Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 25, 2013

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

Re: Executive Director's Response to the City of Carrollton's Motion to Overturn
TCEQ Docket No: 2013-0437-MSW
The City of Farmers Branch

Ms. Bohac:

Enclosed for filing is the original and (7) copies of the Executive Director's Response to the City of Carrollton's Motion to Overturn regarding: The City of Farmer's Branch; Permit No. MSW1312A.

If you have any questions, please contact me at (512) 239-3400.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2013 MAR 25 PM 3:14
CHIEF CLERKS OFFICE

Sincerely,

Diane Goss

Diane Goss
Staff Attorney
Environmental Law Division, MC 173
Diane.goss@tceq.texas.gov

/jfd

Cc: Service list

TCEQ DOCKET NO. 2013-0437-MSW

IN THE MATTER OF THE APPLICATION OF THE CITY OF FARMERS BRANCH, TO MODIFY LANDFILL PERMIT NO. MSW-1312A	§ § § § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO THE CITY OF CARROLLTON'S MOTION TO OVERTURN

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

The executive director of the Texas Commission on Environmental Quality (TCEQ) files this Response to the City of Carrollton's (Movant) Motion to Overturn (MTO) the executive director's issuance of Modification to Municipal Solid Waste (MSW) Permit No.1312A held by the City of Farmers Branch (Applicant).

2013 MAR 25 PM 3:14
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

I. BACKGROUND

The City of Farmers Branch operates a permitted Type I MSW landfill in Denton County Texas. On January 18, 2011, TCEQ received an application for a temporary authorization (TA) for to authorize use of contaminated soil as alternative daily cover (ADC) on a trial basis under MSW Permit No. 1312A. On May 11, 2011, the executive director issued a TA authorizing use of contaminated soil as ADC under MSW Permit No. 1312A. On November 8, 2011, TCEQ received a request for a 180-day extension of the TA. On February 9, 2012, the executive director approved the extension request. The Applicant filed an application to modify MSW Permit No. 1312A received by TCEQ on August 8, 2012. The application requested to modify the permit to authorize use of contaminated soil as ADC. The executive director issued the Modification on January 22, 2013. TCEQ received public comments from the Movant and others during the public comment period. The Modification and executive director's informal response to

public comments received on the modification application were mailed to the Applicant and Movant on February 6, 2013. Movant filed an MTO on February 27, 2013.

II. MOVANTS' CHALLENGES & EXECUTIVE DIRECTOR'S RESPONSES

1. Movant asserts that granting the modification was improper because the Applicant failed to demonstrate that all relevant regulatory and statutory requirements are satisfied in accordance with 30 Tex. Admin. Code § 50.133(a)(2).

Executive Director's Response:

As detailed below, the executive director' technical review of the application determined that all relevant regulatory and statutory requirements are satisfied in accordance with 30 Tex. Admin. Code § 50.133(a)(2). The procedural rules for TA to authorize ADC are under 30 Tex. Admin. Code § 305.62(k). The technical review of the Application was conducted in accordance with Title 30, Texas Administrative Code, Chapter 330. Specific procedures and technical requirements regarding use of ADC at an MSW landfill are under 30 Tex. Admin. Code § 330.165(d).

2. Movant asserts that the Applicant failed to demonstrate that the facility has obtained air authorizations required for any increases in volatile organic compound (VOC) air emissions that may be generated by the stockpiling and use of contaminated soil as daily cover in accordance with 30 Tex. Admin. Code § 50.133.

Executive Director's Response:

The operation of an MSW landfill facility is required to comply with the standard air permit requirements under Title 30, Texas Administrative Code, Chapter 330, subchapter U. Additionally, the Applicant is required to comply with and obtain any air quality authorizations required for the facility and facility activities in accordance with 30 Tex. Admin. Code § 330.55(a).

3. Movant asserts that the Application and proposed Site Operating Plan (SOP) fail to demonstrate: a design basis for berms to prevent storm water from coming in contact with contaminated soil; that the facility has adequate capacity for management and disposal storm water that becomes contaminated from contact with the ADC material; locations of and quantities of stockpiled ADC material. Additionally, Movant asserts and the application and SOP fail to provide operational procedures for removal of contaminated stormwater in a manner that prevents contamination, fail to provide financial assurance for closure and removal of stockpiled ADC material and that there has been no trial period to suspend the management of stormwater or demonstration that such actions will not result in contamination.

Executive Director's Response:

The executive director's technical review of the Application concluded that the stormwater management procedures satisfy the regulatory requirements. The Alternative Daily Cover Operating Plan (ADCOP) indicates that water that comes into contact with the soil stockpile will be considered contaminated water and managed consistent with the facility's Leachate and Contaminated Water Plan. (Application, MSW Permit 1312A, Permit Modification Contaminated Soil Daily Cover, Appendix B, ADCOP Section 3.1 Revised August 2012).

Additionally, the facility is prohibited from causing a discharge of solid waste or pollutants into or adjacent to waters in the state without obtaining specific authorization from TCEQ or that are in violation of Texas Water Code, §26.121 in accordance with 30 Tex. Admin. Code §330.15(a) and (h). Off-site discharge of contaminated water from an MSW landfill facility is prohibited without prior authorization in accordance with 30 Tex. Admin. Code § 330.207(e). Additionally, the facility is required to collect, contain, properly manage and dispose contaminated water in a manner that does not cause surface or groundwater pollution in accordance 30 Tex. Admin. Code §§ 330.305(g) and 330.207. The rules also provide that ground or surface water that has come into contact with the working face be handled as contaminated water in accordance with 30 Tex. Admin. Code § 330.305.

It is not clear what regulatory requirements the Movant is referring to by the assertion that there has been no trial period to suspend the management of stormwater or any demonstration that such actions will not result in contamination. One purpose of the regulatory scheme requiring temporary authorization of a certain material for use as ADC prior to submittal of an application requesting a permit modification authorizing the material for use as ADC is to determine whether any problems occur from use of the ADC material and require corrective action for any such identified problems in accordance with 30 Tex. Admin. Code § 330.165(d)(2). The Applicant submitted six bimonthly status reports received by the MSW Permits Section on August 4, 2011, October 10, 2011, January 13, 2011, May 8th, 2012, July 8, 2012 and September 17, 2012, in accordance with 30 Tex. Admin. Code § 330.165(d)(2). These reports do not identify any problems requiring corrective action.

The executive director does not concur that the approved modification is more permissive than TA issued for the ADC because the approved modification requires that stormwater runoff from areas that have been covered with the ADC and from ADC stockpiles are required to be managed as contaminated water as proposed in the ADCOP. *(Id.)*.

The executive director's response to the Movant's challenge regarding closure costs is provided under number 5, below.

4. Movant asserts that Application fails to demonstrate that contaminated soils will be adequately tested and characterized in a manner protective of human health and the environment and in accordance with TCEQ requirements.

Executive Director's Response:

The executive director's technical review indicated that the Application satisfies the requirements for waste acceptance, characterization and classification. Procedures, requirements , limitations and record keeping for the facility's acceptance and use of contaminated soil as ADC required by 30 Tex. Admin. Code § 330.165(d)(4) are contained in the facility's ADCOP. The ADCOP proposes acceptance of materials

authorized to be accepted at the facility for disposal by landfilling and materials contaminated with petroleum, pesticides, or metals that are not classified as Class 1 non-hazardous industrial solid waste. (Application, MSW Permit 1312A, Permit Modification Contaminated Soil Daily Cover, Appendix B, ADCOP Section 2, Revised August 2012). Additionally the ADCOP proposes concentration limits on Total Petroleum Hydrocarbon (TPH), TCLP Metals and RCRA 8 Metals for soil materials contaminated with petroleum, pesticides, or metals that are accepted at the facility as special waste or as class 2 industrial waste be utilized as ADC in accordance with the facility Waste Acceptance Plan and 30 Tex. Admin. Code §§ 330.165(d)(4), and (335.521(a)(1). (*Id.* at 2.2).

5. Movant asserts that the Applicant has failed to demonstrate compliance with closure cost requirements.

Executive Director's Response:

The executive director's technical review concluded that the modification to authorize contaminated soil as ADC satisfies the regulatory requirements for closure costs. The Applicant is required to provide an estimate of the cost of closure of the largest waste fill area that could potentially be open in the following year and of areas that have not received final cover in accordance with 30 Tex. Admin. Code § 330.503(a). Additionally, the Applicant is required to review the facility's permit conditions on an annual basis and verify that the current active areas match the areas on which closure costs are based. (*Id.*). If facility activities require changes to the closure plan that increase the closure cost estimate the Applicant is required to request a permit modification to reflect changes to the Closure Plan and Closure cost estimate. (*Id.*). Finally, if changes in facility operations increase the facility's closure cost estimate that result in a net increase in the amount provided in the facility's financial assurance mechanism the Applicant is required to cause the closure cost amount to be increased and submit evidence that the financial assurance mechanism has been increased within 60 days in accordance with 30 Tex. Admin. Code § 37.141.

6. Movant asserts that failure to limit the amount of contaminated soil stockpiled at the facility is a threat to human health and the environment and a violation of General Prohibitions under 30 Tex. Admin. Code § 335.4. Acceptance, use and management of contaminated soil as ADC is required to be conducted in a manner that does not violate the general prohibitions under the Industrial and Hazardous Waste rules including the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization and the endangerment of the public health and welfare. (30 Tex. Admin. Code § 335.4).

Executive Director's Response:

The executive director's review of the application indicated that the application satisfies the requirements for use of contaminated soil as ADC. The facility ADCOP provides that contaminated soil materials used for ADC shall include only materials authorized for disposal by landfilling at the facility and imposes concentration limitations on constituents of concern, and TPH concentrations as well as prohibiting the acceptance of certain polychlorinated biphenyl wastes in accordance with 30 Tex. Admin. Code §§ 330.165(d)(4). (Application, MSW Permit 1312A, Permit Modification Contaminated Soil Daily Cover, Appendix B, ADCOP Section 2.1 – 2.2, Revised August 2012). Additionally, acceptance, use and management of contaminated soil as ADC is required to be conducted in a manner that does not violate the general prohibitions including discharge or imminent threat of discharge of MSW into or adjacent to waters of the state without obtaining specific authorization and the endangerment of the human health and welfare or the environment. (30 Tex. Admin. Code § 330.15).

7. Movant asserts that existing contamination at the facility should be addressed prior to authorizing use of contaminated soil as ADC.

Executive Director's Response:

The MSW rules set out a mandatory regulatory framework controlling

groundwater monitoring and corrective action where contamination has been detected or identified at an MSW landfill. (Title 30, Texas Administrative Code, Chapter 330, Subchapter J). The Applicant conducts groundwater monitoring and corrective action at the facility in accordance with the facility's groundwater monitoring and corrective action plan in accordance with Chapter 330, Subchapter J and MSW Permit No. 1312A. The MSW rules do not prohibit the use of contaminated soil as at an MSW landfill that is undergoing corrective action. Acceptance, use and management of contaminated soil as ADC is required to be conducted in a manner that does not violate the general prohibitions under the MSW rules including discharge or imminent threat of discharge of MSW into or adjacent to waters of the state without specific authorization and the endangerment of the human health and welfare or the environment. (30 Tex. Admin. Code § 330.15).

8. Movant asserts the application includes inaccurate citations and is insufficient to determine whether the use of contaminated soil as ADC will be protective of human health and the environment.

Executive Director's Response:

The executive director has not located the inaccurate citation noted by the Movant. The facility is prohibited from operating in a manner that causes endangerment of human health welfare and the environment in accordance with 30 Texas Admin. Code § 330.15(a). The use of contaminated soils as ADC is subject to the requirements of 30 Texas Admin. Code § 330.165(d). The TCEQ rules regulating solid waste, promulgated in accordance with TCEQ's statutory authority and the Texas Government Code, Chapter 2001, are designed to be protective of human health and the environment. The executive director conducts a technical review to determine whether an application satisfies the rules. If the facility is operated in accordance with the rules and the modified permit, operation of the facility will be protective of human health and the environment.

III. PRAYER

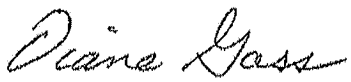
For the reasons laid out above, the executive director respectfully requests that the Commission allow the City of Carrollton's Motion To Overturn to be overruled by operation of law.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Zak Covar
Executive Director

Robert Martinez, Director
Environmental Law Division



By_____

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REPRESENTING THE
EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2012, the original and seven true and correct copies of the Executive Director's Response to Motion to Overturn was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, or by deposit in the U.S. Mail.

Diane Goss

By_____

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TCEQ Docket No. 2013-0437-MSW

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