



DEPARTMENT OF THE ARMY
CAMP STANLEY STORAGE ACTIVITY, MCAAP
25800 RALPH FAIR ROAD, BOERNE, TX 78015-4800

May 28, 2015

Bridget C. Bohac, Chief Clerk
MC105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Subject: Army Request for Reconsideration on Proposed Permit NO. WQ0015219001

Dear Ms. Bohac:

We request reconsideration of TCEQ Executive Director's decision dated May 1, 2015. Specifically, aspects of the permit and the TCEQ responses to several comments on those aspects of the proposed permit No. WQ0015219001 appear arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Ref "comment #6" discussed in the May 1, 2015 Executive Director decision, our comment was not adequately addressed and pertains to whether the package plant may be undersized. The May 1, 2015 TCEQ response to comments does not address how 30 TAC §217.32 is discretionary, "[f]or a (wastewater treatment) facility less than 1.0 mgd, the permitted flow is the maximum 30-day average flow estimated by multiplying the average annual flow by a factor of at least 1.5." There does not appear to be discretion in this regulation; it does not use the word "may." This undersizing of the waste water treatment plant (WWTP) is even more evident when one delves into the details – the permit uses 75 gallons per person for use calculations, which is at the low end of the TCEQ table and low for actual use in this area. Using the 1.5 factor, the permitted 30-day average flow rate should be 210,000 gpd instead of 140,000 gpd.

Instead of addressing how this mandatory provision is somehow inapplicable or optional, the TCEQ response appears to rely on the 75%/90% rule (75% start design; 90% start expansion construction) to limit the development should the earlier phases of development exceed their flow projections. However, there is no analysis of why 30 TAC §217.32's rule, which appears mandatory on its face, can be ignored. See enclosed highlighted excerpts of the two relevant regulations (30 TAC 317.32 and 306.126) and see relevant excerpt from a Texas State Office of Administrative Hearings (SOAH) decision, 2010 TX SOAH LEXIS 59 (February 8, 2010):

FN 40. TEX. WATER CODE ANN. (Water Code) § 5.103(c) states: "The commission shall **follow its own rules** as adopted until it changes them in accordance with [the APA]." If a Texas agency fails to **follow** the clear,

unambiguous language of its **own** regulations, its action is arbitrary and capricious. See *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 255 (Tex. 1999) and *Public Util. Comm'n v. Gulf States Util. Co.*, 809 S.W.2d 201, 207 (Tex. 1991).

The response in the May 1, 2015 Executive Director's decision that because the development will be built in phases, the waste water treatment plant can be increased in size at some later date if the actual measured flows exceed 70 – 90% of the design flows is also not logical. Phases of developments are often different densities/ have varying sizes of homes/lots, so a first phase may well not produce the same flow rate as a later phase. Thus until all phases are complete, the actual total flow will not be known. In any case, as set forth above, there is no discretion in TCEQ's regulations to allow reverse designing of waste water treatment plants.

Ref "comment #4" discussed in the May 1, 2015 Executive Director decision, the applicant has added soil surveys done by a consultant in late October 2014 to the permit file in Boerne, however, no karst feature survey has been done or documented with the permit. A Karst environment, where direct connections to the aquifer may be present via crevices and caves, is a very different issue than soil. As, I set out in detail in our comments, the site is also approximately 600 feet northwest of the Edwards Aquifer Contribution Zone. The 40.5 acre area proposed for land irrigation is more accurately described as karst surface and intermittent creek bed with potential for aquifer recharge. This potential package plant would be sited in a location that potentially is on the boundary of the Upper and Lower Glen Rose formations with multiple faults and fractures. Our understanding is that recharge features are frequently found along this boundary. The applicant should be required to hire a consultant to conduct a professional survey in accordance with 30 TAC §217.10(c), for geologic cave or recharge features on the proposed site and the results reported to TCEQ. There is no discussion in the Executive Director's responses to comments on how this code provision does not apply (see above citation for the proposition that TCEQ must follow its own rules). A Karst survey, which is quite different from a soil survey, should be mandated and then the wastewater permit writers at TCEQ should review the results of such a study and evaluate the propriety of siting a wastewater plant and 40.5 acre irrigation system at this location.

If you have any questions please feel free to contact me at (210) 295-7082 or 9830.

Sincerely,

James V. Cannizzo
Counsel

Enclosure