

TCEQ DOCKET NO. 2022-1046-MWD

APPLICATION BY RATTLER RIDGE, § BEFORE THE TEXAS COMMISSION
LLC FOR TPDES § ON
PERMIT NO. WQ0016049001 § ENVIRONMENTAL QUALITY

CITY OF SAN MARCOS' REPLY TO RESPONSES TO HEARING REQUESTS AND MOTION FOR RECONSIDERATION

COMES NOW the City of San Marcos, Texas (“City” or “San Marcos”) and files this Reply to Responses to Hearing Requests and Motion for Reconsideration (“Reply”) in this docket for the Application filed by Rattle Ridge, LLC (“Applicant”) for a Texas Pollution Discharge Elimination System permit. In Reply to the Responses to Hearing Requests previously filed, the City would show as follows:

I. Reply

The Commission received two responses to the City’s request for a contested case hearing. The respondents were: the Applicant and the Office of Public Interest Counsel. The City will address each response in turn.

OPIC

The Office of Public Interest Counsel (“OPIC”) found that the City met the definition of affected persons and recommends that its requests for a contested case hearing be granted. The City fully supports the OPIC’s analysis and recommendation.

APPLICANT

Applicant, as expected, opposes the City’s hearing request. However, instead of indicating that the City’s concerns are not issues which should be referred to SOAH, Applicant merely makes unverified claims that go to the merits of the application, not whether the issues should be referred to SOAH.

As carefully briefed by the OPIC, the City is an affected party by its proximity of services with capacity to provide the same service as that sought by the Applicant. Quite frankly, the TCEQ

is the only agency that ensures that the waters of the state are maintained in as clean and healthy a manner as possible. The increase in flow and discharge points provide greater opportunities for contamination of the state's most valuable resource – water. On this basis, the City has an interest in ensuring that its surrounding water resources remain free of pollutants from poorly conceived package plants.

In order to not burden the record with re-hashing the reasons why the City is an affected person by the Application, the City hereby incorporates by reference its previously filed requests for hearing.

Regionalization

The Applicant misstates the concept of regionalization. The state's policy on regionalization seeks to prevent just such type of application sought in this docket – small package plants which can be serviced by larger, professionally-run organizations, like the City. The state's policy is not a policy where it allows the Applicant to impose service conditions on the provider of the service. Quite the contrary, the TCEQ rules for connection and permitting are designed to allow the provider of the service to impose connection and service rules on applicants. Applicant's suggestion it was denied service by the City is erroneous and not borne out by the facts in this case.

Thus, there is a question of law and fact as to whether the Application meets the statutory and regulatory hurdles for regionalization.

Water Quality

The City raised water quality concerns. When one operates an unmanned wastewater treatment plant that has similar discharge parameters, the City is rightfully concerned whether the Applicant can meet those standards and whether more stringent requirements may be necessary due to an additional polluter to a valuable recreational and water source for the area. As such, the

City has raised a question of fact and law regarding the propriety of the discharge parameters proposed by the ED herein.

Odor

The Local Government Code and other Texas statutes grant the City jurisdiction over certain environmental matters. Further, with the proximity of the City's collection system to the Applicant's service area, the need to address odor issues regarding neighboring property is paramount. Regardless of the system used to collect and disinfect wastewater, the Applicant has not demonstrated how its system can prevent plat odors from escaping into the environment. As such, the City reasserts and supports the OPIC assertion that odor is properly an issue to be litigated herein.

Compliance History

The proper operation of a package plant is vital to a valuable recreation and water resource to the City. Thus, the fact that the Applicant has little to no experience in the operation of a wastewater treatment plant is of great concern to the City. The record of the Applicant in operating a plant that is designed to discharge to waters in the state is wholly relevant to whether the applicant can and should be given that right.

The City supports the list of referred issues listed by the OPIC.

II. Request for Reconsideration

As stated above, the Application has not addressed adequately the state's policy on regionalization. With the proximity of the City's wastewater treatment facility with capacity, and collection system with capacity, there has not been an adequate explanation as to the standards the ED applies in making regionalization determinations. In short, the state's statutory policy on regionalization is being misapplied. The state's regionalization policy seeks regional and area-wide providers in order to reduce the deleterious effect of package plants throughout the state. In this case, the City is a regional or area-wide provider.

In implementing and applying the state's statutory policy on regionalization, the Applicant has failed to articulate the factors or connection rules that would defeat the policy. In short, the City does not have adequate notice as to what conditions may defeat or except the state's rule on regionalization. As no TCEQ rule or policy exists that provides the ED the opportunity to implement the rule as stated in its Response to Comments, the City hereby seeks that the Commission order the ED to re-examine its implementation of the state's statutory policy on regionalization; find the Application inconsistent therewith; and, remand the Application to the ED for the TCEQ to require it to evaluate the Application.

III. Conclusion and Prayer

The City respectfully requests the Commission:

- (1) Grant the City's Motion to Reconsider; and
- (2) In the alternative, name the City as an affected person and grant the City's request for a contested case hearing; and
- (3) Grant the City all other and further relief to which it is justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2022, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to all counsel of record.

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