

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

April 5, 2010

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

Re: V & M RENTALS and G & T PROPERTIES, L.L.C.
TCEQ DOCKET NO. 2010-0358-MWD

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Garrett Arthur" followed by a small flourish.

Garrett Arthur, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. BOX 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

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DOCKET NO. 2010-0358-MWD

APPLICATION BY	§	BEFORE THE
V&M RENTALS AND	§	
G&T PROPERTIES, L.L.C.	§	TEXAS COMMISSION ON
PROPOSED TPDES	§	
PERMIT NO. WQ0014809001	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS**

To the members of the Texas Commission on Environmental Quality:

The Office of the Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to hearing requests in the above-referenced matter.

I. Introduction

On May 21, 2007, V&M Rentals and G&T Properties, L.L.C. ("Applicant") applied to the TCEQ for a new Texas Pollutant Discharge Elimination System (TPDES) permit. The permit would authorize the construction and operation of a new domestic wastewater treatment plant. The proposed plant would be located in Brazos County, near College Station, near the intersection of Walnut Road and Reveille Road.

Under the proposed permit, the plant would be allowed to discharge treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The treated effluent would be discharged to an unnamed tributary; then to White Creek; then to the Brazos River above the Navasota River, in Segment No. 1242 of the Brazos River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary. The

designated uses for Segment No. 1242 are high aquatic life uses, public water supply, and contact recreation.

The application was declared administratively complete July 30, 2007. The combined notice was published October 27, 2009 in *The Eagle* newspaper, and the Spanish language notice was published October 30, 2009 in *La Voz Hispana*. The Executive Director's (ED) Response to Comments (RTC) was mailed February 3, 2010, and the deadline for hearing requests was March 5, 2010.

The TCEQ received timely hearing requests from the following people: Carolyn Bienski; Gay Favor; Eugene, Truce, and Michael Salach; Aaron Tarone; Sue Valenta; and Lloyd Wassermann. For the reasons stated herein, OPIC recommends that the Commission grant the hearing requests of Gay Favor, Aaron Tarone, and Sue Valenta. OPIC recommends denial of the remaining requests. OPIC further notes that we will reconsider our recommendation if any of the requesting parties submit timely filed replies addressing the deficiencies discussed below. Any such reply should provide additional information to demonstrate that the requestor has a personal justiciable interest and qualifies as an affected person.

II. Applicable Law

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under Title 30, Texas Administrative Code (TAC) § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;

- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

III. Analysis of Hearing Requests

A. Whether the requestors are affected persons

Gay Favor

According to a map prepared by the ED's staff and attached hereto, the proposed discharge route crosses Gay Favor's property less than one mile from the proposed discharge point. Ms. Favor states that she has a water well 300 feet from White Creek and does not want the well contaminated with sewer water. Because of her proximity to the proposed plant and discharge route, Ms. Favor's concern for the water quality of her well is a personal justiciable interest which is not common to members of the general public. The TCEQ regulates the discharge of wastewater to protect surface and ground water. Therefore, a reasonable relationship exists between Ms. Favor's interest in water quality and the TCEQ's regulation of wastewater treatment plants. Based on her personal justiciable interest, OPIC finds that Gay Favor is an affected person in this matter.

Aaron Tarone

According to the ED's map, the proposed discharge route crosses Aaron Tarone's property less than one mile from the proposed discharge point, and his property is adjacent to the proposed site of the wastewater treatment plant. In his hearing request, Mr. Tarone states that he is worried about contamination of the local watershed. Because of his proximity to the proposed plant and discharge route, Mr. Tarone's concern for the water quality of the local watershed is a personal justiciable interest which is not common to members of the general public. The TCEQ regulates wastewater discharges to prevent contamination of local watersheds. Therefore, a reasonable relationship exists between Mr. Tarone's interest in water quality and the TCEQ's regulation of wastewater treatment plants. Based on his personal justiciable interest, OPIC finds that Aaron Tarone is an affected person in this matter.

Sue Valenta

According to the ED's map, Sue Valenta's property is adjacent to the proposed location of the wastewater treatment plant. In her hearing request, Ms. Valenta states that a "smelly" treatment plant will negatively affect the people and animals living in the area. Ms. Valenta is also concerned about flooding and states that the proposed site is in a flood plain. Finally, Ms. Valenta states that she does not want sewer water runoff from the plant to come on her property. Given Ms. Valenta's proximity to the proposed plant, her concerns regarding odor, flooding, and runoff qualify as personal justiciable interests not common to the general public. Further, there is a reasonable relationship between her stated interests and the activities to be regulated under the proposed permit. Based on her personal justiciable interests, OPIC finds that Sue Valenta is an affected person in this matter.

Carolyn Bienski

According to the ED's map, the proposed discharge route crosses Carolyn Bienski's property less than one mile from the proposed discharge point. While it is undisputed that her property is in close proximity to the proposed plant, Ms. Bienski's hearing request contains no information regarding how she is an affected person. The hearing request does not state any personal justiciable interests, such as concerns about her health or her water quality, and without any statement regarding a personal justiciable interest, proximity alone is not enough for OPIC to find that Ms. Bienski is an affected person.

Eugene, Truce, and Michael Salach

According to the ED's map, the proposed discharge route crosses the Salachs' property less than one mile from the proposed discharge point. While their property is very close to the proposed plant, the Salachs' hearing request contains no information regarding how they are affected persons. The hearing request does not state any personal justiciable interests, such as nuisance odor, and without any statement regarding a personal justiciable interest, proximity alone is not enough for OPIC to find that the Salachs qualify as affected persons.

Lloyd Wassermann

Brazos County Commissioner Lloyd Wassermann submitted a hearing request, but the hearing request does not indicate that the hearing request was submitted on behalf of Brazos County or that Lloyd Wassermann was acting in a representative capacity. Therefore, OPIC considers Lloyd Wassermann's request to be an individual hearing request and not a hearing request from the County. Furthermore, if the request is intended to be made on behalf of the County, there is no accompanying resolution adopted by the Commissioners Court demonstrating the County's intent. The hearing request contains no statement of Lloyd

Wassermann's location and distance relative to the proposed facility, and no information regarding how Lloyd Wassermann is an affected person. Without more specific information, OPIC cannot, at this time, find that Lloyd Wassermann is an affected person.

B. Which issues raised in the hearing requests are disputed

All issues raised in the hearing requests are disputed.

C. Whether the dispute involves questions of fact or of law

The disputed issues involve questions of fact.

D. Whether the issues were raised during the public comment period

All of the disputed issues of fact were raised during the public comment period.

E. Whether the hearing requests are based on issues raised solely in a public comment which has been withdrawn

The hearing requests are not based on issues raised solely in a public comment which has been withdrawn.

F. Whether the issues are relevant and material to the decision on the application

The hearing requests have raised the issue of odor. The issue of odor is specifically addressed by TCEQ regulations concerning the siting of domestic wastewater plants.¹ Therefore, odor is an issue which is relevant and material to the Commission's decision on this application.

The hearing requests have raised the issue of water quality. Water quality is an issue addressed by the Chapter 307 Texas Surface Water Quality Standards, and the issue is therefore relevant and material to the Commission's decision on this application.²

¹ See 30 TAC § 309.13.

² See 30 TAC Chapter 307.

The hearing requests have raised the issue of siting the proposed plant in a floodplain. The TCEQ regulates the siting of a wastewater treatment plant in a floodplain under Chapter 309 of its rules.³ Therefore, this issue is relevant and material to the Commission's decision on the application.

The hearing requestors question whether the proposed plant will be properly managed and monitored. The TCEQ regulates the monitoring of a wastewater treatment plant under Chapter 319 of its rules.⁴ Therefore, this issue is relevant and material to the Commission's decision on the application.

The hearing requests have raised the issue of groundwater quality. The TCEQ regulates the siting of wastewater treatment plants in relation to public and private water wells.⁵ The issue of groundwater quality is therefore relevant and material to the Commission's decision on this application.

G. Maximum expected duration for the contested case hearing

For the contested case hearing, OPIC estimates a maximum duration of nine months from the first day of the preliminary hearing to issuance of the proposal for decision.

³ See 30 TAC § 309.13.

⁴ See 30 TAC Chapter 319, Subchapter A.

⁵ See 30 TAC § 309.13.

IV. Conclusion

Having found that Gay Favor, Aaron Tarone, and Sue Valenta qualify as affected persons and have raised disputed issues of fact that are relevant and material to the Commission's decision on this application, OPIC recommends the Commission grant their hearing requests.

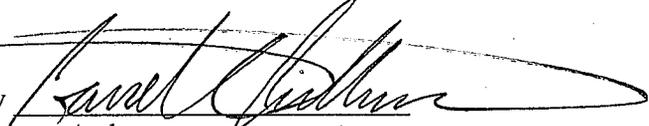
OPIC further recommends that the following issues be referred to the State Office of Administrative Hearings for a contested case hearing:

1. **Whether the proposed plant will cause nuisance odors**
2. **Whether the proposed plant will adversely impact surface water quality**
3. **Whether the proposed plant complies with TCEQ regulations concerning floodplains**
4. **Whether the proposed plant will be monitored in accordance with TCEQ regulations**
5. **Whether the proposed plant will adversely impact groundwater quality**

For the contested case hearing, OPIC recommends a duration of nine months from the first day of the preliminary hearing to issuance of the proposal for decision.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2010, the original and seven copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.

for *Tim McWhorter*
Garrett Arthur

MAILING LIST
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TCEQ DOCKET NO. 2010-0358-MWD

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