

TCEQ DOCKET NO. 2024-0670-MWD

**APPLICATION BY MUNICIPAL
OPERATIONS, LLC. FOR
TPDES PERMIT NO. WQ0016171001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**SAN ANTONIO WATER SYSTEM'S REPLY TO
RESPONSES TO HEARING REQUEST**

TO THE HONORABLE COMMISSIONERS:

The San Antonio Water System (SAWS) through the San Antonio Metropolitan Health District (Metro Health), component entities of the City of San Antonio (collectively the “San Antonio Entities”), files these replies to the responses to SAWS’ request for contested case hearing.

I. BACKGROUND/SUMMARY

On February 12, 2024, SAWS timely filed a request for contested case hearing on behalf of the San Antonio Entities. SAWS’ request was based on Metro Health’s May 8, 2023 comments on the ED’s Draft Permit. On July 22, 2024, the Executive Director and the Applicant filed responses arguing that the Commission should deny SAWS’ request because the San Antonio Entities are not “affected persons” based on their conclusion that Metro Health and SAWS are separate entities, and that Metro Health lacks sufficient “state law” authority to give it standing and that SAWS did not file comments, as required, to give it standing.

The fundamental error made by the ED and the Applicant is treating Metro Health, SAWS, and the City of San Antonio as separate and distinct entities. They are not. They are the City of San Antonio.

The City of San Antonio is a “home-rule municipality,” created by charter as authorized by the Texas Constitution.¹ As a home-rule municipality, San Antonio has the power of self-government and may take any action in the interest of the citizens' health, safety and welfare that is not contrary to the Texas and U.S. Constitutions or federal or state laws.²

¹ Texas Const. Art. XI, § 5.

² *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531 (Tex. 2016) (“Home-rule municipalities derive their powers from the Texas Constitution and “possess the full power of self government and look to the Legislature not for grants of power, but only for limitations on their power.”)

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,"³ and authorized by ordinance to monitor and address public health issues relating to sewer lines.⁴

SAWS is a water and sewer retail public utility that is wholly owned by San Antonio. SAWS' authority is derived exclusively through the powers delegated to it by the City Council of the City of San Antonio pursuant to Ordinance No. 75686, which was approved on April 30, 1992. The powers delegated to the SAWS Board of Trustees come directly from, and are defined by, the City Council of the City of San Antonio. As such, the powers that City Council chose to delegate to the Board of Trustees are specifically limited in scope to those powers related to the control, management and operation of the System. Crucially, SAWS does not possess more power than what has been delegated to it by the City of San Antonio. The issues related to a potential contested case hearing are clearly related to the authority specifically granted to SAWS by the City Council of the City of San Antonio. SAWS is simply the agency that is executing some of the powers possessed by the City of San Antonio.

Metro Health filed comments which was within its sphere of authority, SAWS requested a hearing based on those comments, which was within its sphere of authority, and collectively they are an affected person because they exercise the City of San Antonio's state law authority originating in the Texas Constitution and the laws passed by the Texas Legislature.

While San Antonio has broad constitutional authority, it also has express statutory authority regarding the matters raised by the application. The City of San Antonio has statutory authority under Texas Local Government Code § 551.002 to protect the watersheds that supply drinking water to the more than 2 million people in Bexar, Medina, and Atascosa Counties served by SAWS. So long as any part of the City of San Antonio timely filed comments, SAWS, as a part of the City and relying on the City's statutory authority, may request a contested case hearing based on those comments. The fact that different parts of the City filed the comments and the request for hearing does not affect the City's (or its different parts') status as an affected person.

³ San Antonio Charter, Art. IV, Sec. 63.

⁴ San Antonio Code of Ordinances, Art. V, Sec. 34-446 – 34-450.

II. REPLIES

A. Reply to the Executive Director

The ED argues that the San Antonio Entities are not affected persons under 30 TAC § 55.203(b) because they are not “governmental entities with authority under state law over issues raised by the application.”⁵ The basis for the ED’s position is that Metro Health’s authority under the San Antonio City Charter is not “authority under state law.”⁶

In her response, the ED focuses on the authority delegated to Metro Health by the City rather than on the City’s “authority under state law.” The reference in SAWS’ request to the San Antonio City Charter was to provide some clarity as to Metro Health’s role with regard to exercising San Antonio’s statutory and constitutional authority. The reference was not offered as an independent basis for the San Antonio Entities’ state law authority.⁷ For purposes of analyzing SAWS’ request, the issue is whether the City of San Antonio has authority under state law, which neither the ED nor the Applicant dispute.

SAWS’ request for hearing clearly set out Texas Local Government Code § 551.002, as a source of authority under state law over issues raised by the application. That statute gives home-rule cities, like San Antonio, the authority to prohibit the potential pollution or degradation of streams that may constitute or recharge the source of San Antonio’s water supply, and as a city with a population of greater than 750,000 largely dependent on a single aquifer, San Antonio also may protect the recharge of its aquifer.⁸ As referenced in the request, San Antonio has adopted a Water Quality Ordinance designed to maintain or improve the quality of water entering the Edwards Aquifer and delegated to SAWS the authority to exercise the City’s authority.⁹ The proposed discharge point associated with the permit application is into Helotes Creek, which is in the Edwards Aquifer Contributing Zone and immediately upstream of a uniquely sensitive portion of the Edwards Aquifer Recharge Zone, and the Edwards Aquifer is the primary source of San

⁵ *ED’s Response to Hearing Requests* at 11 (July 22, 2024).

⁶ *Id.*

⁷ SAWS would note, however, that valid provisions in a municipal home-rule charter are “state law.” Texas Constitution Article XI, Section 5 grants home rule municipalities the power of self-governance. The fact that a municipality’s authority may flow from the Texas Constitution rather than from the Texas Legislature, does not make that authority any less of a “state law.” See *Texas River Barges v. City of San Antonio*, 21 S.W.3d 347, 354-355 (Tex. App. – San Antonio 2000, no writ).

⁸ Local Gov’t Code § 551.002.

⁹ San Antonio Ordinance No. 81491 (Jan. 12, 1995).

Antonio's water supply. Local Government Code § 551.002 is a "state law" that provides the San Antonio Entities with authority over issues raised by the application.

For purposes of the hearing request, the issue is not whether Metro Health has authority under state law, but rather whether the City of San Antonio has such authority. As set out above, the City of San Antonio has such authority. Metro Health, as the City's public health entity had the authority to file comments on behalf of the City, and SAWS, as the City's retail water utility with the obligation to protect the City's water supply, had the authority to request a contested case hearing on behalf of the City.

The ED also recommends denial of SAWS' request because SAWS did not file comments on the draft permit. SAWS does not dispute the fact that it did not file comments, but the request filed by SAWS was on behalf of Metro Health and the City of San Antonio, and the request was limited to the comments filed by Metro Health. For purposes of the hearing request, Metro Health and SAWS should be viewed as the City of San Antonio and not as separate entities. As such, SAWS' request should be viewed as the City of San Antonio's request based on Metro Health's comments.

B. Reply to the Applicant

The Applicant argues that Metro Health does not have authority over any issues raised by the application by focusing on Metro Health's authority under San Antonio's ordinances.¹⁰ The problem with this argument, as with the ED's, is that for purposes of determining whether a governmental entity is an affected person, the Commission needs to consider the authority held by the governmental entity itself, not looking at the delegation of the governmental entity's authority to its divisions or agencies. As set out previously, the City of San Antonio has ample statutory authority over the issues raised by the application to be an affected person. It does not matter that Metro Health may not have been delegated all of this authority.

The Applicant also argues that SAWS should not be allowed to request a hearing because SAWS (as the "hearing requestor") did not timely submit comments on the draft permit.¹¹ As with the ED, the Applicant makes the mistake of concluding that the comments, as filed by Metro Health, were not comments filed by the City of San Antonio, and that the hearing request, filed by

¹⁰ *Municipal Operations, LLC's Response to Hearing Requests* at 9 – 10 (July 22, 2024) ("*Municipal Operations' Response*").

¹¹ *Id.*

SAWS, was not a hearing request filed by the City of San Antonio. Metro Health’s comments clearly state that Metro Health is a “Department of the City of San Antonio,”¹² and SAWS’ hearing request clearly states that SAWS is a component unit of the City of San Antonio.”¹³ While the Applicant alleges that SAWS is an “independent body, separate from Met Health,” the only authority provided by the Applicant is an ordinance that clearly states that SAWS is an “agency of the City of San Antonio.” SAWS may be governed by an independent board, but it is still part of the City of San Antonio.

Finally, the Applicant argues that SAWS’ request cannot be viewed as a request made by the City of San Antonio because the “City of San Antonio” filed a separate request for reconsideration that did not request a hearing.¹⁴ The Applicant’s argument is unpersuasive. An entity filing a request for reconsideration is not precluded by Commission rules from also filing a request for hearing.¹⁵ In fact, it is common practice for a requesting entity to file both, particularly when there is hope that the ED will grant reconsideration on some issues. The request for reconsideration filed by the Mayor of San Antonio should not be construed to mean that the City of San Antonio could not also request a hearing.

C. Issues for Hearing

The San Antonio Entities agree with the ED regarding her recommendations regarding issues to refer to SOAH. The ED’s Issues 1, 2, and 4 are sufficiently broad to include the issues raised in the San Antonio Entities comments and request for hearing.

III. CONCLUSION

Metro Health and SAWS are divisions of the City of San Antonio. As such, they should be viewed as the City of San Antonio for purposes of evaluating whether they are an affected person who raised material and disputed issues of fact regarding the application in timely comments filed with the Commission. The City of San Antonio, through Metro Health, timely raised material and disputed issues of fact in its comments, and the City of San Antonio, through SAWS, timely filed a request for a contested case hearing based on Metro Health’s comments and the City of San Antonio’s state law authority. For the reasons set out herein, and in their hearing request, SAWS

¹² *Comments of Metropolitan Health District* (May 8, 2023).

¹³ *San Antonio Entities’ Request* at 2.

¹⁴ *Municipal Operations’ Response* at 10.

¹⁵ 30 TAC § 55.201.

respectfully request that the Commission find SAWS (as the delegated representative of the City of San Antonio) to be an affected person and refer the issues raised in their comments and hearing request to SOAH for a contested case hearing.

Respectfully submitted,



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ATTORNEYS FOR
THE SAN ANTONIO WATER SYSTEM

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2024 the original of the San Antonio Water System's Reply to Responses to Hearing Request was filed electronically with the Chief Clerk of the TCEQ, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



C. Joe Freeland