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June 8, 2010

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
Austin, Texas 78711-3087

via e-file

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

To Ms. Castañuela:

Please find enclosed for electronic filing Protestants James A. and Shirley
Martin's Motion for Continuance.

If you have any questions, please do not hesitate to call.

Sincerely,



Richard W. Lowerre

Enclosures

cc: Service List

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

APPLICATION OF FARMERSVILLE
INVESTORS, L.P. FOR TPDES PERMIT
NO. WQ0014778001

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BEFORE THE TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY

PROTESTANTS JAMES A. AND SHIRLEY MARTIN'S
MOTION FOR CONTINUANCE

**TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:**

Come now, Protestants James A. and Shirley Martin and file this their Motion for
Continuance, and in support thereof, respectfully show the following:

INTRODUCTION

Protestants seek a continuance of the agenda on this matter for two weeks.

On the morning of June 7, 2010, Protestants received notice that Commission
consideration of the application that is subject to these proceedings was scheduled to occur on
June 16, 2010. The undersigned attorney for Protestants is not available for the June 16, 2010
agenda. For the reasons discussed below, Protestants must seek a continuance of two weeks or
until the next available agenda.

BASIS FOR THE MOTION

Protestants seek this continuance because of the conflicts in scheduling caused by the
following facts.

Recent addition of the matter to the agenda created the conflict: The notice of the agenda
was dated June 4, 2010, a week after the draft Agenda was posted online and available for
viewing on May 28, 2010. This May 28, 2010, draft Agenda did not include consideration of
Farmersville Investors, LP's Application ("Application").

Only after viewing the draft agenda posted May 28, 2010, the undersigned attorney for Protestants confirmed a set of meetings that will occur during the week of June 16, 2010 outside the state of Texas. With travel and meetings, the undersigned's meetings with other clients out of the State conflict with the agenda setting.

Need for resolution of pending motions and objections: There are several motions and objections currently pending before the Commission in this docket. To allow all parties to prepare argument, rulings, or at least recommendations, from the General Counsel would be very helpful.

In fact, given the General Counsel's request for briefing and the ALJ's recent proposal to amend the PDF, Protestants had a second reason to believe the matter would not be set in mid-June.

No other attorney for Protestant can reasonably prepare. The undersigned attorney is the lead attorney in this matter. Only he attended the hearing on the merits. He wrote all Protestants' briefing thereafter. No other attorney in the law firm has been substantially involved in these proceedings. No other attorney can reasonably prepare for Agenda in the nine days between receipt of notice and June 16, 2010.

Two weeks delay will have no significant impact. The Application was received by TCEQ over 3 years ago, on January 31, 2007. The staff processing and Applicant's revisions took almost two years and it was not until February 23, 2009, that the Commission issued an Interim Order referring this matter to the State Office of Administrative Hearings. A hearing on the merits was held on December 16-17, 2009, and the Administrative Law Judge issued her Proposal for Decision on March 26, 2010. There is no evidence in the record and no information

available to Protestants to indicate that a two-week delay in the Commissioners' final decision will injure any party.

CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, Protestants pray that consideration of the application that is subject to these proceedings be continued until June 30, 2010, or the next available Agenda meeting after June 30 . This Motion for Continuance is not made for purposes of delay, but in order that justice may be done.

Respectfully Submitted,

**LOWERRE, FREDERICK, PERALES,
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By: 
Richard W. Lowerre
State Bar No. 12632900
For Protestants James A. and Shirley Martin

CERTIFICATE OF CONFERENCE

By my signature, below, I certify that my office has contacted all other parties in this proceeding in regards to the above-titled motion. Applicant has indicated that it opposes this motion. The Executive Director has indicated that he takes no position on this motion. Public Interest Counsel has no objection to this motion, but their attorney may have a scheduling conflict on June 30th.


Richard W. Lowerre

CERTIFICATE OF SERVICE

By my signature, below, I certify that on the 8th day of June, 2010, a true and correct copy of Protestants James A. and Shirley Martin's Motion for Continuance set out above was served upon the following in the methods described below.



Richard W. Lowerre

FOR THE EXECUTIVE DIRECTOR:

Kathy Humphreys
Environmental Law Division
Texas Commission on Environmental Quality
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
via facsimile transmission and U.S. mail

FOR THE CHIEF CLERK:

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**FOR THE ADMINISTRATIVE LAW
JUDGE:**

The Honorable Sharon Cloninger
Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
via facsimile transmission and U.S. mail