

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Glerin Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 11, 2006

TO: Persons on the attached mailing list.

RE: Aqua Utilities, Inc.
TPDES Permit No. WQ0013989001

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 Wimberley Village Library, 400 Farm-to-Market Road 2325, Wimberley, 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

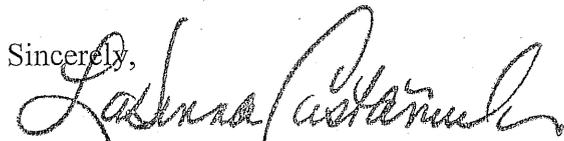
Processing of Requests.

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

Aqua Utilities, Inc.

TPDES Permit No. WQ0013989001

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APPLICATION BY
AQUA UTILITIES INC.
FOR PERMIT NO. 13989-001

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
 2005 JUN -5 PM 2:24
 CHIEF CLERK'S OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Aqua Utilities Inc.'s (Aqua) application for TPDES permit No. 13989-001, and on the Executive Director's preliminary decision. This application was originally filed by Woodcreek Utilities Inc., however, due to a merger between Aqua Utilities and Woodcreek Utilities, the application was transferred to Aqua on January 2, 2005. As required by 30 Texas Administrative Code (TAC) Section 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from the following individuals:

Pete Anderson	David Baker
Clint Frankmann	David Glenn
Hazel Greathouse	Linda Hewlett
Gerin Hood	Kathi T. O'Riordan
Jim Thompson	Marvin Wold

Additionally, the following entities submitted comments:

Hays County Precinct 3; represented by Commissioner William Burnett	The City of Woodcreek (City)
Wimberley Neighbors for Healthy Water (WNHW); represented by Richard Lowerre and Elizabeth Sumter	Village of Wimberley (The Village); represented by Emily Rogers and Steve Klepfer the Mayor Pro Tem
Wimberley Quicksand Partners, Ltd. (Wimberley Partners); represented by Brad Greenblum	Mayor Ken Jacobs
Wimberley City Council, represented by Tony McGee	Guadalupe-Blanco River Authority, represented by David Welsch

Hays-Trinity Ground Water Conservation District (HTWCD); represented by Jack Hollon	<i>Wimberley View</i> ; represented by Charles McClure
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This Response addresses all timely public comments received, whether or not withdrawn.

BACKGROUND

Description of the Facility

Aqua has applied to the TCEQ for renewal of TPDES Permit No. 13989-001 that authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.25 million gallons per day (MGD) via surface irrigation of 143 acres of land in the interim phase and 0.375 MGD via surface irrigation of 175 acres of land in the final phase. The draft permit authorizes Aqua to build the wastewater treatment facility in two stages. The first stage, referred to as the interim phase, has been built and is in service. The second stage, referred to as the final phase, will be built when Aqua anticipates needing the additional capacity.

The wastewater treatment facilities and disposal site are located approximately 1200 feet south southeast of the intersection of Farm-to-Market Road 2325 and Jacob's Well Road, approximately 4 miles north of the community of Wimberley in Hays County, Texas. The wastewater treatment facility serves the City of Woodcreek. The disposal site is located in the drainage basin of Cypress Creek in Segment No. 1815 of the Guadalupe River Basin. No discharge of pollutants into water in the state is authorized by this permit.

Procedural Background

The application was received on August 18, 2000, declared administratively complete on September 12, 2000, and declared technically complete on September 22, 2000. TCEQ's Executive Director has completed the technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision was published on February 1, 2001. A Public Meeting was held on June 11, 2001 at the Danforth Junior High School in Wimberley. The initial comment period closed at the close of the public meeting. An application to transfer the application from Woodcreek Utilities to Aqua was received on December 21, 2004. The application for transfer was approved on January 27, 2005. A revised notice of Application and Preliminary Decision was published on July 15, 2005. The second public comment period ended on August 15, 2005. House Bill 801 applies to this application.

COMMENTS AND RESPONSES

COMMENT 1

Hays County Commissioner, William Burnett, commented that he is concerned about the placement of the lift station that was being constructed at Cypress Fairway Village in Woodcreek. According to Commissioner Burnett, the lift station is only 50 feet from the back patio of several townhomes and is close to several others. Commissioner Burnett stated that the placement of the lift station townhomes is against the spirit of 30 TAC, Chapter 317. Similarly, WNHW believes that the lift stations are not properly constructed.

RESPONSE 1

TCEQ's rules include design criteria for sewerage systems,¹ and lift stations are specifically addressed.² The site chosen for a lift station should include consideration of the potential nuisance aspect.³ Additionally lift stations must be designed such that sewage from the lift station will not invade private property.⁴ The rules do not, however, delineate a specific buffer zone for every lift station.

In addition, the technical review of an application for a permit for a wastewater treatment facility does not include a review of the location of lift stations. Additionally, the collection system is not part of this permit, however it must meet the requirements of 30 TAC Chapter 317. Before an applicant may begin construction of a wastewater treatment facility, the applicant must submit a summary transmittal letter signed by a professional engineer, that states the plans and specifications for the sewage system are in substantial compliance with the rules.⁵ The Applicant submitted a summary transmittal letter on February 24, 2000.

COMMENT 2

The City of Woodcreek supports the draft permit and notes that the opposition to the draft permit will ultimately result in increased water and wastewater rates for residents of the City who are served by the City. Additionally, Ken Jacobs, the Mayor of The City of Woodcreek, asked that the TCEQ have some sympathy towards the consumers served by Aqua.

¹ Chapter 317, 30 TAC.

² 30 TAC §317.3.

³ 30 TAC §317.3(a).

⁴ 30 TAC §317.3(e).

⁵ 30 TAC §317.1.

RESPONSE 2

The TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out in Chapter 26 of the Texas Water Code. Chapter 26 does not authorize the TCEQ to consider the cost of the wastewater treatment facility or the costs associated with obtaining the necessary permits. Thus, the TCEQ may not consider actual or potential costs to consumers in determining whether to approve or deny Aqua's application. Wastewater utility rates are reviewed separately if the utility requests a rate increase.

COMMENT 3

WNHW expressed concern about sewage backing-up into members houses and onto their property.

RESPONSE 3

Because the facility is a gravity flow system, it is unlikely that untreated sewage will flow against the force of gravity and backup into individual residences. The draft permit does not authorize the discharge of untreated sewage. The draft permit only authorizes the use of treated wastewater onto the designated irrigation fields. Persons concerned that untreated sewage is being discharged may notify the Region 11 office at 512-339-2929 or toll free 1-800-823-8224. Citizen complaints may also be filed on-line at <http://www.tceq.state.tx.us/cgi-bin/enforcement/complaints>.

COMMENT 4

WNHW expressed concern over the ponding of irrigation effluent on the golf course.

RESPONSE 4

The draft permit prohibits ponding of effluent on any of the irrigation fields.⁶ The draft permit includes a maximum irrigation application rate of 1.96 acre-feet per year per acre irrigated.⁷ Additionally Aqua may not irrigate during rainfall events, or when the ground is frozen or saturated.⁸ Persons concerned that irrigation effluent is ponding on the golf course may notify the Region 11 office at 512-339-2929 or toll free 1-800-823-8224. If Aqua allows ponding of effluent, Aqua may be in violation of its permit and, thus, may be subject to enforcement action.

⁶ See, draft permit, Special Provision, paragraph 4.

⁷ Draft Permit, Page 1.

⁸ See, draft permit, page 17, paragraph 5.

COMMENT 5

WNHW expressed concern over odors from the effluent disposed on the golf course.

RESPONSE 5

Most of the odors typically associated with a wastewater treatment facility are a result of the aerobic activity associated with the actual treatment process and are limited to the area around the wastewater treatment facility. Once the sewage has been treated and the effluent moved away from the treatment facility, the odor from the effluent is typically slight. Because the draft permit requires that the effluent be chlorinated before it is used for irrigation, and because chlorine kills the bacteria which cause odors, the odor will be further reduced. The effluent will be chlorinated both before it enters the holding pond and again at the sprinkler head just before it is sprayed.

Furthermore, the draft permit states that the effluent from the facility may not create a nuisance odor.⁹ The draft permit includes a provision stating that Aqua may not irrigate any of the irrigation fields when the fields are in use.¹⁰ Anytime anyone notices an odor that they believe is associated with the effluent on the golf course, they may notify the Region 11 office at 512-339-2929 or toll free 1-800-823-8224. If the effluent has a nuisance odor, Aqua may be in violation of its permit and, thus, may be subject to enforcement action.

Finally, Aqua shall comply with the requirements of 30 TAC § 309.13 (a) through (d) regarding buffer zones. In addition, by ownership of the required buffer zone area, Aqua must comply with the requirements of 30 TAC Section 309.13(e).

COMMENT 6

WNHW expressed concern over sewage and effluent leaking or spilling from the wastewater treatment facility.

RESPONSE 6

The wastewater treatment facility was designed to prevent by-passes.¹¹ To help ensure that sewage will not spill or leak from the wastewater treatment facility, an autodialer has been installed to notify the wastewater treatment plant operator when the level in wastewater treatment units or lift stations reaches a certain level. Once a potential problem is detected, the autodialer will call preprogrammed numbers to notify the operator of the problem. Once the call is answered, an operator will

⁹ 30 TAC §319 (e).

¹⁰ See, Draft Permit, Special Provision 15.

¹¹ See, Attachment F, Design Features, Woodcreek Renewal Application, Received August 18, 2000.

dispatched to the facility. Finally, the wastewater treatment facility that would be authorized by this permit is a newly constructed facility and if operated correctly, should have few if any operational problems.

The draft permit does not authorize Aqua to discharge pollutants, other than through irrigation of the designated fields with treated effluent.¹² Thus, any discharge may subject Aqua to enforcement action.

COMMENT 7

WNHW is concerned that Aqua does not have adequate equipment for sewage treatment, transportation, irrigation, or disposal.

RESPONSE 7

Before a wastewater treatment facility is built, Aqua must supply the Executive Director with a summary transmittal letter signed by a professional engineer that states the plans and specifications for the sewerage system are in substantial compliance with the rules.¹³ Aqua submitted a summary transmittal letter on February 24, 2000. Based on the information supplied by Aqua, its wastewater treatment, transportation, irrigation, and disposal systems are adequate for the flow and effluent limits authorized by the draft permit. TCEQ's technical review of an application for a discharge permit for a wastewater treatment facility does not include a review of the specifics of the wastewater treatment, transportation, irrigation, or disposal systems.

Moreover, according to 30 TAC §305.126(a) (the "75-90 rule"), once the wastewater treatment facility reaches 75% of its capacity, the owner must initiate engineering and financial planning for expanding or upgrading the facility. Once the wastewater treatment facility reaches 90% of its permitted capacity, the owner must obtain authorization from the Commission to begin construction of a new or expanded facility.

This draft permit authorizes Aqua to operate the newly constructed wastewater treatment facility. The new facility is designed to handle 0.25 MGD in the initial phase and 0.375 MGD in the final phase, and must have adequate equipment for the flow and effluent limits in the draft permit. From November 2000 to December 2002, the facility discharged an average of 0.126 MGD. Additionally, if anyone has a concern over any aspect of the wastewater treatment facility, they may contact the TCEQ Region 11 office at 512-339-2929 or toll free 1-800-823-8224. If the TCEQ determines that

¹² Standard Provision 2b of the draft permit provides: "[T]here shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to waters in the state at any location not permitted as an outfall or otherwise defined in the Special Provisions of this permit. Unauthorized discharges shall be reported under Part 2a of these standard provisions."

¹³ 30 TAC §317.1.

the wastewater treatment facility is not adequate, enforcement action may be initiated.

COMMENT 8

WNHW asserts that TCEQ's Executive Director failed to prepare a compliance summary and failed to supply it when requested. WNHW acknowledges that TCEQ staff provided a compliance summary on March 1, 2001; however, WNHW claims that the compliance summary is inadequate because it:

- does not include a regional inspection conducted on October 25, 1999;
- does not include different regional inspection findings for each of the two facilities that are separately permitted;
- indicates that Agreed Order #1998-0514-MWD-E addresses and resolves all violations that occurred since 1996. According to WNHW, the Agreed Order does not address the violations of Permit 11431 that occurred in 1996, nor the violations in 1999, nor the violations for Permit No. 11790; and
- is limited to AquaSource facilities owned or operated in Hays County, and the TCEQ is aware that AquaSource owns and operates numerous facilities throughout Texas.

Similarly, WNHW requests that TCEQ compile a compliance history for all facilities owned or operated by AquaSource. WNHW claims that AquaSource has a history of: operating without a valid permit; repeated unlawful discharges of raw sewage and treated effluent from various point sources; repeated discharges of sludge causing accumulation in receiving stream; repeated failures to construct, maintain, and operate facility equipment; repeated exceedances of permit limits for various parameters; repeated exceedances of flow limits; repeated failures to maintain or file TCEQ required reports; and repeated instances of nuisance odors. WNHW further expressed concern over AquaSource's poor compliance record.

RESPONSE 8

The ED has compiled a compliance history that includes the pertinent information from the last five years.¹⁴ The compliance history includes a review of all facilities in Texas that are owned by or operated by AquaSource. Aquasource has a 1.27 or average classification and the site rating is 2.00 or average.

COMMENT 9

WNHW, David Glenn, and the Village are concerned over Woodcreek's (prior applicant) poor compliance record. WNHW has compiled a list of noncompliance issues including:

- improperly constructing and maintaining pipes, lines, taps, and lift stations;

¹⁴ The compliance history was prepared under 30 TAC Chapter 60.

- refusing facility inspections;
- violating agreed orders;
- illegally connecting customers outside its CCN boundary;
- violating permit requirements by failing to control the operation, maintenance, and disposal by irrigation;
- violating the Texas Water Code by causing, allowing, and permitting an entity to discharge effluent without a permit; and
- misrepresenting information in applications.

RESPONSE 9

TCEQ is not aware of any of the specific compliance issues raised by WNHW, David Glenn, and the Village. A TCEQ inspector visited all three of Woodcreek's facilities on March 20, 2001. At that time the only violation the inspector found was that the Phase II wastewater treatment facility (Permit No. 11790) had been operating with an expired permit. The inspector did not recommend any further action because the wastewater treatment facility was deactivated before the permit expired. The Phase I and Phase II wastewater treatment facilities have had numerous violations for exceeding their permitted flow rates; however, now that the Phase III plant is operational, the Phase I and Phase II plants are no longer needed and have been converted to lift stations. Additionally, the capacity of the new facility is greater than maximum volumes seen in the past and should alleviate any capacity concerns. As stated in response number 8, the current applicant, Aqua Utilities, has a 1.27 or average classification and the site rating is 2.00 or average.

COMMENT 10

WNHW is concerned that Woodcreek has not adopted adequate spill response or contingency plans. WNHW stated that its basis for this concern is a discharge that continued for more than 24 hours before it was discovered. The Village requests that the permit for this facility include a provision requiring that the operator provide TCEQ with spill response and contingency plans. According to the Village, this provision would ensure proper TCEQ oversight.

RESPONSE 10

As stated in the draft permit, Aqua must notify TCEQ of any noncompliance which may endanger human health or safety or the environment within 24 hours of becoming aware of the noncompliance.¹⁵ Additionally, Aqua must provide TCEQ with a written report of instances of non-compliance within five working days.¹⁶ The report must include:

- the noncompliance and its cause;

¹⁵ See, Draft permit, Standard Provision 2a.

¹⁶ See, Draft Permit, Standard Provision 2a.

- the potential danger to human health or safety, or the environment;
- the period of noncompliance, including exact dates and times;
- the anticipated time the noncompliance is expected to continue if it has not been corrected;
- the steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance; and
- the steps taken to mitigate its adverse effects.

COMMENT 11

WNHW and the Village stated a concern that the facility's lines are not properly constructed. As a basis for its concerns, WNHW contends that a section of the downtown main sewer line has been repaired five times. According to WNHW, the newest sewer line constructed over Hogg Creek near Par Circle was not incased before it was buried. Also, according to the Village, a lift station had an unlawful discharge of approximately 500 gallons of untreated sewage, which flowed onto neighboring property.

RESPONSE 11

If a permit is issued, before an applicant may construct the collection system it must obtain approval from TCEQ. It is the responsibility of the design engineer to ensure that the system is properly constructed. Aqua may be subjected to enforcement for any noncompliance with TCEQ's rules regarding design criteria for collection system. The technical review of an application for a permit for a wastewater treatment facility does not include a review of the collection system which includes sewer lines and lift stations.

COMMENT 12

WNHW asserts that Aqua has failed to demonstrate adequate control over the disposal of treated effluent through irrigation. WNHW asserts that ownership of the irrigation infrastructure and responsibility for necessary maintenance and repair of the irrigation system is unclear.

Similarly, Wimberley Partners is concerned that numerous provisions and conditions in the draft permit are not within Aqua's direct control, ownership or management. Specifically, Wimberly Partners asserts that most of the sprinklers, spray facilities, transmission lines and other equipment needed for Aqua to irrigate are owned, maintained, and operated by Wimberley Partners.

RESPONSE 12

Aqua is responsible for all aspects of compliance with the permit, even if it contracts some of the responsibility to another entity. The application for a wastewater treatment plant requires Aqua to

provide a copy of a long term lease for the effluent disposal area, if Aqua does not own the land.¹⁷ Aqua provided a "Water Use Agreement," dated 8/28/97, between Woodcreek and Woodcreek Country Club, Ltd. in its application. According to the Water Use Agreement, Aqua will "assume the responsibility for the disposal of the reclaimed water from the holding ponds..." Additionally, according to the Water Use Agreement, Woodcreek will be responsible for maintaining the irrigation equipment.¹⁸ Furthermore, Article Four, Section 4.01 of the Water Use Agreement states that the Water Use Agreement will continue, even if County Club is sold. The Executive Director has determined that the 1997 "Water Use Agreement" provides Aqua with sufficient control over the irrigation facilities.

COMMENT 13

WNHW asserts that the irrigation infrastructure needs serious repairs and upkeep to prevent leaks and ponding of effluent on the golf course. According to WNHW some of the pipes are over 25 years old.

RESPONSE 13

The draft permit requires that Aqua not irrigate to the point that the irrigation water is ponding on the golf course. It is Aqua's responsibility to do whatever it takes to ensure that ponding does not occur. Thus, if the irrigation infrastructure needs updating or repairing to prevent ponding or to comply with the terms of its permit, Aqua must update or repair it. If Aqua does not comply with the terms of its permit, it may be subject to enforcement action.

COMMENT 14

WNHW and Wimberley Partners are concerned that the two sewage holding ponds are not properly lined.

RESPONSE 14

According to a letter from CMA Engineering, Inc., dated 10/27/00, the holding pond located near the WWTP was constructed with a 40-mil liner without a leak detection system. This type of liner is not one of the liners specifically enumerated by 30 TAC § 317.4(j)(2). Therefore, the Executive Director must approve the liner on a case-by-case basis. In this case, the Executive Director approved the proposed liner by letter dated January 6, 1999.

¹⁷ See, Administrative Report for Permit Application, Received August 18, 2000, Page 8.

¹⁸ See, Water Use Agreement, Article Three, Section 3.06.

COMMENT 15

WNHW states that the irrigation sites do not have adequate controls to prevent ponding, spills, and other discharges. According to WNHW, Aqua needs full-time personnel that will conduct inspections when irrigating. According to WNHW, the personnel should have the ability to shut down the system if problems arise.

RESPONSE 15

The draft permit requires that irrigation practices shall be designed and managed so as to prevent ponding of effluent or contamination of ground and surface waters and to prevent the occurrence of nuisance conditions in the area. Tailwater control facilities shall be provided as necessary to prevent the discharge of any wastewater from the irrigated land. Wastewater shall not be applied for irrigation during rainfall events or when the ground is frozen or saturated.

The draft permit requires that Aqua not irrigate to the point that the irrigation water is ponding on the golf course, and it is Aqua's responsibility to do whatever it takes to ensure compliance. Thus, if Aqua is able to prevent ponding, spills and other discharges without employing a full-time operator, it has complied with the terms of its permit. Page 1 on the draft permit states that no discharge of pollutants into water in the state is authorized by this permit. Furthermore, if Aqua does not comply with the terms of its permit it may be subject to enforcement action.

COMMENT 16

According to WNHW, there are not enough isolation valves.

RESPONSE 16

Specific engineering criteria are not reviewed during the administrative or technical review of a draft permit. Before an applicant may begin construction of a wastewater treatment facility, however, Aqua must submit a summary transmittal letter signed by a professional engineer that states that the plans and specifications for the sewerage system are in substantial compliance with the rules.¹⁹ Aqua submitted a summary transmittal letter on February 24, 2000.

COMMENT 17

WNHW, the Village, and Jim Thompson are concerned that the golf course does not have adequate soil depth to allow for irrigation. According to the Village, if the soils become too saturated, effluent will be discharged into creeks and streams that run through the Village. The Village recommends that TCEQ add a provision to the permit that would require Aqua to measure the soil moisture.

¹⁹ 30 TAC §317.1.

RESPONSE 17

Based on groundwater impact evaluation done by the TCEQ, soil moisture monitoring was not required in the draft permit or in the existing permits. The permitted rate of wastewater application does not exceed the typical irrigation application rate for Bermuda grasses nor the agronomic rate.

The groundwater impact evaluation stated that "to establish a golf course in areas such as this facility, soil must be transported from an outside source to assist in the establishment of turf grasses." However, the groundwater impact evaluation dated June 4, 1998, recommended that the permittee submit information concerning the soil depths and corresponding textures prior to wastewater application.

COMMENT 18

According to WNHW, Aqua has not proven that it is capable of operating at the interim level because the Phase II Plant (TPDES Permit No. 11790-001) is still on line.

RESPONSE 18

According to TCEQ's inspector, the Phase II Plant is no longer on line and has been dismantled. The information provided in the technical report indicates that the WWTP facility is capable of meeting both the effluent limits and the flow limits authorized by the draft permit. If the WWTP facility is not able to meet the effluent or flow limits in the permit, it may be subject to enforcement action.

COMMENT 19

The Village is concerned that Aqua does not have the proper crop for irrigation.

RESPONSE 19

According to Aqua common Bermuda and Bermuda hybrid 419 are used as the fairway grasses. The irrigated land near the WWTP is pasture land consisting of native grasses.

COMMENT 20

Hazel Greathouse expressed concern over utility billing practices.

RESPONSE 20

Concerns regarding utility customer service issues can be addressed by contacting the TCEQ Utilities and Districts section at (512) 239-4691. However, the TCEQ does not have jurisdiction to address billing practices in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the

state's rivers, lakes, and coastal waters.

COMMENT 21

Hazel Greathouse expressed concern that her neighbors new water meter is leaking a significant amount of water onto her driveway.

RESPONSE 21

Concerns regarding utility customer service issues can be addressed by contacting the TCEQ Utilities and Districts section at (512) 239-4691. TCEQ does not have jurisdiction to address water meters in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. In addition, Ms. Greathouse may wish to contact Aqua directly regarding her neighbor's water meter.

COMMENT 22

Hazel Greathouse is concerned that she has not received a new water meter.

RESPONSE 22

Concerns regarding utility customer service issues can be addressed by contacting the TCEQ Utilities and Districts section at (512) 239-4691. TCEQ does not have jurisdiction to address water meters in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. Ms. Greathouse can also contact Aqua directly regarding her water meter.

COMMENT 23

Jim Thompson states that there is sufficient irrigation capacity on the golf course; therefore, in his opinion, the request for additional irrigation capacity is not necessary. He notes that he would support the request for additional irrigation capacity if the additional capacity would only be used in an emergency.

Similarly, Pete Anderson and HTCD asked if the draft permit would require Aqua to continue discharging its effluent on the golf course. WNHW stated that they believe the effluent should be used to irrigate the golf course only. Both Pete Anderson and HTCD noted that, if Aqua does not discharge to the golf course, the golf course will have to be watered using ground water.

David Glenn suggested that the TCEQ evaluate the impact of the facility on the Trinity Aquifer. Mr. Glenn notes that the effluent has always been used to irrigate the golf course, thus, reducing the

impact on the aquifer. Additionally, Mr. Glenn suggests that TCEQ work with the Hays Trinity Groundwater Conservation District to develop a workable water management plan.

RESPONSE 23

Through the wastewater permitting process, the Executive Director evaluates the application submitted by Aqua to determine if the proposed method of wastewater disposal complies with TCEQ rules and is protective of the environment. If Aqua does not have approval or surface area to irrigate, the Executive Director cannot propose a Draft Permit as Aqua must have sufficient area to irrigate without causing ponding or runoff. If the application indicated that there was not sufficient area available for irrigation, the Executive Director would require the Applicant to obtain additional acreage. In this case, the Executive Director has evaluated the land available for irrigation and has determined that there is sufficient land available for irrigation.

COMMENT 24

Marvin Wold noted that, in the future, clean groundwater will be very important to the community. He urged Aqua to make protecting the groundwater a priority.

RESPONSE 24

The Executive Director prepared a Ground Water Impact Evaluation (Evaluation) for the wastewater treatment facility in 1998. The Executive Director concluded that the wastewater holding ponds must be lined to prevent any seepage into the ground water.²⁰

The Executive Director noted that ground water could be impacted by irrigation because the native soils are shallow, stony, and permeable. The Executive Director required in the Draft Permit that soils would have to be brought to the site to establish the turf grasses necessary for a golf course. Thus, the Executive Director has determined that the draft permit will protect the ground water.

COMMENT 25

Gerin Hood requested that TCEQ require Aqua to publish all public notices in the *Wimberley View*. Charles McClure stated that TCEQ should publish notices of proposed waste water discharge facilities in the local paper, rather than in the *Austin American Statesman*.

RESPONSE 25

Regulations governing notice requirements for wastewater treatment facilities are contained in 30 TAC Chapter 39. According to 30 TAC § 39.405(f)(1), Aqua must publish notice in the newspaper of largest circulation in the county or in a newspaper of general circulation if the facility is located

²⁰ See, Draft Permit, Special Provision 17.

in a municipality. Furthermore, according to 30 TAC §39.551(c)(1):

The applicant shall publish notice of application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

Aqua published notice of the application and preliminary decision and the revised notice of the application and preliminary decision in the *Austin American Statesman*. According to the affidavit provided by the newspaper, the *Austin American Statesman* is regularly published in Travis and Hays counties. Because the wastewater treatment facility is located in Hayes County, the notice complies with TCEQ rules.

COMMENT 26

David Glenn asked why TCEQ has changed its position regarding the use of treated effluent on the golf course. According to Mr. Glenn, the TCEQ recently denied the use of treated effluent on the same golf course (Permit No. 14164-001).

RESPONSE 26

Permit 14164-001 was withdrawn by the applicant, not denied by TCEQ. TCEQ continues to encourage disposal of treated effluent through irrigation, when the conditions are appropriate and applicable regulatory requirements are met.

COMMENT 27

David Glenn states that there are mapped regional faults that cross Aqua's property. According to Mr. Glenn, wastewater that intersects the faults may percolate down into the Trinity Aquifer and contaminate nearby shallow drinking water wells. Additionally, Mr. Glenn states that the faults may hydrologically connect the surface water to ground water of the Glen Rose Formation. According to Mr. Glenn, the Texas Water Development Board reports that 10 - 15% of the recharge to the Edwards Aquifer may occur as lateral underflow from the Glen Rose Formation. Additionally, HTCD noted that the Tom Creek Fault lies along the edge of the alternate disposal site. HTCD believes that the irrigation areas proposed by Aqua should be carefully studied to determine if ground water contamination is possible.

RESPONSE 27

Mapped faults crossing Aqua's property have soils developed over the fault trace. The Executive Director agrees that faults are likely hydrologically connected at some depth, and that ground water movement increases along these planar structures. The high capacity water wells developed along

these fault planes support this conclusion. Soil covering the fault trace, however, impedes the percolation and downward migration of surface water.

Additionally, the draft permit requires that wastewater be applied at agronomic rates for irrigation of the turf grasses. Wastewater applied at the evapo-transpiration rate is used by the turf grass. The wastewater is retained in the rooting zone of the grass and does not have the opportunity to percolate down, co-mingle with the ground water and impact the ground water quality. The application rate of 2 acre-feet/acre/year contained in the draft permit is the agronomical rate for beneficial use of wastewater when applied to turf grasses. Based on these analyses, the Executive Director has concluded that the ground water will not be contaminated by the irrigation water.

COMMENT 28

David Glenn requests that a field investigation be conducted to determine the extent and nature of the faults on Aqua's property.

RESPONSE 28

The Executive Director has concluded that a field investigation is not necessary because the treated effluent is not likely to reach any faults underlying the irrigation fields or the golf course. The draft permit requires that all holding ponds be lined, and the irrigation practices must limit the effluent used to agronomic rates on crops. Treated effluent should not contact the faults if Aqua irrigates according to its draft permit.

COMMENT 29

David Glenn expressed concern that, because of the inability to verify that Aqua is meeting its effluent limits, the public health and safety will be greatly compromised if Aqua is authorized to discharge effluent on its property. The Village and GBRA also expressed concern over Aqua's ability to protect human health and safety.

RESPONSE 29

The draft permit requires Aqua to report any noncompliance that may endanger human health, safety, or the environment to the TCEQ Regional Office within 24 hours of becoming aware of the noncompliance.²¹

To ensure that human health and safety is protected, the draft permit requires that the effluent be chlorinated, as does the existing permit. Specifically, both the existing permit and the draft permit require "[t]he effluent shall be chlorinated in a chlorine contact chamber to a residual of 1.0 mg/l

²¹ See, Draft Permit; Standard Provision 2a.

with a minimum detention time of 20 minutes.”²² To provide additional protection, Aqua must erect signs, in both English and Spanish, that warn that the irrigation water is from a non-potable water supply. The signs must include a red slash superimposed over the international symbol for drinking water accompanied by the message “DO NOT DRINK THE WATER.” Moreover, Aqua cannot irrigate if the irrigation area is in use, and the spray fixtures must be designed such that they cannot be operated by unauthorized people.²³ Aqua must comply with these provisions, regardless of whether it is irrigating the golf course or the property by the wastewater treatment facility. If Aqua does not comply with these provisions, it may be subject to enforcement action.

Finally, the data provided to the TCEQ’s field investigators indicate that while the facility has previously violated its flow limits for a significant period, it has not violated its other permit limits.

COMMENT 30

David Glenn recommended that the permit either have tighter standards or that Aqua be required to continuously monitor its effluent.

RESPONSE 30

Applicable effluent limits²⁴ and monitoring frequencies²⁵ are specified in TCEQ’s rules. The effluent limits in the draft permit are protective of human health safety and the environment and complies with TCEQ’s requirements. Additionally, Woodcreek designed the wastewater treatment plant is designed to meet secondary treatment standards (not to exceed 20 BOD mg/l and 20 TSS mg/l on a daily average basis) contained in the regulatory requirements.

Furthermore, TCEQ’s rules provide that the effluent from wastewater treatment facilities with flows less than one-half million gallons per day should be monitored. Aqua’s compliance history does not indicate that more frequent monitoring requirements are required.²⁶

COMMENT 31

David Glenn requests that the TCEQ and the public have access to effluent sample results, so that compliance can be verified.

²² See, Draft permit, page 2.

²³ See, Draft Permit, Page 18, Special Provisions 13-15.

²⁴ 30 TAC §309.4.

²⁵ 30 TAC 319.9(a).

²⁶ 30 TAC § 319.9(a).

RESPONSE 31

TCEQ does have access to these results. The results are public information and may be obtained by the public by contacting the Region 11 office at 512-339-2929, or TCEQ Central Records at 512-239-2900.

COMMENT 32

Wimberley Partners is concerned that numerous provisions and conditions in the draft permit are not within Aqua's direct control, ownership or management. Specifically, Wimberley Partners asserts that the land used for irrigation is owned by Wimberley Partners.

RESPONSE 32

According to the application, Woodcreek Country Club, Ltd. owns the land used for irrigation.²⁷ Additionally, the application included a copy of an Irrigation Easement, recorded in the Real Property records in Hays County on May 12, 1997. The Irrigation Easement meets the administrative requirements of the permit application and Aqua certifies to the accuracy of information provided in the permit application, including the Irrigation Easement. Additionally, the draft permit does not allow Aqua to irrigate without authorization. If Aqua irrigates in violation of its permit, it may be subject to enforcement.

COMMENT 33

Wimberley Partners states that the permit should be issued to AquaSource because Woodcreek merged with AquaSource, leaving AquaSource as the sole surviving corporate entity.

RESPONSE 33

This application was originally filed by Woodcreek Utilities Inc., however, due to a merger between Aqua Utilities and Woodcreek Utilities, the application was transferred to Aqua on January 2, 2005. If issued, the permit will be issued to Aqua Utilities, Inc.

COMMENT 34

Wimberley Partners states that the effluent used for irrigation should be chlorinated.

RESPONSE 34

The draft permit requires that effluent be chlorinated. The effluent must be chlorinated in a chlorine

²⁷ Letter dated 9/8/2000 from Jeff Goebel (AquaSource Development Company), to Laurie Lancaster (TCEQ).

contact chamber to a residual of 1.0 mg/l with a minimum detention time of 20 minutes.²⁸ Additionally, if the effluent is transferred to a holding pond the effluent must be re-chlorinated before it may be used for irrigation water. Finally, the effluent must contain a trace chlorine residual at the point of irrigation application.

COMMENT 35

Wimberly Partners, WNHW, and GBRA state that AquaSource should conduct soil sampling. WNHW states that the soil samples should be taken before AquaSource starts to irrigate.

RESPONSE 35

The draft permit requires Aqua to analyze samples from the root zones of the disposal site for pH, total nitrogen, potassium, phosphorus and conductivity. Aqua must provide the results of the analyses to the TCEQ Regional Office (MC Region 11) and Water Quality Management Information Systems Team (MC 224) of the Enforcement Division during September of each year.

COMMENT 36

Kathi O'Riordan asked what problems might arise if Aqua is issued a wastewater discharge permit, and what steps would be taken to mitigate any problem.

RESPONSE 36

The wastewater treatment facility that would be authorized by this permit is a newly constructed facility. If operated correctly, it should have few if any operational problems. However, if problems should arise, the draft permit requires the permittee to report any noncompliance which may endanger human health or safety or the environment within 24 hours.

COMMENT 37

Ken Jacobs and Clint Frankman state that it is important to recognize that a wastewater treatment facility is better for the community than septic systems. Additionally, Ken Jacobs states that it is better to irrigate a golf course with the effluent from a wastewater treatment than for the effluent to enter a stream or creek.

RESPONSE 37

TCEQ supports treating wastewater at a wastewater treatment facility over using multiple septic systems. A wastewater treatment facility must be permitted and comply with the ongoing permit requirements for effluent quality. Septic systems, however, are not required to meet effluent

²⁸ Draft Permit, Page 2, Item A.

limitations. Wastewater treatment facilities are operated by licensed personnel and can meet effluent standards. TCEQ also supports the beneficial reuse of effluent because it helps protect the groundwater supply by maximizing the use of the effluent and decreasing the dependence on other sources water for irrigation.

COMMENT 38

Tony McGee asked why the TCEQ does not perform unannounced inspections of existing wastewater treatment facilities that have applied for a renewal of an existing permit.

RESPONSE 38

The TCEQ may make an unannounced inspection of a wastewater treatment facility at any time; however as a matter of policy, routine inspections of existing facilities are announced. If the TCEQ receives a complaint, the inspector may perform an unannounced inspection.

COMMENT 39

Tony McGee asked what the TCEQ's authority is to inspect facilities, such as the golf course, that are not permitted by the TCEQ.

RESPONSE 39

The Texas Water Code gives TCEQ employees and agents authority to enter any public or private property for the purpose of inspecting and investigating conditions relating to water quality.²⁹ The statute does not require that the property that is being investigated have a permit assigned. However, in this case, the irrigated area is covered by the permit and may be inspected to determine compliance with TCEQ rules and permits.

COMMENT 40

David Welsh commented that GBRA favors regionalization, and believes that The Village is the entity best equipped to serve the City of Woodcreek.

RESPONSE 40

The Texas Water Code specifically states, "[i]t is the policy of this state to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems...."³⁰ Thus, it is the TCEQ's policy it to encourage and promote regionalization. However,

²⁹ TWC §26.014.

³⁰ TEX. WATER CODE Sections 26.003 and 26.081

this permit application is for the renewal of an existing wastewater treatment plant, which makes regionalization impracticable.

COMMENT 41

GBRA noted that there are concerns about inspections being performed timely.

RESPONSE 41

TCEQ records indicate that the wastewater treatment plant was inspected on:

July 25, 1994, February 19, 1998, February 9, 1999, October 25, 1999, March 20, 2001, June 4, 2004, and July 20, 2005.

TCEQ will continue to routinely investigate the wastewater treatment plant. Additionally, persons concerned about the operation of the facility may notify the Region 11 office at 512-339-2929 or toll free 1-800-823-8224.

COMMENT 42

GBRA believes there is some confusion over the water balance, specifically over how much wastewater is being produced and how much is being used for irrigation.

RESPONSE 42

TCEQ's Executive Director reviewed the water balance submitted with the original application, dated May 11, 1998. The Executive Director concluded that freshwater in addition to the effluent, would be needed as make-up water to sustain the entire cover crop for the proposed irrigation area.

COMMENT 43

WNHW noted that the water use agreement between AquaSource and the golf course is for 600,000 gallons a day, but the draft permit only authorizes AquaSource to discharge 375,000 gallons a day. WNHW asked why an alternative site was needed, since the golf course has committed to the full volume AquaSource would be authorized to discharge.

RESPONSE 43

The Executive Director evaluates an application to determine if the proposed method of dispersal complies with regulations and is protective.

The Executive Director does not chose the location of the irrigation fields, nor does it dictate how the irrigation fields must be used, as long as there is sufficient area to irrigate without causing

ponding or runoff. Also, the Executive Director does not have jurisdiction over contracts between third parties. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

COMMENT 44

According to WNHW, the TCEQ should not have processed the renewal application because Aqua has not submitted the soil samples that were required by its initial application.

RESPONSE 44

The Executive Director processed the renewal application without the results of the soil analysis because the Executive Director determined that the amount of effluent that has been discharged onto the golf course is not sufficient to significantly change the soil conditions. The Executive Director relied in previous years soil samples submitted to analyze the renewal application.

COMMENT 45

WNHW contends that the application is incomplete because the TCEQ does not have the 1999 Water Use Agreement.

RESPONSE 45

Aqua provided a "Water Use Agreement," dated August 28, 1997, between Woodcreek and Woodcreek Country Club, Ltd. in its application. According to the Water Use Agreement, Woodcreek (now Aqua) will "assume the responsibility for the disposal of the reclaimed water from the holding ponds..." Additionally, according to the Water Use Agreement, Woodcreek will be responsible for maintaining the irrigation equipment. *See* Water Use Agreement, Article Three, Section 3.06. Furthermore, Article Four, Section 4.01 of the Water Use Agreement states that the Water Use Agreement will continue, even if County Club is sold.

WNHW submitted an "Amended and Restated Water Use Agreement" that is dated July 13, 1999. The Amended and Restated Water Use Agreement was not supplied by Woodcreek in the application; thus the Executive Director has not evaluated it.

The Executive Director has determined that the 1997 "Water Use Agreement" provides Aqua with sufficient control over the irrigation facilities.

COMMENT 46

Dell Hood commented that, if the wastewater treatment plant fails, the health and safety of local residents is jeopardized.

RESPONSE 46

The wastewater treatment facility is a new, small facility; thus is less likely to fail than an older system. Additionally, as noted in the response to Comment 42, the wastewater treatment facility has taken steps to minimize the impact of a system failure. Thus, the public health and safety will be protected, if the facility is operated in compliance with the draft permit.

COMMENT 47

Clint Frankman noted that permits are not worth anything, unless they are enforced. According to Mr. Frankman, the community is very concerned about a situation like the one at the City of Buda occurring in Wimberley.

RESPONSE 47

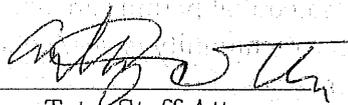
TCEQ's policy is to maintain the quality of water in the state consistent with the public health and enjoyment³¹. The Executive Director is aware that a permit must be followed and enforced to be protective. Enforcement actions are handled through the Office of Compliance and Enforcement (OCE).

Thus, TCEQ endeavors to protect Texas' water quality, and if necessary, will enforce against those that threaten it. The draft permit has been modified to require that Aqua submit the results of all sample analyses to both the Region 11 office, and TCEQ's Central Records on a quarterly basis.

³¹ TWC § 26.003.

Respectfully Submitted,

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Representing the Executive Director of the Texas
Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on August 8, 2006, the "Executive Director's Response to Public Comments" for Aqua Utilities, Inc. for Permit No. 13989-001, was filed with the Office of the Chief Clerk for the Texas Commission on Environmental Quality.



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