

**J. A. and Shirley J. Martin**  
**P. O. Box 497**  
**Gordonville, TX 76245**  
**972-824-8912**

November 19, 2015

Executive Director  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

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REVIEWED

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By         

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CHIEF CLERKS OFFICE

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CONFIDENTIAL  
ON FILE WITH TCEQ  
DATE: 11/19/15

Re: **REQUEST FOR CONTESTED  
CASE HEARING.**

Protest to TCEQ Consideration of  
Application to renew TPDES Permit  
No. WQ0014778001, City of Farmerville, Tx.

Dear Sir or Madam:

Please consider this as a **request for a Contested Case Hearing** and a protest to the action described in the TCEQ Notice issued June 29, 2015 regarding the proposed sewage treatment plant permitted to Farmersville Investors, LLP (FI) which continues to be in litigation. I am the owner of the property north of and adjacent to the site identified in the Application. We insist that the renewal of the Farmersville Investors permit is improper and unnecessary. FI has sold the site pending a new and different facility.

I have obtained from the City of Farmerville, Texas (CFV) a copy of the application dated June 2, 2015 which is apparently the subject of the TCEQ notice. That application appears to be for a different facility but at or near the same location of the earlier permit. The application form states that the facility is "still in design" and contains no details concerning technical standards, flow, the discharge route nor the discharge point. As regards the discharge point, the application states that there will be no use of city or county easement or right-of-way.

However, the third or fourth and final discharge point for the permit issued to FI was via a pipeline to be place under Collin County Road 550 to the road drainage ditch, then flowing either via the ditch or through a pipe to the concrete "wing wall" at the large conduit under CR 550 onto property controlled by the USA Corps of Engineers (Lake Lavon). I have never seen an application identifying that point. The USACOE has never granted access or permission of a discharge point on land it controls and maintains at that point, contrary to instructions of TCEQ concerning applications for permits.

Thus, one must assume the discharge route and discharge point are not the same for the CFV "new sewer plant." Regarding the discharge disposal site, the applicant's response

*mm*

(page 13, item 7 i.) concerning the owner of the effluent disposal site is “n/a” generally meaning ‘not applicable.’ Although the application states that a map is included showing the discharge and discharge point (page 14, item 8 b.), the copy provided to me does not contain such.

None of the maps/diagrams provided with the application identify the discharge route or point and generally misidentify the owners of directly affected adjacent property. Even the map “DISCHARGE APPLICATION FOR OF FARMERSVILLE” prepared by the City Engineer designing the new plant includes absolutely no information disclosing the sewerage flow or discharge other than a diagram of the 10 acres proposed to be used for the site.

The application on its face states that the plant is yet to be designed. The minutes of Farmersville City Council meeting, June 23, 2015 (three weeks after the date of the application), include the following:

**ITEM IV – J) UPDATE ON WASTEWATER TREATMENT** City Manager Ben White reported Farmersville Economic Development Corporation has been asked to spend a healthy amount on the cost of \$1.8 million for engineering fees. The City has a 90 day capital fund to be used for capital expenditures for wastewater. The funds are performing well and the City has set aside \$100,000 for needed expenditures. The 90 day fund is a management style and is not required by ordinance. If the Council directs, the fund could be changed to 60 or 30 day fund for a couple of years to assist with the engineering costs. The same style of funding is being accomplished for the Electric Department as well. Each item for the engineering will be reviewed and ensured requiring the cost. Jim Foy expressed \$600,000 seems hefty for the design of the wastewater plant. He felt Kimley Horn needs to understand the City’s requirements. A future meeting is planned to discuss the details and requirements to scope the project accurately. FEDC has set aside \$150,000 for this budget year which includes the routing alignment. Mr. White stated there is a cost savings if the City does the easements and began the talks with the land owners. In the next month or two, a master plan will be developed to include the existing plant and how to phase in the new plant. Phasing in the lift stations will also be considered.

Those who are or may be affected have no way of knowing what to protest at this point. That is the logical and reasonable conclusion. If the first permit is renewed, the “new sewer plant” design may be approved by TCEQ because the new plant design and flow are considered “administrative” changes for which no public input is considered notwithstanding the instructions of TCEQ concerning the discharge point ; that a change in the discharge point is a “Major Revision” putting the application back to step one.

If the facility were to be built as per the application for which renewal is sought (still in litigation), without question our property will be most severely and detrimentally impacted. In the Contested Case Hearing regarding that permit, the applicant submitted for the Administrative Law Judge’s consideration documents showing their expert measurements of elevation in the area of the discharge. Several of those elevations were at and below the conservation pool level (492’) of Lake Lavon, including those west of CR 550, on our property. In an effort to show that the discharge point did not dump directly into Lake Lavon, the applicant maintained that a rise in elevation about 90 yards east of CR 550

was silted-in to a level slightly above the 492' level; that therefore Lake Lavon was down stream from the discharge point. If that is the case, the first applicant's own data shows that our property will be flooded in part with the sewage plant discharge.

On April 25, 2015 the level of Lake Lavon reached 492.11 feet. On May 30, 2015 the level was at 503.87 feet. The level remained above 492' until August 6. On August 5, 2015, when the level had fallen to 492.15' I went to the site to observe the impact of the flooding on our property and east of CR 550. Without question massive further silting occurred downstream from CR 550. The scouring run-off from above CR 550 must have shot through the large culvert with such force and carrying so much additional silt that at this time, the build up is probably as much as four feet above the stream bed (I took several elevation measurements with GPS devices above 495' - not sure how accurate the devices are, but the change in the area is obvious and dramatic).

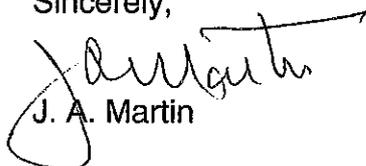
A pool of water about 1 foot deep was standing at the culvert apron on the east and on the west. Thus, the flooding of our property will be even more dramatic now. The first applicant and TCEQ argued (successfully to this point) that the standard was keyed to topography as it existed at the moment rather than the topography with the 492' level as prescribed by USACOE. That being the case, the facts as they are now must control, if that first permit is being considered along with the new plant to be designed.

This matter has been in process for almost ten years. I have spent a great amount of resources resulting in numerous changes. The first applicant argued their project should be allowed to go forward; that our protests were delaying their start of development. The first permit is now years old.

Our plans for our property have been dashed. We are convinced that the undiluted effluent lagoon that will result is not just undesirable, but more importantly dangerous. Even if our use of our property is ignored, the plans are for what will be an ultimately densely populated neighborhood, certainly with many children in the immediate area. As a matter of fact, plans for an elementary school are included in the development. Surely some at TCEQ and on the Commission played in mud puddles, fished for crawdads, and so on when very young and now recognize and acknowledge the danger in this instance.

I ask that the Executive Director at the least give pause to this application and the renewal of the first permit until such time as the facts are known to both the applicant and to us.

Sincerely,

  
J. A. Martin

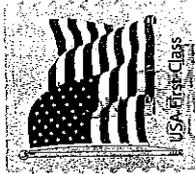
  
S. J. Martin

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P.O. Box 497

GORDONVILLE, TX 76245

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P.O. Box 13087  
Austin, TX 78711-3087





identifying that point. The USACOE has not granted access or permission even to this date for a discharge point on land it controls and maintains at that point, contrary to instructions of TCEQ concerning applications for permits requiring that the discharge route and discharge point be identified and owned or controlled by the applicant.

Thus, one must assume the discharge route and discharge point are not the same for the CFV "new sewer plant." Regarding the discharge disposal site, the applicant's response (page 13, item 7 i.) concerning the owner of the effluent disposal site is "n/a" generally meaning 'not applicable.' Although the application states that a map is included showing the discharge and discharge point (page 14, item 8 b.), the copy provided to me does not contain such.

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the applicants submitted for the Administrative Law Judge's and TCEQ Commissioners' consideration documents showing their expert measurements of elevation in the area of the discharge. Several of those elevations were at and below the conservation pool level (492') of Lake Lavon, including those west of CR 550, on our property. In an effort to show that the discharge point did not dump directly into Lake Lavon, thus requiring a higher oxygen content, the applicant maintained that a rise in elevation about 90 yards east of CR 550 was silted-in to a level slightly above the 492' level; that therefore Lake Lavon was down stream and isolated from the discharge point. If that is the case, the first applicant's own data shows that our property will be flooded in part with the sewage plant discharge.

On April 25, 2015 the level of Lake Lavon reached 492.11 feet. On May 30, 2015 the level was at 503.87 feet. The level remained above 492' until August 6. On August 5, 2015, when the level had fallen to 492.15' I most recently went to the site to observe the impact of the flooding on our property and east of CR 550 that resulted from the extremely heavy rainfall. Without question massive further silting occurred downstream from CR 550. The scouring run-off from above CR 550 must have shot through the large culvert with such force and carrying so much additional silt that at this time, the build up is probably as much as four feet above the stream bed. I took several elevation measurements above 495' with GPS devices. Although I am not certain of the precise accuracy of the devices I used, the change in the area is obvious and dramatic even without measurement.

A pool of water about 1 foot deep was standing at the culvert apron on the east and on the west. Thus, the flooding of our property will be even more dramatic now. The first applicant and TCEQ argued (successfully to this point) that the standard was keyed to topography as it existed at the moment rather than the topography with the 492' level as prescribed by USACOE. That being the case, the facts as they are now must control, if that first permit is being considered along with the new plant to be designed.

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This matter has been in process for almost ten years. I have spent a great amount of time and effort that resulted in numerous changes. The first applicant argued their project should be allowed to go forward; that our protests were

delaying their start of development. The first permit is now years old. Not one shovel of dirt has been turned and the plan now apparently is to start over - some day..

We ask that the Executive Director stop or at the least give pause to this application and stop the renewal of the first permit until such time as the facts are known to both the applicant and to those affected.

Sincerely,

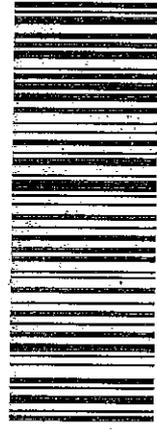


J. A. Martin

Copy: Ben Smith, Farmersville City Manager

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Georgetown, TX 76245

**CERTIFIED MAIL**



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