

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

July 1, 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: GRASON VOLENTE INVESTMENTS, LTD.
TCEQ DOCKET NO. 2010-0653-MWD

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script that reads "Vic McWherter".

Vic McWherter, Senior Attorney
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

P.O. Box 13087

Austin, Texas 78711-3087

512-239-1000

Internet address: www.tceq.state.tx.us

TCEQ DOCKET NO. 2010-0653-MWD

IN THE MATTER OF THE	§	BEFORE THE
APPLICATION BY GRASON	§	
VOLENTE INVESTMENTS, LTD.	§	TEXAS COMMISSION ON
FOR RENEWAL OF	§	
WATER QUALITY PERMIT	§	ENVIRONMENTAL QUALITY
NO. WQ0014563001	§	

THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUEST

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) and files this Response to Hearing Request in the above-referenced matter.

I. INTRODUCTION

Grason Volente Investments, Ltd. (Applicant) has applied for a renewal of TPDES Permit No. WQ001456300. This permit authorizes operation of the Volente Peak Wastewater Treatment Facility (Facility) and the discharge of treated domestic wastewater at a daily average flow not to exceed .10 million gallons per day (MGD) via subsurface irrigation with a minimum area of 1,089,000 square feet in the interim phase, and a daily average flow not to exceed .175 MGD via subsurface irrigation with a minimum of 1,742,400 square feet in the final phase. Applicant has not yet constructed the Facility, which will be an activated sludge process plant operated in the extended aeration mode. Treatment units in the interim phase will include an equalization basin, bar screen, aeration basin with chemical addition for phosphorus removal, final clarifier, two effluent filters, two chlorine contact chambers and a sludge holding tank. In

the final phase, Applicant will add an additional aeration basin, final clarifier, two effluent filters, and two chlorine contact chambers.

The Facility will be located six miles west of the intersection of Ranch Road 620 and Farm-to-Market Road 2769 and 1.5 miles north of Farm-to-Market Road (Volente Road) in Travis County, Texas. The Facility and disposal site are located in the drainage basin of Lake Travis. No discharge of pollutants into water in the State is authorized by this permit. The permit also contains provisions for the hauling and disposal of sludge consistent with Commission rules. The permit proposed for renewal has been updated to include special provisions that are consistent with the Commission's Chapter 222 rules regarding subsurface irrigation disposal. Effluent limitations and monitoring requirements are unchanged from the existing permit.

Grason Volente Investments, Ltd. filed this permit renewal application on May 29, 2009, and the executive director declared the application administratively complete on July 8, 2009. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on July 30, 2009 in the *Austin American Statesman*. John and Judy Schlotzhauer filed a hearing request received by the chief clerk's office on August 4, 2009. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on January 7, 2010 in the same newspaper. The Executive Director's Decision and Response to Comments was mailed on March 26, 2010, extending the deadline for requests for reconsideration or contested case hearing thirty calendar days to April 26, 2010. No additional hearing requests were filed.

II. REQUIREMENTS OF APPLICABLE LAW

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code § 5.556 added by Acts 1999, 76th Leg., ch 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application. 30 TEXAS ADMINISTRATIVE CODE (TAC) § 55.201(d). 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." This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will 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 and safety of the person, and on the 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.

The Commission shall grant an affected person's timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the commission's decision on the application. 30 TAC §55.211(c).

Accordingly, pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;
- 2) which issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's response to Comment;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

III. DISCUSSION

A. Right to a Contested Case Hearing

Texas Water Code §26.028(d) and 30 TAC §55.201(i) provide that no right to a hearing exists for certain water quality discharge permits. These authorizations include applications to renew or amend a permit if the applicant is not trying to:

- (A) increase significantly the quantity of waste to be discharged;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) 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;

Under the current application, Applicant would not increase the quantity of waste to be discharged from its existing permit, effluent limitations and monitoring requirements would remain the same as the existing permit requirements, opportunity for a public meeting was given, the executive director has filed a response to comments that addresses all timely and significant public comment, and because the Facility is not yet in operation, the applicant's compliance history is "average" by default. Therefore, OPIC finds that no right to a hearing exists on the proposed renewal. If the Commission should find otherwise, OPIC offers the following hearing request analysis.

B. Affected Person Analysis

The Office of the Chief Clerk received a timely filed hearing request from John and Judy Schlotzhauer. The requesters state "[w]e are requesting a public hearing on the above noted Permit." Additionally, they requested to be on the permanent mailing list for the Facility. The request states no additional information about the interests the requesters seek to protect or their location relative to the Facility. Therefore, OPIC cannot find that the requesters are affected persons.

C. Issues Raised

As stated above, the requesters asked for a hearing and asked to be placed on the mailing list. The request addresses no other concerns. Therefore, OPIC cannot find that the request satisfies the requirement of raising disputed issues of fact that are relevant and material to the Commission's decision on this application. 30 TAC §55.211.

IV. CONCLUSION

OPIC recommends that the Commission find that no right to a hearing exists for the proposed permit renewal. OPIC further finds that the requesters have not shown that they are affected persons nor have they raised issues which may be referred to the State Office of Administrative Hearings. For these reasons, OPIC recommends that the Commission deny the hearing request.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By *Vic McWherter*
Vic McWherter
Office of Public Interest Counsel
State Bar No. 0785565
(512)239.6363 PHONE
(512)239.6377 FAX

CERTIFICATE OF SERVICE

I hereby certify that on July, 1 2010, the original and seven true and correct copies of the Office of the Public Counsel's Response to Hearing Request were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

Vic McWherter
Vic McWherter

MAILING LIST
GRASON VOLENTE INVESTMENTS, LTD.
TCEQ DOCKET NO. 2010-0653-MWD

FOR THE APPLICANT:

Greg Hammonds
Grason Volente Investments, Ltd.
205 Wild Basin Rd, Bldg. 2, Ste. A
West Lake Hills, Texas 78746
Tel: (512) 684-3880
Fax: (281) 656-0540

Vonnie Baker
Jim Clarno
Backer-Aicklen & Associates, Inc.
507 West Liberty St.
Round Rock, Texas 78664-5129
Tel: (512) 244-9620
Fax: (512) 244-9623

FOR THE EXECUTIVE DIRECTOR

Christiaan Siano, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

FOR OFFICE OF PUBLIC ASSISTANCE

via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTORS:

John & Judy Schlotzhauer
16415 Jackson St.
Volente, Texas 78641-6045