DUGGINS
WREN
MANN &
ROMERO, LLP

One American Center
600 Congress
Suite 1900
Austin, TX 78701

P.O. Box 1149
Austin, TX 78767

p: 512.744.9300
f: 512.744.9399
www.dwmrlaw.com

February 27, 2013

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2013 FEB 27 PM 3:06
CHIEF CLERKS OFFICE

HAND DELIVERY

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

RE: City of Carrollton's Motion to Overturn the City of Farmers Branch, Camelot Landfill TX, LP's Modification For Use of Contaminated Soil as Alternative Daily Cover; Municipal Solid Waste Permit No. 1312A

Dear Ms. Bohac:

On behalf of the City of Carrollton, please find enclosed an original and seven copies of a Motion to Overturn. Also enclosed is an extra (8th) copy to be file-stamped and returned to us by our courier. The Motion to Overturn concerns the Executive Director's approval on January 22, 2013 of the City of Farmers Branch's application to modify the Camelot Landfill MSW-1312A approving the use of contaminated soils as alternative daily cover.

Thank you for your consideration of this Motion. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Celina Romero
cromero@dwmrlaw.com

Enclosure

cc: Clayton Hutchins, City Attorney, City of Carrollton

Document No. 175828

Municipal Solid Waste Permit No. 1312A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2013 FEB 27 PM 3:07

CHIEF CLERK'S OFFICE

APPLICATION OF:	§	**BEFORE THE**
	§	
THE CITY OF FARMERS BRANCH,	§	
CAMELOT LANDFILL TX, LP	§	**TEXAS COMMISSION ON**
MODIFICATION FOR USE	§	
OF CONTAMINATED SOIL AS	§	
ALTERNATIVE DAILY COVER	§	**ENVIRONMENTAL QUALITY**

MOTION TO OVERTURN

TO THE HONORABLE COMMISSIONERS:

COMES NOW, the City of Carrollton and files this Motion to Overturn the Executive Director's decision to grant the City of Farmers Branch's ("Applicant" or "City of Farmers Branch") application for a modification to authorize the use of contaminated soils as alternative daily cover ("ADC") at the Camelot Landfill, located in Denton County, Texas and operating under municipal solid waste Permit Number 1312A. In support, the City of Carrollton shows the following:

I. FACTS AND PROCEDURAL BACKGROUND

The City of Farmers Branch owns the Camelot Landfill, which is located in the City of Lewisville, in Denton County, Texas. The eastern boundary of the landfill is adjacent to the municipal city limits of the City of Carrollton. Approximately one year ago, on March 22, 2012, the City of Farmers Branch filed an application for a major amendment for Permit Number 1312B. This major amendment, if granted, would allow the Camelot Landfill to expand vertically, by increasing the maximum elevation by 202 feet, and horizontally, by adding 38.5 acres to the waste disposal area. The City of Carrollton, the City of Lewisville, state and local elected officials, and numerous residents of both cities are opposed to the proposed expansion of the Camelot Landfill.

While the major amendment application was pending, on May 21, 2012, the City of Farmers

Branch filed an application to modify Permit Number 1312A to allow it to use contaminated soils as ADC on a permanent basis. Specifically, the City of Farmers Branch sought authorization to use soil materials contaminated with petroleum, pesticides or metals that are accepted at the site as special waste or soils contaminated with Class 2 industrial waste. The TCEQ staff issued a Notice of Deficiency on the proposed modification on July 19, 2012, and on August 7, 2012, the City of Farmers Branch filed revisions to its application. The City of Carrollton and other parties timely filed comments in opposition to the proposed modification, objecting to the issuance of this modification. A copy of the City of Carrollton's October 17, 2012 objection letter is attached as Exhibit A. On January 15, 2013, the TCEQ issued a Courtesy Response to Comments and on January 22, 2013, the Executive Director acted to approve the modification. The Chief Clerk's letter notifying the persons on the mailing list for this matter of the Executive Director's decision is dated February 6, 2013. This Motion to Overturn is timely as it is filed within 23 days of the date of that letter.

II. SUMMARY OF ARGUMENT

The City of Carrollton believes that this modification was improperly granted because the Applicant failed to demonstrate that it met all relevant statutory and regulatory criteria. 30 TAC § 50.133(a)(2) provides that the Executive Director can issue a permit if the application meets "all relevant statutory and administrative criteria." As is pointed out below, the Applicant has failed to make the requisite demonstrations that all relevant criteria have been met on this modification. For example, the applicant failed to demonstrate that it has obtained all air authorizations needed for any increases in VOC air emissions that may be generated by the stockpiling and use of contaminated soil as daily cover. Nor has the Applicant demonstrated that it has the capacity to dispose of the increased volume of stormwaters that come into contact with contaminated soils. For these and other reasons, the City of Carrollton files this Motion to

Overturn and re-urges its opposition to the use of contaminated soils as ADC, and respectfully requests that this application for a modification be denied.

II. THE APPLICANT FAILED TO DEMONSTRATE THAT ALL RELEVANT STATUTORY AND REGULATORY REQUIREMENTS WILL BE MET

A. APPLICANT MADE AN INADEQUATE DEMONSTRATION THAT USE OF CONTAMINATED SOILS AS ADC WILL NOT GENERATE AN INCREASE IN AIR CONTAMINANTS FROM THE SITE

In its October 17th comment letter, the City of Carrollton expressed a concern that the use of petroleum contaminated soil would increase VOC emissions from the site. The TCEQ responded by stating that "it is not anticipated that the use of contaminated soils as ADC will contribute to VOCs in the regional airshed." The staff seemed to be saying that since contaminated soils can be accepted for disposal at the facility, the use of contaminated soils as ADC will not increase emissions of VOCs at the site. We have several concerns with this position. First, the Applicant has made no demonstration that the use of these soils will not cause an increase in VOC fugitive emissions from the landfill. Staff cannot just assume that the use of contaminated soils as ADC will not increase VOC emissions; the Applicant must make this demonstration. Second, this logic is faulty. Disposing of contaminated soils is not the same thing as using contaminated soils as ADC. Contaminated soils that are disposed of as waste are immediately covered by daily cover. Contaminated soils used as ADC are stockpiled (increasing fugitive emissions from stockpiles) and used as daily cover (increasing fugitive emissions from exposed daily cover).

Staff correctly pointed out in its Response to Comments that landfills must comply with Chapter 330, Subchapter U, relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations. Camelot Landfill holds two Standard Permits for this site, Standard Permit Nos. 75220 and 75222. To our knowledge, neither of these permits was reviewed by air quality staff to determine whether the use of contaminated soil will generate an

increase in fugitive VOC emissions from the site. And neither permit represents the use of contaminated soils and attendant fugitive emissions from the stockpiling or use of such soils as ADC.

Moreover, Camelot Landfill operates under federal Title V General Operating Permit Number O-02376. Under subsection (b)(5)(A) of the "Municipal Solid Waste Landfill General Operating Permit Number 517," applicable to this site, the permit holder is required to comply with 30 TAC Chapter 116 by obtaining a New Source Review authorization prior to new construction or modification of emission units located in the area covered by the general operating permit ("GOP"). In the case of fugitive emissions, the addition of a stockpile(s) of contaminated soil and the use of such soils as daily cover constitute the construction of a new or modification of an existing emissions unit. Accordingly, prior authorization is needed for these new sources under the site's general operating permit.

Under the provisions applicable to both the Standard Permit and the federal Title V permit, any increase in air emissions at an existing source must be authorized. 30 TAC § 101.1(107) defines "unauthorized emissions" as "[e]missions of any air contaminant . . . that exceed any air emission limitation in a permit rule or order of the commission . . . ." Simply assuming there will not be any additional air emissions is not sufficient to authorize these emissions. The Applicant must either demonstrate there will not be any additional air emissions associated with these new activities or seek an amendment to its air permits to authorize the additional air emissions. The Applicant has done neither in this case. As a result, the Applicant has not demonstrated that it is in compliance with its Standard Permits and federal Title V permit. Accordingly this application for a modification should not be approved under 30 TAC § 50.133.

B. APPLICANT HAS FAILED TO DEMONSTRATE THAT IT WILL PROPERLY MANAGE STORMWATERS THAT COME INTO CONTACT WITH THE CONTAMINATED SOIL

In response to the City of Carrollton's comments, TCEQ staff states that any water that comes into contact with the contaminated soil stockpile will be considered contaminated water and managed consistent with the leachate contaminated water plan. This response, however, fails to address stormwater that comes into contact with the contaminated soil used as ADC. Stormwater coming into contact with contaminated soil used as ADC will be contaminated in the same manner as stormwater that comes into contact with the contaminated soil stockpile and should be treated similarly. Moreover, staff's position is more permissive than the Temporary Authorizations that allowed this activity to occur on a trial basis. Both the May 11, 2011 and the February 9, 2012 Temporary Authorizations provided as follows:

> 4. Stormwater runoff from areas that have been covered with the ADC and from ADC stockpiles shall be managed as contaminated water.

The Permanent Authorization should not be more permissive than the Temporary Authorization. Indeed, the purpose of a Temporary Authorization is to have a trial period to determine if this practice will or will not contribute to contamination at the site. 30 TAC § 330.165(d)(2) requires the holder of a Temporary Authorization to file bi-monthly status reports describing the effectiveness of the alternative material, any problems that may have occurred and corrective action required as a result of such problems. Based on the record of this proceeding, there has been no trial period to suspend the management of stormwaters that come into contact with the contaminated soils used as daily cover, as contaminated water. So there is no demonstration that such actions will not result in contamination.

Further, Applicant has not demonstrated that it has the capacity to handle and dispose of the higher volume of contaminated stormwater that will be generated by this activity. In addition, as raised in the City of Carrollton's October 17, 2012 letter and restated here, the

following deficiencies exist in the application for the modification with respect to this issue:

- There is no design or design basis for the containment berms and/or diversion berms described in the application;
- The location(s) of the stockpile area is not specified in order to allow evaluation of the proposed new waste management activity or unit;
- Operational procedures for removal of contaminated stormwater are not provided;
- A demonstration of sufficient storage capacity to manage contaminated stormwater is not provided;
- No limitation of the amount of contaminated soil that may be accumulated in one or more stockpiles is proposed; and
- Financial assurance for closure and removal of the stockpile area has not been provided.

For all of these reasons, the applicant has failed to demonstrate that its Site Operating Plan for use of contaminated soils is adequate to ensure that contaminated stormwaters will be properly managed and disposed of.

C. APPLICANT HAS FAILED TO ENSURE THAT ITS WASTE WILL BE PROPERLY TESTED TO ENSURE THAT THE SOILS IT ACCEPTS ARE WITHIN THE CRITERIA APPROVED BY THE TCEQ

The Applicant wholly fails to demonstrate in its modification application that the contaminated soils proposed to be used as ADC will be sufficiently characterized or managed in a manner that is protective of human health and the environment and consistent with the requirements of the existing permit. Although the application states in Section 2.2 "Chemical Characteristics" that testing will be conducted on the contaminated soil in order to demonstrate the TPH, pesticides, herbicides and metals do not exceed levels specified by TCEQ rules, the testing and characterization is deficient in multiple respects, as pointed out in the City of

Carrollton's October 17th comment letter. Most importantly, the Applicant does not propose to test for Table 1 constituents other than metals, pesticides and herbicides. In fact, it does not appear that the landfill operator will be performing the tests at all, instead it will rely upon generator supplied data, yet there are no procedures in place for the landfill operator to verify that the contaminated soils to be used as ADC are properly characterized. We are concerned that the waste pre-acceptance procedures fail to sufficiently demonstrate the characteristics of the contaminated soil and the verification procedures are wholly inadequate. In addition, there are no procedures in place to demonstrate that PCBs are not present in the contaminated soils used as ADC which is not in compliance with 30 TAC § 330.165(d)(4)(A). In short, the City of Carrollton believes that the soil characterization program fails to verify that the use of contaminated soils as ADC is protective of human health or the environment as required by Commission rules.

D. APPLICANT HAS FAILED TO DEMONSTRATE THAT IT HAS COMPLIED WITH THE CLOSURE COST REQUIREMENTS

The City of Carrollton commented in its October 17th letter that the application fails to propose adjustments to the facility closure cost for closure and removal of stockpiled contaminated soil. The TCEQ responded by stating that the cost to dispose of stockpiled contaminated soils is not expected to be significant and could be addressed by the closure cost contingency amount.

The closure cost contingency amount, however, is not intended to be used to "authorize" additional waste management activities that will add to the cost, but rather is to account for inaccuracies that are inherent in projected construction costs of this nature. 30 TAC § 330.503(a)(2) requires that:

> (2) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the final closure plan or the landfill conditions increase the

> maximum cost of closure at any time during the remaining active life of the unit.

Given the apparent unlimited ability to store contaminated soils which may be used as ADC (see discussion below), using contaminated soils as ADC is clearly a change in landfill conditions that will increase the maximum cost of closure and this increased cost is required by rule to result in an increase in the amount of financial assurance. Stating that the increased cost could be covered in the contingency is not sufficient. The applicant must provide the increase in costs associated with using contaminated soils as ADC and seek an appropriate increase in closure costs. The applicant has failed to do so and as such has failed to demonstrate that its application meets all relevant statutory and administrative criteria under 30 TAC § 50.133.

E. ALLOWING UNLIMITED STOCKPILING OF CONTAMINATED SOILS VIOLATES COMMISSION RULES

The Applicant fails to limit the amount of contaminated soils that may be stockpiled. In response to this concern, staff states that municipal solid waste rules do not limit the amount of material that may be stockpiled for daily cover. The contaminated soil received by the landfill is likely from industrial generators and was required by TCEQ Texas Risk Reduction Program (30 TAC 350) regulations to be excavated because it poses a threat to human health or the environment. Furthermore, because it contains or is industrial solid waste under 30 TAC § 335.1(134)(H), the contaminated soils are subject to the following General Prohibitions under § 335.4:

> In addition to the requirements of 335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:
>
> (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Natural Resource Conservation Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

Allowing the Applicant to stockpile an unlimited amount of contaminated soils without any permitting requirements endangers the human health and environment in violation of the prohibition in 30 TAC § 335.4.

IV. RESPONSE TO CONCERNS ADDRESSING EXISTING CONTAMINATION BEFORE ALLOWING ADDITIONALCONTAMINATED SOIL TO BE USED ROUTINELY AT THE SITE IS INADEQUATE

The City of Carrollton expressed concern that the TCEQ should not allow further contaminants to be introduced into the Camelot Landfill until the landfill has addressed all concerns regarding existing groundwater contamination, including arsenic, TCE and DCE, which have been detected in the groundwater monitoring wells around the site. Staff responded by stating that the Applicant's compliance history supports issuance of the permit modification. This response misses the mark. The City of Carrollton's objection was not related to compliance history. It was related to the fact that the Camelot Landfill has not properly characterized and addressed its existing groundwater contamination. And, as we have pointed out above there are many elements of environmental impacts that have not been thoroughly reviewed and addressed in this modification application, such as, air emissions, contaminated stormwaters, and proper characterization of in-coming contaminated soils. Allowing unlimited additional contaminated materials, including soils containing Class 2 industrial wastes, simply increases the existing contamination at the facility.

V. APPLICATION CONTAINS SKETCHY DETAILS AND ERRORS

All of the above discussion emphasizes the lack of sufficient detail within the application. There is inadequate technical information about how the use and storage of contaminated soils will be protective of the environment. In addition, there are errors in the application. For

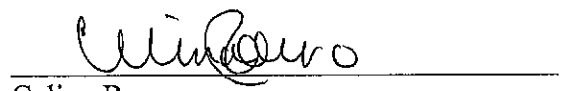
example, in applicant's May 21, 2012 application for a modification to use contaminated soils as ADC on a permanent basis, on page B-1, the Applicant cites to §§ 330.133(c) and 330.133(c)(2), in the context of referring to a temporary authorization. However, § 330.133(c) relates to the unloading of prohibited wastes and there is no current § 330.133(c)(2). There was no correction of this error and it remains a part of the site operating plan.

VI. CONCLUSION

For all of the above reasons, the City of Carrollton requests that the application for the modification to allow the use of contaminated soils as alternative daily cover on a permanent basis at the Camelot Landfill be denied, or, in the alternative, requests that the application to use contaminated soil as alternative daily cover be consolidated into the City of Farmers Branch's pending application for a major amendment for the Camelot Landfill where all of the above issues can be reviewed thoroughly.

Respectfully Submitted,

Celina Romero
State Bar No. 17223900
William Johnson
State Bar No. 24002367
Duggins Wren Mann & Romero, LLP
600 Congress Avenue, 19th Floor
Austin, Texas 78701
512-744-9300 (phone)
512-744-9399 (fax)

By: 
Celina Romero

ATTORNEYS FOR THE CITY OF CARROLLTON

MAILING LIST
For
Camelot Landfill
Permit 1312A

FOR THE APPLICANT:
Via fax – 972-247-5939
Gary Greer, City Manager
Camelot Landfill
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75243

Via fax – 817-735-9775
Jason A. Edwards, P.E.
Weaver Boos Consultants, LLC
Southwest
6420 Southwest Boulevard, Suite 206
Benbrook, Texas 76109

FOR THE EXECUTIVE DIRECTOR:
Via electronic mail:
Brian Christian, Director
Texas Commission on Environmental Quality
Small Business and Environmental Assistance
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
brian.christian@tceq.texas.gov

Guy Henry, Senior Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
guy.henry@tceq.texas.gov

Charles Brown, Technical Staff
Texas Commission on Environmental Quality
Municipal Solid Waste Permits Division MC-124
P.O. Box 13087
Austin, Texas 78711-3087
charles.brown@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL
Via electronic mail:
Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087
pic@tceq.texas.gov

FOR THE CHIEF CLERK
Via Hand Delivery
Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Exhibit A

DUGGINS
WREN
MANN &
ROMERO, LLP

One American Center
600 Congress
Suite 1900
Austin, TX 78701

P.O. Box 1149
Austin, TX 78767

p: 512.744.9300
f: 512.744.9399
www.dwmrlaw.com

October 17, 2012

Filed Via E-Comments
(http://www10.tceq.texas.gov/epic/ecmnts/)

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

RE: Notice of Application and Preliminary Decision for Municipal Solid Waste Permit Modifications, Permit No. 1312A Regarding Use of Contaminated Soils as Daily Cover ("Notice").

Dear Ms. Bohac:

This letter is written on behalf of the City of Carrollton in opposition to the proposed modification to permit 1312A to allow contaminated soil to be used as daily cover.

First, the City of Carrollton objects to the applicant's attempt to bifurcate the use of contaminated soils from the pending permit amendment application, Permit No. 1312B. Soil balance is an important issue in the pending permit amendment application. It is required to be addressed in the rules. If there is insufficient soil to support the daily cover requirements, that is an important aspect of the ability of this landfill to comply with the rules.

Further, there is the issue of the impact of the use of contaminated soils on the Dallas—Fort Worth non-attainment plan for ozone. The Camelot Landfill is in Denton County which is within this non-attainment area. Gasoline is comprised of various volatile organic compounds that evaporate. When they evaporate, they become precursors to ozone formation. If contaminated soil is allowed to be "used" at this site, then additional VOCs will be added to the regional airshed, worsening the ozone condition.

The City of Carrollton believes that the better way to address this issue is to include the proposed use of contaminated soil in the proposed permit amendment. Then the evaporation of VOCs can be considered along with other pollutant issues associated with the proposed amendment. In particular, there are other sources of VOCs from the

proposed landfill, including combustion products from flaring. These must be considered and accounted for in the permitting process. Essentially, the City of Carrollton believes that the proposal to obtain a permit modification is an illegal bifurcation of issues in order to avoid a full and proper hearing.

Second, there are existing groundwater contamination issues at the site. Both TCE and DCE—organic toxic pollutants—have been detected in monitoring wells on the south side of the landfill. It makes no sense to add more toxic pollutants such as benzene, toluene, ethyl benzene and xylene that are routinely found in contaminated soil to this site. The TCEQ should be doing everything possible to remove toxics from this site, rather than adding more toxics.

Third, the permit modification application is grossly inadequate to demonstrate that the contaminated soils proposed to be used as alternative daily cover ("ADC") will be sufficiently characterized or managed in a manner that is protective of human health and the environment and consistent with the requirements of the existing permit.

Section 2.2 "Chemical Characteristics" states that testing will be conducted on the contaminated soil in order demonstrate the TPH, pesticides, herbicides and metals do not exceed levels specified by TCEQ rules. The proposed testing and characterization program, however, is deficient in multiple ways including:

- the waste pre-acceptance procedures fail to sufficiently demonstrate the characteristics of the contaminated soil;
- the landfill operator's reliance on generator supplied data without adequate procedures to verify that the contaminated soils used as ADC are properly characterized is inadequate;
- the method(s) and frequency of testing is not specified and fails to demonstrate that the characterization of chemical contamination is adequate or representative of the contamination in the soil that is actually used as ADC;
- the characterization program fails to demonstrate that the presence and concentration of all chemical constituents of concern are known;
- the characterization program does not address the potential that contaminated soil containing listed hazardous waste will be received by the facility and used as ADC;

- no procedures are in place to demonstrate that PCBs are not present in the contaminated soil used as ADC;
- no testing for Table 1 constituents that are not metals, pesticides, herbicides, or TPH has been proposed; and,
- the characterization program fails to verify that the use of contaminated soils as ADC is protective of human health or the environment as required by TCEQ regulations.

Section 3.1 "Contaminated Soil" commits to control run-on and run-off from contaminated soil. The proposals designed to control the contaminated soil, however, are deficient in multiple ways including:

- there is no design or design basis for the containment berms and/or diversion berms described in the application;
- the location(s) of the stockpile area is not specified in order to allow evaluation of the proposed new waste management activity or unit;
- operational procedures for removal of contaminated storm water are not provided;
- a demonstration of sufficient storage capacity to manage contaminated storm water is not provided;
- no limitation of the amount of contaminated soil that may be accumulated in one or more stockpiles is proposed; and,
- financial assurance for closure and removal of the stockpile area has not been provided.

In summary, the City of Carrollton requests that the permit modification be denied, or, in the alternative, requests that the application to use contaminated soil as daily cover be consolidated into the pending permit amendment.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

DUGGINS WREN MANN & ROMERO, LLP

By: _____
Celina Romero