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July 2, 2010

Via e-file

La Donna Castañuela
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 1st Floor
Austin, TX 78759

Re: TCEQ Docket No. 2010-0653-MWD; *Application by Grason Volente Investments, Ltd. for Permit No WQ0014563-001*

Dear Ms. Castañuela:

Enclosed for filing in connection with the above-referenced matter is Grason Volente Investments, Ltd.'s Response to Hearing Requests. A copy is being served on each party of record.

Should you have questions, please do not hesitate to contact me at (512) 472-8021.

Sincerely,



Denise Fregeolle-Burk
Assistant to Emily W. Rogers

/dfb
Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2010-0653-MWD

APPLICATION BY	§	BEFORE THE
GRASON VOLENTE	§	
INVESTMENTS, LTD.	§	TEXAS COMMISSION ON
FOR PERMIT NO.	§	
WQ0014563-001	§	ENVIRONMENTAL QUALITY

APPLICANT’S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

Grason Volente Investments, Ltd. (“Applicant” or “Grason”), pursuant to 30 Texas Administrative Code (“TAC”) § 55.209(d), files this Response to the hearing request of John and Judy Schlotzhauer. The Schlotzhauers’ request for a “public hearing” should be denied because (1) there is no right to a contested case hearing on this renewal permit application; (2) the request fails to substantially comply with the requirements of 30 TAC § 55.201(d); (3) the Schlotzhauers have not demonstrated that they are an affected person with a personal justiciable interest affected in a way that is different from the general public; and (4) the request does not raise any issues of disputed fact or law.

1. There is no right to a contested case hearing on this renewal permit application.

The TCEQ rules state that there is no right to a contested case hearing on applications filed under Chapter 26 of the Texas Water Code to renew a permit if:

- (1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or requesting to materially change the pattern or place of discharge;
- (2) the activity will maintain or improve quality of waste authorized to be discharged;
- (3) any required opportunity for public meeting has been given;

- (4) the Executive Director has responded to all timely received and significant public comments; and
- (5) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

30 TAC § 55.201(i).

Grason's application meets all five of these requirements. The Applicant has not requested any change in the quantity of waste to be disposed or its disposal location. The Applicant is not requesting and no changes have been made to the discharge limits. An opportunity to request a public meeting was provided, but no request was made, and to the extent the Schlotzhauers' "public hearing" request might be considered a "public meeting" request, it does not meet the minimum requirements of 30 TAC § 55.154(c) regarding when the TCEQ holds public meetings. The TCEQ's Executive Director prepared, filed, and mailed his response to comments on March 25, 2010. Finally, the Applicant's compliance history for the past five years raises no issues regarding the Applicant's ability to comply with the permit. For these reasons, there is no right to a contested case hearing on this Application and the Schlotzhauers' request should be denied.

2. The Schlotzhauers' request fails to substantially comply with the requirements of 30 TAC § 55.201(d).

Section 55.201(d) requires hearing requests to contain a minimum amount of information so that the TCEQ may be able to determine if a contested case hearing should be granted based on the requirements of the law. Specifically, § 55.201(d) requires that the person identify his or her personal justiciable interest affected by the application, including providing information about the requestor's location and distance relative to the facility. Additionally, the request must list all relevant and material disputed issues of fact that were raised during the comment period

and that are the basis of the hearing request. 30 TAC § 201(d)(4). The Schlotzhauers' request contains none of this information and for this reason should be denied.

3. The Schlotzhauers are not affected persons.

In determining whether a person is an affected person, the TCEQ evaluates whether a 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, the TCEQ must consider, among other things, 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). The Schlotzhauers have not provided any information that demonstrates that they are affected persons under this criteria.

The Schlotzhauers do not provide any information about where their property is in relation to the drip irrigation site. Nevertheless, an internet search using the Google search engine shows that the Schlotzhauers' property is not adjacent to the drip irrigation site, or any property owned by the Applicant, and the Schlotzhauers' property is located nearly one-half mile from the drip irrigation field. Because of these reasons, there will be no impact to their property.

With respect to the impact of the drip irrigation site on Lake Travis, there will be none because the permit is a no-discharge permit. No effluent is permitted to leave the site. Additionally, the drip irrigation site does not sit on the banks of the lake. It is at least 1,000 feet from the edge of the cove and on the other side of Lime Creek Road from the lake. Moreover, Volente Peak Wastewater Treatment Plan will be required to produce effluent with a daily average concentration that does not exceed 5 mg/l BOD₅, 5 mg/l TSS, 2 mg/l NH₃-N, and 1 mg/l Total P, which is much better quality effluent than the quality of effluent produced by other

facilities on Lake Travis¹ and septic systems that line the lake. The water quality of Lake Travis is far more likely to be affected by the septic systems that line its banks than by effluent produced at the Volente Peak Wastewater Treatment Plant. For these reasons, the Schlotzhauers are not affected persons.

4. The Schlotzhauers' request does not raise any issues of disputed fact.

A hearing request may only be granted if it raises disputed issues of fact. *See* 30 TAC § 55.211. The Schlotzhauers simply request a “public hearing” and to be placed on the mailing list. The Schlotzhauers' request does not identify anything in the application or in the draft permit which they dispute or which they believe fails to comply with the requirements of Chapter 26 of the Texas Water Code and the TCEQ regulations. Because the Schlotzhauers have raised no issue of disputed fact, their request for a hearing should be denied.

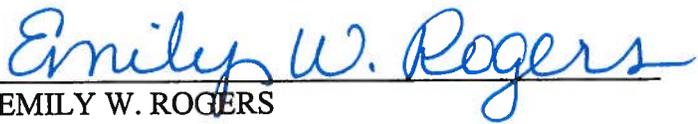
5. Conclusion.

There is no right to a contested case hearing on this Application because the Applicant's permit renewal application meets the requirements of 30 TAC § 55.201(i). The Schlotzhauers' request also fails to substantially comply with the TCEQ rules regarding contested case hearing requests. The Schlotzhauers have not demonstrated that they are affected persons or raised any issues of disputed fact. For these reasons, the Applicant respectfully requests that the Schlotzhauers' hearing request be denied and the Commission renew Grason Volente Investments, Ltd.'s Permit No. WQ0014563-001.

¹ *See e.g.* Cypress Creek Crossings, Ltd., TCEQ Permit No. WQ14203-001, located on the Cypress Creek Arm of Lake Travis. The Crossings WWTP is only required to produce effluent with a daily average concentration of 20 mg/l BOD₅ and 20 mg/l TSS. *See e.g.*, 620 Utility Co., Inc., TCEQ Permit No. WQ13953-001, located at Commander's Point just off of FM 620. The Commander's Point WWTP is only required to produce effluent with a daily average concentration of 20 mg/l BOD₅ with a reporting requirement for the daily average concentration of Total Nitrogen.

Respectfully submitted,

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By: 
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INVESTMENTS, LTD.

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 July 2, 2010 to the parties on the attached Mailing List.


EMILY W. ROGERS

MAILING LIST

for

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