

**TCEQ DOCKET NO. 2012-1329-SLG**

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

**CENTRAL TEXAS GROUNDWATER CONSERVATION DISTRICT’S REPLY TO  
RESPONSES TO MOTION TO OVERTURN**

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

COMES NOW, the Central Texas Groundwater Conservation District (“District”), through the undersigned counsel, and hereby files this reply to the responses to motion to overturn the aforementioned matter.

I. INTRODUCTION

On June 6, 2012, the Executive Director (“ED”) of the Texas Commission for Environmental Quality (“TCEQ” or the “Commission”) issued Domestic Septage Registration No. 710921 to Robert Lee Childress and Childress Outhouses, LLC (the “Registration”). Following the ED’s issuance of the Registration, the District timely filed a motion to overturn the ED’s decision on July 5, 2012, pursuant to the provisions of 30 TEX. ADMIN. CODE § 50.139. On August 1, 2012, both the Office of Public Interest Counsel (“OPIC”) and the ED of TCEQ filed a response to the District’s motion to overturn. By this filing, and for the reasons stated herein, and in the District’s original motion to overturn, the District reiterates its request to revoke the Registration.

## II. ARGUMENTS OF ED

### A. *General Health Concerns*

According to the ED, the Registration contains requirements sufficient to prevent the contamination of the Granite Gravel Aquifer (the “Aquifer”), which serves as the sole source of potable water for numerous central Texas residents. *ED’s Response to Motions to Overturn*, page 4. The ED concluded that the site-specific conditions and the proposed septage application rate contained in the Registration will protect against groundwater contamination. *Id.* These conclusions are based heavily on the general requirements and purposes of TCEQ septage registrations, and do not adequately consider the unique characteristics of this Registration.

Neither the Registration nor the ED’s Response adequately addresses the significant gravel quarry that is contiguous to and downslope of the proposed application area. The quarry poses an imminent concern due to the fact that the quarry operations inadvertently expose the Aquifer. In its current state, the lowest point in the quarry contains a constant pool of water formed by a direct connection between the Aquifer and the quarry floor. *Expert Report by David Price, Professional Engineer*, page 5 (the “Expert Report”). Given that the slope of the proposed application area is such that all runoff is directed toward the quarry and the exposed Aquifer, contamination from applied septage is highly probable. *Id.* at 6. This is unacceptable when numerous central Texas residents rely on the Aquifer as their sole source of potable water.

An additional concern that the ED failed to consider in the initial Registration and its Response is the shallow water table, irrespective of the neighboring and downslope gravel quarry. In the area surrounding the proposed application zone, the water table is shallow and covered by a thin, porous, sandy loam soil formation. A natural, spring-fed pond (the “Pond”) on the property immediately east of Registrant’s property demonstrates the shallow nature of the

water table in the area surrounding the proposed application zone. The elevation of the Pond appears in line with, or even slightly higher, than the elevation of Registrant's property. This indicates that the water table is similarly shallow on Registrant's property, which heightens the risk that groundwater contamination will occur as a result of the proposed septage application. Such a risk of contamination is troublesome in light of the dependence so many central Texas residents have on the Aquifer as their only source of drinking water. For these reasons, the ED has failed to adequately address the health concerns associated with septage application in the proposed zone.

*B. General Technical Concerns*

The ED claims that Registrant submitted a revised map that clarifies the discrepancies and shortcomings present in the original Registration. *ED's Response to Motions to Overturn*, page 5. According to the ED, the revised map rectifies the on-site storage and buffer zone issues raised in the Motions to Overturn. *Id.* Also, the ED points out that the Registration only authorizes application of domestic septage, so the application of any other type of septage would violate the Registration. *Id.* The ED additionally cites a TCEQ staff agronomist who believes that the soil conditions provided in the application were not mischaracterized. *Id.* Each of these contentions is flawed and do not support a decision to uphold the Registration.

While the revised map clarifies some of the issues created by the inadequate map—currently appended to the Registration—the revised map remains unincorporated into the Registration, and it may not depict buffer zones that comply with the buffer zone requirements of 30 TEX. ADMIN. CODE § 312.44(c)(2). *See OPIC's Response to Motion to Overturn*, page 6-7. As OPIC points out in its response, the January 24, 2012 TCEQ Site Investigation Report (the “TCEQ Report”) does not address the quarry pool, the tributary of Backbone Creek that runs

directly through the proposed application zone toward the quarry pool, or any of the other water features on neighboring property. *Id.* at 7. Because the quarry pool is a direct conduit to the Aquifer, and the tributary of Backbone Creek will drain directly toward that conduit, these water features should have been considered in the TCEQ Report. The site investigation was also conducted before Registrant submitted the revised map of the proposed application area. In light of the fact TCEQ has not made a follow-up site investigation to confirm the information depicted on the revised map, or to investigate the neighboring quarry pool and the Pond, there is no way to definitively tell whether the buffer zones presented comport with 30 TEX. ADMIN. CODE § 312.44(c)(2). Accordingly, the Registration should be overturned.

In its response, the ED correctly stated that the Registration does not authorize the application of any type of septage other than domestic septage. *ED's Response to Motions to Overturn*, page 5. However, there is evidence indicating that Registrant accepts chemical toilet waste and non-domestic septage. *Expert Report by David Price, Professional Engineer*, page 2, 7; *OPIC's Response to Motion to Overturn*, page 6. If Registrant does in fact accept such unauthorized waste materials, the Registration is especially inappropriate given the proposed application area's close proximity to the direct Aquifer conduit downslope of and contiguous to Registrant's property.

The ED also claims that, according to a staff agronomist, the soil conditions contained in the Registration were not mischaracterized. *ED's Response to Motions to Overturn*, page 5. While the use of soil surveys for the proposed application area is generally an appropriate way to characterize soil conditions, the presence of exposed soils to the west and south of Registrant's tract, combined with the exposed Aquifer in the gravel quarry immediately downslope of Registrant's tract, render the use of soil surveys alone unacceptable. *See Expert Report by David*

*Price, Professional Engineer*, page 7. In addition, the Expert Report highlights concerns regarding the soil test data furnished in Registrant's application. *Id.* Specifically, the Expert Report notes discrepancies in the soil sample that neither Registrant's application nor the Registration address. *Id.* Also, the soil samples used were not taken by the lab that performed the tests, nor were the tests conducted within the normal testing parameters. *Id.* This raises chain of custody concerns and the potential for a mischaracterization of the soil conditions surrounding Registrant's property.

III. RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, 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,

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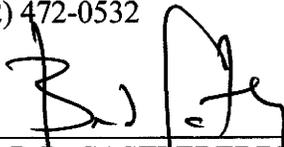
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I hereby certify that on this 10th day of August, 2012, a true and correct copy of the foregoing document was transmitted as follows:

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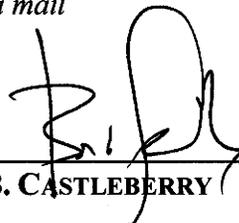
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