

Alamo Group of the Sierra Club  
Aquifer Guardians in Urban Areas  
Austin Regional Sierra Club  
Bexar Green Party  
Cibolo Nature Center  
Environmental Stewardship  
Committee of the Episcopal Church  
of Reconciliation  
Environmental Stewardship  
Committee of the Episcopal Diocese  
of West Texas  
Environment Texas  
First Universalist Unitarian Church of  
San Antonio  
Friends of Canyon Lake  
Fuerza Unida  
Government Canyon Natural History  
Association  
Hays Community Action Network  
Helotes Heritage Association  
Kendall County Well Owners  
Association  
Kinney County Ground Zero  
Medina County Environmental Action  
Association  
Northwest Interstate Coalition of  
Neighborhoods  
San Antonio Conservation Society  
San Geronimo Watershed Alliance  
San Marcos River Foundation  
Santuario Sisterfarm  
Save Barton Creek Association  
Save Our Springs Alliance  
Scenic Loop Protection Association  
Smart Growth San Antonio  
SEED Coalition  
Travis County Green Party  
West Texas Springs Alliance  
Wimberley Valley Watershed  
Association

November 5, 2015

***Via Facsimile and U.S. Mail***

Glenn Shankle, MC 109  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

***Re: San Antonio MS4 Permit, WQ0004284000 (TXS001901)***

Dear Mr. Shankle:

I write you on behalf of the Greater Edwards Aquifer Alliance (“GEAA”) and its member groups Save Our Springs Alliance and Aquifer Guardians in Urban Areas to request that you withdraw the draft MS4 permit for the City of San Antonio and recommence proceedings for issuing a new permit. This request is based on the fact that over six years have passed since the application for the permit was filed back in 2000. Since then, the draft permit and the application upon which it is based have grown stale in the face of dramatic changes in San Antonio’s environment and the law.

Such changes include dramatic population growth. For instance between 2000 and 2006, San Antonio’s population grew 14% from 1,144,646 to 1,306,900. This makes San Antonio the second most populous city in Texas, rivaling San Diego as the seventh largest city in the nation. The city has also expanded its boundaries, adding 105 square miles since 2000. This expansion has been followed by increased development: between 2002 and 2005, the city filled nearly 40 square miles of its area with 1,860 subdivision plats accounting for 24,726 acres of new development. In that same time frame, the city approved 44,350 single-family and 17,074 multi-family building permits.

All this growth and increased urbanization has not gone without exacting a toll on San Antonio’s environment—and economy. For instance, according to stream flow data from USGS,<sup>1</sup> the average peak as well as maximum peak stream flows in San Antonio area creeks and streams have increased since 2000. Such increased and more frequent peak flows lead to more severe flooding, all of which directly impacts San Antonio’s economy.

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<sup>1</sup> See <http://nwis.waterdata.usgs.gov/>.

All told, between January 1, 1978 and April 30, 2006, flooding caused more than \$12.5 million dollars in losses in San Antonio alone<sup>2</sup> and accounted for 84 percent of all weather-related deaths in Bexar and surrounding counties between 1973 and 2000.<sup>3</sup>

Meanwhile, water quality has deteriorated, leading four stream segments in Bexar County to be added to the state's 303(d) list, all for bacteria, a common pollutant associated with storm water and urban runoff. These four impaired areas include two on Lower Leon Creek and two on the Upper San Antonio River. Other already impaired segments, such as Lower Leon Creek and Salado Creek, experienced new impairments that can be linked to storm water and urban runoff. All this indicates that existing storm water programs and measures are not being effective at controlling storm water, the main contributor to surface water degradation in the area.<sup>4</sup>

It is evident, then, that San Antonio's environment is dramatically different than the one back in 2000 when the application supporting the present draft permit was compiled. Consequently, even if the 2000 application was sufficiently responsive to environmental conditions back then, which it is not,<sup>5</sup> it surely cannot be responsive to conditions now given San Antonio's ever-worsening environment.

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<sup>2</sup> [http://bsa.nfipstat.com/reports/1040\\_200604.htm](http://bsa.nfipstat.com/reports/1040_200604.htm).

<sup>3</sup> Scott Huddleston, *S.A.-Austin Area Lies in "Flash Flood Alley"*, San Antonio Express News, 3/11/2001, at 4B.

<sup>4</sup> Given the hydrology of the area, such surface water degradation directly translates into groundwater degradation. For instance, man-made chemicals and pesticides have been detected in area wells. See Paul M. Buszka, Steven D. Zaugg, & Marilyn G. Werner, *Determination of Trace Concentrations of Volatile Organic Compounds in Ground Water Using Closed-Loop Stripping, Edwards Aquifer, Texas*, 45 Bull. Environ. Contam. Toxicol. 507, 510-13 (1990). Even a compound that is an indicator of sewage has been detected. *Id.* Indeed, SAWS 2006 Water Quality Report indicates the presence of total dissolved solids, nitrates and coliform in San Antonio's water supply, pollutants introduced into the groundwater through urban and storm water runoff. See [http://saws.org/our\\_water/waterquality/Report/2006\\_WaterQualityReport.pdf](http://saws.org/our_water/waterquality/Report/2006_WaterQualityReport.pdf). Clearly, then, existing measures are not effective at controlling such runoff.

<sup>5</sup> Indeed, it is not even clear that the proposed programs upon which the draft permit is based meet the statutory "maximum extent practicable" ("MEP") standard. For instance, based on the Fourth Year Annual Report attached to the application, the public education component of San Antonio's program appears to lack such basics as pollutant specific outreach as well as targeted business outreach and measurable goals, common features of other MS4 permits around the country. Nor does the report indicate that there are programs in place for source identification, preventing illicit discharges, or assessing the effectiveness of the program as a whole, some of the key programs required under 40 C.F.R. § 122.26(d)(2), which sets the *minimum* components necessary for meeting the Clean Water Act's standards. Furthermore, it is clear that grandfathering under Local Government Code Chapter 245 interferes with San Antonio's ability to enforce its storm water ordinances, enforcement of which is also key under the Act's requirements. See 40 C.F.R. 122.26(d)(2)(i)(E). Yet all the application states is that "[t]he only modifications to the San Antonio Water System programs are the manner in which the programs are implemented." Clearly, this fails to meet the statutory requirements.

Nor, for that matter, is TxDOT's proposed SWMP any better. Indeed, it is not even clear how TxDOT's proposed SWMP comports with the MEP standard at all given that the SWMP limits TxDOT to implement only those measures that are *practicable*, which TxDOT defines as those measures that are

Indeed, even the legal metric against which the adequacy of the application and draft permit is measured, *i.e.*, the “maximum extent practicable” (“MEP”) standard, has evolved since 2000. For instance, cases in Southern California have established that the MEP standard for storm water permits incorporates receiving water limitations. *City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, 38 Cal. Rptr. 3d 450, 459 (4th App. Dist. 2006). Furthermore, storm water permits can also include other controls, separate from the MEP standard, that are deemed necessary to meet water quality standards. *Building Industry Ass’n of San Diego County v. State Water Resources Control Bd.*, 22 Cal. Rptr. 3d 128, 138-144 (4th App. Dist. 2004). As such, the bar on storm water permits has been raised since 2000, antiquating and dating the current draft permit as being wholly inadequate under the terms of the Clean Water Act.

Consequently, in order to satisfy the increasing demands of an increasingly impaired environment as well as the requirements of the Clean Water Act, TCEQ must require San Antonio to go back and update their application. It would be pointless (and unlawful) to now issue a permit based on the application that was drafted in 2000. Doing so would run counter to the intent behind the Clean Water Act, which requires that ever more increasingly stringent effluent limitations be applied to permits on a regular basis. *See Natural Resources Defense Council, Inc. v. United States EPA*, 859 F.2d 156, 202 (D.C. Cir. 1988); *Sierra Club v. Shell Oil Co.*, 817 F.2d 1169, 1173 (5th Cir. 1987). Here, TCEQ has already lost to delay one permit cycle and the opportunity to ratchet up the permit’s requirements in light of the permit’s failure to improve the environment. Issuing the draft permit as it now exists will cause TCEQ to lose yet another permit cycle and yet another opportunity “to be absolutely certain that these control techniques [in the permit] represent the latest state of the art.” 117 Cong. Rec. 38,664 (Nov. 2, 1971) (statement of Sen. Byrd). This is not what the Clean Water Act warrants.<sup>6</sup>

Accordingly, it is in TCEQ’s best interest to withdraw the draft San Antonio storm water permit and recommence the application process. It is only through a renewed public process that TCEQ can assure the public that the permit will embody the latest state of the art necessary to protect San Antonio’s waters from increasing pollution from storm water and urban runoff. GEAA and its member groups look forward to working with you and the City of San Antonio toward developing a strong storm water permit that adequately protects San

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“available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” *Practicable*, however, is not the same as the *maximum extent practicable*, nor do Clean Water Act section 404(b)(1) guidelines, upon which TxDOT relies to establish its SWMP, inform requirements under section 402(p)(3).

As such, neither program meets the Clean Water Act’s requirements.

<sup>6</sup> Indeed, TCEQ’s failure to properly administer its storm water permitting program in a timely basis could be grounds for EPA to revoke Texas’ authority to implement the Clean Water Act within its borders. *See* 33 U.S.C. § 1342(c)(3).

Glenn Shankle, MC 109

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Antonio's waters from further degradation associated with urban development and the loss of pervious cover. Please do not hesitate to contact us if you have any questions.

Sincerely,

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Cc: Brent Larsen, EPA Region VI [via U.S. Mail]