

BRACEWELL
& GIULIANI

Texas
New York
Washington, DC
Connecticut
Dubai
Kazakhstan
London

Timothy A. Wilkins
Managing Partner, Austin
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Bracewell & Giuliani LLP
111 Congress Avenue
Suite 2300
Austin, Texas
78701-4061

September 18, 2009

LaDonna Castanuela
Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78711-3087

CHIEF CLERKS OFFICE
2009 SEP 18 AM 11:31
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Rulemaking Petition Submitted by K-3 Resources, LP

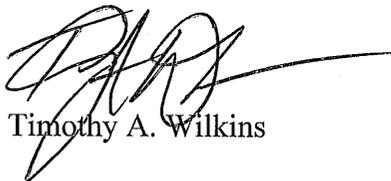
Dear Ms. Castanuela:

Enclosed please find the Rulemaking Petition Submitted by K-3 Resources, LP Requesting the Adoption of an Amendment to the Financial Assurance Requirements Applicable to Class B Sewage Sludge Land Application Facilities, T.A.C. § 37.9105(b)(2). Please file it with the appropriate division of the TCEQ.

Thank you for your assistance, and please call me at (512)542-2134 if there are any questions.

Very truly yours,

Bracewell & Giuliani LLP



Timothy A. Wilkins

RULEMAKING PETITION SUBMITTED BY
K-3 RESOURCES, LP REQUESTING THE ADOPTION OF AN AMENDMENT
TO THE FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO
CLASS B SEWAGE SLUDGE LAND APPLICATION FACILITIES,
30 T.A.C. § 37.9105(b)(2)

I.
INTRODUCTION

K-3 Resources, LP ("K-3"), headquartered at P.O. Box 2236, Alvin, Texas 77512, is a company engaged in the land application of Class B sewage sludges in the State of Texas. Pursuant to 30 T.A.C. § 37.9105(b)(2), companies engaged in land application of sewage sludges are required to provide financial assurance through the acquisition of a specified environmental impairment insurance policy and accompanying insurance certificate which includes a provision for the automatic renewal of said policy except for failure to pay the premium. Unfortunately, the required policy and certificate are commercially unavailable so long as the policy and certificate are required to contain an automatic renewal provision. Pursuant to 30 T.A.C. § 20.15, K-3 respectfully requests that TCEQ amend the rule in question by deleting the paragraph at 30 T.A.C. § 9105(b)(2) to the extent it requires land application companies to obtain policies and certificates containing an automatic renewal clause.

II.
EXPLANATION OF RULE

The proposed rule requested by this Petition will delete the section of 30 T.A.C. § 37.9105(b)(2), the paragraph of the Class B sewage sludge land application rule which requires covered companies to obtain an environmental impairment insurance policy that contains an automatic renewal clause. K-3 proposes only that the provisions relating to automatic renewal be deleted. This request is made because K-3 has found such policies to be commercially unavailable if they are required to contain an automatic renewal clause, see Attachment A hereto, and, therefore, that it is impossible to comply with the referenced rule.

III.
TEXT OF PROPOSED RULE AMENDMENT

K-3 respectfully requests that the Commission delete 30 T.A.C. § 37.9105(b)(2), which reads "The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the policy limit of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the responsible person and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the

notice of cancellation, termination, or failure to renew by both the executive director and the responsible person, as evidenced by the return receipts." Remaining paragraphs in 30 T.A.C. § 37.9105 may require renumbering upon the deletion of Section 27.9105(b)(2).

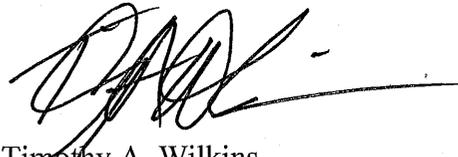
**IV.
AUTHORITY FOR PROPOSED RULE**

The proposed rule is authorized by Texas Health & Safety Code § 361.121(h)(3) which, upon adoption by the Legislature in 2003, required financial assurance on the part of companies engaged in the land application of Class B sewage sludge. Notably, that legislative provision contains no requirement that the environmental impairment insurance policy in question include an automatic renewal provision of the kind objected to herein. See Attachment B.

**V.
IMPACT OF FAILURE TO ADOPT THE PROPOSED RULE**

Failure to adopt the proposed rule will result in K-3 and similarly situated Class B sewage sludge land application companies being faced with the impossible requirement of obtaining insurance coverage on terms that are commercially unavailable. Pursuant to recent TCEQ correspondence, this will result in the revocation of those companies' Class B land application permits. See Attachment C. This is a problem facing not just K-3, but the entire biosolids management industry including many of K-3's competitors. See Attachment D. The revocation of these permits will result in dramatically negative economic consequences for this industry, the loss of hundreds of much-needed jobs associated with those operations, and the regulatory stranding of millions of tons of sewage sludge that is now being beneficially recycled. See Attachment E. Notably, K-3 has no objection to the reinstatement of the requirement now requested for deletion once the referenced insurance policies with automatic renewal provisions become freely commercially available.

Respectfully submitted,



Timothy A. Wilkins
Bracewell & Giuliani, LLP
Counsel for K-3 Resources, LP
State Bar No. 00788668
111 Congress Avenue, Ste. 2300
Austin, Texas 78701
(512) 542-2134
(512) 479-3934 – fax

ATTACHMENT A

BCH

Brady, Chapman, Holland

Associates, Inc.

R i s k P r o N e t
INTERNATIONAL
Founding Partner

September 16, 2009

Karlis Ercums, III
K-3 Resources, L.P.
P O Box 2236
Alvin, TX 77512

Re: TAC 37.9105 (Environmental Impairment Liability and TCEQ Certificate)

Dear Karlis:

Please be advised at this time, we have been unsuccessful in finding any carrier that will sign the TCEQ Certificate required by TAC 37.9105 for the Class B Sewage Sludge for Land Applications.

We originally began our search in August of 2007, when we became aware of the requirement for your Land/Farm Permits. At that time the carriers advised they would not issue the TCEQ Certificate with the current TAC 37.9105 requirements. Several carriers advised after One TCEQ certificate was issued by an underwriter in a branch office, their Home Office sent out an edict that **NO ONE WAS ALLOWED TO ISSUE THE TCEQ CERTIFICATE.**

In May 2008; June 2008; December 2008; January 2009 and August 2009, again we searched for carriers to write the Environmental Liability and issue the required TCEQ Certificate, including contacting carriers TCEQ advised would issue the certificate. All of the carriers advised they will not issue the TCEQ Certificate required by TAC 37.9105 regulation, although One Certificate may have been issued by an underwriter, their Home Office advised they were not to issue any more TCEQ Certificates.

Please let me know if you need any additional information concerning this matter.

Sincerely,



Debbie Blankinship
Account Manager
Brady, Chapman, Holland & Associates



COLEMONT
INSURANCE BROKERS

September 15, 2009

Ms. Debbie Blankinship

Account Manager
Brady, Chapman, Holland & Associates, Inc.
2190 North Loop West Suite 200
Houston, TX 77018

RE: K-3 Resources

Dear Debbie:

You requested we secure insurance for the above captioned as outlined below. We have tried twice since January 2009. Our markets are unwilling provide the certificate of insurance as outlined below. Frankly, upon initial discussions we could not get beyond the certificate requirements to actually discuss the insurance exposures.

Certificate requirements:

Environmental Impairment Liability policy and the TCEQ Certificate required by rule 37.9105 (b) (2) "The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the policy limit of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the responsible person and the executive director.

Cancellation, termination or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice of cancellation, termination, or failure to renew by both the executive director and the responsible person, as evidenced by return receipts."

The markets I approached are:

Markets approached and responses- they all declined

ACE/ Westchester

AIG- still await their legal department response to the certificate (they declined for you)

Nautilus

Chubb

Freberg

James River

Colemont- London- you had already approached all their markets

In my professional opinion, requesting such a condition is beyond the basic reasoning of a two party contract within the realm of insurance negotiations. I am not surprised at the insurance market reluctance to provide such a unilateral position.

I am hopeful this will assist your applicant's attorney.

Best regards,

Terry Moody
Senior Vice President
Colemont Insurance Brokers



Ms. Debbie Blankinship
Brady, Chapman, Holland & Associates
10055 W Gulf Bank
Houston, TX 77040

**RE: TEXAS FINANCIAL ASSURANCE FOR CLASS B SEWAGE
SLUDGE FOR LAND APPLICATION UNITS**

September 18, 2009

Zurich North America
Commercial

3003 Summit Boulevard
Suite 1800
Atlanta, Georgia
30319

Telephone (404) 851 3502

greg.travis@zurichna.com

Dear Ms. Blankinship:

This letter confirms that writing coverage for the above referenced facility types is not part of our risk appetite. We find that the risks associated with sewage sludge land application and the regulatory requirements in Texas which operate to materially detract from an insurer's right to cancel, modify or nonrenew coverage over time take away the necessary underwriting control over the risk once an initial policy and certificate are issued. As you know, the ability of a insurer to adjust coverage over time as the underlying risk changes are critical to maintaining a viable insurance practice. As such, we are not interested in providing coverage for these facilities.

Thank you for your interest in working with us.

Sincerely,

Greg Travis
Product Line Manager

CHARTIS

LEAH FLANAGAN
2929 ALLEN PARKWAY, SUITE 1300
HOUSTON, TEXAS 77019-2128
Tel: 713-342-7516
Fax: 866-780-1294
LEAH.FLANAGAN@CHARTISINSURANCE.COM

September 15, 2009

Debbie Blankinship
Brady, Chapman, Holland & Associates
10055 W. Gulf Bank
Houston, TX 77040

Re: Financial Assurance

Debbie,

This letter is to confirm our earlier correspondence. Chartis will not issue an Environmental Impairment Insurance policy to satisfy the requirements 30 TAC Chapter 37 Subchapter V: Financial Assurance for Class B Sewage Sludge for Land Application Units.

Sincerely,



Leah S. Flanagan
Senior Risk Analyst

ATTACHMENT B

AN ACT

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relating to the land application of certain sludge.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 361.121, Health and Safety Code, is amended by amending Subsections (b), (c), (d), and (h) and adding Subsections (j), (k), (l), (m), (n), and (o) to read as follows:

(b) Except as provided by Subsection (m), a [A] responsible person may not apply Class B sludge on a land application unit unless the responsible person has obtained a permit for that land application unit issued by the commission under this section on or after September 1, 2003.

(c) The notice and hearing provisions of Subchapter M, Chapter 5, Water Code, as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, apply to an application under this section for a permit, a permit amendment, or a permit renewal. In addition, at the time published notice of intent to obtain a permit is required under Section 5.552, Water Code, an applicant for a permit, permit amendment, or permit renewal under this section must notify by registered or certified mail each owner of land located within one-quarter mile of the proposed land application unit who lives on that land of the intent to obtain the permit, amendment, or renewal. Notice to landowners must include the information required by Section 5.552(c), Water Code, and information regarding the anticipated date of the first application

1 of the sludge to the proposed land application unit. An owner of
2 land located within one-quarter mile of the proposed land
3 application unit who lives on that land is an affected person for
4 purposes of Section 5.115, Water Code.

5 (d) In each permit, the commission shall prescribe the
6 conditions under which it is issued, including:

- 7 (1) the duration of the permit;
8 (2) the location of the land application unit;
9 (3) the maximum quantity of Class B sludge that may be
10 applied or disposed of under the permit;

11 (4) a requirement that the permit holder submit
12 quarterly to the commission a computer-generated report that
13 includes, at a minimum, information regarding:

14 (A) the source, quality, and quantity of sludge
15 applied to the land application unit;

16 (B) the location of the land application unit,
17 either in terms of longitude and latitude or by physical address,
18 including the county;

19 (C) the date of delivery of Class B sludge;

20 (D) the date of application of Class B sludge;

21 (E) the cumulative amount of metals applied to
22 the land application unit through the application of Class B
23 sludge;

24 (F) crops grown at the land application unit
25 site; and

26 (G) the suggested agronomic application rate for
27 the Class B sludge;

1 (5) a requirement that the permit holder submit
2 annually to the commission evidence that the permit holder is
3 complying with the nutrient management plan and the practice
4 standards described by Subsection (h)(4);

5 (6) a requirement that the permit holder post a sign
6 that is visible from a road or sidewalk that is adjacent to the
7 premises on which the land application unit is located stating that
8 a beneficial application site is located on the premises;

9 (7) any other monitoring and reporting requirements
10 prescribed by the commission for the permit holder; and

11 (8) [~~5~~] a requirement that the permit holder must
12 report to the commission any noncompliance by the permit holder
13 with the permit conditions or applicable commission rules.

14 (h) The commission by rule shall require an applicant for a
15 permit under this section to submit with the application, at a
16 minimum:

17 (1) [~~7~~] information regarding:

18 (A) [~~1~~] the applicant;

19 (B) [~~2~~] the source, quality, and quantity of
20 sludge to be applied; and

21 (C) [~~3~~] the hydrologic characteristics of the
22 surface water and groundwater at and within one-quarter of a mile of
23 the land application unit;

24 (2) proof evidencing that the applicant has a
25 commercial liability insurance policy that:

26 (A) is issued by an insurance company authorized
27 to do business in this state that has a rating by the A. M. Best

1 Company of A- or better;

2 (B) designates the commission as an additional
3 insured; and

4 (C) is in an amount of not less than \$3 million;

5 (3) proof evidencing that the applicant has an
6 environmental impairment insurance policy or similar insurance
7 policy that:

8 (A) is issued by an insurance company authorized
9 to do business in this state that has a rating by the A. M. Best
10 Company of A- or better;

11 (B) designates the commission as an additional
12 insured; and

13 (C) is in an amount of not less than \$3 million;
14 and

15 (4) proof that the applicant has minimized the risk of
16 water quality impairment caused by nitrogen applied to the land
17 application unit through the application of Class B sludge by
18 having had a nutrient management plan prepared by a certified
19 nutrient management specialist in accordance with the practice
20 standards of the Natural Resources Conservation Service of the
21 United States Department of Agriculture.

22 (j) A permit holder must maintain an insurance policy
23 required by Subsection (h) in effect for the duration of the permit.

24 (k) The commission shall create and operate a tracking
25 system for the land application of Class B sludge. The commission
26 shall require a permit holder to report deliveries and applications
27 of Class B sludge using the tracking system and shall post the

1 reported information on its website. The tracking system must
2 allow a permit holder to report electronically:

3 (1) the date of delivery of Class B sludge to a land
4 application unit; and

5 (2) for each application of Class B sludge to a land
6 application unit:

7 (A) the date of the application; and

8 (B) the source, quality, and quantity of the
9 sludge applied.

10 (1) A permit holder may not accept Class B sludge unless the
11 sludge has been transported to the land application unit in a
12 covered container with the covering firmly secured at the front and
13 back.

14 (m) A person who holds a registration for the application of
15 Class B sludge for a beneficial use approved by the commission and
16 who, on or before September 1, 2002, has submitted to the commission
17 an administratively complete application for a permit under this
18 section may apply Class B sludge in accordance with the terms of the
19 registration until the commission issues a final decision to issue
20 or deny the permit for which the person has applied.

21 (n) The insurance requirements under Subsections (h)(2) and
22 (3) do not apply to an applicant that is a political subdivision.

23 (o) The commission may not issue a permit under this section
24 for a land application unit that is located both:

25 (1) in a county that borders the Gulf of Mexico; and

26 (2) 500 feet or less from any water well or surface
27 water.

1 SECTION 2. (a) This Act takes effect September 1, 2003.

2 (b) The changes in law made to Sections 361.121(c) and (h),
3 Health and Safety Code, by this Act apply to an application to apply
4 Class B sludge to a land application unit that is:

5 (1) filed with the Texas Commission on Environmental
6 Quality on or after September 1, 2003; or

7 (2) filed with the Texas Commission on Environmental
8 Quality before September 1, 2003, but not found to be
9 administratively complete before that date.

H.B. No. 2546

President of the Senate

Speaker of the House

I certify that H.B. No. 2546 was passed by the House on May 1, 2003, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2546 was passed by the Senate on May 23, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor

ATTACHMENT C

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 31, 2009

CERTIFIED MAIL

Mr. Charles E. Pehl, Ph.D., P.G.
K-3 Resources, L.P. (d.b.a. Biosolids Management, Inc.)
P. O. Box 2236
Alvin, Texas 77512

Re: Major Amendment Application for Permit No. WQ0004454000, Jeffries Ranch Beneficial Land Application Site (CN 603111196, RN 102994506)

Dear Dr. Pehl:

The Texas Commission on Environmental Quality (TCEQ) requires persons holding or applying for Class B sewage sludge beneficial land application permits to obtain and maintain a commercial liability and environmental impairment insurance policy in accordance with 30 TAC §§ 37.9100 and 37.9105. Those rules require that entities provide to the TCEQ evidence of the insurance as specified in 30 TAC §§ 37.9145 (or 37.9150) and 37.9155. After reviewing the above referenced application submitted to the TCEQ on November 9, 2007, the Executive Director has determined that the insurance documentation provided with your application does not satisfy the rule requirements. The Executive Director previously notified you of these deficiencies on November 20, 2007.

Please submit the required commercial liability and environmental impairment insurance policy information within ninety (90) days of the date of this letter, or your application will be returned in accordance with 30 TAC Chapter §281.18. If the Executive Director returns the permit application, you will no longer have a valid TCEQ authorization under Permit No. WQ0004454000. **Operating without authorization is a violation of the Texas Water Code and the commission may impose administrative penalties not to exceed \$10,000 per day for each violation.**

If you have further questions or comments, please contact Mr. Chris Linendoll, Wastewater Permitting Section Manager at (512) 239-4515, or if by correspondence include MC-148 in the letterhead address following his name.

Sincerely,

A handwritten signature in black ink, appearing to read "L'Oreal W. Stepney for".

L'Oreal W. Stepney, P.E., Assistant Deputy Director
Office of Permitting & Registration

LWS/BS/evm

Enclosures

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 31, 2009

CERTIFIED MAIL

Mr. Charles E. Pehl, Ph.D., P.G.
K-3 Resources, L.P. (d.b.a. Biosolids Management, Inc.)
P. O. Box 2236
Alvin, Texas 77512

Re: Renewal Application for Permit No. WQ0004456000, Dincans Ranch Beneficial Land
Application Site (CN 603111196, RN 102994571)

Dear Dr. Pehl:

The Texas Commission on Environmental Quality (TCEQ) requires persons holding or applying for Class B sewage sludge beneficial land application permits to obtain and maintain a commercial liability and environmental impairment insurance policy in accordance with 30 TAC §§ 37.9100 and 37.9105. Those rules require that entities provide to the TCEQ evidence of the insurance as specified in 30 TAC §§ 37.9145 (or 37.9150) and 37.9155. After reviewing the above referenced application submitted to the TCEQ on August 8, 2007, the Executive Director has determined that the insurance documentation provided with your application does not satisfy the rule requirements. The Executive Director previously notified you of these deficiencies on August 17, 2007.

Please submit the required commercial liability and environmental impairment insurance policy information within ninety (90) days of the date of this letter, or your application will be returned in accordance with 30 TAC Chapter §281.18. If the Executive Director returns the permit application, you will no longer have a valid TCEQ authorization under Permit No. WQ0004456000. **Operating without authorization is a violation of the Texas Water Code and the commission may impose administrative penalties not to exceed \$10,000 per day for each violation.**

If you have further questions or comments, please contact Mr. Chris Linendoll, Wastewater Permitting Section Manager, at (512) 239-4515, or if by correspondence include MC-148 in the letterhead address following his name.

Sincerely,

A handwritten signature in cursive script, appearing to read "L'Oreal W. Stepney for".

L'Oreal W. Stepney, P.E., Assistant Deputy Director
Office of Permitting & Registration

LWS/BS/evm

Enclosures

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution
August 31, 2009

CERTIFIED MAIL

Mr. Charles E. Pehl, Ph.D., P.G.
K-3 Resources, L.P. (d.b.a. Biosolids Management, Inc.)
P. O. Box 2236
Alvin, Texas 77512

Re: Major Amendment Application for Permit No. WQ0004518000, El Celoso Ranch
Beneficial Land Application Site (CN 603111196, RN 102984986)

Dear Dr. Pehl:

The Texas Commission on Environmental Quality (TCEQ) requires persons holding or applying for Class B sewage sludge beneficial land application permits to obtain and maintain a commercial liability and environmental impairment insurance policy in accordance with 30 TAC §§ 37.9100 and 37.9105. Those rules require that entities provide to the TCEQ evidence of the insurance as specified in 30 TAC §§ 37.9145 (or 37.9150) and 37.9155. After reviewing the above referenced application submitted to the TCEQ on September 17, 2007, the Executive Director has determined that the insurance documentation provided with your application does not satisfy the rule requirements. The Executive Director previously notified you of these deficiencies on September 27, 2007.

Please submit the required commercial liability and environmental impairment insurance policy information within ninety (90) days of the date of this letter, or your application will be returned in accordance with 30 TAC Chapter §281.18. Alternatively, should you wish to continue pursuing authorization for the land application of domestic septage only, please submit a new registration application (TCEQ Form No. 0565) to the TCEQ within thirty (30) days of the date of this letter. If the registration application is submitted by the thirty day deadline, you will be able to continue operating under the current permit until the new domestic septage registration is issued. A copy of this application is enclosed with this correspondence.

If the Executive Director returns the permit application, you will no longer have a valid TCEQ authorization under Permit No. WQ0004518000. **Operating without authorization is a violation of the Texas Water Code and the commission may impose administrative penalties not to exceed \$10,000 per day for each violation.**

Mr. Charles E. Pehl, Ph.D., P.G.
Page 2
August 31, 2009

If you have further questions or comments, please contact Mr. Chris Linendoll, Wastewater Permitting Section Manager, at (512) 239-4515, or if by correspondence include MC-148 in the letterhead address following his name.

Sincerely,

A handwritten signature in cursive script, appearing to read "L'Oreal W. Stepney for".

L'Oreal W. Stepney, P.E., Assistant Deputy Director
Office of Permitting & Registration
Texas Commission on Environmental Quality (MC 148)

LWS/BS/evm

Enclosures

Ruddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.C., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 31, 2009

CERTIFIED MAIL

Mr. Charles E. Pehl, Ph.D., P.G.
K-3 Resources, L.P. (d.b.a. Biosolids Management, Inc.)
P. O. Box 2236
Alvin, Texas 77512

Re: Application for Proposed Permit No. WQ0004893000, Rafter M Ranch Beneficial Land Application Site (CN 603111196, RN 105766943)

Dear Dr. Pehl:

The Texas Commission on Environmental Quality (TCEQ) requires persons holding or applying for Class B sewage sludge beneficial land application permits to obtain and maintain a commercial liability and environmental impairment insurance policy in accordance with 30 TAC §§ 37.9100 and 37.9105. Those rules require that entities provide to the TCEQ evidence of the insurance as specified in 30 TAC §§ 37.9145 (or 37.9150) and 37.9155. After reviewing the above referenced application submitted to the TCEQ on June 8, 2009, the Executive Director has determined that the insurance documentation provided with your application does not satisfy the rule requirements. The Executive Director previously notified you of these deficiencies on June 18, 2009.

Please submit the required commercial liability and environmental impairment insurance policy information to the TCEQ within ninety (90) days of the date of this letter, or your application will be returned in accordance with 30 TAC Chapter §281.18.

If you have further questions or comments, please contact Mr. Chris Linendoll, Wastewater Permitting Section Manager, at (512) 239-4515, or if by correspondence include MC-148 in the letterhead address following his name.

Sincerely,

A handwritten signature in cursive script, appearing to read "L'Oreal W. Stepney".

L'Oreal W. Stepney, P.E., Assistant Deputy Director
Office of Permitting & Registration

LWS/BS/evm

Enclosures

ATTACHMENT D

9/16/2009

Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F
2ND Floor, Room 2101
Austin, Texas 78753

RE: New Insurance Requirement

To whom it may concern:

We at Bono Brothers, Inc., operate a family farm. In this day and age there aren't a lot of us folks left.

Not only are the operating margins of our farming and ranching very close, with the cost of fertilizer, chemicals, seeds and weather conditions the way they are, we are barely able to stay in business.

Applying Sewer sludge on our fields and pastures is very beneficial to our operation. But when we are faced with obstacles that are being placed upon us by the regulatory authorities, we will not be able to operate. We have been applying Sewer sludge on our farm for over twenty-five years, this has not only helped us with our crops and grazing lands, but the communities around our farm have also benefitted by our company hauling the sludge from their neighborhoods. During this twenty-five years, we have never had a complaint from the State, Local governments or Residents. We are the only entity that hauls sludge and applies it to our site.

This new insurance requirement will not only put us out of business, but will cause the subdivisions around us a hardship and will increase costs. It seems that the larger companies are trying to get rid the Small business owners by making it impossible for them to conform to these requirement.

Respectfully,



B.P. Bono

BONO BROTHERS, INC.

TEXAS WORLD WIDE INSURANCE AGENCY



September 16, 2006

Texas Commission on Environmental Quality
PO Box 13087
Austin, TX 78711-3087

VIA FAX

RE: Permit WQ0003742000
Bono Brothers, Inc

To Whom it May Concern:

This agency has been unable to obtain the insurance necessary to satisfy Rule 37.9105 of the Texas Administrative Code. We were not able to find an insurance company willing to make this financial guarantee under the additional circumstances listed in the act.

A handwritten signature in cursive script that reads "Ed Montgomery".

Ed Montgomery, CIC
281 776 5544

101 BAR RANCH, LTD
680 IH 37 N Access
Mathis, Texas 78368
101bar ranch@uscawide.net
Cell (361)877-5494 Home (361)547-5527 Fax (361)547-2572

September 16, 2009

To Whom It May Concern:

My name is Harold H. Wallace. I have a proposed permit #WQ0004859000, Beneficial Land Application site #(CN601686116,RN103150439) located in Live Oak County.

I have been trying to comply with your rules concerning this site, primarily carrying the general liability policy and environmental impairment insurance policy for \$3,000,000.00. I have called numerous insurance agencies and contacted some insurance companies. I have been unable to obtain the coverage you require. I also have been told that there are no companies that are willing to write this coverage. Mr. Rob Norris of TCEQ told me that AIG insurance would write this coverage. I contacted AIG and AIG stated they have never written policies like this nor would they even write policies like this. If AIG, being one of the largest insurance companies in the nation will not write a general liability and environmental impairment insurance policy for \$3,000,000.00, or no other company will write an insurance policy for this risk either, how can TCEQ require us to carry this type of policy? One of the main oppositions is adding TCEQ as an additional insured. I do not know of any other state agency that requires permit holders to list a state agency as an additional insured under their policy. I thought the law stated that you had to have permission from the state to sue the state.

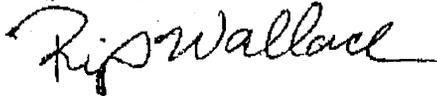
I was also told by Mr. Rob Norris that there are two companies which have obtained this sort of policy. I requested him to send me the names, addresses, and phone numbers, so I could contact the companies for more information. I have not received any correspondence regarding this request.

To comply with your rules, this insurance policy request for TCEQ permitting is going to put an undo burden upon my livelihood as well as causing some cities to have to pay approximately three times the cost of what they are paying now. I have looked into the increase of cost for 10-12 cities and services, and the increase is \$400,000.00 per year. In this time of economic downturn I do not know where cities will get monies to fund this unduly request. I am a small permit holder, only servicing 10-12 cities, not a full-time Class B land applicator. I am also a rancher and struggling with the economy myself. Being that I have not heard of any problem with Class B septic sludge and being that it is a non-hazardous product, I do not see any reason to put an undo burden on permit holders

or additional burdens of the people of all cities of the state of Texas to comply with your regulation of the insurance policy.

Before these rules were put into laws, I can not believe the cities or permit holders were not notified that this regulation was going to be acted upon by legislation. Where I come from this is called "closing the barn door after the horses are out".

Respectfully,

A handwritten signature in cursive script that reads "Rip Wallace". The signature is written in black ink and is positioned above the printed name.

Harold H. "Rip" Wallace

ATTACHMENT E

DEPARTMENT OF SOIL AND CROP SCIENCES



September 17, 2009

Texas Commission on Environmental Quality
MC 100
P.O. Box 13087
Austin, TX 78711-3087

Dear Texas Commission on Environmental Quality:

I have worked with companies land applying Class B biosolids for about 30 years. The nutrient content in the biosolids when it is applied to the land according to agronomic nutrient recommendations and nutrient management plans is a highly effective alternative nutrient source for producers. This source of nutrients has become increasingly important due to the increase in commercial fertilizer costs over the last three years by as much as 5 times, while the cost of Class B biosolids has remained free to the producer once the permit was obtained. As much or more of a benefit is that these materials are being beneficially recycled and not disposed of in landfills. This is critical to good land management and efficient use of the landfill space that is available.

Texas AgriLife Extension Service promotes the beneficial land application of Class B biosolids according to a nutrient management plan in the state of Texas and the US. This is because these materials have been proven scientifically, over and over again, safe when good hygiene is followed. The nutrients that are land applied according to best management practices, regulated buffer strips and set backs, and nutrient management plans will remain on the target field and not be transported to waters of the state thereby protecting our surface waterbodies from the potential for increased nutrient loads. Due to the pretreatment and/or separation of industrial wastes from municipal wastes, the metal concentrations that were once an issue, have for practical purposes become non-existent.

I highly recommend the continued use of Class B biosolids for land application to meet the nutrient needs of crops in Texas.

Sincerely,

Dr. Sam Feagley
Professor and State Soil Environmental Specialist
Soil & Crop Sciences
Texas AgriLife Extension Service
Texas A&M University, 2474 TAMU
College Station, TX 77843-2474
E-mail: sfeagley@ag.tamu.edu
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Educational programs of the Texas AgriLife Extension Service are open to all people without regard to race, color, sex, disability, religion, age, or national origin.
The Texas A&M University System, U.S. Department of Agriculture, and the County Commissioners Courts of Texas Cooperating



September 16, 2009

Texas Commission on Environmental Quality (MC 100)
PO Box 13087
Austin, TX 78711-3087

Re: Environmental Impairment Insurance for Class B Biosolids Beneficial Reuse Sites.

Dear Dr. Shaw:

During 2008, my company recycled over 500,000 wet tons of certified biosolids for approximately 300 permitted wastewater treatment plants (Table 1.) This service area covers seven counties of the Houston, Galveston metropolitan area. These biosolids were land applied for beneficial reuse to three TPDES permitted land application sites operated by K-3 Resources, LP, in northwest Harris and Waller counties. Not only were soil conditions significantly improved, but at one site alone, due to increased soil organic matter, our land application operation has sequestered over 1700 tons of carbon since 2002 (Table 2).

In 2008, renewal applications were submitted 180 days prior to expiration, for all three TPDES permits. Subsequently, Ms. L. Oreal Stepney, Water Quality Division Director notified us by letter dated May 6, 2008, that our permits were administratively incomplete without newly required environmental impairment insurance. My Compliance Director, Charles E. Pehl, PhD, PG replied to TCEQ by letter dated May 21, 2008, that K-3 Resources, LP was ready to purchase the required environmental impairment insurance from any company, anywhere. However, we were unable to obtain the required insurance because no insurance company would issue such a policy so long as TCEQ required automatic renewal.

In a letter dated June 10, 2008, TCEQ notified Dr Pehl that our permits would "remain in full force and effect until commission action on the application is final." Commission action was finally taken a year later. By letter dated August 31, 2009, TCEQ notified K-3 Resources that we would have 90 days to comply with the requirement for environmental impact insurance. If we were unable to procure this insurance, our land application permits would be cancelled.

To date, we are still unable to purchase the required environmental insurance under current state requirements. As a result of TCEQ interpretation of poor legislative action, our land application operation that employs 40 people, will be out of business by the end of November. The half a million wet tons of wastewater treatment sludge that we currently will have to be taken to the local landfills. Improvement to site fertility and carbon sequestration will cease. Land fill tipping fees alone will significantly increase costs to our customers.

However, diverting Class B biosolids to landfill, an expensive, unnecessary waste of organic fertilizer and landfill space, is not the most serious consequence of this legislation. In 2008, K-3 Resources recycled over 36 million gallons of Class B biosolids to our land application sites in Waller and Harris counties. This liquid material was hauled by vacuum tankers from hundreds of small plants in the Houston metropolitan area. These plants use the land application option because they do not individually generate enough biosolids to justify the additional expense of a belt press. All this liquid material will now have to be dewatered by a belt pressed before delivery to a landfill. This unnecessary added expenditure will drastically increase plant operational expenses that have already significantly the increased cost of diesel fuel. Since we are a service business these increases will ultimately be passed to the taxpaying consumer.

Sincerely



Karlis Ercums III
President/CEO



May 21, 2008

Bryan W Shaw, PhD, Commissioner
Texas Commission on Environmental Quality (MC 100)
PO Box 13087
Austin, TX 78711-3087

Re: Beneficial Reuse of Class B biosolids.

Dear Dr. Shaw:

K-3 Resources, LP operates three TPDES permitted land application sites in northwest Harris and Waller counties. During the last reporting, August 1, 2006 to July 31, 2007, we recycled over 8,000 dry tons of certified biosolids to agriculture for approximately 260 permitted wastewater treatment plants in the Houston metropolitan area. All three permits are currently being renewed (*see the attached TCEQ compliance history classification printout for the three sites.*).

Ms. L. Oreal Stepney, Water Quality Division Director notified us by two separate letters both dated May 6, 2008, that Permit WQ0004456-000 and WQ0004456-000 were administratively incomplete and that we had 30 days to comply (*see attached letter for WQ0004454-000*). I anticipate that we will also receive the same letter for our third site, WQ0004518-000. My answer to the TCEQ letter is enclosed. As you can see, we have complied with the required commercial liability.

Here is the rub: although K-3 Resources, LP is ready to purchase environmental impairment insurance from any company, anywhere, we are unable to obtain the required insurance because no company will issue the policy so long as TCEQ requires automatic renewal. The attached e-mails dated 5/05, 5/15, 5/16/08 clearly demonstrates that K-3 Resources, LP has attempted in good faith to purchase the insurance without success.

Commissioner, unless our permits are renewed, we will be forced to divert all future biosolids to landfill. As a result, costs to our customers will significantly increase, especially the smaller package plants that cannot afford a belt press. These plants have already absorbed increased diesel costs. Diverting biosolids to landfill is an inexcusable waste of a low cost organic nitrogen source. Worse still, this diversion will waste valuable and limited landfill space for no good scientific reason.

We have not been silent on this issue. Mr. Rob Norris of Financial Assurance, Revenue Section, Financial Division, TCEQ, Austin (MC 184) (512-239-6239) has been fully appraised of the situation by our company and Debbie Blankenship, of Brady, Chapman, Holland & Associates. To date we have received no answer.

Sir, what is most frustrating to me as an environmental professional is that this gross example of bad public policy is based not on good science, but derived from politics and public hysteria. Having worked with Class A and Class B biosolids for over eighteen years, I know the history of this situation and will personally meet with you at your convenience in your Austin office to discuss solutions. For further information please contact Dr. Sam Feagley, a soil chemist at Texas A&M University (979-845-1460). He is familiar with our company, has visited our land application sites, and can provide additional information on the beneficial aspects of biosolids.

Sincerely

A handwritten signature in cursive script, appearing to read "Charles E. Pehl".

Charles E Pehl, Ph.D., PG
Compliance Director