

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 2, 2006

TO: Persons on the attached mailing list.

RE: Westlakes Utility Corporation
TPDES Permit No. WQ0014658001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Bexar County Courthouse, County Clerk's Office, 100 Dolorosa, San Antonio, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

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

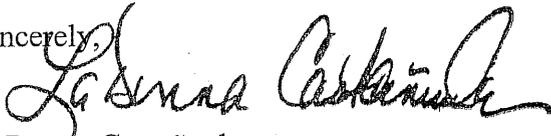
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/tm

Enclosures

MAILING LIST

for

Westlakes Utility Corporation
TPDES Permit No. WQ0014658001

FOR THE APPLICANT:

Hugo Gutierrez Jr., President
Westlakes Utility Corporation
4210 South Zapata Highway
Laredo, Texas 78046

Tom C. Koch
Thomas Koch, Inc.
187 Madrone Trail
Blanco, Texas 78606

PROTESTANTS/INTERESTED PERSONS:

Dwayne Rathburn, Manager
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

FOR THE EXECUTIVE DIRECTOR:

Celia Castro, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Bijaya R. Chalise, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Jodena Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

PROPOSED PERMIT NO. WQ0014658001

APPLICATION BY
WESTLAKES UTILITY
CORPORATION

§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
CHIEF CLERK'S OFFICE
MAY 31 PM 2:57

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Westlakes Utility Corporation's (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014658001 and on the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received a comment letter from San Antonio Water System (SAWS). This response addresses all such timely public comments received, whether or not withdrawn.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Facility Description

The Applicant has applied to the TCEQ for a new permit, proposed TPDES Permit No. WQ0014658001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day (gpd) in the interim I phase, 660,000 gpd in the interim II phase, and 990,000 gpd in the final phase. The proposed wastewater treatment facility will serve a

residential development. 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 Westlake Medina River Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units will include aeration basins, grit removal, final clarifiers, aerobic digesters and chlorine contact chambers for all phases. The facility has not been constructed. The effluent limitations of the draft permit for all phases, based on a 30-day average, are 10 mg/l five-day Carbonaceous Biochemical Oxygen Demand (CBOD₅), 15 mg/l Total Suspended Solids (TSS), 3 mg/l Ammonia-Nitrogen (NH₃-N) and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow, and shall be monitored five times per week by grab sample for interim I phase and daily for interim II and final phases.

The treated effluent will be discharged to a ditch; then to an unnamed tributary; then 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. Segment No. 1903 is not currently listed on the state's inventory of impaired and threatened waters (the 2002 Clean Water Act Section 303(d) list). The effluent limitations in the draft permit will maintain and protect the existing instream uses.

Sludge generated from the treatment facility will be hauled by a registered transporter and disposed of at a TCEQ permitted landfill, Covell Gardens RDF, Permit No. 2093-A in Bexar County.

The draft permit authorizes the disposal of sludge only at a TCEQ registered or permitted land application site, commercial land application site, or co-disposal landfill. The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat.

Procedural Background

The application for a new permit was received on October 20, 2005 and declared administratively complete on December 7, 2005. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on December 23, 2005 in the *San Antonio Express News*. The ED completed the technical review of the application on January 26, 2006, and prepared a draft permit. The Notice of Application and Preliminary Decision was published on March 17, 2006 in the *San Antonio Express News*. The comment period ended on April 17, 2006. This application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

SAWS indicates that the proposed wastewater treatment facility would be located within the extraterritorial jurisdiction of the City of San Antonio and that the City is willing to accept and treat the proposed flow. SAWS states that its extension policies “work in conjunction with new development for construction of necessary water and wastewater infrastructure.” SAWS believes that a “privately owned treatment facility in this location is inconsistent with the policy of regionalization” and SAWS’ goal of “efficient and economical wastewater service on a long-term basis.”

RESPONSE 1:

The Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of wastewater treatment plants. As part of the application process, the Applicant is required to review a three mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that can be utilized. The wastewater treatment plant must have sufficient existing capacity to accept the additional waste. If such a facility exists and they are willing to accept the proposed waste, the Applicant must provide an analysis of expenditures required to connect to the existing wastewater treatment facility. In its application, the Applicant stated there were no wastewater treatment plants within a three-mile radius. The closest treatment facility is over three miles away in another watershed and lacks sufficient existing capacity to serve the demands of the development. The Applicant also stated that SAWS does have a 5-mile long force main that transports wastewater to the Medio Creek Wastewater Treatment Plant, but the existing capacity of the force main is also inadequate to serve the proposed development of 3,300 equivalent dwelling units. In addition, the facility is not located within any corporate city limits and is not within the CCN of any utility.

COMMENT 2:

SAWS indicates that the staff could not locate any copy of the discharge permit application at the Bexar County Clerk's Office.

RESPONSE 2:

30 TAC Section 39.405 (g) requires the Applicant to make application documents available at a site accessible to the general public for review and copying. On May 25, 2006, Applicant submitted an application availability verification form to the Office of the Chief Clerk certifying that

a copy of the permit application, technical summary, draft permit, the ED's preliminary decision, and all other related correspondence were available for public viewing and copying during the comment period at the Bexar County Courthouse, County Clerk's Office, 100 Dolorosa, San Antonio, Texas.

COMMENT 3:

SAWS has concerns regarding the proposed permit and requests a public meeting and a contested case hearing.

RESPONSE 3:

Title 30, TAC Section 55.154(c) provides that a public meeting shall be held if: "(1) the executive director determines that there is a substantial or significant degree of public interest in an application; (2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; or (3) when a public meeting is otherwise required by law." In this instance, the ED made a determination not to hold a public meeting.

SAWS filed a request for a contested case hearing. Therefore, pursuant to 30 TAC Section 55.251(d), their request to be considered for a contested case hearing shall be processed by the Office of the Chief Clerk.

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Acting Director
Environmental Law Division

Celia Castro

Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-5692

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

2006 MAY 31 PM 2:58

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I certify that on May 31, 2006, the "Executive Director's Response to Public Comment" for Permit No. WQ0014658001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Celia Castro

Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350