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May 9, 2023

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
P.O. Box 13087
Austin, Texas 78701-3087

Via TCEQ Online Comment Form

RE: Comments and Hearing Request regarding Application by Municipal Operations, LLC for TPDES Permit No. WQ0016171001.

Dear Ms. Gharis:

On behalf of Greater Edwards Aquifer Alliance (GEAA), and the City of Grey Forest (collectively, “Requestors”), I am submitting these comments and contested case hearing request regarding the above-referenced Application by Municipal Operations, LLC (“Applicant”). GEAA and Grey Forest may be contacted through my office at the address and telephone number indicated above.

I. GEAA and Grey Forest are “Affected Persons.”

The Purposes of GEAA include seeking to protect and preserve the Edwards Aquifer, its springs, watersheds, and the Texas Hill Country that sustains the Aquifer. In forwarding this purpose, GEAA seeks to ensure protection of the water quality in Hill Country streams.

GEAA’s membership includes persons who own property in the close vicinity to the proposed treatment plant, and would be affected by odors from the plant. GEAA’s membership also includes persons who recreate in downstream waters, and who own property adjacent to downstream waters whose use of property will potentially be harmed by the proposed discharge.

Grey Forest is a municipality located within a short distance downstream of the discharge point, with jurisdiction over issues related to the issues raised by the application.

II. Applicant has not properly identified and provided notice to adjacent landowners.

The Applicant has not accurately depicted the Applicant's property boundary, and in doing so has not provided an accurate list of adjacent property owners, resulting in a lack of proper notice of the application. The only landowner identified in the "Affected Landowner List" submitted in the Application is Guajolote Ranch, Inc. For all practical purposes, this is the same entity as the Applicant. In fact, there is such a close relationship that the Application treats the two as the same with respect to a utility service agreement reached between Lennar Homes of Texas, Inc. and the San Antonio Water System (SAWS). Portions of that agreement are substantively attached to the Application as excerpts from the utility service agreement with SAWS. Both Municipal Operations, LLC and Guajolote Ranch, Inc. are apparently treated as constituting the "Developer" for purposes of Lennar's agreement with SAWS. That agreement specifies a distance of the discharge point of at least one mile from "other" property, meaning property not owned by the Developer. In other words, Lennar claims that property owned by *both* Municipal Operations, LLC and Guajolote Ranch Inc. can be treated as both owned by the "Developer" for purposes of meeting Lennar's contractual obligations to SAWS. Yet, Lennar wants these treated as separate entities for purposes of mailed notice of the TCEQ wastewater application. TCEQ should not accept this contrivance.

TCEQ has consistently required that "adjacency" reach to include all persons adjacent to property that is not owned by the Applicant or related business entities. Reflecting the seriousness of this omission, SOAH has previously recommended revocation of a permit where it was discovered after issuance that the Applicant had played a similar game in order to avoid providing notice to adjacent landowners, and it was only a settlement of the case that avoided suspension of the permit which had been previously issued.¹

In this case, Applicant has materially misrepresented the identity of adjacent and downstream landowners. The Application should not be processed further until a correct list of adjacent landowners is developed, with mailed notice given to those landowners, and an extension

¹ *Petition to Revoke Far Hills Utility District's TPDES Water Quality Permit No. WQ0014550002, SOAH Docket 582-09-5727, TCEQ Docket No. 2009-0290-MWD.*

of the comment period is granted to allow full participation by those landowners. If this is not done, then any permit issued would be vulnerable to later revocation due to the lack of proper notice. There are numerous persons owning property adjacent to the development that should have received mailed notice of the application, but did not.

III. The discharge has not been demonstrated to be sufficiently protective of surface water quality.

The proposed discharge will contain multiple contaminants, including nutrients and bacteria. These contaminants have the potential to adversely impact the receiving waters.

Several waters downstream of the discharge will potentially be adversely impacted. Six dams exist in downstream waters near the discharge. Four of the resulting reservoirs are used for swimming, one is used for boating and fishing, while the other is used for livestock watering. The uses of these downstream waters have not been adequately protected. These waters are perennial, thereby warranting a Tier 2 anti-degradation review. The Executive Director erred in concluding that the requirements of a Tier 2 review were met, considering that the discharge will degrade clear hill country streams without being necessary for important social or economic development. Neither the requirements of a Tier 1 anti-degradation review, nor the requirements of a Tier 2 anti-degradation review have been demonstrated to have been met.

The discharge will add nutrients and other contaminants to the receiving water body that will adversely impact the appearance of the water, lower the dissolved oxygen concentration, and impact aquatic life. In addition to the failure of the Applicant to demonstrate compliance with the anti-degradation requirements, the requirements of the general criteria for water quality, set forth at 30 TAC § 307.4, have not been met.

IV. The discharge has not been demonstrated to be sufficiently protective of groundwater.

The proposed discharge is upstream of the recharge zone for the Edwards Aquifer, and contaminants from the discharge will potentially cause adverse impacts upon groundwater within the Edwards Aquifer. Yet, it has not been demonstrated that the permit includes adequate conditions to provide the necessary protection for this groundwater.

V. Applicant has not demonstrated adequate protection for wildlife, including endangered and threatened species.

The proposed facility and discharge have the potential to adversely impact wildlife, including endangered and threatened species, which has not been sufficiently addressed by the Applicant or the TCEQ. The Texas Salamander is present in area waters and will be adversely impacted by the proposed facility and discharge. Several karst invertebrates in impacted waters will also be adversely affected. Several of these reside in the Helotes Blowhole Cave, which is a cave preserve intended to provide protection for the survival of these species. The proposed discharge potentially places survival of these species in jeopardy. In addition, the proposed facility and discharge will adversely impact the Guadalupe Bass, and the False Dragon Head plant.

The water quality standards otherwise applicable to the facility do not provide adequate protection for these species, requiring a case-specific review that has not been performed.

Notably, protection of endangered species is within TCEQ's jurisdiction with regard to a TPDES Permit. EPA noted when approving the Texas program in 1998 that the Texas Water Quality Standards are intended to protect species including endangered species. The EPA specifically noted that 30 TAC § 307.6(b)(4) requires that Texas, "impose case-specific conditions in TPDES permits to protect aquatic and aquatic-dependent species (including listed species) from the toxic effects of discharges when Texas' other toxic criteria and implementation procedures provide insufficient protection." 63 Fed. Reg. 51164, 51197. TCEQ should deny the permit, since the default toxic criteria and implementation procedures do not provide sufficient protection for potentially impacted endangered species in this case, and the required case-specific conditions necessary to protect endangered species have not been developed.

VI. Applicant has not demonstrated compliance with odor control and abatement requirements.

The wastewater treatment process at the proposed facility will cause foul odors. Yet, the Applicant only proposes a buffer distance of 150 feet, and does not provide the necessary detailed depiction of the location of treatment plant units. This buffer distance is inadequate in light of the units proposed to be located at the facility. In particular, the facility will include an unaerated equalization basin. Since this basin will receive wastewater directly from the wastewater

collection system, this basin will contain wastewater with zones of anaerobic activity. Pursuant to TCEQ rules at 309.13(e), this unit should be subject to a buffer zone distance of 500 feet, rather than the 150 feet provided.

VII. Applicant has not demonstrated compliance with applicable location standards of Chapter 309 of the TCEQ Rules, including floodplain protection and protection against active geologic processes.

The proposed site of the wastewater treatment facility is at a location prone to flooding, and where wetlands potentially exist. Furthermore, the proposed site for the plant does not minimize possible contamination of water in the state, in consideration of active geologic processes (including erosion), groundwater conditions, soil conditions, and climatological conditions. As noted above, the facility has not been shown to be protective against excessive offensive odors. In short, Applicant has not demonstrated compliance with the Location Standards of Subchapter B of Chapter 309 of the TCEQ rules.

VIII. It has not been shown that the Application sufficiently identifies the operator of the plant.

For a TPDES permit, it is the duty of both the operator and the owner of the facility to submit an application for a permit. 30 TAC § 305.43(a). It has not been demonstrated that the operator and owner have met the requirements of this rule with respect to the application and proposed discharge.

IX. Applicant has not demonstrated compliance with Texas' regionalization policy.

The plant is proposed to serve an area that is within the San Antonio Water System's (SAWS') Upper Collection and Treatment Area. The Applicant has not sufficiently demonstrated that there is a need for the facility in light of the ability of SAWS to provide service to the proposed service area.

X. Conclusion

For the above reasons, GEAA and Grey Forest respectfully ask that the Application be denied. If not denied, GEAA and Grey Forest request a contested case hearing with regard to the Application.

Respectfully submitted,

/s/ Eric Allmon

Eric Allmon

State Bar No. 24031819

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