

**SOAH DOCKET NO. 582-22-02856
TCEQ DOCKET NO. 2022-0326-MWD**

APPLICATION BY RESTORE THE GRASSLANDS LLC AND HARRINGTON/TURNER ENTERPRISES, LP FOR NEW TEXAS POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0016003001	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
---	--	--

**CITY OF PARKER’S REPLY TO EXCEPTIONS TO PROPOSAL FOR DECISION
TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:**

COMES NOW THE CITY OF PARKER (“City”), and presents to the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) this its Reply to Exceptions to the Administrative Law Judge’s (“ALJ”) Proposal for Decision (“PFD”) filed on April 27, 2023, for the Application by Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP (“Applicants”) for a TPDES Permit in Collin County in the above-referenced docket.

I. Reply to Exceptions

REGIONALIZATION

The Applicant does not make any substantive argument regarding regionalization in their Exceptions to the PFD. The only substantive argument is made by the Executive Director (“ED”) who makes the inexplicable argument that the Commission should ignore its own rules.

The ED apparently asserts that the regionalization statutes and policies are permissive. Thus, her logic continues a duly adopted rule of the Commission should be ignored.

It was much litigated and briefed that the Applicants failed to follow the clear precepts of 30 Tex. Admin. Code Chapter 351, Subchapter C, which requires that North Texas Municipal Water District come to an agreement with a customer or the TCEQ will provide the contract service

terms. The ED uses testimony from an employee of the District to determine that service could not be provided. Such analysis is flawed. The power to accept or reject a contract term or seek imposition of a contract by the TCEQ is reserved to the legislative Board of Directors of the District, not an employee.¹ Thus, the ED's arguments are misplaced and contrary to the law.

The ED requests that the Commission engage in illegal ad hoc rulemaking. This application is simple. There are the 30 Tex. Admin. Code Chapter 351, Subchapter C rules regarding regionalization which are mandatory. The ED is requesting that the clear and unambiguous language be ignored. Such failure to recommend and not follow the Administrative Procedures Act in amending or repealing an existing rule is illegal and should not be allowed.² The ad hoc rulemaking that the ED seeks the Commission to engage in is a narrow exception and should not be expanded in this case. The clear law requires that rule changes should be made through the formal rulemaking process.³

Courts have recognized a limited ad hoc rulemaking when a problem is too technical, complex, or varied to be captured within the bounds of a general rule.⁴ Such circumstances do not exist here. The Applicants failed to follow the rule and the ED, who wishes not to implement the rule, asks the Commission to ignore its own mandates. Such actions should not be allowed to stand. The City agrees with the ALJ that 30 Tex. Admin. Code Chapter 351, Subchapter C has meaning and the precepts contained therein should be followed.

¹ *Glass v. Smith*, 244 S.W.2d 645, 652 (Tex. 1951)

² *Texas Telephone Association v. Public Utility Commission of Texas*, 653 S.W.3d 227, 265 (Ct. Appeals – Austin, 2022).

³ *Texas State Board of Pharmacy v. Witcher*, 447 S.W.3d 520, 542 (Ct. Appeals – Austin, 2014).

⁴ *Id.*

II. CONCLUSION

The City of Parker respectfully requests that Exceptions expressed by the Applicants and the ED be in all things overruled.

Respectfully submitted,

Messer Fort & McDonald
4201 W. Parmer Lane, Suite C-150
Austin, Texas 78727
(512) 600-2308
(972) 668-6414 (Fax)

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.
State Bar No. 00791551

ATTORNEY FOR THE CITY OF PARKER

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2023, a true and correct copy of the foregoing document has been sent via electronic mail, electronic service, facsimile, first class mail, or hand-delivered to all counsel of record.

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.