

SOAH DOCKET NO. 582-24-08875  
TCEQ DOCKET NO. 2023-1667-MWD

APPLICATION BY STEPHEN  
RICHARD SELINGER FOR TPDES  
PERMIT NO. WQ0016103001

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BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS

**CITIZENS AGAINST ELLIS COUNTY MUDS, INC.’S**  
**REPLY TO EXCEPTIONS TO THE PROPOSAL FOR**  
**DECISION**

**October 18, 2024**

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THE PROPOSAL FOR DECISION**

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

Citizens Against Ellis County MUDs, Inc. (“CAECM”) will note that the arguments presented by the Executive Director rest upon the premise that the timing at which Protestant raised the operator issue requires that the substantive requirements related to the operator issue be ignored. This presents a question of whether the other parties were unduly prejudiced or unfairly surprised by the raising of the operator issue. The proper means of addressing such surprise, if it did occur, would have been through a request for continuance, or a request to abate the proceedings. Neither Applicant nor the Executive Director sought such relief. Having not sought a continuance, the Executive Director should not now be allowed to complain of unfair surprise.

What the Executive Director seeks is a “death penalty” discovery sanction. Not only does TCEQ lack the authority to ignore its substantive rules to impose such a sanction, but a death penalty sanction is only proper where the record demonstrates bad faith in the litigation process as a whole, as well as the prior imposition of lesser sanctions. *Paradigm*

*Oil, Inc. v. Retamco Operating, Inc.*, 161 S.W.3d 531, 539 (Tex. App.—San Antonio, 2004, pet. denied). There is no such evidence of bad faith in this case.

Pursuant to Tex. Gov't Code § 2001.051(2), each party in a contested case hearing is entitled to respond and to present evidence and argument on each issue involved in the case. In a direct referral, such as the immediate case, the issue referred is, “whether the application complies with all applicable statutory and regulatory requirements.” Tex. Water Code § 5.557(a). Protestant’s argument that the Applicant failed to demonstrate compliance with the TCEQ Rules requiring that an operator be included as an applicant constituted an exercise of this statutory right, embodying constitutional principles. Granting the permit under these circumstances would deprive Protestant of statutory and constitutional due process.

For these reasons, CAECM maintains its request that the ALJ’s recommendation be reversed, and that the Application be denied.

Respectfully submitted,

/s/ Eric Allmon

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the above and foregoing document has been served via electronic service to the parties of record below, on October 18, 2024.

/s/ Eric Allmon  
Eric Allmon

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