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August 17, 2009

VIA HAND-DELIVERY

La Donna Castañuela
Office of the Chief Clerk - MC 105
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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CHIEF CLERKS OFFICE

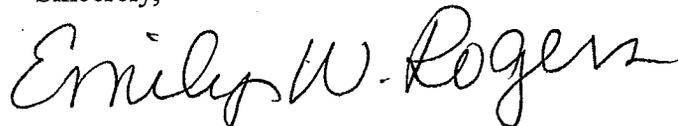
Re: TCEQ Docket No. 2009-0913-MWD; *City of Patton Village's Application for a New TPDES No. WQ0014926001*

Dear Ms. Castañuela:

Enclosed for filing is an original and eight copies of the City of Patton Village's Response to Hearing Requests in connection with the above-referenced matter. Please file the original and 7 copies, and file stamp the extra copy and return it to me via our runner

Should you have questions or need to reach me, please call (512) 472-8021.

Sincerely,



Emily W. Rogers

EWR/dfb
Enclosures

cc: Mailing List

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for
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TPDES Permit No. WQ0014926001

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Gloria Giarrusso
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Kingwood, TX 77339-5505

Gino & Tamara Garza
2403 Little Cedar Drive
Kingwood, TX 77339-5505

Robert Gill
PO Box 1438
New Caney, TX 77357-1438

Interested Parties:

Richard Stubblefield
21997 Hardwood Trail
New Caney, TX 77357-4762

TCEQ DOCKET NO. 2009-0913-MWD

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IN THE MATTER OF THE
CITY OF PATTON
VILLAGE'S APPLICATION
FOR A NEW TPDES
NO. WQ0014926001

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§
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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY
CHIEF CLERKS OFFICE

**THE CITY OF PATTON VILLAGE'S
RESPONSE TO HEARING REQUESTS**

TO THE HONORABLE COMMISSIONERS OF THE TCEQ:

The City of Patton Village ("City") files this, its Response to Hearing Requests by Adriana Casenave, Gino and Tamara Garza, and Gloria Giarrusso, and the comments submitted by Robert Gill and Richard and Mary Stubblefield, pursuant to 30 Texas Administrative Code ("TAC") § 55.209(d). All of the requests should be denied because they do not meet the requirements of 30 TAC § 55.201 and the requestors have not demonstrated that they are affected persons with personal justiciable interests affected in a way that is different from the general public.

A. Background

The City filed its current application on September 15, 2008 to obtain a permit for its proposed wastewater treatment plant. However, its efforts to construct and install centralized sewer began in 1999 when the City applied for grant funding from the Office of Rural Community Affairs ("ORCA"). As part of that process, the City initially signed up 300 customers, but since that time, the City has nearly 1,000 people signed up to receive the sewer service. With centralized sewer service, the City will be able to provide sanitary sewer service to those with failing septic systems, and to new customers who would otherwise be required to install the expensive aerobic-type septic systems.

The TCEQ should find that the persons who have requested a contested case hearing have not raised any *disputed* issue of fact and that they are not affected by the proposed discharge so that the City may move forward with its plans to install a centralized sanitary sewer system and to take people off of septic systems in the area.

B. The requests to not meet the requirements of 30 TAC § 55.201.

Section 55.201 of the TCEQ rules outlines the requirements under which a person may request a contested hearing. These rules require that hearing requests be filed within 30 days after the Chief Clerk mails notice of the Executive Director's ("ED") decision and response to comments ("RTC"). The hearing request must provide contact information, identify the person's personal judiciable interest that may be adversely affected by the application, the requestor's location and distance relative to the facility, a request for a contested case hearing, and a list of all relevant and material disputed issues of fact that are the basis for the hearing request. Only a person with a personal judiciable interest that may be adversely affected by the proposed facility is entitled to a hearing request. TEX. WATER CODE ANN. §§ 5.115 and 5.556(c). And, TCEQ may not refer an issue to the State Office of Administrative Hearings unless the issue involves a disputed issue of fact that is relevant and material to the decision on the application that was raised during the comment period. TEX. WATER CODE ANN. § 5.556(d). None of the requests or comments submitted to the TCEQ regarding the City's wastewater discharge permit application meet these requirements and therefore should be denied.

1. Adriana Casenave, Gino and Tamara Garza, and Gloria Giarrusso

Adriana Casenave, Gino and Tamara Garza, and Gloria Giarrusso together submitted a request for a contested case hearing. Their request fails to meet the requirements of 30 TAC § 55.201 and should be denied. The request fails to state how the requestors will be adversely

affected by the application and fail to provide a list of relevant and material disputed issues of fact. The request merely asks for information about whether the discharge will affect the requestors, their properties, and the water quality. The ED addressed these issues in his response to comments. After the RTC was sent, the requestors did not provide additional concerns about how they would be adversely affected by the application or dispute any of the ED's responses. Because the requestors have not listed any *disputed* issues of fact, there is nothing to be addressed in a contested case hearing. Thus, the hearing requests should be denied.

Moreover, the requestors state that they own properties that "end at Peach Creek." Section 55.201(d) requires the requestors to explain the "requestor's location and distance relative to the proposed facility." The description of the location of the properties is insufficient.

2. Robert Gill

Robert Gill, on April 15, 2009, submitted what appears to be a request for reconsideration of the ED's decision. The request fails to meet the requirements of 30 TAC § 55.201(a) or (d). The comment/request was submitted after the close of the comment period and is therefore untimely. Additionally, the comment/request contains no indication as to where Mr. Gill's property is located or how far the property is from the City's proposed facility. Mr. Gill's request/comment should be denied.

3. Richard and Mary Stubblefield

Richard and Mary Stubblefield state that they "contest" the permit. However, as required by § 55.201(d), they provide none of the information required, including where their property is located relative to the City's proposed facility, how they are adversely affected by the proposed permit in a manner not common to the general public, and what relevant and material disputed

issues of fact that are the basis for their request. Because the Stubblefield's request fails to meet the requirements for a hearing request, their request should be denied.

B. The Protestants are not affected persons.

In determining whether a person is an affected person, TCEQ evaluates whether the requestor is a person with a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. In making that evaluation, TCEQ must consider, among others, whether a reasonable relationship exists between the interest claimed and the activity regulated, the likely impact of the regulated activity on the health and safety of the person and on the use of the person's property, and the likely impact of the activity on the use of the impacted natural resources. 30 TAC § 55.203(c). Under these criteria, none of the requestors are affected persons.

1. Adriana Casenave, Gino and Tamara Garza, and Gloria Giarrusso

Adriana Casenave, Gino and Tamara Garza, and Gloria Giarrusso appear to have property along Peach Creek on White Oak Drive. Their properties are located more than one mile from the proposed treatment plant and about one mile downstream of the discharge point into Peach Creek. The proposed maximum discharge of 350,000 gallon of per day (or 0.541 cfs) is relatively small compared to the flow in Peach Creek.¹ Because of the distance their properties are from the wastewater discharge point and the relatively small amount of discharge compared to the flow in Peach Creek, it is unlikely the requestors, or any activities of the requestors, will be impacted by the wastewater discharge.

¹ The TCEQ assigned a headwater flow of 10.36 cfs to Peach Creek for modeling purposes. See Response to Comment No. 3, pg. 5 of the Executive Director's Response to Comments. The monthly mean discharges at the USGS Gage 08071000 on Peach Creek at Splendora, Texas, which is located upstream of the discharge point, ranged from 524 cfs to 12 cfs during the period from January 2000 to December 2007.

Moreover, currently there are three wastewater treatment plants whose effluent ultimately goes to Peach Creek upstream within three miles of the requestors' properties (Flying J Inc. – TPDES Permit No. 14536-001; East Montgomery County MUD #4 – TPDES Permit No. 14311-001, and Montgomery County MUD #16 – TPDES Permit No. 11386-001), and there are another three located further north on tributaries of Peach Creek (City of Splendora – TPDES Permit No. 13389-001; Splendora ISD Elementary School – TPDES Permit No. 11143-001; and Splendora ISD High School – TPDES Permit No. 11143-002). With the exception of the City of Splendora,² all of these facilities are permitted to discharge wastewater of a quality that is the same as the City's proposed facility: 10 mg/l Carbonaceous Biochemical Oxygen Demand, 15 mg/l Total Suspended Solids, 3 mg/l Ammonia Nitrogen. If there was going to be any adverse affect on the use of requestors' properties because of the discharge of treated wastewater into Peach Creek, the requestors would have already seen such affects. No issues were raised by the requestors that state they are currently unable to use Peach Creek because of the on-going discharges from these existing facilities, whose discharges, in terms of quality, are identical to that which is proposed by the City. These hearing requests should be denied because they are not affected persons.

2. Robert Gill

Robert Gill does not provide any information identifying the location of his property as it relates to the proposed facility. Moreover, this complaint relates to the potential for contamination of his well water. Yet, there is no information from Mr. Gill about his well, its depth, or how wastewater discharged into Peach Creek would reach the groundwater. Additionally, Mr. Gill failed to file his request within the 30 day time period. For these reasons,

² The City of Splendora's Ammonia Nitrogen limit is 2.0 mg/l.

Mr. Gill's request should be denied because he has not demonstrated that he is an affected person.

3. Richard and Mary Stubblefield

Richard and Mary Stubblefield's property, 21997 Hardwood Trail, is not located on Peach Creek. Moreover, they have failed to provide any information about how they would be affected by the application in a manner that is not common to the general public. Therefore, their request should be denied because they have not demonstrated that they are affected persons.

C. List of Relevant Issues and Length of Hearing

While the City does not believe any disputed issues of fact have been raised in any of the requests/comments submitted regarding this application, if there is to be a contested case hearing, the hearing should be limited to the following issue:

Whether the proposed discharge will impact water quality and impair recreational uses.

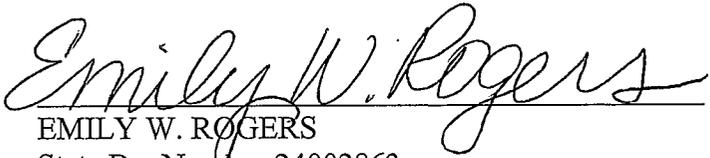
Because the issues are fairly narrow in this case, the City proposes that the timeframe for the hearing be limited to six months.

D. Conclusion

The requests and comments submitted with respect to this application should be denied. None of the persons commenting on the application submitted a list of disputed issues of fact and thus, there is no reason to have a contested case hearing. Furthermore, none of the requestors are affected persons as they have not demonstrated that they are affected by the application in a manner not common to the general public.

Respectfully submitted,

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BY: 
EMILY W. ROGERS
State Bar Number 24002863

ATTORNEYS FOR CITY OF PATTON VILLAGE

CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that a true and correct copy of the above and foregoing was forwarded via First Class Mail, hand delivery or facsimile on August 17, 2009, to all parties on the attached Mailing List.


Emily Rogers

TEXAS
COMMISSION
ON ENVIRONMENTAL
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