

TCEQ DOCKET NO. 2022-0610-MWD

APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
BRYAN FOR TPDES PERMIT NO § OF
WQ 0015930001 § ADMINISTRATIVE HEARINGS

DAVID AND GAIL HYDEN’S REPLY TO
RESPONSES TO REQUESTS FOR CONTESTED CASE HEARING

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

David and Gail Hyden (the “Hydens”) submit this Reply to the Executive Director’s (“ED”) and City of Bryan’s Responses to Requests for Contested Case Hearing and respectfully request that the Texas Commission on Environmental Quality (“TCEQ”) grant the Hydens’ hearing request (the “Hearing Request”) and refer the City of Bryan’s (“City”) application (the “Application”) for TPDES Permit No. 0015930001, to the State Office of Administrative Hearings (“SOAH”) for a hearing on all issues identified in the Hearing Request.

I. THE ED AND OPIC AGREE THE HYDENS ARE AFFECTED PERSONS

The City routinely relies on the ED’s Response to Comments as support for its request to deny the Hydens a contested hearing. Tellingly, the ED and the Office of Public Interest Counsel (“OPIC”) disagree with the City and both recommend that the Commissioners find the Hydens to be affected persons and refer the Application to SOAH for a contested hearing despite the Response to Comments the City claims addressed the Hydens’ concerns. The Hydens respectfully request the Commissioners adopt the recommendation of ED and OPIC and grant the Hydens’ timely contested hearing request.

II. THE ED AND OPIC BOTH RECOMMEND REFFERING THE HYDENS’ ISSUES TO SOAH

The Hydens requested seven issues be referred to SOAH. OPIC agrees that all seven issues

are materially relevant and should be referred to SOAH.¹ The ED similarly agrees that issues No. 3 (“Odor”), No. 4 (“Antidegradation”), No. 5 (“Water Quality”), No. 6 (“Water Quality”), and No. 7 (“Need”) are materially relevant and should be referred to SOAH.²

The only issue the ED did not recommend referring to SOAH is whether the proposed wastewater treatment plant is within a 100-year floodplain.³ The Hearing Request explained that the City failed to adequately substantiate its representation that none of the proposed facilities would fall within Brushy Creek’s 100-year floodplain. Under 30 TEX. ADMIN. CODE § 309.13(a), wastewater treatment plant units cannot be located within the 100-year floodplain “unless the plant unit is protected from inundation and damage that may occur during that flood event.” The City acknowledges that if its facility is in the flood plain, it will have to protect its facility from inundation, but the Application makes no demonstration about how such protection will be accomplished, leaving the Hydens vulnerable to a flooding event that could result in discharge of untreated wastewater onto their property.

The ED either does not address this issue or incorrectly describes the issue as “whether the draft permit will contribute to flooding.”⁴ Although the Hydens are very concerned about increased flooding from the millions of gallons of proposed discharge, the Hydens did not request that issue be referred. OPIC correctly characterized the Hydens’ requested issue as a question of whether the proposed facility location will be improperly sited in a 100-year floodplain and is identified as No. 6 on OPIC’s list of issues it recommends be referred to SOAH.⁵ The Hydens respectfully request the Commissioners adopt OPIC’s recommendation and refer to SOAH the issue of whether the

¹ OPIC Response at 15-16.

² ED Response at 8-9.

³ The ED did not address whether Hyden issue No. 2 (“Wetlands”) should be referred.

⁴ ED Response at 10.

⁵ OPIC Response at 15.

facility is within the floodplain so that the Hydens can determine whether their property is protected.

The Hydens further request that the Commissioners adopt the recommendations of the ED and OPIC that all other issues raised by the Hydens be referred to SOAH for consideration at the contested case hearing.

III. CONCLUSION

The Hydens' property is adjacent and downstream to the City's discharge point and the proposed discharge will have negative impacts on surface water quality and groundwater, result in the loss of enjoyment of the Hyden's property, and negatively impact the Hydens' cattle operation. The City's proposed discharge will have a clear impact on the Hyden's legal rights, duties, power, and economic interests. The ED and OPIC agree. For the foregoing reasons and the reasons expressed in the Hearing Request, the Hydens respectfully request the Commissioners find the Hydens to be affected persons and refer each of the seven issues raised by the Hydens to SOAH for consideration at the contested case hearing.

Respectfully submitted,

MCELROY, SULLIVAN, MILLER & WEBER, L.L.P.

By: /s/ Adam M. Friedman

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CERTIFICATE OF SERVICE

I certify that on June 15, 2022, the Hydens' Reply to Responses to Requests for Contested Case Hearing was filed with the Chief Clerk of the Texas Commission on Environmental Quality, and a copy was sent to all persons listed on the attached mailing list via electronic mail, electronic submittal, or by deposit in the U.S. Mail.

/s/ Adam M. Friedman

Adam M. Friedman

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