

MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

P.O. Box 1568
AUSTIN, TEXAS 78768-1568

JIM MATHEWS
JOE FREELAND

(512) 404-7800
FAX: (512) 703-2785

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY
OCT 23 PM 4:16
CHIEF CLERKS OFFICE

October 23, 2006

Via Hand Delivery

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, Mail Code 105
Austin, Texas 78711-3087

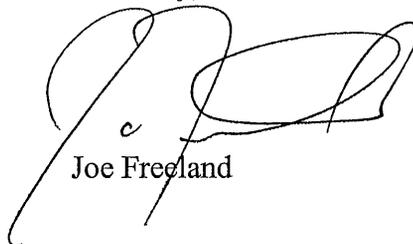
Re: In Re: Application by Westlakes Utility Corporation, TCEQ Docket No. 2006-0884-MWD

Dear Ms. Castañuela:

Enclosed for filing in the above referenced docket please find the original and 11 copies of the San Antonio Water System's Reply to the Responses to Its Request for Hearing.

I have also enclosed an additional copy to be file-stamped and returned to me as evidence of delivery. Thank you for your assistance in this matter.

Sincerely,



Joe Freeland

cc: Service List
Steve Kosub

TCEQ DOCKET NO. 2006-0884-MWD

IN THE MATTER OF THE
APPLICATION OF WESTLAKES
UTILITY CORPORATION FOR
NEW TPDES PERMIT NO.
WQ14658001

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

2007 OCT 23 PM 4:16
CHIEF CLERK'S OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

TO THE HONORABLE COMMISSIONERS:

The San Antonio Water System ("SAWS") files the following reply to the responses to SAWS' request for hearing in this matter.

**I.
REPLY TO THE EXECUTIVE DIRECTOR**

SAWS raised an issue of whether the application provided the public notice required by the Texas Water Code. As set out in the attached affidavit of Dwayne Rathburn (Attachment A), SAWS was unable to review Westlakes Utility Corporation's ("Westlakes") application and the Executive Director's draft permit prior to the expiration of the comment period because no copies of these documents were available at the location described in the public notice.

The Executive Director does not recommend referral of this issue to SOAH because Westlakes submitted an application availability verification form to the Office of the Chief Clerk on May 25, 2006 certifying that certain documents were made available to the public during the comment period. The Executive Director states that the legal sufficiency of this notice is established as a matter of law.

SAWS disagrees with the Executive Director's conclusion. The verification form filed by Westlakes (Attachment B) does not establish that Westlakes complied with the public notice requirements or that SAWS was provided with access to the documents. The form is not verified in a legally conclusive way¹ and does not appear to be signed by the applicant or a governmental

¹ The form is merely signed by someone without any disclosure of the basis of the person's knowledge of the facts. It is not even sworn testimony given before a notary.

official. Moreover, the form expressly states that the documents "are or will be located" in some location "as of the date of this verification." The form is dated May 25, 2006. A notice of the availability of the documents, dated March 7, 2006, was mailed to SAWS by the Executive Director (Attachment C). This notice contained a deadline of around April 7, 2006, for commenting on the documents. The fact that the documents may have been available on May 25, 2006, (even this has not been established) is irrelevant to whether proper public notice was provided during the relevant time period. If the document was not available on March 13, 2006, (as established by Dwayne Rathburn's affidavit) then SAWS could not have prepared comments on the draft permit in time to meet the comment deadlines. Thus, Westlakes notice was deficient. The comment period needs to be reopened to allow SAWS to submit comments regarding the draft permit.

SAWS requests that the Commission refer the following issue to SOAH for hearing (or in the alternative, refer the matter back to the Executive Director to ensure that proper notice is provided).

1. **Whether the Applicant failed to provide adequate notice as required by 30 TAC Section 39.405(g) by failing to make the application documents available at a public site?**

II. REPLY TO WESTLAKES

The crux of Westlakes' position is that SAWS' request for hearing should be denied because (1) SAWS' issue regarding the need for the proposed wastewater treatment plant is not an issue to be addressed in a water quality permit application; (2) SAWS is not a designated regional wastewater provider; and (3) SAWS is not authorized to provide wastewater service to the property. SAWS disputes each of these positions.

The issue of need is a legitimate issue to be considered in a wastewater permit application. As stated in the Commission's instructions for completing a wastewater permit application, the Commission "is required to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment and disposal

systems.”² Moreover, Texas Water Code §26.0282 directs the Commission to consider the need for a plant, including the availability of existing systems, when acting on a wastewater permit application. Thus, this issue is a legitimate issue for referral to SOAH for determination.

The fact that SAWS is not a designated regional system under State law does not affect SAWS’ right to assert the issue of the need for the proposed plant. The issue of need is not limited solely to situations involving regional systems designated pursuant to Subchapter C of Chapter 26 of the Texas Water Code. Texas Water Code §26.0282, which directs the Commission to consider the issue of need, expressly applies to regional systems “not designated as such by commission order.” SAWS is the largest wastewater provider in Bexar County and has collection facilities located within 2900 feet of the proposed system. Thus, the issue of need is a legitimate issue to be referred to SOAH for determination.

Finally, Westlakes is mistaken in its assertion that SAWS is not authorized to provide sewer utility service to the property. As a municipally owned utility, SAWS may provide service without a CCN anywhere except in areas to which service is being lawfully furnished by another retail public utility.³ No utility holds a sewer CCN for the area in question. Therefore, SAWS may legally serve the area and may do so without a CCN.

SAWS requests that the Commission refer the following issues to SOAH for hearing:

2. **Whether a privately owned facility in this location is needed because SAWS operates an adjacent system with capacity to treat the wastewater in question?**
3. **Whether it would be economically unreasonable for the Applicant to use SAWS’ existing facilities?**

III. CONCLUSION

SAWS respectfully requests that the Commission find that SAWS is an affected party and refer the following issues to SOAH for hearing:

² TCEQ, *Instructions for Completing the Domestic Wastewater Permit Application* at 28 (July 2006).

³ Texas Water Code §13.242(a).

1. Whether the Applicant failed to provide adequate notice as required by 30 TAC §39.405(g) by failing to make the application documents available at a public site?
2. Whether a privately owned facility in this location is needed because SAWS operates an adjacent system with capacity to treat the wastewater in question?
3. Whether it would be economically unreasonable for the Applicant to use SAWS' existing facilities?

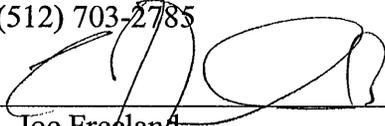
Respectfully submitted,

SAN ANTONIO WATER SYSTEM
2800 U.S. Highway 281 North
San Antonio, Texas 78212
(210) 233-3872
(210) 233-4292 (facsimile)

Phil Steven Kosub
TBN: 11692500

MATHEWS & FREELAND, L.L.P.
P.O. Box 1568
Austin, Texas 78768-1568
(512) 404-7800
Fax: (512) 703-2785

By: _____


Joe Freeland

TBN: 07417500

Email: jfreeland@mandf.com

ATTORNEYS FOR SAN ANTONIO
WATER SYSTEM

CERTIFICATE OF SERVICE

I hereby certify that on this the 23rd day of October 2006, a true and correct copy of SAWS' Reply to the Responses to its Request for Hearing was served on the following parties of record by facsimile transmission and U.S. Mail.

WESTLAKES UTILITY CORPORATION

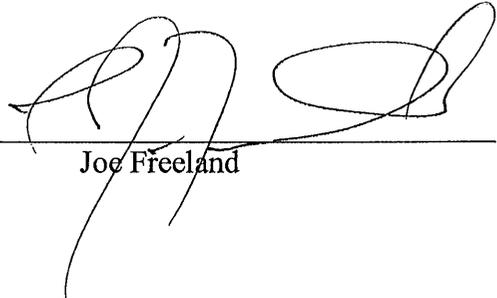
Randall B. Wilburn, Attorney at Law
7407 Rain Creek Parkway
Austin, TX 78759
(512) 535-1661
Fax: (512) 535-1678

EXECUTIVE DIRECTOR
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Celia Castro
Attorney
Texas Commission on Environmental Quality
MC-175
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-5692
Fax: (512) 239-0606

OFFICE OF PUBLIC INTEREST COUNSEL
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Scott A. Humphrey
Office of the Public Interest Council
Texas Commission on Environmental Quality
MC-103
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-6363
Fax: (512) 239-6377



Joe Freeland

Attachment A
Affidavit of Dwayne Rathburn

State of Texas

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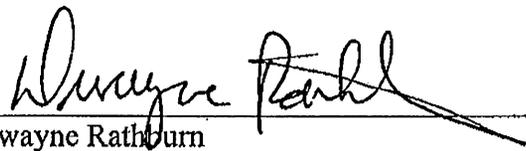
County of Bexar

BEFORE ME, the undersigned authority, personally appeared Dwayne Rathburn, who, being duly sworn on his oath, deposed and stated:

“My name is Dwayne Rathburn. I am employed by the San Antonio Water System (“SAWS”) as Manager of the Program Planning Division in the Infrastructure Planning Department. My responsibilities include reviewing wastewater permit applications, filed by entities other than SAWS, within the extraterritorial jurisdiction of the City of San Antonio.

I read the notice of application and preliminary decision for TPDES permit regarding the proposed Westlakes Utility Corporation permit, dated March 7, 2006, that was mailed to SAWS by the TCEQ. The notice stated that the permit application, the Executive Director’s preliminary decision and the draft permit were available for viewing at the Bexar County Courthouse County Clerk’s Office, 100 Dolorosa, San Antonio, Texas. On or about March 13, I visited the Bexar County Courthouse County Clerk’s Office to view the permit application and the draft permit. I was directed by the Clerk’s staff to a room where such information is kept. I searched the entire room but could not locate a copy of the permit application or the draft permit. The Clerk’s staff was also unable to locate these documents.

Because I was unable to view these documents in the location where they were supposed to be available for public inspection, I was unable to prepare any comments regarding whether the application was complete or whether the draft permit satisfied the appropriate standards before the expiration of the comment period.”


Dwayne Rathburn

Subscribed and sworn before me on the 20th day of October, 2006.


Notary Public in and for
Bexar County, Texas

My Commission Expires: 12/30/2007



Attachment B
Application Availability Verification Form

2006 MAY 25 AM 10:15

CHIEF CLERKS OFFICE

APPLICATION AVAILABILITY VERIFICATION FORM

Applicant Name: WESTLAKES UTILITY CORPORATION

Permit No.: WQ0014658001 CCO# 51269

APPLICATION AVAILABILITY (you must check one box):

- I certify that the permit application was made available for review and copying at a public place in the county where the facilities are or will be located in accordance with the provisions of 30 TAC §39.405(g)(1).
- I certify that a copy of the complete permit application (including any subsequent revisions to the application), draft permit and the executive director's preliminary decision were made available for review and copying at a public place in the county where the facilities are or will be located in accordance with the provisions of 30 TAC §39.405(g)(2) as of the date of this verification.

Location where documents were made available:

Vital Statistics / County Clerks office

Signed by:

Lilah Gonzalez

Title:

Recording Operation Clerk

Company:

Date:

5-23-06

Attachment C
Notice of Application

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR TPDES PERMIT FOR MUNICIPAL WASTEWATER

NEW PROPOSED PERMIT NO. WO0014658001

APPLICATION AND PRELIMINARY DECISION. Westlakes Utility Corporation, 4210 South Zapata Highway, Laredo, Texas 78046, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WO0014658001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. TCEQ received this application on October 20, 2005.

The facility will be located 2,000 feet west of Loop 1604 and approximately 1,000 feet south of Farm-to-Market Road 143 in Southwest Bexar County, Texas. The treated effluent will be discharged to a ditch; thence to an unnamed tributary; thence to Medina River Below Medina Diversion Lake in Segment No. 1903 of the San Antonio River Basin. The unclassified receiving water uses are no significant aquatic life uses for the ditch and limited aquatic life uses for the unnamed tributary. The designated uses for Segment No. 1903 are high aquatic life uses, public water supply, aquifer protection and contact recreation. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bexar County Courthouse, County Clerk's Office, 100 Dolorosa, San Antonio, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name; address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are germane to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

AGENCY CONTACTS AND INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us.

Further information may also be obtained from Westlakes Utility Corporation at the address stated above or by calling Mr. Buck Benson, Earl & Associates, at (210) 222-1500.

Issuance Date MAR 07 2006