

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 18, 2010

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-09-2895; TCEQ Docket No.2008-1305-MWD; In the Matter of the Application by Farmersville Investors, LP, for Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014778001

Dear Mr. Trobman:

Exceptions, replies, and a response have been filed in the above-referenced case by Farmersville Investors, LP (Applicant), James A. and Shirley Martin (Protestants), the Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission), and the Office of Public Interest Counsel (OPIC).

As requested by the ED at page 2 of his Reply to Exceptions, the ALJ strikes Appendix 1; Appendix 2, page 1; and Appendix 4 from Protestants' Exceptions to the Proposal for Decision.

The primary factual dispute at the hearing on the merits was whether the receiving water body is properly characterized as an intermittent stream. The ALJ found that the receiving water is an intermittent stream but discharge from Applicant's proposed sewage treatment plant could at times be directly into Lavon Lake when the water is high. The ALJ therefore recommended that additional dissolved oxygen (DO) computer modeling be performed to ensure surface waters are protected when effluent is discharged directly into the lake. However, having reviewed the exceptions, replies, and Applicant's response, the ALJ is persuaded that the DO criterion included in the draft permit is adequate to protect Lavon Lake when the discharge is directly into the lake.

The ALJ therefore removes the recommendation for additional DO computer modeling and recommends that the proposed changes to the PFD set out in the ED's exceptions letter be adopted. Specifically, Findings of Fact Nos. 24, 32, 35, and 37; Conclusions of Law Nos. 8 and 10; and Ordering Provision No. 1 contained in the Proposed Order should be revised.

Should the Commission deem it necessary for arriving at a final decision, the ALJ recommends that the record be re-opened for the limited purpose of admitting the deposition testimony of James Michalk that is attached to Applicant's Response to Exceptions. The testimony is that computer modeling for discharge directly into Lavon Lake results in identical limits and criteria for all oxygen-related constituents in all phases of plant life as those contained in the draft permit. Applicant did not ask to re-open the record to admit the testimony; no party objected to its inclusion in Applicant's Response to Exceptions. All parties except OPIC participated in the deposition. The attachment of the deposition to Applicant's response could be treated as an implicit request to re-open the record to which there has been no objection to date.

The ALJ also agrees with the ED's exceptions to Findings of Fact No. 36 and Conclusion of Law No. 13, and recommends the changes as set out in the ED's exceptions letter. Additionally, the ALJ agrees with the ED and Applicant that a provision requiring the permit to control over Applicant's application is not necessary and need not be added to the Order as recommended at page 27 of the Proposal for Decision.

Sincerely,


Sharon Cloninger
Administrative Law Judge

SC/lh
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: FARMERSVILLE INVESTOR, LP
SOAH DOCKET NUMBER: 582-09-2895
REFERRING AGENCY CASE: 2008-1305-MWD

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ SHARON CLONINGER

REPRESENTATIVE / ADDRESS

PARTIES

RICHARD LOWERRE
ATTORNEY
LOWERRE, FREDERICK, PERALES, ALLMON &
ROCKWELL
707 RIO GRANDE, SUITE 200
AUSTIN, TX 78701
(512) 469-6000 (PH)
(512) 482-9346 (FAX)
Mail@LF-LawFirm.com

JAMES A. AND SHIRLEY J. MARTIN

KATHY HUMPHREYS
ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087, MC-175
AUSTIN, TX 78711-3087
(512) 239-3417 (PH)
(512) 239-0606 (FAX)
khumphre@tceq.state.tx.us

TCEQ EXECUTIVE DIRECTOR

LES TROBMAN
GENERAL COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-101 P.O. BOX 13087
AUSTIN, TX 78711-3087

(512) 239-5533 (FAX)

TCEQ EXECUTIVE DIRECTOR

AMY SWANHOLM
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6823 (PH)
(512) 239-6377 (FAX)
aswanhol@tceq.state.tx.us

TCEQ PUBLIC INTEREST COUNSEL

JEFFREY S. REED
LLOYD GOSSELINK ROCHELL & TOWNSEND, P.C.
816 CONGRESS AVENUE, SUITE 1900
AUSTIN, TX 78701-2478
(512) 322-5800 (PH)
(512) 472-0532 (FAX)
jreed@lglawfirm.com

FARMERSVILLE INVESTORS, L.P.

xc: Docket Clerk, State Office of Administrative Hearings