

applicable law. TCEQ Decision (Exhibit 1), page 1, paragraph 1.

4. Nonetheless, in response to contentions of disputed fact with respect to material issues by Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Philip Whitworth (hereafter "Protestants"), the TCEQ referred the following eight specific issues to the State Office of Administrative Hearings (SOAH) for a contested case hearing:

Issue No. 1: Whether odor from the facility will cause nuisance conditions interfering with the use and enjoyment of the requesters' property.

Issue No. 2: Whether the facility's operation will comply with the TCEQ rules enacted to protect groundwater.

Issue No. 3: Whether the facility's operation will comply with the TCEQ rules enacted to prevent the contamination of surface water.

Issue No. 4: Whether the facility will be operated in compliance with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

Issue No. 5: Whether the facility's operation will comply with 30 TAC 332.45(11), which requires compliance with end-product testing and standards.

Issue No. 6: Whether the facility's Site Operating Plan includes appropriate fire prevention and control measures.

Issue No. 7: Whether the facility will meet applicable air quality requirements.

Issue No. 8: Whether the facility will meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

TCEQ Interim Order (Exhibit 2), page 1, paragraph 2.

5. Consequently, on February 21, 2006, Applicant propounded interrogatories to Protestants inquiring into the reasons for their contentions with respect to each of the issues identified above:

Interrogatory No. 1: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will result in odor from the facility that will cause nuisance conditions interfering with the use and enjoyment of the property or properties at issue.

Interrogatory No. 2: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with the TCEQ rules enacted to protect groundwater.

Interrogatory No. 3: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with the TCEQ rules enacted to prevent the contamination of surface water.

Interrogatory No. 4: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

Interrogatory No. 5: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with 30 TAC § 332.45(11), which requires compliance with end-product testing and standards.

Interrogatory No. 6: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, does not include appropriate fire prevention and control measures.

Interrogatory No. 7: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not meet applicable air quality requirements.

Interrogatory No. 8: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

Applicant's Interrogatories (Exhibit 3), Nos. 1 - 8.

6. Following is Protestants' entire response to Applicant's Interrogatories 2, 3, 4, 5, 7, and 8:

"This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time."

Protestants' Responses (Exhibit 4), Nos. 2-5, 7, 8.

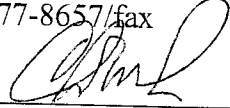
7. Protestants have failed to supplement with even a partial response to the above interrogatories, Applicant's Affidavit (Exhibit 5), paragraphs 4 and 5, and the time for doing

so has passed.<sup>3</sup>

8. Consequently, the TCEQ's findings with respect to Issues No. 2, 3, 4, 5, 7, and 8 are uncontroverted.

Respectfully submitted,

Foster Malish Blair & Cowan, L.L.P.  
1403 West Sixth Street  
Austin, Texas 78703  
(512) 476-8591  
(512) 477-8657/fax

By:   
Christopher Malish  
State Bar No. 00791164  
Kiele Linroth Pace  
State Bar No. 24032810  
ATTORNEYS FOR APPLICANT

---

<sup>3</sup> Pursuant to Order No. 1, signed by the Honorable Cassandra J. Church on February 16, 2006, the deadline for completion of written discovery was April 14, 2006.

cc

COPY

SOAH DOCKET NO. 582-06-0839  
TCEQ DOCKET NO. 2005-1510-MSW  
PROPOSED PERMIT NO. 2320

APPLICATION OF ROY EUGENE	§	BEFORE THE STATE OFFICE
DONALDSON II FOR A PERMIT TO	§	
AUTHORIZE TEXAS ORGANIC	§	
RECOVERY TO COMPOST	§	OF
MUNICIPAL SEWAGE SLUDGE,	§	
SEPTAGE, AND GREASE TRAP	§	
WASTE	§	ADMINISTRATIVE HEARINGS

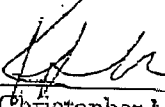
APPLICANT'S FIRST SET OF INTERROGATORIES TO PROTESTANTS

TO: Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth, by and through their attorney of record, J.D. Head, FRITZ, BYRNE, HEAD & HARRISON, LLP, 98 San Jacinto Blvd., Suite 2000, Austin TX 78701.

Pursuant to Rule 197 of the Texas Rules of Civil Procedure and 1 Texas Administrative Code § 155.31(g), you are requested to respond to the following interrogatories within 20 days of service of this request.

Respectfully submitted,

Foster Malish Blair & Cowan, L.L.P.  
1403 West Sixth Street  
Austin, Texas 78703  
(512) 476-8591  
(512) 477-8657/fax

By:   
Christopher Malish  
State Bar No. 00791164  
Kiele Linroth Pace  
State Bar No. 24032810

ATTORNEYS FOR APPLICANT ROY  
EUGENE DONALDSON II

EXHIBIT  
3

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to the following attorney via facsimile and certified mail, return receipt requested, on this the 2<sup>nd</sup> day of February, 2006.

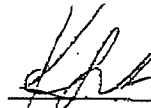
J. D. Head

FRITZ, BYRNE, HEAD & HARRISON, LLP

98 San Jacinto Blvd., Suite 2000

Austin TX 78701

Fax: 512-477-5267



Kiele Linroth Pace

**DEFINITIONS**

1. "Application" refers to the application of Roy Eugene Donaldson II for a permit to authorize Texas Organic Recovery to compost municipal sewage sludge, septage, and grease trap waste, as set out in TCEQ Docket No. 2005-1510-MSW; MSW Permit No. 2320.
2. "Facility" refers to the Texas Organic Recovery Compost Facility.
3. "Property" or "properties" refer to the properties belonging to Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth, the use and enjoyment of which causes them to be affected persons as that term is defined by applicable law.
4. "You," "your," and "yourself" refer to Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth, as well as persons or entities acting on their behalf such as employees, representatives, agents, and attorneys.

**INTERROGATORIES**

1. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will result in odor from the facility that will cause nuisance conditions interfering with the use and enjoyment of the property or properties at issue.

ANSWER:

2. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with the TCEQ rules enacted to protect groundwater.

ANSWER:

3. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with the TCEQ rules enacted to prevent the contamination of surface water.

ANSWER:

4. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

ANSWER:

5. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with 30 TAC § 332.45(11), which requires compliance with end-product testing and standards.

ANSWER:

6. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, does not include appropriate fire prevention and control measures.

ANSWER:

7. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not meet applicable air quality requirements.

ANSWER:

8. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

ANSWER:

9. Please identify each time in the past that an odor from the facility caused nuisance conditions that interfered with the use and enjoyment of the property or properties at issue. Include the character, strength, and duration of the odor; the names of all persons who smelled the odor; the dates and times at which they smelled the odor; where they were and what they were doing when they smelled the odor; where the odor appeared to originate; and the conditions under which they smelled the odor.

ANSWER:

10. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in contamination of groundwater. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

ANSWER:

11. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in contamination of surface water. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

ANSWER:

12. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in the application or incorporation of unauthorized or prohibited materials into feedstocks, in-process materials, or processed materials. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

ANSWER:

13. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in a failure to apply appropriate end-product testing and standards. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

ANSWER:

14. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in a failure to implement appropriate fire prevention and control measures. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

ANSWER:

15. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that compromised or could have compromised the air quality. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

ANSWER:

16. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in the delivery of unauthorized and prohibited materials at the site. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

ANSWER:

17. Please identify the minimum changes that you contend would be necessary with respect to odor from the facility to bring it into compliance with applicable rules regarding nuisance conditions.

ANSWER:

18. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with the TCEQ rules enacted to protect groundwater.

ANSWER:

19. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with the TCEQ rules enacted to prevent the contamination of surface water.

ANSWER:

20. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

ANSWER:

21. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with 30 TAC § 332.45(11), which requires compliance with end-product testing and standards.

ANSWER:

22. Please identify the minimum changes to the facility's plan of operation, as set out in the application, that you contend would be necessary to provide appropriate fire prevention and control measures.

ANSWER:

23. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with applicable air quality requirements.

ANSWER:

24. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

ANSWER:

05/13/06 MON 16:18 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

0014

SOAH DOCKET NO. 582-06-0839  
TCEQ DOCKET NO. 2005-1510-MSW

IN RE: APPLICATION BY	§	BEFORE THE STATE OFFICE
ROY EUGENE DONALDSON, II	§	
FOR A TYPE V-RC MUNICIPAL	§	OF
SOLID WASTE PERMIT IN	§	
TRAVIS COUNTY, TEXAS;	§	
(MSW PERMIT NO. 2320)	§	ADMINISTRATIVE HEARINGS

**PROTESTANTS' OBJECTIONS AND RESPONSES  
TO APPLICANT'S FIRST SET OF INTERROGATORIES**

TO: Roy Eugene Donaldson, II, by and through his attorney of record, Mr. Christopher Malish, Foster, Malish, Blair & Cowan, L.L.P., 1403 West Sixth Street, Austin, TX 78703

COME NOW, Protestants Ann Messer, Julie Moore, H. Philip Whitworth, Jr., Juli Phillips and M. D. Thomson (Thomson Family Limited Partnership) and serve these Objections and Responses to Applicant's First Set of Interrogatories on the following pages.

Respectfully submitted,

FRITZ, BYRNE, HEAD & HARRISON, LLP  
98 San Jacinto Blvd., Suite 2000  
Austin, TX 78701  
TEL: 512/476-2020  
FAX: 512/477-5267

By: \_\_\_\_\_

J. B. Head

State Bar No. 09322400

ATTORNEYS FOR PROTESTANTS  
ANN MESSER, JULIE MOORE,  
H. PHILIP WHITWORTH, JR.,  
JULI PHILLIPS and M. D. THOMSON  
(THOMSON FAMILY LIMITED  
PARTNERSHIP)

K:\DIR\5151610\PLEADINGS\RESPONSES-INT.wpd

EXHIBIT  
4

05/09/06 TUE 17:00 [TX/RX NO 6483]

03/13/06 MON 18:17 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

015

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that on the 13<sup>th</sup> day of March, 2006, the foregoing document was served via facsimile and U.S. First Class mail to the following:

Mr. Christopher Malish

~~Foster, Malish, Blair & Cowan, L.L.P.~~

1403 West Sixth Street

Austin, TX 78703

Ms. Emily Collins

Public Interest Counsel - MC 103

Texas Commission on Environmental Quality

P.O. Box 13087

Austin, TX 78711-3087

03/15/06 MON 16:17 FAX 5124775267

FRITZ BYRNE HEAD HARRIS0

0016

**OBJECTIONS AND RESPONSES TO INTERROGATORIES**

1. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will result in odor from the facility that will cause nuisance conditions interfering with the use and enjoyment of the property or properties at issue.

OBJECTIONS and RESPONSES: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to this objection, Protestants are aware of at least one odor nuisance complaint to the TCEQ regarding the facility.

2. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with the TCEQ rules enacted to protect groundwater.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

3. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with the TCEQ rules enacted to prevent the contamination of surface water.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

4. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

03/13/06 MON 16:17 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

017

5. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with 30 TAC § 332.45(11), which requires compliance with end-product testing and standards.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

6. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, does not include appropriate fire prevention and control measures.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants are aware of a fire at the facility which occurred December 10, 2004.

7. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not meet applicable air quality requirements.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

8. Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

9. Please identify each time in the past that an odor from the facility caused nuisance conditions that interfered with the use and enjoyment of the property or properties at issue. Include the character, strength, and duration of the odor; the names of all persons who smelled the odor; the dates and times at which they smelled the odor; where they were and what they were doing when they smelled the odor; where the odor appeared to originate; and the conditions under which they smelled the odor.

K:\DIR150\3181\01\PLEADINGS\RESPONSES-INT.wpd

- 4 -

05/09/06 TUE 17:00 [TX/RX NO 6483]

03/13/06 MON 16:17 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

0610

OBJECTION and RESPONSE: Protestants Moore, Whitworth, Messer, and Thomson have no information responsive to this interrogatory. Juli Phillips has experienced odor nuisance conditions at her residence as set forth below:

September 1, 2005 at or about 5:30 p.m. while coming home from work, Ms. Phillips experienced a foul odor at her mailbox coming from the west.

September 3, 2005 at or about 4:30 p.m., Ms. Phillips experienced an unpleasant odor while mowing the lawn in her front yard.

September 5, 2005 at or about 3:15 p.m., Ms. Phillips experienced a strong aroma from the west while coming home from work.

September 14, 2005 at or about 2:45 a.m. while going to work, Ms. Phillips experienced a rotten egg smell at the yard gate.

September 23, 2005 at or about 2:10 p.m. while coming home from work, Ms. Phillips experienced an offensive aroma coming from the west.

September 28, 2005 at or about 2:10 p.m., Ms. Phillips experienced an offensive smell coming from the West at the front gate of her property.

October 4, 2005 at or about 2:25 a.m. while going to work, Ms. Phillips experienced an unpleasant odor of something rotten.

October 14, 2005 at or about 5:30 p.m. while coming home from work, Ms. Phillips experienced a terrible aroma in the air at the front gate of her property.

October 17, 2005 at or about 1:30 p.m. while mowing the yard, Ms. Phillips experienced a strong moldy odor in the air.

October 22, 2005 at or about 12:10 p.m. while trimming trees in the front yard, Ms. Phillips experienced an offensive aroma characterized as an old smell.

October 26, 2005 at or about 2:10 p.m. while coming home from work, Ms. Phillips experienced an offensive aroma coming from the west.

October 30, 2005 at or about 12:00 a.m. while going to work, Ms. Phillips experienced a rank aroma coming from the west at the front gate.

November 2, 2005 at or about 2:20 p.m. while coming home from work, Ms. Phillips experienced an offensive aroma coming from the west at the front gate.

K:\DIR\505187\W\PLEADINGS\RESPONSES-IN\7.wpd

- 5 -

05/09/06 TUE 17:00 [TX/RX NO 6483]

03/13/06 MON 15:18 FAT 5124775267

FRITZ BYRNE HEAD HARRISO

0014

November 11, 2005 at 2:10 p.m. while coming home from work, Ms. Phillips experienced an offensive aroma coming from the west at the front gate.

November 21, 2005 at or about 4:15 p.m. while mowing, Ms. Phillips experienced at the front gate an old rotten smell in the air.

December 2, 2005 at or about 7:20 p.m. while going out to dinner, Ms. Phillips experienced an offensive odor coming from the west.

December 6, 2005 at or about 2:15 p.m. while coming home from work, Ms. Phillips experienced a rotten aroma.

December 23, 2005 at or about 3:30 a.m. while going to work, Ms. Phillips experienced at the front gate a strong fragrant smell.

December 23, 2005 at or about 2:10 p.m. while coming home from work, Ms. Phillips experienced an offensive odor at the front gate.

February 6, 2006 at or about 1:50 p.m. while coming home from work, Ms. Phillips experienced a strong rotten odor at the front gate.

February 16, 2006 at or about 2:00 p.m. while coming home from work, Ms. Phillips experienced a strong rotten egg smell at the front gate.

February 24, 2006 at or about 7:15 p.m. while getting ready to go to dinner, Ms. Phillips experienced a sharp odor in the front yard.

March 1, 2006 at or about 3:00 a.m. while going to work, Ms. Phillips experienced a rotten odor at the front gate of her property.

10. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in contamination of groundwater. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

03/13/06 MON 16:19 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

020

11. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in contamination of surface water. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

12. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in the application or incorporation of unauthorized or prohibited materials into feedstocks, in-process materials, or processed materials. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

13. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in a failure to apply appropriate end-product testing and standards. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

03/13/06 MON 16:18 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

020

14. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in a failure to implement appropriate fire prevention and control measures. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants are aware of a fire at the facility on December 10, 2004 based on an investigation report from the TCBQ dated February 2, 2005.

15. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that compromised or could have compromised air quality. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

16. Please identify each time in the past that, to your knowledge, belief or information, the facility has or may have engaged in acts or omissions that resulted or could have resulted in the delivery of unauthorized and prohibited materials at the site. Include the names of all persons who observed the acts or omissions, what they observed and where it transpired, the dates and times that they observed the acts or omissions, where they were and what they were doing when they observed the acts or omissions, and anything else they recall about the conditions under which they observed the acts or omissions.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

KADJRI51514101PLEADINGSRESPONSES-INT.VMD

. 2 .

05/09/06 TUE 17:00 [TX/RX NO 6483]

03/18/06 MON 16-18 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

0022

17. Please identify the minimum changes that you contend would be necessary with respect to odor from the facility to bring it into compliance with applicable rules regarding nuisance conditions.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

18. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with the TCEQ rules enacted to protect groundwater.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

19. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with the TCEQ rules enacted to prevent the contamination of surface water.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

20. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

21. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with 30 TAC § 332.45(11), which requires compliance with end-product testing and standards.

K:\DIR\51515\01\LEADINGSRESPONSES-INT.vpd

19

05/09/06 TUE 17:00 [TX/RX NO 6483]

03/13/06 MON 16:19 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

023

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

22. Please identify the minimum changes to the facility's plan of operation, as set out in the application, that you contend would be necessary to provide appropriate fire prevention and control measures.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

23. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with applicable air quality requirements.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

24. Please identify the minimum changes that you contend would be necessary to bring the facility's plan of operation, as set out in the application, into compliance with applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

OBJECTION and RESPONSE: This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time.

03/13/06 MON 16:20 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

0024

VERIFICATION

STATE OF TEXAS

COUNTY OF Bell§  
§  
§

BEFORE ME, the undersigned authority, a Notary Public, in and for said County and State, personally appeared Ann Messer, known to me to be the person whose name is subscribed below, who after being duly sworn by me, upon her oath deposed and stated:

- 1) that she has read the above and foregoing Responses to Applicant's First Set of Interrogatories to Protestants;
- 2) that all information and statements contained therein are within her own personal knowledge and true and correct to the best of her knowledge, information and belief.

Ann Messer

Ann Messer

Sworn to and subscribed before me, the undersigned Notary Public, this 9th day of March, 2006, to certify which witness my hand and seal of office.

Staci BellearsNotary Public in and for the  
State of Texas

03/13/06 MON 16:20 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

025

VERIFICATION

STATE OF TEXAS §

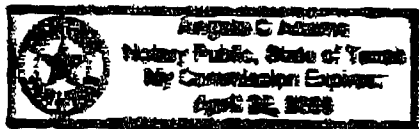
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, a Notary Public, in and for said County and State, personally appeared Julie W. Moore, known to me to be the person whose name is subscribed below, who after being duly sworn by me, upon her oath deposed and stated:

- 1) that she has read the above and foregoing Responses to Applicant's First Set of Interrogatories to Protestants;
- 2) that all information and statements contained therein are within her own personal knowledge and true and correct to the best of her knowledge, information and belief.

Julie W. Moore  
Julie W. Moore

Sworn to and subscribed before me, the undersigned Notary Public, this 9<sup>th</sup> day of March, 2006, to certify which witness my hand and seal of office.



Angela C. Adams  
Notary Public in and for the  
State of Texas

03/13/06 MON 16:26 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

MAR 6 '06 14:11 FROM SCOTT DOUGLASS MCCOMM TO 94775267

PAGE.007/007

03/03/06 FRI 14:00 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

001

VERIFICATION

STATE OF TEXAS

§

COUNTY OF TRAVIS

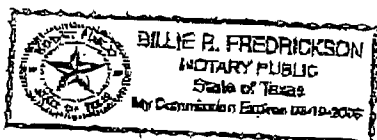
§

BEFORE ME, the undersigned authority, a Notary Public, in and for said County and State, personally appeared H. Philip Whitworth, Jr., known to me to be the person whose name is subscribed below, who after being duly sworn by me, upon his oath deposed and stated:

- 1) that he has read the above and foregoing Responses to Applicant's First Set of Interrogatories to Protestants;
- 2) that all information and statements contained therein are within his own personal knowledge and true and correct to the best of his knowledge, information and belief.

*H. Philip Whitworth, Jr.*  
H. Philip Whitworth, Jr.

Sworn to and subscribed before me, the undersigned Notary Public, this 6th day of March, 2006, to certify which witness my hand and seal of office.



*Billie R. Fredrickson*  
Notary Public in and for the  
State of Texas

MAR 03 2006 14:11

TOTAL PAGE.007  
03/08/06 MON 14:01 [TX/RX NO 6715]

05/09/06 TUE 17:00 [TX/RX NO 6483]

03/13/06 MON 16:20 FAX 5124775267

FRITZ BYRNE HEAD HARRISO

Mar 07 06 01:50p

512 440 1053

03/07/06 TUE 10:56 FAX 512 477 5267

FRITZ BYRNE HEAD HARRISO

0027

P. 3

0002

VERIFICATION

STATE OF TEXAS

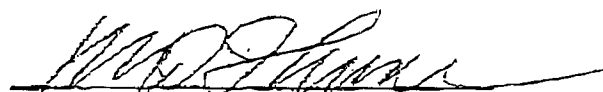
§

COUNTY OF TRAVIS

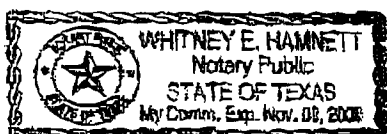
§

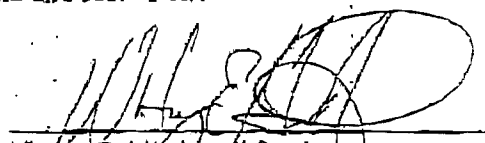
BEFORE ME, the undersigned authority, a Notary Public, in and for said County and State, personally appeared M. D. Thomson, known to me to be the person whose name is subscribed below, who after being duly sworn by me, upon his oath deposed and stated:

- 1) that he has read the above and foregoing Responses to Applicant's First Set of Interrogatories to Protestants;
- 2) that all information and statements contained therein are within his own personal knowledge and true and correct to the best of his knowledge, information and belief.

  
M. D. Thomson

Sworn to and subscribed before me, the undersigned Notary Public, this 7<sup>th</sup> day of March, 2006, to certify which witness my hand and seal of office.



  
Notary Public in and for the  
State of Texas

03/07/06 TUE 12:46 [TX/RX NO 6731]

05/09/06 TUE 17:00 [TX/RX NO 6483]

03/13/06 MON 10:21 FAX 5124778657

FRITZ BYRNE HEAD HARRISO

Mar 13 2006 10:49AM HP LASERJET 3200

0026  
P. 2

03/13/06 MON 08:48 FAX 512-477-5267

FRITZ BYRNE HEAD HARRISO

002

VERIFICATION

STATE OF TEXAS

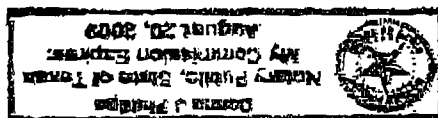
COUNTY OF Garza

BEFORE ME, the undersigned authority, a Notary Public, in and for said County and State, personally appeared Juli Phillips, known to me to be the person whose name is subscribed below, who after being duly sworn by me, upon her oath deposed and stated:

- 1) that she has read the above and foregoing Responses to Applicant's First Set of Interrogatories to Protestants;
- 2) that all information and statements contained therein are within her own personal knowledge and true and correct to the best of her knowledge, information and belief.

Juli Phillips  
Juli Phillips

Sworn to and subscribed before me, the undersigned Notary Public, this 13th day of March, 2006, to certify which witness my hand and seal of office.



Danella J. Phillips  
Notary Public in and for the  
State of Texas

03/13/06 MON 11:06 [TX/RX NO 6176]

05/09/06 TUE 17:00 [TX/RX NO 6483]

STATE OF TEXAS

COUNTY OF TRAVIS

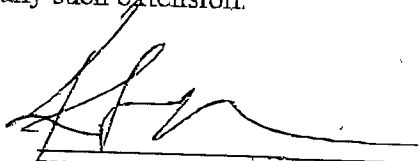
§  
§  
§

## AFFIDAVIT OF KIELE L. PACE

Before me, the undersigned notary, on this day personally appeared Kiele L. Pace, a person whose identity is known to me. After I administered an oath to her, upon her oath she said:

1. My name is Kiele L. Pace. I am over 18 years of age, of sound mind, and capable of making this affidavit.
2. I am an attorney with Foster Malish Blair & Cowan, L.L.P., which serves as counsel for Roy Eugene Donaldson II (Applicant) in the matter of the application for a permit to authorize Texas Organic Recovery to compost municipal sewage sludge, septage, and grease trap waste. As such, I am personally familiar with the following facts and authorized to make this affidavit.
3. Protestants' Objections and Responses to Applicant's First Set of Interrogatories, which we received via fax on March 13, 2006, contains their sole response to Applicant's Interrogatories Nos. 2, 3, 4, 5, and 8, and reads as follows:

"This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time."
4. Protestants have since failed to provide even a partial response to Applicant's Interrogatories Nos. 2, 3, 4, 5, and 8, and have provided no explanation of their continued failure to do so.
5. There was no agreement to extend the April 14, 2006, deadline for completion of written discovery and Protestants did not request any such extension.

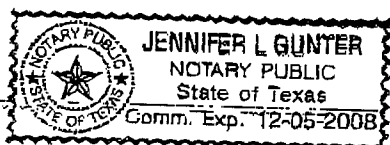
  
Kiele L. Pace

EXHIBIT

5

05/09/06 TUE 17:00 [TX/RX NO 6483]

Sworn to and subscribed before me by Kiele L. Pace on May 9, 2006.



[Signature]  
Notary Public in and for  
The State of Texas

My commission expires: 12/05/08

SOAH DOCKET NO. 582-06-0839  
TCEQ DOCKET NO. 2005-1510-MSW  
PROPOSED PERMIT NO. 2320

APPLICATION OF ROY EUGENE	§	BEFORE THE STATE OFFICE
DONALDSON II FOR A PERMIT TO	§	
AUTHORIZE TEXAS ORGANIC	§	
RECOVERY TO COMPOST	§	
MUNICIPAL SEWAGE SLUDGE,	§	OF
SEPTAGE, AND GREASE TRAP	§	
WASTE	§	ADMINISTRATIVE HEARINGS

APPLICANT'S STATEMENT OF MATERIAL FACTS

TO THE HONORABLE JUDGE OF SAID COURT:

1. Applicant files this Statement of Material Facts in support of its Motion for Summary Disposition, pursuant to 1 Tex. Admin. Code § 155.57(b)(2).

SUPPORTING EVIDENCE

2. Applicant's Motion for Summary Disposition is based on the following supporting evidence:
  - a. Exhibit 1: TCEQ notice of Decision of the Executive Director, from the TCEQ's Chief Clerk, dated July 21, 2005 (hereafter "TCEQ Decision").
  - b. Exhibit 2: TCEQ Interim Order, dated December 6, 2005 (referring the case to SOAH and describing the issues referred for a contested case hearing) (hereafter "TCEQ Interim Order").
  - c. Exhibit 3: Applicant's First Set of Interrogatories to Protestants (hereafter "Applicant's Interrogatories").
  - d. Exhibit 4: Protestants' Objections and Responses to Applicant's First Set of Interrogatories (hereafter "Protestants' Responses").
  - e. Exhibit 5: Affidavit of Kiele L. Pace (hereafter "Applicant's Affidavit").

MATERIAL FACTS

3. On July 21, 2005, the TCEQ decided that the Application of Roy Eugene Donaldson II for a Permit to Authorize Texas Organic Recovery to Compost Municipal Sewage Sludge, Septage, and Grease Trap Waste (hereafter, the "Application") meets the requirements of

applicable law: TCEQ Decision (Exhibit-1), page 1, paragraph 1.

4. Nonetheless, in response to contentions of disputed fact with respect to material issues by Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Philip Whitworth (hereafter "Protestants"), the TCEQ referred the following eight specific issues to the State Office of Administrative Hearings (SOAH) for a contested case hearing:

Issue No. 1: Whether odor from the facility will cause nuisance conditions interfering with the use and enjoyment of the requesters' property.

Issue No. 2: Whether the facility's operation will comply with the TCEQ rules enacted to protect groundwater.

Issue No. 3: Whether the facility's operation will comply with the TCEQ rules enacted to prevent the contamination of surface water.

Issue No. 4: Whether the facility will be operated in compliance with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

Issue No. 5: Whether the facility's operation will comply with 30 TAC 332.45(11), which requires compliance with end-product testing and standards.

Issue No. 6: Whether the facility's Site Operating Plan includes appropriate fire prevention and control measures.

Issue No. 7: Whether the facility will meet applicable air quality requirements.

Issue No. 8: Whether the facility will meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

TCEQ Interim Order (Exhibit 2), page 1, paragraph 2.

5. Consequently, on February 21, 2006, Applicant propounded interrogatories to Protestants inquiring into the reasons for their contentions with respect to each of the issues identified above:

Interrogatory No. 1: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will result in odor from the facility that will cause nuisance conditions interfering with the use and enjoyment of the property or properties at issue.

ce

## FOSTER MALISH BLAIR &amp; COWAN, L.L.P.

Jennifer L. Gunter, CP  
ParalegalATTORNEYS AND COUNSELORS AT LAW  
A REGISTERED LIMITED LIABILITY PARTNERSHIP  
1403 WEST SIXTH STREET  
AUSTIN, TEXAS 78703  
(512) 476-8591  
FAX: (512) 477-8657WRITER'S EMAIL:  
jennifer@fostermalish.com

May 9, 2006

LaDonna Castanuela, Chief Clerk  
Office of the Chief Clerk, MC105  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Bldg. F  
Austin, Texas 78753*Via Hand Delivery*

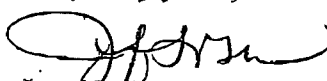
**RE:** SOAH Docket No. 582-06-0839; TCEQ Docket No. 2005-1510-MSW; Proposed Permit No. 2320; *Application of Roy Eugene Donaldson II for a Permit to Authorize Texas Organic Recovery to Compost Municipal Sewage Sludge, Septage, and Grease Trap Waste.*

Dear Ms. Castanuela:

Regarding the above-referenced docket, please find enclosed the original and a copy of **Applicant's Motion for Summary Disposition**. Please file and return a file-marked copy to this office with the courier delivering same.

Thank you for your time and assistance. If you should have any questions, please do not hesitate to call.

Very truly yours,

Jennifer L. Gunter, CP  
Paralegal

Enclosures

cc: J.D. Head  
Fritz, Byrne, Head & Harrison, LLP  
98 San Jacinto Blvd., Suite 2000  
Austin TX 78701  
**Via C.M.R.R.R. 7006 0100 0005 8290 8772 and**  
**Via Fax: (512) 477-5267**

05/09/06 TUE 16:58 [TX/RX NO 9626]

Ms. LaDonna Castanuela, Chief Clerk  
May 9, 2006  
Page 2

cc: Emily Collins  
Public Interest Counsel - MC 103  
~~Texas Commission on Environmental Quality~~  
P.O. Box 13087  
Austin TX 78711-3087  
**Via C.M.R.R.R. 7006 0100 0005 8290 8789 and**  
**Via Fax: (512) 239-6377**

Honorable Cassandra J. Church  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, TX 78711-3025  
**Via C.M.R.R.R. 7006 0100 0005 8290 8796 and**  
**Via Fax: (512) 475-4994**

SOAH DOCKET NO: 582-06-0839  
TCEQ DOCKET NO. 2005-1510-MSW  
PROPOSED PERMIT NO. 2320

APPLICATION OF ROY EUGENE	§	BEFORE THE STATE OFFICE
DONALDSON II FOR A PERMIT TO	§	
AUTHORIZE TEXAS ORGANIC	§	
RECOVERY TO COMPOST	§	OF
MUNICIPAL SEWAGE SLUDGE,	§	
SEPTAGE, AND GREASE TRAP	§	
WASTE	§	ADMINISTRATIVE HEARINGS

APPLICANT'S MOTION FOR SUMMARY DISPOSITION

TO THE HONORABLE JUDGE OF SAID COURT:

INTRODUCTION

1. Applicant is entitled to summary disposition on six out of the eight issues in this case because the TCEQ has found that on those six issues that Applicant meets the minimum requirements, and Protestants<sup>1</sup> have been unable to identify in discovery any reasons why they contend that the facility's plan of operation, as set out in the application, will not comply with the relevant TCEQ rules.

2. More particularly, this case concerns the Application of Roy Eugene Donaldson II for a Permit to Authorize Texas Organic Recovery to Compost Municipal Sewage Sludge, Septage, and Grease Trap Waste (hereafter, the "Application"). TCEQ approved the Application on July 21, 2005. The Protestants challenged TCEQ's decision. Now, SOAH has been charged with determining the following issues:

Issue No. 1: Whether odor from the facility will cause nuisance conditions interfering with the use and enjoyment of the requesters' property.

Issue No. 2: Whether the facility's operation will comply with the TCEQ rules enacted to protect groundwater.

---

<sup>1</sup>Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Philip Whitworth

Issue No. 3: Whether the facility's operation will comply with the TCEQ rules enacted to prevent the contamination of surface water.

Issue No. 4: Whether the facility will be operated in compliance with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

Issue No. 5: Whether the facility's operation will comply with 30 TAC 332.45(11), which requires compliance with end-product testing and standards.

Issue No. 6: Whether the facility's Site Operating Plan includes appropriate fire prevention and control measures.

Issue No. 7: Whether the facility will meet applicable air quality requirements.

Issue No. 8: Whether the facility will meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

3. Although the Protestants have been involved in this case since soon after the application was first filed in April of 2004, as of the April 14, 2006, discovery deadline, Protestants had not been able to identify any reason for contending that the facility's plan of operation, as set out in the application, will not comply with applicable TCEQ rules. Accordingly, Applicant is entitled to summary disposition of those issues for which Protestants have not been able to provide support for their contentions that the application does not meet the TCEQ's minimum requirements.

#### STATEMENT OF MATERIAL FACTS

4. Applicant has prepared a separate Statement of Material Facts (hereafter "Material Facts") which is attached as Exhibit 6. The Statement of Facts shows the following:
5. On July 21, 2005, the TCEQ decided that the Application of Roy Eugene Donaldson II for a Permit to Authorize Texas Organic Recovery to Compost Municipal Sewage Sludge, Septage, and Grease Trap Waste (hereafter, the "Application") meets the requirements of applicable law. TCEQ Decision (Exhibit 1), page 1, paragraph 1.

6. Nonetheless, in response to contentions of disputed fact with respect to material issues by Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Philip Whitworth (hereafter "Protestants"), the TCEQ referred the following eight specific issues to the State Office of Administrative Hearings (SOAH) for a contested case hearing:

Issue No. 1: Whether odor from the facility will cause nuisance conditions interfering with the use and enjoyment of the requesters' property.

Issue No. 2: Whether the facility's operation will comply with the TCEQ rules enacted to protect groundwater.

Issue No. 3: Whether the facility's operation will comply with the TCEQ rules enacted to prevent the contamination of surface water.

Issue No. 4: Whether the facility will be operated in compliance with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

Issue No. 5: Whether the facility's operation will comply with 30 TAC 332.45(11), which requires compliance with end-product testing and standards.

Issue No. 6: Whether the facility's Site Operating Plan includes appropriate fire prevention and control measures.

Issue No. 7: Whether the facility will meet applicable air quality requirements.

Issue No. 8: Whether the facility will meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

TCEQ Interim Order (Exhibit 2), page 1, paragraph 2.

7. Consequently, on February 21, 2006, Applicant propounded interrogatories to Protestants inquiring into the reasons for their contentions with respect to each of the issues identified above:

Interrogatory No. 2: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with the TCEQ rules enacted to protect groundwater.

Interrogatory No. 3: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with the TCEQ rules

enacted to prevent the contamination of surface water.

Interrogatory No. 4: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with 30 TAC § 332.45(10), enacted to prevent unauthorized and prohibited materials from application or incorporation into feedstocks, in-process materials, or processed materials.

Interrogatory No. 5: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not comply with 30 TAC § 332.45(11), which requires compliance with end-product testing and standards.

Interrogatory No. 7: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not meet applicable air quality requirements.

Interrogatory No. 8: Please explain each reason that you contend that the facility's plan of operation, as set out in the application, will not meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

Applicant's Interrogatories (Exhibit 3), Nos. 2-5, 7, 8.

8. Notwithstanding the fact that they had contested the application on the grounds that Applicant's application did not meet minimum requirements, Protestants' failed to identify any reasons for these contentions in response to these interrogatories. In fact, Protestants' entire response to each of Applicant's Interrogatories 2, 3, 4, 5, 7, and 8 was the same:

"This interrogatory is premature because it requests information that will not be known until after additional discovery is completed. This interrogatory will be answered promptly once additional discovery is completed. Subject to the foregoing objection, Protestants have no information in response to this interrogatory at this time."

Protestants' Responses (Exhibit 4), Nos. 2-5, 7, 8 (emphasis added).

9. Protestants have failed to supplement with even a partial response to the above interrogatories, Applicant's Affidavit (Exhibit 5), paragraphs 4 and 5, and the time for doing so has passed.<sup>2</sup>

<sup>2</sup>Pursuant to Order No. 1, February 16, 2006, the deadline for completion of written discovery was April 14, 2006.

10. ~~Consequently, the TCEQ's findings with respect to Issues No. 2, 3, 4, 5, 7, and 8 —~~  
that Applicant meets the minimum requirements of the applicable rules — are uncontroverted.

**BASIS FOR SUMMARY DISPOSITION**

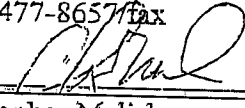
11. As shown in Applicant's Statement of Material Facts, the TCEQ already concluded ~~that the Application meets the requirements of applicable law. Because Protestants' alleged~~  
disputed facts with respect to the eight material issues identified above, however, the TCEQ granted Protestants' request for a contested case hearing and referred the matter to the State Office of Administrative Hearings (SOAH) to address those issues. Nonetheless, though substantial discovery has now been completed, there is not even a scintilla of evidence to support Protestants' allegations that the Application fails to meet the requirements of applicable law with respect to Issues 2, 3, 4, 5, 7, and 8. Consequently, the TCEQ's findings with respect to these issues are uncontroverted and Applicant is entitled to summary disposition on those issues.

**CONCLUSION AND PRAYER FOR RELIEF**

12. For the reasons stated above, Applicant is entitled to summary disposition on Issues 2, 3, 4, 5, 7, and 8. Plaintiff therefore asks that the Administrative Law Judge enter judgment for Applicant on those issues and order that the case proceed to hearing on Issues 1 and 6 only.

Respectfully submitted,

Foster Malish Blair & Cowan, L.L.P.  
1403 West Sixth Street  
Austin, Texas 78703  
(512) 476-8591  
(512) 477-8657 fax

By:   
Christopher Malish  
State Bar No. 00791164  
Kiele Linroth Pace  
State Bar No. 24032810  
ATTORNEYS FOR APPLICANT


CERTIFICATE OF SERVICE

I hereby certify that a photocopy of the foregoing document was forwarded via facsimile and certified mail, return receipt requested, to the following on May 9, 2006:

J.D. Head  
Fritz, Byrne, Head & Harrison, LLP  
98 San Jacinto Blvd., Suite 2000  
Austin TX 78701  
Fax: (512) 477-5267

Emily Collins  
Public Interest Counsel - MC 103  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin TX 78711-3087  
Fax: (512) 239-6377

Honorable Cassandra J. Church  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, TX 78711-3025  
Fax: (512) 475-4994

  
Kiele Linroth Pace

Kathleen Hartnett White, *Chairman*

R. B. "Ralph" Marquez, *Commissioner*

Larry R. Soward, *Commissioner*

Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 21, 2005

TO: Persons on the attached mailing list.

RE: Texas Organic Recovery Compost Facility  
Permit No. 2320

### Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. This decision does not authorize construction or operation of any proposed facilities. Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Mustang Ridge City Hall, 12800 US Highway 183 South, Buda, Texas 78610.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

### How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

EXHIBIT

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

05/09/06 TUE 16:58 [TX/RX NO 9626]

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
  - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an "affected person." An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

### How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be received by the Chief Clerk's office no later than 30 calendar days after the date of this letter. You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

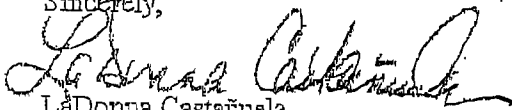
### Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/cz

Enclosures

MAILING LIST

for

Texas Organic Recovery Compost Facility  
Permit No. 2320FOR THE APPLICANT:Roy Eugene Donaldson, II  
Texas Organic Recovery Compost Facility  
15500 Goforth Road  
Creedmoor, Texas 78610Kenneht Stecher, P.E.  
Thonhoff Consulting Engineers, Inc.  
Suite A-236  
1301 Capitol of Texas Highway South  
Austin, Texas 78746INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:Lesley Nicholes, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087Mario Perez, Sr., Technical Staff  
Texas Commission on Environmental Quality  
Waste Permits Division  
MSW Permits Section MC-124  
P.O. Box 13087  
Austin, Texas 78711-3087FOR OFFICE OF PUBLIC ASSISTANCE:Ms. Jodena Henneke, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087FOR PUBLIC INTEREST COUNSEL:Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087FOR THE CHIEF CLERK:Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

LEON J BARISH  
1409 W 6TH ST  
AUSTIN TX 78703-5140

H PHILIP WHITWORTH JR  
SCOTT DOUGLASS & MCCONNICO LLP  
STE 1500  
600 CONGRESS AVE  
AUSTIN TX 78701-3238

SHEILA FOX  
2400 ROCK TERRACE CIR  
AUSTIN TX 78704-3838

PHILIP WHITWORTH  
2605 WOOLDRIDGE DR  
AUSTIN TX 78703-2537

LEE MACKENZIE  
3701 BASFORD RD  
AUSTIN TX 78722-1307

ANN MESSER  
7800 NOLAN BLUFF RD  
BELTON TX 76513-7044

JULIE MOORE  
502 SPILLER LN  
AUSTIN TX 78746-4439

JULIE W MOORE  
604 W 14TH ST  
AUSTIN TX 78703-1726

ALTON PHILLIPS  
1766 ROGERS RANCH RD  
LOCKHART TX 78644-4436

JULI PHILLIPS  
7800 WILLIAMSON RD  
KYLE TX 78640-3961

EDDIE RODRIGUEZ STATE REPRESENTATIVE  
TEXAS HOUSE OF REPRESENTATIVES  
PO BOX 2910  
AUSTIN TX 78768-2910

ROBIN SCHNEIDER EXECUTIVE DIRECTOR  
TEXAS CAMPAIGN FOR THE ENVIRONMENT  
STE 200  
611 S CONGRESS AVE  
AUSTIN TX 78704-8706

05/09/06 TUE 17:05 [TX/RX NO 6484]

## Proposed New TCEQ MSW Permit No. 2320

Application by  
Texas Organic Recovery  
for TCEQ MSW Permit No. 2320

§  
§  
§  
§

Before the  
Texas Commission on  
Environmental Quality

CHIEF CLERK'S OFFICE

MAY 19 PM 3:53

## EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Public Comment on Texas Organic Recovery's application for Municipal Solid Waste (MSW) Permit No. 2320 for the operation of a Type V-RC composting facility and the Executive Director's preliminary decision.

As required by Title 30 Texas Administrative Code (TAC), section 55.156, before an application is approved and a permit is issued, the Executive Director (ED) prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comments from:

Lee Mackenzie

Ann Messer

Julie Moore

Alton Phillips

Juli Phillips

Eddie Rodriguez, State Representative, District 51

Robin Schneider, Texas Campaign for the Environment

M.D. Thompson, Represented by Leon J. Barish

H. Phillip Whitworth

This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

## BACKGROUND

Description of Facility

Texas Organic Recovery has applied to the TCEQ for a Type V-RC MSW permit to authorize a resource recovery and composting facility for the composting of municipal sewage sludge, septage, grease trap waste, and positively sorted organic material limited to paper, cardboard, wood, and vegetative food matter. The facility currently operates under MSW Registration No. 47006.

The facility is located at 15500 Goforth Road, Creedmore, Texas, Travis County, approximately 2000 feet south of the intersection of County Road 177 and Goforth Road in southeast Travis County. This location is in the extraterritorial jurisdiction of Travis County and is not subject to any zoning. The predominant land use in the vicinity is agricultural. There are approximately 45 residences and no business establishments within a mile of the facility. The total permitted facility boundary is approximately 15.23 acres within a 200 acre tract of land. The proposed facility will consist of a site entrance with barb-wire fencing, all-weather interior access road, contaminated water storage pond, groundwater monitoring system, composting pad, curing pad, liquid feedstock unloading area, bulking material storage area, tipping area, de-watering area, and liquid feedstock storage tanks. The facility will be open 12 hours per day, 5 days per week and 5 hours on Saturday. The facility gate will normally be open from 5:00 am to 5:00 pm, Monday through Friday, 9:00 am to 2:00 pm on Saturday, and closed on Sunday.

#### Procedural Background

The application under review is for a new permit for composting activities that are currently being conducted at this site under an approved TCEQ registration. The new permit application was submitted in response to new legislation and new TCEQ rules adopted on December 17, 2003 that require existing registered facility to obtain a permit.<sup>1</sup> The facility was required to submit a permit application within 30 days of receiving notification from TCEQ.<sup>2</sup> Texas Organic Recovery Composting's application was received on January 26, 2004 and declared administratively complete on April 15, 2004. The Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit was published on April 22, 2004 and the Notice of Application and Preliminary Decision was published on December 6, 2004 in the *Austin-American Statesman*. The comment period ended at the conclusion of the public meeting held on April 19, 2005. Because this application was administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

#### Access to Rules, Laws, and Records

The Commission's rules may be accessed on-line using the Texas Administrative Code (TAC) viewer feature at the Texas Secretary of State website; <http://www.sos.state.tx.us>. The Health and Safety Code and the Water Code of the State of Texas may be accessed at the Texas Legislature on-line website at: <http://www.capitol.state.tx.us/statutes/statutes.html>. Other useful information is available at TCEQ's website: <http://www.tceq.state.tx.us>. The federal code, statutes, and regulations may be accessed through the Environmental Protection Agency (EPA) website at: <http://www.epa.gov/epahome/lawregs.htm>.

Commission records for the facility are available for viewing and copying at TCEQ's main office in Austin Park 35 Circle, Building E, Room 103 and TCEQ's Region 11 Office in Austin. If you would like to file a complaint, you may contact the Commission at 1-888-777-3186 or TCEQ Region

<sup>1</sup> 5 Tex. Health & Safety Code Ann. § 361.428 (d) (2003).

<sup>2</sup> 30 TAC § 332.3 (a)(3)(B) (2004).

11 Office at 1921 Cedar Bend Dr., Suite 150, Austin, Texas at 512-339-2929. If the facility is found to be out of compliance, it may be subject to enforcement action.

### COMMENTS and RESPONSES

#### COMMENT 1 (Applicant's Previous Representations to the Community)

Ann Messer and M.D. Thomson commented that during the registration process the Applicant represented to the community that the location would be temporary.

#### RESPONSE 1

The current permit application is distinct and separate from the previously issued registration. A permit application does not require the applicant to submit information regarding plans, past or present, to operate on a temporary basis. The applicable TCEQ rules do not require the applicant to provide information regarding the length of time the applicant anticipates operating the facility. This permit will be issued for the operating life of the facility.

#### COMMENT 2 (Property Value)

Juli Phillips, M.D. Thomson, and H. Phillip Whitworth are concerned about the affect the facility has on the value of the surrounding private property.

#### RESPONSE 2

A permit application is reviewed for compliance with all applicable regulations under state law and TCEQ rules. The rules and regulations do not authorize the ED to consider property values when reviewing an application. However, the issuance of a permit does not authorize injury to persons or property, invasion of other property rights, or any infringement of state or local law or regulation.<sup>3</sup>

#### COMMENT 3 (Odor)

Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth commented that the facility currently emits bad odors in violation of 30 TAC, section 332.45(5) and that the odor interferes with property owners' quality of life and ability to use and enjoy their property. Additionally, they are concerned that the violations may continue after the facility is permitted.

#### RESPONSE 3

Grease trap waste composting operations are required to comply with rules that have been implemented to minimize offensive odors and air pollution; and prevent the creation of nuisance conditions that have the potential to create or contribute to conditions adverse to human health, safety, or welfare.<sup>4</sup> The applicable rules include:

locating areas that receive, process, or store feedstock and final

<sup>3</sup> 30 TAC § 305.122 (c) (2004)

<sup>4</sup> 30 TAC §§ 332.4 (2); 332.45 (5) (2004).

product at least 50 feet from the facility's boundary;<sup>5</sup>

employing dust control on all interior roads;

accepting high odor feedstock only when an appropriate amount of adequate bulking material is on-site;

~~grinding and storing bulking material in a manner that minimizes loss into the atmosphere;~~

turning piles in an appropriate manner to eliminate odor; and

processing feedstock in a manner to eliminate the creation of a nuisance condition.<sup>6</sup>

The Applicant is required to submit a Site Operating Plan (SOP) that describes the facility's planned operating procedures. The submitted SOP, sections Q-R(1-6), adequately addresses procedures regarding the minimization of odors. Additionally, if objectionable odors occur, the owner or operator must initiate appropriate measures to alleviate the condition. The ED found that the application demonstrated a plan capable of complying with rules aimed at minimizing odors and air pollution.

However, if the Applicant poses a threat to public health, safety, or the environment, please report an environmental complaint, including airborne emissions and nuisance conditions. In response to a complaint a regional investigator will investigate the alleged nuisance conditions at the facility. If the regional investigator documents a violation of the TCEQ regulations, then appropriate action will be taken which may include enforcement action.

Violations can be reported by contacting the Environmental Violations Hot Line toll free, 1-888-777-3186 or by contacting TCEQ Region 11, Austin Office, at 512-339-3795.

#### COMMENT 4 (Ground Water)

Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth are concerned that the facility is in violation of 30 TAC, section 332.45(2), enacted to protect groundwater. Julie Moore asked if the applicant tested the newly installed groundwater wells in the Spring of 2005?

#### RESPONSE 4

The facility is currently operating under a registration and is not required to sample ground water. Once the permit is issued the Applicant is required to conduct background groundwater sampling quarterly by collecting four groundwater samples from each monitoring well within 24 months.

<sup>5</sup>30 TAC § 332.44 (5) (2004).

<sup>6</sup>30 TAC § 332.8 (e) (2004).

After background sampling is completed, groundwater sampling will be on an annual basis. The facility will include a groundwater monitoring system based on site-specific technical information consisting of a sufficient number of wells installed at appropriate locations and depths to yield representative groundwater samples from the uppermost aquifer. The groundwater monitoring wells will be sampled and analyzed in accordance with the SOP. The ED has determined that the proposed groundwater monitoring system meets the minimum requirements set forth in the rules and, if the permit provisions are complied with, will provide adequate groundwater monitoring.

COMMENT 5 (Surface Water)

Ann Messer, Julie Moore, Alton Phillips, Juli Phillips, M.D. Thomson, and H. Phillip Whitworth are concerned that the facility is in violation of 30 TAC, section 332.45(1), enacted to protect surface water. There was special concern expressed about the pollution of Williamson Creek. Julie Moore commented that the water in Williamson Creek should be tested. Ann Messer and Alton Phillips commented that the detention pond is inadequate to prevent surface water runoff in a 100-year flood event and that the facility has not prevented runoff into Cowpen Creek and other properties during storm events in the last few years.

RESPONSE 5

The Applicant has demonstrated compliance with the minimum requirements that include a design capable of managing run-on and run-off during a 25 year, 24-hour rainfall event such that it prevents the water from contacting the feedstock in any part of the composting process.<sup>7</sup> Additionally, the Applicant has demonstrated that leachate will be contained in a lined retention facility for storage until proper use or disposal.<sup>8</sup> Upon review of the application, the above concerns have been addressed by requiring the berm to be extended so it is contiguous along the entire facility boundary which includes the storm water holding pond area. The slopes of the sides and toe shall be graded and maintained in such a manner so as to minimize the potential for erosion. The berm shall contain all of the drainage within the facility boundary during a 100-year flood event and still will have a free board of three feet. The ED has determined that with the additional requirements the application complies with TCEQ rules and should protect surface water.

COMMENT 6 (FEMA Maps)

Robin Schneider is concerned that the Federal Emergency Management Agency (FEMA) map used to identify the 100-year flood plain are out-of-date and inadequate to prevent surface water contamination.

RESPONSE 6

The TCEQ rules do not specify the preparation date for the FEMA map used during the review process. The application must be reviewed using a map that provides the location and lateral extent of all flood plains and wetlands on the site and within 500 feet of the site.<sup>9</sup> This application was

<sup>7</sup> 30 TAC 332.45(1) (2004).

<sup>8</sup> 30 TAC 332.45(1) (2004).

<sup>9</sup> 30 TAC § 332.47(5)(A)(v)(VI)(2004).

reviewed using FEMA map No. 48453C0185E dated June 16, 1993 which complies with TCEQ rules.

COMMENT 7 (Accepted Waste Stream)

Juli Phillips and M.D. Thomson are concerned that the facility is not in compliance with 30 TAC, section 332.45 (10), enacted to prevent unauthorized and prohibited materials from being applied to or incorporated into feedstock, in-process material, or processed material. Ann Messer, Julie Moore, and H. Phillip Whitworth are concerned about the pesticides and other chemicals contained in the material being composted.

RESPONSE 7

TCEQ rules have been adopted to prevent unauthorized or prohibited materials from entering the facility. The rules require the entire facility to be fenced; maintenance of a gate at the entrance that is locked outside normal operating hours; and at least one employee on-site to inspect deliveries during operating hours. Additionally, the rules prohibit certain materials from being applied to or incorporated into the feedstock during the composting process.<sup>10</sup> The ED has determined that the submitted application complies with TCEQ rules. To the extent that unauthorized and prohibited material are accepted or prohibited material is incorporated into the feedstock, such activities would be in violation of the proposed permit and enforcement action may ensue.

The substances being approved for composting in this permit have been authorized under Title 30 TAC, Chapter 332, and there has been no data that suggests the substances being composted pose a threat to the environment when properly handled in accordance with TCEQ rules. The terms and conditions contained in the draft permit protect human health and safety and the environment.

COMMENT 8 (End-Product)

Julie Moore, Juli Phillips, and M.D. Thomson are concerned that the facility does not comply with 30 TAC, section 332.45 (11), which requires compliance with end-product testing and standards. Lee Mackenzie commented that he is a gardener, he uses the facility's end-product and he thinks it is great.

RESPONSE 8

The end product produced by composting operations is required to undergo testing and sampling to determine a final product grade before it is sold and distributed.<sup>11</sup> The material is tested for composition of foreign matter, mineral and metal concentrations, salinity, pH, and pathogens. The procedures to obtain representative samples of the finished product include sampling of every 3000 cubic yards produced from a minimum of five locations using specified equipment and analysis process. Upon review the ED determined that the sampling, analysis, and testing procedures set forth in Appendix M of the application complies with TCEQ rules.

COMMENT 9 (Fire)

<sup>10</sup> 30 TAC § 332.45 (10)(2004).

<sup>11</sup> 30 TAC § 332.45 (11)(2004).

Juli Phillips commented that the facility recently had a fire and that she is concerned about its impact on the facility and environment.

#### RESPONSE 9

The facility is required to comply with provisions of the local fire code, provide fire-fighting equipment, and provide fire fighting training for site employees.<sup>12</sup> The application demonstrates compliance with rule requirements and the Applicant has stated that he will work with the local fire department, if necessary, to develop additional operational plans.

#### COMMENT 10 (Operations)

Julie Moore and Juli Phillips are concerned that the facility is not being properly operated. H. Phillip Whitworth commented that the facility is operated in an environmentally reckless manner.

#### RESPONSE 10

Texas Organic Recovery Facility's compliance history under MSW Registration No. 47006 does not include any investigations, notices of violation, or enforcement actions. Additionally, the ED has not received any information that indicates the facility is currently polluting or operating in an environmentally reckless manner.

Violations can be reported by contacting the Environmental Violations Hot Line toll free, 1-888-777-3186 or by contacting TCEQ Region 11, Austin Office, at 512-339-3795.

#### COMMENT 12 (Traffic)

Ann Messer and Juli Phillips commented that the facility brings a lot more traffic, especially big trucks, and wants to know if anything is going to be done about the impact of additional traffic in the area.

#### RESPONSE 12

The Applicant has indicated that when the facility is operating it will impact traffic by an additional 10 vehicles per day. The information provided by the Applicant indicates that both access roads, Goforth Road and Williamson Road, have a carrying capacity of 80,000 pounds and traffic volumes of 10 and 260 vehicles per day, respectively. The Texas Department of Transportation did not provide any comment after it was provided with notice of the application and an opportunity to comment.

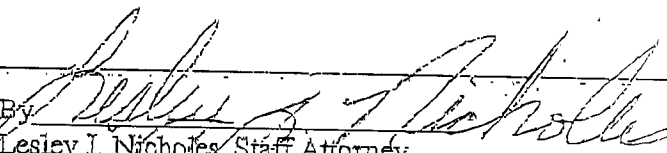
#### CHANGES MADE IN RESPONSE TO COMMENT

In response to public comment and in order to improve the prevention of surface water runoff, the berm running along the perimeter of the permit boundary has been extended to include the perimeter of the detention pond.

Respectfully Submitted,

<sup>12</sup> 30 TAC § 332.47(7)(E)(2004).

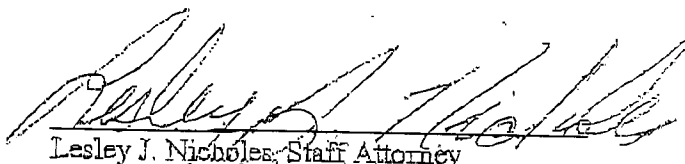
Stephanie Burgeron Perdue, Director  
Environmental Law Division

By   
Lesley J. Nicholes, Staff Attorney  
Environmental Law Division  
State Bar No. 24046530

Representing the Executive Director of the Texas  
Commission on Environmental Quality

CERTIFICATION OF SERVICE

I certify that on July 19, 2005, the "Executive Director's Response to Public Comment" for  
Permit No. MSW-2320 was filed with the Texas Commission of Environmental Quality's Office  
of the Chief Clerk.

  
Lesley J. Nicholes, Staff Attorney  
Environmental Law Division  
State Bar No. 24046530