

From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 5/9/2011 2:42 PM
Subject: Fwd: Public comment on Permit Number WQ0013910001
Place: PUBCOMMENT-OCC2
Attachments: Request for Contested Case Hearing (00529781).PDF

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>>> PUBCOMMENT-OCC 5/9/2011 2:11 PM >>>

CID
72924

>>> <aabernathy@bickerstaff.com> 5/9/2011 1:49 PM >>>

REGULATED ENTY NAME KAUFMAN COUNTY FWSD 1A WWTP
RN NUMBER: RN102334638
PERMIT NUMBER: WQ0013910001
DOCKET NUMBER:
COUNTY: KAUFMAN
PRINCIPAL NAME: KAUFMAN COUNTY FWSD 1A
CN NUMBER: CN602617755
FROM
NAME: Emily Rogers
E-MAIL: aabernathy@bickerstaff.com
COMPANY: Bickerstaff Heath Delgado Acosta
ADDRESS: 3711 S MOPAC EXPY Bldg. One, Suite 300
AUSTIN TX 78746-8013
PHONE: 5124728021
FAX: 5123205638
COMMENTS: See attached letter.

MW

Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

May 9, 2011

Via Electronic Filing

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

Re: TPDES Permit Application No. WQ0013910001
Kaufman County Fresh Water Supply District No. 1A
Request for a Contested Case Hearing

Dear Ms. Castanuela:

On behalf of our client, the City of Forney (the "City"), I request a contested case hearing on the above-referenced TPDES permit renewal application filed by Kaufman County Fresh Water Supply District No. 1A (the "District"). My contact information is as follows:

Emily W. Rogers, Attorney
Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, TX 78746
512-472-8021
512-320-5638 (FAX)

A. The City of Forney is an affected person.

On April 15, 2011, the Executive Director (the "ED") submitted his Response to Public Comment (the "Response"). The City takes this opportunity to address some of the comments in the Response, to reiterate its status as an affected person with regard to the District's application, and renew its request for a contested case hearing.

The City is an affected person with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public. *See* 30 TAC §§ 55.203(a), 55.201(d).

In 2005, the District and the City entered into a service contract requiring the District to construct a wastewater conveyance system to transport and discharge the District's wastewater into the City's Wastewater Interceptor System, to be conveyed to the South Mesquite Regional

Wastewater Treatment Plant to be treated by the North Texas Municipal Water District. Pursuant to Agreed Order Docket No. 2005-1116-MWD-E (the "Agreed Order"), approved at the October 4, 2006 Commission Agenda meeting, the TCEQ ordered the District to submit written certification that all wastewater discharges from its facility were diverted to the City's wastewater collection system as part of the District's regionalization project. *See* Agreed Order, Docket No. 2005-1116-MWD-E at Ordering Provision 3(c). The District had until April 2010 to complete regionalization and failed to do so.

Relying on the service contract and Agreed Order, the City reasonably expected that the District would interconnect with its wastewater collection system as ordered by the Commission. This has not yet occurred. If the District's Permit is issued with no requirement to regionalize as specified by the Agreed Order, the City will be harmed because this uncertainty will be extended. The City will be unable to plan when and how this much-delayed interconnection will be accomplished, harming its legal right to interconnection pursuant to the service contract and the Order.

Additionally, the District's wastewater treatment facility (the "Facility") is located just east of the City and within its extraterritorial jurisdiction ("ETJ"). Some customers served by the Facility reside within the City's ETJ, and part of the District is within the City's ETJ. The City is concerned about the District's ability to comply with its permit as well as the water quality impacts that the Facility may have within its ETJ as a result of the District's continued failure to comply with the terms of its permit and the Agreed Order.

For these reasons, the City has personal justiciable interests related to a legal right, duty, privilege, power, or economic interest not common to the general public that will be affected by the application, and therefore is an affected person with a right to a contested case hearing on the permit renewal application. *See* 30 TAC § 55.201(i).

B. A contested case hearing is proper on the District's renewal application based on the District's compliance history.

In a renewal application such as the present one, if the Commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the Commission must provide an opportunity to request a contested case hearing. 30 TAC § 305.65(9); *see also* 30 TAC § 55.201(i)(5)(E). In Responses 1 and 4, the ED suggests that the District's effluent quality is "improving" because fewer effluent flow measurements have exceeded the permitted daily average flow since the issuance of the permit and "only four" reported values of residual chlorine analytical measurements were above the maximum permitted value. However, the District's compliance history for the past five years raises issues regarding the District's ability to comply with material terms of the permit, and therefore the City has a right to a contested case hearing on the District's renewal application.

Between 2003 and 2005, TCEQ investigators cited the Facility for overflows, illegal discharges, a discharge route that did not conform to the Facility's Permit, and a discharge that violated the effluent limits of the Facility's Permit. As a result, the TCEQ approved an Agreed Order (Docket No. 2005-1116-MWD-E) at its October 4, 2006 Commission Agenda meeting requiring the District to address the problems associated with the Facility. However, as mentioned above, the District has failed to complete regionalization as required under the Agreed Order, and even after issuance of the Order, the Facility has been cited for unauthorized discharges, flow exceedances, and effluent violations. That the District has received a four year extension to comply with the Order does nothing to alleviate the City's concerns.

Although the ED in the Response claims that the District has resolved some issues that previously occurred, the occurrence of a number of violations and exceedances in the last five years triggers the Commission's rules providing for a contested case hearing on applications. 30 TAC § 305.65(9); *see also* 30 TAC § 55.201(i)(5)(E). The District's collection system has had several issues with complying with applicable regulations with regard to sanitary sewer overflows. The District has been cited for several unauthorized discharges in the years 2006 through 2009. The District has also been cited for various reportable effluent violations in the years 2007 and 2008. According to the EPA's Enforcement & Compliance History Online Database, the Facility had an exceedance of total residual chlorine in October 2007, an exceedance in total suspended solids in February, March, and July 2008, and an exceedance in the flow from the Facility in January 2010. Because of the ongoing compliance history of the Facility, the District's ability to comply with material terms of the permit is in question, and the City has a right to a contested case hearing on the application.

Moreover, the District failed to connect to the City's wastewater collection system as required by the Agreed Order. No doubt the District received some sort of benefit (such as a reduced enforcement fine) by its initial promise to connect to the City's system. Although the ED has granted an extension to comply with the regionalization provision of the Agreed Order, there appear to be no milestones to ensure compliance. This begs the question about what the consequences will be if the District again fails to connect to the City's system. The proposed permit should contain special conditions requiring interconnection.

C. Additional Issues for Contested Case Hearing

The City of Forney has several comments and concerns about the application and draft permit that should also be referred issues in a contested case hearing:

1. In Response 2, the ED states that TCEQ modeling results indicate that the effluent limits in the draft permit will meet water quality standards. However, the City is concerned that the effluent limits in the permit are not sufficiently stringent to meet water quality standards, will cause degradation of the water quality, and are not protective of existing uses of Big Brushy Creek, Kings Creek, and Cedar Creek Reservoir. The City believes that this should be a referred issue in a contested case hearing so that evidence on the effects of the effluent limits in the draft permit can be developed and analyzed.

Ms. LaDonna Castanuela
May 9, 2011
Page 4

2. Considering the compliance history of the District, the City does not believe the draft permit is sufficiently stringent in terms of monitoring and reporting to ensure that the District will comply with its permit requirements and conditions. The monitoring in the draft permit that is described in Response 4 is self-monitoring and maintenance of records on site, which the City believes is not sufficiently protective of the permit requirements and conditions. The City believes that additional permitting requirements or conditions should be added to the permit to protect against and mitigate the effects of any unauthorized discharges and upsets at the plant.
3. Finally, the TCEQ should require the Facility to regionalize with the City as ordered by this Commission in Agreed Order, Dkt No. 2005-1116-MWD-E, and the proposed permit should contain special conditions regarding regionalization.

If you have any questions or concerns, please contact me at 512-472-8021.

Sincerely,

 signed by permission

Emily W. Rogers

MWD
72924

From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 12/13/2010 2:32 PM
Subject: Fwd: Public comment on Permit Number WQ0013910001
Place: PUBCOMMENT-OCC2
Attachments: City of Forney request for contested case hearing2.pdf

HR

>>> PUBCOMMENT-OCC 12/10/2010 11:37 AM >>>

>>> <dfregeolle-burk@bickerstaff.com> 12/10/2010 11:24 AM >>>

REGULATED ENTY NAME KAUFMAN COUNTY FWSD 1A WWTP
RN NUMBER: RN102334638
PERMIT NUMBER: WQ0013910001
DOCKET NUMBER:
COUNTY: KAUFMAN
PRINCIPAL NAME: KAUFMAN COUNTY FWSD 1A
CN NUMBER: CN602617755
FROM
NAME: Emily Rogers
E-MAIL: dfregeolle-burk@bickerstaff.com
COMPANY: Bickerstaff Heath Delagdo Acosta LLP
ADDRESS: 3711 S MOPAC EXPY Building One, Suite 300
AUSTIN TX 78746-8013
PHONE: 5124728021
FAX:
COMMENTS: See attached letter

MWD

Bickerstaff Heath Delgado Acosta LLP

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December 10, 2010

Via Electronic Filing

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

Re: TPDES Permit Application No. WQ0013910001
Kaufman County Fresh Water Supply District No. 1A
Request for a Contested Case Hearing

Dear Ms. Castanuela:

On behalf of our client, the City of Forney (the "City"), I request a contested case hearing on the above-referenced TPDES permit renewal application filed by Kaufman County Fresh Water Supply District No. 1A (the "District"). My contact information is as follows:

Emily W. Rogers, Attorney
Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, TX 78746
512-472-8021
512-320-5638 (FAX)

A. The City of Forney is an affected person.

The City is an affected person with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public. *See* 30 TAC §§ 55.203(a), 55.201(d).

In 2005, the District and the City entered into a service contract requiring the District to construct a wastewater conveyance system to transport and discharge the District's wastewater into the City's Wastewater Interceptor System, to be conveyed to the South Mesquite Regional Wastewater Treatment Plant to be treated by the North Texas Municipal Water District. Pursuant to Agreed Order Docket No. 2005-1116-MWD-E (the "Agreed Order"), approved at the October 4, 2006 Commission Agenda meeting, the TCEQ ordered the District to submit written certification that all wastewater discharges from its facility were diverted to the City of Forney's wastewater collection system as part of the District's regionalization project. *See*

Agreed Order, Docket No. 2005-1116-MWD-E at Ordering Provision 3(c). The District had until April 2010 to complete regionalization and failed to do so.

Relying on the service contract and Agreed Order, the City reasonably expected that the District would interconnect with its wastewater collection system as ordered by the Commission. This has not yet occurred. If the District's Permit is issued with no requirement to regionalize as specified by the Agreed Order, the City will be harmed because this uncertainty will be extended. The City will be unable to plan when and how this much-delayed interconnection will be accomplished, harming its legal right to interconnection pursuant to the service contract and the Order.

Additionally, the District's wastewater treatment facility (the "Facility") is located just east of the City of Forney and within its extraterritorial jurisdiction ("ETJ"). Some customers served by the Facility reside within the City's ETJ, and part of the District is within the City's ETJ. The City is concerned about the District's ability to comply with its permit and the water quality impacts that the Facility may have within its ETJ as a result of the continued failure of the District to comply with the terms of its permit and the Agreed Order. As a consequence, the City has a right to a contested case hearing on the permit renewal application. *See* 30 TAC § 55.201(i).

For these reasons, the City has personal justiciable interests related to a legal right, duty, privilege, power, or economic interest not common to the general public that will be affected by the application

B. A contested case hearing is proper on the District's renewal application.

In a renewal application such as the present one, if the commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission must provide an opportunity to request a contested case hearing. 30 TAC § 305.65(9); *see also* 30 TAC § 55.201(i)(5)(E). The District's compliance history for the past five years *does* raise issues regarding the Applicant's ability to comply with material terms of the permit, and therefore the City has a right to a contested case hearing on the District's renewal application.

Between 2003 and 2005, TCEQ investigators cited the Facility for overflows, illegal discharges, a discharge route that did not conform to the Facility's Permit, and a discharge that violated the effluent limits of the Facility's Permit. As a result, the TCEQ approved an Agreed Order (Docket No. 2005-1116-MWD-E) at its October 4, 2006 Commission Agenda meeting requiring the District to address the problems associated with the Facility. However, as mentioned above the District has failed to complete regionalization, and even after issuance of the Order, the Facility has been cited for unauthorized discharges, flow exceedances, and effluent violations.

The District's collection system has had several issues with complying with applicable regulations with regard to sanitary sewer overflows. The District has been cited for several unauthorized discharges in the years 2006 through 2009. The District has also been cited for various reportable effluent violations in the years 2007 and 2008. According to the EPA's Enforcement & Compliance History Online Database, the Facility had an exceedance of total residual chlorine in October 2007, an exceedance in total suspended solids in February, March, and July 2008, and an exceedance in the flow from the Facility in January of 2010. Because of the compliance history of the Facility, the District's ability to comply with material terms of the permit is in question, and the City has a right to a contested case hearing on the application.

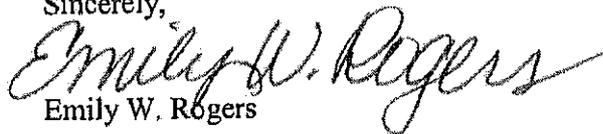
C. Comments

The City of Forney has several comments and concerns about the application and draft permit.

1. The City is concerned that the effluent limits in the draft permit are not sufficiently stringent to meet water quality standards, will cause degradation of the water quality, and are not protective of existing uses of Big Brushy Creek, Kings Creek, and Cedar Creek Reservoir.
2. The City is concerned that the proposed discharge is not consistent with the TMDL for Segment No. 0818 of the Trinity River Basin.
3. Considering the compliance history of the District, the City does not believe the draft permit is sufficiently stringent in terms of monitoring and reporting to ensure that the Applicant will comply with the permit requirements and conditions. The City also believes that additional permitting requirements or conditions should be added to permit to protect against and mitigate the effects of any unauthorized discharges and upsets at the plant.
4. Finally, the TCEQ should require the Facility to regionalize with the City of Forney as ordered by this Commission in Agreed Order, Dkt No. 2005-1116-MWD-E.

The City reserves the right to provide additional comments.

If you have any questions or concerns, please contact me at 512-472-8021.

Sincerely,

Emily W. Rogers

Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

July 26, 2010

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

MWD
72924

OPA *HR 1*

JUL 28 2010

BY *AM*

Re: Proposed TPDES Permit No. WQ0013910001
Kaufman County Fresh Water Supply District No. 1A
Request for a Contested Case Hearing

Dear Ms. Castanuela:

Enclosed please find the original and one copy of the City of Forney's request for a contested case hearing with regard to the above-referenced matter. Please retain the original for your files and return the copy in the enclosed self-addressed stamped envelope.

This document was also submitted to TCEQ via electronic filing on this date.

Thank you and feel free to contact this office with any questions you may have concerning this matter.

Kind Regards,



Michelle M. Russell
Legal Assistant to Emily Rogers

/mmr

Enclosures

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 JUL 27 PM 2:20
CHIEF CLERKS OFFICE



Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

July 26, 2010

HR OPA

JUL 28 2010

BY DM

MWD
72924

CHIEF CLERKS OFFICE

2010 JUL 27 PM 2:21

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Via Electronic Filing

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

Re: Proposed TPDES Permit No. WQ0013910001
Kaufman County Fresh Water Supply District No. 1A
Request for a Contested Case Hearing

Dear Ms. Castanuela:

On behalf of the City of Forney, I request a contested case hearing on the above referenced permit renewal application. My contact information is as follows:

Emily W. Rogers, Attorney
Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, TX 78746
512-472-8021
512-320-5638 (FAX)

A. The City of Forney is an affected person.

The City is an affected person with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public. *See* 30 TAC §§ 55.201(d), 55.203(a). In 2005, the District and the City entered into a service contract requiring the District to construct a wastewater conveyance system to transport and discharge the District's wastewater into the City's Forney Wastewater Interceptor System to be conveyed to the South Mesquite Regional Wastewater Treatment Plant to be treated by the North Texas Municipal Water District. In 2006, TCEQ ordered the District to submit written certification that all wastewater discharges from its facility were diverted to the City of Forney's wastewater collection system thence to North Texas Municipal Water District's South Mesquite Sewage Treatment Facility as part of the District's regionalization project. *See* Agreed Order, Dkt No. 2005-1116-MWD-E. The District had until April 2010 to complete regionalization and failed to do so.