

SOAH DOCKET NO. 582-07-2673
TCEQ DOCKET NO. 2007-0204-WDW

APPLICATIONS OF TEXCOM GULF § BEFORE THE STATE OFFICE
DISPOSAL, L.L.C. FOR TEXAS §
COMMISSION ON ENVIRONMENTAL §
QUALITY UNDERGROUND § OF
INJECTION CONTROL PERMIT NOS. §
WDW410, WDW411, WDW412, AND §
WDW413 § ADMINISTRATIVE HEARINGS

ALIGNED PROTESTANTS', MONTGOMERY COUNTY AND CITY OF CONROE
REPLY TO APPLICANT TEXCOM GULF DISPOSAL, LLC'S EXCEPTIONS
TO AMENDED PROPOSAL FOR DECISION

The Aligned Protestants Montgomery County and the City of Conroe ("Aligned Protestants") submit this reply to the exceptions to the Amended Proposal for Decision, filed by Applicant TexCom Gulf Disposal, LLC, and would respectfully show the Administrative Law Judges the following:

I.

INTRODUCTION

The Administrative Law Judges (ALJ's) have recommended that the Commission deny the Applicant, TexCom Gulf Disposal LLC's (TexCom) UIC well application. Aligned Protestants agree with the recommendation of the ALJ's and urge the Commission to follow said recommendation. One of the reasons which the ALJ's have based their recommendation upon is that there is currently a reasonable alternative to the disposal of nonhazardous waste, the Conroe Publicly Owned Treatment Works ("POTW") that is already permitted to dispose of Class I

nonhazardous waste.¹ The ALJ's evaluated the evidence reflecting the need for additional Class I nonhazardous waste disposal capacity to be located in Montgomery County, Texas. The ALJ's quite clearly and thoroughly found that no need presently exists. The ALJ's listened to the live testimony and read the prefiled testimony, and they concluded that Class I nonhazardous waste could continue to be safely and effectively disposed of in Montgomery County and its environs without the presence of the TexCom wells. The ALJ's concluded that the Conroe POTW is in fact a safe, reasonable and appropriate alternative to TexCom's proposed wells. The ALJ's concluded that there was no need for TexCom's wells, and in doing so, the ALJ's followed the mandate of Section 27.051(d)(2) of the Texas Water Code. They considered whether there is a practical, economic, and feasible alternative to an injection well reasonably available. The ALJ's found that there is, the Conroe POTW, and that therefore the proposed wells are not in the public interest. The ALJ's followed the law and found that the evidence supported their legal conclusion. TexCom is unhappy with this finding and conclusion, and has excepted. Aligned Protestants now reply.

II.

REPLY

TexCom has argued in its exceptions to the Amended Proposal for Decision (PFD) that the Conroe POTW does not serve every Class I nonhazardous waste generator located in Montgomery County, nor any such generator located outside of Montgomery County. These assertions are true. However true, these assertions have no merit. TexCom also argued that

¹Am PFD, p. 90.

there is no guarantee that the Conroe POTW will accept an industrial generator's waste stream. By referring to a very limited and vague set of questions asked of Melvin Solomon, TexCom attempts to establish that the Conroe POTW cannot accept all of the Class I nonhazardous industrial waste generated in Southeast Texas. TexCom, of course, wants to sell a service. They want to sell their service to whomever wishes to purchase the service. TexCom repeatedly confuses need with opportunity. By categorizing the Conroe POTW as inadequate, they strive to keep alive a financial opportunity. TexCom does not miss the point; they intentionally refuse to embrace the truth. They refuse to see the "points" made by the ALJ's and the evidence which the ALJ's referred to. Melvin Solomon testified in his pre-filed testimony that the Conroe POTW receives Class I nonhazardous industrial waste water on a daily basis.² He also testified that the Conroe POTW has sufficient capacity for the foreseeable future.³ Dr. Paul Pearce testified in his pre-filed testimony that Class I nonhazardous wastewater is in fact the type of wastewater that may be accepted at a POTW.⁴ Dr. Pearce also testified that he has reviewed the list of compounds that would make up the industrial wastewater streams that TexCom proposes to accept at their underground injection well.⁵ He also testified that everything on the list can be made acceptable to the Conroe POTW.⁶ Consequently, the testimony in this case is that the

²Pre-filed testimony AP Remand Exh 5, p. 4, ln. 17-20.

³AP Remand Exh. 5, p. 13, ln. 4-8.

⁴AP Remand Exh. 9, p. 10, ln. 5-9.

⁵AP Remand Exh. 9, p. 9, ln. 11-15.

⁶AP Remand Exh 9, p. 10, ln. 10-12.

Conroe POTW has sufficient capacity, and all proposed waste injection streams can be accepted at the Conroe POTW. This is why the Conroe POTW is a currently available, reasonable alternative to the proposed injection wells.

Dr. William Wilder also testified as to a lack of any need for TexCom's injection well facility. He concluded that no need existed for TexCom's facility.⁷ He further testified that, given the lack of need for the facility, it was not in the public interest of the citizens of Montgomery County for TexCom's permits to be granted.⁸ As can be seen from the testimony of Solomon, Pearce and Wilder, the Conroe POTW is a more than adequate alternative to deep well injection in Montgomery County. The ALJ's have concluded the same, and their conclusions are based upon an abundance of competent testimony.

CONCLUSION

~~TexCom has argued all throughout this application process that the injection wells it~~ seeks to permit will be good for Montgomery County, and good for the public generally. TexCom has tried desperately to show that its applications are in the public interest and will be a boon to the local economy. TexCom refuses to accept and admit that no Montgomery County entity, neither governmental, nor corporate nor citizen supports their application. There is a very plain and simple reason for this unified, across the board, opposition. Approval of TexCom's applications will benefit only one identifiable entity: TexCom's investors and its own bottom line. TexCom sees a business opportunity; a chance to make money. That is what their applications are all about: money. Good government demands that TexCom's applications be

⁷AP Remand Exh. 10, p. 41, ln. 6-20.

⁸AP Remand Exh. 10, p. 42, ln. 4-11.

denied. Montgomery County, the City of Conroe, and the citizens of Montgomery County all urge that the applications be denied. The Administrative Law Judges have recommended that the injection well permits be denied. Let justice prevail. Let good government prevail. The injection well permit applications should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2010, a true and correct copy of Aligned Protestants Montgomery County and City of Conroe's Exceptions to the Administrative Law Judges' Proposal for Decision was served on all parties of record as indicated below by electronic mail, first class mail, or facsimile delivery:

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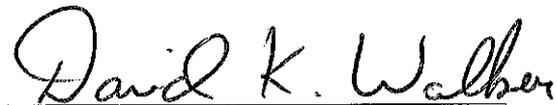
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