

December 30, 2009

PATRICK J. LARKIN  
214.651.2132  
Direct Fax: 214.659.4075  
patrick.larkin@strasburger.com

**Via Email and U.S. Mail**

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

MWD  
62481

H OPA  
RFR JAN 04 2010  
BY EB

RE: In Re: TPDES Permit No. WQ0013847001

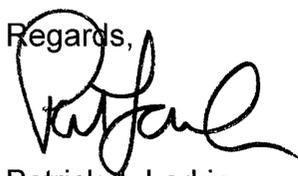
Dear Ms. Castañuela:

Please find enclosed the following documents:

1. Request for Contested Case Hearing of Dr. Fredrick H. Sklar, M.D.; and
2. Request for Reconsideration.

Please contact the undersigned with any questions.

Regards,



Patrick J. Larkin

Enclosure

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 JAN -4 AM 10:04  
CHIEF CLERKS OFFICE

MWD

MWD  
6848.

H

OPA

JAN 04 2010

IN RE: TPDES PERMIT NO. WQ0013847001

BY EB

APPLICATION BY NORTH TEXAS §  
DISTRICT COUNCIL ASSEMBLIES OF §  
GOD FOR A MAJOR AMENDMENT TO §  
TPDES PERMIT NO. WQ0013847001 §

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

REQUEST FOR CONTESTED CASE HEARING OF DR. FREDRICK H. SKLAR, M.D.

In support of this Request for Contested Case Hearing, the Requester states as follows:

- (a) Requester Name: Dr. Frederick H. Sklar
- (b) Address: P.O. Box 2897, Waxahachie, TX 75168-8897
- (c) Phone: 214-532-1638
- (d) Fax: 214-651-4075

(e) Request and basis for grant of a Contested Case Hearing:

A Contested Case Hearing to address the decision of the Executive Director in the above-referenced matter should be granted because (a) the permit application and the Executive Director's Decision ("EDD") to grant the permit modification do not meet the requirements of applicable law; (b) because there are contested questions of fact that are relevant and material to the adequacy of the permit; and (c) the EDD and Response to Comments contain misstatements of facts and law that undermine the legal sufficiency of the EDD and that should be addressed in a Contested Case Hearing.

The Request for Contested Hearing of Dr. Fredrick H. Sklar, M.D., should be granted for the following reasons:

(1) Dr. Sklar is an Affected Person. Dr. Sklar's residence is located immediately adjacent to the property where the Permittee operates wastewater collection systems and the proposed treatment facility. A surface water body is located adjacent to the Sklar residence and would be adversely affected by releases from the wastewater collection and transport systems. Dr. Sklar's family relies on a water supply well located at the Sklar property for all potable water uses at their residence. Additional water supply wells exist at the Sklar property which are used for agricultural purposes, including irrigation of vegetable crops and water supply for domestic animals and livestock. The likely impact of the expansion of the permitted

2010 JAN - 4 AM 10: 04  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

facility, including expansion of wastewater collection and transport systems, is to degrade the quality of the water supply wells and surface waters at the Sklar property. Expansion of the permitted facility, including expansion of wastewater collection and transport systems, is likely to adversely impact eco-receptors in the vicinity of the wastewater collection and transport systems as well as downstream from the effluent discharge authorized under the proposed permit modification.

(2) Disputed issues of fact which require a Contested Case Hearing include, but are not limited to the following:

(a) The Permittee has inadequately and inaccurately represented the integrity of the wastewater collection and transport systems and the increased potential for releases from these systems and their potential to impact surface water, ground water relied upon by Dr. Sklar and eco-receptors affected by runoff from these facilities. The EDD and the Response to Comments ("RTC") are accordingly not adequately supported as a matter of law.

(b) The Permittee has inadequately and inaccurately represented the potential for releases from the wastewater collection, transport and treatment facilities to migrate to and adversely impact the water supply wells located at the Sklar property. The permit application, the EDD and the RTC factually mischaracterize the direction of flow of ground water at and from the permitted facility, including wastewater collection systems.

(c) The Permittee has inadequately and inaccurately represented the nature of the wastewaters which are and will be generated by the permittee's operations. The permit application, the EDD and the RTC factually mischaracterize the wastewater being treated at the facility as domestic wastewater. The Requester's understanding is that the applicant's operations include commercial, medical and drug treatment services that will generate wastewater that does not retain the characteristics of domestic wastewater.

(d) The Permittee has inadequately and inaccurately represented the ability of the proposed treatment systems to adequately treat the wastewaters which are and will be generated by the

permittee's operations. The treatment technology proposed in the permit application, and approved in the EDD and the RTC, are based upon factually inadequate or inaccurate characterization of the wastewater being treated at the facility. The applicant's operations are believed to include commercial, medical and drug treatment services that will generate wastewater that does not retain the characteristics of domestic wastewater and for which different or additional treatment technology will be necessary to meet applicable legal standards.

(3) Disputed Responses to Comments which require a Contested Case Hearing include, but are not limited to the following:

(a) RTC No. 1 only addresses the adequacy of proposed permit criteria with respect to effluent discharges. Applicable legal standards require that permit requirements governing all aspects of system design, operation and maintenance (including collection and transportation systems) must be adequate to address risks to human health and the environment. Because the EDD and RTC do not address public comments regarding adequacy of the entire system design (including collection and transportation systems), the EDD and RTC are deficient as a matter of law and a Contested Case Hearing is necessary to evaluate these issues.

(b) RTC No. 1 concludes that the Sklar water supply wells are in all respects protected from releases from the applicant's wastewater facilities including collection and transportation systems. The permit application, proposed modification and ED Decision address only surface topography and fail to consider the potential for subsurface migration of Permittee's commercial, industrial and domestic wastewater. The ED Decision fails to recognize that middle and deeper zone subsurface ground water flows move toward Requester's water supply wells and thereby incorrectly assumes that Dr. Sklar's water supply well(s) are up-gradient from the sources of wastewater releases generated by the Permittee's operations.

(c) RTC No. 2 asserts that if requested, the applicant would be required to submit a full set of plans demonstrating that the system meets design criteria and applicable legal requirements.

Neither the EDD nor the RTC states whether the permit decision is based upon a summary submittal by the applicant or if the applicant was required to submit a detailed basis for the permit decision. The size, complexity and likelihood of non-domestic character of the wastewater being treated makes it imperative that the Commission require a detailed review to determine whether the minimal design criteria proposed by the applicant are adequate to meet applicable legal standards. The conclusory assertions included in the EDD and RTC regarding surface topography and lack of potential subsurface pathways and impacts indicates that only a summary submittal was made by the applicant or reviewed by the Commission. Moreover, the failure of the EDD and RTC to state whether the detailed submittal was requested makes it impossible to determine the adequacy of the factual record, which necessitates a Contested Case Hearing.

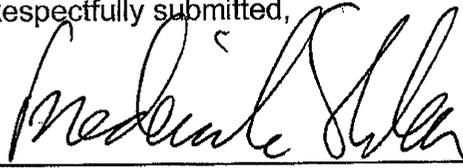
(d) RTC No. 4 suggests that the commercialization of the applicant's facilities (and resulting high-volume and non-domestic character of the wastewater being treated under the permit) are beyond the Commission's jurisdiction and does not affect the permit decision. The permit modification is proposed to be authorized under 30 TAC 217. This chapter explicitly provides that it does not apply to or authorize the discharge of non-domestic wastewater. The legal basis for the permit decision is thus, called into question if the Commission failed to inquire or assumed, incorrectly, that as a matter of law the characteristics of the wastewater do not affect the legal basis of the permit.

(e) RTC No. 4 merely assumes and concludes without stating any factual basis, that the "wastewater treatment facility is a private domestic facility." The RTC and the EDD thus incorrectly assumes as fact that "this means the facility will not be accepting any non-domestic wastewater." The RTC and the EDD are based upon unsupported assumptions by the ED and by incomplete and inaccurate factual representations by the applicant.

For the foregoing reasons, we respectfully request that Dr. Sklar be granted a Contested Case Hearing, that the Executive Director reconsider the decision states in its letter dated

December 3, 2009, and further, that the Executive Director deny or modify the draft permit modification so as to address these issues and ensure the health and well-being of the Requester.

Respectfully submitted,



Frederick H. Sklar, M.D.

P.O. Box 2897

Waxahachie, Texas 75168-8897

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2010 JAN -4 AM 10:05

CHIEF CLERKS OFFICE

M.C.D.  
68481

RFR

OPA

JAN 04 2010

IN RE: TPDES PERMIT NO. WQ0013847001

BY EB

APPLICATION BY NORTH TEXAS §  
DISTRICT COUNCIL ASSEMBLIES OF §  
GOD FOR A MAJOR AMENDMENT TO §  
TPDES PERMIT NO. WQ0013847001 §

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

REQUEST FOR RECONSIDERATION

In support of this Request for Reconsideration, the Requester states as follows:

- (a) Requester Name: Dr. Frederick H. Sklar
- (b) Address: P.O. Box 2897, Waxahachie, TX 75168-8899
- (c) Phone: 214-532-1638
- (d) Fax: 214-651-4075

CHIEF CLERKS OFFICE  
 2010 JAN -4 AM 10:05  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

(e) Request and basis for reconsideration:

The December 3, 2009, decision of the Executive Director ("ED Decision") in the above-referenced matter should be reconsidered and reversed or modified because the permit application and proposed permit modification do not meet the requirements of applicable law. The application and modified permit are deficient in the following respects:

(1) The proposed expansion and changes to permittee's operations have or will significantly alter the character of the wastewater collected by and treated in the permittee's wastewater collection systems and treatment facility. It is Requester's understanding that the operational changes and expansion will include commercial or industrial activities including, but not limited to extensive hospitality facilities (motel buildings, RV campsites with wastewater collection facilities), drug addiction therapies and related medical treatment and commercial activities that generate medical wastes and associated commercial and industrial wastes. Requester respectfully contends that these changes have altered or will alter the character of the wastewater such that it

does not retain the characteristics of domestic wastewater as defined in the Texas Administrative Code. The application for permit modifications should be reconsidered and processed under Commission regulations and design criteria that are applicable to commercial and industrial operations, including commercial hospitality and medical treatment facilities.

(2) The Executive Director's Decision asserts that the proposed modification satisfies the surface water quality standards applicable to the treatment facility effluent. The proposed permit modifications and the ED Decision, however, do not adequately address the risks to public health presented by the significant expansion of volume being handled by the Permittee's existing and modified wastewater collection systems, the changes in characteristics of the wastewater from domestic to non-domestic and associated changes in the Permittee's operations, and their effects on the wastewater collection systems and treatment facility. The expanded volume and altered character of wastewater presents risks to both the receiving water quality and also to the quality of groundwater used by and the resulting health of the Requester.

(3) The aged condition of the multiple connections and expanded area served by the collection system significantly increase the risk that the Permittee's domestic, commercial and industrial wastewater will be released to soils and groundwater. The Permittee's property and adjacent properties have historically operated multiple hand-dug water supply wells which have not been properly plugged and abandoned. These historic wells have not been properly identified or addressed by the Permittee's application nor the ED Decision. Releases to the surface and shallow ground water would foreseeably impact these wells, and such releases would thereby find a direct

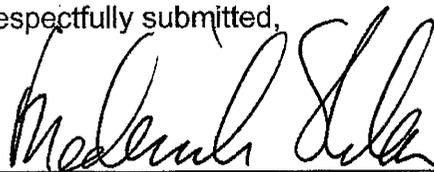
pathway to deeper aquifers serving water supply wells. The Permittee's collection system and wastewater generating operations present significant risks to the drinking water wells operated by the Requester.

(4) The permit application, proposed modification and ED Decision address only surface topography and fail to consider the potential for subsurface migration of Permittee's commercial, industrial and domestic wastewater. The ED Decision fails to recognize that subsurface ground water flows toward Requester's water supply wells and thereby incorrectly assumes that the Requester's water supply well(s) are up-gradient from the sources of wastewater releases generated by the Permittee's operations.

(5) The permit application and ED Decision do not contain a complete analysis of the risks from the commercial and industrial wastewaters generated by the Permittee's operations and accordingly, impose only minimal design requirements. The Executive Director should require more stringent design criteria for both the collection system and treatment facility because it is necessary to both protect public health and to ensure the facility will meet water quality standards established by the Commission.

For the foregoing reasons, we respectfully request that the Executive Director reconsider the decision stated in the letter directed to Requester dated December 3, 2009, and further, that the Executive Director deny or modify the draft permit modification so as to address these issues and ensure the health and well-being of the Requester.

Respectfully submitted,



Frederick H. Sklar, M.D.  
P.O. Box 2897  
Waxahachie, Texas 75168-8897

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2010 JAN -4 AM 10:05

CHIEF CLERKS OFFICE



ATTORNEYS AT LAW

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Strasburger & Price, LLP  
901 Main Street, Suite 4400 • Dallas, Texas 75202-3794

2010 JAN -4 AM 10:04

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RECEIVED

JAN 04 2010

TOEQ MAIL CENTER  
MM



ATTORNEYS AT LAW

From: Patrick J. Larkin  
300 Convent Street, Suite 900  
San Antonio, Texas 78205-3715

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



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December 30, 2009

MWD  
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PATRICK J. LARKIN  
214.651.2132  
Direct Fax: 214.659.4075  
patrick.larkin@strasburger.com

H  
RPR OPA  
JAN 04 2010

Via Email and U.S. Mail

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

BY \_\_\_\_\_

RE: In Re: TPDES Permit No. WQ0013847001

Dear Ms. Castañuela:

Please find enclosed the following documents:

1. Request for Contested Case Hearing of Dr. Fredrick H. Sklar, M.D.; and
2. Request for Reconsideration.

Please contact the undersigned with any questions.

Regards,

Patrick J. Larkin

Enclosure

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 DEC 30 PM 3:13  
CHIEF CLERKS OFFICE

MW  
68481

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OPA

JAN 04 2010

IN RE: TPDES PERMIT NO. WQ0013847001

BY WB

APPLICATION BY NORTH TEXAS	§	BEFORE THE
DISTRICT COUNCIL ASSEMBLIES OF	§	TEXAS COMMISSION ON
GOD FOR A MAJOR AMENDMENT TO	§	
TPDES PERMIT NO. WQ0013847001	§	ENVIRONMENTAL QUALITY

REQUEST FOR CONTESTED CASE HEARING OF DR. FREDRICK H. SKLAR, M.D.

In support of this Request for Contested Case Hearing, the Requester states as follows:

- (a) Requester Name: Dr. Frederick H. Sklar
- (b) Address: P.O. Box 2897, Waxahachie, TX 75168-8897
- (c) Phone: 214-632-1638
- (d) Fax: 214-651-4075

(e) Request and basis for grant of a Contested Case Hearing:

A Contested Case Hearing to address the decision of the Executive Director in the above-referenced matter should be granted because (a) the permit application and the Executive Director's Decision ("EDD") to grant the permit modification do not meet the requirements of applicable law; (b) because there are contested questions of fact that are relevant and material to the adequacy of the permit; and (c) the EDD and Response to Comments contain misstatements of facts and law that undermine the legal sufficiency of the EDD and that should be addressed in a Contested Case Hearing.

The Request for Contested Hearing of Dr. Fredrick H. Sklar, M.D., should be granted for the following reasons:

(1) Dr. Sklar is an Affected Person. Dr. Sklar's residence is located immediately adjacent to the property where the Permittee operates wastewater collection systems and the proposed treatment facility. A surface water body is located adjacent to the Sklar residence and would be adversely affected by releases from the wastewater collection and transport systems. Dr. Sklar's family relies on a water supply well located at the Sklar property for all potable water uses at their residence. Additional water supply wells exist at the Sklar property which are used for agricultural purposes, including irrigation of vegetable crops and water supply for domestic animals and livestock. The likely impact of the expansion of the permitted

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
 2009 DEC 30 PM 3:13  
 CHIEF CLERKS OFFICE

facility, including expansion of wastewater collection and transport systems, is to degrade the quality of the water supply wells and surface waters at the Sklar property. Expansion of the permitted facility, including expansion of wastewater collection and transport systems, is likely to adversely impact eco-receptors in the vicinity of the wastewater collection and transport systems as well as downstream from the effluent discharge authorized under the proposed permit modification.

(2) Disputed issues of fact which require a Contested Case Hearing include, but are not limited to the following:

(a) The Permittee has inadequately and inaccurately represented the integrity of the wastewater collection and transport systems and the increased potential for releases from these systems and their potential to impact surface water, ground water relied upon by Dr. Sklar and eco-receptors affected by runoff from these facilities. The EDD and the Response to Comments ("RTC") are accordingly not adequately supported as a matter of law.

(b) The Permittee has inadequately and inaccurately represented the potential for releases from the wastewater collection, transport and treatment facilities to migrate to and adversely impact the water supply wells located at the Sklar property. The permit application, the EDD and the RTC factually mischaracterize the direction of flow of ground water at and from the permitted facility, including wastewater collection systems.

(c) The Permittee has inadequately and inaccurately represented the nature of the wastewaters which are and will be generated by the permittee's operations. The permit application, the EDD and the RTC factually mischaracterize the wastewater being treated at the facility as domestic wastewater. The Requester's understanding is that the applicant's operations include commercial, medical and drug treatment services that will generate wastewater that does not retain the characteristics of domestic wastewater.

(d) The Permittee has inadequately and inaccurately represented the ability of the proposed treatment systems to adequately treat the wastewaters which are and will be generated by the

permittee's operations. The treatment technology proposed in the permit application, and approved in the EDD and the RTC, are based upon factually inadequate or inaccurate characterization of the wastewater being treated at the facility. The applicant's operations are believed to include commercial, medical and drug treatment services that will generate wastewater that does not retain the characteristics of domestic wastewater and for which different or additional treatment technology will be necessary to meet applicable legal standards.

(3) Disputed Responses to Comments which require a Contested Case Hearing include, but are not limited to the following:

(a) RTC No. 1 only addresses the adequacy of proposed permit criteria with respect to effluent discharges. Applicable legal standards require that permit requirements governing all aspects of system design, operation and maintenance (including collection and transportation systems) must be adequate to address risks to human health and the environment. Because the EDD and RTC do not address public comments regarding adequacy of the entire system design (including collection and transportation systems), the EDD and RTC are deficient as a matter of law and a Contested Case Hearing is necessary to evaluate these issues.

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(c) RTC No. 2 asserts that if requested, the applicant would be required to submit a full set of plans demonstrating that the system meets design criteria and applicable legal requirements.

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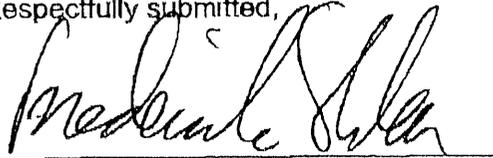
(d) RTC No. 4 suggests that the commercialization of the applicant's facilities (and resulting high-volume and non-domestic character of the wastewater being treated under the permit) are beyond the Commission's jurisdiction and does not affect the permit decision. The permit modification is proposed to be authorized under 30 TAC 217. This chapter explicitly provides that it does not apply to or authorize the discharge of non-domestic wastewater. The legal basis for the permit decision is thus, called into question if the Commission failed to inquire or assumed, incorrectly, that as a matter of law the characteristics of the wastewater do not affect the legal basis of the permit.

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December 3, 2009, and further, that the Executive Director deny or modify the draft permit modification so as to address these issues and ensure the health and well-being of the Requester.

Respectfully submitted,



Frederick H. Sklar, M.D.  
P.O. Box 2897  
Waxahachie, Texas 75168-8897

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 DEC 30 PM 3:13

CHIEF CLERKS OFFICE

MWD  
68481

KFR OPA

JAN 04 2010

BY EB

IN RE: TPDES PERMIT NO. WQ0013847001

APPLICATION BY NORTH TEXAS §  
DISTRICT COUNCIL ASSEMBLIES OF §  
GOD FOR A MAJOR AMENDMENT TO §  
TPDES PERMIT NO. WQ0013847001 §

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

2009 DEC 30 PM 3:14  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

REQUEST FOR RECONSIDERATION

In support of this Request for Reconsideration, the Requester states as follows:

- (a) Requester Name: Dr. Frederick H. Sklar
- (b) Address: P.O. Box 2897, Waxahachie, TX 75168-8897
- (c) Phone: 214-532-1638
- (d) Fax: 214-651-4075

(e) Request and basis for reconsideration:

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(1) The proposed expansion and changes to permittee's operations have or will significantly alter the character of the wastewater collected by and treated in the permittee's wastewater collection systems and treatment facility. It is Requester's understanding that the operational changes and expansion will include commercial or industrial activities including, but not limited to extensive hospitality facilities (motel buildings, RV campsites with wastewater collection facilities), drug addiction therapies and related medical treatment and commercial activities that generate medical wastes and associated commercial and industrial wastes. Requester respectfully contends that these changes have altered or will alter the character of the wastewater such that it

does not retain the characteristics of domestic wastewater as defined in the Texas Administrative Code. The application for permit modifications should be reconsidered and processed under Commission regulations and design criteria that are applicable to commercial and industrial operations, including commercial hospitality and medical treatment facilities.

(2) The Executive Director's Decision asserts that the proposed modification satisfies the surface water quality standards applicable to the treatment facility effluent. The proposed permit modifications and the ED Decision, however, do not adequately address the risks to public health presented by the significant expansion of volume being handled by the Permittee's existing and modified wastewater collection systems, the changes in characteristics of the wastewater from domestic to non-domestic and associated changes in the Permittee's operations, and their effects on the wastewater collection systems and treatment facility. The expanded volume and altered character of wastewater presents risks to both the receiving water quality and also to the quality of groundwater used by and the resulting health of the Requester.

(3) The aged condition of the multiple connections and expanded area served by the collection system significantly increase the risk that the Permittee's domestic, commercial and industrial wastewater will be released to soils and groundwater. The Permittee's property and adjacent properties have historically operated multiple hand-dug water supply wells which have not been properly plugged and abandoned. These historic wells have not been properly identified or addressed by the Permittee's application nor the ED Decision. Releases to the surface and shallow ground water would foreseeably impact these wells, and such releases would thereby find a direct

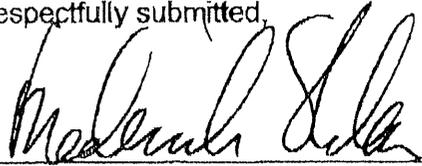
pathway to deeper aquifers serving water supply wells. The Permittee's collection system and wastewater generating operations present significant risks to the drinking water wells operated by the Requester.

(4) The permit application, proposed modification and ED Decision address only surface topography and fail to consider the potential for subsurface migration of Permittee's commercial, industrial and domestic wastewater. The ED Decision fails to recognize that subsurface ground water flows toward Requester's water supply wells and thereby incorrectly assumes that the Requester's water supply well(s) are up-gradient from the sources of wastewater releases generated by the Permittee's operations.

(5) The permit application and ED Decision do not contain a complete analysis of the risks from the commercial and industrial wastewaters generated by the Permittee's operations and accordingly, impose only minimal design requirements. The Executive Director should require more stringent design criteria for both the collection system and treatment facility because it is necessary to both protect public health and to ensure the facility will meet water quality standards established by the Commission.

For the foregoing reasons, we respectfully request that the Executive Director reconsider the decision stated in the letter directed to Requester dated December 3, 2009, and further, that the Executive Director deny or modify the draft permit modification so as to address these issues and ensure the health and well-being of the Requester.

Respectfully submitted,



Frederick H. Sklar, M.D.  
P.O. Box 2897  
Waxahachie, Texas 75168-8897

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 DEC 30 PM 3:14

CHIEF CLERKS OFFICE



# Fax

	Date	Pages (including cover sheet)	
	December 30, 2009	12	
<b>To</b>			
Name	Company/Firm	Phone Number	Fax Number
Office of the Chief Clerk	TCEQ	512-239-3300	512-239-3311
<b>From</b>			
Name	Phone Number	Email	
Patrick J. Larkin	214.651.2132	patrick.larkin@strasburger.com	
Client/Matter number	Client/Matter name		
21862.0101	Sklar/TPDES Permit		

## Message

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
 2009 DEC 30 PM 3:13  
 CHIEF CLERKS OFFICE

Please call us immediately if the fax you receive is incomplete or illegible.

This message and any attachments are intended only for the use of the individual or entity to which it is addressed contains information which is confidential and protected by the attorney-client privilege or may contain confidential medical information protected by federal and state law. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. You as a recipient are obligated to maintain any confidential medical information you receive via this telecopy in a safe, secure and confidential manner. If you have received this telecopy in error, please immediately notify the Strasburger & Price Help Desk toll free at (877) 678-5836.

Strasburger & Price, LLP

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Austin • Collin County • Dallas • Houston • San Antonio • New York, N.Y. • Washington, D.C. • Strasburger & Price, SC • Mexico City

**PUBCOMMENT-OCC2 - Fwd: Public comment on Permit Number WQ0013847001**

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**From:** PUBCOMMENT-OPA  
**To:** PUBCOMMENT-OCC2  
**Date:** 12/30/2009 3:21 PM  
**Subject:** Fwd: Public comment on Permit Number WQ0013847001  
**Attachments:** Request for Reconsideration.pdf

---

RFR

>>> PUBCOMMENT-OCC 12/30/2009 3:07 PM >>>

*MWD*  
*68481*

>>> <patrick.larkin@strasburger.com> 12/30/2009 2:59 PM >>>

**REGULATED ENTY NAME** LAKEVIEW CAMP  
**RN NUMBER:** RN101513554  
**PERMIT NUMBER:** WQ0013847001  
**DOCKET NUMBER:** 2009-0998-MWD-E  
**COUNTY:** ELLIS  
**PRINCIPAL NAME:** NORTH TX DIST COUNCIL OF THE ASSEMBLIES OF GOD  
**CN NUMBER:** CN600790125  
**FROM**  
**NAME:** Patrick Larkin  
**E-MAIL:** [patrick.larkin@strasburger.com](mailto:patrick.larkin@strasburger.com)  
**COMPANY:** Strasburger & Price, LLP  
**ADDRESS:** 901 MAIN ST Suite 4400  
DALLAS TX 75202-3707  
**PHONE:** 2146512132  
**FAX:** 2146514300  
**COMMENTS:** Please find attached a Request for Reconsideration.

*MWD*

IN RE: TPDES PERMIT NO. WQ0013847001

APPLICATION BY NORTH TEXAS	§	BEFORE THE
DISTRICT COUNCIL ASSEMBLIES OF	§	TEXAS COMMISSION ON
GOD FOR A MAJOR AMENDMENT TO	§	ENVIRONMENTAL QUALITY
TPDES PERMIT NO. WQ0013847001	§	

REQUEST FOR RECONSIDERATION

In support of this Request for Reconsideration, the Requester states as follows:

- (a) Requester Name: Dr. Frederick H. Sklar
- (b) Address: P.O. Box 2897, Waxahachie, TX 75168-8897
- (c) Phone: 214-532-1638
- (d) Fax: 214-651-4075

- (e) Request and basis for reconsideration:

The December 3, 2009, decision of the Executive Director ("ED Decision") in the above-referenced matter should be reconsidered and reversed or modified because the permit application and proposed permit modification do not meet the requirements of applicable law. The application and modified permit are deficient in the following respects:

- (1) The proposed expansion and changes to permittee's operations have or will significantly alter the character of the wastewater collected by and treated in the permittee's wastewater collection systems and treatment facility. It is Requester's understanding that the operational changes and expansion will include commercial or industrial activities including, but not limited to extensive hospitality facilities (motel buildings, RV campsites with wastewater collection facilities), drug addiction therapies and related medical treatment and commercial activities that generate medical wastes and associated commercial and industrial wastes. Requester respectfully contends that these changes have altered or will alter the character of the wastewater such that it

does not retain the characteristics of domestic wastewater as defined in the Texas Administrative Code. The application for permit modifications should be reconsidered and processed under Commission regulations and design criteria that are applicable to commercial and industrial operations, including commercial hospitality and medical treatment facilities.

(2) The Executive Director's Decision asserts that the proposed modification satisfies the surface water quality standards applicable to the treatment facility effluent. The proposed permit modifications and the ED Decision, however, do not adequately address the risks to public health presented by the significant expansion of volume being handled by the Permittee's existing and modified wastewater collection systems, the changes in characteristics of the wastewater from domestic to non-domestic and associated changes in the Permittee's operations, and their effects on the wastewater collection systems and treatment facility. The expanded volume and altered character of wastewater presents risks to both the receiving water quality and also to the quality of groundwater used by and the resulting health of the Requester.

(3) The aged condition of the multiple connections and expanded area served by the collection system significantly increase the risk that the Permittee's domestic, commercial and industrial wastewater will be released to soils and groundwater. The Permittee's property and adjacent properties have historically operated multiple hand-dug water supply wells which have not been properly plugged and abandoned. These historic wells have not been properly identified or addressed by the Permittee's application nor the ED Decision. Releases to the surface and shallow ground water would foreseeably impact these wells, and such releases would thereby find a direct

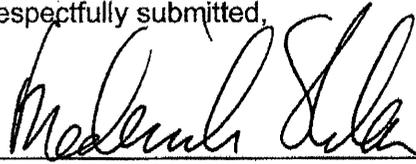
pathway to deeper aquifers serving water supply wells. The Permittee's collection system and wastewater generating operations present significant risks to the drinking water wells operated by the Requester.

(4) The permit application, proposed modification and ED Decision address only surface topography and fail to consider the potential for subsurface migration of Permittee's commercial, industrial and domestic wastewater. The ED Decision fails to recognize that subsurface ground water flows toward Requester's water supply wells and thereby incorrectly assumes that the Requester's water supply well(s) are up-gradient from the sources of wastewater releases generated by the Permittee's operations.

(5) The permit application and ED Decision do not contain a complete analysis of the risks from the commercial and industrial wastewaters generated by the Permittee's operations and accordingly, impose only minimal design requirements. The Executive Director should require more stringent design criteria for both the collection system and treatment facility because it is necessary to both protect public health and to ensure the facility will meet water quality standards established by the Commission.

For the foregoing reasons, we respectfully request that the Executive Director reconsider the decision stated in the letter directed to Requester dated December 3, 2009, and further, that the Executive Director deny or modify the draft permit modification so as to address these issues and ensure the health and well-being of the Requester.

Respectfully submitted,



---

Frederick H. Sklar, M.D.

P.O. Box 2897

Waxahachie, Texas 75168-8897

**PUBCOMMENT-OCC2 - Fwd: Public comment on Permit Number WQ0013847001**

**From:** PUBCOMMENT-OPA  
**To:** PUBCOMMENT-OCC2  
**Date:** 12/30/2009 3:23 PM  
**Subject:** Fwd: Public comment on Permit Number WQ0013847001  
**Attachments:** Request for Contested Case Hearing.pdf

H

MWD  
68481

>>> PUBCOMMENT-OCC 12/30/2009 3:07 PM >>>

>>> <patrick.larkin@strasburger.com> 12/30/2009 2:56 PM >>>

**REGULATED ENTY NAME** LAKEVIEW CAMP  
**RN NUMBER:** RN101513554  
**PERMIT NUMBER:** WQ0013847001  
**DOCKET NUMBER:** 2009-0998-MWD-E  
**COUNTY:** ELLIS  
**PRINCIPAL NAME:** NORTH TX DIST COUNCIL OF THE ASSEMBLIES OF GOD  
**CN NUMBER:** CN600790125  
**FROM**  
**NAME:** Patrick Larkin  
**E-MAIL:** [patrick.larkin@strasburger.com](mailto:patrick.larkin@strasburger.com)  
**COMPANY:** Strasburger & Price, LLP  
**ADDRESS:** 901 MAIN ST Suite 4400  
DALLAS TX 75202-3707  
**PHONE:** 2146512132  
**FAX:** 2146514300  
**COMMENTS:** Please find attached a Request for Contested Case Hearing of Dr. Fredrick H. Sklar, M.D.

MWD

IN RE: TPDES PERMIT NO. WQ0013847001

APPLICATION BY NORTH TEXAS	§	BEFORE THE
DISTRICT COUNCIL ASSEMBLIES OF	§	TEXAS COMMISSION ON
GOD FOR A MAJOR AMENDMENT TO	§	
TPDES PERMIT NO. WQ0013847001	§	ENVIRONMENTAL QUALITY

REQUEST FOR CONTESTED CASE HEARING OF DR. FREDRICK H. SKLAR, M.D.

In support of this Request for Contested Case Hearing, the Requester states as follows:

- (a) Requester Name: Dr. Frederick H. Sklar
- (b) Address: P.O. Box 2897, Waxahachie, TX 75168-8897
- (c) Phone: 214-532-1638
- (d) Fax: 214-651-4075

- (e) Request and basis for grant of a Contested Case Hearing:

A Contested Case Hearing to address the decision of the Executive Director in the above-referenced matter should be granted because (a) the permit application and the Executive Director's Decision ("EDD") to grant the permit modification do not meet the requirements of applicable law; (b) because there are contested questions of fact that are relevant and material to the adequacy of the permit; and (c) the EDD and Response to Comments contain misstatements of facts and law that undermine the legal sufficiency of the EDD and that should be addressed in a Contested Case Hearing.

The Request for Contested Hearing of Dr. Fredrick H. Sklar, M.D., should be granted for the following reasons:

(1) Dr. Sklar is an Affected Person. Dr. Sklar's residence is located immediately adjacent to the property where the Permittee operates wastewater collection systems and the proposed treatment facility. A surface water body is located adjacent to the Sklar residence and would be adversely affected by releases from the wastewater collection and transport systems. Dr. Sklar's family relies on a water supply well located at the Sklar property for all potable water uses at their residence. Additional water supply wells exist at the Sklar property which are used for agricultural purposes, including irrigation of vegetable crops and water supply for domestic animals and livestock. The likely impact of the expansion of the permitted

facility, including expansion of wastewater collection and transport systems, is to degrade the quality of the water supply wells and surface waters at the Sklar property. Expansion of the permitted facility, including expansion of wastewater collection and transport systems, is likely to adversely impact eco-receptors in the vicinity of the wastewater collection and transport systems as well as downstream from the effluent discharge authorized under the proposed permit modification.

(2) Disputed issues of fact which require a Contested Case Hearing include, but are not limited to the following:

(a) The Permittee has inadequately and inaccurately represented the integrity of the wastewater collection and transport systems and the increased potential for releases from these systems and their potential to impact surface water, ground water relied upon by Dr. Sklar and eco-receptors affected by runoff from these facilities. The EDD and the Response to Comments ("RTC") are accordingly not adequately supported as a matter of law.

(b) The Permittee has inadequately and inaccurately represented the potential for releases from the wastewater collection, transport and treatment facilities to migrate to and adversely impact the water supply wells located at the Sklar property. The permit application, the EDD and the RTC factually mischaracterize the direction of flow of ground water at and from the permitted facility, including wastewater collection systems.

(c) The Permittee has inadequately and inaccurately represented the nature of the wastewaters which are and will be generated by the permittee's operations. The permit application, the EDD and the RTC factually mischaracterize the wastewater being treated at the facility as domestic wastewater. The Requester's understanding is that the applicant's operations include commercial, medical and drug treatment services that will generate wastewater that does not retain the characteristics of domestic wastewater.

(d) The Permittee has inadequately and inaccurately represented the ability of the proposed treatment systems to adequately treat the wastewaters which are and will be generated by the

permittee's operations. The treatment technology proposed in the permit application, and approved in the EDD and the RTC, are based upon factually inadequate or inaccurate characterization of the wastewater being treated at the facility. The applicant's operations are believed to include commercial, medical and drug treatment services that will generate wastewater that does not retain the characteristics of domestic wastewater and for which different or additional treatment technology will be necessary to meet applicable legal standards.

(3) Disputed Responses to Comments which require a Contested Case Hearing include, but are not limited to the following:

(a) RTC No. 1 only addresses the adequacy of proposed permit criteria with respect to effluent discharges. Applicable legal standards require that permit requirements governing all aspects of system design, operation and maintenance (including collection and transportation systems) must be adequate to address risks to human health and the environment. Because the EDD and RTC do not address public comments regarding adequacy of the entire system design (including collection and transportation systems), the EDD and RTC are deficient as a matter of law and a Contested Case Hearing is necessary to evaluate these issues.

(b) RTC No. 1 concludes that the Sklar water supply wells are in all respects protected from releases from the applicant's wastewater facilities including collection and transportation systems. The permit application, proposed modification and ED Decision address only surface topography and fail to consider the potential for subsurface migration of Permittee's commercial, industrial and domestic wastewater. The ED Decision fails to recognize that middle and deeper zone subsurface ground water flows move toward Requester's water supply wells and thereby incorrectly assumes that Dr. Sklar's water supply well(s) are up-gradient from the sources of wastewater releases generated by the Permittee's operations.

(c) RTC No. 2 asserts that if requested, the applicant would be required to submit a full set of plans demonstrating that the system meets design criteria and applicable legal requirements.

Neither the EDD nor the RTC states whether the permit decision is based upon a summary submittal by the applicant or if the applicant was required to submit a detailed basis for the permit decision. The size, complexity and likelihood of non-domestic character of the wastewater being treated makes it imperative that the Commission require a detailed review to determine whether the minimal design criteria proposed by the applicant are adequate to meet applicable legal standards. The conclusory assertions included in the EDD and RTC regarding surface topography and lack of potential subsurface pathways and impacts indicates that only a summary submittal was made by the applicant or reviewed by the Commission. Moreover, the failure of the EDD and RTC to state whether the detailed submittal was requested makes it impossible to determine the adequacy of the factual record, which necessitates a Contested Case Hearing.

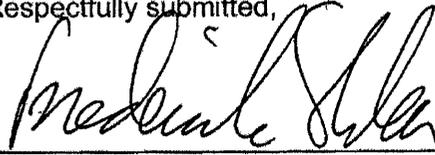
(d) RTC No. 4 suggests that the commercialization of the applicant's facilities (and resulting high-volume and non-domestic character of the wastewater being treated under the permit) are beyond the Commission's jurisdiction and does not affect the permit decision. The permit modification is proposed to be authorized under 30 TAC 217. This chapter explicitly provides that it does not apply to or authorize the discharge of non-domestic wastewater. The legal basis for the permit decision is thus, called into question if the Commission failed to inquire or assumed, incorrectly, that as a matter of law the characteristics of the wastewater do not affect the legal basis of the permit.

(e) RTC No. 4 merely assumes and concludes without stating any factual basis, that the "wastewater treatment facility is a private domestic facility." The RTC and the EDD thus incorrectly assumes as fact that "this means the facility will not be accepting any non-domestic wastewater." The RTC and the EDD are based upon unsupported assumptions by the ED and by incomplete and inaccurate factual representations by the applicant.

For the foregoing reasons, we respectfully request that Dr. Sklar be granted a Contested Case Hearing, that the Executive Director reconsider the decision states in its letter dated

December 3, 2009, and further, that the Executive Director deny or modify the draft permit modification so as to address these issues and ensure the health and well-being of the Requester.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frederick H. Sklar". The signature is written in a cursive style and is positioned above a horizontal line.

Frederick H. Sklar, M.D.

P.O. Box 2897

Waxahachie, Texas 75168-8897

Texas Commission on Environmental Quality  
Office of the Chief Clerk  
P.O. Box 13087  
Austin, TX 78711-3087

September 27, 2009

HR OPA  
SEP 0 / 2009

BY JM

Sent by Fax (512-239-3311) and U.S. Mail

Dear Sirs:

I wish to request a contested case hearing.

**My name:** Frederick Sklar

**Mailing address:** P.O. Box 2897, Waxahachie, TX 75168

**Physical address:** 251 N. Oak Branch Rd., Waxahachie, TX 75167

**Home phone:** 972-938-0814

**Cell phone:** 214-532-1638

**E-mail:** [fsklar@sbcglobal.net](mailto:fsklar@sbcglobal.net), [fsklar@nsfc.us](mailto:fsklar@nsfc.us)

**Applicant:** North Texas District Council Assemblies of God

**Permit Number:** WQ0013847001

**Location and distance of our property relative to the facility:** Our property shares with the Applicant a common boundary, which I estimate to be approximately 1/3 mile long. The Applicant's camp facility is the western boundary of our property. The southern boundary of our property is FM 66; the eastern boundary of our property is Oak Branch Rd.

**Adverse Effect:** This is my homestead of 27 years. We rely upon a ground water well that provides us all of our potable water, and I am very concerned that the facility's sanitary sewage collection and management systems and ultimate discharge of sewage waste into our neighboring streams may be contaminating our drinking water. The present application will increase the discharge of sewage more than three fold, and I fear that contaminants may get back into the ground water supplying our well. I am very concerned that this project will adversely affect the health of my family.

From time to time we raise valuable livestock on our property. The proposed permit does not adequately ensure that the sanitary sewage management facilities throughout the applicant's property are properly designed, constructed and maintained so as to prevent impacts to the surface and ground water which are adjacent to our property. The effluent flow levels allowed under the draft permit create the potential for inadequate treatment in the facility treatment systems. The permit does not ensure that the treatment system is adequate to ensure full treatment of effluent at the higher flow levels. The recent and planned growth and commercialization of the facility indicate that there is a potential for industrial, viral and pathogenic pollutants that are not addressed in the monitoring and treatment requirements in the draft permit. The proposed Permit does not adequately address the risk that variability in effluent flow will adversely impact treatment capacity in the treatment systems.

I therefore request a contested case hearing.

Thank you.  
Fred Sklar



MWD  
68481

CHIEF CLERKS OFFICE

2009 SEP 30 PM 2:06

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY



OPA HR

SEP 28 2009

September 27, 2009

BY DM

Texas Commission on Environmental Quality  
Office of the Chief Clerk  
P.O. Box 13087  
Austin, TX 78711-3087

Sent by Fax (512-239-3311) and U.S. Mail

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**My name:** Frederick Sklar

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
9399  
2009 SEP 28  
CHIEF CLERK'S OFFICE

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I therefore request a contested case hearing.

Thank you.  
Fred Sklar

*Fred Sklar*

MWD  
68481

*DM*



**TCEQ**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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If you submit your comments online, you will receive an e-mail confirmation for your records. If you do not receive an e-mailed confirmation within 24 hours, we may not have received your remarks.

### Or comment by mail or fax:

Please include a TCEQ permit or docket number when you mail or fax comments on a pending permit application.

Please submit your comments using one of the options below:

**Mail to:**

Office of the Chief Clerk, MC 105  
TCEQ  
PO Box 13087  
Austin, TX 78711-3087

**Courier or hand-deliver to:**

Office of the Chief Clerk  
TCEQ  
12100 Park 35 Circle, Bldg F  
Austin, TX 78753

**Fax to: 512-239-3311\***

\*Note: All comments submitted by fax must be followed by a hard copy in the mail within three days.

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 SEP 29 AM 9:33  
CHIEF CLERK'S OFFICE

**From:** PUBCOMMENT-OPA  
**To:** PUBCOMMENT-OCC2  
**Date:** 9/30/2009 2:18 PM  
**Subject:** Fwd: Public comment on Permit Number WQ0013847001  
**Place:** PUBCOMMENT-OCC2

HR

>>> PUBCOMMENT-OCC 9/28/2009 8:59 AM >>>

>>> <fsklar@sbcglobal.net> 9/27/2009 12:17 PM >>>

*MKID  
68481*

**REGULATED ENTY NAME**LAKEVIEW CAMP

**RN NUMBER:**RN101513554

**PERMIT NUMBER:**WQ0013847001

**DOCKET NUMBER:**Not Found

**COUNTY:**ELLIS

**PRINCIPAL NAME:**NORTH TX DIST COUNCIL OF THE ASSEMBLIES OF GOD

**CN NUMBER:**CN600790125

**FROM**

**NAME:**Frederick Sklar

**E-MAIL:**fsklar@sbcglobal.net

**COMPANY:**

**ADDRESS:**PO BOX 2897

WAXAHACHIE TX 75168-8897

**PHONE:**2145321638

**FAX:**2144566696

**COMMENTS:**My name: Frederick Sklar Mailing address: P.O. Box 2897, Waxahachie, TX 75168 Physical address: 251 N. Oak Branch Rd., Waxahachie, TX 75167 Home phone: 972-938-0814 Cell phone: 214-532-1638 E-mail: fsklar@sbcglobal.net Applicant: North Texas District Council Assemblies of God Permit Number: WQ0013847001 Location and distance of our property relative to the facility: Our property shares with the applicant a common boundary, which I estimate to be approximately 1/3 mile long. The applicants camp facility is the western boundary of our property. The southern boundary of our property is FM 66; the eastern boundary of our property is Oak Branch Rd. Adverse Effect: This is my homestead of 27 years. We rely upon a ground water well that provides us all of our potable water, and I am very concerned that the facility's sanitary sewage collection and management systems and ultimate discharge of sewage waste into our neighboring streams may be contaminating our drinking water. The present application will increase the discharge of sewage more than three fold, and I fear that contaminants may get back into the ground water supplying our well. I am very concerned that this project will adversely affect the health of my family. From time to time we raise valuable livestock on our property. The proposed permit does not adequately ensure that the sanitary sewage management facilities throughout the applicant's property are properly designed, constructed and maintained so as to prevent impacts to the surface and ground water which are adjacent to our property. The effluent flow levels allowed under the draft permit create the potential for inadequate treatment in the facility treatment systems. The permit does not ensure that the treatment system is adequate to ensure full treatment of effluent at the higher flow levels. The recent and planned growth and commercialization of the facility indicate that there is a potential for industrial, viral and pathogenic pollutants that are not addressed in the monitoring and treatment requirements in the draft permit. The proposed Permit does not adequately address the risk that variability in effluent flow will adversely impact treatment capacity in the treatment systems. I therefore request a contested case hearing.

*MCD*