



Mr. Moore's Direct Line: (512)322-5881  
Email: jmoore@lglawfirm.com

April 26, 2010

**Via Electronic Filing  
and Facsimile Transmission**

Ms. LaDonna Castañuela  
Chief Clerk (MC 105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: In the Matter of the Application by Farmersville Investors, L.P.  
for TPDES Permit No. WQ0014778001  
TCEQ Docket No. 2008-1305-MWD; SOAH Docket No. 582-09-2895

Dear Ms. Castañuela:

Enclosed for filing please find the original of a Response to Motion to Reopen Record in the above-referenced matter.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

John R. Moore

JRM/ldp  
1107542  
ENCLOSURES

cc: Service List  
Mr. Kyle Kruppa  
Mr. Brad B. Castleberry  
Mr. Jeffrey S. Reed

## Service List

### FOR THE CHIEF CLERK:

LaDonna Castañuela  
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

### FOR THE STATE OFFICE OF ADMINISTRATIVE HEARINGS:

The Honorable Sharon Cloninger  
Administrative Law Judge  
P. O. Box 13025  
Austin, Texas 78711-3025  
Tel: (512) 475-4993  
Fax: (512) 475-4994

### REPRESENTING THE EXECUTIVE DIRECTOR:

Kathy Humphreys, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3417  
Fax: (512) 239-0606

### REPRESENTING THE PUBLIC INTEREST COUNSEL:

Amy Swanholm, 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

### REPRESENTING THE PROTESTANTS:

Richard Lowerre  
Marisa Perales  
Attorney At Law  
Lowerre, Frederick, Perales, Allmon & Rockwell  
707 Rio Grande, Suite 200  
Austin, Texas 78701  
Tel: (512) 469-6000  
Fax: (512) 482-9346

**SOAH DOCKET NO. 582-09-2895  
TCEQ DOCKET NO. 2008-1305-MWD**

<b>APPLICATION OF FARMERSVILLE</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>INVESTORS, LP, FOR TPDES</b>	§	<b>OF</b>
	§	
<b>PERMIT NO. WQ0014778001</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**RESPONSE TO MOTION TO REOPEN RECORD**

Applicant, Farmersville Investors, LP (“Farmersville”), files its Response to Protestants James A. and Shirley Martin’s Motion to Reopen the Record for the Limited Purpose of Offering the Final Feasibility Report, respectfully showing:

**I. INTRODUCTION**

Protestants James A. and Shirley Martin (“Protestants”) filed a Motion to Reopen the Record for the Limited Purpose of Offering the Final Feasibility Report (“Motion”) on April 20, 2010. The Motion seeks to reopen the record for the limited purpose of offering a final version of a Report regarding an investigation of the feasibility of establishing one or more regional wastewater treatment plants on the east side of Lake Lavon. A draft of the report was admitted into evidence and considered by the Administrative Law Judge (“ALJ”) in reaching the following proposed findings of fact and conclusions of law:

Findings of Fact:

46. There is need for Farmersville’s proposed WWTP under TEX. WATER CODE ANN. § 26.082 based on the construction schedule for the Farmersville property.
47. There is currently no regional wastewater treatment plant available for Farmersville to connect into, and no agreements for the building of any such regional plant have been finalized or are set for the foreseeable future.
48. No area-wide, regional, or other wastewater treatment plant and/or collection system is available to serve the needs of the Farmersville development.

49. Onsite sewage facilities are not a viable option for wastewater treatment for the Farmersville development based on the location of the property.

Conclusions of Law:

5. Farmersville's proposed WWTP is needed based on the Commission's consideration of regionalization and need under TEX. WATER CODE ANN. § 26.0282.
6. The Draft Permit adequately addresses regionalization concerns based on the Commission's consideration of need and regionalization under TEX. WATER CODE ANN. § 26.0282.
7. No additional terms or conditions should be included in the permit based on the Commission's consideration of need and regionalization under TEX. WATER CODE ANN. § 26.0282.

The final feasibility report, if in evidence, would change nothing in respect to the foregoing proposed findings of fact and conclusions of law. Protestants concede that the final version of the report is nearly identical to the draft version already in evidence. More importantly, the final report does not obligate any entity to create, construct, or even begin to plan a regional plant that might some day serve the needs of Farmersville's development. The ultimate finding that *no area-wide, regional, or other wastewater treatment plant and/or collection system is available to serve the needs of the Farmersville development* remains unaltered.

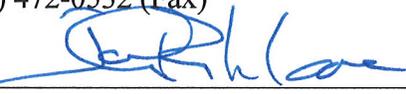
On the eve of commencing the originally scheduled evidentiary hearing in this proceeding, Protestants pulled the draft report out of their hat and requested that the process be delayed while they investigated the impacts of the draft feasibility report. After three months of delay, Protestants had nothing to impact the conclusion that *no area-wide, regional, or other wastewater treatment plant and/or collection system is available to serve the needs of the Farmersville development*. Protestants are now seeking additional delay. Applicant requests

that Protestants' latest attempt at delay, their Motion to Reopen the Record for the Limited Purpose of Offering the Final Feasibility Report, be in all things denied.

Applicant further requests such additional relief to which it might show itself justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK**  
**ROCHELLE & TOWNSEND, P.C.**  
816 Congress Ave., Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)

By: 

JOHN R. MOORE

State Bar No. 143248565

JEFFREY S. REED

State Bar No. 24056187

BRAD B. CASTLEBERRY

State Bar No. 24036339

**ATTORNEYS FOR APPLICANT**  
**FARMERSVILLE INVESTORS, LP**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of April, 2010, a true and correct copy of the foregoing Applicant's Response to Protestants James A. and Shirley Martin's Motion to Reopen the Record for the Limited Purpose of Offering the Final Feasibility Report was provided by U.S. mail, hand-delivery or facsimile to the persons listed below:

**FOR THE CHIEF CLERK:**

LaDonna Castañuela  
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

**FOR THE STATE OFFICE OF  
ADMINISTRATIVE HEARINGS:**

The Honorable Sharon Cloninger  
Administrative Law Judge  
P. O. Box 13025  
Austin, Texas 78711-3025  
Tel: (512) 475-4993  
Fax: (512) 475-4994

**REPRESENTING THE EXECUTIVE  
DIRECTOR:**

Kathy Humphreys, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3417  
Fax: (512) 239-0606

**REPRESENTING THE PUBLIC INTEREST  
COUNSEL:**

Amy Swanholm, 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

**REPRESENTING THE PROTESTANTS:**

Richard Lowerre  
Marisa Perales  
Attorney At Law  
Lowerre, Frederick, Perales, Allmon & Rockwell  
707 Rio Grande, Suite 200  
Austin, Texas 78701  
Tel: (512) 469-6000  
Fax: (512) 482-9346



---

JOHN MOORE