

**SOAH DOCKET NO. 582-24-07157
TCEQ DOCKET NO. 2023-0850-MWD**

**APPLICATION BY MEGATEL
HOMES, LLC FOR NEW TPDES
PERMIT WQ0016162001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**APPLICANT MEGATEL HOMES, LLC’S
REPLY TO THE EXCEPTIONS TO
THE PROPOSAL FOR DECISION AND PROPOSED ORDER**

Megatel Homes, LLC (“Megatel”) files the following Reply to Exceptions to the Proposal for Decision (“PFD”)¹ in response to the Exceptions filed by the City of Mansfield (“City”) on December 12, 2024.² Exceptions were not filed by the only two other parties which are the Executive Director (“ED”) of the Texas Commission on Environmental Quality (“TCEQ”) and TCEQ’s Office of Public Interest Counsel.

The TCEQ Commission referred only two issues to the State Office of Administrative Hearings which relate to: (i) regionalization (the “State’s Regionalization Policy”); and (ii) Texas Water Quality Standards (“TSWQS”).³ The Administrative Law Judge (“ALJ”) granted Megatel’s unopposed motion for partial summary disposition regarding the TSWQS.⁴ Thus, the sole remaining issue relates to the State’s Regionalization Policy.

¹ Pursuant to the PFD and 30 Tex. Admin. Code §80.257(a), replies to a PFD must be filed within 30 days after the date of the PFD. In this case, 30 calendar days after the November 22, 2024 issuance date of the PFD falls on Sunday, December 22, 2024. Pursuant to 30 Tex. Admin. Code §1.7, if the time period concludes on a Saturday, Sunday or legal holiday, the period runs until the next day. Thus, replies to exceptions are due December 23, 2024.

² The City’s filing on December 12, 2024 is entitled “Reply to Exceptions to Proposal for Decision” from counsel who had not made an appearance, although a motion to substitute counsel is expected to be filed. Megatel references the City’s filing as the “City’s Exceptions”.

³ PFD at 8.

⁴ PFD at 23.

I. INTRODUCTION

Contrary to the City’s assertion that the Megatel “did not perform even a modicum of a regionalization analysis”⁵, the evidentiary record shows that Megatel took exactly the right steps to comply with the State’s Regionalization Policy. First, even *before* filing the Application in May 2022, Megatel began the process of considering alternatives for providing wastewater service to the 517-acre Cipriani Development to be served by the proposed wastewater permit.⁶ Since the property is not included in any sewer Certificate of Convenience and Necessity (“CCN”) issued by the Public Utility Commission of Texas, there is no retail sewer provider which Megatel could have contacted.⁷ Second, Megatel’s engineers contacted the City *before* the Application was filed and specifically asked for a “determination if [the City] can service our tract.”⁸ The City’s response was that:

This area is very far from any water or sewer infrastructure. To have Mansfield utility service would require significant infrastructure similar to what is shown in the master plans. Please review and let me know if you would like to discuss.⁹

Expert testimony in the record reflects that although the City’s response indicates that the City did not have a strong interest, if any at all, in providing sewer service, Megatel’s subsequent proactive and transparent negotiations with the City for two years or more for service is a “key component in satisfying the State’s Regionalization Policy.”¹⁰ Third, since Megatel’s development plans included the creation of municipal utility districts (“MUDs”) to support the

⁵ City’s Exceptions, at 1.

⁶ APP-ZI1 (Ipour Direct) at MEG 0003.

⁷ APP-ZI1 (Ipour Direct) at MEG 0003.

⁸ APP-HG-9 at MEG 0493.

⁹ APP-HG-9 at MEG 0493.

¹⁰ APP-HG1 (Gilbert Direct) at MEG 0396-0398, specifically at MEG 0396, lines 12-13.

Cipriani Development, as part of the MUD creation process, Megatel contacted the City and requested sewer service on February 18, 2022 *before* the Application was filed, and again on June 6, 2022 *after* the application was filed.¹¹ Megatel and the City ultimately began discussions regarding the requests for wastewater service in the September 2022 timeframe as part of a Development Agreement.¹²

During TCEQ's review of evaluating whether the Application complies with the State's Regionalization Policy, the ED's Response to Public Comment ("RTC") shows that the ED took into serious consideration Megatel's efforts to obtain wastewater services from the City, both *before* and *after* the Application was filed.¹³ A genuine review of the evidence in the record shows that Megatel's diligent actions were entirely consistent with the State's Regionalization Policy. The ALJ appropriately determined based on the evidentiary record that the extensive negotiations between the City and Megatel which resulted in the City's outright refusal to provide wastewater service fully satisfied the requirements of the State's Regionalization Policy.¹⁴

II. ANALYSIS

Despite the City's theatric opening assertion that Megatel "did indeed provide false information to TCEQ to get its permit approved"¹⁵, the ALJ has clearly explained that "[t]here is no suggestion that this omission was intentional" *based on the City's own statements to Megatel*.¹⁶

¹¹ APP-ZI1 (Ipour Direct) at MEG 0005-0006.

¹² APP-ZI1 (Ipour Direct) at MEG 0006.

¹³ APP-9 at APP Ex. 00392-00393.

¹⁴ See e.g., PFD at 18-20.

¹⁵ City's Exceptions, at 1. Although the City does not point to what it believes to be "false" in its opening assertion, Megatel presumes the City is referring to the portion of the Application regarding wastewater facilities within a three-mile radius since the City repeats the same claim below.

¹⁶ PFD at 19.

After the City next pontificated in its Exceptions about the City’s beliefs regarding the purpose for TCEQ’s regionalization reviews - but citing to no supporting authority - the City recognized that the ALJ applied the correct TCEQ regionalization policy to Megatel’s Application (the “2021 Web Page Guidance”) which entails four components.¹⁷

However, the City failed to acknowledge that the applicable 2021 Web Page Guidance expressly provides that “TCEQ may approve new, renewal and major amendment applications for discharges of wastewater in any one of the following [four] situations . . .”¹⁸ Thus, if Megatel’s Application meets any one of the four components of the 2021 Web Page Guidance, then Megatel’s Application complies with the State’s Regionalization Policy. As discussed below, Megatel’s Application meets more than one if not all of the four such components.

A. The Application Reasonably States that There is No Wastewater Treatment Facility or Collection System Within Three Miles of the Proposed Facility

With regard to the first component of the 2021 Web Page Guidance, the ALJ recognizes that before filing the Application, Megatel’s engineering firm contacted the City regarding wastewater service, and the City’s own engineer replied that the Cipriani Development to be served by the wastewater permit “was very far from any water or sewer infrastructure.”¹⁹ The ALJ also confirms that there is “no suggestion” that Megatel intentionally omitted information in the simple act of checking the box in the TCEQ form indicating that there are no wastewater collection systems within a three-mile radius of the proposed facility.²⁰

¹⁷ City’s Exceptions at 2, *citing* APP-HG-6 at MEG 0440-0442.

¹⁸ APP-HG-6 at MEG 0440 (emphasis added).

¹⁹ PFD at 19.

²⁰ PFD at 19.

Conversely but without a single shred of evidence, the City offers disparaging assertions that Megatel: (i) “provided false information to the Commission to escape the regionalization review”; (ii) engaged in a “blatant attempt to falsely provide information so the Commission might give zero review to a regionalization review”; and (iii) may have included other “erroneous information” in its Application.²¹ But the City cites to nothing to support its hypotheses. In diametrical opposition to the City’s derogatory assertions which have no evidentiary support or basis, an honest and truthful review of the evidentiary record reflects that Megatel’s engineers certainly had rational, sensible reasons for checking the box in the Application form that there are no facilities within three miles:²²

- The City’s response to Megatel’s inquiry regarding service indicates that the City was disinterested in providing wastewater service, did not have present capacity, and did not have the willingness to expand to provide wastewater service;²³ and
- TCEQ’s expert testified that based on the City’s statements that the City’s facilities are very far from Megatel’s service territory and that it would require significant infrastructure to serve the Cipriani Development, it would have been reasonable for Megatel’s engineers to conclude that there were not facilities within three miles that could handle the capacity.²⁴

There is no evidence to the contrary. As summarized in the ED’s Response to Closing Arguments:

It seems reasonable to the ED for Megatel to interpret this email [from the City] as a denial of service. At the very least, [the City’s] statements could reasonably be understood to indicate that the City could not serve the tract at the time of the email, and that there were no facilities nearby.²⁵

²¹ City’s Exceptions, at 3.

²² See e.g., Megatel’s Closing Argument at 23-24 (citations omitted); Megatel’s Response to Closing Arguments, at 12 (citations omitted).

²³ APP-HG1 (Gilbert Direct) at MEG 0398.

²⁴ Tr. 169 (Dutta).

²⁵ ED’s Response to Closing Arguments at 3.

Indeed, the evidentiary record completely refutes the City's suppositions, and there is nothing in the evidentiary record to indicate even a glimmer of nefarious motivations, contrary to the City's baseless statements.

Nonetheless, as the ALJ rightfully concludes, regardless of whether the City has pipes within a three mile radius, any unintentional misstatement on TCEQ's Application form is harmless error because Megatel endeavored to obtain service from the City, but the City ultimately did not agree to provide service.²⁶ Thus, Megatel has effectively complied with the first component of TCEQ's 2021 Web Page Guidance, given the City's response to Megatel's engineer about facilities within a three mile radius, and even if Megatel unintentionally did not strictly comply, it was harmless error.²⁷

B. Megatel Requested Service From the City but the Request was Denied

With regard to the second component of the TCEQ's 2021 Web Page Guidance, although the City acknowledges that Megatel and the City engaged in significant negotiations to reach an agreement, the City refuses to recognize that the evidentiary record shows that the City denied service when the City refused to approve the Development Agreement.²⁸ In fact, the evidentiary record is replete with direct evidence that the City denied Megatel's wastewater service request. For example:

²⁶ PFD at 19.

²⁷ Although not cited by the ALJ in the PFD, the ALJ's conclusion regarding harmless error is supported by the *Application by Regal, LLC for TPDES Permit No. WQ0015817001*, SOAH Docket No. 582-21-0576; TCEQ Docket No. 2020-0973-MWD (Nov. 29, 2021), FOF 40-42, 51; COL 21-22 (the box regarding facilities within a three-mile radius was incorrectly checked and there were facilities within three miles, but the application nevertheless met the State's Regionalization Policy because service was not available from the nearby system).

²⁸ City's Exceptions, at 3-4.

- “When the City Council refused to approve the Development Agreement, they denied our wastewater service request.”²⁹
- “[The City] rejected Megatel’s efforts to receive city sewer service which denied service to Megatel, making sewer service from the City unavailable . . . nothing more is expected of Megatel pursuant to the State’s Regionalization Policy. . . .”³⁰
- “[T]he City Council denied service when City Council rejected the terms in the Development Agreement which included wastewater service. At that point, there is nothing left for Megatel to do in order to comply with the State’s Regionalization Policy.”³¹
- “[I]t is not relevant whether the City has collection facilities within three miles. . . . Megatel submitted a service request to the City, negotiated for service, but was denied by the City Council. Pursuant to the State Regionalization Policy, when the City denied Megatel’s request for sewer service, there was nothing left for Megatel to do to comply.”³²
- “In this case, service by [the City] is not available because it has denied Megatel’s service requests. There is no basis to deny the permit application on the basis of regionalization where the so-called areawide system is unavailable. This reasoning supported the Commission’s decision to grant a new permit to applicant in *Application by Regal, LLC for TPDES Permit No. WQ0015817001*, SOAH Docket No. 582-21-0576; TCEQ Docket No. 2020-0973-MWD.”³³
- When asked on cross-examination, TCEQ’s expert testified that “The City did not approve this request for service.”³⁴

²⁹ APP-ZI1 (Ipour Direct) at MEG 0012.

³⁰ APP-HG1 (Gilbert Direct) at MEG 0389.

³¹ APP-HG1 (Gilbert Direct) at MEG 0390.

³² APP-HG1 (Gilbert Direct) at MEG 0396.

³³ APP-HG1 (Gilbert Direct) at MEG 0400.

³⁴ Tr. 173 (Dutta).

Further, the City's insistence on conditions to wastewater service such as annexation and other restrictions included in the Development Agreement equate to a denial of service.³⁵ As explained by Megatel's expert on the State's Regionalization Policy on cross-examination:

But certainly the Commission has granted permits where there was a system maybe even very close nearby but for multiple reasons that wastewater service from a municipal provider was unavailable, it had been conditioned on things like annexation, which the Commission has found to constitute denial of service.³⁶

...

And what I have seen certainly in my position is that cities who no longer have annexation, they impose their land use restrictions in exchange for wastewater. The Commission has found those special conditions to be effective denial of service and at which point an applicant has satisfied the regionalization inquiry and does not have to do anything further. And I think that is what happened in this case.³⁷

Thus, the City takes much too simplistic a view of the TCEQ's 2021 Web Page Guidance by stating that the ALJ was in error to conclude that the key factor is "whether Megatel attempted to obtain service."³⁸ The ALJ's conclusion was correct, and the City introduced no direct evidence and did not develop any evidence during the hearing to support its erroneous contention that the City did not deny Megatel's request for wastewater service. Thus, Megatel has met the second component of TCEQ's 2021 Web Page Guidance, and has fully complied with the State's Regionalization Policy.

C. There was no Need for an Evaluation of Costs

With regard to the third component of the 2021 Web Page Guidance, the City's asserts that there is no credible evidence indicating that there should be an exception to the regionalization

³⁵ See e.g., Megatel's Closing Argument at 19-23 (citations omitted); Megatel's Response to Closing Arguments, at 15-18 (citations omitted).

³⁶ Tr. 72-73 (Gilbert).

³⁷ Tr. 83 (Gilbert).

³⁸ City's Exceptions, at 4.

review based on costs.³⁹ However, the City's assertion ignores: (i) that a cost analysis was not required at all given the City's denial of service;⁴⁰ and (ii) their own Closing Arguments which recognize Megatel's estimates of costs to connect to the City's wastewater system.⁴¹ Thus, the ALJ correctly concluded that given the extensive negotiations between the City and Megatel which resulted in the City's outright refusal to provide wastewater service, there was no need for a cost evaluation.⁴² Although there was no need for Megatel to address the third component of TCEQ's 2021 Web Page Guidance, Megatel nevertheless conducted a cost evaluation. In any event, Megatel has followed the State's Regionalization Policy.

D. Megatel did not Need to Obtain a Certificate of Convenience and Necessity for the Service Area

With regard to the fourth component of the 2021 Web Page Guidance, none of the property in the Cipriani Development to be served by the proposed wastewater permit is included in any sewer CCN.⁴³ Thus, there is no retail sewer provider with which Megatel's proposed wastewater permit would displace or duplicate for the same service area. Since Megatel's development plans for the Cipriani Development include MUDs which do not need a CCN to provide retail service, and there is no CCN covering the property, Megatel has a path forward to provide retail sewer service to the Cipriani Development without obtaining a CCN, and Megatel has taken steps to

³⁹ City's Exceptions, at 4.

⁴⁰ See *e.g.*, PFD at 19-20, referencing the City's refusal to agree to wastewater service ending the regionalization inquiry. See also *supra*, the discussion regarding denial of service ending the regionalization inquiry.

⁴¹ City's Closing Arguments at 16, citing Exh. APP-HG12 (Although the City's Closing Arguments are not paginated, page number references are nonetheless provided); see also *e.g.*, Applicant's Response to Closing Arguments at 21, citing APP-HG1 (Gilbert Direct) at MEG 0410 (cost evaluation admitted by the ALJ for limited purposes of establishing that there can be a wide range of cost estimates, citing Prh. Tr. at 11-13).

⁴² PFD at 18-20.

⁴³ APP-ZI1 (Ipour Direct) at MEG 0003.

prevent the City from obtaining a CCN over the property.⁴⁴ Thus, with regard to the fourth component of the 2021 Web Page Guidance, the absence of a CCN in no way impairs Megatel's ability to provide retail wastewater service to the Cipriani Development through the MUDs.

III. CHANGES TO THE PFD

As explained above, the City offers virtually no legal authority or evidentiary support for the City's Exceptions, which do not include any salient reasons to change either the PFD, the proposed Findings of Fact, Conclusions of Law, or Ordering Provisions.

IV. CONCLUSION

Megatel agrees with the ALJ's reasoning, analysis, and conclusions in the PFD, which is fully supported by the evidentiary record, and requests only the clarifications to the Findings of Fact and the Ordering Provision that were included in the Exceptions that Megatel filed on December 12, 2024.

Respectfully submitted,

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⁴⁴ APP-ZI1 (Ipour Direct) at MEG 0003-0004, and 0013-0014.

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2024, a copy of Applicant’s foregoing Reply to Exceptions to the Proposal for Decision was served on all person listed either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

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