

TCEQ DOCKET NO. 2024-0131-MWD

APPLICATION BY WILCO § BEFORE THE TEXAS COMMISSION
MUNICIPAL UTILITY DISTRICT 45 §
WWTP, LLC § ON
FOR PROPOSED TPDES PERMIT §
NO. WQ0016146001 § ENVIRONMENTAL QUALITY

05 RANCH INVESTMENTS, LLC'S
REPLY TO RESPONSES TO HEARING REQUESTS

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

05 Ranch Investments, LLC (“05 Investments”), pursuant to 30 Texas Administrative Code (“TAC”) § 55.209(g), files this Reply to the Responses to Hearing Requests filed by the Executive Director (“ED”), the Office of Public Interest Counsel (“OPIC”), and Wilco Municipal Utility District 45 WWTP, LLC (“Wilco MUD 45” or “Applicant”), related to Wilco MUD 45’s application for Proposed TPDES Permit No. WQ0016146001 (“Application”) and the draft permit filed by the ED in this matter related to the Application (“Draft Permit”). 05 Investments respectfully shows the following:

I. SUMMARY

The Texas Commission on Environmental Quality (“Commission”) should grant 05 Investments’ timely-filed request for contested case hearing (“Request”) on the ED’s decision regarding the Application and Draft Permit because it satisfies all criteria warranting that the Commission do so; the Request complies with the form and procedural requirements set forth in 30 TAC § 55.201, and 05 Investments is an “affected person” as such term is defined in Texas Water Code (“TWC”) § 5.115 and 30 TAC § 55.203. OPIC agrees with 05 Investments’ Request and has recommended that the Commission find that 05 Investments is an “affected person” and should be granted a

referral to the State Office of Administrative Hearings (“SOAH”) for a contested case hearing.¹ 05 Investments supports such a recommendation. The Applicant’s Response to Requests for Contested Case Hearing (the “Applicant’s Response”) and the ED’s Response contend that 05 Investments’ Request should be denied.² This Reply addresses those responses.

II. REPLY

A. 05 Investments is an “Affected Person” in this Matter and the Commission should grant 05 Investments’ Request for Contested Case Hearing.

Contrary to the Applicant’s and the ED’s recommendation, the Commission should grant 05 Investments’ Request, because it satisfies all of the regulatory prerequisites applicable to a contested case hearing request regarding a TPDES permit application. While the Applicant’s and the ED’s Responses contend that 05 Investments is not an “affected person,” this Reply provides the factual bases to refute such contentions and demonstrates that 05 Investments is entitled to a contested case hearing.³

In its response, OPIC correctly found that 05 Investments qualifies as affected person in this matter.⁴ 05 Ranch Investments is located downstream of the proposed facility and is the owner of the land upon which the already permitted Prairie Crossing

¹ Office of Public Interest Counsel’s Response to Hearing Requests (“OPIC’s Response”); Docket No. 2024-0131-MWD, pg. 10 (April 1, 2024).

² Applicant’s Response to Requests for Contested Case Hearing (“Applicants Response”); Docket No. 2024-0131-MWD, pg. 9 (April 1, 2024); Executive Director’s Response to Hearing Requests (“ED’s Response”); Docket No. 2024-0131-MWD, pg. 11 (April 1, 2024).

³ Applicant’s Response accuses the Prairie Crossing entities of “exploiting” Commission processes by filing its Request in this matter. (Applicant’s Response, pg. 2-3 (April 1, 2024).) Such argument is both factually incorrect and also has no bearing on who qualifies as an affected person under TCEQ rules. Applicant’s Response also discusses developer-related negotiations. (Applicant’s Response, pg. 2-3 (April 1, 2024).) This Reply will not address such comments as they have no relevance to affected person status in a TCEQ proceeding.

⁴ OPIC’s Response at pg. 10 (April 1, 2024).

wastewater treatment plant will sit.⁵ OPIC correctly found that this downstream proximity from the proposed plant and stated economic interests in the permitted Prairie Crossing facility are personal justiciable interests in the matter as outlined in 30 TAC § 55.203(c).⁶ As such, the Commission should decline to follow the recommendations of the Executive Director and the Applicant, and instead follow the recommendation of OPIC and grant 05 Investments' Request.

B. The Applicant is Incorrect in its Assertion that 05 Investments Cannot Raise Regionalization Concerns as a Personal Justiciable Issue.

The Applicant is incorrect in stating that 05 Investments has no personal justiciable interest based on regionalization, and the Commission should find as such. Commission regionalization policy was instituted in response to TWC § 26.0282 that dictates that when considering wastewater permits, the Commission “may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of *existing or proposed* areawide or regional waste collection, treatment, and disposal systems not designed as such by commission order pursuant to provisions of this subchapter.”⁷ 05 Investments is the owner of the land on which the already permitted regional wastewater treatment effort by Prairie Crossing Wastewater, LLC, will sit⁸ and as accurately stated by OPIC, has a personal justiciable interest in the matter because of the downstream location of its land to the proposed Wilco MUD 45 facility and its economic interests in the permitted Prairie Crossing Wastewater, LLC facility. The fact

⁵ TPDES Permit No. WQ0015850001.

⁶ OPIC's Response at pg.10 (April 1, 2024).

⁷ Tex. Water Code § 26.0282 (emphasis added).

⁸ See TPDES Permit No. WQ0015850001.

that the facility has not been constructed yet is not relevant under TWC § 26.0282. Therefore, as recommended by OPIC, regionalization is an appropriate issue to be raised by 05 Investments and should be treated as such by the Commission.

C. The ED Has Correctly Identified and Outlined the Relevant and Material Issues for Referral to SOAH and the Commission Should Adopt Their Recommendation, or, in the Alternative, Adopt the Issues Recommended by OPIC.

In determining the issues that are relevant and material to be referred to the State Office of Administrative Hearings (“SOAH”), the Commission should follow the recommendations of the ED, or in the alternative, OPIC. The ED’s Response identifies six issues for referral and OPIC’s Response identifies four issues for referral. 05 Investments believes the issue list recommended by the ED is the most comprehensive and supports the Commission’s referral of all six issues to SOAH. In the alternative, 05 Investments encourages the Commission’s referral of OPIC’s four identified issues to SOAH as it encompasses the same material.

III. CONCLUSION

For the foregoing reasons, and as recommended by OPIC, 05 Investments requests that the Commission find that 05 Investments is an affected person whose Request complies with the procedural prerequisites set forth in 30 TAC § 55.201 and grant it a contested case hearing on the relevant and material issues raised in its Requests. In the alternative, 05 Investments requests that the Commission deny the Application or remand it for reconsideration by the ED. Further, in the event of a contested case hearing, 05 Investments reserves the right to raise and pursue any and all issues that may be relevant to its interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was filed with the Office of the Chief Clerk and served to the Executive Director, OPIC, and the Applicant pursuant to 30 Tex. Admin. Code § 55.209(g) on this 15th of April, 2024.



Nathan E. Vassar