TEXAS
COMMISSION
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QUALITY

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CHIEF CLERKS OFFICE

TCEQ PROPOSED PERMIT NO. WQ0014778001

APPLICATION BY FARMERSVILLE INVESTORS, L.P. for PROPOSED TPDES PERMIT NO. WQ0014778001	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Farmersville Investors, LP application and ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments.

The Office of the Chief Clerk timely received comment letters and oral comments at the public meeting from the following persons: **Carla J. Chambless, Michael D. Chambless, Joni Clark, James Costabell, Jill Fuller, Amber Green, Nancy Holloman, John E. Lehan, Douglas Laube, James A. Martin, Frank Moore, Paul and Bettye Petree, Betty Pryor, Camille Reagan, Virginia Ripley, Martin C. Rochelle** representing the **North Texas Municipal Water District (the District), R.B. Seward, Deanna Tyler, Albert VanderVelde, Wilda Faye VanderVelde**, and **Lee Warren**.

This Response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Farmersville Investors, LP (Applicant) has applied to the TCEQ for a new permit that will authorize the Applicant to discharge treated domestic wastewater at a daily average flow not to exceed 0.1 million gallons per day (MGD) in the interim I phase, 0.25 MGD in the interim II phase, and 0.5 MGD in the final phase. The proposed wastewater treatment facility will serve a new residential subdivision.

The treated effluent will be discharged to an unnamed tributary, then to the Elm Creek Arm of Lavon Lake in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life use for the unnamed tributary. The designated uses for Segment No. 0821 are contact recreation, public water supply, and high aquatic life use. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that by adding permit requirements for a phosphorus of 0.5 mg/L to the permit, no significant degradation of water quality is expected in Lavon Lake, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. The facility will be located approximately 0.5 mile southwest of the intersection of State Highway 78 and County Road 550 in Collin County, Texas.

The draft permit authorizes a discharge of treated domestic wastewater at an interim I volume not to exceed a daily average flow of 0.1 million gallons per day and at an interim II volume not to exceed a daily average flow of 0.25 million gallons per day and a final volume not to exceed a daily average flow of 0.5 million gallons per day. The effluent limitations in the interim I phase of the draft permit, based on a 30-day average, are 10 milligrams per liter (mg/l) Biochemical Oxygen Demand (5-day) (BOD_5), 15 mg/l Total Suspended Solids (TSS), 0.5 mg/l Phosphorus, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent limitations in the interim II and final phases of the draft permit, based on a 30-day average, are 10 mg/l Carbonaceous BOD_5 ($CBOD_5$), 15 mg/l TSS, 3 mg/l Ammonia Nitrogen (NH_3-N), 0.5 mg/l Phosphorus, and 4.0 mg/l minimum DO. In addition, for each phase, the effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

Procedural Background

The permit application for a new permit was received on January 31, 2007 and declared administratively complete on February 23, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on March 1, 2007 in the *Farmersville Times & Princeton Herald* and on May 11, 2007 in the Collin County edition of the *Dallas Morning News*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on June 22, 2007 in the Collin County edition of the *Dallas Morning News*. In addition, both the NORI and NAPD were remailed to a corrected list of landowners on July 31, 2007 along with a letter explaining that the original mailing list required corrections for some incorrect addresses and the omission of some landowners. The Notice of Public Meeting was published on October 28, 2007 in the Collin County edition of the *Dallas Morning News*. A public meeting was held on December 4, 2007 in Farmersville, Texas. The public comment period ended on December 4, 2007. 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, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Albert VanderVelde provided a property owner map with additional information on the correct property owners located around the Applicant's property boundary and downstream of the point of discharge.

RESPONSE 1:

After reviewing the information provided, the original mailing list was corrected and both notices, the NORI and the NAPD, were re-mailed to the corrected list of landowners on July 31, 2007 along with a letter explaining why the original mailing list required such corrections.

COMMENT 2:

Albert VanderVelde indicates that the notice was published in the Farmersville newspaper that reaches only about 2,500 residents but the notice should be published in a newspaper with larger circulation like the Dallas Morning News.

RESPONSE 2:

The Applicant originally published the first notice, the NORI, on March 1, 2007 in the *Farmersville Times* and the *Princeton Herald*. These papers were not the correct papers for notice purposes for this particular permit application. Subsequently the NORI was republished on May 11, 2007 in the Collin County edition of the *Dallas Morning News* and the second notice, the NAPD, was published on June 22, 2007 in the Collin County edition of the *Dallas Morning News*.

COMMENT 3:

James A. Martin is concerned that the Applicant has permission to discharge onto his property and indicates the application does not clearly show how treated effluent will flow from the proposed wastewater treatment plant to the outfall located on Mr. Martin's property.

RESPONSE 3:

The original map in the application did show that the proposed discharge point was on Mr. Martin's property. However, the Applicant has changed the proposed discharge point. The discharge point is

now proposed to be 50 feet downstream of the original proposal. This point is not on Mr. Martin's property and is just downstream of Mr. Martin's property. The draft permit, if issued, does not grant to the Applicant any property rights to use private property for conveyance of wastewater along the discharge route described in this permit. It is the responsibility of the Applicant to acquire property rights as may be necessary to use the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. In addition, the draft permit does not authorize the invasion of any personal rights or any violation of federal, state, or local laws and regulations.

The 50 foot change in the location of the proposed discharge point does not require re-notice because the change will not affect any new landowners and is to the same receiving water.

COMMENT 4:

Martin C. Rochelle indicates that the District, which operates two wastewater treatment facilities for the City of Farmersville, is evaluating the construction of a regional wastewater treatment plant to serve the area located northeast of Lavon Lake. He indicates that in order for the District to withdraw its protest of the application, the draft permit should include a requirement that the Applicant connect to the District's regional wastewater treatment facilities as they become available. In addition, Lee Warren is concerned that the TCEQ would allow this facility to be constructed when it will not be needed after ten to twenty years when the regional facility is available.

RESPONSE 4:

At this time, there are no regional treatment plants within the area of the proposed discharge and no applications have been made for a regional facility. The draft permit does not require that the Applicant connect to any regional wastewater treatment facilities if one was to become available. However, Texas Water Code, Section 26.0282 provides that in considering the issuance, amendment, or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as areawide or regional disposal systems by Commission Order.

In addition, the Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of wastewater treatment plants. The Applicant is required to review a three-mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that the permittee can use. The wastewater treatment plant must have sufficient existing capacity to accept the additional wastewater. According to the Applicant, this review was completed and no adequate treatment facilities were found for the proposed discharge.

COMMENT 5:

Martin C. Rochelle indicates that the proposed discharge is into a tributary of Lavon Lake which serves as a primary source of drinking water for water users served by the District and the District is concerned that the cumulative impact of the existing and additional dischargers into Lavon Lake would require additional treatment. He states that the District has agreed to reduce the Wilson Creek Regional Wastewater Treatment Facility's phosphorus limit from 1.0 mg/l to 0.5 mg/l and the District would expect the TCEQ to include this limit in the proposed draft permit.

RESPONSE 5:

The draft permit includes effluent limits and monitoring requirements for Phosphorus. The effluent limitations in the interim I phase of the draft permit, based on a 30-day average, are 10 mg/l BOD_5, 15 mg/l TSS, 0.5 mg/l Phosphorus, and 4.0 mg/l minimum DO. The effluent limitations in the interim II and final phases of the draft permit, based on a 30-day average, are 10 mg/l $CBOD_5$, 15 mg/l TSS, 3 mg/l NH_3-N, 0.5 mg/l Phosphorus, and 4.0 mg/l minimum DO.

COMMENT 6:

Martin C. Rochelle indicates that in order for the District to withdraw its protest of the application, the draft permit should include effluent limits that are not less stringent than the effluent limits included in the District's Wilson Creek Regional Wastewater Treatment Facility wastewater permit, Permit No. WQ0012446001. These limits, based on a daily average, are 5 mg/l CBOD5, 5 mg/l TSS, 2 mg/l NH3-N, 0.5 mg/l Phosphorus, 200 colonies per 100 ml fecal coliform and 5 mg/l minimum DO.

RESPONSE 6:

There are many factors taken into consideration when evaluating effluent limits for a wastewater discharge permit. Effluent limits for BOD_5 or $CBOD_5$, Ammonia-Nitrogen, and minimum effluent dissolved oxygen are analyzed to ensure that dissolved oxygen concentrations within the water bodies along the discharge route will be maintained above the criteria assigned to them.

Dissolved oxygen levels in a water body can be affected by numerous factors related to a wastewater discharge. Among these are the location of the discharge and the size of the discharge. The effluent limits stipulated in the permit for the District's Wilson Creek plant and in the draft permit for Farmersville Investors, LP are, in both cases, predicted to be adequate to ensure that dissolved oxygen levels in all water bodies along the discharge route, including Lavon Lake, will be maintained above their designated criteria. The effluent limits for the District's Wilson Creek plant are necessarily significantly more stringent than those in the Farmersville Investors, LP draft permit because the District's existing permitted flow phase is 96 times the size of the Farmersville Investors, LP draft permit's proposed final phase flow, and the District's final permitted flow phase is 128 times the size of the draft permit's proposed final phase flow.

Every permitted and proposed wastewater treatment plant discharge location is evaluated individually to account for different conditions specific to their particular location and situation which could affect each permit's effluent limits. The effluent limits for oxygen-demanding constituents in the Farmersville Investors, LP draft permit are in the same general range as those of other similar-sized wastewater treatment facilities currently permitted to discharge into the Lavon Lake watershed.

COMMENT 7:

Martin C. Rochelle indicates that the District is the operator for many facilities located within the area. In order to ensure the proposed facility is operated at a level to protect water quality concerns near Lavon Lake, the District requests that the Applicant make a commitment that the District be selected as the operator for the proposed facility.

RESPONSE 7:

The draft permit includes Other Requirement No. 1 which indicates that the proposed facility is a Category C facility and must be operated by a chief operator or an operator holding a Category C license or higher. The TCEQ does not have authority in the permitting process to dictate who will operate a facility beyond requiring that an appropriately licensed operator operate a particular plant. However, the Applicant may contract with an individual operator, company, and other entity to operate the facility. Companies, individuals, and other non-governmental entities that contract to operate domestic wastewater facilities are required to hold a current wastewater operator registration issued by the TCEQ.

COMMENT 8:

Paul and Bettye Petree are concerned about the health effects of discharging into Lavon Lake which is a major water supply reservoir. Deanna Tyler is concerned about contamination of Lavon Lake since it is a water supply reservoir. Albert VanderVelde is concerned that there are 23 permitted discharges and 2 proposed discharges into Lavon Lake and especially since the proposed discharge is into a shallow portion of Lavon Lake. Carla J. Chambless and Michael D. Chambless are concerned that there are already 23 dischargers into Lavon Lake. Nancy Holloman is concerned about wastewater contaminating Lavon Lake. Virginia Ripley is concerned about the capacity of Lavon Lake to be able to support these wastewater treatment facilities with 23 existing dischargers and 2 pending permit applications. Jill Fuller is concerned about pollution from the proposed wastewater treatment facility. Deanna Tyler is concerned about the environment.

RESPONSE 8:

The TCEQ rules in 30 TAC Section 307.6(b)(3) state that water in the state shall be maintained to

preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. The proposed permit was developed to protect aquatic life and human health in accordance with the Texas Surface Water Quality Standards. The provisions in the proposed draft permit were established to be protective of human health and the environment as long as the Applicant operates and maintains the facility according to TCEQ rules and requirements. The current permitted dischargers were considered in evaluating the application.

TCEQ's rules prohibit new dischargers that would cause degradation of the receiving stream. To ensure the effluent limits in the draft permit will maintain and protect existing uses, the ED's staff performs an antidegradation review of the receiving waters. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that by adding permit requirements for phosphorus of 0.5 mg/l to the permit, no significant degradation of water quality is expected in Lake Lavon, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected.

With the possible exception of the very largest of facilities, the various permitted dischargers in the Lavon Lake watershed are generally not expected to have any significant combined effect on dissolved oxygen levels in the lake. For the draft Farmersville Investors, LP permit and other similar-sized and smaller permits, effluent limit recommendations are set at levels predicted to be sufficient to ensure that water quality in the immediate vicinity of where each of the discharges enters the lake will be maintained above the relevant criteria for the lake, as well as being protective of water quality in the lake as a whole. Evaluations of effluent limits for larger facilities take larger portions of the lake into consideration for the evaluation of effects on water quality.

COMMENT 9:

James A. Martin is concerned that pollutants will be discharged into the water supply and onto the land such as harmful bacteria and pathogens, carcinogens and toxic chemicals, pharmaceuticals, greases, herbicides, pesticides and fungicides in addition to pollutants from human wastes and human bodily fluids. He is also concerned about the long term effects of discharging treated effluent, especially with respect to the discharge of elevated levels of estrogen.

RESPONSE 9:

30 TAC Section 307.6 (b)(3) requires that water in the state shall be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. The proposed permit was developed to protect aquatic life and human health in accordance with the Texas Surface Water Quality Standards. The provisions in the proposed draft permit were established to be protective of human health and the environment as long as the Applicant operates and maintains the facility

according to TCEQ rules and requirements.

Currently, there are no federal or state criteria for emerging pollutants such as estrogen and pharmaceuticals.

COMMENT 10:

James A. Martin is concerned about the effect from the proposed discharge on recreational use of the downstream area, especially the Lakeland Park camping and water recreation area and Pebble Beach swimming area. He questions the Applicant's assumption that the receiving stream is non-contact recreation and that the future use of the area is considered agricultural. He is also concerned about being able to use his property and the unnamed tributary on his property for recreational use if treated effluent is discharged into the unnamed tributary on his property. He is concerned that chlorination of the treated effluent will not provide sufficient disinfection and will not provide enough protection for recreational use.

RESPONSE 10:

Under the general criteria (30 TAC Section 307.4 (j)) of the Texas Surface Water Quality Standards, contact recreation is presumed as a use for *all* water bodies except where listed otherwise for specific water bodies in Appendix A of 30 TAC Section 307.10. Therefore, the ED has presumed that the unnamed tributary supports contact recreation and has drafted permit limits to protect that use.

As stated above, and in accordance with 30 TAC Section 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that by adding permit requirements for phosphorus of 0.5 mg/l to the permit, no significant degradation of water quality is expected in Lake Lavon, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected.

COMMENT 11:

Douglas Laube is concerned about the impact to the lake from the proposed discharge when the lake is at various levels such as 70, 50, 30, or 20 percent of the full capacity. He asks if the lake level of Lavon Lake is not an issue, then why was flow into Lavon Lake from Lake Texoma stopped. R.B. Seward is concerned that the TCEQ did not consider the lake level fluctuations in Lavon Lake where the lake level rose and fell more than 26.5 feet in the past 12 years.

RESPONSE 11:

TCEQ modeling in lakes for wastewater permit effluent limit determination is typically performed under conditions representative of each lake's defined normal pool elevation. This approach is used for various reasons, including consistency, efficiency, and to ensure that effluent limit recommendations are environmentally protective. For dischargers in the general size range of the proposed Farmersville Investors, LP permit, the lake portion of the dissolved oxygen modeling analyses typically focuses on only a fairly small localized portion of the lake, where the majority of the dissolved oxygen impact will occur. Although the dissolved oxygen model for this facility was configured to simulate conditions at normal pool elevations, the recommended effluent limits are expected to be protective at other lake levels as well. When lake levels are below the normal pool elevation level, the wastewater has additional time and distance prior to reaching the lake during which oxygen-demanding substances are further assimilated before they enter the lake. Lower lake levels could potentially have a significant impact on predicted dissolved oxygen levels if other dischargers normally separated by a significant lake distance have more interaction due to low lake levels. However, in this case, the only other permitted discharger outfall within a 3-mile radius is a very small 0.005 MGD permittee located about 2.4 miles around the shoreline of the lake.

COMMENT 12:

James A. Martin is concerned that the treated effluent will stand in the streambed constantly at the proposed discharge rate and that the adjacent landowners and public need to be protected from the proposed discharge. Lee Warren is concerned that the treated effluent will be stagnant and will not flow properly into Lavon Lake under severe drought conditions.

RESPONSE 12:

If the proposed discharge is left unimpeded, and provided there are no on-channel dams or obstructions, flow in the streambed should be continuous whereby drought conditions will not affect it.

COMMENT 13:

James Costabell asks how the North Texas Municipal Water Supply District, the main supplier of potable water in the area, views this proposed permit.

RESPONSE 13:

This RTC includes comments from the North Texas Municipal Water District and responses to those comments. It is represented in the District's comment letters that the District is, at the least, partially opposed to the proposed permit. The District's comment letters are available to the public for viewing and copying at the TCEQ's Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78711.

COMMENT 14:

Joni Clark, Jill Fuller and Betty Pryor are concerned about the effects on local wildlife from the proposed wastewater treatment facility. Paul and Bettye Petree are concerned about the effects on cattle grazing where the discharge enters Lavon Lake which is a shallow area of the lake.

RESPONSE 14:

According to 30 TAC Section 307.6(b)(4), water in the state shall be maintained to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. The proposed permit was developed to protect aquatic life and human health in accordance with the Texas Surface Water Quality Standards. The provisions in the proposed draft permit were established to be protective of human health and the environment as long as the Applicant operates and maintains the facility according to TCEQ rules and requirements.

COMMENT 15:

Wilda Faye VanderVelde is concerned about effects on her health, especially since she has severe allergies, from the proposed wastewater treatment facility. Albert VanderVelde is concerned about his wife and neighbors which have been diagnosed with breathing issues. John E. Lehan is concerned about the effect from the proposed wastewater treatment facility on his wife and brother-in-law's quality of life since they have emphysema and breathing issues. Jill Fuller is concerned about severe allergies and Betty Pryor is concerned about allergies and pulmonary illness due to the proposed wastewater treatment facility. Joni Clark and Amber Green are concerned about their children's allergies due to the proposed wastewater treatment facility. Carla J. Chambless is concerned about her health and the health of her grandson who has breathing issues. Michael D. Chambless is concerned about the health of his grandson who has asthma and allergies.

RESPONSE 15:

The ED does not anticipate that the proposed facility will emit airborne contaminants that would have an adverse affect on people with allergies or breathing problems. The Texas Clean Air Act provides that certain facilities may be exempt from the requirements of an air quality permit if, upon review, it is found that those facilities will not make a significant contribution of air contaminants to the atmosphere and that human health and the environment will be protected. According to 30 TAC Section 106.532, wastewater treatment facilities have undergone this review and are permitted by rule as long as the wastewater treatment facility only performs the functions listed in the rule.

COMMENT 16:

James Costabell is concerned that the proposed wastewater treatment facility does not have a plan for

catastrophic release of raw untreated sewage that may result in a discharge into Lavon Lake and a lack of how this issue will be addressed by the TCEQ. R.B. Seward is also concerned that the facility does not have an adequate emergency plan. Lee Warren would like the Applicant to have an emergency action plan for the facility equipment and notify residents in the area of cleanup procedure, ecological impact studies and execution of this plan.

RESPONSE 16:

If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. The Applicant is subject to potential enforcement action for failure to comply with TCEQ rules or with the permit.

Details of any emergency response plan are not included in a discharge permit. However, the Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater. In addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by TCEQ. Also, Standard Provision No. 7 of the proposed draft permit states that when the flow reaches 75 percent of the permitted daily average flow for three consecutive months, the Applicant must initiate engineering and financial planning for expansion or upgrade of the domestic wastewater treatment or collection facilities. When the flow reaches 90 percent of the permitted daily average flow for three consecutive months, the Applicant must obtain authorization from TCEQ to begin constructing the necessary additional treatment or collection facilities. These permit provisions are designed to help prevent unauthorized discharges of raw sewage.

COMMENT 17:

James A. Martin indicates that the rules require buffer zones to extend at least 500 feet from ponds or lagoons and that the applicant addressed only the 150-foot buffer zone requirement.

RESPONSE 17:

According to 30 TAC Section 309.13(e)(1), the buffer zone distances are defined as follows: Lagoons with zones of anaerobic activity (e.g., facultative lagoons or un-aerated equalization basins) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line.

The proposed Farmersville Investors Wastewater Treatment Facility will not use lagoons. It will be a single stage nitrification activated sludge process plant. Treatment units for the interim I and II phases include a lift station, bar screen, aeration basin, final clarifier, sludge digester, and a chlorine

contact chamber. Treatment units for the final phase include a lift station, splitter box, bar screen, two aeration basins, two final clarifiers, two aerobic digesters, and two chlorine contact chambers. The proposed facility does not include any ponds or lagoons with anaerobic zones. Therefore, the 500-foot buffer zone requirement does not apply to the proposed wastewater treatment facility. The facility must meet the 150-foot buffer zone requirement. The Applicant indicates the facility will meet this requirement by ownership of the required buffer zone area according to the requirements of 30 TAC Section 309.13(e).

COMMENT 18:

Carla J. Chambless, Michael D. Chambless, Joni Clark, Jill Fuller, Amber Green, Nancy Holloman, John E. Lehan, Betty Pryor, James A. Martin, Deanna Tyler, R.B. Seward, Albert VanderVelde, Lee Warren, and Paul and Bettye Petree are concerned about odor issues from the proposed facility.

RESPONSE 18:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC Section 309.13(e). These rules provide three options for applicants to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by ownership of the buffer zone area, by restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant, or by providing odor control. The Applicant indicates that the proposed facility will meet the buffer zone requirements by ownership of the required buffer zone area.

COMMENT 19:

Camille Reagan is asking how many homes are included in the interim phase at 100,000 gallons per day.

RESPONSE 19:

The Applicant indicates that there will be about 1,500 single-family connections in the proposed development and that each connection or home would average about 325 gallons per day. Therefore, about 300 connections or homes would result in about 100,000 gallons per day which is the average flow for the interim I phase of the proposed wastewater treatment facility.

COMMENT 20:

Albert VanderVelde is asking why it is necessary to place the proposed wastewater treatment facility next to an existing residential area. John E. Lehan is concerned about future residential development in the local area since the proposed wastewater treatment facility is located in an existing residential area.

RESPONSE 20:

The Texas Water Code, Section 26.027, authorizes the TCEQ to issue permits for discharges into or adjacent to water in the state. If it is determined that the application and proposed discharge meets all applicable rules and regulations, the ED does not have the authority to mandate a different discharge location or different type of wastewater treatment plant. The ED evaluates applications for wastewater treatment plants, based on the information provided in the application.

COMMENT 21:

Virginia Ripley is requesting information on the additional facilities designed by the consultant. She would like to see how these facilities are doing, how they are working, and what their records show and how many years they have been in operation.

RESPONSE 21:

The application form does not require the Applicant to provide information concerning other wastewater treatment facilities that have been designed by the Applicant's engineering consultant. However, information about the engineering consultant's firm, including information about additional facilities designed by the firm can be found at: www.jonescarter.com.

COMMENT 22:

Frank Moore is concerned about additional services such as a fire station, police station and widening of the roads that are needed for the proposed development. Carla J. Chambless, Michael D. Chambless, Joni Clark, Amber Green, Nancy Holloman, John E. Lehan, Betty Pryor, Deanna Tyler, Albert VanderVelde, Paul and Bettye Petree are concerned about the effect on their property values from the proposed wastewater treatment facility. Carla J. Chambless, Michael D. Chambless, Amber Green, Nancy Holloman, Deanna Tyler and Albert VanderVelde are concerned about traffic congestion on the area roads and effects on ambulance service and protection due to the proposed development. Lee Warren is concerned that there are no adequate roads for trucks to provide for equipment and for building and maintaining the proposed wastewater treatment facility.

RESPONSE 22:

The TCEQ's jurisdiction in a permit application is limited to the issues set out by statute. The ED does not consider property values, city planning, or a review of the proposed development during the review of a wastewater discharge permit application. Consequently, the TCEQ may not consider traffic congestion due to a development or traffic due to a proposed wastewater treatment facility in determining whether to approve or deny a permit. However, the scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court in response

to activities that interfere with the landowner's use and enjoyment of his or her property.

COMMENT 23:

Albert VanderVelde asks about the distance between the plant associated with the pike that just went on to highway 78 as part of the Trinity River Project and the proposed wastewater treatment facility.

RESPONSE 23:

The ED is unaware of a treatment plant that is related to the toll road portion of the Trinity River Project. To the extent of the ED's knowledge, the project is not relevant to the evaluation of this proposed permit's potential effect on Lavon Lake or on the unnamed tributary. Information about the Trinity River Project and its related toll road projects can be found at: www.trinityrivercorridor.com.

COMMENT 24:

Jill Fuller is concerned about noise from the proposed wastewater treatment facility.

RESPONSE 24:

The TCEQ's jurisdiction in a permit application is limited to the issues set out by statute. The ED does not consider noise from a facility in determining whether to approve or deny a permit. However, the scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his or her property.

COMMENT 25:

James A. Martin indicates that he tried to view a copy of the application at the public library and it was not available; he subsequently obtained a copy of some of the information from the TCEQ.

RESPONSE 25:

The Applicant indicates that the permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Charles J. Rike Memorial Library, 203 Orange Street, Farmersville, Texas. In addition, the Applicant's representative certified on June 27, 2007 that these documents will remain in place until either the TCEQ acts on the application or the application is referred to the State Office of Administrative Hearings (SOAH) for hearing.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

Marc Friberg, Staff Attorney
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on 7/2/08 the original of the "Executive Director's Response to Public Comment" on Farmersville Investors L.P.'s application for proposed TPDES Permit No. WQ WQ0014778001 was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

Marc Friberg, Staff Attorney
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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CHIEF CLERKS OFFICE

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 10, 2008

TO: Persons on the attached mailing list.

RE: Farmersville Investors, L.P.
TPDES Permit No. WQ0014778001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Charles J. Rike Memorial Library, 203 Orange Street, Farmersville, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:
   (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
   (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela

LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
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TPDES Permit No. WQ0014778001

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FOR THE CHIEF CLERK:

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PROTESTANTS/INTERESTED PERSONS:

See attached list.

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