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February 12, 2024

Via Electronic Submission

Laurie Gharis, Chief Clerk
TCEQ MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: San Antonio Water System's Request (on Behalf of the San Antonio Metropolitan Health District) for Contested Case Hearing regarding TPDES Permit No. WQ0016171001 requested by Municipal Operations, LLC

Dear Chief Clerk:

On behalf of the San Antonio Water System (SAWS) through the San Antonio Metropolitan Health District (Metro Health), component entities of the City of San Antonio, I request a contested case hearing regarding the application for TPDES Permit No. WQ0016171001, submitted by Municipal Operations, LLC (Applicant). The Executive Director's letter providing notice of the ED's Decision is dated January 12, 2024. This request for contested case hearing, therefore, is timely filed.

Background

Applicant filed an application to obtain TPDES Permit No. WQ0016171001, which would authorize the Applicant to dispose of treated domestic wastewater at a daily average flow not to exceed one million gallons per day into Helotes Creek in the Edwards Aquifer Contributing Zone upstream of a sensitive portion of the Edwards Aquifer Recharge Zone. SAWS relies upon the Edwards Aquifer as the primary source of drinking water for the greater San Antonio region.

Metro Health filed comments on the draft permit on May 8, 2023, raising concerns about impacts that this proposed wastewater plant could have on the quality of the groundwater in the Edwards Aquifer and the possible adverse effects on the Bexar County Karst Invertebrates and their habitat. Because Metro Health is a department of the City of San Antonio, and SAWS is responsible for administering San Antonio's Aquifer Recharge Zone and Watershed Protection Ordinance (Water Quality Ordinance), SAWS is filing this request on its own behalf as well as on behalf of Metro Health.

Request for Contested Case Hearing

SAWS and Metro Health request a contested case hearing.

Identity of Requesters

Metro Health is a department of the City of San Antonio. Metro Health is an administrative department of San Antonio, created by San Antonio's Charter to "enforce all laws of the state and

ordinances and regulations relating to public health.”¹ Additionally, Metro Health is authorized by ordinance to monitor and address public health issues relating to sewer lines.² SAWS is San Antonio’s retail water utility providing water service to approximately two million people located throughout Bexar, Medina, Comal, and Atascosa Counties. Groundwater produced from the Edwards Aquifer represents a significant portion of SAWS’ water supply. Additionally, SAWS is responsible for administering San Antonio’s Water Quality Ordinance.³

Authorized Representative for Receiving Correspondence

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San Antonio’s Demonstration of Affected Person Status

SAWS and Metro Health have interests related to legal rights, duties, privileges, powers, or economic interests affected by this application that are different than those of the public in general. Pursuant to state law, the City of San Antonio may prohibit the pollution or degradation of any stream that recharges its drinking water supply,⁴ and San Antonio adopted its Water Quality Ordinance to maintain or improve the quality of water entering the Edwards Aquifer and to prevent the risk of contaminants entering the Edwards Aquifer and posing a risk to the public health.⁵

Metro Health is San Antonio’s public health department charged with enforcing all laws of the state and ordinances and regulations relating to public health, including laws protecting public health from contamination of drinking water. SAWS is the component unit of San Antonio responsible for administering Water Quality Ordinance. Additionally, SAWS owns and operates groundwater wells used to provide drinking water to approximately two million people in its service area.

The proposed treatment plant is located in the contributing zone of the Edwards Aquifer, upstream of the recharge zone. The proposed discharge will travel down Helotes Creek, which is highly fractured and closely connected hydraulically to the recharge of the Trinity and Edwards Aquifers. SAWS owns and operates drinking water wells in the Trinity and Edwards Aquifers downgradient from the discharge route and are potentially subject to pollutants discharged by the facility. Therefore, the proposed discharge would be into a watercourse that has a direct connection to the drinking water supply relied on by SAWS to serve its customers, and the operation of the proposed wastewater plant could adversely affect the greater San Antonio region’s drinking water supply.

¹ San Antonio Charter, Art. IV, Sec. 63.

² San Antonio Code of Ordinances, Art. V, Sec. 34-446 – 34-450.

³ San Antonio Code, Article V, Division 6.

⁴ Local Gov’t Code § 551.002.

⁵ San Antonio Ordinance No. 81491 (Jan. 12, 1995).

Disputed Issues of Fact/Policy

Groundwater Quality

SAWS and Metro Health are concerned that discharges from this facility could adversely affect groundwater quality in the Trinity and, more importantly, the Edwards Aquifer. The Trinity and Edwards Aquifers are directly connected hydraulically to Helotes Creek through fracturing along the creek downstream of the proposed discharge location. As a result, flows in Helotes Creek in this area are directly connected, hydraulically, to the Edwards Aquifer.⁶ Additionally, given the high transport velocities in the Edwards Aquifer, the proximity of SAWS' wells, and the aquifer's limited ability to filter groundwater, changes in water quality in Helotes Creek could impair SAWS' ability to use some of its groundwater wells.

SAWS and Metro Health are concerned that the Executive Director failed to fully assess whether the discharges could degrade the water quality in the aquifers. Metro Health raised concerns about the adequacy of the Executive Director's Tier 2 Anti-Degradation review in its comments. As explained in the Executive Director's Response to Comments, the Executive Director only conducted a Tier 2 review for the Lower Leon Creek segment, which is a segment located more than 15 miles downstream from the discharge and more than 10 miles below the Edwards Aquifer Recharge Zone, and that review was only "preliminary."⁷ SAWS and Metro Health assert that receiving streams that recharge the Edwards Aquifer should be reviewed as high-quality waters for purposes of the Commission's anti-degradation review, and that the Executive Director should have conducted a Tier 2 Anti-Degradation review to determine whether the quality of the groundwater in the Edwards Aquifer would be degraded. The Commission should not grant the requested permit until such a review is conducted.

Issue: Is the Edwards Aquifer, in the San Antonio area, a "high-quality" water for which a Tier 2 Anti-degradation review should be performed as part of the review of a TPDES permit application discharging pollutants into a receiving stream that is hydrologically connected to the Edwards Aquifer Recharge Zone?

Issue: Will the provisions of the draft permit adequately prevent the degradation of the quality of the groundwater in the Edwards Aquifer?

Issue: Will the provisions of the draft permit adequately protect the quality of the groundwater aquifers recharged by the receiving stream?

Endangered Species

SAWS and Metro Health are concerned that discharges from this facility could adversely affect listed threatened and endangered species, including the Bexar County Karst Invertebrates. The effluent discharge route associated with the proposed permit crosses two Critical Habitat Units for the Bexar County Karst Invertebrates and passes close by two other units. As explained in the Executive Director's Response to Comments (including Metro Health's comments), the Executive Director only evaluated the potential effects of the discharge on three of the Edwards Aquifer endangered species (Peck's cave amphipod (*Stygobromus pecki*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), and San Marcos salamander (*Eurycea nana*)) as being the only species

⁶ Comparative Evaluation of Wastewater Disposal Practices in the Contributing Zone of the Edwards Aquifer at 110, Southwest Research Institute (July 2020).

⁷ Executive Director's Response to Comment at (Jan. 5, 2024).

of concern in Bexar County. The Executive Director did not evaluate the potential effects of the discharge on the Bexar County Karst Invertebrates or their Critical Habitat. This is because the Executive Director relied upon a 1998 Biological Opinion from the United States Fish and Wildlife Service, which did not include consideration of the critical habitat for the invertebrates, which were not designated until after the 1998 opinion

Issue: Will the provisions of the draft permit prevent the incidental take of the Bexar County Karst Invertebrates

Issue: Will the provisions of the draft permit prevent the adverse modification or destruction of Critical Habitat of the Bexar County Karst Invertebrates?

Operational Requirements

SAWS is concerned that the draft permit does not contain adequate provisions to ensure the proper operation of the proposed treatment plant, which are needed to allow the Applicant to meet the proposed effluent limits. Applicant has proposed the use of biological nutrient removal technology to achieve the discharge limits in the draft permit. Operation of a wastewater plant with this advanced treatment technology is complex and should only be undertaken under the supervision of a Class A operator. The draft permit only requires operation by a Class C operator in the interim phases and a Class B operator in the final phase. Improper operation of the proposed plant could result in exceedances of the proposed permit limits. SAWS recommends that the permit, if granted, be modified to require operation under the supervision of a Class A operator in all phases.

Issue: Should the draft permit be revised to require operation by an operator holding a Class A license during all permit phases?

Conclusion

SAWS, through its relationship with Metro Health, is an affected party that raised issues during the comment period that have not been addressed in the draft permit. SAWS respectfully requests that the Commission grant this request for a hearing on the permit application and refer the matter to the State Office of Administrative Hearings for a hearing.

Sincerely,



Joe Freeland
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Attorneys for San Antonio Water System