

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 26, 2009

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 MAR 26 PM 1:51
CHIEF CLERKS OFFICE

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

VIA FACSIMILE 512/239-5533

Re: SOAH Docket No. 582-08-0203; TCEQ Docket No. 2006-1572-MWD;
Application by Marlin Atlantis White, Ltd., for New TPDES Permit
No. WQ0014570001

Dear Mr. Trobman:

I have reviewed the exceptions to the Proposal for Decision (PFD) and proposed Final Order that have been recommended to the Commission for approval. After reviewing those exceptions, I have no changes to make to the PFD or proposed Final Order. However, I do wish to briefly respond to the exceptions.

The City of Dickinson has argued that my recommendation is contrary to the mandate of regionalization contained in the Texas Water Code. Namely, Dickinson alleges that—by following past TCEQ precedent and allowing the Applicant to use its final build-out capacity as the basis of its requests for service from other providers—the PFD allows the building of a new treatment plant when one may not be necessary. While I understand Dickinson's concerns, I think they are addressed by the proposed inclusion of language in the PFD that requires Applicant to tie into a regional facility if one is built. That will address regionalization concerns. Moreover, Applicant's projected total need is that included in the final phase. That amount is what is in issue in the application and it is the proper amount of permitted treatment capacity that Applicant needs to move forward with the building project in issue. It is appropriate to use that amount in determining whether other treatment facilities could provide water service without the need for the facility proposed in this case. Thus, I do not find Applicant's concerns on this issue to be well-founded.

Dickinson also disagrees with my conclusion that TEX. WATER CODE § 49.215(a) prohibits San Leon Municipal Utility District from being an alternative source of water service in this case—barring approval by the City of Texas City. Dickinson claims that statute applies only if the Applicant in this case were seeking residential service from San Leon MUD. Dickinson argues that it does not prohibit San Leon MUD from providing wholesale service to Applicant. I disagree with Dickinson's reading of that statute. Specifically, the statute states:

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A district providing potable water and sewer utility services to household users shall not provide services or facilities to serve areas outside the district that are also within the corporate limits of a city without securing a resolution or ordinance of the city granting consent for the district to serve the area within the city.

Therefore, as the Applicant notes in its response to exceptions, the plain reading of the statute indicates that it *applies* to any district providing potable water services to household users, but it *prohibits* the utility from providing any services or facilities to serve areas outside the district that are also within the corporate limits of a city (absent the required approval by the city). So, the reference to “household users” is not part of the prohibition. Rather, the prohibition is much broader, including the provision of any services or facilities. In the ALJ’s opinion, that clearly would encompass service to be provided to the Applicant in this case that would ultimately be provided to household users located within the boundaries of Texas City. Thus, I continue to conclude that alternate service could not be provided by San Leon MUD absent a resolution or ordinance from Texas City. Such a resolution or ordinance has not been obtained in this case. Moreover, as noted in the PFD, there are other reasons why San Leon MUD would not be a satisfactory alternate provider of water service.

These are my only comments at this time in response to exceptions. I will appear at the Commission’s open meeting and be prepared to answer any questions the Commissioners may have at that time.

Sincerely,



Craig R. Bennett

Administrative Law Judge

CRB/lb
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STYLE/CASE: MARLIN ATLANTIS WHITE LTD

SOAH DOCKET NUMBER: 582-08-0203

REFERRING AGENCY CASE: 2006-1572-MWD

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