shell, with the Central Texas Groundwater Conservation District, to review the matter and offer some input as to the specific nature of the original filing, the conditions of the site, and technical information that relates to these items.

In our review, we found that site-specific information was discovered, and such information was not made known by the applicant to the TCEQ, in the permit filing. Such information affects the Public Safety and Welfare of thousands of people located in the immediate area of the site, that utilize the aquifer adjacent to Applicant's site. Also, the original application contains many errors and omissions that may have deemed the initial review by the Commission, and review afforded by affected parties, inadequate in scope and content.

Specifically, it is my Professional Engineering opinion, that the following information should be addressed in a more thorough review:

1. The legal status of Childress Outhouses LLC was incorrectly stated on application;
2. RN and CN numbers were variously mis-stated;
3. Numerous other errors appear on application (e.g. address);
4. The existing soil conditions of the site were incorrectly stated and/or characterized;
5. The drainage of the proposed site was incorrectly characterized by a non-Engineer, leading to possible false assumptions about the likelihood and/or possibilities of pathogenic vectoring.

Exhibit 1

6. The existence of an exposed aquifer, in close proximity to the site, was not disclosed.
7. The existence of ground water, in close proximity to the site, was not disclosed or investigated.
8. Incorrect and/or incomplete existing habitations were left off of the site assessment.
9. Tests submitted with the application show exceptions on the soil testing, said exceptions being confirmed with the Testing Lab. Such exceptions could impact soil test results.

Additionally, our firm believes that unique circumstances regarding the Granite Gravel Aquifer, coupled with the location of the site, material being applied, hydrologic conditions of the area, and extensive research data regarding viral transport and long-term viability in aquifers, should merit a higher degree of scrutiny, as the area serves over 2,000 people as the sole source of potable water. This should include special provisions, should such permit ultimately be allowed, to ensure grinding of any solids, during lime mixing operations, to a liquid form, so as to ensure full mixing of lime, to ensure full pathogen reduction. This should include provisions for continuous mixing for a period of at least 30 minutes, and multiple sampling of the resulting slurry. Furthermore, due to published research regarding viral transport in groundwater, periodic testing of the disposal site and nearby wells, should also be undertaken to ensure the operation is achieving full and continuous removal of viral pathogens.

Additionally, it has come to our attention, that the applicant pumps and hauls not only chemical toilet waste, but non-domestic sewage. No provisions have been made to address these issues, which are not allowed under the permit. It is respectfully recommended that provisions be placed on any permit to disallow such wastes.

Furthermore, due to the critical nature of the water supply, which is exposed immediately adjacent to the applicant, that proper application of Engineering principles should be made so as to ensure, to the highest standard possible, the Public Safety and Welfare. This should include provisions to acknowledge, that under 30 TAC Chapter 285 no application of sewage beyond 140 BOD₅ is allowed on a site, yet the potential exists to land apply rates far beyond this level, as the applicant has a business that will pump any type of sewage waste, and other than "self reporting", there are no safeguards to protect Public Safety and Welfare beyond such levels.

Also, the area in question experiences periodic rainfall events that exceed the norm. Frequently, these events produce rainfall rates in excess of 2 inches per hour, resulting in extremely high rates of runoff. The applicant's property slopes in such a manner as to have a high degree of runoff during such events, causing runoff directly to the exposed aquifer. These events are hard to predict. Due to history of such events, there is great concern that contamination of the aquifer would occur.

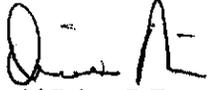
With the above items in mind, it is my Professional Engineering opinion, that items as submitted with the original application are deficient, and that a permit may have been issued based on incomplete information and analysis. Accordingly, conditions surrounding the original application should be revisited with more thorough information being supplied.

Our firm stands ready to furnish additional information in this regard, including multitudes of studies regarding groundwater, pathogen vectoring, and other related items. I have also enclosed some additional detail about specific items mentioned in the above summary.

Mr. Brad Castleberry
Page 3

I may be contacted at 512-698-7676, in Austin, should you have any additional questions in this regard.

Respectfully,



David Price, P.E.
Manager
AusTex Development I, Ltd.
TBPE Firm F-5636



Price
#66362
7/3/12

Enclosures:

- Detailed Supplemental Information

cc: Mr. Charles Shell
Central Texas Groundwater District
PO Box 870
Burnet, TX 78611

Detailed Supplemental Information

Background:

The referenced permit 710921, issued on June 6 by the TCEQ (in letter dated 12 June 2012), is for application of domestic septage on a portion of property at 605 CR 121, west of US 281, near the intersection of CR 121 and FM 1855 (Fairland Road). This property is located north of Marble Falls, Texas, and SW of Burnet, Texas.

AusTex Development was retained by Central Texas Groundwater Conservation District (CTGCD) on 28 June to review the permit and offer Professional Engineering input as to the conditions at the site, the conditions regarding the permit paperwork, and other factors which would affect the position of CTGCD relating to the permit.

Entities

The Texas Commission on Environmental Quality (TCEQ) is tasked with the authority to issue permits relating to beneficial land use application for domestic septage. Additionally, this same organization has a broader scope, under the Texas Administrative Code, to permit and enforce various environmental rules and regulations, as codified in State Law. These regulations include periodic review and modifications of laws relating to sewage application under 30 TAC Chapter 285, as well as municipal sewage guidelines under various other chapters. Also included is the regulation of domestic water sources and supplies. These regulations are sometimes in conflict with one another, but the overall purpose of the Rules is to protect the Public Safety and Welfare, which is of primary importance. Such protection is afforded under Federal Law, and is also afforded each citizen of the State of Texas, as promulgated under the Texas Engineering Practice Act.

The Central Texas Groundwater Conservation District (CTGCD) is a political entity, formed in 2005, with the purpose of protecting the underground water resources for the citizens of Burnet County. The district has taxing authority and is funded through ad-valorem taxes. The District has authority under Chapter 36 of the Texas Water Code; Chapter 8810, Subtitle H, Title 6; Special Districts Local Laws Code and 31 TAC Chapter 356.

Childress Outhouses, LLC is a Limited Liability Corporation, as filed with the Texas Secretary of State. Per the application filed, they design and install OSSF systems. Per business information noted onsite, they also rent/service portable toilets, as well as pump septic tanks. They are owned by Robert and Jacelyn Childress.

AusTex Development is a design-build firm, engaged in land development, engineering, and construction. The principal, David Price, is a Registered Professional Engineer, and has extensive experience in wastewater and septage, including occupational licenses in the onsite industry. Mr. Price served for several years on the City of Austin Water and Wastewater Commission, as well as the Texas Onsite Wastewater Association, and has been engaged in construction and engineering since 1974. Mr. Price has extensive experience in hydraulics and hydrology, and has served in many cases as an expert witness in such matters. Mr. Price has extensive knowledge of the specific area, being a life-long resident of Austin, and specific experience in the Granite Gravel aquifer.

Location

The Geographic location of the property, in Burnet County, lies in a unique area of the Llano uplift, characterized by granite outcroppings, and characterized by a very thin layer of sandy loam type soils, over a varying depth layer of "granite gravel". The general area (Fairland) is known for a highly variable strata, including granite gravel, sandy loam soil, and granite outcroppings. These materials, specific to the area, have been locally mined for many years, with various business interests operating sand/granite gravel operations in the "lower portions" of the strata. Such operations often only require direct digging of the material out of the ground, and directly loading into trucks for transportation and selling as a highly permeable fill. Some operations in the area further screen the material, to provide for sizing of the material for various gradations, with only the use of a motorized screening plant.

Of particular note, specific to the permit in question, is the operation of such a sand/gravel operation immediately adjacent to the applicant/permittee (Childress). Visual observations of this operation, immediately south of the Childress site show a thin layer of sandy loam soil (Class II, or better), overlying a deep layer (over 30 feet) of granite gravel (class I). Of extreme interest, in the bottom of this open pit, is the presence of groundwater. This groundwater was not an "occasional" seep, but appeared to be a constant pool level elevation of the top of an aquifer. This statement is supported by the aquatic water plants that were growing around the perimeter of the pond, toward the bottom of this pit. The pit had been locally excavated down to the level of the groundwater, then stopped.

Part of the characteristics of this granite gravel layer, and the area topography, is the existence of a large underground pool of stored water. The aquifer in this area, supplies water to approximately 2,000-3,000 people, and is well documented, in terms of flowrate, depth, and susceptibility to pollutants (please see Central Texas Groundwater District website, report on Granite Gravel Aquifer). The applicant's property drains (per Marble Falls G.I.S. and USGS topographic data), *directly* to the exposed portion of this aquifer, to the south (please see photo section, below). This aquifer has been extensively studied by the CTGWD, and is currently being monitored in many locations.

The neighbor's property, immediately adjacent to Childress, and to the east, was also viewed, via walking from the neighbor's house. Just north of the neighbor's home, a spring fed pond was encountered (see photos, below). The pond had not been excavated, and exhibited vegetation that is characteristic of a full-time source of water. This pond appeared to slightly higher than the Childress site. The water surface elevation of the pond was such that it appeared water was high enough in the strata to be seeping to this outlet point, and the water level would expected to be similarly high on the Childress tract, immediately across the fence, to the west. Property owner indicated holes on property never struck rock, only dirt and sand.

Applicant property was viewed from the west, and the north. There appeared to be no evidence of any "crops" (as stated on the application, as the reason for wanting to apply septage), and the property did not appear to be under any cultivation, other than possibly some grass production, evidenced by a few round hay bales on the site. There was no evidence of any type of items for erosion/containment, often referred to as BMP's. The Applicant site appeared to be accessed from the quarry site to the south, with a road leading into the property, past the wash-rack area, where there appears to be a water pump well-house. Again, no erosion controls were in evidence, with only a set of tire tracks leading into the property from the west (photo).

In viewing the site, and environs, there are a few glaring issues that come to mind, when coupled with the application made by Mr. Childress. Any of these issues are cause for concern.

First and foremost, it does not appear that the soil conditions specified by Applicant on application, appear to be correct. Strata downslope, and transverse to his property, indicate nothing but sandy loam and granite gravel. CTGCD has extensive information on the aquifers in the area, including the Granite Gravel Aquifer. The lack of proper and sufficient soils overlying a site is of primary importance in the review and granting of any permit, and the incorrect, or overly broad, data supplied on the application may have caused TCEQ to not properly review said permit application. Indeed, soil permeability rates are specified

Secondly, there is an obvious water table, that is exposed, immediately downslope of Mr. Childress property (and even on the west side of CR 121). With the lack of utilization of BMP's, as well existing topography leading directly to the aforementioned aquifer, the likelihood of possible direct runoff contamination into the aquifer is extremely high. The observance of a "perched" water table, as evidenced by the spring on the neighbor's property, is cause for concern, as such existing conditions are not allowed under the Regulated Management conditions of the permit (as issued), and the permeability rates of the *in-situ* soils would have rendered such a site as unsuitable for land application of septage.

Application Issues (Original Submission)

On the application, there are many errors, including incorrect data, missing information, and many items that should have rendered it technically incomplete.

Application Items in error or of question:

On Page 1, Applicant information requires a CN number from TCEQ. The number furnished, either CN803966, or 803966, does not exist, and it was not possible to look up report by CN number.

On Page 2, the box "Limited Partnership" was checked. However, in filings with the Texas Secretary of State, Childress Outhouses is a limited liability company (LLC). The entity information is therefore not correct. As an LLC, Childress is to have a Secretary of State issued ID number, which is to be furnished on all reports.

Also on page 2, the Fed Tax ID number does not match and number with the Texas Secretary of State (required for all business entities, and specifically LLC's).

Of note, Mr. Childress is listed as both the "Administrative Contact", as well as "Technical Contact" on Page 5 (page 6, if cover counted as page 1).

On page 6, Mr. Childress furnishes a RN number of RN105386973, stating the site is "part of a larger business site". However, per the TCEQ website, RN105386973 is registered to Childress Outhouses, with no designation as to business entity type. This is another discrepancy on filing paperwork.

Mr. Brad Castleberry
Page 7

On page 6, Mr. Childress lists the address as "121 County Road, Marble Falls, TX". The address is not the address of the site (605 CR 121). This is a technical error on the application, and does not match the data furnished for the site. The TCEQ form is quite specific to verify the address -- yet this was not done.

On page 7, the location of the site (lat/long) does not appear to be correct, as the location specified falls within a required buffer zone.

Item 5(g), page 7, states "We primarily install septic systems, and pump some domestic sewage. I am after the sewage because fertilizer has gotten so high to purchase for my crops". In a review of the site on 30 June, including viewing from above, there is no evidence of crop planting. The property does not appear to be in cultivation (although it may be, just not evident from fence perimeters).

Of extreme concern, noted on the site, is the evidence Mr. Childress is in the portable outhouse business (which is apparent, due to his registered business name). One small vacuum truck was seen at the rear of his shop, and only one. There is concern that high BOD wastes could be disposed of at site.

The required detailed maps, of existing homes and wells, appear to be incomplete (house sitting in gravel pit, immediately to south of tract, does not seem to appear on the application). Despite highly detailed data available, such data was not included in hand-drawn information submitted.

The soil data furnished, is not reliable. To simply ignore the soils that are exposed to the west and south of the subject tract, in terms of quarry operations, is disingenuous at best. Considering that the applicant holds various professional licenses, and has specific training in soils (relating to OSSF systems), it of concern that the actual soils, and presence of an exposed aquifer were ignored on the application. While the use of soil surveys is generally allowed under the application, the operation of the permit restricts application to known site conditions and soil permeabilities.

The test data on the soils, furnished by the applicant, include test results from a lab. Please note that the soil sample had some exceptions -- which were discrepancies in the sample -- that were not addressed. In speaking with the lab, the samples were not taken by the lab, and were also tested outside of the normal test parameters specified. As such, such reports should be disqualified for use in the application, as currently included.

(END text)

See photos and Map, below:



Photo 1: Spring on property located to east of Applicant, at approx same elevation as disposal area.



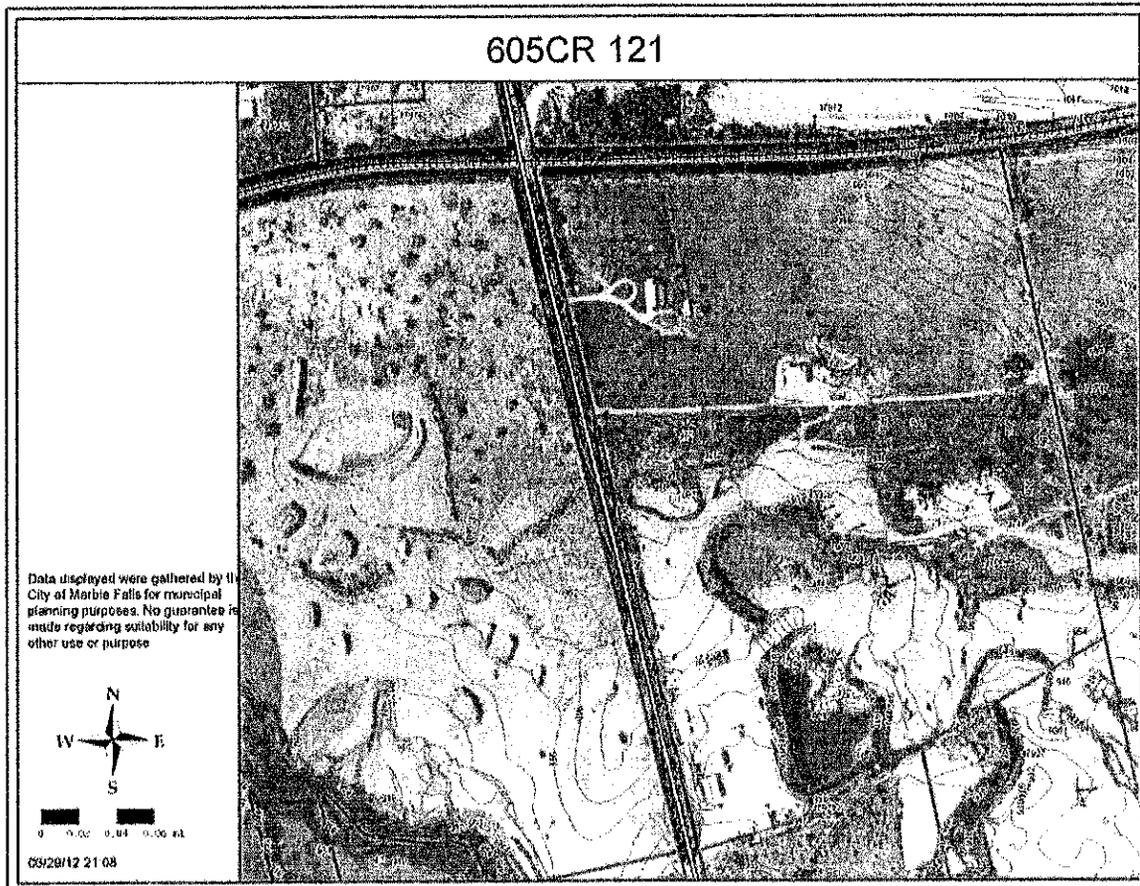
Photo 2: Property (open quarry), immediately downslope of proposed disposal area.
Applicant's property is open area in foreground.



Photo 3: Exposed Granite Gravel Aquifer, immediately downslope of Applicant's site (upper, right, of photo). Stockpiled material is granite gravel, and water passes directly through material.



Photo 4: Proposed disposal area (note slope). Highly eroded strata to North (railroad track behind tree line).



Map 1: Applicant's property is below RR track, to right of road, and slopes SW to existing quarry.(at top, right of photo).

2 Ft Contour Lines	County Roads
2 Ft Contour Lines	Farm to Market Roads
Block Numbers	State Highways
Block Numbers	US Highways
Lot Numbers	Railroad
Lot Numbers	Railroad
Tracts & Platted Lots Boundary	BCAD Ownership Parcels
Tracts & Platted Lots Boundary	BCAD Ownership Parcels
Low Water Crossings	Floodway
Low Water Crossings	Floodway
Bridges	100 Yr Floodplain
Bridges	100 Yr Floodplain
Street Labels	Creeks
City Street Labels	Creeks
Streets	Ponds
Roads	Ponds
City Streets	Highland Lakes System
Private Drives	Highland Lakes System

(Map key)