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WORKING FOR JUSTICE IN ENVIRONMENTAL POLICY

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October 17, 2019

Danny Anderson, Manager
Solid Waste Branch
Division of Waste Management
300 Sower Boulevard 2d Floor
Frankfort, Kentucky 40601

Re: Modification to Special Waste Landfarm Permit
R&R Septic and Excavation LLC Agency Interest No.
128929 Application Activity No. APE 2019003

Dear Mr. Anderson:

These written comments are submitted on behalf of the Kentucky Resources Council and the Council's members in Henry County, regarding the requested modification of the existing Special Waste Landfarm Permit of R&R Septic and Excavation LLC.

According to the Public Notice, the Robbie Lane property is currently permitted to receive wastewater only on an emergency basis in the event of a catastrophic equipment failure at Carnegie House Company, which prepares private label food products. The permit applicant proposes to, and is seeking Cabinet approval, to land apply the material on a "more routine basis."

After review of the permitting and enforcement files for the current facility, the Council is concerned both that the minor modification should not be granted at this time, and also that the existing permit should be reopened and reevaluated in order to assure full compliance with the Cabinet regulations governing the land application of special wastes. As a preliminary matter, the Council believes that the classification of the facility as a Type B Special Waste Landfarm should be revisited.

Reevaluation Of Facility Classification Is Justified And Needed

According to 401 KAR 45:020, "Landfarming" is a category of special waste site or facility that "landfarms" special wastes. For facilities such as this, which propose to land apply wastes other than municipal

wastewater treatment sludges, the Cabinet's regulation at 401 KAR 45:100 provides criteria by which the facility is classified either as a Type A landfarm, or a Type B. Those criteria include the concentration of cadmium, copper, lead, nickel, and zinc in the sludge, and the volume of wastewater treatment sludge to be land applied over a calendar year.

The Council is concerned that the 2017 permitting action classifying the Robbie Lane facility as a Type B landfarming facility was in error, since that classification was apparently based on an erroneous assumption that the Cabinet had the regulatory authority to vary from its own special waste landfarming regulations and to allow a facility proposing to land apply sludges in a volume and with metals concentrations greater than is allowed for a Type B landfarm, to nevertheless be so classified.

The effect of the variances to exceed the 250 tons / 250,000 gallon Type B volume annual application limit, and to land apply wastes with pollutant concentrations in excess of the Type B limits, was that the facility was excused from compliance with a number of conditions of importance to this agricultural community, including public notice requirements, financial assurance requirements, surface and groundwater monitoring requirements, and the post closure requirements of 401 KAR 45:100.

The Council requests that the Cabinet reevaluate the classification of the facility for two reasons.

First, the agency records do not appear to contain the documentation and findings necessary to support the granted variances. 401 KAR 30:020 is quite specific regarding how and when a variance may be requested and approved. Among the requirements are a finding by the cabinet that the requirement is insignificant as a potential hazard to public health or the environment because of its small quantity; low concentration; physical, biological, or chemical characteristics; or method of operation used. A request for variance is required to be accompanied by analyses, procedures, controls, and other pertinent data necessary to support the request for variance. The granting of a request by the cabinet shall be in writing and shall specify appropriate conditions such as duration, limitations, and review procedures to provide adequate protection to health and the environment.

Absent adequate supporting data and specific Cabinet findings, the pollutant concentration and volume variances appear unjustified and inconsistent with 401 KAR 30:020 Section 2.

Second, the Cabinet is not at liberty to utilize a general variance provision to avoid the more specific requirements of a regulation such as 401 KAR 45:100 Section 2(5), which **limits** the discretion of the Cabinet to reclassify Type A facilities to Type B to *composting* facilities, and does not extend to allow such reclassification of

landfarming facilities. Specifically, that subsection provides that a facility *composting* Type A wastewater sludge may “at the discretion of the cabinet, be classified as a Type B facility depending upon the volume of special wastes received, methods of composting and siting considerations.”

No comparable discretion is afforded the Cabinet in 401 KAR 45:100 to allow reclassification of Type A landfarming facilities as Type B, and certainly not on the basis of pollutant concentrations.

401 KAR 45:100 Section 2 contains specific numerical cut points for metals concentrations and sludge volumes, and attaches more rigorous financial, notice, surface and groundwater monitoring requirements for sludges applied with pollutant concentrations and volumes higher than those cut points. The Cabinet granting of variances from those numerical thresholds on the basis of a general variance regulation despite the conscious decision of the drafters of 401 KAR 45:100 to limit such variances to composting and then only on the bases of volume, method of composting, and siting considerations, is unsupported in law or fact.

401 KAR 45:100 Section 2(6) contemplates and directs that the agency shall reevaluate the classification of landfarming facilities on an annual basis. Given the lack of justification and regulatory authority for the variances by which a facility falling under Type A parameters was granted Type B status, the Council requests that the classification be reevaluated and that all requirements attendant to a Type A facility, including financial assurance and surface and groundwater monitoring, be imposed if it is determined that the facility is more properly classified as Type A.

Comments Concerning Modification Of Wastes Authorized Under Permit

The requested permit modification would, according to the Public Notice, allow the receipt and land application of “material” on a “more routine basis.”

There is often a thin line between legitimate land application of certain categories of wastes as a method of treatment and disposal and the overloading of wastes onto land in excess of the carrying capacity of the soils and the ability of natural processes to treat the waste without adverse environmental consequence. The Cabinet must request and review information sufficient to assure that the chemical and physical composition of the wastes that will be received and land applied, as well as the volumes of the waste to be managed, are consistent with sound practice and regulation.

Specifically, and without limitation, the Cabinet must require the applicant to provide sufficiently detailed information to enable a reasoned determination by the Cabinet that:

- The landfarming of the wastes will not present a threat to human health or the environment;
- The land application of these particular wastes is appropriate because the characteristics and volume of the wastes to be land applied will biodegrade in the environment;
- The wastes can be managed in a manner that meets the environmental protection requirements of 401 KAR 30:031;
- It is unlikely that that waste constituents will contaminate surface or groundwaters; and that
- The wastes will not create nuisance conditions from odors or unsightly conditions.

In order to satisfy these obligations, site-specific data on the land on which the application is to occur must be provided, demonstrating that the rate of application, manner of application, frequency of application, slope of the land, and other parameters relevant are such that the carrying capacity of the land will not be exceeded. Additionally, baseline and periodic data on concentrations of metals and other pollutants of concern must be provided in order to assure that the proposed addition of pollutants (and particularly of those metals and other constituents that will accumulate in soils) do not exceed the cumulative carrying capacity of the land so as to constitute a release of a hazardous substance, pollutant, or contaminant.

Additionally, to the extent that the application assumes that waste constituent uptake is a component of the waste management strategy, specific plans for planting, managing, and harvesting must be provided and be implemented.

It is said that past is prelude. Past and current compliance by a permittee with state and local regulation and ordinances is both a legitimate and mandated matter of inquiry in determining whether a permit should be allowed to be modified to increase allowable wastes, or should be continued at all.

In conclusion, the current application does not appear to contain sufficient information in sufficient detail to allow a reasoned determination on these points. For this reason, the Council respectfully requests that additional information be requested addressing the criteria of 401 KAR 45:100 Section 3(5), and that the comment period be reopened on submittal of that additional analysis and data.

Thank you in advance for your consideration of these comments.

Cordially,

A handwritten signature in black ink, consisting of a large, stylized 'T' followed by a series of loops and a long horizontal stroke extending to the right.

Tom FitzGerald
Director