TCEQ DOCKET NO. 2013-0437-MSW

APPLICATION OF THE CITY OF FARMERS BRANCH FOR PERMIT MODIFICATION FOR USE OF CONTAMINATED SOIL AS ALTERNATIVE DAILY COVER	§ § § § § § §	**BEFORE THE** **TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

JOINT RESPONSE OF THE CITY OF FARMERS BRANCH AND CAMELOT LANDFILL TX, LP TO MOTION TO OVERTURN

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

The City of Farmers Branch ("Farmers Branch") and Camelot Landfill TX, LP (collectively referred to as "Respondents")[1] file this Joint Response to City of Carrollton's ("Carrollton") Motion to Overturn ("MTO") the Executive Director's decision to approve a permit modification authorizing the use of contaminated soil as alternative daily cover at the Camelot Sanitary Landfill ("the Camelot Landfill") located in Denton County, and respectfully state as follows:

I. INTRODUCTION & BACKGROUND

The Executive Director reviewed and approved a modification to the existing MSW permit for the Camelot Landfill to allow the use of contaminated soil as alternative daily cover ("ADC"). These types of modifications are not uncommon. The Commission has previously approved the use of contaminated soil as ADC at many MSW landfills in Texas. This includes the recent approval of a similar permit modification allowing the use of contaminated soil as

[1] Farmers Branch is the owner and operator of the Camelot Landfill. Camelot Landfill TX, LP has an agreement with the City of Farmers Branch to operate the Camelot Landfill.

ADC at the nearby City of Arlington Landfill.[2] The Executive Director also previously approved two temporary approvals for this same activity at the Camelot Landfill, and these were implemented without incident.

What makes this situation different is Carrollton's motivation for challenging the permit modification. Farmers Branch has submitted, and the Executive Director is in the process of reviewing, an application for a major amendment to the permit for Camelot Landfill (MSW Permit Number 1312A) that would authorize expansion of the facility. Carrollton has expressed its opposition to that amendment and appears to be using this MTO simply as another avenue to complain about the Camelot Landfill. This is abundantly clear in the very first substantive paragraph of the MTO, in which Carrollton summarizes the status of the major amendment application rather than addressing the permit modification that it is supposedly challenging. There is nothing in or about the MTO that merits consideration or action by the Commission.

II. SUMMARY OF ARGUMENT

In the MTO, Carrollton makes five regulatory arguments, as well as two application/procedural complaints. Some of these arguments/complaints relate to MSW operating requirements, while others do not. Before responding to each of these arguments individually, it is important to first address the primary incorrect assertion underlying most of the MTO.

Carrollton claims that language in 30 TAC §50.133(a) ("The executive director may act on an application subject to this subchapter if...the application meets all relevant statutory and administrative criteria...") prevents the Executive Director from approving the ADC permit

[2] Modification to Permit No. 358A. Executive Director Approval issued January 15, 2013.

modification unless Farmers Branch makes demonstrations of compliance with various regulatory requirements in addition to those applicable to ADC. Carrollton's argument is in error in three key ways.

1. 30 TAC Chapter 50, Subchapter G - *Action by the Executive Director* – applies only to the Executive Director's action on an application for a permit. The application here is for a modification, not a permit. Therefore, 30 TAC §50.133(a) does not apply to the Executive Director's action in this matter.

2. In addition, specific language in 30 TAC Chapter 50, Subchapter G provides that it "does not affect the executive director's authority to act on an application where that authority is delegated elsewhere." 30 TAC §50.131(a). The Executive Director's authority relating to MSW permit modifications has been explicitly delegated elsewhere. 30 TAC §305.70 – *Municipal Solid Waste Permit and Registration Modifications* – authorizes the Executive Director to act on an application for a modification to an MSW permit. *See* 30 TAC §305.70(g). The provisions of 30 TAC §50.133(a), therefore, do not apply to the Executive Director's action here.

3. Even if the 30 TAC §50.133(a) were applicable, the permit modification application, including its ADC Operating Plan ("ADCOP"), and other components of the Camelot Landfill's existing permit, including the Site Operating Plan ("SOP"), Waste Acceptance Plan ("WAP"), Leachate and Contaminated Water Management Plan ("LCWMP"), and Stormwater Pollution

Prevention Plan ("SPPP") all demonstrate that the use of contaminated soil as ADC is fully compliant with applicable requirements.

A. COMPLIANCE WITH COMMISSION'S AIR QUALITY REQUIREMENTS

Carrollton's arguments regarding air quality issues associated with contaminated soil used as ADC are both legally and factually flawed. Use of ADC is part of landfill cell operation and is therefore specifically authorized by the standard permit applicable to MSW landfills, as set out in 30 TAC Chapter 330, Subchapter U. *See* 30 TAC §§330.991(a)(4) & 330.985(a). Furthermore, the permit modification at issue here is not within the scope of any of the standard permit exceptions outlined in 30 TAC §330.985; it does not involve incineration, rock crushing, composting, or Class 1 industrial nonhazardous waste, and Carrollton has not shown, or even alleged, that the changes authorized by this permit modification would constitute a major new source or a major modification.

B. MANAGEMENT OF AND CAPACITY FOR STORMWATER ASSOCIATED WITH THE USE OF CONTAMINATED SOIL AS ADC

The use of contaminated soil as ADC poses no risk to, or through, stormwater. Section 1 of the ADCOP requires that contaminated soil applied to the working face of the landfill cannot remain exposed for more than 24 hours; it must either be filled over with waste or covered with a minimum of six inches of daily cover soil. Operating requirements found in Camelot Landfill's SOP, SPPP, and LCWMP also establish various practices for managing stormwater at the landfill, including the requirement that berms and grading divert water away from the working face of the landfill. This greatly reduces the extent to which stormwater could even come in contact with the ADC material. Pursuant to 30 TAC §330.165(d)(6), the Executive Director has discretion to require that runoff from ADC areas be managed as contaminated water and acted

well within that discretion when determining that this type of management was not necessary in this case.[3]

Regarding stormwater associated with stockpiled ADC material, Section 3.1 of the ADCOP provides that

> Stormwater runon to and runoff from the contaminated soil piles will be controlled by containment berms and/or diversion berms or by covering the contaminated soil stockpiles with a minimum of six inches of clean soil. Stormwater that comes into contact with the contaminated soil in a stockpile will be considered contaminated water and managed consistent with the requirements for contaminated water in the site's Leachate and Contaminated Water Plan.

This includes provisions for offsite disposal of non-leachate contaminated water (including stormwater within a containment berm), following either pumping and storage in a leachate tank or direct pumping into a tanker truck. Because the LCWMP provides for pumping into either a leachate tank or directly into a tanker truck, no additional storage capacity is necessary.

C. TESTING OF CONTAMINATED SOILS TO ENSURE COMPLIANCE WITH ADC CRITERIA

Carrollton incorrectly claims that the permit modification fails to demonstrate how the contaminated soils used as ADC will be sufficiently characterized or managed. Section 2.2 of the ADCOP specifically addresses chemical characteristics of contaminated soils that will be used as ADC and their characterization, including the use of generator waste profile sheets with attached chemical characteristic information that accompany the wastes at time of acceptance and the maintenance of these sheets in the Site Operating Record. In the MTO, Carrollton objects to the use of generator supplied data, but has alleged no specific deficiency with using this information or any Commission rule requiring the use of some other type of information.

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[3] 30 TAC §330.165(d)(6) states: "The executive director **may** require the owner or operator to test runoff from areas that have alternative daily cover for compliance with Texas Pollutant Discharge Elimination System storm water discharge limits or manage the runoff as contaminated water." (emphasis added).

Furthermore, Carrollton completely ignores the existence of Camelot Landfill's existing Waste Acceptance Plan (WAP), part of the approved Site Operating Plan for the facility. Contaminated soil is treated as a special waste at the Camelot Landfill and, therefore, would fall under the special waste procedures of the WAP. These procedures have already been approved as appropriate for determining if a waste may be accepted at the landfill. Section 2.2 of the ADCOP and the Waste Acceptance Plan comply with Commission requirements regarding characterization of incoming waste materials, including the contaminated soil approved for use as ADC.

D. CLOSURE COSTS

In the MTO, Carrollton makes two arguments regarding closure costs and the use of contaminated soil as ADC. First, Carrollton challenges the Executive Director's assessment that any impact on closure costs resulting from the authorization to use contaminated soil as ADC will not be significant and can be addressed by the closure cost contingency amount, part of the existing, approved closure cost estimate and financial assurance for the facility. Respondents assert that the Executive Director's determination is correct and well within the Executive Director's discretion. But Carrollton's larger error is alleging that using contaminated soils as ADC will "clearly increase the maximum cost of closure," a statement for which Carrollton has provided no basis at all. In fact, closure costs are actually likely to decrease. This permit modification does not limit the use of contaminated soils solely to ADC; these soils can still be disposed of in the Camelot Landfill. Therefore, there is greater flexibility upon closure, with the potential to use contaminated soils as ADC and/or also to help achieve suitable closure contours, thereby reducing closure costs.

E. STOCKPILING OF CONTAMINATED SOILS

Carrollton claims that the stockpiling of contaminated soils would violate Commission rules, specifically the General Prohibitions in the Industrial Solid Waste and Municipal Hazardous Waste Rules found in 30 TAC §335.4. This claim is completely without merit. The Executive Director's approval of the permit modification is specifically authorized by 30 TAC §305.70 and was based on the Executive Director's review of the ADCOP, including provisions that restrict the types of materials that can be used, place limitations on constituent concentrations, and specify operational, performance, verification, and inspection procedures. There is absolutely no basis to assume, much less conclude, that the ADC operations approved by the Executive Director will violate any provision of 30 TAC §335.4 or any other Commission rule.

F. EXISTING CONTAMINATION

Carrollton's arguments regarding existing groundwater conditions at the landfill are simply not relevant to the Executive Director's approval of this permit modification. Even if they were, constituents that have been identified during groundwater sampling at the facility have been addressed under the appropriate and relevant provisions of the Commission's rules, including the implementation of a corrective action plan previously approved by the Executive Director. The Executive Director has properly reviewed the compliance history for the facility and, despite Carrollton's claim, the Executive Director does not "miss the mark": that compliance history supports the approval of this permit modification.

G. APPLICATION DETAIL AND RULE CITATION INACCURACIES

Carrollton claims that the permit modification application lacks sufficient detail and that there are rule citation errors. Regarding the level of detail, the Executive Director correctly determined that the application complies with all of the technical detail and filing requirements of 30 TAC §§305.70 and 330.165(d). Furthermore, the permit modification is part of and based on the overall permit for the facility, including the SOP, ADCOP, WAP, LCWMP, as well as other existing technical and compliance data, all of which have been approved and support approval of this modification.

Carrollton identifies two citations to rules in the ADC Summary section on page B-1 of the ADCOP that refer to rule numbers in the prior version of the Commission's MSW rules. They do not affect the activities approved in this permit modification and merely describe and confirm the process that will be undertaken in connection with unrelated potential future requests to use other ADC materials. While the citations are not current, the procedures described in the ADC Summary section are. Ultimately, any future request to use other ADC materials would have to comply with the rules that are in effect at the time of any such request.

III. CONCLUSION

Contaminated soil has been successfully and safely used as ADC at the Camelot Landfill pursuant to two previous temporary authorizations. All applicable requirements were met in connection with the Executive Director's review and approval of the permit modification allowing the continued use of this ADC material, and all operational requirements will continue

to be satisfied. None of Carrollton's arguments in the MTO warrant the Commission's further consideration or action, and the MTO should be overruled by operation of law.

Respectfully submitted,

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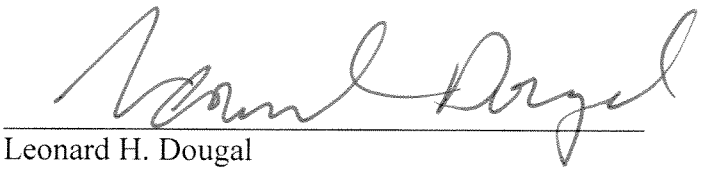

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