

TCEQ DOCKET NO. 2023-0850-MWD

APPLICATION BY MEGATEL HOMES, § BEFORE THE TEXAS
LLC FOR NEW TPDES PERMIT NO. § COMMISSION ON
WQ0016162001 § ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the Application by Megatel Homes, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) permit Number WQ0016162001 and the ED’s preliminary decision. The Office of the Chief Clerk received a hearing request from the City of Mansfield (Mansfield or City).

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map.

I. EXECUTIVE SUMMARY

The Executive Director received one hearing request on this application, from the City of Mansfield. After evaluating the hearing request, the Executive Director determined that the City of Mansfield has demonstrated that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public. The proposed treatment facility is in the City’s extraterritorial jurisdiction and therefore, the City has statutory authority over issues relevant to the application. The City’s hearing request raised the following issues: whether the draft permit is protective of water quality in the receiving waters in accordance with the Texas Surface Water Quality Standards; and whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options.

The Executive Director recommends referring the following issues to the State Office of Administrative Hearings:

Issue 1: Whether the draft permit is protective of water quality in the receiving waters in accordance with the Texas Surface Water Quality Standards. *(RTC Response No. 2)*

Issue 2: Whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options. *(RTC Response No. 1)*

II. DESCRIPTION OF FACILITY

The Applicant applied for a new TPDES permit to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The proposed facility will be located approximately 1 mile southwest of the intersection of Bedford Street and North Farm-to-Market Road 157, in Johnson County, Texas.

The proposed facility will be a suspended growth single-stage nitrification activated sludge process plant operated in the conventional mode. Treatment units will include an onsite lift station, mechanical bar screens, two aeration basins, two secondary clarifiers, a chlorine contact chamber, a dechlorination system, and two aerobic digesters. The facility has not been constructed.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l five-day biochemical oxygen demand (BOD₅), 15 mg/l total suspended solids (TSS), 126 CFU or MPN of *E. coli* per 100 ml, and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent will be discharged to Reece Branch, then to Mountain Creek, then to Joe Pool Lake in Segment No. 0838 of the Trinity River Basin. The unclassified receiving water use is limited aquatic life use for Reece Branch and high aquatic life use for Mountain Creek. The designated uses for Segment No. 0838 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's *Procedures to Implement to Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the

receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Mountain Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected.

III. PROCEDURAL HISTORY

The TCEQ received the application on May 4, 2022. The Application was declared administratively complete on June 8, 2022. The Notice of Receipt of Application and Intent to Obtain Permit (NORI) was published in English on June 11, 2022, in the *Dallas Morning News*. The application was determined technically complete on September 22, 2022. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in the *Dallas Morning News* on October 21, 2022. The period to request a contested case hearing ended on November 21, 2022.

This application was filed on or after September 1, 2015; therefore, it is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requester is an affected person;
- 2) whether issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's RTC;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e)

Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments, and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requester prior to the filing of the ED's RTC. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- 2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language

the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

- 3) request a contested case hearing;
- 4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- 5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d)

Requirement that Requestor be an Affected Person/ "Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person.

- a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- b) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - 1) whether the interest claimed is one protected by the law under which the application will be considered;

- 2) distance restrictions or other limitations imposed by law on the affected interest;
 - 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - 4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - 5) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - 6) whether the requestor timely submitted comments on the application which were not withdrawn; and
 - 7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- d) In making affected person determinations, the Commission may also consider, to the extent consistent with case law:
- 1) the merits of the underlying application and supporting documentation in the Commission's administrative record, including whether the application meets the requirements for permit issuance;
 - 2) the analysis and opinions of the executive director; and
 - 3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203

Referral to the State Office of Administrative Hearings (SOAH)

“When the Commission grants a request for a contested case hearing, the Commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;

2) was raised during the public comment period by an affected person whose hearing request is granted; and

3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of the Requests

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestors Complied with 30 TAC §§ 55.201 (c) and (d)

The TCEQ received one timely hearing request, from Ms. Vanessa Ramirez, on behalf of the City of Mansfield that raised disputed issues during the public comment period that have not been withdrawn. The City's hearing request provided the necessary contact information and requested a contested case hearing. The proposed treatment facility is in the City's extraterritorial jurisdiction and therefore, the City has statutory authority over issues relevant to the application. The City explained its position that it has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public.

The Executive Director recommends the Commission find that the hearing request of the City of Mansfield substantially complies with 30 TAC §§ 55.201 (c) and (d).

B. Whether individual requestor meets affected person requirements The City of Mansfield

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person, and recommends the Commission find that the City of Mansfield is an affected person.

The City demonstrated that they are an affected person and have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public. 30

TAC § 55.203(b) provides that governmental authorities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. According to the address identified by the Applicant in the permit application, the proposed treatment facility will be located in the extraterritorial jurisdiction of the City of Mansfield and therefore, the City has statutory authority over issues relevant to the application. All of the issues raised by the City in their hearing request were raised during the public comment period. Specifically, the City's hearing request raised the following issues: whether the draft permit is protective of water quality in the receiving waters in accordance with the Texas Surface Water Quality Standards; and whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options.

The City of Mansfield raised issues that are relevant and material to the application and has identified a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application in a way that is not common to members of the general public.

Therefore, the Executive Director recommends that the Commission find that the City of Mansfield is an affected person and grant their hearing request.

C. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director has analyzed issues in accordance with the regulatory criteria. The issues were raised by the City of Mansfield during the comment period and addressed in the RTC. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred. The issues raised for this application and the Executive Director's analysis and recommendations follow.

Issue 1: Whether the draft permit is protective of water quality in the receiving waters in accordance with the Texas Surface Water Quality Standards. (*RTC Response No. 2*)

The issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not protect water quality in the

receiving waters, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

Issue 2: Whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options. *(RTC Response No. 1)*

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not comply with the regionalization policy of TWC § 26.0282, that information would be relevant and material to a decision on the application. The Executive Director recommends referring this issue to SOAH.

Issue 3: Whether the applicant has the appropriate level of experience and managerial competence to effectively construct and manage the treatment facility. *(RTC Response No. 1)*

The issue involves a question of fact, was raised during the comment period, and was not withdrawn; however, it is not relevant and material to a decision on the application. The applicant is a new applicant with an unclassified compliance history, and no demonstration has been made that the applicant is unqualified to construct and manage the facility. The Executive Director does not recommend referring this issue to SOAH.

Issue 4: Whether the applicant has the financial resources to effectively construct and manage the treatment facility. *(RTC Response No. 1)*

The issue involves a question of fact, was raised during the comment period, and was not withdrawn; however, it is not relevant and material to a decision on the application. The Executive Director does not recommend referring this issue to SOAH.

VI. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VII. Conclusion

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that the City of Mansfield is an affected person and grant its hearing request.
2. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.
3. The Executive Director recommends referring the following relevant and material issues that were included in their hearing request and timely raised during the comment period to SOAH:

Issue 1: Whether the draft permit is protective of water quality in the receiving waters in accordance with the Texas Surface Water Quality Standards. *(RTC Response No. 2)*

Issue 2: Whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options. *(RTC Response No. 1)*

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel,
Interim Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Bobby Salehi, Staff Attorney
Environmental Law Division
State Bar No. 24103912
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-5930
Fax: (512) 239-0626

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 2, 2023, the original of the “Executive Director’s Response to Hearing Requests” for TPDES Permit WQ0016162001 for Megatel Homes, LLC was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Bobby Salehi, Staff Attorney
Environmental Law Division
State Bar No. 24103912

MAILING LIST

Megatel Homes, L.L.C.

TCEQ Docket No. 2023-0850-MWD; TPDES Permit No. WQ0016162001

FOR THE APPLICANT:

Zach Ipour, President
Megatel Homes, L.L.C.
2101 Cedar Springs Road, Suite 700
Dallas, Texas 75201

Jonathan Nguyen, Permit Specialist
Quiddity Engineering
3100 Alvin Devane Boulevard, Suite 150
Austin, Texas 78741

Alex Pfefferkorn, Land Development
Manager
Quiddity Engineering
3100 Alvin Devane Boulevard, Suite 150
Austin, Texas 78741

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Bobby Salehi, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711

Deba Dutta, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711

FOR ALTERNATIVE DISPUTE RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711

FOR THE CHIEF CLERK

via eFilings:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711

REQUESTER(S):

Vanessa Ramirez
City of Mansfield
1200 East Broad Street
Mansfield, Texas 76063

E. Allen Taylor, Jr.
Taylor Olson Adkins Sralla & Elam LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

INTERESTED PERSON(S):

Bradley Anderle
Taylor Olson Adkins Sralla & Elam LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

Attachment A

Megatel Homes, LLC

WQ0016162001

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



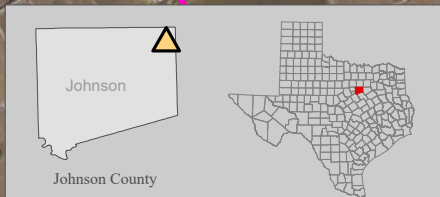
*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 8/2/2023
CRF 0091083
Cartographer: Abanda

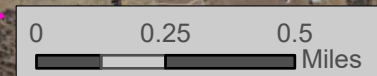


- Facility Outfall
- Facility Boundary
- City of Mansfield - City Limits
- 1-Mile Discharge Route
- Discharge Route
- 0.5-Mile Radius
- 1.0-Mile Radius
- 1.5-Mile Radius
- County Boundary

Requestor:
City of Mansfield



The facility is located in Johnson County. The Triangle (Orange) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Johnson County (red) in the state of Texas.



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.