
RICHARD KAMMERMAN, P.C.

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October 1, 2007

Via HAND DELIVERY ON MONDAY
OCTOBER 1, 2007

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Application of Lerin Hills, Ltd. for Water Discharge Permit No. WQ0014712001
("Application"); Response of Lerin Hills, Ltd. To Hearing Requests
Docket No. 2007-1178-MWD
Lerin Hills Ltd.
Request(s) filed on Permit No. WQ0014712001

Dear Ms. Castañuela:

Please find attached one original and eleven copies of the Lerin Hills Ltd. response to the above referenced matter.

Sincerely,



Richard E. Kammerman

cc: Joe B. Allen
Kathy Humphries
Blas Coy
Keri Dorman and Trey Lary
Lynne Humphries
Teague Harris
Jay Harpole
Abel Godines
Mary Ann Airey

CHIEF CLERKS OFFICE

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Those other persons on the attached list

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Docket No. 2007-1178-MWD
Lerin Hills Ltd.
Request(s) filed on Permit No. WQ0014712001

Dear Ms. Castañuela:

I represent Lerin Hills, Ltd. ("Lerin Hills"), the Applicant for TPDES Water Quality Permit No. WQ0014712001 ("Permit"). This is the Response of the Applicant to Hearing Requests.

- A. Lerin Hills agrees with the Executive Director's Response to Public Comments ("ED RTC") dated June 26, 2007 which responds to 44 comments raised by the public including those persons requesting a contested hearing.
- B. Lerin Hills agrees with the Executive Director's Decision in the ED RTC that the "PERMIT APPLICATION MEETS THE REQUIREMENTS OF APPLICABLE LAW" (emphasis supplied).
- C. Further, Lerin Hills agrees with the ED RTC (Page 10- Response 9) that the draft Permit as proposed will protect the environment, water quality, and human health, and that it meets TCEQ Rules.
- D. Lerin Hills believes that the proposed Permit is one of the most strict of any issued municipal permits.
- E. Because of the Applicant's desire to address the concerns of the downstream landowners, the Applicant has prepared and submitted an application for a Chapter 210 Authorization ("Authorization") whereby the treated effluent will be reused on the Applicant's property.

- F. The Authorization has been reviewed by the TCEQ which has prepared a draft Authorization.
- G. Under the terms of the draft Authorization, Lerin Hills will reuse the treated effluent on its own property except in times of heavy rains
- H. Tapatio Springs Service Company and its Affiliates (collectively called "Tapatio") do not have standing to object to the proposed Permit for Lerin Hills because Tapatio is not a downstream landowner; the land owned by Tapatio is not located anywhere near the site of the Lerin Hills' plant; and the treated effluent from the Lerin Hills plant will have no affect on Tapatio.
 - 1. Tapatio has not shown that it is an affected party or is any way affected differently than the general public
 - 2. Lerin Hills has sought on numerous occasions to negotiate with Tapatio regarding utility service, but all negotiations came to naught.
 - 3. The principals of Lerin Hills and Tapatio have a very poor relationship stemming from previous encounters and litigation.
 - 4. Lerin Hills will be in competition with Tapatio for the sale of real estate, and the Request by Tapatio for a contested case hearing is merely to delay and stop a competitor from entering the real estate market.

THE ARGUMENTS OF TAPATIO, A REAL ESTATE COMPETITOR OF LERIN HILLS IN KENDALL COUNTY, REGARDING AMONG OTHER ITEMS, REGIONALIZATION, LACK MERIT, AND PROVIDE NO JUSTIFICATION TO HAVE A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS ("SOAH") (emphasis supplied).

- I. In light of the strict Permit developed by the TCEQ staff and agreed to by Lerin Hills, the reuse of the treated effluent on its own land, and the absence of merit in the regionalization argument of Tapatio, nothing is gained except delay and additional expense to everyone by sending this Application to SOAH.
- J. Robert Webster, a landowner about 3,000 feet downstream from the point of discharge with a "lake" on his property who is also a well respected organic gardening expert and was one of the strongest objectors, has now advised the Commission in a letter dated August 20, 2007 that he withdraws his comments and request for a contested hearing.
- K. John E. Bakke and Patricia S. Bakke have withdrawn their comments and request for a contested hearing.
- L. Edgar W. Blanch, Jr, in a letter to the TCEQ, has withdrawn his request for a contested hearing and in another letter to the TCEQ in July, 2007 has endorsed the ED RTC.

- M. Cow Creek Groundwater Conservation District has notified the Commission that it has withdrawn its comments and request for a contested hearing.
- N. Based on the proposed Permit and the Authorization, Lerin Hills believes there will be no adverse impact on the downstream waters and their uses. This is illustrated by the ED RTC and the withdrawal letter of Mr. Webster.

Further, if Tapatio has standing, which Lerin Hills vigorously denies, then a review of the records and facts before the Commission indicates that Tapatio:

1. has a permit for only 0.150 gpd average daily flow which is not sufficient to serve Lerin Hills;
2. is located to the west of Lerin Hills, and to reach that plant, Lerin Hills would have to pump its wastewater up about two hundred or more feet in elevation and more than two-miles over ridges and ravines. Thus, going to that plant is not reasonable or adjustable;
3. is not interested in making any contract or arrangement with Lerin Hills. It is undisputed that the principals in Tapatio and Lerin Hills have a poor relationship, one that relates to a time when Tapatio sought unsuccessfully to buy the land which is now owned by Lerin Hills;
4. has affiliates which are in the land development business. Tapatio sells real estate, and it will compete with Lerin Hills for the sale of lots in Kendall County. Tapatio objects to Lerin Hills' Application because it fears the competition from Lerin Hills in the marketplace; and
5. fails to justify its claim of regionalization under Texas Water Code Ann. Sec. 26.082 since Tapatio is not a public entity that has been designated as a regional entity under that section.

Even more telling, Tapatio hopes to cause Lerin Hills to fail by protesting and requesting a contested hearing to delay this Application. Thus, it seeks to eliminate a competitor and/or control the ability of Lerin Hills to obtain wastewater service, and hence, control development on Lerin Hills' property.

- O. Lerin Hills adopts and incorporates herein by reference:
 - a. its letters to the Commission dated November 28, 2006 (including the letter to the TCEQ dated October 23, 2006 from Lynne B. Humphries, counsel for Lerin Hills Municipal Utility District ("MUD") attached thereto; and
 - b. its letter to the Commission dated July 26, 2007.

- P. The land owned by Lerin Hills is the only land within the Lerin Hills Municipal Utility District ("MUD") which was recently created by the Commission. None of the MUD lies within the corporate limits or extraterritorial jurisdiction of any municipality. Once the Permit is issued, Lerin Hills will request that the Permit and the Authorization be transferred to the MUD which will provide water, wastewater and drainage facilities to serve the Lerin Hills property within the MUD. None of the property of Lerin Hills is currently within the area of any certificate of public convenience and necessity ("CCN") for water or sewer or any other utility.
- Q. Representatives of Lerin Hills have worked diligently commencing months before the filing of the Application on May 3, 2006 to address the issues relating to the Application and Permit. They conferred with different members of the staff of the TCEQ regarding parameters for the Application and related issues. Lerin Hills has agreed to the strict terms of the proposed Permit presented in June, 2006 which included a phosphate limitation of .5 mg/l. Lerin Hills further agreed with the TCEQ staff when the staff in the ED RTC also required chlorination and dechlorination. On the whole, the proposed Permit is one of the strictest, if not the strictest, municipal permit issued by the TCEQ. It requires "tertiary treatment".

Edgar W. Blanch, Jr.

By letter dated May 31, 2007, Edgar W. Blanch, Jr. withdrew his request for a contest hearing and comments. In Mr. Blanch's letter to the Commission dated July 11, 2007, Mr. Blanch did not request a contested hearing but stated, in the fourth paragraph on the first page, that the ED RTC "...in comment 5 and Response 5 provides the comfort that I have sought. (It is the responsibility of Lerin Hills to acquire all property rights necessary to use the discharge route)". As is evident, the concerns of Mr. Blanch were not issues related to the Permit but issues related to property rights, a matter that is beyond the jurisdiction of the TCEQ.

To the extent that Mr. Blanch has not withdrawn his Request and comments, his Request should be denied for the following reasons:

- a. His issue is not a water quality issue but an issue related to property rights.
- b. He has sent a letter withdrawing his Request, and then a second one not making a Request but suggesting he is satisfied with the ED RTC. If he claims to now make a Request, he is estopped from making it because of his prior letters to the TCEQ.
- c. Because Lerin Hills will reuse the treated effluent on its own property in accordance with the Chapter 210 Authorization, any other concerns of Mr. Blanch are moot. See the letter dated May 16, 2007 to the TCEQ from Mr. Webster (the landowner next door to Mr. Blanch) attached as Exhibit 1. In that letter, Mr. Webster acknowledged that he is in agreement with the "nature of this reuse" referring to the Application for the Chapter 210 Effluent Reuse Application.

William R. "Rick" Wood, P.E.

William R. "Rick" Wood, P.E. submitted a request for hearing (the "Wood Request"). Mr. Wood's letter asserts that he owns property that is adjacent to and downstream of Lerin Hills. He does not state that his land is on the receiving waters, and he is not shown as a downstream landowner according to the public records of Kendall County. The land of Mr. Wood is located a long way from the site of the proposed Lerin Hills plant.

As with the other requests, the Wood Request should be denied for the following reasons:

- a. Mr. Wood does not establish himself as an "affected party." Merely owning or purporting to own land nearby or adjacent to the land owned by Lerin Hills does not afford party status.
- b. Mr. Wood does not identify a personal justiciable interest affected by the Application and does not explain how and why he believes he will be affected by the application in a manner not common to members of the general public.
- d. Mr. Wood has asserted that Lerin Hills ought to reuse the treated effluent from the Lerin Hills' plant on its own property. That is what Lerin Hills now proposes to do with the Chapter 210 Authorization.

Thus, the request of Mr. Wood for a contested hearing should be denied.

Tapatio Springs Service Company

By letters dated June 26, 2006, and October 23, 2006, Tapatio submitted a request for hearing (the "Tapatio Request") through its attorney, Patrick W. Lindner of the Law Offices of Davidson & Troilo, P.C. As will be shown, the Tapatio Request should be denied.

Tapatio is an investor owned utility ("IOU") that holds CCNs for water service (CCN No. 12122) and sewer service (CCN No. 20698). Tapatio is not a downstream landowner, but owns land to the west of land owned by Lerin Hills. Tapatio's issue is not a water quality issue.

As of this date, no part of Tapatio's CCNs for water or sewer include property proposed to be included in the MUD or to cover the land owned by Lerin Hills. Tapatio serves the residential community known as "Tapatio Springs Resort" ("Tapatio Development"). Even though different corporate structures are used, the principal owners of Tapatio are the same as the principal owners of Tapatio Development. The proposed development of Lerin Hills in the MUD will be the principal competition of Tapatio Development since these properties are adjacent.

Ultimately, the Tapatio Request boils down to a landowner/developer using its status as an IOU and a CCN-holder to attempt to prevent or delay a competing residential development.

To further complicate matters, Abel Godines, a principal of Lerin Hills has had past business dealings with the principal owners of Tapatio and Tapatio Development. Mr. Godines paid several hundred thousand dollars to the owners of Tapatio and Tapatio Development. Mr. Godines believed that these payments were made to acquire an ownership interest in Tapatio Development. The principal owners of Tapatio and Tapatio Development characterized these payments by Mr. Godines as a loan. These business dealings were so controversial that lawsuits were filed and eventually settled. Clearly the Tapatio Request must be viewed in light of this past relationship. To say the least, it is not a good relationship.

The records of the Commission will indicate that another IOU in the area, the Kendall County Utility Company, Inc. ("KCUC"), also owned by principals in Tapatio, had tried to amend its water CCN to include portions of the property owned by Lerin Hills which is included in the MUD. In complete disregard of the Commission requirement at the time to mail notice to all affected landowners, KCUC failed to mail notice of its CCN amendment to Lerin Hills or the prior owner of Lerin Hill's property. In response to Lerin Hills' protests, the Commission instructed KCUC to mail notice to Lerin Hills. In complete disregard of the Commission's direct request, KCUC again failed to mail notice to Lerin Hills. In March or April, 2006, the Commission referred KCUC's application to SOAH. There was a SOAH hearing on September 12, 2006 at which time Lerin Hills' attorney filed an Objection to Jurisdiction stating that KCUC never sent required notice to Lerin Hills, and the administrative law judge abated the hearing on this point and also on the issue of whether there were others who did not receive notice. Another hearing was set in April, 2007, and KCUC, at that time, announced that it was no longer seeking to include land owned by Lerin Hills and located in the MUD in its application to amend its CCN. As a result, a written agreement was signed by KCUC, Lerin Hills, and the MUD reflecting that KCUC no longer was seeking to cover land owned by the MUD and Lerin Hills in its application to amend its CCN.

What the Tapatio Request doesn't tell you is that, according to information available from the Texas Secretary of State, the President of both Tapatio and KCUC is John J. Parker, Sr. and the Vice-President of both Tapatio and KCUC is John J. "Jay" Parker, Jr. Tapatio and KCUC are controlled by the same people. The newspaper article from the *Boerne Star* attached as **Exhibit C** to the letter from Lynne Humphries to the TCEQ dated October 20, 2006 in the file of the TCEQ regarding the creation of the MUD further explains the relationship between Tapatio and KCUC and the ownership of Jay Parker and Michael Shalit in Tapatio. Tapatio, KCUC, and the other Tapatio entities (Tapatio Springs Real Estate Holdings, L.P., Kendall County Development Co. L. P. and Tapatio Springs Real Estate Holdings) are acting in a coordinated and cooperative manner to attack Lerin.

The goal of Tapatio and its affiliates is simple: stop or delay competing residential development and, in the process, continue to grind personal axes from prior disputes.

KCUC began the process of filing a frivolous and unmerited application with the TCEQ aimed at including part of the Lerin Property to be served by the MUD in its application to amend its CCN. That has now ended. The protest of Tapatio to the Permit of Lerin Hills and the request for a contested case hearing now are merely a continuation of that process, and it needs to stop now.

The prior owner of Lerin Hills' property was Jay Harpole, who is also a partner in Lerin Hills. Mr. Harpole sought water and wastewater service from Tapatio and was denied. According to Mr. Godines, prior to Lerin Hills' acquisition of the property, it was under contract by Mr. Carlo DeSanti, who after being denied service by Tapatio, did not close on the sale of the property. Also according to Mr. Godines, prior to Mr. DeSanti's contract, Dick Rathgaber tried to acquire the property, but was denied service by Tapatio. During the feasibility period of Lerin Hills' contract to purchase the property, Lerin Hills was twice denied service by Tapatio.

On October 11, 2006, Mr. Godines and Mr. Harpole met with Jay Parker and Michael Shalit requesting Tapatio withdraw its request for a contested hearing. According to Mr. Godines and Mr. Harpole, Mr. Parker and Mr. Shalit explained that they are protesting because Lerin Hills' development would compete with Tapatio Development. The meeting netted absolutely zero.

Lerin Hills has attempted to negotiate with Tapatio in good faith but to no avail. Tapatio is not a downstream landowner nor is Tapatio's land located near the proposed treatment plant; therefore Tapatio does not have a water quality interest in this Application. Further, Tapatio is affiliated with other companies which own land adjacent to the western boundary of the land owned by Lerin Hills. Tapatio serves the land owned by its affiliates with water and sewer. Tapatio and its affiliates were approached by representatives of Lerin Hills before it purchased its land to discuss water and sewer issues. Tapatio was not interested. Even during this past summer, counsel for Lerin Hills and counsel for the MUD asked and received a conference with counsel for Tapatio, at which time a settlement offer was made by counsel for Lerin Hills. Tapatio NEVER RESPONDED TO THE OFFER OF SETTLEMENT. The reason, in part, is that Tapatio will be in direct competition with Lerin Hills in the real estate development business. The comments of and request for a contested case hearing by Tapatio are a subterfuge to delay and prevent Lerin Hills from competing in the real estate market in Kendall County.

The Tapatio Request should be denied for the following reasons:

- a. Tapatio does not establish itself as an "affected party."
- b. The Tapatio Request does not identify a personal justiciable interest affected by the Application and does not explain how and why Tapatio believes it will be affected by the Application in a manner not common to members of the general public.
- c. Tapatio claims to be ready, willing, and able to serve the Lerin Hills' property proposed to be included in the MUD, but all attempts to negotiate any type of agreement with Tapatio have failed and given the past history of the principals involved, the chances of success are nil. Trying to work a deal with Tapatio for service has been as successful as trying to put a "square peg in a round hole". It just will not work. The following is an example of the impossibility of negotiating with Tapatio.

Abel Godines approached Tapatio at least twice requesting service. Tapatio denied such requests. Tapatio tried to condition service to Lerin Hills' property upon Lerin Hills' constructing and giving to Tapatio a major road to serve Tapatio owned real estate. There is no legal basis for Tapatio demanding a gift to Tapatio Development. Lerin Hills had no alternative

but to proceed with alternate plans. Now, when an Application for a discharge Permit is filed, Tapatio and its affiliates say they will serve, but then in October, 2006, Tapatio made unreasonable demands as a condition of service. It appears to Lerin Hills that the purpose of this offer to serve is merely to create confusion and delay development in Lerin Hills. On several occasions, Mr. Godines had phone conversations with Jay Parker and Michael Shalit to discuss water and wastewater service. Mr. Godines met with Messrs Parker and Shalit in the fourth quarter of 2004 and was told in no uncertain terms that they could not and would not provide either water or wastewater service to the property owned by Lerin Hills.

- d. Regardless, such service by Tapatio is not reasonable or practical. Sewage cannot gravity flow from the Lerin Hills' property to the Tapatio wastewater treatment facilities. In order to obtain sewer service from Tapatio, sewage would need to be conveyed for approximately 1.5 miles and lifted more than 200 feet – all at considerable expense to the customers of Lerin Hills (and the MUD). Such a massive engineering undertaking is not practicable or advisable. Pumping raw wastewater this distance under high pressure unnecessarily increases the environmental risk of a spill. Preliminary engineering estimates are that the expense to pump sewage from the Lerin Hills land located in the MUD to the Tapatio system would significantly increase the costs to install and maintain the collection system. The Tapatio wastewater treatment plant is old and not adequately sized to treat the amount of wastewater and would require expansion; therefore, there is no cost savings to Lerin Hills or to the MUD to utilize the Tapatio plant.

The Tapatio wastewater treatment plant had a reported average daily flow of about 0.100 mgd and is permitted for only 0.15 mgd with 20 BOD and 20 TSS requirements. From time to time in the past, that plant has experienced permit excursions, the latest that Lerin Hills is aware of was in the beginning of 2006 when 26,000 gallons of sewage spilled from that plant.

While the Tapatio plant is privately owned, the Lerin Hills plant will be owned and operated by the MUD, a public entity governed by a publicly elected Board of Directors.

Tapatio has raised other so-called "issues" in its letters, and those "issues" have either been addressed by the TCEQ staff in the ED RTC or in the proposed Permit. With reference to the so-called "regionalization" issue, Tapatio misconstrues Texas Water Code Ann. Section 26.082 dealing with regionalization. Further, Tapatio is not a Regional Entity designated under this statute, and considering the facts and circumstances regarding communications and relations between Lerin Hills and Tapatio, Lerin Hills believes that there is no opportunity for any agreement with Tapatio.

Letter of July 26, 2007 from Eric Allmon ("Letter").

- A. The Letter was not timely filed. A Motion to Extend the Time for Filing was filed. Lerin Hills filed a response to that Motion requesting that the Motion be denied. No action has been taken on the Motion and response. Without repeating the issues, the Motion lacks merit and should be denied. Thus, the filings of the two groups of Requesting Parties, one of which is Tapatio and its affiliates and the other includes Mr. Webster and Mr. Blanch, as well as Mr. Wood (Group 2) should not be considered as timely filed.

- B. If the Motion is granted by the Commissioners, the six points raised in the Letter are nothing more than conclusions without any factual bases.
- C. In particular, item 3 dealing with regionalization states that the "applicant has not demonstrated adequately that it has meaningfully pursued efforts to work with the **City of Burleson...**" (emphasis supplied) That is right only because the City of Burleson has nothing to do with this Application because it is miles away from Kendall County in a different county. However, as shown above, the Applicant has made extensive efforts to negotiate with Tapatio, but all for naught. Item 3 is a frivolous issue.
- D. Issues such as water quality/supply, both ground and surface also lack merit. If there was a groundwater problem, Cow Creek Groundwater Conservation Water District would not have withdrawn its request for contested case hearing, no less would the TCEQ ground water staff have passed on this Application.
- E. Issues such as flooding/erosion/siting, to the extent the TCEQ has jurisdiction over them have been addressed in the proposed Permit and the ED RTC. As with the other six "issues", the Letter fails to specifically identify factual issues, but merely contains broad assertions not backed by any facts, but contrary to facts found by the ED RTC and shown herein.
- F. Issues regarding disruption of use and enjoyment of private property are vague and ambiguous, and thus not meaningful. However, if this was the case, Mr. Webster would never have withdrawn his comments and objections to it. After all, he has a "lake" about 3,000 feet down stream that he states is used for his personal enjoyment and that of his guests. This claim as with the rest of the so-called "issues" lacks merit. The same holds true for "health and safety of humans and wildlife" since it is addressed by the ED RTC and the Permit.
- G. The final "issues" of "staffing/emergency response/financial stability" are addressed by the terms of the proposed Permit. These "issues" lack merit.

Representatives of Lerin Hills have heard the objections of downstream landowners such as Mr. Webster, and out of respect to those downstream owners, Lerin Hills proposes to reuse the treated effluent on its own property subject to the provisions of the Chapter 210 Authorization (which the Commission can only issue after the Permit is issued).

Sadly, Tapatio and a few of the other people who still object and request a contested hearing really have other goals in mind, namely, slowing growth and stopping development in Kendall County, neither of which are proper issues to be decided in any contested hearing.

* * * * *

Office of the Chief Clerk

October 1, 2007

Page 10 of 10

As has been shown in this Response, the "Requests" and "issues" of those named herein and others that are unnamed but who raised similar points are without merit and do not and cannot form the bases for referral of this Application to SOAH.

Accordingly, Lerin Hills requests that the TCEQ deny the Requests for contested hearing and referral to SOAH and issue the proposed Permit as submitted by the TCEQ staff.

Sincerely,

A handwritten signature in cursive script that reads "Richard E. Kammerman".

Richard E. Kammerman

cc: Joe B. Allen
Kathy Humphries
Blas Coy
Keri Dorman and Trey Lary
Lynne Humphries
Teague Harris
Jay Harpole
Abel Godines
Mary Ann Airey

Those other persons on the attached list

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CHIEF CLERKS OFFICE BY 

May 16, 2007

Chief Clerk, TCEQ
MC-105
P. O. Box 13087
Austin, TX 78711-3087

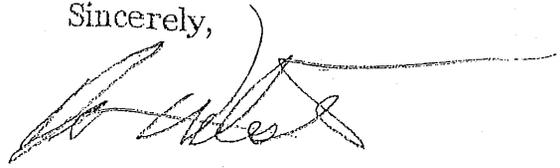
Re: TPDES Permit #WQ0014712001

Dear Sirs:

This letter is to notify you that I have been working with Mr. Godines of Lerin Hills, Ltd. and his engineering firm to resolve our differences concerning the application for TPDES Permit #WQ0014712001. I further understand that his engineering firm has met with TCEQ staff and is preparing an application package for a Chapter 210 Effluent Reuse Authorization. We are in agreement on the nature of this reuse and I expect that we will be able to finalize our agreement within a short period of time.

It is my intent that upon signing a written agreement with Lerin Hills Ltd, and receiving assurance from TCEQ staff that their application for said Chapter 210 Authorization is in order, I will withdraw my request for a contested case hearing. I will further urge other parties acting on my behalf to do likewise.

Sincerely,



Robert Webster

EXHIBIT NO. 1

ROBERT WEBSTER
335 Highway 46 West • Boerne, Texas 78209 • 830-249-6892