

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 9, 2011

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

Re: **FARMERSVILLE INVESTORS, LP.**
SOAH DOCKET NO. 582-09-2895
TCEQ DOCKET NO. 2008-1305-MWD

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Reply to the ED's Exceptions to the ALJ's Proposal for Decision on Remand in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Amy Swanholm".

Amy Swanholm, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. Box 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

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

**IN THE MATTER OF
THE APPLICATION
OF
FARMERSVILLE
INVESTORS, L.P.
FOR PERMIT NO.
WQ0014778001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S REPLY TO THE ED’S
EXCEPTIONS TO THE ALJ’S PROPOSAL FOR DECISION ON
REMAND**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) with its Reply to the ED’s Exceptions to the ALJ’s Proposal for Decision on Remand (Amended PFD) in the above-referenced matter.

I. Finding of Fact No. 40

OPIC objects to the ED’s recommendation to amend Finding of Fact No. 40. The ED correctly states that the TCEQ rules require a facility owner submit of a “summary transmittal letter,” prior to construction of a wastewater treatment facility. The ED may then request the facility owner submit a complete set of design plans and specifications to ensure compliance with 30 TAC Chapter 217, but this is discretionary.¹ The ED also correctly notes that these rules ensure compliance with Chapter 217 of TCEQ rules, not Chapter 307. However, OPIC

¹ 30 TAC §217.6(c) and (f).

objects to removing Farmersville's obligation to submit design plans and specifications, prior to construction.

OPIC objects to the proposed amendment to Finding of Fact No. 40 because the record shows that the proposed facility may not be able to comply with 30 TAC Chapter 217. Specifically, Protestants argue that the proposed facility can not comply with 30 TAC § 217.328(d), requiring that the proposed facility have "at least one all-weather access road with the driving surface situated above the 100-year flood plain."²

The issue of compliance with 30 TAC § 217.328(d) was raised by Protestants during the comment period, as well as in their initial closing arguments and exceptions to the PFD. Although this issue was not remanded for the ALJ's consideration during the remand hearing, timely arguments have been presented by the Protestants. These arguments are not directly addressed by the initial PFD or the Amended PFD.³

As Protestants have accurately pointed out, it is necessary for TCEQ staff, plant operators, and other emergency personnel to access the proposed plant in times of severe flooding. If the proposed facility does not have access during a 100-year flooding event, this could cause a public health hazard, as well as potential harm to water quality. In light of this potential harm to the public, and the evidence within the record showing the proposed facility location may not be able to comply with TCEQ's siting requirements, Farmersville should show TCEQ that it can comply with 30 TAC § 217.328(d) prior to beginning construction of the proposed facility. Finding of Fact No. 40 would require this.

OPIC asks that the ALJ not adopt the ED's proposed amendments to Finding of Fact 40. Instead, OPIC respectfully recommends that the ALJ continue to require Farmersville to show TCEQ it can design a facility that complies with TCEQ's Chapter 217 rules. Therefore, OPIC asks that the ALJ amend Finding of Fact No. 40 to include the following language:

² *Protestants' Exceptions to the Proposal for Decision Following the Remand Hearing*, February 28, 2011, at 19-21 and Appendix 4.

³ *Amended Proposal for Decision* (Amended PFD), February 7, 2011, at 35; PFD at 20. Note that both the PFD and the Amended PFD only address the siting requirements in 30 TAC §§ 309.10-309.14.

40. If the Draft Permit is approved, Farmersville, prior to construction, ~~shall will be obligated to then~~ submit its design plans, and specifications, and a final engineering design report for review by the ED to ensure compliance with requirements set out in 30 Tex. Admin. Code ch. ~~307~~, the ~~Texas Surface Water Quality Standards~~. 217, Design Criteria for Domestic Wastewater Systems.

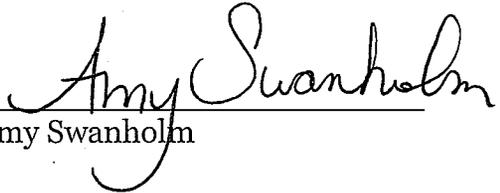
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2011 the original and seven true and correct copies of the *Office of the Public Interest Counsel's Reply to the ED's Exceptions to the Proposal for Decision on Remand* were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.



Amy Swanholm

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

The Honorable Sharon Cloninger
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