

LOWERRE & FREDERICK
ATTORNEYS AT LAW
44 East Avenue, Suite 100
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
Mail@LF-LawFirm.com

CHIEF CLERK'S OFFICE

2007 JUL 27 AM 8:02

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

July 26, 2007

Via facsimile and first-class mail

Ms. LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711

Re: **Comments and Request for Contested Case Hearing on proposed TPDES
Permit No. WQ0014712001, by Lerin Hills Ltd.**

Dear Ms. Castañuela,

On behalf of Mountainview at Tapatio, L.P., Tapatio Springs Real Estate Holdings, L.P., Kendall County Development Co., L.P., Tapatio Springs Service Company and Kendall County Utility Company (collectively "Requestor Group 1"), we reiterate the comments filed on their behalf on October 23, 2006, and request a contested case hearing on the above-referenced draft permit. In addition, on behalf of Mr. Bob Webster, Mr. Rick Wood, Mr. Edgar Blanch (collectively "Requestor Group 2") we request a contested case hearing. Requestor Group 2 adopts the comments previously filed on behalf of Requestor Group 1. Those comments are adopted and incorporated into this request at Attachment A. All Requestors (Group 1 and Group 2) may be contacted at the address, daytime telephone number and fax number of counsel, provided above.

As described in Attachment A, each of the individual Requestors in Requestor Group 1 are affected persons, and stand to be adversely affected by the above-referenced application. Requestors reassert their personal justiciable interests demonstrated in their October 23, 2006 Comments and Request for Contested Case Hearing, included in the attachment. Each of the Requestors in Requestor Group 2 are landowners within 1 mile downstream of the application site and may suffer adverse impacts from the application discharges.

Further, all Requestors (Group 1 and Group 2) wish to incorporate the substance of all comments submitted to the Commission on this application, and request that comments 1-44 as presented in the Executive Director's Response to Comments be referred as issues to the State Office of Administrative Hearings for a contested case hearing. The issues referred can roughly fall under the following categories:

Water Quality/Supply Concerns, both ground and surface

Requestors believe that TCEQ's analyses may not have been sufficiently comprehensive to ensure that operation of the proposed facility would not harm surface or groundwater supply or quality, and the applicant has not carried its burden of proof.

Flooding/Erosion/Siting Concerns

Requestors believe that the TCEQ should have considered flooding, erosion and siting concerns when evaluating this permit, and the applicant should be required to meet applicable design criteria prior to the issuance of the permit.

Regionalization/Necessity Issues

The applicant has not demonstrated adequately that it has meaningfully pursued efforts to work with the City of Burleson on expanding capacity or building infrastructure to meet future needs.

The Staffing/Emergency Response/Financial Stability Issues

The applicant has not demonstrated that staffing will be adequate, that it has an adequate plan for emergency response, or that it has the financial stability to maintain the facility in the long-term.

Health and Safety of Humans and Wildlife

The application and current draft permit do not provide meaningful assurances that the facility will be operated in such a way as to avoid harming the health and safety of humans and wildlife.

Disruption of use and enjoyment of Private Property

Requestors do not believe that the protections are adequate and the remedies are sufficient.

Sincerely,


Eric Allmon *my name*

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2007, the original and eleven (11) copies of the foregoing document was sent via facsimile and mail to the Chief Clerk at the Texas Commission of Environmental Quality, and copies were served on all parties listed below via hand delivery, facsimile transmission, or by deposit in the United States Mail.

Eric Allmon
Eric Allmon

FOR THE APPLICANT:

J. Abel Godines
Lerin Hills, Ltd.
4820 Bacon Road
San Antonio, Texas 78249
Facsimile: (210)

Mail

Charles Hallenberge, PE
Pate Engineers, Inc.
8200 Interstate 10 West, Suite 440
San Antonio, Texas 78230
Facsimile: (210)

Mail

Richard Kammerman
Richard Kammerman, P.C.
7200 North Mopac, Suite 150
Austin, Texas 78731
Facsimile: (512) 343-6767

Fax & Mail

FOR THE EXECUTIVE DIRECTOR:

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
PO Box 13087
Austin, Texas 78711-3087
Facsimile: (512) 239-0606

Fax & Mail

Mary Ann Dimakos Airey, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
PO Box 13087
Austin, Texas 78711-3087
Facsimile: (512) 239-4114

Fax & Mail

CHIEF CLERKS OFFICE

2007 JUL 27 AM 8:02

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
PO Box 13087
Austin, Texas 78711-3087
Facsimile: (512) 239-4007

Fax & Mail

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel
PO Box 13087, MC-103
Austin, Texas 78711-3087
Facsimile: (512) 239-6377

Fax & Mail

PROTESTANTS/INTERESTED PERSONS:

Joan & Lee Roy Hahnfeld
306 State Highway 46 W.
Boerne, Texas 78006-8104

Mail

Grady B. Jolley
Nunley, Davis, Jolley, Cluck, Aelvoet, LLP
1580 S. Main Street, Suite 200
Boerne, Texas 78006-3311

Mail

The Honorable Eddie J. Vogt
Kendall County Judge
201 E. San Antonio, Suite 120
Boerne, Texas 78006-2013

Mail

William R. Wood
306 State Highway 46 W.
Boerne, Texas 78006-8104

Mail

Patrick Linder
Davidson & Troilo
7550 W IH-10 Suite, 800
San Antonio, Texas 78229-5815
Facsimile: (210) 349-0041

Fax & Mail

Attachment A

JOHN W. DAVIDSON
ARTHUR TROILO
TERRY TOPHAM
CHEREE TULL KINZIE
R. GAINES GRIFFIN
RICHARD E. HETTINGER
PATRICK W. LINDNER
IRWIN D. ZUCKER
RICHARD D. O'NEIL
J. MARK CRAUN

LAW OFFICES OF
DAVIDSON & TROILO
A PROFESSIONAL CORPORATION

SAN ANTONIO
7550 W IH-10, SUITE 800, 78229-5815
210/349-6484 • FAX: 210/349-0041

LEA A. REAM
FRANK J. GARZA
JAMES C. WOO
RICHARD L. CROZIER
R. JO RESER
MARIA S. SANCHEZ
DALBY FLEMING
LISA M. GONZALES

AUSTIN OFFICE
210 CONGRESS, SUITE 810, 78701
512/408-0006 • FAX 512/478-8138

OPA *H*

OCT 24 2006

BY *JP*

October 23, 2006

*DAVIDSON
533346*

*RECEIVED
OCT 24 2006
AUSTIN OFFICE*

Via Fax (512) 475-4994
Office of the Chief Clerk MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RE: Lerin Hills Ltd.; Application for Water Quality Permit No. WQ0014712001; Comments and Request for Contested Case Hearing submitted at public meeting on October 24, 2006

Dear Ms. Castanuela:

We represent Mountainview at Tapatio, L.P., Tapatio Springs Real Estate Holdings, L.P., Kendall County Development Co., L.P., Tapatio Springs Service Company, and Kendall County Utility Company (all five clients jointly referred to as "Tapatio"). All of these companies protest the above-referenced application and request a contested case hearing. Each of these companies is an affected person because each has a personal justifiable interest related to a legal right, duty and economic interest affected by this application. All of these companies may be reached through the undersigned at the address and phone number shown in the letterhead. Tapatio previously submitted comments and request for contested case hearing in response to the notice of application.

Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company were listed by the Applicant as affected landowners. However, the envelope from Applicant to these companies, sent by certified mail, contained only blank paper, not the notice of application. Tapatio asserts that Applicant's mailed notice was defective because these notices, and perhaps many others, were deficient. To the extent that the Applicant certifies that mailed notice was properly given to these entities, this certification is in error.

TCEQ Chief Clerk
Protest of Lerin Hills STP
October 23, 2006
Page 2 of 7

Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company were listed by the Applicant as affected landowners. Each of these companies is concerned about the effect that the proposed wastewater treatment plant and the proposed discharge of effluent will have on them and their property, especially as it relates to impact on the quantity and quality of groundwater and surface water and odors from lift stations, the plant, and the receiving stream. These companies developed property for residential purposes within the area and, to the extent that Applicant's activities adversely affect the environment in this area, such as the quality of the surface water and groundwater, and the people, plants, fish, and wildlife that depend upon the water, these companies will be adversely affected.

Mountainview at Tapatio, Tapatio Springs Real Estate Holdings, and Kendall County Development Company were listed by the Applicant as affected landowners. Some of the principals of these companies have been actively involved in developing and selling developed real estate in the area adjoining the proposed project. Based upon their experience, the Applicant's proposed build-out schedule stated in the Technical Report 1.1 (1)(b) is over zealous and in their opinion, the Applicant will not be able to meet its projected build-out schedule. The amount authorized to be discharged under the permit during the next five years is well beyond the reasonableness of the probable build-out schedule. In addition, the Applicant recently threatened to increase the density of the proposed development in retaliation for the local residents opposing the permit. Obviously, the Applicant does not know what his development plans are and further processing of the permit should be abated until the Applicant makes the necessary decisions regarding development density.

The Applicant's proposed treatment plant is intended to serve a single tract allegedly owned by the Applicant. Tapatio Springs Service Company owns and operates a sewage treatment plant with excess capacity and located within three miles of the proposed treatment facility. The Applicant's statement in the Technical Report that Tapatio's plant is at capacity is wrong and the statement regarding a 200 foot ridge ignores the fact that the Applicant plans to use many lift stations to transport raw sewage to Applicant's proposed plant. Tapatio Springs Service Company has an application pending with the TCEQ to merge with Kendall County Utility Company. The Applicant did not communicate with either Tapatio Springs Service Company or Kendall County Utility Company regarding the availability of service from this existing treatment plant. Tapatio Springs Service Company has agreed to provide wastewater service to an adjoining tract of land and a SOAH administrative law judge recently issued the recommendation that Tapatio Springs Service Company's application amend its sewer CCN to

TCEQ Chief Clerk
Protest of Lerin Hills STP
October 23, 2006
Page 3 of 7

include the adjoining area be approved. For this reason, among others, the Applicant has failed to use reasonable means to encourage and promote regionalization or to justify the need for the proposed facility in the technical report.

Tapatio is further opposed to the application because, based upon information filed by the Applicant with the TCEQ relating to a petition for creation of a MUD, the Applicant proposes to construct its treatment facility within an easement used for electric power transmission. This information conflicts with the information filed with the application pertaining to the wastewater treatment plant. Tapatio is concerned that the construction or operation of the plant may cause an interruption of service that Tapatio needs to operate its water and wastewater facilities. Tapatio is concerned that the Applicant has made contradictory representations, under oath, to the TCEQ. To the extent the Applicant now plans to move the location of the treatment plant, the representations made by the Applicant in the MUD creation petition are inconsistent.

The Applicant's petition for creation of a proposed district includes cost projections to construct and operate a no-discharge permit. A no-discharge alternative is not presented as part of the Applicant's request for the pending permit. As stated previously, Tapatio is concerned about this and possibly other contradictions made by Applicant in two separate applications pending with the TCEQ.

Tapatio is also opposed to the permit because the Applicant does not possess the technical, financial, and managerial experience needed to construct and operate the proposed facility. The Applicant has expressed intent, in writing, to transfer ownership of the facility and permit to another entity, but that entity is not a co-Applicant.

The Applicant has publicly stated that the water supply for the project will be obtained solely from the Guadalupe Blanco River Authority. Tapatio is unaware whether a contract for this water supply has been signed, but the contract between GBRA and Tapatio contains the following provision, which must be included in all contracts per GBRA policy:

Customer agrees that the supply of water to Customer under this Agreement for use on any lands within a CCN in Kendall County shall be conditioned, to the extent allowed by law, on compliance, in the design, construction and operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with

TCEQ Chief Clerk
Protest of Lerin Hills STP
October 23, 2006
Page 4 of 7

all federal, state and local laws, rules and regulations relating to (i) protection of the quality of groundwaters or surface waters; (ii) recharge of aquifers; or (iii) drainage and flood control. Customer further agrees that, to the extent allowed by law, it will not supply any water supplied to Customer under this Agreement for use on any lands if and for so long as there is any material non-compliance, in the design, construction or operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with any such laws, rules or regulations. At GBRA's request from time to time, Customer shall demonstrate to GBRA its compliance with the requirements of this Section 5.4. If Customer fails to comply with the requirements of this Section 5.4 with respect to Customer's supply of water for use on any lands, GBRA shall have available all remedies allowed by law including, without limitation, termination of this Agreement, or suspension or reduction of the supply of treated water under this Agreement until Customer demonstrates that compliance has been achieved; provided, however, GBRA will notify Customer of the violation and provide Customer a reasonable time to cure the violation. Customer will not be obligated to implement any requirement that GBRA does not require all other Project customers or participants to implement.

The Applicant's proposed project does not comply with the requirements of this provision because the treatment, disposal, and reuse of wastewater does not protect the quality of groundwater or surface waters, recharge of aquifers, or drainage and flood control. The application did not contain a geologic assessment of the receiving stream to determine whether geologic features forming conduits into the area groundwater supply.

The proposed project is located within a priority groundwater management area designated by the TCEQ. Designation was due, in part, to the potential for groundwater contamination. The proposed permit does not adequately protect the groundwater supply from contamination.

The preliminary layout for the sanitary sewer system as filed by Applicant with its request to create a municipal utility district does not plainly show how wastewater collected within one watershed will be piped to the single wastewater plant. These plans do not show the measures that need to be taken or that will be taken to reduce the risk of these major lift stations from overflowing.

TCEQ Chief Clerk
Protest of Lerin Hills STP
October 23, 2006
Page 5 of 7

The Applicant refers to Centerpoint Energy's reliability of service to explain the lack of needing back-up power. Centerpoint Energy does not serve the area, so back-up generator and alarms should be required. In addition, the Applicant refers to an "auto dialer" that monitors critical plant functions. This plant is located in a rural area, many miles away from any other plant that any certified operator hired by Applicant may operate and at least one hour from San Antonio. An "auto dialer" is not sufficient safeguard against the harm that will occur from any plant upset.

Due to the lack of proper notice and inconsistency in representations to the TCEQ, at this time Tapatio cannot describe any amendments to the application to address their concerns. Tapatio asks that the application be withdrawn or denied.

Tapatio submits that the following issues have been raised and not sufficiently addressed:

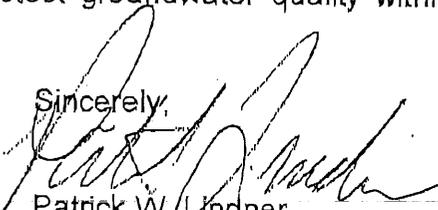
1. Whether the Applicant submitted a sufficiently complete application.
2. Whether the Applicant and the Chief Clerk complied with applicable notice requirements.
3. Whether the proposed facility and the proposed discharge will adversely impact surface water or groundwater, including drinking water and runoff issues.
4. Whether the proposed facility and discharge comply with the siting requirements in 20 TAC §309.12.
5. Whether the proposed facility will have controls and operators to prevent the discharge of improperly treated waste.
6. Whether the Applicant has used reasonable efforts to promote the policy of regionalization of wastewater service.
7. Whether the application should be denied under Texas Water Code Ann. §26.0282 based on need, including the availability of existing and proposed area wide or regional waste collection, treatment, and disposal systems.
8. Whether the proposed facility will produce nuisance odors, including whether an adequate buffer zone is proposed.

TCEQ Chief Clerk
Protest of Lerin Hills STP
October 23, 2006
Page 6 of 7

9. Whether the proposed permit is protective of the health and safety of nearby residents.
10. Whether the proposed permit will protect the use and enjoyment of property by nearby residents.
11. Whether a bond is necessary to ensure the safe operation and possible closure of the facility.
12. The Applicant's lack of experience in the operation of wastewater treatment facilities.
13. The Applicant's inconsistent answers in the application for the discharge permit and the petition to create a district.
14. The lack of the proposed facility operator being an Applicant.
15. The probable amount of wastewater that the Applicant will need to discharge from the facility during the initial five-year term of the permit.
16. Whether the discharge consistent with the proposed permit will cause a violation of the general criteria of the stream standards as set forth in 30 TAC Section 307.4, including but not limited to the aesthetic parameters, nutrients, salinity, and aquatic life uses and dissolved oxygen.

In conclusion, each of the several companies identified in the initial paragraph of this letter is an affected person opposed to the application and requests a contested hearing on the above-referenced application. The petitioner should be required to present evidence at a hearing to demonstrate that the legal requirements have been satisfied. The information provided by the Applicant and the proposed permit is not sufficient to protect groundwater quality within this priority groundwater management area.

Sincerely,



Patrick W. Lindner
For the Firm

TCEQ Chief Clerk
Protest of Lerin Hills STP
October 23, 2006
Page 7 of 7

PWL/re

cc: Richard Kammerman (Via U.S. Mail)
Attorney for Lerin Hills, Ltd.
7200 North Mopac, Ste. 150
Austin, Texas 78731
Jay Parker (Via U.S. Mail)
Michael Shalit (Via U.S. Mail)