

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 18, 2016

Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: Executive Director's Response to Hearing Requests for City of Farmersville;  
Permit No. WQ0014778001; Docket No. 2016-0306-MWD

Dear Ms. Bohac:

Enclosed for filing are the original and seven copies of the "Executive Director's Response to Hearing Requests." If you have any questions or comments, please call me at (512) 239-0676.

Sincerely,

A handwritten signature in black ink, appearing to read "LH", written over the printed name of Linda Horng.

Linda Horng  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Mailing List

**TCEQ Docket NO. 2016-0306-MWD**

<b>APPLICATION BY CITY OF FARMERSVILLE FOR RENEWAL OF TCEQ PERMIT NO. WQ0014778001</b>	<b>§ § § §</b>	<b>BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>
--	----------------------------	---

---

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

---

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to hearing requests on the application by City of Farmersville, for a renewal to TCEQ permit number WQ0014778001 and on the Executive Director's preliminary decision. The Office of the Chief Clerk (OCC) received one timely hearing request from J.A. and Shirley Martin.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ's Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

Attached for Commission consideration is a satellite map of the area.

**I. Background**

***A. Description of Facility***

City of Farmersville has applied for a renewal of its existing permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.10 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.25 MGD in the Interim II phase, and a daily average flow not to exceed 0.50 MGD in the Final phase.

The facility has not been built and will be located approximately 0.5 miles 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; thence to

Elm Creek Arm of Lavon Lake in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed tributary. The designated uses for Segment No. 0821 are primary contact recreation, public water supply, and high aquatic life use.

### ***B. Procedural Background***

The TCEQ received the City of Farmersville application for a renewal of a TPDES permit on June 8, 2015 and declared it administratively complete on June 29, 2015. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on July 12, 2015, in the *McKinney Courier Grozett*. The ED completed the technical review of the application and prepared an initial TPDES draft permit. The Notice of Application and Preliminary Decision (NAPD) was published on October 25, 2015 in the *McKinney Courier Grozett*.

The public comment period ended on November 24, 2015. The ED's Response to Public Comment was filed on January 21, 2016. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76<sup>th</sup> Legislature, 1999.

## **II. The Evaluation Process for Hearing Requests**

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. The Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. This application is subject to the HB 801 requirements.

### ***A. Responses to Requests***

"The executive director, the public interest counsel, and the applicant may submit written responses to [hearing] requests . . . ." 30 TAC § 55.209(d).

According 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 of 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.

### ***B. Hearing Request Requirements***

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements. As noted in 30 TAC § 55.201(c):

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was 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.

According to 30 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. If the request is made by

a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(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.

### ***C. Requirement that Requestor be an "Affected Person"***

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person." The factors to consider in making this determination are found in 30 TAC § 55.203 and are as follows:

(a) For any application, 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.

(b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- (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.

#### ***D. Referral to the State Office of Administrative Hearings***

30 TAC § 50.115(b) details how the Commission refers a matter to the State Office of Administrative Hearings: “When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(c) further states:

The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue: (1) involves a disputed question

of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.

***E. Permit Applications Where There is No Right to a Contested Case Hearing***

30 TAC § 55.201(i)(5) outlines when a renewal or amended permit application proposed to be issued under the Texas Water Code, Chapter 26, is not subject to a contested case hearing. A permit renewal or amendment is not subject to a contested case hearing when:

- (A) the applicant is not applying to:
  - (i) increase significantly the quantity of waste authorized to be discharged; or
  - (ii) change materially the pattern or place of discharge;
- (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;

**III. Evaluation of Hearing Requests**

***A. Whether the Requestor Complied With 30 TAC §§ 55.201(c) and (d).***

The hearing requestors submitted timely written contested case hearing (CCH) requests that included contact information and raised disputed issues. Each

hearing requestor identified their personal justiciable interest in the application that is not common to the general public. In addition, the requestors indicated that their property is adjacent to the wastewater treatment facility site.

The ED recommends finding that all requestors substantially complied with 30 TAC §§ 55.201(c) and (d).

***B. The Requestors Have no Right to a Contested Case Hearing on this Renewal Application.***

This is an application for renewal of a wastewater discharge permit and the Commission must determine whether there is a right to a contested case hearing. The CCH requests in this case should be denied under TWC § 26.028(d) and 30 TAC § 55.201(i)(5), because there is no right to a contested case hearing for this permit renewal.

30 TAC § 55.201(i)(5) states that there is no right to a CCH for applications that seek to renew or amend a permit under Texas Water Code, Chapter 26, if: (1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge, (2) The activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged, (3) Any required opportunity for public meeting has been given, (4) Consultation and response to all timely received and significant public comment was done, 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.

This application seeks to renew TLAP permit no. WQ0014778001. This is a renewal of a permit issued in 2011. Effluent limitations and monitoring requirements in the draft permit remain the same as the existing permit effluent limitations and monitoring requirements. The draft permit does not increase the

quantity of waste authorized to be discharged or change the pattern or place of discharge. The ED recommends finding that the activity to be authorized by the renewal permit will maintain or improve the quality of waste authorized to be discharged.

No requests for public meeting were received. The ED received one comment letter during the public comment period and responded to all timely received relevant and material, or significant public comments in the RTC filed on January 21, 2016.

The compliance history for the Applicant does not raise an issue about the Applicant's ability to comply with the material terms of the draft permit. The Applicant has a high compliance history classification and a 0.00 numerical rating. Therefore, the Applicant's compliance history raises no issues regarding the Applicant's ability to comply with the material terms of the permit.

The ED recommends finding that the permit renewal application meets all of the conditions in 30 TAC § 55.201(i)(5) and that there is no right to a contested case hearing in this case.

The ED recommends that the Commission find that the Requestors are not entitled to a contested case hearing under TWC § 26.028(d) and 30 TAC § 55.201(i)(5).

## **VII. Executive Director's Recommendation**

The ED recommends the following actions by the Commission:

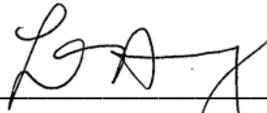
1. Find that there is no right to a contested case hearing under TWC § 26.028(d) and 30 TAC § 55.201(i)(5); and
2. Deny all contested case hearing requests.

Respectfully submitted,  
Texas Commission on Environmental Quality

Richard A. Hyde, P.E.  
Executive Director

Caroline Sweeney, Deputy Director  
Office of Legal Services

Robert Martinez, Director  
Environmental Law Division

By:  \_\_\_\_\_

Linda Horng, Staff Attorney  
Environmental Law Division  
State Bar No. 24078690  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
Phone: (512) 239-0676  
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

### **Certificate of Service**

I certify that on April 18, 2016, the Executive Director's Response to Hearing Requests for the City of Farmersville, TCEQ Permit No. WQ0014778001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

 \_\_\_\_\_

Linda Horng, Staff Attorney  
Environmental Law Division  
State Bar No. 24078690

**MAILING LIST  
CITY OF FARMERSVILLE  
DOCKET NO. 2016-0306-MWD; PERMIT NO. WQ0014778001**

**FOR THE APPLICANT:**

Benjamin L. White  
City of Farmersville  
205 South Main Street  
Farmersville, Texas 75442-2209  
Tel: (972) 782-6151  
Fax: (972) 782-6604

Eddy W. Daniel  
Daniel & Brown, Inc.  
P.O. Box 606  
Farmersville, Texas 75442-0606  
Tel: (972) 784-7777  
Fax: (972) 782-7721

**FOR THE EXECUTIVE DIRECTOR**  
via electronic mail:

Linda Horng, 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

Hilario Arriaga, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division, MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0486  
Fax: (512) 239-4430

Brian Christian, Director  
Texas Commission on Environmental  
Quality  
Environmental Assistance Division  
Public Education Program, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-5678

**FOR PUBLIC INTEREST COUNSEL**  
via electronic mail:

Vic McWherter, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

**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:

Bridget C. Bohac  
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

REQUESTER(S)/INTERESTED  
PERSON(S):

See attached list.

**REQUESTER(S)**

J A & Shirley J Martin  
Po Box 497  
Gordonville, TX 76245-0497

**PUBLIC OFFICIALS - INTERESTED**

**PERSON(S)**

The Honorable Jodie Laubenberg  
Tx House Of Representatives  
206 N Murphy Rd  
Murphy, TX 75094-3512

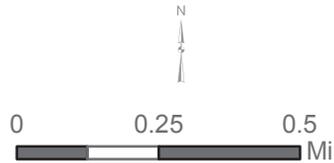
# City of Farmersville WQ0014778001

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

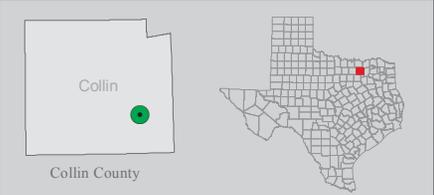
Date: 4/11/2016



- WWTP Boundary
- 1 Mile Radial distance from WWTP
- J.A. and Shirley Martin
- Watercourse
- Waterbody
- Major Highways
- Intermediate Roads
- Minor Roads

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Collin County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Collin County (red) in the state of Texas.