James A. Martin
P. O. Box 497
Gordonville, Texas 76245
(972) 824-8912

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 JAN 29 AM 10: 05

CHIEF CLERKS OFFICE

January 27, 2009

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

Re: Farmersville Investors, LP
TCEQ Docket No. 2008-1305-MWD

Dear Ms. Castanuela:

Enclosed for filing are an original and eleven copies of James A. and Shirley Martin's Reply to Response to Hearing Requests filed January 16, 2009 in the above matter.

Sincerely,

James A. Martin

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 JAN 29 AM 10: 05

CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2008-0495-WR

**IN THE MATTER OF
THE APPLICATION OF
FARMERSVILLE INVESTORS, L.P.
FOR PERMIT NO. WQ0014778001**

BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

JAMES A. AND SHIRLEY MARTIN'S REPLY TO RESPONSE TO HEARING REQUESTS

The Chief Clerk of the Texas Commission on Environmental Quality (TCEQ) on December 31, 2008 forwarded copies of Requests for Reconsideration and Requests for Contested Case Hearing to the applicant Farmersville Investors, L.P. (Farmersville), the Executive Director of the TCEQ and the Public Interest Counsel of the TCEQ. Each of these filed a formal written response dated January 16, 2009 to the hearing requests.

James A. and Shirley Martin whose Requests for Reconsideration/Request for Hearing are addressed by those January 16 responses herewith reply to those responses.

On April 4, 2007 the Executive Director of TCEQ issued a Statement of Basis/Technical Summary and Executive Director's Preliminary Decision with description of a draft permit for the facility. On June 14, 2007, TCEQ issued its Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater. At this date, the Executive Director had declared the application to be administratively complete.

The public generally views instructions issued by regulatory agencies as having the same authority as promulgated "rules and regulations" issued by the authority. They are thus viewed as standards the agency applies, reliable for those citizens with business before the agency. Therefore, from the outset we have tried to measure both our response and the application against TCEQ standards as described in its instructions for applicants.

For the reasons set out herein, we conclude that buffer zone requirements have not been met and that public health and safety issues have not been resolved.

TCEQ **Instructions for Completing the Domestic Wastewater Permit Application** (Form TCEQ-10053-Instructions) includes the following definitions (underlining added):

Facility - All contiguous land and fixtures, structures, or appurtenances used for storing, processing, or <u>disposing</u> of waste. (See also the definition relating to sewage sludge. (p. 7 of 65)

Site - The land or water area where any facility or activity is physically located or conducted, <u>including adjacent land used</u> in connection with the facility or activity. (p 10 of 65)

Outfall - The point or location where waterborne waste discharges from a sewer system, treatment facility, or disposal system into or adjacent to water in the state. (p. 9 of 65)

Treatment Facility (facility) - Wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agriculture wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission. (p. 11 of 65)

Wastewater Treatment Plant Unit - Any apparatus necessary for the purpose of providing treatment of wastewater (i.e., . . .overland flow sites, treatment ponds or basins that contain wastewater, etc.) . . . (p. 11 of 65)

1. AFFECTED LANDOWNER INFORMATION

a. The following information is required for the affected landowners list and other interested parties. . . .

1. A; All applicants must submit a map that clearly shows the following:
> the applicant's property boundaries
> the location of the treatment facility within the applicant's property
> . . .

2. For applications discharging treated effluent to waters in the state, in addition to the landowners in item **a** above, the map must clearly show the following:
> the point of discharge
> the highlighted discharge route for one mile downstream from point of discharge . . . (p 19 of 65)

2. BUFFER ZONE MAP

The buffer zone map is used to show how the applicant will comply with the requirements of 30 TAC Section 309.13(e). This part of the regulations pertains to abating and controlling nuisance odor conditions from wastewater treatment plants. . . . (p 20 of 65)

a. The buffer zone map must clearly show the following information: . . .(property boundaries, treatment units and distance to the property boundaries). . .
> the required buffer zone (500 feet for lagoons with zones of anaerobic activity, 150 for all other treatment units)
> If the buffer zone is not owned by the applicant, the map must show the distance in feet the buffer zone extends into all surrounding property (p. 21 of 65)

. . . A draft permit cannot be prepared until the buffer zone requirements are satisfied. Changing the method in which the buffer zone will be satisfied requires a major amendment to a permit. (p 21 of 65)

3. TREATMENT UNITS

a. Provide a detailed description of the treatment process. . . .Provide a detailed description tracing the flow of wastewater through the entire treatment process, starting with the headworks and finishing with the point of discharge. . . . (p23 of 65)

c. Indicate how the buffer zone requirements have been met. For a full explanation of buffer zone requirements please reference Page 22-23 of the instructions. (p. 24 of 65)

d. Attach flow diagrams for the existing facilities and/or each proposed phase of construction. The flow diagram must demonstrate the flow of wastewater through the plant from the headworks to the point of discharge (or disposal site) as well as the sludge processing sequence. . . .(p. 24 of 65)

Arguments

The Outfall and the 150-Foot Buffer Zone

TCEQ instructions clearly include the "outfall" as a unit of the facility. The outfall initially identified was on property not owned by the applicant, with no indication of its route to the outfall. It was to a point where the effluent would be forced to accumulate to a depth of up to 5 or 6 feet before flowing through a conduit under county road 550. Whether those pools are constructed as lagoons or not, those pools would be "facultative and un-aerated" (TCEQ Instructions p 21 of 65) for incubation of parasites and with resultant foul odors Yet at June 14, the TCEQ had prepared a Draft Permit without addressing this issue.

In its **Decision of the Executive Director** dated July 1, 2008, Response 3 states "The original map in the application did show that the proposed discharge point was on Mr. Martin's property. However, the Applicant has changed the proposed discharge point. The discharge point is now proposed to be 50 feet down stream from the original proposal. This point is not on Mr. Martin's property . . ." But 50 feet down stream in the county road right-of-way is still less than 150 feet from Martins' property. (The response makes no mention of efforts to obtain approval from the U.S. Army COE or from Collin County although TCEQ instructions require approval from the owner of the newly incorporated property. (TCEQ Instructions page 17 of 65)). The January 16, 2009 **Executive Director's Response to Hearing Requests** includes a diagram showing a relocated outfall..

The applicant addresses the 150 foot buffer zone by concluding that the outfall is not part of the disposal function of the facility notwithstanding the definitions provided by TCEQ

and quoted above. The "plant" includes all functions from the "headworks to the point of discharge." The applicant apparently concedes that it is required to comply with a buffer zone requirement but reaches the inane conclusion that that zone is measured from an enclosed concrete collection point, not from the point where odors originate where it proposes to discharge sewage effluent at the rate of a swimming pool full per hour and is exposed to the atmosphere..

(The Applicant adds in a footnote "It should be noted that the Martins' concerns related to possible violations of the Proposed Permit (i.e., the catastrophic release of sewerage) are not proper when analyzing whether a person may be "affected by the proposed activity. . . " That comment in the response of the Applicant is apparently intended to address the concern expressed by Mr. James Costabell. See Comment 16 of the Executive Director's Response to Public Comment.)

TCEQ addresses the 150 foot buffer zone by stating, "The facility, however, must meet the 150-foot buffer zone requirement. In its application, Farmersville indicated that the facility will meet the 150 foot buffer zone requirement by ownership of the area according to the requirements of 30 TAC Section 309 (c)." That position is inconsistent with TCEQ instructions to applicants (pages 22 and 24 of 65) quoted above, "A draft permit cannot be prepared until the buffer zone requirements are satisfied."

The 150-foot buffer zone encompasses all property within 150 feet from the "outfall." The Draft Permit must be withdrawn until such time as the buffer zone requirements are satisfied and in compliance with TCEQ requirements..

The 500-Foot Buffer Zone

Apparently, both the applicant and TCEQ assume that effluent pools will not exist within 500 feet of any property owner because no effluent lagoons are included in the proposal. As shown on the 7.5 minute U.S.G.S. Topographical Map included with the application, the elevation of Elm Creek falls from 500 feet above MSL to 490-feet in about one mile, 5000-feet or so. That is slightly over 2 inches in 100 feet. This explains the huge mud flat downstream from the Applicant's outfall. There is little practical question that pools of sewage effluent will be persistently and perpetually present. That logical conclusion can only be refuted with physical inspection and a survey of the area to locate any pooling..

The scope of the required 500-foot buffer zone is not known. A survey is required to resolve that buffer zone requirement.

Health and Safety of the Water Supply and of the Public

Apparently both TCEQ and the Applicant are satisfied that no danger exists to human health or aquatic organisms from exposure to or contact with or ingestion of the treated sewage effluent, relying on Texas Surface Water Quality Standards for safeguarding water

supply, protecting health and aquatic organisms. In addressing the concern about elevated levels of estrogens in aquatic organisms (fish), the TCEQ response is "Currently, there are no federal or state criteria for emerging pollutants such as estrogens and pharmaceuticals."

That same response might have been given before approval of thalidomide as a pharmaceutical for treatment of morning sickness in pregnant mothers or before approval of DDT as a pesticide or before the use of asbestos as an insulating material in schools, offices, factories and homes. Yet had the mere possibility of new-borns without arms or legs or skulls and other devastating natal malformations, in the case of the first, or a massive and widespread die-off of birds and wildlife and the consequent effect on the ecology for people, or the cacogenic dangers of respiration of free asbestos fibers on the population been broached and addressed, the immeasurable and catastrophic harm to individuals might have been at least thwarted if not avoided. The time to address the potential effects of emerging pollutants is before their spread is eminent and before the spread is condoned even out of complacency or ignorance. "We were warned but we didn't know for sure." will be little comfort to a grieving parent.

Fish will be harvested for human consumption from the Elm Creek arm of Lake Lavon where 560 acre feet per year of sewage effluent will concentrate. It is the abnormally high levels of estrogens in fish and other aquatic organisms that evidence the problem.

As pointed out in our letter of July 11, 2007 the Lakeland Park camping and water recreation area and the Pebble Beach Swimming Area are 1.5 to 2 miles from the proposed discharge. Children may not intentionally drink that water; they will be swimming in it. Try to imagine a child taking a mouth full of water while swimming and spurting it out. Probably not a danger in his or her pool at home maintained by the pool man but a danger to those families who have an outing to Lake Lavon.. Further, certainly TCEQ is aware that studies have shown that while some harmful pollutants are 99% controlled, the remaining bacterial population, including some pollutants not effectively controlled, grows as the sewage effluent travels from the point of measurement.

The silence in the responses is somewhat akin to "These are chances we are willing for you folks in that area to take; sacrifices we are willing for you to make and necessary for our plan for urbanization of this rural area."

We ask that TCEQ obtain or require assurance that no long term health effects exist as to any concern voiced before proceeding with the permitting of the facility.

Conclusion

The spirit of Texas regulation and the thrust of its policy decisions are aimed at protection of its people. It should be noted that TCEQ issued its first draft proposing approval of the permit even with the route of effluent discharge across another owner's private property then across the Lake Lavon flowage easement to a stream bed someplace on the other owner's property then to the Applicant's outfall. We are uncertain at this point whether

this is the second or third try. However, the fact that the application was submitted and accepted and acted upon with the knowledge that the proposal incorporated land not owned or controlled indicates a cavalier indifference to TCEQ instructions and the permitting process. Clearly, the facts at the proposed site were dashed aside. Either that or perhaps the process was initiated without any knowledge indicating a serious lack of elementary data and disregard of the possible detrimental effects on affected citizens. Either way it does appear to cast a shadow of illegitimacy on this particular application process.

We ask that TCEQ withdraw the Draft Permit and require that any further consideration require a renewed application following the instructions TCEQ has issued, fully addressing the prerequisites to proposed permitting.

Further we ask that any further public hearings or proceedings concerning the matter be held in Collin County, Texas near the proposed site and near the Applicant and three of the four requestors.

Respectfully,

James A. Martin
~~P. O.~~ Box 497
Gordonville, TX 76245

Shirley J. Martin

CERTIFICATE OF SERVICE

I hereby certify that on January 27th, 2009 the original and ~~seven~~ ELEVEN true and correct copies of this document were posted via U.S. Mail to the Chief Clerk of the TCEQ and that a copy was posted for delivery by U.S. Mail to all persons listed on the attached mailing list.

James A. Martin

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 JAN 29 AM 10: 05
CHIEF CLERKS OFFICE

MAILING LIST
FARMERSVILLE INVESTORS, LP
TCEQ DOCKET NO. 2008-1305-MWD
PERMIT NO. WQ0014778001

For the Applicant:
Leon J. Backes
Farmersville Investors, LLP
5400 LBJ Fwy, Ste 975
Dallas, TX 75240-1062

Steve Barry, PE
Jones & Carter, Inc.
8701 New Trails Dr., Ste 200
The Woodlands, TX 77381-4241

Phill Haag, Attorney
Scott Rhodes
Winstead PC
401 Congress Ave., Ste 2100
Austin, TX 78701-3798

For the Executive Director:
Kathy Humphreys, Acting Senior Attorney
Texas Commission on Environmental Qualiity
Environmental Law Division, MC-173
P. O. Box 13087
Austin, TX 78711-3087

Mary Ann Airey, Technical Staff
Texas Commission on Environmental Qualiity
Water Quality Division, MC-148
P. O. Box 13087
Austin, TX 78711-3087

For Public Interest Counsel:
Mr. Blas J. Coy, Jr.,, Attorney
Texas Commission on Environmental Qualiity
Public Interest Counsel, MC-103
P. O. Box 13087
Austin, TX 78711-3087

For Office of Public Assistance
Ms. Bridget Bohac, Director
Texas Commission on Environmental Qualiity
Office of Public Assistance
P. O. Box 13087
Austin, TX 78711-3087

For Alternative Dispute Resolution
Mr. Kyle Lucas
Texas Commission on Environmental Qualiity
Alternative Dispute Resolution, MC-1222
P. O. Box 13087
Austin, TX 78711-3087

For the Chief Clerk:
Ms. LaDonna Castanuela
Texas Commission on Environmental Qualiity
Office of Chief Clerkn, MC-105
P. O. Box 13087
Austin, TX 78711-3087

Public Officials - Requesters
The Honorable Jodie Laubenberg
Texas House of Representatives
P. O. Box 2910
Austin, TX 78768-2910

Joe Jaynes
County Commissioner Collin County
210 S. McDonald St., Ste 626
McKinney, TX 75069-7602

Martin C. Rochelle, Attorney
Lloyd Gosselink Blevins Rochelle
& Townsend PC
816 Congress Ave., Ste 1900
Austin, TX 78701-2442

Wilda Faye Vandervelde
3897 C.R. 1014
Farmersville, TX 75442-6616