



December 10, 2008

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CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

VIA U.S. MAIL

Ms. LaDonna Castañuela
Chief Clerk, Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. E, Room 201S
Austin, Texas 78753

RE: SOAH Docket No. 582-08-0202; TCEQ Docket No. 2007-0426-MWD;
In re: In the Matter of the Application of Hays County Water Control &
Improvement District No. 1 for Amendment to Texas Pollutant Discharge
Elimination System (TPDES) Permit No. WQ0014293001

Dear Ms. Castañuela:

Please find enclosed herewith an original and 12 copies of the following for filing with the Texas Commission on Environmental Quality in the above referenced matter:

**Protestant Group C's, Robert M. O'Boyle's
and Barbara Stroud's Exceptions to Proposal for Decision**

Please return a file-marked copy to our awaiting courier. A copy of this document has also been served upon the State Office of Administrative Hearings as well as all parties herein.

Sincerely,

Alexis Montgomery
Legal Administrative Assistant to Robert M. O'Boyle

/am
Encls.

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Chief Clerk, TCEQ
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Cc w/encls: **(via facsimile)**

Honorable Cassandra Church
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

Honorable Roy G. Scudday
Administrative Law Judge
State Office of Administrative Hearings
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IN THE MATTER OF THE
APPLICATION OF HAYS COUNTY
WATER CONTROL & IMPROVEMENT
DISTRICT NO. 1 FOR AMENDMENT
TO TEXAS POLLUTANT DISCHARGE
ELIMINATION SYSTEM (TPDES)
PERMIT NO. WQ0014293001

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

2009 DEC 10 PM 4:54:19
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**PROTESTANTS GROUP C'S, ROBERT O'BOYLE'S AND
BARBARA STROUD'S EXCEPTIONS TO PROPOSAL FOR DECISION**

The Group C Protestants (the "Associations") and Protestants Robert O'Boyle and Barbara Stroud (herein collectively "Protestants") file this their Exceptions to the Proposal for Decision and Order issued by the State Office of Administrative Hearings ("SOAH"), and would respectfully show the Administrative Law Judges the following:

I.

Protestants adopt and incorporate by reference herein all other post-hearing motions and exceptions filed by any protesting party.

II.

Protestants incorporate by reference their Proposed Findings of Fact and Conclusions of Law and urge adoption of same where at variance with the ALJ's proposed findings and conclusions.

III.

Protestants incorporate by reference and re-urge their Motion to Require Applicant to File Application and Meet Other Procedural Requirements for a Major Amendment.

IV.

Protestants renew their objections to the contested case hearing and their request for a continuance of that hearing so that a major amendment can be considered.

V.

Protestants renew their objections to the contested case hearing and renew their motion for continuance based upon Applicant's late and untimely supplementation of discovery responses, expert reports, and expert testimony at the contested case hearing.

VI.

Protestants object and except to the Proposal for Decision because SOAH mistakenly assumes that discharges under the permit as modified by the Non-Unanimous Settlement Agreement shall only occur when there is sufficient flow (e.g., 9 CFS or 14 CFS) in Bear Creek to ensure no degradation. In truth, the permit as modified by the Non-Unanimous Settlement Agreement will allow discharge in numerous instances in which there is little or no flow in the creek and, therefore, degradation will occur.

VII.

Protestants object and specially except to Proposed Findings of Fact 46. The most credible evidence of background total phosphorus concentration in Bear Creek is 0.015 mg/L.

VIII.

Protestants object and specially except to Proposed Findings of Fact 55 and 56, and Proposed Conclusions of Law 8 and 13, which were not the subject of any testimony or other evidence, and are invalid conclusions drawn by the ALJ's.

IX.

Protestants request that a new, draft permit with the incorporated settlement terms be issued so that Protestants can have an opportunity to review the permit as it would issue if the Proposal for Decision is accepted by the Commission. As it stands, it is very difficult to tell from the Proposal for Decision what terms, exactly, will be included in the permit, and how those terms will be explained and defined in the permit.

X.

WHEREFORE, Protestants Group C, and Protestants Robert M. O'Boyle and Barbara Stroud, respectfully request that the Proposal for Decision be amended to provide for remand to TCEQ by virtue of a major amendment or, alternatively, for a new trial on the basis that Applicant was impermissibly allowed to introduce expert testimony and theories that were not the subject of timely discovery supplementation and which constituted a surprise. Alternatively, Protestants request that the Proposal for Decision be modified as requested herein, and that they have such other relief as is just.

Respectfully submitted,



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**Attorney for Group C Protestants and
Robert M. O'Boyle and Barbara Stroud**

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the above and foregoing has been sent via U.S. mail this the 10th day of December 2008, to the following counsel of record:

Ray Chester
McGinnis Lochridge & Kilgore, LLP
600 Congress Avenue, Suite 2100
Austin, Texas 78701

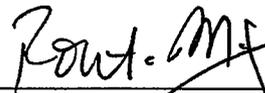
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