

TCEQ DOCKET NO. 2016-0306-MWD

APPLICATION BY	§	BEFORE THE
	§	
CITY OF FARMERSVILLE	§	TEXAS COMMISSION ON
	§	
FOR PERMIT NO. WQ0014778001	§	ENVIRONMENTAL QUALITY

APPLICANT'S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

The City of Farmersville ("Applicant"), pursuant to 30 Texas Administrative Code ("TAC") § 55.209(d), files this Response to Hearing Requests made to the Texas Commission on Environmental Quality ("TCEQ" or "Commission") for a contested case hearing on the above-referenced renewal permit application, and would respectfully show the Commissioners the following:

I.
Introduction

The Applicant submitted an application with the TCEQ to renew its existing Texas Pollutant Discharge Elimination System Permit No. WQ0014778001 ("Permit"), which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The wastewater treatment plant, which, once constructed, will serve customers in the City of Farmersville, is located approximately 0.5 mile southwest of the intersection of State Highway 78 and County Road 550, in Collin County, Texas 75442. The treated effluent will be discharged to an unnamed tributary, then to the Elm Creek Arm of Lake Lavon in Segment No. 0821 of the Trinity River basin. The renewal application requests no

changes to the existing permit that would increase the quantity of the discharge, reduce the quality of the discharge, or alter the point of the discharge.

The Notice of Receipt of Application and Intent to Obtain Water Quality Permit was issued by the TCEQ on June 29, 2015, and the Notice of Application and Preliminary Decision for TPDES Permit was issued October 12, 2015. J.A. and Shirley J. Martin (“Martins”) filed two comment letters dated August 30, 2015 and November 19, 2015. The Martins also requested a contested case hearing on this Application.¹

This case is not one for which any hearing requests may be granted. The Applicant is merely seeking a renewal of its permit, without change to the proposed quantity or quality of the discharge, or the location of the discharge. Under TCEQ rules, there is no right to a contested case hearing for this type of permit application. Moreover, the hearing requestors have not demonstrated that they are affected persons.

II.

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

¹ It should be noted that the Martins protested this Permit and were granted a contested case hearing when the Permit was initially issued. See TCEQ Docket No. 2008-1305-MWD. The TCEQ granted the Permit upon the recommendation of the Administrative Law Judge. The Martin’s appeal of the Commission’s decision is pending in Travis County District Court. See D-1-GN-11-003012.

- (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).

The Applicant'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 and, thus, the quality of the discharge will be maintained. TCEQ's Notice of Application and Preliminary Decision for the Applicant's permit renewal notified the public that they could request a public meeting on this application. However, no public meeting was requested. The TCEQ's Executive Director prepared, filed, and mailed his response to comments on January 21, 2016. 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 Martin's request should be denied.

III.

The Martin's Have Not Demonstrated They Are Affected Persons

A. Legal Authority

To be granted a contested case hearing, a person must be an "affected person," meaning the person has "a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application" that is not "common to members of the general public."² The person must describe, briefly but specifically, how and why he or she will be affected by the change proposed in the application.³ An interest common to members of the

² 30 TAC § 55.203(a).

³ *Id.*

general public does not qualify as a personal justiciable interest.⁴ The Commission is instructed to consider a list of non-exclusive factors in determining whether a person is an affected person, including:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) the 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) the 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 the 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.⁵

The requestor must show a concrete and particularized, legally protected interest that is actual or imminent rather than conjectural or hypothetical, or an “injury in fact.”⁶ Only legally protected interests that are sufficiently particularized and that will be actually or imminently affected by the application are sufficient to confer standing.⁷ A general concern or allegation about the negative effects on a requestor’s environmental, scientific, or recreational interests alone is not sufficient to confer standing in the absence of allegations that the individual or group has an interest in property affected by the application.⁸

⁴ 30 TAC § 55.203(a).

⁵ *Id.* § 55.203(c).

⁶ *Save Our Springs*, 304 S.W.3d at 878 (citing *Lujan v. Defenders of Wildlife*, U.S. 555, 560-61 (1992)).

⁷ *Id.* at 882.

⁸ *See Save Our Springs*, 304 S.W.3d at 882.

B. Evaluation of the Martin's Hearing Requests

The Martin's have failed to demonstrate that they are affected by the Application. They allege the discharge will flood their property in part with effluent from the plant and make flooding on their property more dramatic. In determining whether a requestor is an affected entity, the TCEQ must consider, among other things, whether the interest claimed is one protected by the law under which the application will be considered.⁹ As noted by the Executive Director in the Response to Comments, TCEQ has no jurisdiction to address flooding issues in the wastewater permitting process. The TCEQ's jurisdiction is limited to assessing the proposed discharge to assure that it is protective of the water quality of the state's water resources.

The Martins also raise several other concerns about the Application in their request for a contested case hearing. However, none of those concerns allege that the Martin's are in some way affected by the Application. Moreover, many of comments regarding the Application are incorrect and are contradicted by the Application itself. Thus, the Martin's have not demonstrated they are affected persons entitled to a contested case hearing.

**IV.
There are No Relevant Issues of Fact and Law**

The Martins have not raised any issues of fact or law that should be referred to contested case hearing. As previously noted, many of the comments, such as the comments regarding this discharge route, are clearly contradictory to what is in the Application. Other issues raised by the Martins, such as flooding concerns, are not within the TCEQ's jurisdiction. There are no relevant issues of fact or law to refer to a contested case hearing.

⁹ 30 TAC § 55.203(c).

V.
Conclusion

For the reasons stated herein, the Applicant respectfully requests that the TCEQ deny the hearing request and grant the renewal of the Permit.

Respectfully submitted,

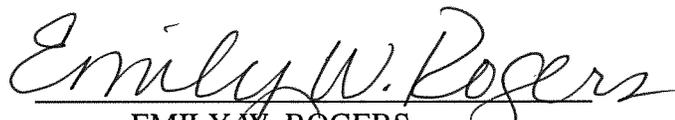
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CERTIFICATE OF SERVICE

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 April 18, 2016 to the parties on the attached Mailing List.


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