

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

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

**CITY OF MANSFIELD’S  
REPLY TO EXCEPTIONS TO PROPOSAL FOR DECISION**

**TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:**

COMES NOW THE CITY OF MANSFIELD (“City”), and presents to the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) this its Exceptions to the Administrative Law Judge’s (“ALJ”) Proposal for Decision (“PFD”) filed on November 22, 2024, for the Application by Megatel Homes, LLC (“Megatel” or “Applicant”) for a TPDES Permit in Johnson County in the above-referenced docket.

**I. INTRODUCTION**

The application which is the subject of this proceeding (the “Application”) seeks to construct a wastewater treatment facility within the extraterritorial jurisdiction of the City. The Applicant did not perform even a modicum of a regionalization analysis. The City continues to assert that the subject permit should be denied. The ALJ erred in not recommending denial of the permit.

**II. ANALYSIS**

The ALJ’s finding that the Application contained a regionalization review compliant with the Texas Water Code and applicable TCEQ regulations, guidance, and practice is in error. The Applicant did, indeed, provide false information to the TCEQ in order to get its permit approved. Despite the submission of erroneous information in Megatel’s Application, the ALJ has recommended approval of the permit. The City disagrees with the ALJ’s recommendation.

When performing the regionalization review for a new TPDES permit, it is important to remember the reason for the review. While everyone can agree that economic development is of importance in this state, it is not the sole factor in determining if a new TPDES permit SHOULD be granted. The permit must also be “necessary to the health, safety, and welfare of the people of this state...” to “prevent pollution and to maintain and enhance the quality of the water in the state.”<sup>1</sup> The State has an interest in keeping the waters of the state clean for its residents, wildlife, and public at large. For this reason, a regionalization review is tantamount and necessary to any TPDES permit application. Frankly, it is the last backstop the state has to ensure the non-proliferation of new sources of pollution into the water of the state. The ALJ’s finding that the regionalization review is adequate in this case fails this ever-important test to the state’s need for clean water.

The ALJ recognizes and relies upon certain guidance provided by the TCEQ in determining whether an adequate regionalization review has been accomplished. The guidance document, found at App Exhibit HG-6, details certain standards the Commission utilizes to determine the adequacy of a regionalization review. The agency guidance lists four guidelines in which the agency may “approve new...applications for discharge of wastewater.”<sup>2</sup> Each will be considered in turn.

**There is no wastewater treatment facility or collection system within three miles of the proposed facility.**<sup>3</sup>

There is no evidence that a wastewater treatment facility is within three miles of the proposed facility. However, there is evidence that a wastewater collection system line is located

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<sup>1</sup> See TWC § 26.081. (a).

<sup>2</sup> See App. Ex. HG-6 at 1-2.

<sup>3</sup> Id. at 1.

within 2.5 miles of the proposed facility. City witness, Jeff Price, testified that the City owns a 30-inch sewer line within 3 miles of the proposed facility.<sup>4</sup> Yet, Applicant provided false information to the Commission in order to escape the regionalization review. The Application shows as follows:

**3. Nearby WWTPs or collection systems**

Are there any domestic permitted wastewater treatment facilities or collection systems located within a three-mile radius of the proposed facility?

Yes ☐

No ☒

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This blatant attempt to falsely provide information so the Commission might give zero review to a regionalization review should not be rewarded. This begs the very real question: if this is the lengths the Applicant will go to reduce critical review of its application, what other aspects of its application likewise contain erroneous information? As such, the permit should be denied based on this information.

**The applicant requested service from wastewater treatment facilities within the 3 miles and the request was denied.**<sup>6</sup>

It is without question that the City and the Applicant conducted significant negotiations toward an agreement. What is unclear as to why the parties' decision to not come to terms on an agreement is being held against the City. The Commission's guidance states that the regionalization review should cease if a request is denied. The City has not denied service to the Applicant. In fact, it took action to demonstrate its intent to serve the Applicant's property.

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<sup>4</sup> City Ex. 1 at 4.

<sup>5</sup> App Ex. Tab D at 00047.

<sup>6</sup> See App. Ex. HG-6 at 2.

The ALJ states that what is important in this analysis is “whether Megatel attempted to obtain service....”<sup>7</sup> This is a misstatement of the TCEQ guidance document. TCEQ guidance provides that service was requested and denied. This did not occur. The evidence is clear in that the parties did not come to terms, not that service was denied. Thus, the Applicant cannot produce any evidence that service has been denied. As such, the Applicant has failed to make a demonstration necessary for the Commission’s required findings needed to meet this branch of the Commission’s own guidance document. As such, the Applicant should not be credited with performing a regionalization review.

**The applicant can successfully demonstrate that an exception to regionalization should be granted based on costs, affordable rates, and/or other relevant factors.**<sup>8</sup>

There is no credible evidence adduced that demonstrates that an exception to the regionalization review should be granted.

**The applicant has obtained a Certificate of Convenience and Necessity (CCN) for the service area of the proposed new facility or the proposed expansion of the existing facility.**<sup>9</sup>

There is no evidence that the applicant has the CCN for the proposed area.

Thus, when considering all the evidence and the Commission’s guidance document on regionalization, there is sufficient evidence to state that an inadequate regionalization review was performed. Such poor regionalization review should result in the denial of the permit application. As such, the City hereby recommends the following changes to the Proposed Findings of Fact and Conclusions of Law.

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<sup>7</sup> See Proposal for Decision at 18-19.

<sup>8</sup> See App. Ex. HG-6 at 2.

<sup>9</sup> See App. Ex. HG-6 at 2.

### **III. CHANGES TO PFD**

Because of the errors discussed above, the City requests the following changes to the proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs.<sup>10</sup>

#### **Findings of Fact**

24. Applicant did not ~~established~~ the need for wastewater service from its Facility.

~~28. In March 2022, Applicant emailed the City's Director of Engineering Services and asked whether the City could provide wastewater service to the Cipriani Development.~~

~~29. The City's Director of Engineering Services responded by email, stating, "[t]his location is in [the City's] ETJ but outside of the current city limits. This area is very far from any water or sewer infrastructure. To have [City] utility service would require significant infrastructure similar to what is shown in the master plans."~~

~~30. Applicant submitted a request for wastewater service for the Cipriani Development from the City, and discussions between the City and Applicant began in September 2022.~~

~~31. Representatives of the City and Applicant entered into a development agreement providing, among other things, that the City would provide wastewater services to the Cipriani Development. The development agreement also provided for financial incentives to Applicant and required City annexation of the development.~~

~~32. City council did not adopt the development agreement.~~

~~33. The City did not agree to provide wastewater services.~~

~~34. The City has a contract with the Trinity River Authority (TRA), under which the City transports wastewater to TRA's Mountain Creek Regional Wastewater System for treatment.~~

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<sup>10</sup> Insertions are shown as underlines. Deletions are stated or shown by a strikethrough.

~~Under the City's contract with TRA, the City is to provide service to the area that includes the Cipriani Development.~~

~~35. TRA has capacity to treat the proposed wastewater at its Mountain Creek Regional Wastewater System, but it has not contracted with developers directly. Its contract is with its member cities, including the City. The contract requires the City, rather than TRA, to collect any wastewater for treatment from the area covered by the Cipriani Development.~~

28. The City of Mansfield has a collection system within 3 miles of the proposed facility.

29. The Applicant erroneously stated that there were no such facilities within 3 miles of the proposed facility.

30. The City never denied providing wastewater service to the Applicant.

31. The applicant did not demonstrate that an exception to regionalization should be granted based on costs, affordable rates, and/or other relevant factors.

32. The applicant has not obtained a Certificate of Convenience and Necessity (CCN) for the service area of the proposed new facility or the proposed expansion of the existing facility.

### **Conclusions of Law**

11. The Draft Permit is not protective of water quality and the existing uses in the receiving waters under the applicable surface water quality standards in 30 Texas Administrative Code chapter 307.

14. The Application demonstrates compliance with TCEQ's regionalization policy. Tex. Water Code §§ 26.003, .081, and .0282.

14A. The City did rebut the prima facie demonstration by demonstrating that one or more provisions in the Draft Permit violate a specifically applicable state or federal requirement that relates to a matter referred by the TCEQ. 30 Tex. Admin. Code §§ 80.17(c), 80.117(c).

**Ordering Paragraphs**

1. The Application of Megatel Homes, LLC for Texas Pollutant Discharge Elimination System Permit No. WQ0016103001 is denied ~~granted~~.

**IV. CONCLUSION**

The City of Mansfield respectfully requests that the findings of fact, conclusions of law, and ordering paragraphs be accepted and incorporated in the Commission's Final Order.

Respectfully submitted,

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**ATTORNEY FOR THE CITY OF  
MANSFIELD**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of December, 2024, a true and correct copy of the foregoing document has been sent via eservice, facsimile, first class mail, or hand-delivered to all counsel of record.

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