



May 10, 2010

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Via Facsimile and U.S. Mail

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

RE: In Re: TPDES Permit No. WQ0013847001

Dear Ms. Castañuela:

Please find enclosed the following document:

Reply to Applicant and Executive Director's Responses to Request for Contested Case Hearing.

Please contact the undersigned with any questions.

Regards,

Patrick J. Larkin

Enclosure

cc: Mailing List

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 MAY 10 AM 10:56
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

IN RE: TPDES PERMIT NO. WQ0013847001 2010 MAY 10 AM 10: 56

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

BEFORE THE CHIEF CLERKS OFFICE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

REPLY TO APPLICANT AND EXECUTIVE DIRECTOR'S RESPONSES TO REQUEST
FOR CONTESTED CASE HEARING

In support of the Request for Contested Case Hearing, Dr. Fredrick H. Sklar, M.D., incorporates the issues raised and requests for hearing made in prior filings by Dr. Sklar and the factual findings supporting the Request made in the November 30, 2009 Executive Director's Response to Public Comments and the January 29, 2010, Executive Director's Response to Hearing Requests reference, and states as follows:

Introduction

1. The Lakeview Conference Center operates "24-hours, 7-days a week" as a year-round residential, recreational, dining, RV park and conference facility. The Lakeview facility has grown very quickly from a few rustic cabins and church summer camp to a mega-destination conference and recreational complex. The facility has installed a waste collection and transport system with hundreds of sanitary waste connections located at RV campsites, hotel rooms, a fitness center, golf cart rental and maintenance facilities and large scale dining and banquet halls. The permit application, draft permit and filings by the Applicant fail to document that the waste facilities have been designed, constructed and will be operated so as to prevent releases of sanitary waste or adequate treatment prior to discharge.

2. Dr. Fredrick Sklar and his family live immediately adjacent to the conference center. Dr. Sklar relies upon shallow wells to provide potable and non-potable water for his family, livestock and irrigation. The Lakeview waste collection, transport and treatment systems are adjacent and up-gradient to a Soil Conservation Service lake used for swimming, boating and fishing, an unnamed tributary to the lake and other surface waters which are shared with Dr. Sklar.

3. Dr. Sklar filed comments opposing the expansion of the Lakeview waste water facilities and challenging the adequacy of the existing and proposed waste collection, treatment and discharge facilities. Dr. Sklar filed timely requests for a contested case hearing and has complied with all prerequisites to grant of hearing on the safety and adequacy of the systems authorized under the proposed permit.

4. Dr. Sklar's hearing requests are reasonable and identify controverted issues that are based on information taken from the permit administrative record, his personal knowledge, and publicly available government records.

Dr. Sklar is an Affected Person

5. The administrative record and the Executive Director's Response to Contested Case Hearing confirm the obvious – Dr. Sklar is a person whose property interests, economic interests and personal health and safety are affected by the operation of the Lakeview facilities regulated by the TCEQ. It is uncontroverted that Dr. Sklar's residence is immediately adjacent to the facility. It is uncontroverted that Dr. Sklar, his family, his livestock and his irrigated crops all rely upon ground water that is drawn from the Woodbine aquifer.

6. The Woodbine Aquifer is recharged from surface percolation of rainfall and from seepage from surface water bodies (See U.S. Geological Survey Hydrologic atlas 730-E Paul D. Rydler, 1996; http://pubs.usgs.gov/ha/ha730/pub/ch_e/E-text.ascii) such as the Soil Conservation Service Lake and the Oak Creek tributary which receive effluent from the Lakeview sanitary systems. Contrary to the assertions of the Executive Director in the Response to Public Comments, the Sklar wells are not located upgradient to the Lakeview waste collection system and effluent discharge. Rather, ground water gradient analyses prepared by the U.S.G.S. and the Texas Water Development Board document that the direction of flow (and thus, potential impacts of surface recharge to the Woodbine) is not coordinate with surface gradient. Thus, contaminants in the Woodbine in the vicinity of Maypearl, Texas, flow in directions counter to the Lakeview surface effluent discharges. See <http://www.twdb.state.tx.us/publications/reports/GroundWaterReports/GWRReports/Individual%20Report%20htm%20files/report62.asp>

The Hearing Requests are Reasonable and Supported by Competent Evidence

7. The Applicant's Response to Contested Case Hearing asserts that Dr. Sklar is not an affected person or that his status as an affected person is not supported by competent evidence. The Executive Director's Response to Comments and Response to Hearing Request make numerous factual findings that demonstrate that Dr. Sklar is undoubtedly an affected person. The Executive Director's recommended list of issues to be referred for hearing by the SOAH explicitly refer to and are based on numerous factual findings in the permit record. The Executive Director's recommended referrals and the underlying factual record fully support the reasonableness and basis for Dr. Sklar's hearing requests. Moreover, Dr. Sklar's requests for reconsideration and requests for hearing were personally executed by Dr. Sklar and set out his personal knowledge of the facts stated therein. A request for contested case hearing does not require proof of the issues which the Requester seeks to address at hearing. See *Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Environmental Justice*, 962 S.W.2d 288 (Tex. App. Austin, 1998) and see, *United Copper Industries, Inc. v. Joe Grissom*, 17 S.W.3d 797 (Tex. App. Austin, 2000) (Hearing requester need only demonstrate potential adverse impact, it need not demonstrate ability to prevail on the merits).

Issues Requiring Contested Case Hearing – Whether the Permit, Including System Design and Permit Limits Adequately Address Foreseeable Risks from Facility Wastewater System Operations:

8. The following issues should be referred to SOAH for contested case hearing:
- Whether industrial activities by the Applicant (whether or not the waste water retains legal status as "Domestic") require enhanced system design, maintenance and record-keeping for collection, treatment and discharge systems.
 - Whether the content and increased volumes of discharge increase the risk of surface and subsurface releases and contamination of receiving waters and adjacent surface waters.
 - Whether the content and increased volumes of discharge to the small tributary to Oak Creek increase the risk of contamination of Dr. Sklar's ground water.
 - Whether the permit should be modified to ensure the collection and treatment system will be designed, built and operated to prevent surface and subsurface releases of untreated waste which threaten adjacent surface waters and the Sklar's' ground water.
 - Whether the numerous shallow wells located on and adjacent to the facility have been closed or are protected from system releases and discharges - the Applicant has failed to locate and ensure that surface pathways to vulnerable ground water have been terminated.
 - Whether, the Executive Director and Applicant's incorrect assumptions regarding ground water flows and potential impacts from system releases and effluent discharges would allow impacts to the Sklar ground water wells
 - Whether discharges authorized in the proposed permit will adversely impact the environment in the vicinity of the collection systems, treatment plant and downstream from the point of discharge.
 - Whether discharges authorized in the proposed permit will adversely impact the environment adjacent to the collection systems, treatment plant and point of discharge.
 - Whether this permit action will adversely affect the health and economic welfare of Dr. Sklar, his family and his property.

Respectfully Submitted,



PATRICK J. LARKIN

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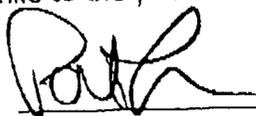
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**COUNSEL FOR HEARING REQUESTER
FREDRICK H. SKLAR, M.D.**

CERTIFICATE OF SERVICE

I certify that on May 10, 2010, a copy of the foregoing document was sent by first class mail, electronic mail, and/or facsimile to the persons on the attached Mailing List.



Patrick J. Larkin
Counsel for Hearing Requester
Frederick H. Sklar, M.D.

CHIEF CLERKS OFFICE

2010 MAY 10 AM 10:56

TEXAS
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ON ENVIRONMENTAL
QUALITY

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Date **May 10, 2010** Pages (including cover sheet)

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From

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Client/Matter number	Client/Matter name
21862.010	Sklar/TPDES Permit

Message

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 2010 MAY 10 AM 10: 56
 CHIEF CLERKS OFFICE

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