

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ DOCKET NO. 2010-0422-MWD 2010 APR 19 PM 4: 58

IN THE MATTER OF THE	§	BEFORE THE TEXAS
APPLICATION OF	§	CHIEF CLERKS OFFICE
XS RANCH FUND VI., L.P.	§	COMMISSION ON
FOR TPDES PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ40014946001	§	

PROTESTANTS' REPLY TO RESPONSES TO REQUEST FOR HEARING

TO THE HONORABLE COMMISSIONERS:

COMES NOW, McCall Ranch, L.P., Flying M Ranch, L.C., Ms. Jo Goertz and Michael Goertz, Protestants in the above docketed and styled proceeding, and file this Reply to Responses to Protestants' Request for Hearing:

I. Standing

All parties except the Applicant conclude that Protestants maintain standing in this cause. Applicant bases its contention that Protestants have not substantially complied with the requirements for making a request for a contested case hearing on an alleged failure to raise a disputed issue of fact that is relevant and material to the disposition of the permit application. Protestants have disputed (1) that all of the treatment facilities are located beyond the TCEQ's required buffer zone, (2) that such facilities are adequate to protect against groundwater contamination, (3) that such facilities will not produce nuisance odors, (4) that the proposed effluent limitations are adequate to prevent significant degradation of the receiving waters, (5) that the proposed permit adequately addresses sludge handling, processing and storage, and (6) that the proposed plant capacity is appropriate. Each of these factors are relevant and material to the disposition of the proposed application and any order granting a permit in these proceedings.

II. Issues

OPIC has correctly presented five of the issues to be addressed in this proceeding. Both the ED and the Applicant have inappropriately characterized the issues presented by Protestants by confining the issue to whether there is or is not facial compliance with a Commission rule. Because such rules are "minimum" requirements and Commission permitting orders can require more than a "minimum" effort, such issue construction is insufficient. Hence, for example, it is not material that a facility may be located beyond a "buffer zone" if that facility will contribute to groundwater contamination through pollutant migration. It is also unacceptable to defer odor control and sludge management practices to Applicant's final facility design and staff approval as that deprives the protesting adjacent landowners of any ability to question how the Applicant intends to meet regulatory standards and their sufficiency at the proposed location. In short, the Applicant's and ED's listing of issues to be addressed at a SOAH hearing are far too narrow in scope to provide any meaningful application and participation in a contested hearing.

Protestants propose that the following issues be forwarded to SOAH for appropriate adjudication under the facts to be adduced at a contested case hearing:

1. Whether any of the Applicant's proposed treatment facilities are to be located too close to Protestants' property?
2. Whether Applicant's proposed facilities and discharge will adequately protect against groundwater contamination?

3. Whether Applicant's facilities and operations will likely produce nuisance odors?
4. Whether the proposed effluent limitations will be adequate to prevent significant degradation of the receiving waters?
5. Whether the Applicant's proposed permit adequately addresses sludge handling, processing and storage practices to prevent surface and groundwater contamination and nuisance odors?
6. Whether Applicant's proposed plant capacity is appropriate to the permit term and development plans?

III. Duration of Hearing

The parties will need sufficient time to conduct discovery and prepare pre-filed testimony between the date of the initial SOAH jurisdictional hearing and the hearing on the merits. Post hearing briefs customarily require two to three months following the preparation of the hearing transcript and the ALJ usually requires at least two months to prepare a Proposal for Decision following the post hearing briefing. Hence, the maximum expected duration should be twelve months from the date of the preliminary jurisdictional hearing until the PFD is issued.

Respectfully submitted,

By: *Skip Newsom*

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ATTORNEY FOR PROTESTANTS

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2010, a true and correct copy of the above and foregoing instrument was electronically delivered to each of the party representatives in this docket.

Skip Newsom

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CHIEF CLERKS OFFICE

SKIP NEWSOM

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DATE: April 19, 2010

SUBJECT: Application of XS Ranch Fund VI, L.P. for TPDES Permit No.
WQ0014946001

Number of pages, including this cover sheet: 4

IF PROBLEMS ARE ENCOUNTERED IN RECEIVING THIS TRANSMISSION, PLEASE CALL (512) 477-4121 AS SOON AS POSSIBLE.

Comments/Special Instructions: Please see attached Reply to Responses to Request for Contested Case Hearing.

Skip Newsom

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