

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a  
Texas Commission on Environmental Quality document,  
which is filed in the permanent records of the Commission.  
Given under my hand and the seal of office on

DEC 06 2005

LaSerna Caceruela, Chief Clerk  
Texas Commission on Environmental Quality

AN INTERIM ORDER concerning the application by Roy Eugene Donaldson, II for a Type V-RC Municipal Solid Waste Permit (MSW Permit No. 2320); TCEQ Docket No. 2005-1510-MSW.

On November 30, 2005, the Texas Commission on Environmental Quality (Commission) considered during its open meeting requests for hearing submitted by Ann Messer, Julie Moore, Juli Phillips, M.D. Thomson, and H. Philip Whitworth concerning the application by Roy Eugene Donaldson, II (Applicant) for a Type V-RC Municipal Solid Waste Permit (MSW Permit No. 2320) for a composting facility called the Texas Organic Recovery Compost Facility located in Travis County, Texas. The requests for hearing were evaluated in accordance with the requirements of the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55. The Commission also considered the responses to the hearing requests filed by the Executive Director, the Office of Public Interest Counsel, and the Applicant; all timely public comment; and the Executive Director's Response to Public Comment.

After evaluation of all relevant filings and answers to questions during its meeting, the Commission determined that: (1) Ann Messer; (2) Julie Moore; (3) Juli Phillips; (4) M.D. Thomson; and (5) H. Philip Whitworth are affected persons as provided by applicable law. The Commission next determined whether the requests for hearing raised disputed issues of fact that were raised during the comment period and that are relevant and material to its decision on the application. The Commission determined that the following issues raised by the requesters are disputed facts, were raised during the comment period, and are relevant and material to its decision on the application and directed that they be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing, with a concurrent referral to formal mediation with the Commission's Alternative Dispute Resolution Program ("ADR"):

- (1) Whether odor from the facility will cause nuisance conditions interfering with the use and enjoyment of the requesters' property;

EXHIBIT

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- (2) Whether the facility's operation will comply with the TCEQ rules enacted to protect groundwater;
- (3) Whether the facility's operation will comply with the TCEQ rules enacted to prevent the contamination of surface water;
- (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;
- (5) Whether the facility's operation will comply with 30 TAC § 332.45(11), which requires compliance with end-product testing and standards;
- (6) Whether the facility's Site Operating Plan includes appropriate fire prevention and control measures;
- (7) Whether the facility will meet applicable air quality requirements; and
- (8) Whether the facility will meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.

The Commission also specified that the maximum duration of the contested case hearing shall be six months from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH.

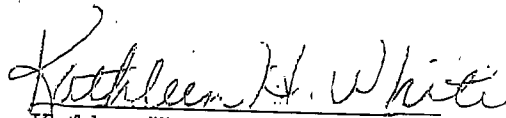
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. If the Applicant and persons named in Ordering Provision No. 3 are willing, this contested matter is referred to ADR for formal mediation;
2. The Commission's Chief Clerk shall refer the case to SOAH for hearing on the application as ordered below;
3. The following are affected persons and their hearing requests are granted with regard to the issues described in Ordering Provision No. 4: (a) Ann Messer; (b) Julie Moore; (c) Juli Phillips; (4) M.D. Thomson; and (5) H. Philip Whitworth;
4. The Chief Clerk shall refer to SOAH the following issues for a contested case hearing on the application:

- (a) Whether odor from the facility will cause nuisance conditions interfering with the use and enjoyment of the requesters' property;
  - (b) Whether the facility's operation will comply with the TCEQ rules enacted to protect groundwater;
  - (c) Whether the facility's operation will comply with the TCEQ rules enacted to prevent the contamination of surface water;
  - (d) 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;
  - (e) Whether the facility's operation will comply with 30 TAC § 332.45(11), which requires compliance with end-product testing and standards;
  - (f) Whether the facility's Site Operating Plan includes appropriate fire prevention and control measures;
  - (g) Whether the facility will meet applicable air quality requirements; and
  - (h) Whether the facility will meet applicable requirements for prevention of the delivery of unauthorized and prohibited materials at the site.
5. All issues not identified as being referred to SOAH in Ordering Provision No. 4 are hereby denied; and
6. The maximum duration of the hearing is set at six months from the first day of the preliminary hearing to the date the proposal for decision is issued by the State Office of Administrative Hearings.

Issue date: DEC 05 2005

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Kathleen Hartnett White, Chairman

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## FACSIMILE TRANSMITTAL SHEET

TO:	Honorable Cassandra J. Church	FROM:	Jennifer L. Gunter, Paralegal
COMPANY:	SOAH	DATE:	05/10/06
FAX NUMBER:	(512) 475-4994	TOTAL NO. OF PAGES INCLUDING COVER:	
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	
RE:	SOAH Docket No. 582-06-0839; TCEQ Docket No. 2005-1510-MSW - Applicant's Motion for Summary Disposition		
	YOUR REFERENCE NUMBER:		

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

## NOTES/COMMENTS:

Please find attached Applicant's Motion for Summary Disposition; this is also being sent to you via certified mail. Thank you.

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