



April 13, 2009

Ms. LaDonna Castanuella  
Office of the Chief Clerk, MC 105  
ATTN: Agenda Docket Clerk  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, TX 78711-3087

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 APR 13 PM 4:32  
CHIEF CLERKS OFFICE

RE: Docket No 2008-1936-MWD  
Forestar USA Real Estate Group

Via Facsimile, Original and copies to follow by U. S. Mail

Dear Ms. Castanuela:

Please enter this response of the Applicant on the above referenced Docket item. A number of comments and a large amount of anecdotal information were submitted to the Commission in a request for a contested hearing dated August 22, 2008, by the Save Our Springs Alliance, a local special interest struggle group previously in bankruptcy as a result of damages awarded by the courts to defendants in one or more frivolous lawsuits it has filed against property owners in the local area. The Applicant wishes to respond to each comment in the referenced August 22 document.

Comment 1. The proposed wastewater treatment plant and area drip fields are approximately nine miles from the Edwards Aquifer Recharge Zone as measured in a straight line, and there are approximately eighteen miles between the proposed wastewater treatment plant site and drip fields and the Edwards Aquifer Recharge Zone as measured along the Onion Creek channel. Per 30 TAC 222 (Chapter 222 – Subsurface Area Drip Dispersal Systems), a minimum one hundred foot horizontal buffer is required between a subsurface drip dispersal system and any surface waters of the state. The boundary of the proposed drip fields are designed with a three hundred foot buffer from Onion Creek for added safety to waters of the state. Chapter 222 – Subsurface Area Drip Dispersal Systems requires drip dispersal systems to be designed and operated in a manner such that groundwater quality shall not be polluted. In their Comment 1, SOS has attempted to create a scientific connection by alleging a certainty where none exists with statements that are presented as factual but which are

anecdotal and may or may not be true and correct even if the alleged connection is accepted. Further, SOS has not demonstrated nor even alleged that TCEQ rules that do and will govern this plant and its operation are inadequate to protect waters of the state in regulating this activity.

It is worth entering a side bar comment on the many similar protests and claims of SOS, in general. The statements made by SOS in Comment 1 of their letter of August 22, are well known and are largely those same allegations SOS has submitted in its routine protest of nearly every similar application in southwestern Travis County and Hays County for nearly two decades. The credibility of these claims has eroded with each protest they have made that in turn has been shown to be unfounded and in fact to be untrue.

In its history, as in this case before the TCEQ, SOS stated that constructing Motorola would destroy the water quality of the Edwards Aquifer. They claimed Barton Creek Mall, next to Barton Creek would surely pollute and in fact destroy Barton Springs by itself. SOS said the science was clear and there was absolutely no doubt about their claims in those cases. SOS said the same about several Lantana area apartment projects, about Barton Creek Country Club, about the Terrace Office Complex on Barton Creek at Antioch Cave, and they also said that the same unavoidable destruction would occur if the Lady Bird Johnson Wildflower Center, a nationally-recognized model of environmental sensitivity, were built on the recharge zone. All of these were built and in much closer proximity to Barton Creek and its recharge zone and features than the project of this applicant, with several in the recharge zone or in the lower Barton Creek watershed itself. Within the last year or so, SOS has also publicly claimed that Barton Springs is nearly pristine and must be even further protected, and yet still similarly threatened by every new development making the same untrue claims they have made for more than a decade. They continue to oppose other applications and projects citing the same certainty of pollution of the Edwards Aquifer and Barton Springs as they have done, above and in TCEQ files and through frivolous lawsuits in the courts. None of those statements have been shown to be accurate or true by the simple passage of time. The allegations of SOS in Comment 1, once again, are unsupported by fact. Statements made by SOS in their referenced letter are made as if they are fact, when, in truth, in every case they may or may not be able to be demonstrated or proven to be accurate or substantiated, scientifically.

Comment 2. The Fellers have stated that a portion of their property will be leased by the applicant for long term use as the subsurface drip disposal irrigation site for this plant. SOS has provided no reason to disbelieve the statements of the Fellers or those of the Applicant and their intent in this matter in the Application. TCEQ will of course

require an acceptable, executed, long term lease to be submitted and approved before a permit will be issued. This is an administrative and procedural matter as in other permits where final legal documents have been required of the applicant before issuance of a permit. Such matters are well within the purview of the TCEQ to continue to manage. However, further information from the applicants and the Fellers was available and was provided to TCEQ staff. The lease has been negotiated and is presently awaiting closing and signature by the Applicant. The initial term of the lease is thirty years, with two ten-year extensions planned for in the document and further extensions are allowed. The letter of intent that was referenced by SOS stated that no binding lease had been entered into at that time, not that a lease would not be entered into as SOS goes on to infer. The statement by SOS is false or inaccurate. The issue of 20 LUE's related to future homes in proximity to the plant has no bearing on this application. The purpose of a wastewater treatment plant and TCEQ's requirement that plants be built with extra capacity is precisely to provide for wastewater service to existing and future homes in its service area. TCEQ and local authorities have strict requirements for installation of wastewater infrastructure which will have to be adhered to by developers now and in the future and TCEQ has determined those requirements are adequate to protect groundwater in the Edwards Aquifer Recharge Zone. Finally, while SOS objects to "continued use of the [drip] property" by the owner, the entire Fellers property is presently a cattle ranch and hay-growing operation and use for cattle grazing and hay production will likely continue on portions of the Fellers ranch. In fact, it is beneficial to the treatment and disposal system for crops or vegetation grown on TLAP sites to be harvested and doing so is of genuine benefit.

The issues raised by SOS in Comment 2 are well within the procedural purview of TCEQ to manage and are and have been in the past found to be insufficient to require a contested public hearing.

Comment 3. The proposed drip disposal fields are largely located on mildly sloped areas of existing, well established and well vegetated grasslands that were physically field-inspected by environmental enforcement personnel from TCEQ. These existing native and crop grass areas will be planted with bermuda grass and over-seeded with winter grass as a cool season crop, or with other crop grasses acceptable to TCEQ, to maximize water use and uptake from the soil. Chapter 222 – Subsurface Area Drip Dispersal Systems prohibits surfacing or ponding of effluent and the requirements of the TCEQ in that regard are well proven to be adequate to eliminate concern over the unfounded claims in Comment 3, nor has SOS claimed or demonstrated that the TCEQ requirements are inadequate in this or in any other instance. The likelihood of highly treated and fully disinfected effluent disposed of underground in this manner reaching the creek is negligible or non-existent. Comment 3 is anecdotal and the issues raised by SOS in

Comment 3 are readily within the purview of TCEQ to manage, and are and have been in the past found to be insufficient to require a contested public hearing.

The claim by SOS referring to steep slopes and canyons in proximity to this disposal site are not reflected in the site topography as observed by TCEQ field inspection personnel. If their statement is generic and applies to Onion Creek watershed topography in general such a generic statement has no bearing on the specifics of this application. Their purpose in making such an easily disproven and false claim about this particular site is unknown.

Comment 4. Chapter 222 – Subsurface Area Drip Dispersal Systems requires drip area dispersal systems to be specifically designed to achieve a uniform application of effluent throughout the dispersal zones. Chapter 222 – Subsurface Area Drip Dispersal Systems requires drip lines to follow the contour of the site and not exceed 1% lateral slope. Chapter 222 – Subsurface Area Drip Dispersal Systems allows an underground application rate of 0.1 gallons (one tenth of one gallon – the equivalent of a typical canned drink) per square foot per day for drip fields in this geographic area. The statements by SOS in Comment 4 are inconsistent with the regulatory requirements levied on the applicant and the design criteria of the TCEQ, and are anecdotal at best and unrelated to this application. Nowhere does SOS provide any information which demonstrates that the uptake of one tenth of one gallon per square foot per day of irrigation water is unattainable in even the most adverse conditions, and yet that is the TCEQ criteria upon which the maximum dosage rate was set by the state. Comment 4 is anecdotal and the issues raised by SOS in Comment 4 have been found in the past to be insufficient to require a contested public hearing.

Comment 5. Chapter 222 – Subsurface Area Drip Dispersal Systems prohibits seepage of effluent from the drip field into groundwater, and requires drip dispersal systems to be designed and operated in a manner such that groundwater quality shall not be polluted. SOS once again makes anecdotal statements in Comment 5 and provides no claim nor any demonstration that Chapter 222 is inadequate to protect waters of the state. TCEQ staff has said it knows of no instance that any claim in Comment 5 is connected to a properly operated TLAP system in the Onion Creek Watershed. And of course, their claims are unrelated to any system that has not been built. Comment 5 is factually and scientifically unrelated to this application.

Comment 6. SOS states a complaint about a matter that is procedural in nature, not substantive. SOS is invited to examine application documents it has not heretofore examined to obtain a better understanding of the TCEQ regulations and rules and this project. Comment 6 states a shortcoming on the part of SOS, not that of TCEQ or the

Applicant and such shortcomings have not been found in the past to be sufficient to require a contested public hearing

Comment 7. Chapter 222 – Subsurface Area Drip Dispersal Systems requires the applicant to provide temporary storage that equals at least three days of the design flow of the facility. Anecdotal information or claims of inadequacy of TCEQ approved requirements and procedures provided by SOS in Comment 7 do not demonstrate that the requirements of TCEQ and Chapter 222 are inadequate, nor do they supply specific information to support their claim.

Comment 8. SOS has erred once again in the details of this permit and has revealed a lack of knowledge regarding both TCEQ rules and this project. The proposed permit does not include surface irrigation fields, it includes subsurface drip disposal fields. Chapter 222 – Subsurface Area Drip Dispersal Systems does not mandate restricted access to subsurface drip disposal fields during application. This comment displays a lack of knowledge of Chapter 222 by SOS, and, had it merit, is still a complaint about a procedural matter, not a substantive complaint. Again, SOS is invited to read the TCEQ rules. Comment 8 reveals another shortcoming of SOS, not that of TCEQ or the Applicant, and should not be sufficient to require a contested public hearing

Comment 9. Chapter 222 – Subsurface Area Drip Dispersal Systems prohibits conditions at a treatment facility or at subsurface drip dispersal zones that contributes to odor. Additionally, Chapter 222 prohibits passage of effluent from the drip field soil profile into groundwater, and requires drip dispersal systems to be designed and operated in a manner such that groundwater quality shall not be polluted. We note the concern of the SOS regarding these matters, however, we find again that SOS has provided no demonstration that these concerns are well founded here or elsewhere they have made the same claims, or that TCEQ regulations are inadequate in this instance. The mere statement of concern on their part is meaningless when they have not provided any substantiation to their claim with regard to this Docket item. In fact the concern by SOS about many issues is well known and noted, including in highly publicized recent lawsuits, but nonetheless those concerns have not been shown to be connected to this application.

TCEQ rules and criteria for drip area dispersal systems are in place to ensure that the system is designed and operated in a manner that insures no effluent leaves the drip fields. Once again, SOS has provided no demonstration that these concerns are well founded or even remotely likely to occur simply due to a concern on their part.

Comment 10. In general, SOS has not demonstrated that this proposed facility and the development to be served thereby will generate pollution that is likely to reach ground or surface waters of the state in amounts that will equal or exceed the limitations inherent in TCEQ and local regulations. SOS has not demonstrated that the rules and requirements of the TCEQ, and especially Chapter 222, are not adequate to prevent pollution of the kind they claim in their comments. SOS has not remotely demonstrated imminent effects or injuries that claimed to threaten their members and that are in any way associated with this permit review process.

SOS has long been a vocal supporter of exclusively large lot development requiring septic tank underground disposal of fundamentally untreated, undisinfected household wastes directly into the subsurface geology – this handling of untreated sewage, they state, is far superior to any central sewer systems which collect and convey all untreated wastes to a TCEQ-regulated plant for treatment and disposal. And yet, SOS opposes the subsurface disposal of effluent that is highly treated and disinfected, which is cleaner in many respects than much ground water and certainly cleaner in nearly all respects than a surface creek like Onion Creek flowing through largely unregulated ranching and agricultural area, or through those developments and communities built in past years without any substantial water quality regulations.

We also note that this plant surpasses the operating criteria of the nearby Dripping Springs Wastewater Plant, also a sub-surface drip disposal plant, which SOS initially opposed but which plant SOS later agreed was adequate for its similar location and use. Opposing the present application in the face of that earlier plant approval further casts questions on the public health or environmental purpose of any opposition by SOS to this proposed plant.

Yours truly,

A handwritten signature in black ink, appearing to read "Brian C. Rider". The signature is fluid and cursive, with a large initial "B" and "R".

Brian C. Rider,  
Senior Real Estate Counsel

ATCH: Hard Copies mailed or to follow to attached Mailing List.

**MAILING LIST**  
**FORESTAR USA REAL ESTATE GROUP, INC.**  
**DOCKET NO. 2008-1936-MWD; PERMIT NO: WQ0014824001**

FOR THE APPLICANT:

Barrett Allison, PE  
Environmental & Planning Assoc.  
7200 Twilight Mesa Dr.  
Austin, Texas 78737-3525  
Tel: (512) 394-9710  
Fax: (512) 394-1537

Gilbert P. Gregory  
Bury & Partners-Public Works Inc.  
3000 S. 31<sup>st</sup> St. Ste. 308  
Temple, Texas 76502-1652  
Tel: (254) 742-2110  
Fax: (254) 742-2120

Wayne E. McDonald  
Forestar Real Estate Group Inc  
1300 S. Mopac Expy  
Austin, Texas 78746  
Tel: (713) 267-2731  
Fax: (713) 267-2794

FOR THE EXECUTIVE DIRECTOR:

Christiaan Siano, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512) 239-0606

David Uba Akoma, Technical Staff  
Texas Commission on Environmental Quality  
Water Quality Division, MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-1444  
Fax: (512) 239-4430

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-163  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE  
RESOLUTION:

Mr. Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4010  
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

REQUESTER:

Andrew Hawkins  
Save Our Springs Alliance  
P.O. Box 684881  
Austin, Texas 78768-4881