

TCEQ DOCKET NO. 2021-1442-MWD

APPLICATION BY	§	BEFORE THE
STEPHEN RICHARD SELINGER	§	
FOR NEW TPDES PERMIT	§	TEXAS COMMISSION ON
NO. WQ0015932001	§	ENVIRONMENTAL QUALITY

**CITY OF WAXAHACHIE’S AND CITY OF ENNIS’
REPLY TO RESPONSES TO REQUEST FOR CONTESTED CASE HEARING
ON APPLICATION FOR NEW TPDES PERMIT NO. WQ0015932001**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ):

The City of Waxahachie, Texas and the City of Ennis, Texas (collectively the “Cities”) file this Reply to Responses of the Executive Director (“ED”) and the Office of Public Interest Counsel (“OPIC”) to the City’s Request for Contested Case Hearing on the Application of Stephen Richard Selinger for New TPDES Permit No. WQ0015932001.

I.

INTRODUCTION

Stephen Richard Selinger (“Applicant”) applied to the Texas Commission on Environmental Quality for new TPDES Permit No. WQ0015932001 (the “Application”) to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 405,000 gallons per day into the Cities’ drinking water source. By letter dated December 1, 2021, the TCEQ set a deadline of January 3, 2022 for the Cities to file a formal written reply to any response to hearing requests filed by the Applicant, the ED, or OPIC. This reply is therefore timely filed.

As both the ED and OPIC note in their respective Responses to Hearing Request,¹ the Cities have timely requested a contested case hearing regarding the issues raised in their public comments filed at TCEQ.² The Cities concur with both the ED and OPIC in their conclusion that the Cities are “affected persons” entitled to a contested case hearing on issues raised in their respective hearing requests because the Cities have interests related to legal rights, duties, privileges, powers, or economic interests affected by the Application that are not common to the general public. The proposed wastewater facility will be located within the extraterritorial jurisdiction (“ETJ”) of the City of Ennis. Ennis has specific statutory authority to protect the public health and safety of those who reside within its ETJ, but moreover, to regulate orderly development within its ETJ. TEX. LOC. GOV’T CODE §§ 42.001, 212.044.

Further, Ennis has sewer facilities near the proposed district. As a regional water and sewer service provider, Ennis has an interest to ensure that new development regionalizes with existing systems to the greatest extent possible in order to protect the public health, safety, and welfare of its citizens. *See* Texas Water Code § 26.081(a). Moreover, the proposed discharge is upstream of a source of Ennis’ and Waxahachie’s drinking water supply source, Lake Bardwell. This discharge could negatively affect the water quality of Lake Bardwell. The Cities therefore have an interest in protecting the water quality of their drinking water supply.

¹ On or about December 21, 2021, Applicant either filed or submitted to counsel for the parties in this proceeding a document entitled “Applicant’s Response to City of Ennis’ Request for Contested Case Hearing for New TPDES’S (sic) Permit No. WQ0015932001.” By its letter dated December 1, 2021, the Commission required Applicant’s response to the any requests for a contested case hearing to be filed by December 13, 2021. Thus, Applicant’s response is not timely filed, and the Commission should not consider any issues raised therein. Nevertheless, the Applicant does not contest the party status of either city.

² The Executive Director states that the Cities’ additional hearing requests in response to the ED’s Response to Comments were filed on October 15, 2021, one day after the close of the hearing request period, and are therefore untimely and were not considered by the ED. The Cities note that the issues that they raised in their October 15 responses discussed and elaborated upon the issues already raised in their previous hearing requests that the ED considers timely filed. The Cities therefore respectfully note that the Commission may consider the Cities’ October 15, 2021 responses, but that in any event the Cities have timely requested a hearing and raised issues should be referred to the State Office of Administrative Hearings, and that demonstrate that they are affected persons.

For these reasons, the Cities agree with the ED's and OPIC's conclusions that the Cities are affected persons because they have interests in this application that are not common to the general public, and are entitled to a contested case hearing on the application in order to properly adjudicate these issues based on record evidence.

II.

REPLY TO ED'S AND THE APPLICANT'S LIST OF ISSUES TO REFER

The Cities agree with OPIC's recommended list of issues, and with the ED's recommended list of issues 1 through 5. The Cities, however, propose a modification to the ED's Issue 3, and recommend that ED's Issue 6 be referred to SOAH. The Cities disagree with the Applicant's characterization of the issues regarding need and regionalization.

The Executive Director recommends several issues be referred to the State Office of Administrative Hearings ("SOAH") for consideration but suggests that the issue regarding emerging contaminants not be referred because the TCEQ does not have regulations regarding emerging contaminants. The Applicant, in his late filed response, claims that the issues of need and regionalization should not be referred because there are no material issues of disputed fact. The Cities disagree with the ED and the Applicant.

With respect to the emerging contaminants, the TCEQ does have regulatory authority over them. Specifically, surface waters must not be toxic to humans from ingestion, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life. 30 TAC § 307.4(d). Simply because the TCEQ has not yet adopted standards to address emerging contaminants does not render their impact on water quality irrelevant. It is the TCEQ's responsibility to ensure that these contaminants are not toxic to humans or aquatic or terrestrial wildlife, particularly if the proposed discharge is to a sole drinking water supply source. Thus,

whether the TCEQ has adequately addressed emerging contaminants in the draft permit is a disputed issue of material fact that is within the TCEQ's jurisdiction to address. This issue should be referred to SOAH for consideration.

As for the Applicant's untimely claims that Ennis has mislead the TCEQ regarding the distance to Ennis' collection system and the relative costs of service, the Applicant's own arguments demonstrate there is a material dispute of fact regarding whether the Applicant should be required to seek a regional solution to his wastewater needs. Ennis contends that the Applicant should have been required to first request service from the City because the system is within three miles of Ennis's collection system, and that the Applicant's permit should be denied because there is a regional system to which the Applicant could connect. These disputed issues should be referred to SOAH for consideration.

The Cities further suggest that the third referred issue identified by the ED be revised for clarity. As drafted, it states: "**Issue 3.** Whether the draft permit is protective of surface and groundwater quality in Lake Bardwell."

The Cities respectfully suggest that this issue be changed as follows: "**Issue 3.** Whether the draft permit is protective of surface water in Lake Bardwell and its contributing waterways and groundwater in Ellis County."

III.

CONCLUSION

The Cities urge the TCEQ to find that the Cities are affected persons and grant their requests for a contested case hearing on this Application and refer the issues as set out by the Cities herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify by my signature below that on December 30, 2021 a true and correct copy of the above and foregoing document was served on all parties on the attached Mailing List via electronic or regular mail.



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