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Written
Comments
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CHIEF CLERK'S OFFICE

TNRCC Public Participation Form
Woodcreek Utilities, Inc.
Public Meeting
Water Quality Land Application Renewal of
Municipal Wastewater
Permit No. 13989-001

Please add me to the mailing list. DATE: June 11, 2001

PLEASE PRINT:

Name: DAVID GLENN
Address: P.O. Box 2505
City/State: Wimberley TX Zip: 78676
Phone: (577) 847-1410

Are you here today representing a municipality, legislator, agency, or group? Yes No
If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓BELOW

- I wish to provide formal oral comments.
- I wish to provide formal written comments.

OPA
JUN 11 2001

Please give this to the person at the information table. Thank you.

4. PERMITTING AQUASOURCE TO DISPOSE OF ITS TREATED WASTEWATER EFFLUENT ON ITS OWN PROPERTY WILL GREATLY COMPROMISE THE PUBLICS HEALTH AND SAFETY AND LIMIT THE ABILITY TO VERIFY THAT TREATMENT IS WITHIN APPROVED PLANT LIMITS. UNFORTUNATELY AQUASOURCE'S PERFORMANCE IN THE WIMBERLEY VALLEY AREA FOR THE PAST THREE (3) YEARS HASN'T INSPIRED PUBLIC CONFIDENCE IN THEIR ABILITY TO OPERATE IN A LESS SUPERVISED ENVIRONMENT. WE UNDERSTAND THAT OUR LOCAL EXPERIENCE ISN'T SIGNIFICANTLY DIFFERENT FROM AQUASOURCES POOR OPERATING RECORD IN THE REST OF TEXAS. THIS HEIGHTENS CONCERNS FOR THIS TYPE OF OPERATION TO EVEN BE CONSIDERED. EITHER TREATMENT STANDARDS SHOULD BE TIGHTENED OR THERE SHOULD BE CONTINUOUS MONITORING AND RECORDING THAT THE TNRCC AND PUBLIC CAN VERIFY DURING REGULAR SUPERVISORY CHECKS.

THANK YOU FOR HOLDING THIS PUBLIC MEETING. MOST OF ALL WE WILL APPRECIATE A PUBLIC HEARING BEFORE FINAL ACTION IS TAKEN ON THIS PERMIT RENEWAL. WE LOOK FORWARD TO DISCUSSING THE ABOVE CONCERNS WITH YOU. REMEMBER, "OUR WATER IS THE ELIXIR THAT MAKES THE WIMBERLEY VALLEY MAGIC"!

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OPA
JUN 11 2001

MARY E. KELLY
Of Counsel
(512) 474-1082

June 11, 2001
Supplemental Written Public Comments

Ms. LaDonna Castanuela
Office of the Chief Clerk (MC 105)
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, TX 78711-3087

7:01 JUN 11 PM 12:01
CHIEF CLERKS OFFICE
CONSERVATION COMMISSION

RE: Supplemental Written Public Comments of Wimberley Neighbors for Healthy Water on AquaSource's Application for Renewal Permit No. 13989-001

Dear Ms. Castanuela,

On behalf of Wimberley Neighbors for Healthy Water (WNHW), I submit the following supplemental public comments and request for contested case hearing regarding the above named application. WNHW has previously submitted public comments on January 26, 2001, and supplemental public comments March 21, 2001. According to the Notice of Public Meeting, the public comment period has been extended until June 11, 2001. This supplemental written public comments for the public meeting clarifies and raises numerous relevant and material issues of fact and law regarding this renewal application and draft permit.

I. Comments

The draft renewal permit fails to address and remedy many of the issues and concerns arising from bad compliance history of AquaSource¹ at its Woodcreek facilities located in Hays County as well as its other facilities in Texas. Furthermore, the draft renewal permit fails to address and remedy many of the issues and concerns arising from AquaSource's misrepresentations and failure to abide by its permit requirements, the rules and regulations of TNRCC, and the laws of Texas.

¹ In this public comment, references to AquaSource include, but not are not limited to, AquaSource Utility, Inc., and its subsidiary, parent, sister or other affiliated companies, partnerships, or joint ventures.

summary and be utilized for compliance history evaluations required by TNRCC rules. (See Appendix 2 - Compliance History Charts). Also, WNHW requests that the compliance histories for all of the other facilities owned and operated by AquaSource be included.

B. AquaSource has a Bad Compliance Record.

Many of AquaSource's facilities have been the target of numerous complaints, discharge violations, and enforcement actions. For a summary of the compliance history of several AquaSource facilities, see Appendix 2 - Compliance History Charts. Charts are provided for the following AquaSource Permits:

1. Woodcreek Phase I, Hays County, Permit No. 11431;
2. Woodcreek Phase II, Hays County, Permit No. 11790;
3. Woodcreek "Phase III" located at 1200 feet south southeast of the intersection of Farm-to-Market Road 2325 and Jacob's Well Road, Hays County, Permit No. 13989 (the subject of this public meeting),
4. Countryside Estates, Jefferson County, Permit No. 11249, and
5. Fort Bend County MUD No. 46, Permit No. 12782.

Some examples of the violations include, but are not limited to, the following.

1. Operating without valid permits (see Appendix 3, p. 6):
 - Permit No. 11431 expired January 17, 2000, but facility still operated for 10 months.
 - Permit No. 11790 expired January 17, 2000, but facility continued operating until March 19, 2001 (more than 1 year after expiration).
2. Repeated unlawful discharges of raw sewage and treated effluent from various point sources including, but not limited to, wastewater treatment plants, lift stations, lines, grinder pumps, force mains, holding ponds and irrigation sites (see Appendix 2, generally):
 - Under Permit No. 11431, AquaSource had at least 23 unlawful discharges since taking control of the facility in September 1997.
 - Under Permit No. 11790, AquaSource had at least 18 unlawful discharges since taking control of the facility in September 1997.
 - Under Permit No. 13989, AquaSource had a major discharge due to lift station failure just 2 months after facility came into operation (see Appendix 3, p. 5 - Lift Stations Not Properly Constructed or Maintained).

- DO limit has been violated at least 1 time (see Appendix 2, Countryside Estates, Permit No. 11249, p.4)
- BOD limit has been violated at least 1 time, which was greater than 40% of permitted level (see Appendix 2, Countryside Estates, Permit No. 11249, p.5)
- Ammonia Nitrogen limit has been violated at least 1 time (see Appendix 2, Fort Bend County MUD No. 46, Permit No. 12782, p.4)
- Chlorine minimum and maximum limits has been violated at least 1 time (see Appendix 2, Fort Bend County MUD No. 46, Permit No. 12782, p.4)

6. Repeated exceedences of permitted flows for facilities:

- Under Permit No. 11431, AquaSource exceeded its permitted flow level at least 41 times since taking control of the facility.
- Under Permit No. 11790, AquaSource exceeded its permitted flow level at least 24 times since taking control of the facility.

7. Repeated failures to maintain and/or file with TNRCC reporting records:

- Repeated failures to timely notify TNRCC of unlawful discharges:
 - TNRCC discovered unlawful discharges 5 months after first incident. AquaSource finally reported the discharges 8 months after the first occurrence and 3 months after TNRCC's discovery (see Appendix 2, Fort Bend County MUD No. 46, Permit No. 12782, pages 1-3).
 - AquaSource notified TNRCC 21 days after incident involving a 50,000 gallon discharge of treated wastewater traversing 200 yards just 50 feet south of Cypress Creek (see Appendix 2, Woodcreek Phase II, Permit No. 11790, page 4)
- Repeated failures to submit monthly effluent reports to TNRCC (see Appendix 2, Countryside Estates, Permit No. 11249, page 6)

8. Causing nuisance odors (see Appendix 2, Woodcreek Phase I, Permit No. 11431, pp. 4, 14-16)

- Several **taps** have been installed incorrectly without following state design criteria for installation and disinfection (see Appendix 3, Enforcement Letter, Attachment H - Statement of Dwayne Patlyek).
 - Several **lift stations** were responsible for unlawful discharges caused by various factors, including, but not limited to, improper construction, maintenance, operation and safety precautions, such as:
 - Stream of sewage spewed onto community center's property for an unknown period of time because of failure to equip lift station with auto dialer alarm (see Appendix 3, p. 5 - Lift Stations Not Properly Constructed or Maintained)
 - On-site lift station lacked audio/visual alarm (see Appendix 2, Countryside Estates, Permit No. 11249, p. 3)
 - Power loss due to blown fuse (Permit No. 11431, p. 1)
 - Debris causing pumps to pump dry (Permit No. 11431, p. 6)
 - Bad capacitors causing pump failure (Permit No. 11790, p. 2)
 - Electrical problems causing pump failure (Permit No. 11790, p. 4)
 - Vandals being able to access electric box and shut off main breaker (Permit No. 11790, p. 6)
 - Faulty float switch (Permit No. 11790, p. 7)
2. Refusing facility inspection (see Appendix 4 - Newspaper Article);
 - AquaSource has refused to have its facility inspected by the city, although AquaSource's wastewater treatment plant falls within the city's ETJ.
 3. Violating agreed orders (see Appendix 3, page 7);
 - AquaSource added wastewater connections outside its CCN although an Agreed Order specifically prohibited such actions.
 4. Illegally connecting customers outside its CCN boundary (see Appendix 3, page 7 & 8).
 - AquaSource illegally connected customers outside of its CCN area in violation of Texas Law and TNRCC rules.
 5. Violating permit requirements by failing to control the operation, maintenance and disposal by irrigation
 - AquaSource lacks control of the operation, maintenance and disposal of its treated effluent by signing an agreement that turned control over to the

D. AquaSource has a history of misrepresenting information in applications. For a discussion of misrepresentations, see Appendix 3 - Enforcement Letter.

Examples of misrepresentations include, but are not limited to, the following:

1. Misrepresenting control over disposal of treated effluent by irrigation (see Appendix 3, page 8);
 - In this permit renewal application (Permit No. 13989 - the subject of this public meeting), AquaSource had referenced and submitted an agreement showing control over disposal of treated effluent, when in fact that agreement had been voided and superseded for over a year.
2. Misrepresentation of process of disposal of treated effluent by irrigation (see Appendix 3, page 9);
 - In this permit renewal application (Permit No. 13989 - the subject of this public meeting), AquaSource had referenced and submitted a simple disposal method for treated effluent, when in fact a more convoluted and complicated plan had been in place for over a year.
3. Misrepresentations of facility inspections (see Appendix 3, page 9).
 - In the application to amend its CCN No. 20124 for the Woodcreek/Wimberley area in Hays County, AquaSource referenced and submitted old, favorable inspection reports instead of more recent and accurate, yet unfavorable inspection reports.

II. Request for Hearing

Many members of WNHW are landowners or residents whose interests are directly affected by AquaSource's application and operation. Examples of interests affected include, but are not limited to, the loss of use and enjoyment of property and injury to their health and the natural resources that they rely upon due to events including, but not limited to:

1. sewage backing-up into houses and onto property and leaking onto lawns and roads,
2. odors emanating from the disposal activities, and
3. sewage and effluent leaking and/or spilling from faulty or inadequate sewer lines, lift stations, holding ponds, and treatment facilities.

H

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OPA

JAN 29 2001

January 26, 2001

Public Comment and Hearing Request

Ms. LaDonna Castanuela
Chief Clerk (MC 105)
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, TX 78711-3087

CHIEF CLERK'S OFFICE
JAN 29 2001
10:41 AM
NOTIFICATION

RE: Application of Woodcreek Utilities, Inc., a subsidiary of AquaSource, for Renewal of Water Permit No. 13989-001

Dear Ms. Castanuela,

On behalf of Wimberley Neighbors for Healthy Water (WNHW), I submit the following public comments and request for hearing regarding the above named application. WNHW and its individual members meet the standard of affected persons or group as required by 30 TAC §§ 55.203 and 55.205. The comments of WNHW and individual members, below, raise numerous relevant and material disputed issues of fact and law regarding the above named application.

I. WNHW qualifies as an affected group

Many members of WNHW are landowners or residents whose interests are directly affected by Woodcreek Utilities' application and operation. Examples of interests affected include, but are not limited to, the loss of use and enjoyment of property and injury to their health and the natural resources that they rely upon due to events including, but not limited to:

1. sewage backing-up into houses and onto property,
2. ponding of irrigation effluent on the golf course,
3. odors emanating from the disposal of effluent on the golf course, and
4. sewage and effluent leaking and/or spilling from faulty or inadequate equipment for sewage treatment, transportation, and irrigation disposal.

me

The affected members include, but are not limited to:

1. Johanna Smith, 2001 Jacobs Well Road, Wimberley, Texas 78676
2. Barbara Knoll, 1 Lakewood, Wimberley, Texas, 78676; and
3. Dwayne Patlyek, 210 Leveritts Loop, Wimberley, TX 78676.

These WNHW members request that WNHW be named as a party to represent them. They are not seeking anything from the hearing process that requires their participation individually instead of WNHW's participation.

WNHW has as its organization's purposes, goals that are directly related to the protection of the environment and public health, including the restoration and protection of water quality, the preservation of its natural environment, the promotion of responsible water and wastewater treatment, the examination of any and all wastewater treatment options, and the representation of its members and their economic interests. WNHW was organized to represent its members in decisions of local, state and federal agencies. In the past, WNHW has been named as a formal party to TNRCC contested case hearing on applications of Woodcreek Utilities for applications to amend its CCN area and permit applications for wastewater treatment. WNHW is now participating in a contested case hearing and is negotiating with applicants regarding a possible settlement.

The interests that WNHW seeks to protect are germane to the organization's purposes. The goals and purposes include conservation, public education, protection of the natural resources and health of the community, and protection of the member's property interests and other economic interests.

These public comments and hearing request are not an effort to delay the processing of the application; they are simply to bring to the attention of the Executive Director and Commission the numerous problems that exist with the existing facility and the inadequacies of the permit to resolve these problems.

If the Executive Director of TNRCC or the Applicant believe that WNHW or its individual members do not comply with the requirements of TNRCC and Texas law, WNHW and its individual members request that they be advised specifically as to the state requirement(s) and any alleged deficiency in its public comment and hearing request. WNHW will be pleased to submit additional information, if appropriate, and asks for a full opportunity to do so if there is any objection to the affected person status or hearing request.

II. Comments on Disputed Issues of Fact and Law

A. Executive Director Failed to Follow Required Procedures Prior to Issuing the Draft Permit

The Executive Director "shall prepare a summary which describes the compliance status of persons applying for permits" such as this renewal permit. 30 TAC § 281.21(d). This compliance summary is to include such things as citizen complaints, inspections, any alleged noncompliance, any enforcement actions and responses to the enforcement actions. The compliance summary must include information regarding the site that is subject to the application as well as other facilities owned or operated by the applicant. Prior to public notice and upon completion of technical review, the compliance summary must be sent to the applicant and to any other person upon request.

The Executive Director failed to prepare a compliance summary and, thereby, failed to make the compliance summary available to WNHW when WNHW requested it. As will be discussed in more detail later, the compliance history of Woodcreek Utilities and its parent corporation, AquaSource, contains numerous complaints, discharge violations and enforcement actions at the facilities involved with this permit and at many other AquaSource facilities around Texas. Not only should such a poor compliance history have been evaluated by the Executive Director and the staff, but also appropriate provisions addressing the problems should have been incorporated into the draft permit or the permit should have been denied.

B. Woodcreek Utilities, as well as its parent corporation, AquaSource, has a Poor Compliance Record

All of Woodcreek Utilities' facilities have been the target of numerous complaints, discharge violations, and enforcement actions. The poor track record also extends to AquaSource, of which Woodcreek Utilities is its subsidiary. Examples of violations include, but are not limited to, unlawful discharges and operating without a valid permit. Permit number 11431 for Woodcreek Utilities' Phase I plant expired in January 2000, yet the plant continued to operate until October 2000. Woodcreek Utilities' Phase II plant, permit number 11790, also expired in January 2000, yet that plant still continues to operate. For a more exhaustive record of the compliance history of Woodcreek Utilities and AquaSource, see Attachment A (compliance history charts).

Many other AquaSource facilities have similar poor compliance histories. A quick review showed complaints and violations similar to those listed in Attachment A for many other AquaSource treatment facilities.

WNHW recognizes that when AquaSource purchased some such sewage treatment facilities, those facilities had a history of problems. Nevertheless, at the Woodcreek plants, AquaSource not only failed to make timely repairs, but also knowingly added new connections and significant amounts of sewage to treatment facilities that were already over loaded.

C. Woodcreek Utilities' Poor Compliance Record Stems From Various Problems that the Draft Permit Fails to Address:

1. Woodcreek Utilities fails to adopt adequate spill response plans and contingency plans. Recently, an unlawful discharge occurred as a result of an overflow from a lift station that is part of the facility subject to this permit renewal. This discharge allegedly continued for more than 24 hours prior to discovery. (See Attachment B, newspaper articles and pictures).
2. Lines for transporting sewage into or out of the treatment facility are not properly constructed. For example, members of WNHW observed on five separate occasions construction activities to repair the section of the downtown main sewer line that serves the Brookshire Brothers store.
3. Lines over creeks are not properly constructed and as such fails to adequately assure the prevention of leaks and spills into the creeks. For example, the newest line constructed over Hogg Creek near Par Circle was not incased prior to it being buried.
4. New lines in other areas were apparently not properly constructed, with adequate materials to protect against movement and breakage of the lines.

D. The Irrigation System and Plan for Disposal of Treated Effluent Contains Numerous Problems:

1. Woodcreek Utilities fails to demonstrate adequate control over the disposal of treated effluent through irrigation because ownership of the irrigation infrastructure and responsibility for necessary maintenance and repair of irrigation system remains unclear.
2. The infrastructure of the irrigation system needs serious repairs and upkeep to prevent leaks and ponding of effluent on the golf course. Some of the pipes are over 25 years old.
3. Two sewage holding ponds are not properly lined.
4. The irrigation sites fail to have adequate controls to prevent ponding, spills, and other unlawful discharges. Woodcreek Utilities needs full-time personnel that will conduct inspections during irrigation and have the ability to shut down the system if problems arise, given the poor design and poor state of the equipment.
5. The required amount of isolation valves are not installed. Isolation valves detect problems that are otherwise undetectable except for visual observation of problems such as ponding on the golf course.

6. Irrigated areas of both golf courses fail to have adequate soil depth.
7. New and old lift stations have not been properly constructed or maintained to avoid repeated releases of sewage. AquaSource is in violation of requirements in TNRCC rules for preventing overflows during power failures and other such conditions, for use of telemetry for notifying operators of problems, and for spill containment.

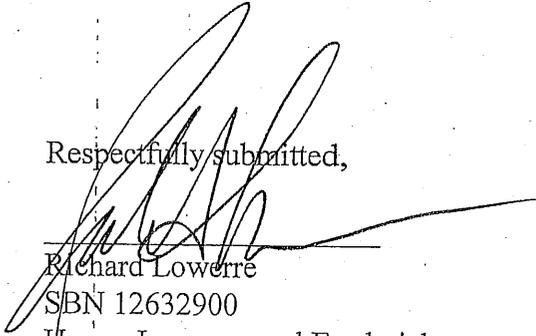
E. Woodcreek Utilities has not proven that it can even operate at the interim level because the Phase II Plant (permit no. 11790) is still on line.

III. Conclusion

Based upon the above comments, the draft permit does not meet the requirements of Texas Law and will not assure the protection of the environment and interests of the members of WNHW.

Therefore, WNHW requests that its comments be considered and that, if all of their concerns are not resolved to their satisfaction, the Commission will grant their request for hearing and send the matter to SOAH for a hearing on the matter.

Respectfully submitted,



Richard Lowerre

SBN 12632900

Henry, Lowerre, and Frederick

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**ATTACHMENT A:
COMPLIANCE HISTORY CHARTS**

AQUASOURCE/WOODCREEK UTILITIES - PHASE I
PERMIT #11431-001
Hays County

SRV - Self-Reported Violation
 NOV - Notice of Violation
 Cmp - Complaint

ltr - Letter
 AqS - AquaSource

TWC - Texas Water Code
 TAC- Texas Administrative Code

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
07- 28	2000	Other	Permit renewal not submitted and permit expired as of 1/17/00.	TNRCC ltr to Woodcreek Utilities notifying it that any activity is a violation subject to administrative penalties.	TWC § 26.121 30 TAC §§ 327.1 - 327.5; § 305.125 Permit, Page 1	TNRCC File Copy - Ltr dated 7/28/00
04- 21	2000	Complaint or SRV ??? can't tell from phone memo notes	Eddie Gumbert saw a leak in one of the treated effluent lines & thought it might impact Cypress Creek. Mr. Gumbert reached David Harris of AquaSource and line was repaired late 4/22	AquaSource repaired line late 4/22. TNRCC noted no action for it to take.	TWC § 26.121 Permit, page 3, VI.4 30 TAC § 305.125; §§327.1-327.5	TNRCC File Copy - Phone Memo dated 4/24/00
03- 03	2000	SRV	Backside of 4-Plex and RR-12, broken clean out on 2" pressure main leaking sewage on ground, 50-75 gal of sewage.	AquaSource cleaned up debris after repair was made and added CL2 to effected area. AqS determined that action (capping off) to prevent recurrence was unnecessary b/c it was pressure main. No action by TNRCC.	TWC § 26.121 30 TAC § 305.125; §§327.1-327.5	TNRCC File Copy - Noncompliance Notification faxed 3-3-00

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
01- 18	2000	Complaint	Lift station overflows constantly; sewage residue and big mess left when pipes are cleaned; area constantly smells of sewage.	TNRCC called AqS Regional Manager who told TNRCC that they try to do their best to clean up an area after any sanitary overflow and disinfect w/ granular choline. TNRCC records show that AqS routinely report overflows. TNRCC determined that no further action was necessary b/c lift station would be taken out of service when new plant to comes on line btwn July & Sept 2000.	TWC § 26.121 Permit, page 2, VI.4 30 TAC § 305.125, § 317.3	TNRCC File Copy - Compliant Investigation Addendum for Complaint No. 110000148
12- 26	1999	SRV	3" Clean out behind residence and next to golf course (#18 WoodCreek Dr.) broke when hit by a golf cart, about 50 gal of sewage ran down vacant lot towards Woodcreek Dr.	AqS treated area w/ Cl ² HTH, disposed of debris, capped off riser pipe on 3" force main & covered up to prevent problem occurring again. No action be TNRCC noted.	TWC § 26.121 Permit, page 2, V and page 3, VI.4 30 TAC § 305.125, § 327.1-327.5	TNRCC File Copy - Noncompliance Notification faxed 12-26-99.

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
12- 17	1999	NOV	Inspection on 10/25/99 - Unsatisfactory compliance w/ flow limits - exceeded 8 out of 8 months (2/99-9/99). (TNRCC did not evaluate irrigation practices). Although the flow limit exceedances were reported in the last inspection, this period's violation was classified as "Other Alleged Noncompliances Noted and Resolved" rather than "Outstanding Alleged Violations."	NOV ltr sent 12/17/99. TNRCC stated that during an exit interview with David Harris the "alleged noncompliances" were noted and resolved regarding the flow limits. The inspection report states that the same noncompliances were noted at the last inspection for the previous review period (see Summary of Inspection Findings 2/9/99). A notice of enforcement was sent and an Agreed Order (Docket No. 98-0514-MWD-E) was signed. A permit has been issued for a replacement facility.	TWC § 26.121(c) Permit, Page 2, V. 30 TAC § 305.125	TNRCC File Copy - Ltr re: NOV.
11- 09	1999	SRV	Behind Goforth Wastewater plant manhole overflow. Estimated 3000-5000 gal. Caused by someone opening up manhole and putting board inside blocking manholes exit pipe.	AqS cleaned up debris/water on ground & disinfected area. No action noted to prevent recurrence of problem. No action noted in file by TNRCC.	TWC § 26.121 Permit, page 3, VI.4. 30 TAC § 305.125; §§327.1-327.5	TNRCC File Copy - Noncompliance Notification reported 11/10/99

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
10- 27	1999	Other - Agreed Order	<p>Enforcement ID No. 12409, Agreed Order Assessing Administrative Penalties and Requiring Certain Actions signed 9/22/99.</p> <p>Settlement terms: 1) Admin penalty \$2500 - already paid 2) SEP w/ conditionally remitted \$1250 of the assessed \$2500 administrative penalty. 3) Refrain from adding new wastewater connection to Phase 1 from outside CCN until certification of facility being in compliance w/ permit w/in 300 days (8/30/00) is submitted.</p>	<p>Sent ltr (dated 11/4/99) w/ certified copy of Agreed Order assessing penalties and requiring certain actions. Settled Enforcement Action against Woodcreek a "<u>subsidiary of Aguasource</u>" for the violations documented during the inspection on 2/19/98.</p>		TNRCC File Copy - Agreed Order: Docket No. 1998-0514- MWD-E
04- 13	1999	SRV	<p>Broken sewer clean out behind #6 Deer Field. Route towards wooded area</p>	<p>AqS applied CL2 & water mixture to area. No cause of problem or action taken to prevent recurrence noted by AqS. No action by TNRCC.</p>	<p>TWC § 26.121 30 TAC § 305.125; §§327.1-327.5</p>	TNRCC File Copy - Noncompliance Notification faxed 4/14/99.

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
03- 20	1999	SRV	13 th Fairway, behind #3 County Court. Discharge 20' into the drainage ditch. Approx. 20-25 gal. Caused by Pipe 2" damaged area about 1' in diameter, may have been hit by greens mower.	AqS lightly applied CL2 and H2O to area. Cut out section of damaged pipe (2" by 3") and installed new pipe & fittings. No action by TNRCC noted.	TWC § 26.121 Permit, page 2, V and page 3, VI.4. 30 TAC § 305.125; §§ 327.1-327.5	TNRCC file copy - Noncompliance Notification faxed/reported 3/22/99.
02- 26	1999	SRV	Woodcreek lift station btwn Town House Circle & Cypress Creek. Manhole overflow - 20-50 gal sewage spewed over into retaining wall. Caused by failure of electrical controls shutting down pumps and allowing lift station pit to fill up & spew over.	Lift Station wastewater pumped back into collection system. AqS removed small amount of debris and washed down area w/ potable water. Added new controls & wires.	TWC § 26.121 Permit, Page 3, VI.4 and page 4, VII.17. 30 TAC § 305.125; § 317.3	TNRCC File Copy - Phone Memo 2/26/99 and Noncompliance Notification Report faxed 3/3/99
02- 09	1999	NOV	Inspection on 2/9/99 - Unsatisfactory compliance w/ flow limits - exceeded 11 out of 11 months (3/98-1/99). TNRCC did not evaluate irrigation practices. Although the flow limit exceedances were reported in the last inspection, this period's violations were classified as "Other Alleged Noncompliances Noted and Resolved" rather than "Outstanding Alleged Violations."	The inspection report states that the same noncompliances were noted at the last inspection for the previous review period. A notice of enforcement was sent and an Agreed Order (Docket No. 98-0514-MWD-E) has been prepared.	TWC § 26.121(c) Permit, page 2, V. 30 TAC § 305.125	TNRCC file copy - Compliance Review Inspection Report dated 2/9/99.

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
11- 25	1998	SRV	#3 green of golf course at end of Deer Field. 3" clean out broken, 1000 gal sewage spilled & debris caused by lawn mower on golf course hitting clean out	AqS added 3 gal diluted CL2 to affected area. Replaced clean out cap, roped off area & cleaned up debris.	TWC § 26.121 Permit, Page 3, VI.4. 30 TAC § 305.125	TNRCC File Copy Noncompliance Notification
11- 18	1998	SRV	Customer grinder pump at 6 Woodcreek Dr. had broken pipe behind cutoff valve; sewage spread over 150 sq.ft. Est. 300-500 gallons. Caused by broken valve on customer's grinder pump station.	AqS stated that health & safety dangers were few if any (but would be less if plumber was better equipped to do this kind of work). Customer spread Clorox & flushed w/ chlorinated potable water. Plumber replaced valve & piping.	TWC § 26.121 Permit, Page 3, VI.4. 30 TAC § 305.125; § 317.2	TNRCC File Copy - Noncompliance Notification faxed 11/20/99

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
09- 20	1998	Complaint	Complaint observed a manhole overflowing into a ditch stated that AqS on site and attempted to pump out the sewage but left w/o finishing. Applied Clorox, but left sewage on the ground.	TNRCC investigated 9/21/98. Observed water pooled on road & noted faint odor of raw sewage. No AqS personnel at the site. TNRCC called AqS and was told that water was disinfected wash down water. TNRCC told AqS to re-check the condition. AqS called TNRCC after recheck and stated minimal amount of water still on road was primarily wash down water containing disinfectant. It was AqS's professional opinion that clean up was satisfactory. No violation confirmed.	TWC § 26.121 and § 26.039 Permit, page 2, V and page 5, VII.2.a. 30 TAC § 305.125; §§327.1-327.5	TNRCC File Copy - Cmplnt No. 119900028 recording phone call complaint. Also copy of Investigation Report dated 9/21/98

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
03- 24	1998	NOV	<p>Compliance Inspection Report for Inspection conducted on 2/19/98:</p> <p><u>Compliance w/ flow limits:</u> no AqS changes to resolve earlier exceedances of 100% of permitted 30-day average flow from 1/96-9/96. Now, 1/97-12/97, facility exceeded 100% of permitted 30-day average flow limit.</p> <p><u>Compliance w/ 75/90 Rule:</u> Permittee failed to comply w/ requirements of this provision 9/91- present (which was 3/24/98).</p>	<p>TNRCC Action: Enforcement initiation requested 3/24/98. Sent ltr to AqS on 3/24/98 including Inspection Report and NOV.</p>	<p>TWC § 26.121 Permit, Page 2, V. Permit, Page 6 VII.7 30 TAC § 305.125; § 305.126</p>	<p>TNRCC File Copy - NOV, Compliance Review Inspection Report dated 3/24/98, and TNRCC Enforcement Referral Action dated received 3/25/98.</p>

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
11- 15	1996	NOV	<p>Compliance Inspection Report for inspection conducted on 10/09/96.</p> <p><u>Compliance w/ flow limits:</u> Unsatisfactory - exceeded permitted flows. Average daily flows for 1996 were: Jan 0.064MGD, Feb 0.060 MGD, March 0.062 MGD, April 0.062 MGD, May 0.062 MGD, June 0.061 MGD, July 0.070 MGD, Aug 0.053 MGD, Sept 0.061 MGD.</p> <p><u>Compliance w/ 75/90 Rule:</u> unsatisfactory evaluation</p>	TNRCC noted that HDR Engineering, Inc. submitted an application and documents for merging Phase I & II permits on 11/2/95 and a proposal for facility modifications. Regional Office sent NOV ltr to AqS on 11/15/96 and forwarded inspection report to enforcement section to follow up on plans for correcting flow exceedence.	TWC § 26.121 Permit, Page 2, V. Permit, Page VII.7 30 TAC § 305.125; § 305.126	TNRCC File Copy - Compliance Review Inspection Report conducted on 10/9/96 and NOV ltr to AqS dated 11/15/96.
10- 23	1996	Other	Ltr responding to Woodcreek Mayor Pool's letter requesting 75/90 info on utility.	TNRCC responded in ltr dated 10/23/96 that phase I permit is a land disposal permit and therefore the flow data & associated effluent quality data are not sent to TNRCC but kept at plant site on a monthly basis for 3 years. Instructed Pool to examine data at plant.	Permit, Page 3, VI. 3. 30 TAC § 305.125	TNRCC File Copy - TNRCC ltr on 10/23/96

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
03- 21	1996	NOV	Woodcreek failed to submit soil sample analysis in 9/95	TNRCC sent NOV ltr requesting that delinquent reports be submitted.	30 TAC § 305.125 30 TAC 319.1 - 319.11 Permit, page 4, VI.10 TWC § 26.121(c) and § 26.042	TNRCC File Copy - TNRCC ltr dated 3/21/1996
02- 27	1996	SRV	Phone call from Woodcreek - Spill caused by ants in breaker box. 200-300 gallons flowed about 200 ft into bar ditch but didn't make it to creek or road.	AqS cleaning it up (no descriptions of clean up) No action by TNRCC noted	TWC § 26.121 Permit, Page 3, VI.4. 30 TAC § 305.125	TNRCC File Copy - Phone memo dated 2/27/96
12- 11	1995	Other	Woodcreek requested to combine Phase I & II permits into one permit	TNRCC sent response ltr explaining it can't process the application request because the 2 facilities are not contiguous land and structures. Note the following suggestions: the application requires long term lease for wastewater disposal site if not the owner - review of Water Use Agreement indicates that it expired on 5/12/94; application indicates that there are only 63.2 acres of land that Woodcreek Resort allows irrigation on, this is in contradiction to the 100 acres specified by both permits.	Permit, page 4, VI. 11 & page 1, IV.	TNRCC File Copy - TNRCC ltr dated 12/11/95

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
03- 09	1995	NOV	Woodcreek failed to submit soil sample analysis for 9/94	TNRCC sent 2 nd notice ltr on 3/9/95 requesting that delinquent reports be submitted	30 TAC § 305.125 30 TAC § 319.1 - 319.11 Permit, page 4, VI.10. TWC § 121.26(c) & § 26.042	TNRCC File Copy - TNRCC ltr dated 3/9/95
01- 20	1995	NOV	Woodcreek failed to submit soil sample analysis for 9/94	TNRCC sent ltr requesting that delinquent reports be submitted	30 TAC § 305.125 30 TAC 319.1 - 319.11 Permit, Page 4, VI.10. TWC § 26.121 & § 26.042	TNRCC File Copy - TNRCC ltr dated 1/20/95
10- 18	1994	Other	Woodcreek ltr responding to TNRCC ltr dated 8/26/94 regarding inspection violations for inspection conducted on 7/25/94(see-below).	Woodcreek stated that it immediately corrected the CL2 residual violation after inspection and discussed plans to increase the permitted flow.	Permit, page 2, V. 30 TAC § 305.125; § 317.6	TNRCC File Copy - Woodcreek ltr to TNRCC dated 10/18/94
09- 14	1994	Complaint	Resident concerned regarding pond close to private property (ltr doesn't say what the specific complaint was)	Investigated and sent a final report to resident (not attached—not if TNRCC file)		TNRCC File Copy

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
08- 28	1994	Complaint	Resident reported on 8/24/94 that sewage was going into a pond not approved for that purpose & pond is overflowing onto complaint's property	TNRCC investigated the complaint on 9/14/94 and found no violations. Report stated that no sewage being discharged into pond — only fresh water pond that's overflowing.		TNRCC File Copy - Ltr to resident on 9/14/94; Complaint Investigation Report of Complaint No. 119500302
08- 26	1994	NOV	NOV ltr re: inspection conducted on 7/25/94 (see below).	TNRCC sent NOV ltr requiring Woodcreek to respond by 10/26/94. (see also enforcement referral 3/24/98 stating that 7/25/94 inspection report was forwarded to enforcement & requested follow up on the 75/90 & flow limit violations)	(see inspection below)	TNRCC File Copy - TNRCC letter dated 8/26/94

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
07- 25	1994	NOV	Annual Inspection conducted on 7/25/94: <u>Compliance w/ flow limits:</u> Unsatisfactory evaluation. Facility operating at over 100% of permitted flow as follows Mar 94 - .059 MGD, Apr 94 - .062 MGD, May 94 - .074 MGD, June 94 - .074 MGD; <u>Compliance w/ 75/90 Rule:</u> Unsatisfactory evaluation; <u>Chlorine</u> at time of inspection was below permitted level.	NOV Ltr to permittee on 8/26/94 (see above). Inspection was to be forwarded to the enforcement section to follow up on flow exceedence.	TWC § 26.121 Permit, page 2, V.; page 6, VII.7; and page 3, VI.4 30 TAC § 305.125 30 TAC § 305.126 30 TAC § 317.6	TNRCC File Copy - NOV ltr dated 8/26/94; Inspection Report.
07- 11	1994	NOV	Woodcreek failed to submit reports concerning effluent quality for 9/93.	TNRCC sent NOV ltr on 7/11/94 requesting delinquent reports.	30 TAC § 305.125 30 TAC § 319.1 - 319.11 Permit, page 2, V.B.	TNRCC File Copy - TNRCC ltr dated 7/11/94
07- 07	1994	Compliant	Phone complaint about strong foul odor from low water crossing area in vicinity of wastewater package plant. Chronic problem	TNRCC conducted inspection on 7/25/94. Didn't detect any odors at that time and found both plants in compliance with permit parameters. Violations noted in inspection report (above 7/25/94). Odors only from naturally decaying vegetation.		TNRCC File Copy - TNRCC ltr dated 8/29/94; Investigation Report re: No. 940700460

Mo/ Day	Yr	Cmp/NOV SRV/Other	Description	TNRCC Action	Applicable Statute/Rule	Source
06- 28	1994	Compliant	Phone complaint about odor problems from sewage treatment plant caused by effluent used to irrigate golf course	TNRCC conducted inspection on 7/25/94 and didn't detect any odors at that time and found both plants in compliance with permit parameters. Violations noted in inspection report (above 7/25/94). Odors only from naturally decaying vegetation.		TNRCC File Copy - TNRCC ltr dated 8/29/94; Investigation Report re: No. 940800842
09- 24	1991	Complaint	Effluent holding pond overflows when it rains & runs into golf course & creek	TNRCC investigated and found permittee completed extensive modifications to plant to prevent overflows	TWC § 26.121 Permit, page 2, V. 30 TAC § 305.125; §317	On-line search - Investigation No 910900018
04- 23	1991	Complaint	Strong odors coming from treatment plant	TNRCC investigated and found no violation - no odors noticed on several visits		On-line search Investigation No 910400694
04- 04	1991	Complaint	Nuisance odors - bad odors especially at night	TNRCC conducted annual inspection on 4/16/91 and unannounced site visit on 5/21/91: No violations found		TNRCC File Copy - TNRCC ltr dated 6/27/91
05- 02	1990	NOV	Golf course allows 2 holding ponds to overflow; irrigates course w/ effluent	TNRCC sent NOV ltr; district waiting response	TWC § 26.121 Permit, page 2, V. 30 TAC § 305.125; §§ 327.1-327.5	On-line search Investigation No 900500002

AQUASOURCE/WOODCREEK UTILITIES - PHASE II
PERMIT #11790-001
Hays County

SRV - Self-Reported Violation
 NOV - Notice of Violation
 Cmp - Complaint

ltr - Letter
 AqS - AquaSource

TWC - Texas Water Code
 TAC- Texas Administrative Code

Mo/ Day	Yr	Cmp/NOV SRV/Oth	Description	TNRCC Action	Applicable Statute/Rule	Source
07- 28	2000	Other	Permit renewal not submitted and permit expired as of 1/17/00.	TNRCC ltr to Woodcreek Utilities notifying it that any activity is a violation subject to administrative penalties.	TWC § 26.121 30 TAC §§ 327.1 - 327.5; § 305.125 Permit, page 1	TNRCC File Copy - Ltr dated 7/28/00
05- 27	2000	SRV	Wood Acre Lift station spewed over into roadway about 20 gal. Caused by electrical problems, pump down	AqS Added a Cl2 mix and electricians working on system. No action noted by TNRCC.	TWC § 26.121 30 TAC § 305.125 30 TAC § 317.3(e) Permit, page 2, V and page 3, VI.4	TNRCC File Copy - Noncompliance notification faxed by AqS on 5/29/00.
12- 17	1999	NOV	Compliance Inspection Report on 10/25/99: Unsatisfactory compliance with flow limits - exceeded 8 out of 8 months	TNRCC Regional Office had exit interview with David Harris discussing violations & their resolutions. Noncompliance noted and "resolved" by a permit for a new wastewater treatment plant that will replace this plant. Construction began 12/1/99.	TWC § 26.121(c) Permit, page 2, V 30 TAC § 305.125	TNRCC File Copy - Report of inspection conducted on 10/25/99 & NOV ltr dated 12/17/99

Mo/ Day	Yr	Cmp/NOV SRV/Oth	Description	TNRCC Action	Applicable Statute/Rule	Source
08- 02	1999	Other	Woodcreek proposal to expand wastewater system to incl Bowen Elementary School, Wimberley ISD Administrative Bldg and other.	No action noted in file.		TNRCC file copy - CMA Engineering, Inc. letter to TNRCC dated 8/2/99
05- 15	1999	SRV	3' sewer line blocked w/ grease, spewed out of customer's clean out about 10 gals.	AqS used sewer snake to remove blockage; cleaned up debris and applied CL2 mix to area.	TWC § 26.121 30 TAC § 305.125 Permit, page 2, V	TNRCC file copy - Aqs Noncompliance Notification faxed on 5/17/99.
04- 08	1999	NOV	Compliance Inspection Report on 2/9/99: 1) Unsatisfactory compliance w/ flow limits. From Mar98 to Jan99 exceeded 6 out of 11 months	NOV ltr. Noncompliance noted and "resolved" by a permit for a new wastewater treatment plant that will replace this plant.	TWC § 26.121(c) 30 TAC § 305.125 Permit, page 2, V	TNRCC File Copy - Inspection Report dated 2/9/99 and TNRCC NOV dated 4/8/99
02- 13	1999	SRV	Woodacre Dr & Pleasant Valley Lift Station - Discharge out of pit onto roadway towards wooded area 500 gal caused by vandals (cut seal on the electric box and shut off the main breaker).	AqS sprayed pavement with diluted chlorine solution and flushed with potable water. Reported to Sherriff's Dept. Local Security and locked bottom panel out. Restored power back to lift station.	TWC § 26.121 30 TAC § 305.125 30 TAC § 317.7 30 TAC § 317.3(e) Permit, page 2, V and page 3, VI.4	TNRCC File Copy - Aqs Noncompliance Notification faxed on 2/15/99

Mo/ Day	Yr	Cmp/NOV SRV/Oth	Description	TNRCC Action	Applicable Statute/Rule	Source
01- 18	1999	SRV	Raw sewage (3-500 gal) flowed out a cleanout on the main & ran down vacant lot on Woodacre Dr. Caused by grease & trash plug in main line.	AqS cleaned up paper & trash; raked ground to mix sewer with soil; disinfected with small amount of chlorinated water; called in hydro-jet truck from Cap-Tex to clean the main line twice that a grease & trash plug formed.	TWC § 26.121 30 TAC § 305.125 Permit, page 2, V.	TNRCC File Copy - AqS Noncompliance Notification faxed on 1/19/99.
11- 25	1998	SRV	Sewage Line backed up causing discharge of sewage at clean out caused by rocks and debris in line.	AqS had lines an manholes jetted out and removed debris. Cleaned spill area; disinfected; covered spill with dirt.	TWC § 26.121 30 TAC § 305.125 Permit, page 2, V	TNRCC File Copy - Aqs Noncompliance Notification faxed on 11/30/98

Mo/ Day	Yr	Cmp/NOV SRV/Oth	Description	TNRCC Action	Applicable Statute/Rule	Source
03- 24	1998	NOV	<p>Compliance Inspection conducted on 2/19/98:</p> <p><u>Unauthorized discharges:</u> Leak from manhole on effluent transfer line observed. Reported by public. At the time of inspection, line no longer in use and valved off. Fall in the line created enough pressure to cause the manhole to leak.</p> <p>Also, public alleged that the effluent holding pond had overflowed (complaint not in TNRCC file). Couln't be substantiated during inspection, but noticed recent work on pond levy to ensure maintenance of 2 ft freeboard.</p> <p><u>Compliance w/ 75/90 Rule:</u> 1/97-12/97, facility exceeded 75% of permitted flow for Mar, Jul, Aug, Sept, & Oct.</p>	TNRCC sent NOV ltr to AqS with copy of inspection report and requesting a response.	TWC §26.121 Permit, page 2, V. Permit, page 6, VII.7 30 TAC § 305.125, § 305.126	TNRCC File Copy - Compliance Inspection Report dated 2/19/98 & NOV ltr dated 3/24/98
11- 10	1997	Complaint	Phone call complaint that no check valve installed at grinder pump connection at sewer main	TNRCC ccontacted advised Woodcreek of requirements for 2 backflow prevention devices on grinder pump installations.	30 TAC § 317.2 Permit, page 3, VI.4	TNRCC File Copy - Complaint No. 119800113

Mo/ Day	Yr	Cmp/NOV SRV/Oth	Description	TNRCC Action	Applicable Statute/Rule	Source
10- 06	1997	Other	Soil Sample Report			TNRCC File Copy - Report of Soil Analysis taken 9/22/97
11- 15	1996	Other	Compliance Review Inspection Report conducted on 10/9/96 - no violations/deficiencies			TNRCC File Copy - TNRCC ltr dated 11/15/96 & Compliance Inspection Report dated 10/9/96
03- 21	1996	NOV	Woodcreek failed to submit soil sample analysis for 9/95	TNRCC sent NOV ltr requesting delinquent report	30 TAC § 305.125 30 TAC § 319.1- 319.11; Permit, page 4, VI.10; TWC § 26.121(c) and § 26.042	TNRCC File Copy - TNRCC ltr dated 3/21/96
05- 30	1995	Other	Sample Analysis			TNRCC File Copy - Report of Soil Sample Analysis taken 5/2/95
04- 18	1995	Other	Woodcreek provided soil samples.			TNRCC file copy - Woodcreek ltr dated 4/18/95

Mo/ Day	Yr	Cmp/NOV SRV/Oth	Description	TNRCC Action	Applicable Statute/Rule	Source
03- 09	1995	NOV	Woodcreek failed to submit soil sample for 9/94	TNRCC sent second NOV ltr requesting delinquent report	30 TAC § 305.125 30 TAC § 319.1 - 319.11; Permit, page 4, VI.10; TWC § 263.121(c) & § 26.042	TNRCC File Copy - TNRCC ltr dated 3/9/95
01- 20	1995	NOV	Woodcreek failed to submit reports concerning effluent quality for 9/94	TNRCC sent NOV ltr requesting delinquent report	30 § TAC 305.125 30 TAC § 319.1 - 319.11; Permit, page 3, VI.4; TWC § 26.121(c)	TNRCC File Copy - TNRCC ltr dated 1/20/95
07- 25	1994	Other	Compliance Review Inspection Report conducted on 7/25/94 - no violations/deficiencies			TNRCC File Copy - TNRCC ltr dated 8/26/94 and Inspection Report dated 7/25/94
07- 11	1994	NOV	Woodcreek failed to submit soil sample for 9/93	TNRCC sent NOV ltr requesting delinquent report	30 TAC § 305.125 30 TAC § 319.1- 319.11; Permit, page 4, VI.10; TWC § 26.121(c) & § 26.042	TNRCC File Copy - TNRCC ltr dated 7/11/94
04- 13	1994	Other	Sample Analysis			TNRCC File Copy - Report of sample analysis taken 4/4/94

**ATTACHMENT B:
NEWSPAPER ARTICLES AND PICTURES**

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MWD

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CHIEF CLERK'S OFFICE
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

March 21, 2001
Public Comment and Hearing Request

Ms. LaDonna Castanuela
Chief Clerk (MC 105)
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, TX 78711-3087

RE: Application of Woodcreek Utilities, Inc., a subsidiary of AquaSource for Renewal of Water Permit No. 13989-001; Supplemental Comments

Dear Ms. Castanuela,

On behalf of Wimberley Neighbors for Healthy Water (WNHW), I submit the following public comments that supplement the comments and request for hearing regarding the above named application. The initial comments and hearing request were filed on January 26, 2001.

On March 21, 2001, WNHW filed with the Executive Director of TNRCC a request for investigation and enforcement action against AquaSource/Woodcreek Utilities. (See Attachment A). Several allegations in that letter also pertain to the application for renewal of Permit No. 13989. That letter is attached and all allegations are incorporated into and should be considered as additional public comments against the application for renewal of Permit No. 13989.

Also, WNHW pointed out in its initial comments that TNRCC failed to compile a compliance summary as required by TNRCC rules. According to TNRCC Rules, the Executive Director "shall prepare a summary which describes the compliance status of persons applying for permits" such as this renewal permit. 30 TAC § 281.21(d). This compliance summary should include such things as citizen complaints, inspections, any alleged noncompliance, any enforcement actions and responses to the enforcement actions. The compliance summary must also include information regarding the site that is subject to the application as well as other facilities owned or operated by the applicant.

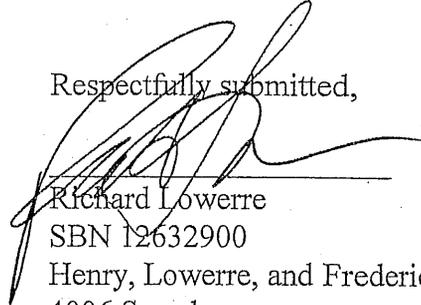
On March 1, our office received from TNRCC staff a letter including the compliance summary for TPDES Permit No. 13989-001. (See Attachment B). However, that compliance summary fails to address or include everything required by TNRCC rules. Inadequacies discovered in the staff's compliance summary include, but are not limited to, the following examples.

- 1) The compliance summary fails to include the regional inspection conducted on October 25, 1999, which again documents unsatisfactory compliance with permitted flow limits, including exceedences for the entire review period.
- 2) The compliance summary fails to note the different regional inspection findings for each of the two facilities that were separately permitted. It appears that the compliance summary only mentions violations for inspections of the Phase I facility that was covered by Permit No. 11431 until its expiration. The compliance summary fails to mention violations for inspections of the Phase II facility that was covered by Permit No. 11790 until its expiration.
- 3) The compliance summary indicates that Agreed Order 1998-0514-MWD-E addresses and resolves all violations that occurred since 1996. However, that agreed order only addressed violations documented in the February 19, 1998, inspection for only Permit No. 11431. The agreed order does not address the violations of Permit No. 11431 in 1996 nor can it address the 1999 violations because those violations occurred after the enforcement action was initiated. Furthermore, the agreed order does not address any violations for Permit No. 11790.
- 4) The compliance summary is limited to only AquaSource facilities owned or operated in Hays County. TNRCC is aware that AquaSource owns and operates numerous facilities around Texas, not just in Hays County.

Due to the inadequacies of the TNRCC staff's compliance history, WNHW requests that its compliance histories compiled from TNRCC's and AquaSource's records replace the staff's summary and be utilized for compliance history evaluations required by TNRCC rules. (See Attachment C). Also, WNHW requests that the compliance histories for the other facilities owned and operated by AquaSource be included.

Therefore, WNHW requests that their comments be considered and that, if all of their concerns are not resolved to their satisfaction, the Commission grant their request for hearing and send the matter to SOAH for a hearing on the matter.

Respectfully submitted,



Richard Lowerre

SBN 12632900

Henry, Lowerre, and Frederick

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(512) 454-3050 ph; (512) 454-6231 fax

XC: Kathy Brown, TNRCC Staff Attorney
Terry Murphy, TNRCC Enforcement Coordinator
John Foulds, TNRCC Permit Engineer
Julian Centeno, TNRCC Permit Engineer
Elston Johnston, TNRCC Austin Regional
Claudia Chapin, TNRCC Austin Regional
Larry King, TNRCC Austin Regional

XC without Attachments A and C (because those were provided in separate correspondence):

Laura Nehman
Scott Jerger
Mark Zeppa
Bill Dugat/Emily Rogers/Bruce Wasinger
The Honorable Jim Powers
WNHW
Jack Hollon
Kenneth Jacobs
Steve Klepfer
Michael Dickey

A

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March 21, 2001

Mr. Jeffrey Saitas
Executive Director
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: AquaSource/Woodcreek Utilities: CCN No. 20124 & Wastewater Permit No. 13989

Dear Mr. Saitas:

I am writing on behalf of Wimberley Neighbors for Healthy Water (WNHW) to request the following:

- 1) an immediate investigation and appropriate enforcement action by TNRCC against AquaSource/Woodcreek Utilities,
- 2) reconsideration of TNRCC's staff position regarding the draft renewal permit for permit no. 13989, and
- 3) an order directing AquaSource/Woodcreek Utilities to stop all wastewater connections for potential customers that are located outside of the permitted CCN boundary, including potential customers that are located within the quarter-mile discretionary zone just outside of the CCN boundary.

WNHW requests these above actions based on the following allegations:

- 1) AquaSource/Woodcreek lacks control of the disposal of treated effluent from its wastewater treatment plant including, but not limited to, the inability to ensure permit compliance through supervision, operation and maintenance. This lack of control has resulted in AquaSource/Woodcreek causing, allowing or permitting violations of Texas law and TNRCC permits. Furthermore, since AquaSource/Woodcreek lacks control, the permit renewal application for Permit

No. 13989 is administratively and technically incomplete because the operator of the irrigation system must be the permittee or a co-permittee;

- 2) AquaSource/Woodcreek is unable to serve without damage to surface and ground waters due to improper construction of facilities and inadequate irrigation; and
- 3) AquaSource/Woodcreek has in the past and continues to be in significant noncompliance with applicable statutes, rules, and permit regulations.

WNHW recognizes that AquaSource/Woodcreek acquired systems that had problems. Nevertheless, AquaSource/Woodcreek has knowingly and intentionally compounded and aggravated existing problems as demonstrated below.

I. LACK OF CONTROL OVER DISPOSAL OF TREATED EFFLUENT

Due to executing a 1999 agreement that superceded and replaced a previous agreement, AquaSource/Woodcreek lacks control of the operation, maintenance and disposal of its treated effluent. This lack of control has resulted in AquaSource/Woodcreek causing, allowing or permitting violations of Texas law and TNRCC permits. Furthermore, due to AquaSource/Woodcreek's lack of control, the renewal application for Permit No. 13989 is administratively and technically *incomplete* because the operator of the irrigation system must be the permittee or a co-permittee.

A. AquaSource Fails to Control the Operation, Maintenance and Disposal by Irrigation Because of the 1999 Agreement.

AquaSource fails to control the disposal of treated effluent as required by Texas law and standard permit conditions. This lack of control includes, but is not limited to, the inability to ensure permit compliance through supervision, operation and maintenance.

Section 305.125 (5) of the Texas Administrative Code states that the "permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions." Therefore, in order to achieve compliance with its permit, AquaSource/Woodcreek must, among other things, operate and maintain the equipment and be the entity that disposes of its treated effluent by irrigation.

The current permit, as well as the draft renewal permit, acknowledges that AquaSource/Woodcreek lacks ownership of the lands used for irrigation. To overcome lack of ownership and still meet section 305.125 (5) requirements, AquaSource/Woodcreek executed in 1997 a Water Use Agreement with Woodcreek Country Club (Country Club), the owner of the

lands used for irrigation. (See Attachment A - 1997 Water Use Agreement). That Agreement indicates that AquaSource/Woodcreek is responsible for the disposal of the treated effluent. That responsibility encompasses all costs, operation, and maintenance of all equipment necessary for the disposal of the treated effluent, including pumps, chlorination units, and holding ponds. Therefore, to satisfy TNRCC requirements of control over the operation and maintenance of disposal by irrigation, AquaSource/Woodcreek submitted this 1997 Water Use Agreement with the application for the existing Permit No. 13989 and with the pending Permit No. 13989 draft renewal application filed in August 2000.

However, on July 13, 1999, AquaSource/Woodcreek and the Country Club executed another settlement agreement that superseded and replaced the 1997 Water Use Agreement. (See Attachment B - 1999 Amended and Restated Water Use Agreement). Unlike the 1997 Water Use Agreement that indicated AquaSource/Woodcreek's responsibility for control of maintenance and operation, the 1999 agreement shifts responsibility to the County Club.

The 1999 agreement clearly states that "some maintenance obligations will immediately be assumed by the Owner [the Country Club], while others will be effective only when the new system begins operations." It is unclear the extent of AquaSource/Woodcreek's lack of control, but it appears that immediately upon execution of the 1999 agreement, the Country Club assumed all costs of maintenance and operation of all pipes, pumps, sprinklers and other existing equipment currently necessary for disposal, especially the irrigation system on the existing golf courses and downstream of the holding ponds including the pumps. Therefore, AquaSource/Woodcreek willingly and knowingly arranged to abdicated its control over the supervision, maintenance and operation of the irrigation system that is used for the disposal of the treated effluent. This lack of responsibility for supervision and control of operation and maintenance is in violation of section 305.125 (5), and thus, AquaSource/Woodcreek's current permit and pending draft renewal permit.

Furthermore, the responsibilities will change throughout the life of the 1999 Water Use Agreement as AquaSource/Woodcreek completes expected construction to its facilities. AquaSource/Woodcreek plans to construct a line to transfer effluent directly to the Country Club's sprinklers. This also raises the control issue because the sprinkler heads are designated as being owned and controlled by the Country Club. For example, if a sprinkler head malfunctions and uncontrollably discharges effluent, AquaSource/Woodcreek will have no supervision to detect the problem, no control to fix such a problem, and no control to prevent the reoccurrence of the problem through regular maintenance and operation.

Therefore, in stark contrast to the 1997 Agreement, the 1999 Agreement apparently fails to satisfy TNRCC's requirements.

B. As a Result of the 1999 Agreement, AquaSource/Woodcreek Is Causing, Allowing, and/or Permitting Violations of the Texas Water Code and Permits.

As discussed earlier, the 1999 agreement allows the Country Club to have maintenance and operational control of the disposal of treated effluent; however, that control without a permit is apparently in violation of the Texas Water Code. The permitting program applies to owners or operators of any treatment works treating domestic sewage. 30 TAC § 305.1 (b)(2). This includes the owners or operators of any devices and systems including any disposal field. TEX. WATER CODE § 26.001 (6). In essence, the operator of the irrigation system must be the permittee or a co-permittee. By the implication of the 1999 agreement, the Country Club - as owner and operator of the disposal of treated effluent by irrigation - must apply for a permit to discharge.

Furthermore, by signing the agreement and providing the treated effluent to the Country Club for it to discharge, AquaSource/Woodcreek is also apparently violating the statute. No person may cause, allow or permit the discharge of any waste or the performance of any activity that violates the statute or any permit. TEX. WATER CODE § 26.121 (c). As already discussed, a standard permit condition requires that AquaSource/Woodcreek retain control of the disposal of treated effluent; however, the 1999 agreement removes that required control. As such, AquaSource/Woodcreek's violation is two-fold. First, AquaSource/Woodcreek has caused, allowed, and permitted an activity that violates its permit requirements. And second, AquaSource/Woodcreek has caused, allowed, and permitted an activity in violation of the statute—specifically, the discharge of treated effluent by the Country Club without a permit.

C. As a Result of the 1999 Agreement, the permit renewal application for Permit No. 13989 is administratively and technically incomplete.

Due to AquaSource/Woodcreek's lack of control, the renewal application for Permit No. 13989 is administratively and technically *incomplete* because the operator of the irrigation system must be the permittee or a co-permittee.

II. IMPROPER CONSTRUCTION AND INADEQUATE IRRIGATION

Despite the existence of a new treatment plant, AquaSource/Woodcreek cannot properly manage existing wastewater, and thus any new wastewater, because its current operation pollutes surface and ground waters due to improper construction and maintenance of its lines and equipment. (In addition to the attachments specifically listed in each section, see also generally Attachment C - Public Comments Regarding Draft Renewal Permit No. 13989).

A. Brookshire Collection Main Not Constructed Properly:

It appears that the new collection main (including that main referred to as the Brookshire Brothers Grocery Line) was not properly constructed (see Attachment D - Statement of Terry Sumter).

B. Lift Stations Not Properly Constructed or Maintained:

The lift stations, including the one for the new main, were not properly constructed and are not being properly maintained or operated to avoid frequent spills. Examples of the inadequacy of construction and maintenance include, but are not limited to, the following:

- 1) Lift station spill on January 5, 2001. (See Attachments E and G - Photos and Newspaper Articles). The time lapse of the spill is unknown, but from the amount of sewage that had ponded in and around the malfunctioning lift station, it appears to have been discharging for sometime before the problem was discovered. Although AquaSource/Woodcreek employees are to check the lift stations daily, the time of the last visual inspection of this lift station is unknown.
- 2) The engineering and technical specifications for the Brookshire Brothers Area Lift Station states that "[a]ll new motor controls . . . shall include . . . [a] Four channel autodialer capable of transmitting pump trouble conditions, high level and power outage alarms by telephone line. (See Attachment F - Excerpt of Engineering and Technical Report). However, AquaSource's spokesman, Mr. Craig Sherwood, stated that AquaSource was merely considering installing an autodialer, even though such a device would most likely prevent a major discharge like the one that occurred January 5, 2001. (See Attachment G - Newspaper Article).

C. Lines and Taps Not Properly Constructed:

Certain lines and taps were built without following the state criteria for design and construction. (See Attachment H - Statement of Dwayne Patlyek).

D. Irrigation Not Adequate:

The irrigation disposal equipment, ponds and lines are not adequate to serve existing loads. (See Attachment H - Statement of Dwayne Patlyek).

III. NONCOMPLIANCE AND MISREPRESENTATIONS

AquaSource/Woodcreek has a history of noncompliance with statutes, rules, orders and permit requirements. Furthermore, AquaSource/Woodcreek has apparently misrepresented to TNRCC important facts on several different occasions.

A. Noncompliance With Statutes, Rules, Orders and Permit Requirements

AquaSource/Woodcreek's history of noncompliance with statutes, rules, orders and permit requirements includes, but is not limited to:

- 1) operating without a permit,
- 2) compiling an extensive compliance history filled with unlawful discharges, complaints, and enforcement orders,
- 3) violating agreed orders,
- 4) illegally connecting customers outside its CCN boundary, and
- 5) violating permit conditions restricting flow limits.

Each of the above listed allegations are discussed in more detail below.

1. Operating Without a Permit

Despite the existence of a new treatment plant, it appears that AquaSource/Woodcreek continues to operate without a permit an old treatment plant called Phase II, Permit No. 11790, which expired well over a year ago. During a site visit of AquaSource/Woodcreek in Hays County on February 1, 2001, AquaSource/Woodcreek representatives, Mr. Sherwood and Mr. David Harris informed the visitors that the phase II treatment plant was still operating at that time. It appears that the plant is continuing to still operate. (See Attachments H and I).

However, TNRCC notified AquaSource/Woodcreek that permits for each of the old wastewater treatment plants, Phase I (Permit No. 11431) and Phase II (Permit No. 11790), expired on January 17, 2000 because it failed to submit a permit renewal application for either permit. (See Attachment J - TNRCC Letters). Despite TNRCC's cancellation of both permits, AquaSource notified TNRCC on September 21, 2000, that it was requesting "voluntary cancellation" of both permits because the wastewater facility, Permit No. 13989, would be on-line on October 1, 2000. (See Attachment K -

AquaSource Letter). Furthermore, AquaSource/Woodcreek has notified TNRCC of several unlawful discharges that have occurred under both permits since the expiration and subsequent voluntary cancellation. (See Attachment L - Compliance History Charts for Permit Nos. 11431 & 11790).

2. Extensive Compliance History Involving Numerous Unlawful Discharges and Complaints

Many of AquaSource/Woodcreek's facilities have been the target of numerous complaints, discharge violations, and enforcement actions. For AquaSource/Woodcreek's compliance history and the statutes, rules and/or permit violations, see Attachment L.¹

3. Violations of Agreed Orders

In 1999, AquaSource/Woodcreek and TNRCC entered into an Agreed Order, Docket No. 98-0514-MWD-E. In that order, Woodcreek was to "immediately refrain from adding new wastewater connections from outside the Certificate of Convenience and Necessity (CCN No. 20124)" area until the phase I plant complied with the effective permit conditions, which would be the conditions of Permit No. 11431.

Although AquaSource/Woodcreek had two separate permits, the Agreed Order did not differentiate between new wastewater connections made under either Permit No. 11431 or Permit No. 11790. Instead, the Agreed Order specified that the utility could not add any new wastewater connections from outside *its CCN*. AquaSource/Woodcreek's CCN No. 20124 includes *both* Permits Nos. 11430 and 11790. Therefore, the Agreed Order prohibited any new wastewater connections under either permits.

A review of the last inspection report for Permit No. 11431, reveals that the phase I plant was not in compliance as of December 17, 1999. (See Attachment L). Despite the noncompliance of the phase I plant, AquaSource/Woodcreek initiated service to the Brookshire Brothers Grocery in November 1999. Brookshire Brothers Grocery is located outside CCN No. 20124 area; therefore, the hook-up was in violation of the Agreed Order.

¹ The compliance histories were compiled from TNRCC's and AquaSource's records.

4. Illegal Connections Outside CCN Boundary.

In Attachment M, the letter states that “no tap will be made for a customer whose point of sewer service is not located completely within the 1/4 mile buffer zone.” However, as stated earlier, AquaSource/Woodcreek has in the past hooked up customers outside its CCN area and the 1/4 mile discretionary buffer zone, contrary to existing state laws, TNRCC rules, and restrictions of an enforcement action against Woodcreek.

5. Violations of Permit Conditions Restricting Flow Limits

Furthermore, by adding new wastewater connections AquaSource/Woodcreek has violated and is continuing to violate state law and its permit conditions. Whether the Brookshire Brother’s new wastewater connection was under Permit No. 11431 or Permit No. 11790, the connection caused AquaSource/Woodcreek to continue exceeding its permitted flow limits. (See Attachment L).

B. Misrepresentations

AquaSource/Woodcreek has apparently misrepresented several facts in: 1) its renewal permit for Permit No. 13989, 2) its application to amend CCN No. 20124, and 3) in its compliance history.

1. Misrepresentations in Permit Renewal Application for Permit No. 13989.

It appears that several misrepresentations exist in the permit renewal application. Examples include, but are not limited to, the following. (See Attachments A and B).

a. Misrepresentations of Control Over the Disposal of Treated Effluent by Irrigation.

Although the permit renewal application that was submitted on August 14, 2000, AquaSource/Woodcreek represented and included as the irrigation contract covering land disposal of the treated effluent a copy of the 1997 Water Use Agreement instead of the executed 1999 Amended and Restated Water Use Agreement. The 1997 Water Use Agreement depicts AquaSource/Woodcreek as being in control of irrigation facilities and equipment, unlike the 1999 Amended and Restated Water use agreement, which details the transfer of control from AquaSource/Woodcreek to the County Club. The Amended and Restated Water Use Agreement had been executed and became effective on August 28, 1999 - almost a year earlier than the renewal application was submitted to TNRCC.

b. Misrepresentations of Process for Disposal of Treated Effluent by Irrigation.

Furthermore, AquaSource/Woodcreek stated in the permit renewal application that land disposal of treated effluent would be “[f]rom the plant to a holding pond then through two 6 inch transfer lines to existing 796,000 and 3,000,000 gal. holding ponds on the golf course. The golf course then irrigates on 143 acres (175 acres in final phase.)” However, the executed 1999 Amended and Restated Water Use Agreement provides for a more complicated and convoluted schematic for disposal of treated effluent, including information that contradicts the language provided in the renewal application. Although the 1997 Water Use Agreement was submitted with the renewal application, the 1999 Amended and Restated Water Use Agreement superceded and replaced the 1997 Water Use Agreement upon execution.

Section 305.125 (19) of the Texas Administrative Code states that “[w]here the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application . . . it shall promptly submit such facts or information.” AquaSource/Woodcreek has been aware of the 1999 agreement since its execution; therefore, AquaSource should have included the 1999 agreement in the renewal application, or at the very least, should have submitted it immediately after incorrectly filing the 1997 Water Use Agreement. However, AquaSource/Woodcreek apparently has failed to do so.

Furthermore, due to AquaSource/Woodcreek’s lack of control and misrepresentations, the renewal application for Permit No. 13989 is administratively and technically *incomplete* because not only is the information inaccurate, but also the operator of the irrigation system must be the permittee or a co-permittee.

2. Misrepresentations in Application for an Amendment to CCN No. 20124.

It appears that several misrepresentations exist in the application for an Amendment to CCN No. 20124 including, but not limited to, misrepresentations concerning facility inspections. (See Attachment L).

On page 7 of the application to amend CCN No. 20124 submitted in September 1999, AquaSource/Woodcreek stated that the last date of inspection for both of its permits, Nos. 11431 and 11790, was November 15, 1996.

That inspection revealed that Permit No. 11431 was exceeding permit flows and referred to the enforcement section. However, it was not until after the February 19, 1998 inspection, that Permit No. 11431 was actually subjected to an enforcement action that

resulted in an Agreed Order. While AquaSource/Woodcreek acknowledged and included a copy of the Agreed Order, it did not include a copy of the February 19, 1998 inspection reports that led to the Agreed Order. Yet, that inspection report would admittedly have been a more recent inspection report than the November 1996 inspection report AquaSource/Woodcreek stated was the last inspection date.

Interestingly, the November 1996 inspection report was the last inspection report that Permit No. 11790 had no violations or deficiencies. In actuality, both permits had undergone two other investigations on February 9, 1999 and February 19, 1998. During both investigations, TNRCC found violations of exceeding flow limits for **both** permits. Since TNRCC sent both inspection reports to AquaSource/Woodcreek prior to the submittal date of the application to amend CCN No. 20124, AquaSource/Woodcreek could have and should have listed as the date of the last inspection report and included in the permit application either of these inspection reports, but it did not. Instead, a pre-enforcement order, three-year-old inspection report, which was the last favorable inspection report for one of the permits, was the only inspection report included with the permit application.

In addition, WNHW would like to call your attention to the problem concerning TNRCC records and AquaSource/Woodcreek permits. It appears that AquaSource/Woodcreek may have incorrectly reported noncompliance notifications to TNRCC by reporting those noncompliance notifications under the expired permits. This in turn misrepresents the compliance history of AquaSource/Woodcreek's only currently permitted wastewater treatment plant, Permit No. 13989.

Since, the expiration and subsequent "voluntary cancellation" of both permits, Nos. 11431 and 11790, AquaSource/Woodcreek has sent several Water Quality Noncompliance Notifications to TNRCC. However, the notifications have been reported under the expired permits. (See Attachments J, K and L).

Both wastewater treatment plants, phase I and phase II, are supposed to be operating as only lift stations to the phase III plant that operates under Permit No. 13989. Some of the unlawful discharges that have been reported probably should have been reported under the current Permit No. 13989.² For example, the January 5, 2001 unlawful discharge that occurred at the Brookshire Brothers Grocery lift station. That lift station should be operating under the existing Permit No. 13989. However, after reviewing TNRCC files, a noncompliance report regarding that discharge could not be located in the files for Permit No. 13989. Meanwhile,

² Some of the notifications were probably correctly filed under the expired permits because the phase I plant operated for sometime since the permit expired and the phase II plant still operates despite the expired permit. See discussion earlier.

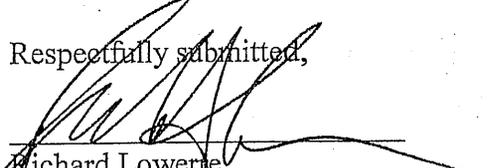
AquaSource/Woodcreek reported under the expired Permit No. 11431 an unlawful discharge due to lift station failure on January 5, 2001.³

IV. CONCLUSION

WNHW requests that TNRCC conduct the following:

- 1) an immediate investigation and appropriate enforcement action by TNRCC against AquaSource/Woodcreek Utilities,
- 2) reconsideration of TNRCC's staff position regarding the draft renewal permit for Permit No. 13989, and
- 3) an order directing AquaSource/Woodcreek Utilities to stop all wastewater connections for potential customers that are located outside of the permitted CCN boundary, including potential customers that are located within the quarter-mile discretionary zone just outside of the CCN boundary.

Respectfully submitted,


Richard Lowrie

SBN: 12632900

Henry, Lowerre, and Frederick

4006 Speedway

Austin, Texas 78751

Phone: 512-454-3050; Fax: 512-454-6231

CC: Laura Nehman
Scott Jerger
Mark Zeppa
Bill Dugat/Emily Rogers/Bruce Wasinger
The Honorable Jim Powers
Jack Hollon
Kenneth Jacobs
Steve Klepfer
Michael Dickey
WNHW

³ While the dates are similar, it cannot be ascertained from the report if this report is for the Brookshire lift station discharge or some other lift station discharge that happened to occur on the same day.

ATTACHMENT A - 1997 WATER USE AGREEMENT

WATER USE AGREEMENT

THE STATE OF TEXAS
COUNTY OF HAYS

§
§
§

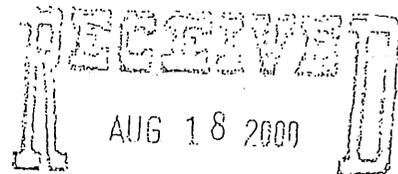
THIS WATER USE AGREEMENT (hereinafter referred to as this "Agreement"), is made to be effective the 1st day of May, 1997, by and between Woodcreek Utilities, Inc., a Texas Corporation, Charter No. 00395440-00, organized and operating pursuant to the Texas Business Corporations Act and Texas Water Code, Chapter 13 (hereinafter referred to as the "Utility"), and Woodcreek Country Club, Ltd., a Texas limited partnership as owner of certain properties in Hays County, Texas (hereinafter referred to as "Owner").

WITNESSETH:

WHEREAS, the Utility is the holder of two Certificates of Convenience and Necessity from the Texas Natural Resource Conservation Commission ("TNRCC"), CCN No. 10316 and CCN No. 20124 (collectively the "CCN"), and is therefore authorized to provide water supply and waste disposal wastewater treatment services to the land within its service area, and

WHEREAS, Utility has constructed and is operating facilities at its Phase I and Phase II Treatment Plants that will generate effluent from its wastewater treatment plants in the form of reclaimed water ("reclaimed water") of satisfactory quality for use in irrigating Owner's Phase I and Phase II golf courses which are landscaped areas with restricted public access.

WHEREAS, Owner owns, operates and maintains certain landscaped areas that Owner desires to irrigate with reclaimed water supplied by Utility. Such use of reclaimed water will replace the use of groundwater for said irrigation and thereby will allow utility and Owner to maximize efforts to conserve the potable water supply.



Owner agrees to accept reclaimed water for landscaped area irrigation, and Utility agrees to supply reclaimed water to Owner for the considerations and under the terms and conditions to hereinafter set forth, which is the subject of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, and subject to the conditions set forth, Owner and the Utility agree as follows:

ARTICLE ONE

DEFINITIONS

SECTION 1.01. *UTILITY.*

"Utility" shall mean Woodcreek Utilities, Inc., a Texas Corporation, Charter No. 00395440-00, a corporation existing and acting pursuant to the Texas Business Corporations Act and Texas Water Code Chapter 13.

SECTION 1.02. *OWNER.*

"Owner" shall mean Woodcreek Country Club, Ltd., a Texas limited partnership.

ARTICLE TWO

EASEMENT FOR IRRIGATION; AREA OF USE

SECTION 2.01. *DESCRIPTION OF WOODCREEK RESORT PHASE I AND II GOLF COURSE.*

Owner shall be obligated to use reclaimed water (which reclaimed water may be "cut," or diluted with potable water, if necessary, in the sole discretion of Owner) as irrigation for golf courses known and referred to herein as "Woodcreek Resort Phase I Golf Course" and "Woodcreek Resort Phase II Golf Course."

SECTION 2.02. *IRRIGATION EASEMENT FOR RECLAIMED WATER: EXISTING PERMITS.*

(1) Irrigation of Phase I Golf Course. TNRCC Wastewater Treatment Plant Permit No. 11431-01, which is a permit issued for the purpose of disposal of reclaimed water from one or more wastewater treatment plants owned and operated by the Utility, has the purpose of providing wastewater treatment service within its service area. Permit 11431-01 may be expanded or changed from time to time.

Owner specifically recognizes that Permit 11431-01 calls for the disposal of the reclaimed water as irrigation for the Woodcreek Resort Phase I Golf Course. Owner further recognizes the need for the continued ability of the Utility to dispose of the reclaimed water generated by the wastewater treatment plant(s) operated by the Utility. Therefore, Owner agrees to permit the continued disposal of the Utility's reclaimed water on, over, and within the area of Woodcreek Resort Phase I Golf Course. Such permission has previously been granted in the form of an Irrigation Easement, executed by Owner, which has been recorded in the Real Property Records of Hays County, Texas. A copy of the Irrigation Easement is attached hereto as Exhibit "A", and a copy of a Correction Easement (correcting a mistaken reference in the property description in the Irrigation Easement) is attached hereto as Exhibit "B". The Correction Easement has been, or will be, filed in the Real Property Records of Hays County, Texas.

(2) Irrigation of Phase II Golf Course. TNRCC Wastewater Treatment Plant Permit No. 11790-01, which is a permit issued for the purpose of disposal of reclaimed water from one or more wastewater treatment plants owned and operated by the Utility, has the purpose of providing wastewater treatment service within its service area. Permit 11790-01 may be expanded or changed from time to time.

Owner specifically recognizes that Permit 11790-01 calls for the disposal of the reclaimed water as irrigation for the Woodcreek Resort Phase II Golf Course. Owner further recognizes the need for the continued ability of the Utility to dispose of the reclaimed water generated

the wastewater treatment plant(s) operated by the Utility. Therefore, Owner agrees to permit the intended disposal of the Utility's reclaimed water on, over, and within the area of Woodcreek Resort Phase II Golf Course. Such permission has previously been granted in the form of an Irrigation Easement executed by Owner, which has been recorded in the Real Property Records of Hays County, Texas. A copy of the Irrigation Easement is attached hereto as Exhibit "A", and a copy of the Correction Easement (correcting a mistaken reference in the property description in the Irrigation Easement) is attached hereto as Exhibit "B". The Correction Easement has been, or will be, filed in the Real Property Records of Hays County, Texas.

SECTION 2.03. *FUTURE PERMITS.*

Owner and the Utility specifically agree that it is the intention of both parties that the Irrigation Easement(s) granted and recorded be construed to allow for the disposal of any and all water subject to the provisions of Section 3.01 below) reclaimed water that any permit issued by the TNRCC or other governmental agency allows to be discharged as irrigation on the area of the Woodcreek Resort Phase I Golf Course and/or the Woodcreek Resort Phase II Golf Course. This authority shall include any future expansions or modifications to Permit No. 11431-01 or Permit No. 11790-01. This authority shall also be construed to allow any existing or future permits obtained by the Utility for the disposal of reclaimed water from any expansion of the Utility's existing plants, or the reclaimed water from any plant or plants constructed in the future by the Utility for the purpose of providing wastewater treatment to Owner's property.

Owner and the Utility agree that should the TNRCC or any other governmental agency require that the Utility change or obtain an additional discharge point for the disposal of reclaimed water, to the extent that this event would require any irrigation easement or easements Owner agrees to grant such irrigation easement(s) on property owned by Owner provided such easements do not unreasonably interfere with Owner's operations. Such easement(s) shall be granted substantially in the form of the Irrigation Easement as modified by the Correction Easement attached as Exhibits "A" and "B" hereto. Such additional easement(s), if necessary, shall be granted upon request from the Utility, and shall be granted by Owner without any compensation, monetary or otherwise. However,

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obtain the consent of the Owner before constructing any additional
ed by Owner. Owner may require payment from Utility in the amount
ditional holding pond space constructed on property owned by Owner
construction of the holding ponds.

ARTICLE THREE RECLAIMED WATER

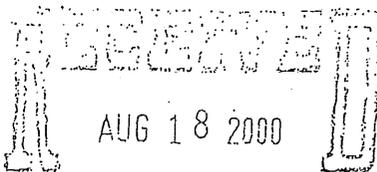
RECEIPT AND APPLICATION OF RECLAIMED WATER

receive, accept, and apply up to 600,000 gal/day average daily flow
by Utility during the term of this Agreement for irrigation of Owner's
Utility, and such amount of reclaimed water in excess of 600,000
Water") as may be desired by Owner (provided such reclaimed water
a right of first refusal to use the Excess Water.

CONDITIONS PRECLUDING DELIVERY OF RECLAIMED WATER

the requirements for Utility to deliver reclaimed water as stated in
gnize and agree that such delivery of reclaimed water may at times
the control of Utility. In this respect, Utility shall not be required

livery of reclaimed water is interrupted, Utility shall expend its
to correct the cause of interruption and restore delivery of reclaimed
e. If reclaimed water is interrupted, or if a malfunction of Utility's
in of inadequately treated reclaimed water, Owner shall temporarily
Owner normally uses to augment reclaimed water received from



SECTION 3.03. *QUALITY OF RECLAIMED WATER.*

The reclaimed water delivered to Owner and Utility shall be of a quality satisfactory and acceptable for irrigation of landscaped areas with restricted access in accordance with the permit conditions of Utility as approved by the TNRCC. Owner understands and agrees that the quality of the reclaimed water, especially total salinity, is different from that of other water and that Utility shall not be responsible for the quality of the water for its intended use. However, Utility further agrees that it shall use all commercially reasonable efforts not to discharge water in a form or content so as to adversely affect the golf course(s) or to prevent the continued use of the golf course(s) due to the discharge of the reclaimed water. Utility agrees to coordinate with Owner where necessary to plan for the timely and proper discharge of reclaimed water.

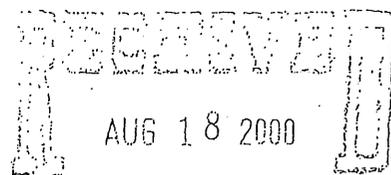
SECTION 3.04. *RESTRICTIONS ON USE OF RECLAIMED WATER.*

Owner and the Utility recognize that the reclaimed water to be located within the reclaimed water holding pond(s) (whether existing or future) is non-potable water, as such term is defined by the rules and regulations of the TNRCC. Therefore, Owner and the Utility agree that no use of such water, other than as irrigation or as a golf course amenity, shall be made by either party.

SECTION 3.05. *ADDITION OF WATER: NO OTHER MATERIALS.*

Owner and the Utility recognize that the use of the reclaimed water holding pond as a golf course amenity may require from time to time the addition to the reclaimed water holding pond by the Owner of additional water, to achieve a level of water sufficient to provide the amenity. Owner and the Utility agree that Owner, at its sole expense, may add water to the reclaimed water holding pond. Owner agrees that after water from any source enters the reclaimed water holding point, it may only be disposed of as irrigation along with the reclaimed water.

Owner also specifically agrees to use water from wells located on its property to add water to the holding ponds, prior to the use of any potable drinking water supplied by the Utility.



Owner further agrees to refrain from adding water to the reclaimed water holding pond at any time the Utility requests that no such water be added, provided that the addition of such water is not otherwise necessary to render the reclaimed water suitable for use for irrigation in the sole discretion of Owner, in which case water may be added notwithstanding the request from Utility. Such constraint from adding water shall continue until the Utility, in its sole judgment, shall permit resumption. Owner further agrees that no material other than water shall be deposited in the reclaimed water holding pond by Owner.

SECTION 3.06. *DISPOSAL OF RECLAIMED WATER BY UTILITY.*

Owner and the Utility recognize that the use and disposal of the reclaimed water as irrigation will provide a benefit to Utility. Therefore, Utility agrees to assume the responsibility for the disposal of the reclaimed water from the holding ponds, as irrigation for the Woodcreek Resort Phase I Golf Course and/or the Woodcreek Resort Phase II Golf Course.

Utility agrees to maintain all equipment necessary for the disposal of the reclaimed water, including pumps, chlorination units, and all equipment necessary for the disposal of the effluent as reclaimed water and to follow instructions of Owner where possible as to the disposal of the water, except that, nothing shall prevent Utility from disposing of the reclaimed water on the property.

Utility shall maintain and have responsibility for and shall bear all costs of operation and maintenance of the holding ponds per the TNRCC permits. All ponds shall be maintained by the Utility in a manner and size to accommodate the flow of reclaimed water produced by Utility.

ARTICLE FOUR
MISCELLANEOUS

SECTION 4.01. *NO MERGER.*

Unless otherwise expressly provided, the representations and agreements contained herein shall be deemed to be material and continuing, shall not be merged, and shall survive sale of

Owner's property or the sale of Utility or its property and shall remain binding on Owner and Utility or its successors or assigns. . .

SECTION 4.02. *TERM.*

The term of this Agreement shall commence on the date set forth below and shall terminate on the fortieth anniversary thereof, and then shall renew automatically from year to year thereafter, unless terminated by mutual agreement of the parties hereto. However, the easements previously granted and described herein shall survive termination of the Agreement, until affirmatively abandoned by the Utility by instrument recorded in the Real Property Records of Hays County, Texas.

SECTION 4.03. *WAIVERS.*

No failure by either party hereto to insist upon the strict performance or observance of any obligation hereunder, or to exercise any right of remedy consequent upon a breach thereof, and no acceptance of any payment hereunder, shall constitute a waiver of such obligation or a breach thereof. No waiver of any breach of any obligation shall affect or alter this Agreement or shall be deemed a waiver of any other then existing or subsequent breach hereof.

SECTION 4.04. *FORCE MAJEURE.*

If any party hereto shall be unable to observe or perform any covenant or condition herein by reason of "*force majeure*," then the failure to observe or perform such covenant or condition shall not constitute a default hereunder so long as such party shall use its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. "*Force majeure*," as used herein, means any condition or event not reasonably within the control of such party, including, without limitation, acts of God; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides, lightning, earthquakes, subsidences, fires, hurricanes;

AUG 18 2000

tornadoes; droughts; floods; arrests; restraints of government and of people; explosions; and partial or entire failure of utilities. Failure to settle strikes, lock-outs, and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of the opposing party or parties, in either case when such course is in the judgment of the party hereto unfavorable to such party, shall not constitute failure to use its best efforts to remedy such a condition or event.

SECTION 4.05. *CONSENTS AND APPROVALS.*

Whenever the consent or approval of either party hereto shall be required under the provisions hereof, such consent or approval shall not be unreasonably withheld.

SECTION 4.06. *RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT.*

Nothing in this Agreement shall confer upon any person or other entity other than the parties hereto, or their legal successors and assigns, any benefit or any legal or equitable right, remedy, or claim under this Agreement. All obligations hereunder of the parties hereto shall be binding upon their respective successors and assigns from time to time, whether so expressed or not.

SECTION 4.07. *TERMS OF THIS AGREEMENT EXCLUSIVE.*

The terms and provisions of this Agreement contain the entire agreement between the parties and shall supersede all previous communications, representations, and agreements, either verbal or written, with respect to such matters.

SECTION 4.08. *NOTICES.*

Any notice or request authorized or required by this Agreement to be given to or to be filed with either party hereto shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by United States mail, postage prepaid, addressed as follows if to the Utility:

RECEIVED
AUG 18 2000
WATER QUALITY APPLICATIONS TEAM

Woodcreek Utilities, Inc.
P.O. Box 1027
Wimberly, Texas 78676

and addressed as follows if to the Owner:

Woodcreek Country Club, Ltd.
P.O. Box 1090
Wimberly, Texas 78676
Attn: Ronald Bertanga

Either party hereto may, by notice sent to the other party hereto, designate a different address to which notices under this Agreement are to be sent.

SECTION 4.09. *ASSIGNMENTS.*

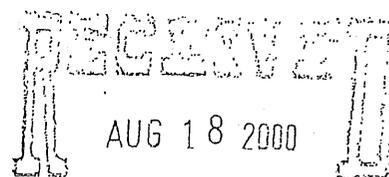
Either party hereto shall have the right to assign this Agreement; however, such assignment must contain an affirmation by the Assignee of the assumption of the duties and responsibilities of the Assignor.

SECTION 4.10. *CONSTRUCTION AND INTERPRETATION.*

This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. The titles assigned to the various Sections and Articles of this Agreement are for convenience of reference only and shall not be restrictive of the subject matter of any such Section or Article or otherwise affect the meaning, construction, or effect of any part hereof.

SECTION 4.11. *SEVERABILITY.*

If any provision or application of this Agreement shall be held illegal, invalid, or unenforceable by any court, the invalidity of such provision or application shall not affect or impair any of the remaining provisions and applications hereof.



This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one main instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of AUGUST 28 1997.

UTILITY:
WOODCREEK UTILITIES, INC.

BY: [Signature]
PRINTED NAME: RONALD F BERTAGNA
TITLE: PRESIDENT

OWNER:
WOODCREEK COUNTRY CLUB, LTD.

BY: WOODCREEK COUNTRY CLUB I, INC.

BY: [Signature]
MICHAEL BERTAGNA
PRESIDENT

WOODCREEK COUNTRY CLUB WATER

RECORDED
AUG 18 2000

WATER QUALITY APPLICATIONS TEAM

ATTACHMENT B - 1999 AMENDED AND RESTATED WATER USE AGREEMENT

AMENDED AND RESTATED WATER USE AGREEMENT

THE STATE OF TEXAS

§

COUNTY OF HAYS

§

§

This Amended and Restated Water Use Agreement (the "Agreement") is made between Woodcreek Utilities, Inc., a Texas Corporation, Charter No. 00395440-00, organized and operating pursuant to the Texas Business Corporations Act and Texas Water Code, Chapter 13 ("Utility"), and Woodcreek Country Club, Ltd., a Texas limited partnership as owner of certain properties in Hays County, Texas ("Owner"). This Agreement is made to be effective upon its execution by both parties.

WITNESSETH:

WHEREAS, the Utility is holder of two Certificates of Convenience and Necessity from the Texas Natural Resource Conservation Commission ("TNRCC"), CCN No. 10316 and CCN No. 20124 (collectively the "CCN"), and is therefore authorized to provide water supply and waste disposal wastewater treatment services to the land within its service area, and

WHEREAS, Utility has constructed and is operating facilities at its Phase I and Phase II Treatment Plants that will generate effluent from its wastewater treatment plants in the form of reclaimed water ("reclaimed water") of satisfactory quality for use in irrigating Owner's Phase I and Phase II golf courses which are landscaped areas with restricted public access.

WHEREAS, Owner owns, operates and maintains certain landscaped areas that Owner desires to irrigate with reclaimed water supplied by Utility. Such use of reclaimed water will replace the use of groundwater for said irrigation and thereby will allow Utility and Owner to maximize efforts to conserve the potable water supply.

WHEREAS, Utility and Owner have previously executed a Water Use Agreement dated August 28, 1997, pursuant to which, among other things, Owner has agreed to receive, and Utility has agreed to supply, up to 600,000 gallons per day average daily flow of reclaimed water produced by Utility, plus such amount of reclaimed water in excess of 600,000 gallons per day daily flow as produced by Utility and as may be desired by Owner. That Agreement further provided that Utility will maintain all equipment necessary for the disposal of the reclaimed water, including holding ponds, pumps, chlorination units and all equipment necessary for the disposal of the reclaimed water; and

WHEREAS, the term of the former Water Use Agreement expires on August 28, 2037; and

WHEREAS, in order to maintain environmental compliance, Utility believes that it must now build a new sewage treatment plant under a new permit to be obtained from the TNRCC. When and if a new permit is granted, this new plant will, in all likelihood, change the basic structure of the

Water Use Agreement because reclaimed water will be pumped directly to the irrigation sprinklers, rendering unnecessary the existing pumps and holding ponds on owner's property.

WHEREAS, the Parties have therefore agreed to amend and restate the Water Use Agreement to provide for a change in the control, responsibility and cost for the existing equipment currently necessary to dispose of the reclaimed water.

WHEREAS, Owner agrees to accept reclaimed water for landscaped area irrigation, and Utility agrees to supply reclaimed water to Owner for the considerations and under the terms and conditions hereinafter set forth.

NOW THEREFORE, in mutual consideration of the premises and provisions hereinafter contained, and for other good and valuable consideration, Utility and Owner agree as follows:

1. DEFINITIONS

- 1.1 "Utility" shall mean Woodcreek Utilities, Inc., a Texas Corporation, Charter No. 00395440-00, a corporation existing and acting pursuant to the Texas Business Corporations Act and Texas Water Code Chapter 13.
- 1.2 "Owner" shall mean Woodcreek Country Club, Ltd. a Texas limited partnership.
- 1.3 "TNRCC" shall mean the Texas Natural Resource Conservation Commission.

2. EASEMENT FOR IRRIGATION

2.1 OWNER'S OBLIGATION TO USE RECLAIMED WATER

Owner shall be obligated to use reclaimed water (which reclaimed water may be "cut" or diluted with potable water in the sole discretion of Owner) as irrigation for golf courses known as "Woodcreek Resort Phase I Golf Course" and Woodcreek Resort Phase II Golf Course."

2.2 IRRIGATION EASEMENT FOR RECLAIMED WATER; EXISTING PERMITS

- 2.2.1 Irrigation of Phase I Golf Course. TNRCC Wastewater Treatment Plant Permit No. 11431-01, which is a permit issued for the purpose of disposal of reclaimed water from one or more wastewater treatment plants owned and operated by the Utility, has the purpose of providing wastewater treatment service within its service area. Permit 11431-01 may be expanded or changed from time to time.

Owner specifically recognizes that Permit 11431-01 calls for the disposal of the reclaimed water as irrigation for the Woodcreek Resort Phase I Golf Course. Owner further recognizes the need for the continued ability of the Utility to dispose the reclaimed water generated by the wastewater treatment plant(s) operated by the Utility. Therefore, Owner agrees to permit the continued disposal of the Utility's reclaimed water on, over, and within the area of Woodcreek Resort Phase I Golf Course. Such permission has been previously granted in the form of an Irrigation Easement and Correction Easement (collectively "Irrigation Easement"), executed by Owner, which has been recorded in the real property records of Hays County, Texas, and attached to the previous Water Use Agreement, and which grant will be modified to reduce the amount of property within Parcel 3, as referenced in Exhibit A to the Permanent Construction and Utility Easement, signed contemporaneously herewith. (This modification applies at all times herein when reference is made to "Irrigation Easement.")

2.2.2 Irrigation of Phase II Golf Course. TNRCC Wastewater Treatment Plant Permit No. 11790-01, which is a permit issued for the purpose of disposal of reclaimed water from one or more wastewater treatment plants owned and operated by Utility, has the purpose of providing wastewater treatment service within its service area. Permit 11790-01 may be expanded or changed from time to time.

Owner specifically recognizes that Permit 11790-01 calls for the disposal of the reclaimed water as irrigation for the Woodcreek Resort Phase II Golf Course. Owner further recognizes the need for the continued ability of the Utility to dispose the reclaimed water generated by the wastewater treatment plant(s) operated by the Utility. Therefore, Owner agrees to permit the continued disposal of the Utility's reclaimed water on, over, and within the area of Woodcreek Phase II Golf Course. Such permission has previously been granted in the form of an Irrigation Easement, which has been recorded in the real property records of Hays County, Texas, and attached to the previous Water Use Agreement.

2.3 FUTURE PERMITS

Owner and Utility specifically agree that it is the intention of both parties that the Irrigation Easement granted and recorded, and this Amended and Restated Water Use Agreement be construed to allow for the disposal of any and all (subject to the provisions of Section 3.1 (below)) reclaimed water that any permit issued by the TNRCC or other governmental agency allows to be discharged as irrigation on the area of the Woodcreek Resort Phase I Golf Course and/or the Woodcreek Resort Phase II Golf Course. This authority shall include any future expansions or modifications to Permit No. 11431-01 or Permit No. 11790-01, including the proposed permit No. 13989-001. This authority shall also be construed to allow any existing or future permits obtained by the Utility for the disposal of reclaimed

water from any expansion of the Utility's existing plants, or the reclaimed water from any plant or plants constructed in the future by the Utility for the purpose of providing wastewater disposal to Owner's property, or other purpose, as long as such does not limit Owner's rights to reclaimed water as stated in this Agreement.

Owner and the Utility agree that should the TNRCC or any other governmental agency require that the Utility change or obtain an additional discharge point for the disposal of reclaimed water, to the extent that this event would require any irrigation easement(s). Owner agrees to grant such irrigation easement(s) on property owned by Owner provided such easement(s) do not unreasonably interfere with Owner's operations. Such easement(s) shall be granted substantially in the form of the Irrigation Easement. Such additional easement(s), if necessary, shall be granted upon request from the Utility, and shall be granted by Owner without any compensation, monetary or otherwise. However, the Utility shall be required to obtain the consent of the Owner before constructing any additional holding ponds on property owned by Owner. Owner may require payment from Utility in the amount of \$2,000 per surface acre of additional holding pond space constructed on property owned by Owner for the use by Utility, prior to construction of the holding ponds.

3. RECLAIMED WATER

3.1 RECEIPT AND APPLICATION OF RECLAIMED WATER

Owner agrees to receive, accept and apply up to 600,000 gal/day average daily flow of all reclaimed water produced by Utility during the term of this Agreement for irrigation of Owner's landscaped areas at no cost to Utility, and such amount of reclaimed water in excess of 600,000 gal/day daily flow (the "Excess Water") as may be desired by Owner (provided such reclaimed water is available). Owner shall have a right of first refusal to use the Excess Water. Utility agrees to supply all reclaimed water to Owner, on a first-use basis as Owner requests, except to the extent that it is precluded from doing so by the terms of its TNRCC permit regarding usage limits on Owner's golf courses.

3.2 LIMITATIONS PRECLUDING DELIVERY OF RECLAIMED WATER

Notwithstanding the requirements for Utility to deliver reclaimed water as stated in this Agreement, both parties recognize and agree that such delivery of reclaimed water may at times be precluded for reasons beyond the control of Utility. In this respect, Utility shall not be required to deliver reclaimed water.

Whenever the delivery of reclaimed water is interrupted, Utility shall expend its commercially reasonable efforts to correct the cause of interruption and restore delivery of

reclaimed water to Owner as soon as possible. If reclaimed water is interrupted, or if a malfunction of Utility's treatment units results in production of inadequately treated reclaimed water, Owner shall temporarily use the groundwater supply that Owner normally uses to augment reclaimed water received from Utility.

3.3 QUALITY OF RECLAIMED WATER

The reclaimed water delivered to Owner from Utility shall be of a quality satisfactory and acceptable for irrigation of landscaped areas with restricted access in accordance with the permit conditions of Utility as approved by the TNRCC. Owner understands and agrees that the quality of the reclaimed water, especially total salinity, is different from that of other water and that Utility shall not be responsible for the quality of the water for its intended use. However, Utility further agrees that it shall use all commercially reasonable efforts not to discharge water in a form or content so as to adversely affect the golf course(s) or to prevent the continued use of the golf course(s) due to the discharge of the reclaimed water. Utility agrees to coordinate with owner where necessary to plan for the timely and proper discharge of reclaimed water.

3.4 RESTRICTIONS ON USE OF RECLAIMED WATER

Owner and the Utility recognize that the reclaimed water to be located within the reclaimed water holding pond(s) (whether existing or future) is non-potable water, as such term is defined by the rules and regulations of the TNRCC. Therefore, Owner and the Utility agree that no use of such water, other than as irrigation or as a golf course amenity, shall be made by either party.

3.5 ADDITION OF WATER: NO OTHER MATERIALS

Owner and the Utility recognize that the use of the reclaimed water holding ponds as a golf course amenity may require from time to time the addition to the reclaimed water holding ponds by the Owner of additional water, to achieve a level of water sufficient to provide the amenity. Owner and the Utility agree that Owner, at its sole expense, may add water to the reclaimed water holding ponds. Owner agrees that after water from any source enters the reclaimed water holding ponds, it may only be disposed of as irrigation along with the reclaimed water.

Owner also specifically agrees to use water from wells located on its property to add water to the holding ponds, prior to the use of any potable drinking water supplied by the Utility.

Owner further agrees to refrain from adding water to the reclaimed water holding pond at any time the Utility requests that no such water be added, provided that the addition of such water is not otherwise necessary to render the reclaimed water suitable for use for irrigation in the sole discretion of Owner, in which case water may be added notwithstanding the request from Utility. Such constraint from adding water shall continue until the Utility, in its sole judgment, shall permit resumption. Owner further agrees that no material other than water shall be deposited in the reclaimed water holding ponds by Owner.

3.6 MAINTENANCE OF FACILITIES AND EQUIPMENT

The prior Water Use Agreement, in Section 3.06, provided as follows:

"Owner and the Utility recognize that the use and disposal of the reclaimed water as irrigation will provide a benefit to Utility. Therefore, Utility agrees to assume the responsibility for the disposal of the reclaimed water from the holding ponds, as irrigation for the Woodcreek Resort Phase I Golf Course and/or the Woodcreek Resort Phase II Golf Course.

"Utility agrees to maintain all equipment necessary for the disposal of the reclaimed water, including pumps, chlorination units, and all equipment necessary for the disposal of the effluent as reclaimed water and to follow instructions of Owner where possible as to the disposal of the water; except that, nothing shall prevent Utility from disposing of the reclaimed water on the property.

"Utility shall maintain and have responsibility for and shall bear all costs of operation and maintenance of the holding ponds per the TNRCC permits. All ponds shall be maintained by the Utility in a manner and size to accommodate the flow of reclaimed water produced by Utility."

3.6.1 The Parties agree to amend Section 3.06 of the previous Water Use Agreement to provide for Owner rather than Utility to assume all cost of maintenance for the existing equipment currently necessary to dispose of the reclaimed water, as set forth in the remaining subsections of this Section 3.6. Pursuant to the schedule set forth in this Section 3.6, below, Owner agrees to assume all costs of maintenance and operation of all pipes, pumps, sprinklers and other equipment needed to move wastewater effluent from the existing irrigation ponds to each of the existing Golf Courses (known as "Woodcreek Resort Phase I Golf Course" [being 18 holes] and "Woodcreek Resort Phase II Golf Course" [being 9 holes] [sometimes collectively referred to herein as the "existing Golf Courses"]).

3.6.2

Once Utility completes construction of the new sewage treatment plant (which will be required by the new permit, when and if granted by the TNRCC), it will connect a transfer line from that plant to deliver effluent to Owner's sprinkler heads by way of connections on Owner's irrigation lines, thereby eliminating the need for existing pumps and ponds. Effluent will be delivered at volumes and pressures equal to or greater than Owner's current operating systems, to accommodate triple-row irrigation systems which may be expanded up to forty-five (45) golf holes. Irrigation system rotation will be consistent with current golf course irrigation practices.

Effluent delivered from Utility's new plant to the irrigation system shall be delivered, as available, in a volume sufficient to water a complete cycle on an eighteen-hole course or a nine-hole course at a time. Irrigation scheduling will be done consistently on a weekly basis as agreed upon, but may be changed as necessary. The hookup of Utility's new system into Owner's irrigation system will be compatible to work with a triple-row irrigation system without modification by Owner.

3.6.3

The Parties recognize that there will be a transitional phase before the new plant becomes operational (the time at which effluent from the new plant is delivered to the sprinkler heads, as contemplated in Section 3.6.2, above), and this Amended and Restated Water Use Agreement becomes effective. During that transitional phase, some maintenance obligations will be immediately assumed by Owner, while others will be effective only when the new system begins operations (as contemplated in Section 3.6.2, above). The Parties therefore agree as follows:

- a. Until the new system becomes operational (the time at which effluent from the new plant is delivered to the sprinkler heads by way of owner's irrigation system, as contemplated in Section 3.6.2, above), Owner agrees to assume all costs of maintenance of the irrigation system on the existing Golf Courses, downstream of the ponds and including the pumps. During this period, Utility agrees to assume all costs of maintenance upstream from the pumps, plus the cost of electricity for the irrigation pumps, and Utility is the operator of the ponds.
- b. After the new system is operational (the time at which effluent from the new plant is delivered to the sprinkler heads by way of owner's irrigation system, as contemplated in Section 3.6.2, above), and as long as the new system is operational such that Utility does not have to use either or both ponds which are on the existing Golf Courses, Utility's maintenance obligations are released, except as otherwise stated herein. Owner (i) assumes responsibility for the pumps after the ponds on the existing Golf Courses; and (ii) assumes

maintenance responsibility downstream of and after the connection between the new trunklines and the irrigation system on the existing Golf Courses. There will be no invoices from either Owner or Utility again except Owner's invoices to Utility for reimbursement of electricity until the new plant begins operations, as described in Section 3.6.3.a, above. If Utility utilizes the ponds as part of its reclaimed water delivery system, the maintenance obligations are governed by Section 3.6.3.a., above.

As an alternative to Utility's present plan to directly connect its effluent delivery lines to Owner's irrigation system, Utility reserves the right to utilize the existing effluent ponds as part of its reclaimed water delivery system. In this event, Owner agrees to provide land for the construction of new effluent ponds or expansion of existing effluent ponds, on either Phase I or Phase II, at locations agreed by the parties.

Utility agrees to commence delivery of effluent within one hundred twenty (120) days of the time that the plant is placed into permanent operation.

The release granted to Utility in this section specifically excludes any remedial obligations that may be required by the TNRCC or other regulatory body with jurisdiction over the ponds, or by third-party private litigation, in which case Utility and Owner will cooperate in achieving the required remediation. It is further understood that Owner is not releasing Utility for any damage which may occur to that part of the irrigation system that Owner has agreed to maintain if such damages are caused by the negligent or willful act(s) of Utility, its employees, agents, or representatives, including damage caused by any malfunction in Utility's new plant and/or system. It is further understood that Owner is not releasing Utility for any liability or potential liability which may arise as a result of any third party claim for relief or damages threatened or filed against Owner which pertains in any way to the chemical components found in either the soil under or around the ponds or the water contained therein.

- c. The parties agree that, within thirty (30) days, a full Toxicity Characteristic Leaching Procedure (TCLP) test will be performed by an approved laboratory on each of the Phase I and Phase II effluent ponds. After these tests, complete copies of the results will be supplied to all parties. The results will be reported to regulatory bodies as required by law. Utility will pay for the costs of these tests. If the TCLP indicates a substance that is not eligible for

disposal by beneficial land farm disposal, it is contractually agreed that Owner will remain as the owner and Utility will remain as the operator.

- d. After the new system becomes operational, Utility also agrees to cooperate in the maintenance of the ponds, and Owner agrees to control, to the best of Owner's ability, the water level of the ponds in order to prevent overflow.
- e. Utility agrees to install (1) a floating intake system with backwash (Auto-Float N-Screen, or equivalent) for the Phase I pond; and (2) an automatic cut-off switch in the Phase I pond as an overflow prevention measure. Utility agrees to maintain these devices at its own expense at any time (before or after the new system goes on stream) that Utility is delivering effluent to the ponds, and agrees to alert Owner if any pond overflow situation appears imminent. Owner agrees to comply with all reasonable overflow prevention measures. Once Utility ceases delivery of effluent to the ponds, ownership of the equipment described in this section will vest in Owner.
- f. Utility agrees to maintain, at its own expense, and have responsibility for the chlorination units associated with the existing ponds (for both Phase I and Phase II) until such time as the TNRCC states in writing that the water from the ponds no longer has to be chlorinated.

4. MISCELLANEOUS

4.1 NO MERGER

Unless otherwise expressly provided, the representations and agreements contained herein shall be deemed to be material and continuing, shall not be merged, and shall survive sale of Owner's property or the sale of Utility or Utility's property and shall remain binding on Owner and Utility or their successors or assigns.

4.2 TERM

The term of this Agreement shall commence on the date set forth below and shall terminate on August 28, 2037, and then shall renew automatically from year to year thereafter, unless terminated by mutual agreement of the parties hereto. However, the easements previously granted and described herein shall survive termination of the Agreement, until affirmatively abandoned by the Utility by instrument recorded in the Real Property Records of Hays County, Texas

4.3 WAIVERS

No failure by either party hereto to insist upon the strict performance or observance of any obligation hereunder, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of any payment hereunder, shall constitute a waiver of such obligation or a breach thereof. No waiver of any breach of any obligation shall affect or alter this Agreement or shall be deemed a waiver of any other then existing or subsequent breach hereof.

4.4 FORCE MAJEURE

If any party hereto shall be unable to observe or perform any covenant or condition herein by reason of "*force majeure*," then the failure to observe or perform such covenant or condition shall not constitute a default hereunder so long as such party shall use its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. "*Force majeure*," as used herein, means any condition or event not reasonably within the control of such party, including, without limitation, acts of God; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidences; fires; hurricanes; tornadoes; droughts; floods; arrests; restraints of government and of people; explosions and partial or entire failure of utilities. Failure to settle strikes, lock-outs, and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of the opposing party or parties, in either case when such course is in the judgment of the party hereto unfavorable to such party, shall not constitute failure to use its best efforts to remedy such a condition or event.

4.5 CONSENTS AND APPROVALS

Whenever the consent or approval of either party hereto shall be required under the provisions hereof, such consent or approval shall not be unreasonably withheld.

4.6 RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT

Nothing in this Agreement shall confer upon any person or other entity other than the parties hereto, or their legal successors and assigns, any benefit or any legal or equitable right, remedy, or claim under this Agreement. All obligations hereunder of the parties hereto shall

be binding upon their respective successors and assigns from time to time, whether so expressed or not.

4.7 REPLACE EXISTING WATER USE AGREEMENT

This Agreement is intended to supersede and replace the existing Water Use Agreement between the parties.

4.8 NOTICES.

Any notice or request authorized or required by this Agreement to be given to or to be filed with either party hereto shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if and when sent by United States mail, postage prepaid, addressed as follows if to the Utility:

Woodcreek Utilities, Inc.
P.O. Box 1027
Wimberly, Texas 78767

and addressed as follows if to the Owner:

Woodcreek Country Club, Ltd.
P.O. Box 1090
Wimberly, Texas 78767

Either party hereto may, by notice sent to the other party hereto, designate a different address to which notices under this Agreement are to be sent.

4.9 ASSIGNMENTS

Either party hereto shall have the right to assign this Agreement; however, such assignment must contain an affirmation by the Assignee of the assumption of the duties and responsibilities of the Assignor.

4.10 CONSTRUCTION AND INTERPRETATION

This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. The titles assigned to the various Sections and Articles of this Agreement are for convenience of reference only and shall not be restrictive of the subject matter of any such Section or Article or otherwise affect the meaning, construction, or effect of any part hereof.

4.11 SEVERABILITY

If any provision or application of this Agreement shall be held illegal, invalid, or unenforceable by any court, the invalidity of such provision or application shall not affect or impair any of the remaining provisions and applications hereof.

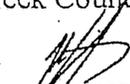
This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one main instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of 7-13-99.

OWNER:

WOODCREEK COUNTRY CLUB, LTD.

By: Woodcreek Country Club I, Inc., sole general partner

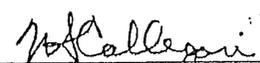
By: 

Name: Michael Bertagna

Title: President

UTILITY:

WOODCREEK UTILITIES, INC.

By: 

Name: W. A. ALLEGARI

Title: PRESIDENT - AQUASOURCE SOUTHERN DIV.

**ATTACHMENT C - PUBLIC COMMENTS REGARDING DRAFT
RENEWAL PERMIT NO. 13989**

HENRY, LOWERRE & FREDERICK
ATTORNEYS AT LAW
4006 SPEEDWAY
AUSTIN, TEXAS 78751
henrylaw@io.com
(512) 454-3050 FAX (512) 454-6231

MARY E. KELLY
Of Counsel
(512) 474-1082

January 26, 2001
Public Comment and Hearing Request

Ms. LaDonna Castanuela
Chief Clerk (MC 105)
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, TX 78711-3087

RE: Application of Woodcreek Utilities, Inc., a subsidiary of AquaSource, for Renewal of
Water Permit No. 13989-001

Dear Ms. Castanuela,

On behalf of Wimberley Neighbors for Healthy Water (WNHW), I submit the following public comments and request for hearing regarding the above named application. WNHW and its individual members meet the standard of affected persons or group as required by 30 TAC §§ 55.203 and 55.205. The comments of WNHW and individual members, below, raise numerous relevant and material disputed issues of fact and law regarding the above named application.

I. WNHW qualifies as an affected group

Many members of WNHW are landowners or residents whose interests are directly affected by Woodcreek Utilities' application and operation. Examples of interests affected include, but are not limited to, the loss of use and enjoyment of property and injury to their health and the natural resources that they rely upon due to events including, but not limited to:

1. sewage backing-up into houses and onto property,
2. ponding of irrigation effluent on the golf course,
3. odors emanating from the disposal of effluent on the golf course, and
4. sewage and effluent leaking and/or spilling from faulty or inadequate equipment for sewage treatment, transportation, and irrigation disposal.

The affected members include, but are not limited to:

1. Johanna Smith, 2001 Jacobs Well Road, Wimberley, Texas 78676
2. Barbara Knoll, 1 Lakewood, Wimberley, Texas, 78676; and
3. Dwayne Patlyek, 210 Leveritts Loop, Wimberley, TX 78676.

These WNHW members request that WNHW be named as a party to represent them. They are not seeking anything from the hearing process that requires their participation individually instead of WNHW's participation.

WNHW has as its organization's purposes, goals that are directly related to the protection of the environment and public health, including the restoration and protection of water quality, the preservation of its natural environment, the promotion of responsible water and wastewater treatment, the examination of any and all wastewater treatment options, and the representation of its members and their economic interests. WNHW was organized to represent its members in decisions of local, state and federal agencies. In the past, WNHW has been named as a formal party to TNRCC contested case hearing on applications of Woodcreek Utilities for applications to amend its CCN area and permit applications for wastewater treatment. WNHW is now participating in a contested case hearing and is negotiating with applicants regarding a possible settlement.

The interests that WNHW seeks to protect are germane to the organization's purposes. The goals and purposes include conservation, public education, protection of the natural resources and health of the community, and protection of the member's property interests and other economic interests.

These public comments and hearing request are not an effort to delay the processing of the application; they are simply to bring to the attention of the Executive Director and Commission the numerous problems that exist with the existing facility and the inadequacies of the permit to resolve these problems.

If the Executive Director of TNRCC or the Applicant believe that WNHW or its individual members do not comply with the requirements of TNRCC and Texas law, WNHW and its individual members request that they be advised specifically as to the state requirement(s) and any alleged deficiency in its public comment and hearing request. WNHW will be pleased to submit additional information, if appropriate, and asks for a full opportunity to do so if there is any objection to the affected person status or hearing request.

II. Comments on Disputed Issues of Fact and Law

A. Executive Director Failed to Follow Required Procedures Prior to Issuing the Draft Permit

The Executive Director "shall prepare a summary which describes the compliance status of persons applying for permits" such as this renewal permit. 30 TAC § 281.21(d). This compliance summary is to include such things as citizen complaints, inspections, any alleged noncompliance, any enforcement actions and responses to the enforcement actions. The compliance summary must include information regarding the site that is subject to the application as well as other facilities owned or operated by the applicant. Prior to public notice and upon completion of technical review, the compliance summary must be sent to the applicant and to any other person upon request.

The Executive Director failed to prepare a compliance summary and, thereby, failed to make the compliance summary available to WNHW when WNHW requested it. As will be discussed in more detail later, the compliance history of Woodcreek Utilities and its parent corporation, AquaSource, contains numerous complaints, discharge violations and enforcement actions at the facilities involved with this permit and at many other AquaSource facilities around Texas. Not only should such a poor compliance history have been evaluated by the Executive Director and the staff, but also appropriate provisions addressing the problems should have been incorporated into the draft permit or the permit should have been denied.

B. Woodcreek Utilities, as well as its parent corporation, AquaSource, has a Poor Compliance Record

All of Woodcreek Utilities' facilities have been the target of numerous complaints, discharge violations, and enforcement actions. The poor track record also extends to AquaSource, of which Woodcreek Utilities is its subsidiary. Examples of violations include, but are not limited to, unlawful discharges and operating without a valid permit. Permit number 11431 for Woodcreek Utilities' Phase I plant expired in January 2000, yet the plant continued to operate until October 2000. Woodcreek Utilities' Phase II plant, permit number 11790, also expired in January 2000, yet that plant still continues to operate. For a more exhaustive record of the compliance history of Woodcreek Utilities and AquaSource, see Attachment A (compliance history charts).

Many other AquaSource facilities have similar poor compliance histories. A quick review showed complaints and violations similar to those listed in Attachment A for many other AquaSource treatment facilities.

WNHW recognizes that when AquaSource purchased some such sewage treatment facilities, those facilities had a history of problems. Nevertheless, at the Woodcreek plants, AquaSource not only failed to make timely repairs, but also knowingly added new connections and significant amounts of sewage to treatment facilities that were already over loaded.

C. Woodcreek Utilities' Poor Compliance Record Stems From Various Problems that the Draft Permit Fails to Address:

1. Woodcreek Utilities fails to adopt adequate spill response plans and contingency plans. Recently, an unlawful discharge occurred as a result of an overflow from a lift station that is part of the facility subject to this permit renewal. This discharge allegedly continued for more than 24 hours prior to discovery. (See Attachment B, newspaper articles and pictures).
2. Lines for transporting sewage into or out of the treatment facility are not properly constructed. For example, members of WNHW observed on five separate occasions construction activities to repair the section of the downtown main sewer line that serves the Brookshire Brothers store.
3. Lines over creeks are not properly constructed and as such fails to adequately assure the prevention of leaks and spills into the creeks. For example, the newest line constructed over Hogg Creek near Par Circle was not incased prior to it being buried.
4. New lines in other areas were apparently not properly constructed, with adequate materials to protect against movement and breakage of the lines.

D. The Irrigation System and Plan for Disposal of Treated Effluent Contains Numerous Problems:

1. Woodcreek Utilities fails to demonstrate adequate control over the disposal of treated effluent through irrigation because ownership of the irrigation infrastructure and responsibility for necessary maintenance and repair of irrigation system remains unclear.
2. The infrastructure of the irrigation system needs serious repairs and upkeep to prevent leaks and ponding of effluent on the golf course. Some of the pipes are over 25 years old.
3. Two sewage holding ponds are not properly lined.
4. The irrigation sites fail to have adequate controls to prevent ponding, spills, and other unlawful discharges. Woodcreek Utilities needs full-time personnel that will conduct inspections during irrigation and have the ability to shut down the system if problems arise, given the poor design and poor state of the equipment.
5. The required amount of isolation valves are not installed. Isolation valves detect problems that are otherwise undetectable except for visual observation of problems such as ponding on the golf course.

6. Irrigated areas of both golf courses fail to have adequate soil depth.
7. New and old lift stations have not been properly constructed or maintained to avoid repeated releases of sewage. AquaSource is in violation of requirements in TNRCC rules for preventing overflows during power failures and other such conditions, for use of telemetry for notifying operators of problems, and for spill containment.

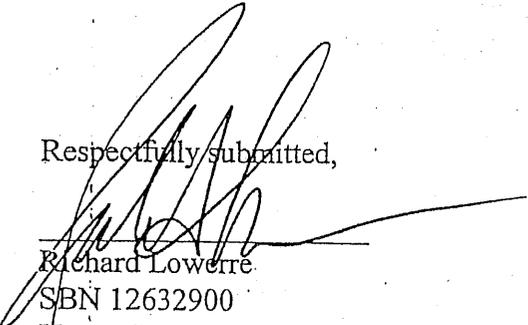
E. Woodcreek Utilities has not proven that it can even operate at the interim level because the Phase II Plant (permit no. 11790) is still on line.

III. Conclusion

Based upon the above comments, the draft permit does not meet the requirements of Texas Law and will not assure the protection of the environment and interests of the members of WNHW.

Therefore, WNHW requests that its comments be considered and that, if all of their concerns are not resolved to their satisfaction, the Commission will grant their request for hearing and send the matter to SOAH for a hearing on the matter.

Respectfully submitted,



Richard Lowerre

SBN 12632900

Henry, Lowerre, and Frederick

4006 Speedway

Austin, TX 78751

(512) 454-3050 ph; (512) 454-6231 fax

ATTACHMENT D - STATEMENT OF TERRY SUMTER

STATEMENT OF TERRY SUMTER

I have knowledge of the sewer line extension to Brookshire Brothers. During the construction of the line, I observed Woodcreek/AquaSource Utilities and/or their subcontractor bore under Las Flores Drive at FM2325 numerous times. Apparently the sewer line had collapsed on numerous occasions and had to be rebored. On the occasions I observed Woodcreek/AquaSource Utilities and/or their subcontractors I never saw them encase or bed the sewer line.

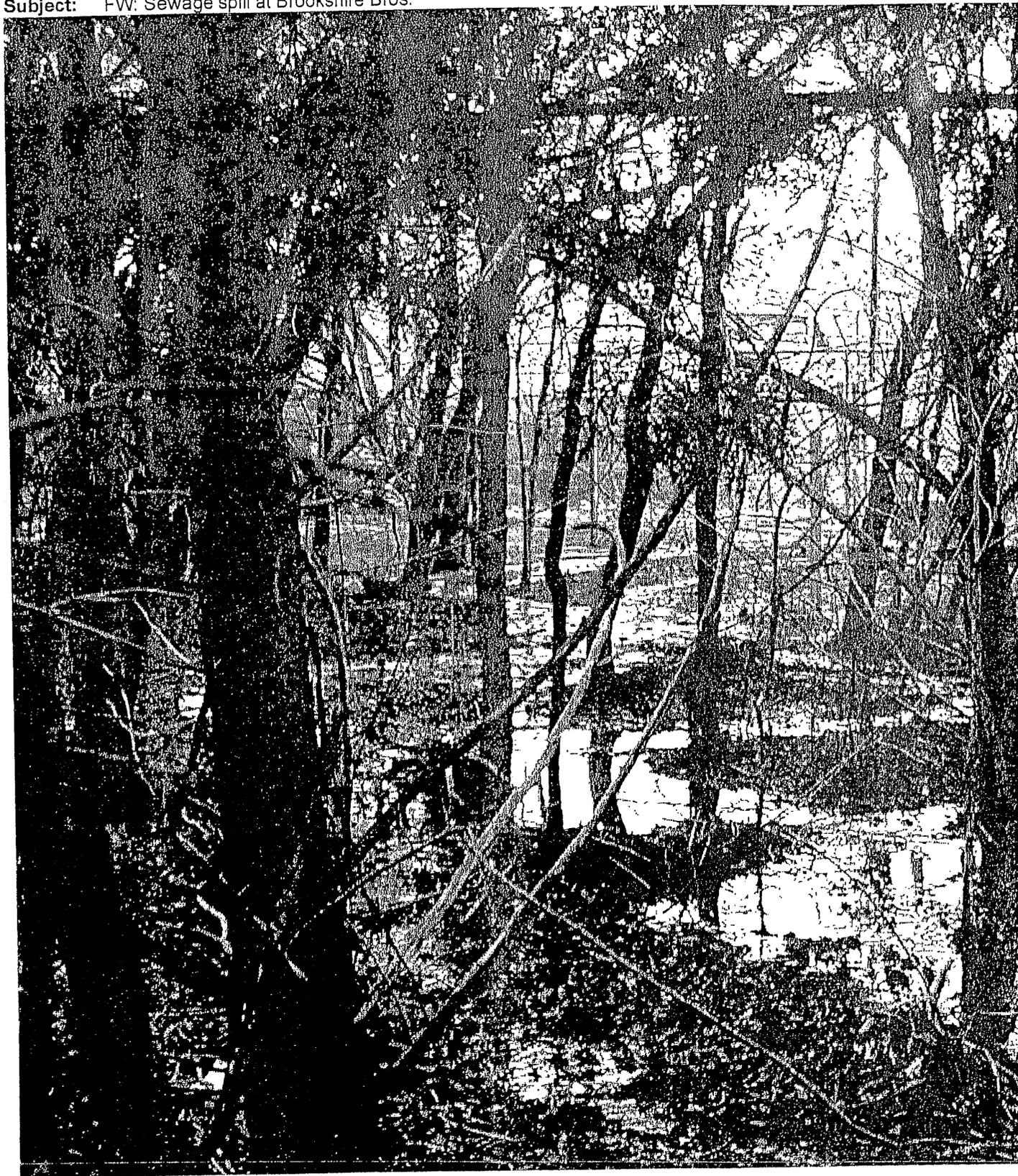


Terry Sumter

ATTACHMENT E - PHOTOS OF SPILL



Subject: FW: Sewage spill at Brookshire Bros.



WIMBERLEY VIEW
 JAN. 13, 2001



About 500 gallons of sewage spilled out of an AquaSource lift station last week, flowing into a nearby wooded area. The situation prompted a complaint to the TNRCC from Mayor Linda Hewlett. COURTESY WIMBERLEY VIEW

Wimberley mayor files complaint with TNRCC

Hewlett says village is too environmentally sensitive to tolerate even one sewage spill.

By Charles McClure
 with the View
 Wimberley Mayor Linda Hewlett has filed a complaint with the Texas Natural Resource and Conservation Commission (TNRCC) in the wake of a sewage spill Friday Jan. 6.

The action was prompted after a lift station operated by AquaSource overflowed, spilling a stream of sewage on property set aside for a wooded commu-

about 500 gallons of sewage poured out of the station before it was discovered by a group of citizens on the site to review plans for the community center.

Melcher said a power fuse in the pump that sends the waste water back to the treatment plant failed, which resulted in

nearby wooded area, but Melcher assured no sewage flowed into Cypress Creek. AquaSource said the spill was covered by a pondare disinfectant and a disinfectant.

Hewlett said AquaSource told her the area had been cleaned up with chlorine and bleach.

With 60 dead duck dead, the blame for Cypress Creek we just can't stand to have any spills in the community. When we do dump on top of it.

Linda Hewlett
 Mayor of Wimberley

WIMBERLEY VIEW
JAN 10, 2001

Sewage spill raises concern

AquaSOURCE assures no danger was posed to nearby river; incident is reported to TNRCC

By Charles McClure
with the View

David Glenn was looking over a five-acre tract designated as the future home of a proposed community center when he made a disturbing discovery.

"Friday afternoon, there was a group of us that were back there looking at some plans (for the community center) when we suddenly came across water running across the property," Glenn recounted. "It had a little smell to it, so we followed to where it was coming from."

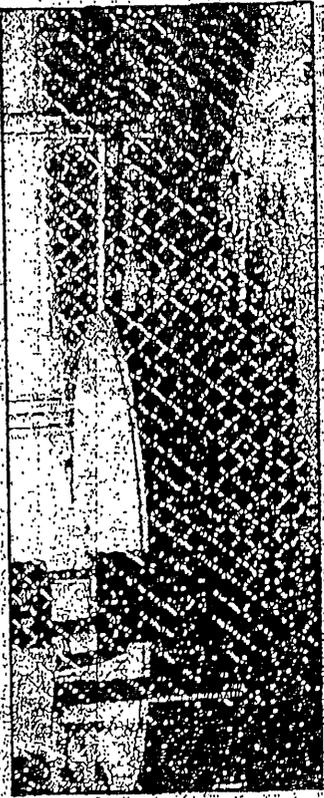
A lift station operated by AquaSOURCE had overflowed, spilling a stream of sewage on the property near the Brookshire Brothers Grocery Store off Ranch Road 12 in Wimberley. The lift station, according to the firm, services the grocery store and the Senior Citizens Center.

According to AquaSOURCE Rick Melcher, the spill was contained that same day and reported to the Texas Natural Resource and Conservation Commission (TNRCC).

"A power fuse blew out in the pump that sends the wastewater back to the treatment plant," Melcher explained. "We inspect that lift station daily."

Melcher said the spill was estimated to be about 500 gallons. Only the immediate area around the lift station was affected. Melcher said the company tried to clean up the incident by pumping it into nearby...

Spill



This lift station near Brookshire Brothers overflowed Friday, spilling about 500 gallons of sewage.

(Continued from Page 1)

"We had a real problem," Hewlett said. "A man from AquaSOURCE was there and said the station was inspected every day. It was obvious to me that the leak had been going on for more than one day."

spillage was covered by a powdered chlorine. According to Wimberley Mayor Linda Hewlett, a group of civic leaders visited the site to take a firsthand look at the damage.

LESLIE SHAFFER/WIMBERLEY VIEW

the sewage overflow. Hewlett also fired off a letter to David Beyer, Southern Regional President of AquaSource. The area around the pump was covered with streams of running water which emitted a strong odor. Hewlett wrote, "It appeared that this unsanitary condition had been occurring for some time." For AquaSource's part, they maintain the lift station is inspected daily and that only the immediate area was affected. Photographs clearly reveal

the sewage overflow. Hewlett also fired off a letter to David Beyer, Southern Regional President of AquaSource. The area around the pump was covered with streams of running water which emitted a strong odor. Hewlett wrote, "It appeared that this unsanitary condition had been occurring for some time." For AquaSource's part, they maintain the lift station is inspected daily and that only the immediate area was affected. Photographs clearly reveal

had't used specifically. While Hewlett said that sound like we had done it ourselves, a INRCC spokesperson called AquaSource procedures "normal". The spill did nothing to improve the already strained relationship between Village of Wimberley officials and the utility firm. This situation is a terrible one for the citizens of Wimberley, Hewlett stated. "It would appear that adequate safety should have been established by

A SOURCE OF CONTROVERSY

Complaints mount against water/wastewater provider

LOUIE BOND
SPECIAL TO THE VIEW

It's been a long, rough honeymoon for AquaSource. Since the rapidly-growing utility company purchased Odoreck Utilities in 1997, complaints and challenges have dogged its relationship with the area. The cities of Odoreck and Wimberley, backed by the county and various citizen groups, have opposed AquaSource on a number of fronts.

AquaSource's applications pending before the Texas Natural Resource Conservation Commission (NRCC) this year, have included:

- a statewide merger of all AquaSource companies
- a permit to discharge effluent from the Wimberley/Woodcreek treatment plant into Wilson Creek
- the expansion of AquaSource's sewer service area
- water and wastewater rate increases

Earlier this year, the NRCC readily granted AquaSource's request to merge their acquisitions across the state, but the other three issues are still up for grabs. AquaSource can expect a hot fight from those opposed.

Creek discharge
Perhaps no topic is as politically volatile in Wimberley as the discharge of treated sewage

into local waterways. AquaSource has applied to discharge almost a million gallons of effluent per day into Wilson Creek from its newly constructed treatment plant on FM 2325.

Wimberley activist David Baker, who has led the fight to preserve the quality of local creeks and rivers, says discharging effluent was not part of a plan the company discussed with then-County Judge Eddy Etheredge, Woodcreek Mayor Ken Jacobs and other community leaders in early 1998. The group, concerned about the location of a proposed new plant close to Cypress Creek, worked with AquaSource to obtain a new location. The site purchased by the company contained a front section of land for irrigation, ensuring no creek discharge. Now, Baker says, the front section is slated for development, and AquaSource is asking TNRCC for the discharge permit. The company's motives are purely financial, Baker claims, and ignore the potential environmental implications.

"Owning the right to discharge into the creek has a tremendous monetary value long-term," Baker points out. "The rights could eventually be sold to the city or another utility company at a later date."

What's more important, he explains, is the impact of the discharge on the quality of not only Wilson Creek, but the Blanco River as well.

Wilson Creek is really little more than an intermittent stream, sitting dry and empty during the past summer's drought. When it flows, it empties into the Blanco River at the one-lane bridge on River Road. The river itself was little more than a trickle during the summer.

Baker says a 900,000 gallon effluent discharge amounts to a flow of about 2.5 cubic feet per second, or about half of the Blanco's base flow of 5 cubic feet per second in August.

"That's a huge impact," Baker says. "Anytime you do a discharge into any body of water, there is a change of chemistry, with an increase in the growth of algae. Wimberley residents will certainly want to avoid that at all costs."

And, officially, it does. One of the committees formed this year after Wimberley voted to incorporate was the water/wastewater advisory board, headed up by council member Steve Klepfer.

"The city feels AquaSource is extremely premature in asking to discharge a million gallons a day," Klepfer says. "We feel it would much safer to go as far as we can with irrigation. Even with the growth of the valley, it will be a long time before we ever have to talk about the need for discharge."

Baker says the application is under technical review by the TNRCC, and will come to the public hearing stage in the near future. He feels the strong

public opposition he has heard is well-warranted.

"I think they are going to have to follow the Edwards rules in this case because Wilson Creek crosses two fault lines," he says. "They need to do more stringent analysis of the impact on groundwater. They'll also have to use some modeling to prove the discharge will not push the water below stream standards."

Baker and others are working to establish the standards for the area by conducting some baseline water testing where the creek joins the river. In addition to the Wimberley Watershed Association, which has worked for years to protect the area's most vital resource, a new group, Wimberley Neighbors for Healthy Waters, formed this summer to help the fight.

Sewer lines
The newly-formed Wimberley city government also taking a long, hard look at AquaSource's bid to extend sewer service through Wimberley. The company plans to run lines to all Wimberley Independent School District campuses as well as the Brookshire Brothers grocery store and retail area. Plans include running the lines through the rest of the town in the near future, but the TNRCC must permit expansion of AquaSource's service area.

"The city has just now started looking at its options for a central wastewater system for the town," Klepfer says. "I believe because one investor-owned utility has stuck a line in the ground doesn't mean that's the sole option."

Klepfer says Wimberley

Wilson

water level
at Church h
since Aug
I fell 45 ft
99 to Aug
NEW RAIN

AquaSource

Continued from Page 2

needs to look at the "15 to 20 year horizon" to see what is best for Wimberley.

"Our current experience with AquaSource is that they are kind of premature," he says. "They went forward without any community input. We're opposed to them coming through with the sewer line right now because the timing is wrong."

Klepfer says his committee is considering studies that have already been done on future needs, including those conducted by the Guadalupe-Blanco River Authority in 1996-97.

"We're not going into this blind," he says.

Rate increase

Wimberley and Woodcreek city councils both voted in recent months to reject a statewide AquaSource rate increase. The approximate 15

percent increase was implemented on July 17, but by law municipalities must approve the change. Across the state, all but one of the 16 Texas cities served by AquaSource have rejected the increase.

While cities may reject the rate hike, unincorporated areas must pay the higher price while fighting. Two TNRCC hearings addressed those areas in late November, with Woodcreek Mayor Ken Jacobs in attendance at both.

The first meeting was an informal hearing to try to organize the widely-scattered groups into some type of organized structure, finally settling on geographic divisions.

The second meeting, two days later, was a formal hearing before an administrative law judge. Although Jacobs says he attended primarily as an observer, Woodcreek's attorney in the case, Bill Dugat (who also represents Wimberley) asked for standing based on the

nance of other AquaSource systems, many recently acquired and in poor condition.

"This is a basic erosion of a municipality's fundamental right to set their own rates," Klepfer said at the Wimberley council meeting rejecting the increase.

Aggressive acquisition

Since 1997, AquaSource, a subsidiary of utility giant DQE, has become the largest investor-owned utility in Texas, and serves more than a half million customers in 21 states. The company website says AquaSource is "aggressively seeking expansion" into even more states by purchasing small to medium-sized operations in a "roll-up" strategy to aggregate the smaller companies. AquaSource has also expanded its services into contract operations, utility construction and development and bottled water. The company currently owns 130 water and wastewater systems in Texas

alone.

Battle scars

The entire fight has been time-consuming and expensive, Jacobs says, with appeals to AquaSource likely and no guarantee that the city will ever recoup the money spent on legal services.

"One of the things that's wrong with this process is that the rules are all clearly in favor of the utilities," Jacobs says.

NIMBERLEY
VIEW

JAN. 24,
2001

Village takes steps to create sewage utility

Deal struck with GBRA that could loan money to build municipally-owned treatment plant

By Charles McClure
with the View

The Village of Wimberley City Council has taken the first steps toward creating a municipally-controlled sewage utility.

The action was in the form of a resolution during Thursday's regular session to the Texas Natural Resources and Conservation Commission (TNRCC), establishing a partnership with the Guadalupe-Blanco River Authority (GBRA).

Wimberley has requested and will receive assistance from the GBRA to manage and operate the proposed water system," the resolution read. "Wimberley is presently engaged in discussions regarding the construction and operation of this system, with the requested Certificate for Wastewater service being in the name of the Village of Wimberley."

The village council's point man on the issue is Steve Klepfer, municipal engineer.

"Frankly, the community has needed a central sewage system for over 20 years," Klepfer said. "We have nine square miles of septic systems and it is not working."

But it is the prospect of a million gallons of effluent being dumped into the Blanco River on a daily basis, as called for in AquaSource's permit request with the TNRCC, that finally proved the catalyst for the unanimous decision.

"As the city council began in May addressing the waste wa-

were confronted right away with some immediate issues with the investor-owned utility, AquaSource," Klepfer said. "It really forced us to address this right away. We really want to have some ability to control the

"Frankly, the community has needed a central sewage system for over 20 years."

— Steve Klepfer

direction of water and wastewater in the valley for the next 50 years — and that means controlling our own destiny."

Klepfer said the village council had to take a good, long look at the performance of investor owned and governmentally owned and operated systems.

"At that point we approached GBRA, who had — during the 1980s and again in the 1990s, performed studies with leaders in the Wimberley valley of the water and wastewater needs," Klepfer explained. "So we knew them and they knew us."

The city approached GBRA about a partnership.

"We told them that we wanted to move forward with this. That we want to come up with some good plans that would

COMMUN

Resolution

(Continued from Page 1)

take care of the waste water, as well as the water needs for the future. That led to us submitting our own application for a Certificate of Convenience and Necessity (CCN) with the TNRCC.

The council is digging in its heels concerning any discharge into the Blanco River and its tributaries.

"We don't want any stream discharges," Klepfer flatly stated. "We think that irrigation permits not take care of the needs in this valley for many, many years to come."

The council maintains that the responsibility for wastewater disposal rightly rests with the municipality.

"Investor-owned utilities — by definition — their motive is not necessarily the community's local interest," Klepfer asserted. "They are investors. And there is nothing wrong with that. I'm a businessman. But when it comes to a public provider of something so essential as waste water treatment, it is inevitable decisions on a daily level and a strategic level that are going to come down as bottom-line decisions."

Taking control into their own hands may not be easy, city officials admit, but it is a necessity.

"There are five faults that run through the city of Wimberley," Klepfer said. "It is pretty clear that the water that is running in these faults is probably running into the Edwards Aquifer. Not all of it

recharges directly into the Trinity. The proposed discharge will cross three faults on its way to the Blanco.

"Maybe that will be fine," Klepfer continued. "I'm a biochemist. I don't have any real great fear of treating water until it is essentially water again, but I do have a huge fear of us doing that until we understand the geology of the valley. Most importantly, we need to know who is controlling the valves every day."

Klepfer called the AquaSource permit request a "hoop" move, adding that a municipally operated treatment system would be more likely to take responsibility for the ecological welfare of an area.

"If you get a well run, well operated, well directed municipal wastewater treatment facility, it can be operated at a much higher level than the minimum standards required by the TNRCC," Klepfer said.

In addition to the GBRA, the village has been, and will continue working in cooperation with the Travis Family Aquifer Conservation District, assured Klepfer.

Klepfer said the city is consulting previous studies concerning funding while it weighs its options on how a treatment system would be financed.

"It will be funded by the revenue of its users," Klepfer explained. "There will be no municipal bond. We carry a good reputation that this is an

position to build a plant for us and we would pay them back on the revenue of customers."

Unfortunately for the city, much of the federal grant money that was available to municipalities for water and sewage needs has dried up, but Klepfer said the city will leave no stone unturned concerning funding assistance.

"There are some possibilities through the Texas Water Development Board, and we will investigate all of those, but this is not pie in the sky. We have a partner in GBRA. They have the means to do this. They have done this in other communities. They operate numerous wastewater treatment facilities."

It is too early for a time table, said Klepfer.

"But I will say there is an immediate need," Klepfer said. "There are a large number of people ready to have wastewater treatment facilities. The downtown merchants come to mind the most."

Klepfer and the village anticipates stiff opposition from AquaSource.

"They will protest it vigorously," Klepfer assured. "They have and will continue to put huge expense in actively pursue water and wastewater customers in the state of Texas. I wish that we had been a municipality 10 years earlier, so an investor-owned municipality wouldn't be in our valley."

ATTACHMENT F - EXCERPT OF ENGINEERING AND TECHNICAL REPORT

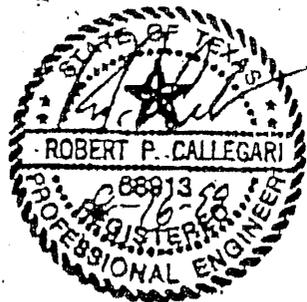
Engineering Report and Technical Specifications for

**Brookshire Brothers Store #67
Wastewater System Improvements
Wimberley, Texas**

**Brookshire Brothers Area Lift Station
And 3" Force Main**

Prepared for:

**Brookshire Brothers, L.T.D.
P.O. Box 1688
Lufkin, Texas 75901**



August 1999

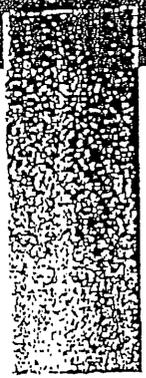
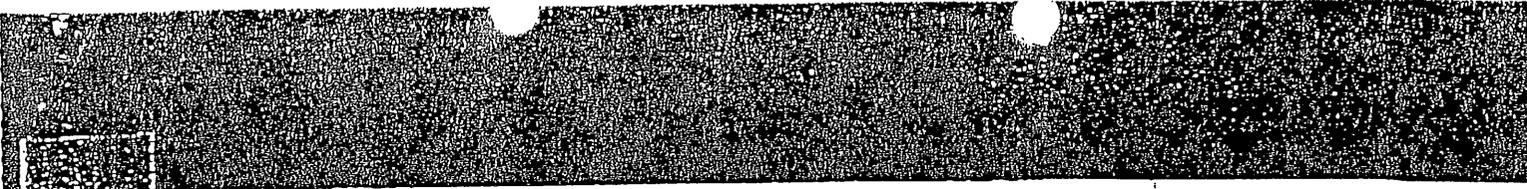


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Wastewater Flow Projections

Appendix B – Brookshire Brothers Area Lift Station and
3" Force Main Design Calculations

TECHNICAL SPECIFICATIONS

Section 1 – Site Work

Section 2 – Lift Station and Pumping Equipment

Section 3 – Piping and Appurtenances

Section 4 – Chain Link Fencing

4.0 LIFT STATION

4.1 Motor

The motors shall be of the submersible type designed for continuous under-water operation. The motor shall be suitable for "across the line" starting, and conforming to the latest National Electrical Manufacturers Association (NEMA) Specifications for submersible motors.

The stator, rotor and bearings shall be mounted in a sealed submersible type housing. The stator windings shall have Class F insulation, (155°C or 311°C), and a dielectric oil filled motor, NEMA B design. The pump and motor shall be specifically designed so that they may be operated partially or completely submerged in the liquid being pumped. The pump shall not require cooling water jackets. Stators shall be securely held in place with a removable end ring and threaded fasteners so they may be easily removed in the field without the use of special tools. Pump shall be equipped with heat sensors. The heat sensor shall be a low resistance, bi-metal disc that is temperature sensitive. It shall be mounted directly on the stator windings and sized to open at 120°C and automatically reset at 30-35°C differential. The sensors shall be connected in series with motor starter-coil so that the starter shall be equipped with overload heaters so all normal overloads are protected by the external heater block.

4.2 Electrical Power Cable

Electrical power cord shall be water resistant 600V, 60°C, UL and/or CSA approved and applied dependent on amp draw for size. The power cable entry into the cord cap assembly shall first be made with a compression fitting. Each individual lead shall be stripped down to bare wire, at staggered intervals, and each strand shall be individually separated. This area of the cord cap shall then be fitted with an epoxy compound potting which will prevent water contamination to gain entry even in the event of wicking or capillary attraction. The power cord leads shall then be connected to the motor leads with extra heavy connectors having brass inserts with a screwed wire to wire connection. There shall be an additional epoxy compound potting area separating the motor housing from the cord cap assembly. The Cord cap assembly where bolted to the connection box assembly shall be sealed with a Buna N Rubber O-ring on a beveled edge to assure proper sealing.

4.3 Rail System

The lift stations shall have a rail system to facilitate the removal and installation of the submersible pumps. All new pumps shall be provided with a lifting chain or lifting cable and be of suitable length to extend from the pump to the top of the wet well. The access frame shall provide a hook to attach the lifting chain or lifting cable when not in use. The lifting chain/cable shall be sized according to the pump weight with a factor of safety of 2.



4.4 Motor Controls

All new pump stations shall be provided with four (4) sealed float-type weighted mercury switches to control pumps and provide alarm signals. Each switch shall be in a solid polypropylene float. Each float shall suspend on its cable and shall be field adjustable. Three floats shall be used to control the pumps (lead pump on, lag pump on, and all pumps off), and one float shall be used as a high water level alarm.

All new motor controls shall be locally mounted in a NEMA 4 locking cabinet and shall include: the following:

1. H-O-A selector switch
2. Start-stop push button
3. Combination circuit breaker type motor starter for each pump with short circuit overload and three ambient compensated overload relays, and transformer with disconnect and overload protection for control circuit of 24 V
4. Automatic alternator
5. High level alarm contacts
6. Pump running lights
7. Overload reset button to reset overload relays
8. Terminal board for connection of level sensors
9. Leakage sensor alarm light and pump shutdown
10. Four channel autodialer capable of transmitting pump trouble conditions, high level and power outage alarms by telephone line
11. Float switch test pushbuttons

The panel shall have a plexiglass window installed that will allow reading of the pump elapse hour meters without opening the enclosure. The door shall be designed so that it may be locked. Voltage and horsepower rating of the control panel shall be compatible with the electric motor.

4.5 Wet Well

The wet well shall be constructed of concrete of the size shown on the plans and shall have a lockable manway access cover. The bottom slab shall be poured in place reinforced concrete. The bottom section of the wet well shall be set into the bottom slab while it is still workable but in no case longer than 1-hour after the slab is poured. The bottom section of the wet well shall be supported until the bottom slab has set in place. The wet well section shall not rest on or deform the reinforcing bars. The slab shall be troweled smooth. Grout shall be placed at a minimum 45-degree angle as shown in the plans and finished smooth.

ATTACHMENT G - NEWSPAPER ARTICLES

AquaSource spill explanation grilled by council

By Charles McClure

AquaSource's Craig Sherwood was summoned to Thursday's village council meeting to directly address the problem that caused a lift station to overflow, he said. Proskauer, Brubaker and two weeks ago.

"We don't anticipate any future problems being anticipated, it (further functions) is possible," Sherwood said. "That is something we are looking at."

Flooding concerns lift station raised by public

AquaSource said it operates three lift stations locally behind the Wimberley Independent School District Administration Building, including Scout's Promenade and one behind the middle school.

When the middle school lift station overflowed, it caused a sewage spill that was visible from the road. AquaSource officials said they were not aware of the problem until after the spill.

When sewage tanks full, over the course of a few days, you can't now about it unless the tanks are full.

At that point, there has been a lot of problems over the years and years that is the advantage to a lift station.

AquaSource usually inspects the lift station in question. But Sherwood suggested that further improvements to the lift station are needed.

See AquaSource, page 8

8 - Wimberley View, Wednesday, January 24, 2001

AquaSource

The lift stations might be tied to a commitment from the Village of Wimberley. Sherwood said he was looking for a way to leave the meeting this afternoon. Later in the meeting, the council would announce an agreement with the River Authority that could lead to a municipally managed sewage treatment system (see related story, page one).

"You can see that one of the needs for us making an investment is that it takes several thousand dollars for each lift station to put this equipment in. We don't mention the hundreds of dollars a year for operation."

ago, we only had Woodcreek. I do know the operators work seven days a week and keep it up for what they do. But as far as how specific that is, something that we're going to make sure is in place. Echoing the comments of other witnesses, McGee, a retired attorney, said the spill appeared to have been "going on for more than just one day."

"If that kind of volume spilled in less than just one day, I guess that lift station is capable of spilling a lot of sewage if a major break occurs," McGee said. "What kind of volume is that lift station capable of spilling in one day?"

Sherwood said he would have to find out the specific numbers from company engineers. "I'm not prepared to answer that, but I will find out and get back to you," Sherwood promised. Council members asked specific questions about how the lift station operated and what lines connected to it. Klepfer said he was particularly concerned about what might happen to the sewage within the lift station in the case of flooding, voicing concerns the lift station could actually become submerged. "We'll certainly take a look at it," Sherwood said.

(Continued from Page 1)

ATTACHMENT H - STATEMENT OF DWAYNE PATLYEK

**(Note - Original Pictures Referenced in Mr. Patlyek's Attachments
are Available for Review Upon Request)**

STATEMENT OF DWAYNE PATLYEK

I have knowledge of problems with the AquaSource/Woodcreek utilities. My knowledge includes, among other things, knowledge about the continued operation of the phase II plant, problems regarding the irrigation of treated effluent, slow response to sewage spills in neighborhoods, water and sewer tap violations, violation of state design criteria with regards to atmospheric valves, violation of state design criteria for a sewer line crossing of Hog creek, and water leaks that are not fixed for months.

Regarding the continued operation of the phase II plant, I attended on February 1, 2001, a site visit of the AquaSource/Woodcreek Utilities. During that site visit, Mr. Craig Sherwood and Mr. David Harris informed us that the phase II plant was still in operation because the lift station that will pump the sewage from the phase II plant to the phase III plant has not been completed yet.

Regarding problems about the irrigation of treated effluent, I know of several problems that involve the Irrigation equipment and facilities including, but not limited to, problems with the holding ponds. In the phase one area of the golf course, a berm has been constructed around the treated effluent holding pond. During periods of heavy rain, the berm will direct the rain water to flow directly into the holding pond causing the pond to overflow and discharge sludge and treated sewage into Hog Creek and then into Cypress Creek. Furthermore, Hog Creek indirectly feeds well 11; therefore, the discharge would affect that well, too. Problems exist with the

STATEMENT OF DWAYNE PATLYEK

Page 2

phase II holding pond. For example, that pond has been breached, which allows the pond to prematurely overflow causing seepage into the wet weather creek.

Other problems with the golf courses used for irrigating AquaSource/Woodcreek's treated effluent includes, but is not limited to, problems with irrigating during the golf course's operating hours, faded warning signs around the holding ponds, and the soil's inadequate percolation rate on several fairways.

Regarding sewage spills in neighborhoods. During the course of my work I have been called to resolve sewage spills in customers' backyards. AquaSource on numerous occasions has refused to isolate their sewer spill, thus allowing their sewage to spill over 24 hours in a customer's back yard offering no assistance to the customer. I personally know of four incidences in which they refused to control their sewage spills. On October 25, 1997 at 51 Meadows more than 2000 gallons were spilled and the valve is above ground level. (*Attachment A*) On September 28, 1998 at 3 Brookhollow 500 to 1000 gallons were spilt. On November 18, 1998 at 5 Woodcreek Drive more than 1500 gallons were spilt. This sewage spill lasted for 2 days. On June 20, 1999 at 71 Woodcreek Drive this spill leaked for more than 2 1/2 weeks resulting in more than 2000 gallons spilt and a call to the TDH for assistance. I do not believe any of these spills were reported to TNRCC.

STATEMENT OF DWAYNE PATLYEK

Page 3

Regarding water and sewer tap violations. I have observed AquaSource install water and sewer taps closer than 9 feet apart. When AquaSource crosses over a water main with a pressure sewer main or lateral line they do not follow the state design criteria for crossover protection. Water lines are crossed over pressure sewer mains without protection (ie: sleeving, concrete, etc.). The reverse is also true.

(Attachment B) They do not disinfect the new water mains after installation and do not use any bedding for their new pipe installation. Furthermore, when installing a pressure sewer main they consistently do not bed the line, do not install thrust blocks, atmospheric valves, entry ports etc.

(Attachment C)

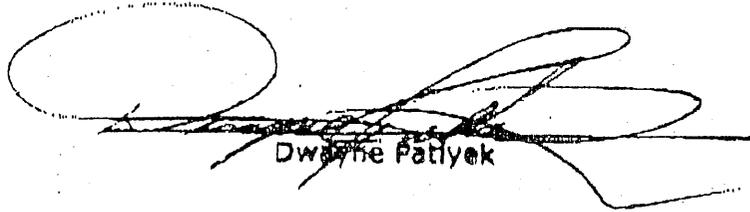
Regarding the violations of state design criteria for Hog Creek crossing. While installing the hog creek 2" sewer line AquaSource did not follow state standards. The line is not sleeved, is in the trench without bedding, the concrete was poured without reinforced rebar, there is no second pipe, no erosion control, no flood contact, no check valve or isolation valve on either side of band. No permit was applied for or received from the City of Woodcreek for the line extension or any other governmental agency. *(Attachment D)*

Regarding water leaks that are not fixed for months. I have personally witnessed water leaks that continue for months without repair. I

STATEMENT OF DWAYNE PATLYEK

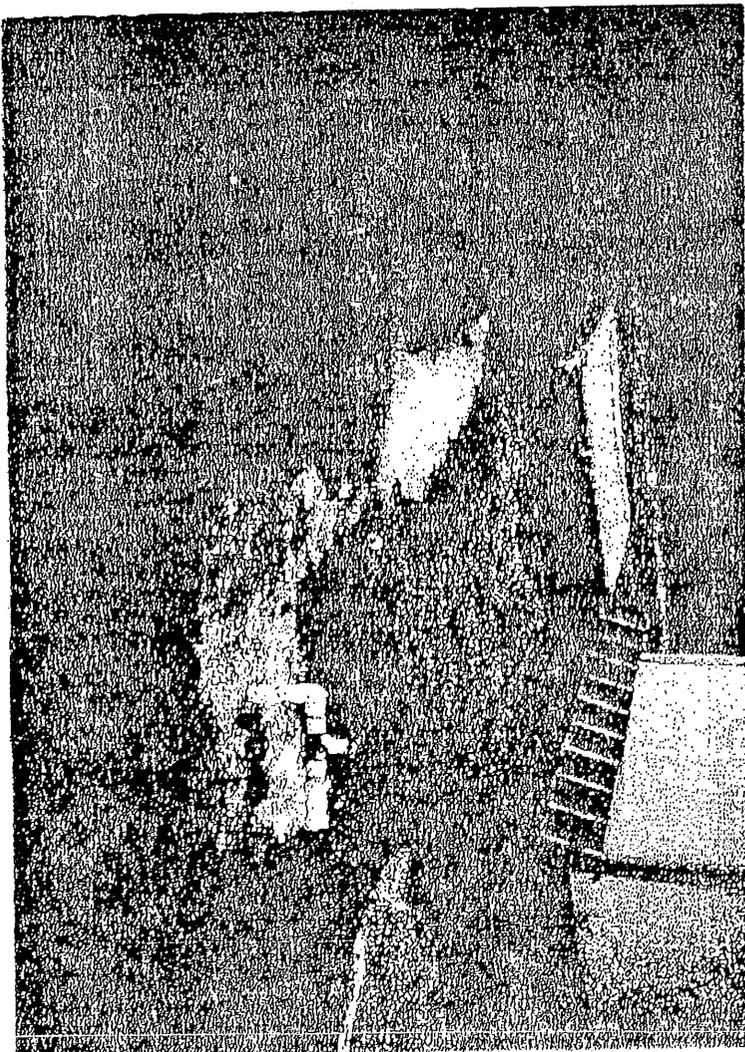
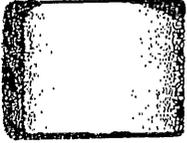
Page 4

know of one that has been leaking for two years on Sweetwater Street.



Dwayne Patlyek

ATTACHMENT F
SI MEADOWS

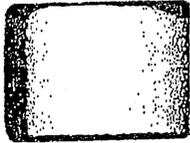


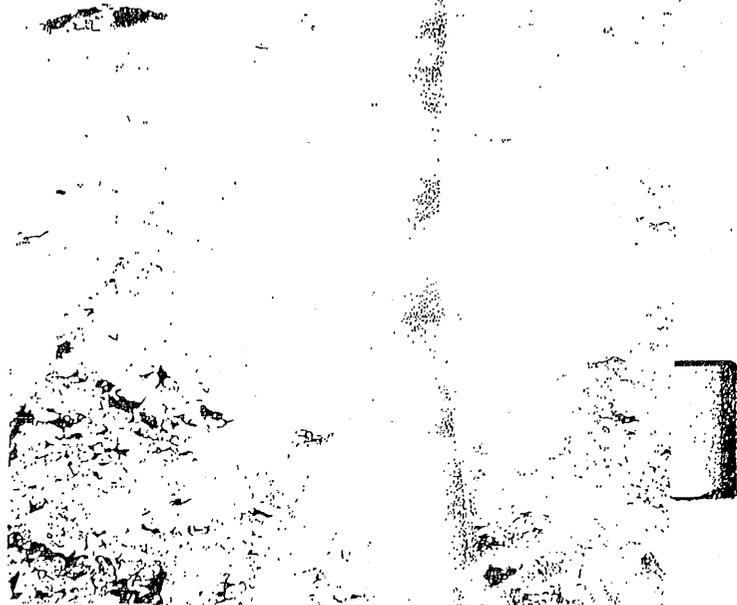
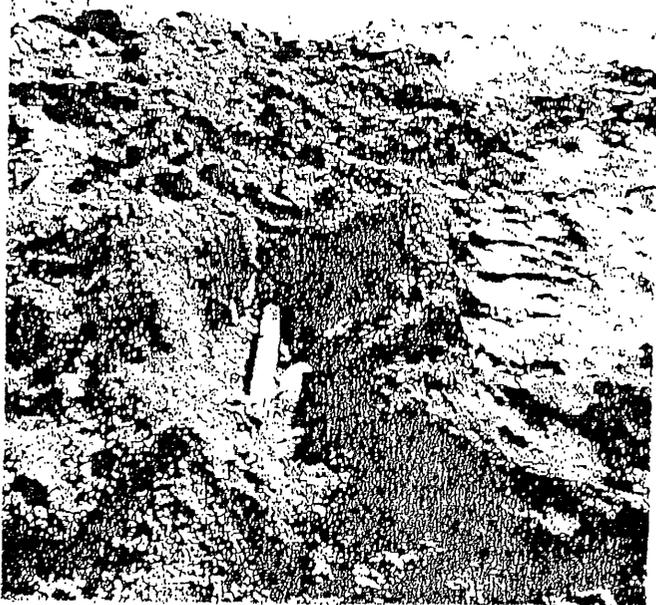
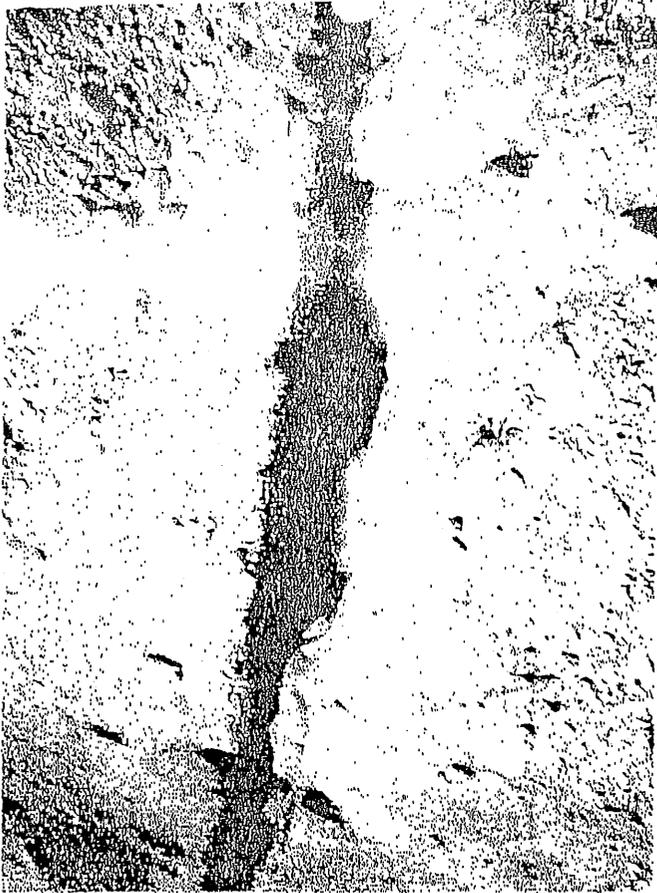


ATTACHMENT B

CROSSOVER VIOLATION

ATTACHMENT C
NO BEDDING





ATTACHMENT D

11. Rock reaction

ATTACHMENT I - NEWSPAPER ARTICLE

Wimberley View, MARCH 14, 2001

AquaSource plant permit is expired

By Charles McClure
with the View

AquaSource's Phase II sewage treatment plant operates without a permit, controlled by both a company spokesman and the Texas Natural Resource Conservation Commission (TNRCC).

The treatment plant is located off Jacob's Well Road, near its intersection with F.M. 2325. According to the TNRCC, the permit (Number 11790) for the treatment plant expired January 17, 2000.

The regulatory agency issued a letter in June of last year warning AquaSource that it was violating the law.

"Any wastewater disposal activity at this site is a violation of Texas Administrative Code and any violation will be subject to penalties," Janet Wyman, then a team leader with the Water Quality Applications Team for the TNRCC.

Rick Melcher, AquaSource spokesman, said the plant

had to continue operation while the firm constructed a new lift station behind Cypress Fairway Village, which has been mired in controversy. Residents of the townhomes allege the lift station is too close to their residences and is in violation of state law.

"We are waiting for completion of that lift station and the line to take wastewater to our new plant," Melcher explained. Melcher says the new waste-

water treatment plant, located on F.M. 2325, will assume the duties currently being handled by the Phase II plant. He said he anticipated Phase II to be off-line in 90 days.

While AquaSource knew and freely admitted Phase II was operating without a permit, TNRCC took nearly two weeks to merely confirm the location of the plant, and had no idea it was still in operation.

When the Wimberley View

Firm expects Phase II to be off-line in 90 days

attempted to contact Wyman to inquire about the warning letter, it was disclosed that he had been transferred to another position within the agency. Neither the Permit Administrative Review Section nor the Enforcement Division TNRCC could find any record of the plant's existence. Final communications, spokespeople verified the expired permit. No current application for a permit was on file.

■ No Permit, page 5

No Permit

son stated "When I talked to someone, they said they were not aware they were operating at the AquaSource's Phase II plant."

Melcher said the completion of the new lift station has been the major obstacle keeping the firm from shutting down the Phase II plant.

"That lift station is on that line," Melcher said. "We are waiting for completion of that lift station and the completion of the line to take wastewater over to the new plant to be treated."

Melcher believes that AquaSource has avoided fines.

and penalties, because it has been 'coordinating completely' with TNRCC. He said the Phase II plant is still meeting state law requirements.

"Phase II is just behind schedule on completing the pipeline," Melcher stated. "We expect to have the line completed within 90 days."

Melcher said cost was the reason AquaSource did not have the Phase II plant re-permitted. "The company had expected the new lift station and pipeline to be completed by now."

"It is costly, and that goes back to the rate payers," he

said. "It would have been a wasted expense had the pipeline been completed on time."

Although it is not yet receiving all the wastewater in AquaSource's service area, the new plant is on-line and permitted. When the Phase II plant is actually taken off-line, the new plant will receive the additional flow.

"You can't just shut it down (Phase II) if (the wastewater) has to be treated," Melcher retorted. "We are meeting the treatment parameters and they

(the TNRCC) know we are doing everything possible to get that line completed and take it over to the new plant."

"They (the TNRCC) can fine us if they want to or fine the violation because that permit has expired but they know fully well, because we have been working with them, that we are doing everything we can to complete the new plant and the pipeline structure to get the Phase II wastewater to it," Melcher continued. "It has just run behind schedule."

(Continued from Page 1)

ATTACHMENT J - TNRCC LETTERS

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution
July 28, 2000

Woodcreek Utilities, Inc.
P.O. Box 1027
Wimberly, Texas 78676

Re: Expiration of Permit No. 11790-001

Dear Permittee:

Inasmuch as an application for permit renewal was not submitted, all terms and conditions of the subject permit expired as of midnight, **January 17, 2000**. Any wastewater disposal activity at this site is a violation of the Texas Administrative Code and any violation will be subject to administrative penalties.

The commission rules do not allow the permit expiration date to be extended. If the facility is in operation or a permit is needed for future use, the owner of the facility will need to apply for a new permit. An application for a new permit will need to be submitted to the Water Quality Applications Team. You can obtain an application form by contacting the Permits Administrative Review Section at (512) 239-5160.

If you have further questions or comments, please call me at (512) 239-4407.

Sincerely,

A handwritten signature in cursive script that reads "Janet Wyman".

Janet Wyman, Team Leader
Water Quality Applications Team
Permits Administrative Review Section (MC 148)
Registration, Review & Reporting Division

cc: TNRCC Region 11
Carol Piza, Team Leader, Team 5, Enforcement Section III, MC 149

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution
July 28, 2000

Woodcreek Utilities, Inc.
P.O. Box 1027
Wimberly, Texas 78676

Re: Expiration of Permit No. 11431-001

Dear Permittee:

Inasmuch as an application for permit renewal was not submitted, all terms and conditions of the subject permit expired as of midnight, **January 17, 2000**. Any wastewater disposal activity at this site is a violation of the Texas Administrative Code and any violation will be subject to administrative penalties.

The commission rules do not allow the permit expiration date to be extended. If the facility is in operation or a permit is needed for future use, the owner of the facility will need to apply for a new permit. An application for a new permit will need to be submitted to the Water Quality Applications Team. You can obtain an application form by contacting the Permits Administrative Review Section at (512) 239-5160.

If you have further questions or comments, please call me at (512) 239-4407.

Sincerely,

A handwritten signature in cursive script that reads "Janet Wyman".

Janet Wyman, Team Leader
Water Quality Applications Team
Permits Administrative Review Section (MC 148)
Registration, Review & Reporting Division

cc: TNRCC Region 11
Carol Piza, Team Leader, Team 5, Enforcement Section III, MC 149

ATTACHMENT K - AQUASOURCE LETTER



1100 Brittmoores Park Dr
Houston TX 77041

713-983-3249
713-983-3749
jgoebel@aquasource.com

WQ 11790-001

Jeff Goebel
Project Coordinator

September 21, 2000

Texas Natural Resource Conservation Commission
PO Box 13087
Austin TX 78711-3087
Attn: Water Quality Division, Application Team (MC-148)

Re: Woodcreek Utilities, Inc Permit No. 13989-001

To Whom It May Concern:

This letter is to inform you that a facility is being built at the location designated in the above referenced wastewater discharge permit. Please also be advised that as a requirement of this permit this is also a request for voluntary cancellation of permit no. ~~11431-001~~ and ~~11790-001~~. Our new facility should be "on-line" on October 1, 2000.

If you should have any questions please call me at 713-983-3249.

Thank you,

Jeff Goebel

cc: TNRCC
Region 11 Office
1921 Cedar Bend Dr.
Suite 150
Austin TX 78758-5336

Mark Zeppa
6101 W. Courtyard Dr.
Suite 221
Austin TX 78730

David Beyer
11100 Brittmoores Park Dr
Houston TX 77041

ATTACHMENT L - COMPLIANCE HISTORY CHARTS

(SEE THIS LETTER'S TAB C)

ATTACHMENT M - AQUASOURCE LETTER

LAW OFFICES OF MARK H. ZEPPA, P.C.

RECEIVED
JAN 08 2001

6101 West Courtyard Drive, Suite 221
Austin, Texas 78730
(512) 346-4011 Fax (512) 346-6847
mhzeppa@inetport.com

January 5, 2000

via hand delivery

Mr. Doug Holcomb, PE, Manager
Utilities & Districts Section
Water Permit & Resource Management Division
Texas Natural Resource Conservation Commission
P O Box 13087, MC 153
Austin, Texas 78711-3087

Re: Rule 291.103(a)(1)(A) and (2) Notice of Extension of Sewer Utility Service
AquaSource Utility, Inc. dba Woodcreek Utilities, Inc., CCN No. 20124

Dear Mr. Holcomb:

Please be advised that within the last thirty days, AquaSource Utility, Inc. dba Woodcreek Utilities, Inc. (AquaSource) has made a sewer utility tap on its new Brookshire Brothers Grocery collection main to serve the property of Mr. Jim Sheffield. This point of use is within 1/4-mile of the utility's existing certificated area boundaries as shown on the attached map. ←

Please be further advised that AquaSource intends to provide service within its 1/4-mile service area buffer zone as depicted on the enclosed map to any qualified service applicant. AquaSource is now the retail public utility serving this area, as "service" is defined by Texas Water Code §13.002(21). Most of the known potential customers are listed in the Sewer Service Survey filed in the discovery answers in AquaSource's pending CCN amendment docket – SOAH Docket No. 582-00-1469; TNRCC Docket No. 2000-0335-UCR. Until a final order is entered approving that requested CCN amendment, no tap will be made for a customer whose point of sewer service usage is not located completely within the 1/4-mile buffer zone.

Service is being provide to the indicated area because:

- (1) a number of affected landowners and businesses have failing onsite sewer systems and have requested service;

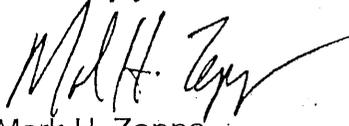
Mr. Doug Holcomb, PE, Manager
January 5, 2001
Page 2

- (2) AquaSource has covenanted to provide service as soon it is legally permitted and had the new plant capacity with a number of landowners along the route of the indicated collection main in consideration for their granting AquaSource the easements necessary to install that main;
- (3) AquaSource would like to earn a return on its investment in the new collection main and associated lift stations since those assets were constructed at the request of local business and governmental leaders as a service to the Wimberley community;
- (4) AquaSource's new wastewater treatment plant is completed and in commercial operation so there is now more than adequate service capacity for this additional customer service demand; and
- (5) since there are no other retail public utilities serving or certificated to this territory, it is the utility's statutory right to do so.

As announced in ASU's discovery answers in the above-referenced docket, all parties of record are being served with a copy of this Rule 291.103 notice and map.

If you or your staff have any question about this notice, please call me.

Sincerely yours,



Mark H. Zeppa

Encl. (1)

cc:

Lara Nehman, Staff Attorney
Texas Natural Resource Conservation Comm'n
P. O. Box 13087
Austin, Texas 78711-3087

Representing: Executive Director

Mr. Doug Holcomb, PE, Manager
January 5, 2001
Page 3

Scott Jerger, Attorney
Office of the Public Interest Counsel
Texas Natural Resource Conservation Comm'n
P. O. Box 13087
Austin, Texas 78711-3087

Representing: Public Interest Counsel

The Honorable Bill Burnett
County Commissioner, Precinct 3
P. O. Box 2085
Wimberley, Texas 78676

Representing: Hays County

The Honorable Mayor Kenneth E. Jacobs
P. O. Box 1570
Woodcreek, Texas 78676

Representing: City of Woodcreek

Jack Hollon
3700 River Road
Wimberley, Texas 78676

Representing: Hays Trinity Groundwater
Conservation District

Richard Lowerre, Attorney
Henry, Lowerre & Frederick
4006 Speedway
Austin, Texas 78751

Representing: Wimberley Neighbors for
Healthy Water

William Dugat, III
Emily Rogers
Bickerstaff, Heath, Smiley, Pollan,
Kever & McDaniel, LLP
816 Congress Avenue, Ste. 1700
Austin, Texas

Representing: Village of Wimberley

Michael Dickey
P. O. Box 1847
Wimberley, Texas 78676

Representing: Self

Mr. Doug Holcomb, PE, Manager
January 5, 2001
Page 4

David Beyer, President
AquaSource Utility, Inc.
11100 Brittmoore Park Drive
Houston, Texas 77041

Craig Sherwood, Central Texas Operations Manager
AquaSource Services & Technologies, Inc.
5008 Burleson Road
Austin, Texas 78744

Judith Beck, Attorney
DQE, Inc.
Cherrington Corporate Center
400 Fairway Drive, Suite 400
Coraopolis, Pennsylvania 15108

courtesy copies:

Bill West, Jr., General Manager
Guadalupe-Blanco River Authority
933 East Court Street
Sequin, Texas 78155

Randy Goss, General Manager
LCRA – WaterCo
P O Box 220
Austin, Texas 78767-0220

Dr. Victoria Harkins
Utilities & Districts Section
Water Permit & Resource Management Division
Texas Natural Resource Conservation Commission
P O Box 13087, MC 153
Austin, Texas 78711-3087

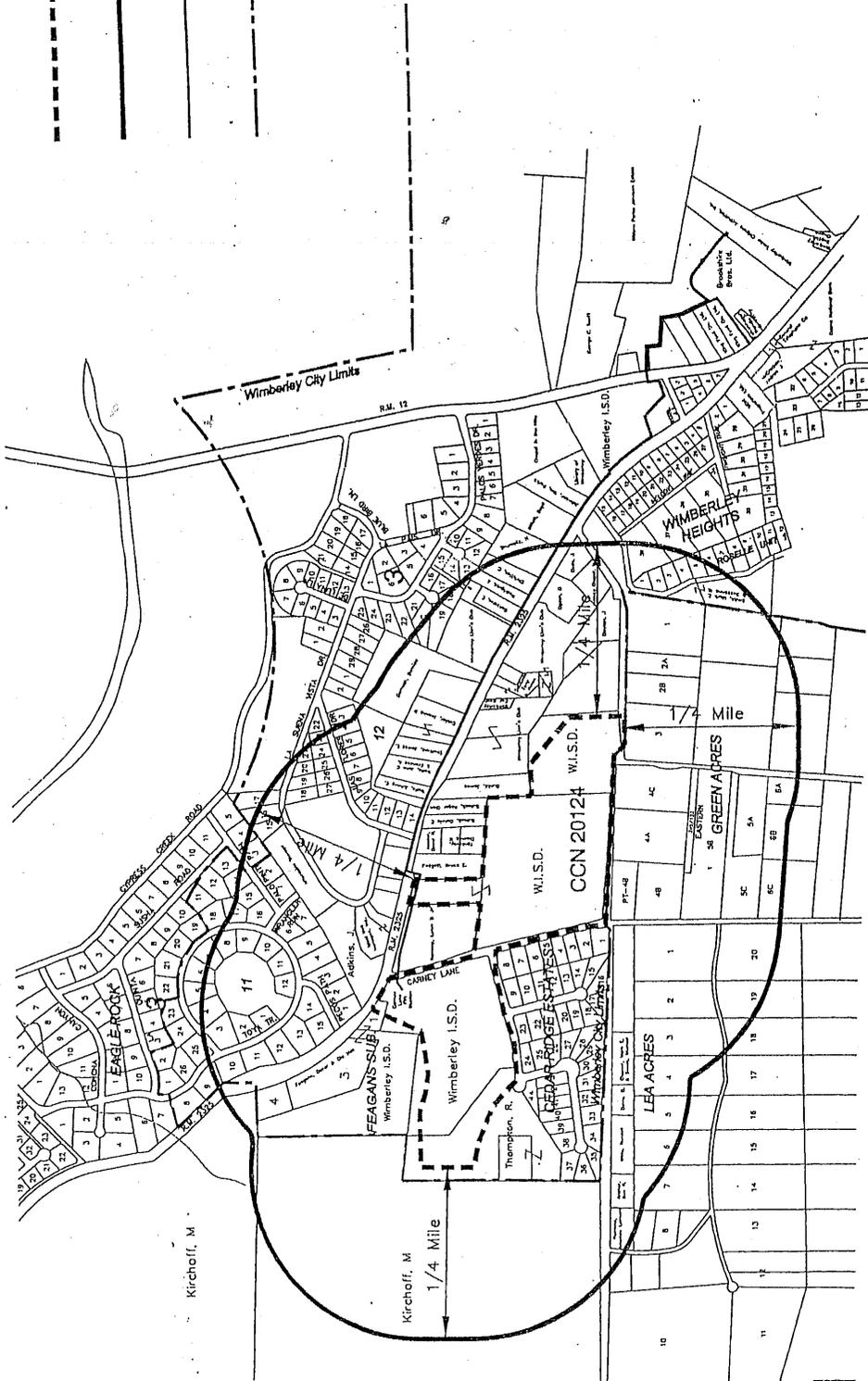
LEGEND

Existing CCN Boundary

Proposed Service Area Boundary

Brookshire Bros. Wastewater Line

Wimberley City Limits



AquaSource

ALAN STEARMAN
Digital Mapping, Analysis, and GIS Consulting
512-926-1409
astearm@aquasource.com

GDS Associates, Inc.
Engineers and Consultants

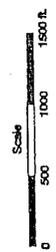
Site 800
919 Congress Avenue
Austin, TX 78701

512 494-03
FAX 512 494-02

December 10, 2000

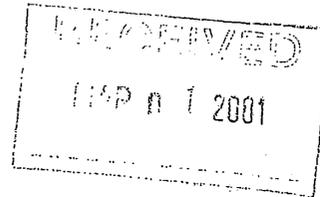
Woodcreek Utilities Phase 1 Proposed Wastewater Service Area

Hayes County



B

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

February 27, 2001

Mr. Richard Lowerre
Henry, Lowerre, and Frederick
4006 Speedway
Austin, Texas 78751

Re: *Woodcreek Utilities, Inc.*
Compliance Summary

Dear Mr. Lowerre:

Your comment letter was forwarded to me, and I noted you commented that you did not receive a copy of the compliance summary you requested. I have attached a compliance summary, dated February 23, 2001.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kathy H. Brown".

Kathy H. Brown
Staff Attorney

COMPLIANCE SUMMARY

Woodcreek Utilities, Inc.
TPDES Permit No. 13989-001
February 23, 2001

CURRENT ASSESSMENT OF COMPLIANCE

General: No discharge of pollutants to waters in the State is authorized. Treated wastewater is disposed of via irrigation.

Self Reported Data: Submittal of data is not required. Documentation to be maintained on-site and available upon request. Last inspection on February 9, 1999 reported that all data was satisfactory.

Regional Inspections:

February 9, 1999, the inspector noted the following violation:

Facility exceeded monthly average permitted flow limits in 11 out of 11 months. Violation addressed and resolved in Commission Agreed Order 1998-0514-MWD-E, effective November 7, 1999.

February 19, 1998, the inspector noted the following violation:

Facility exceeded monthly average permitted flow limits in all 12 months of the review period. Violation addressed and resolved in Commission Agreed Order 1998-0514-MWD-E, effective November 7, 1999.

October 9, 1996, the inspector noted the following violation:

Facility exceeded monthly average permitted flow limits January through September of 1996. Violation addressed and resolved in Commission Agreed Order 1998-0514-MWD-E, effective November 7, 1999.

PENDING ENFORCEMENT ACTION

None.

PRIOR ENFORCEMENT ACTION

Commission Agreed Order 1998-0514-MWD-E, effective November 7, 1999. Order issued for flow exceedances. All technical requirements of the Order have been complied with.

CONTACTs

Mr. Terry Murphy, Enforcement Coordinator, (512) 239-0572

cc: Mr. Elston Johnson, Manager, Water Section, Austin Regional Office
Ms. Claudia Chapin, Investigator, Austin Regional Office
Mr. Larry King, Enforcement Coordinator, Austin Regional Office

C

AQUASOURCE/WOODCREEK UTILITIES - PHASE I
PERMIT #11431-001
Hays County

Date*	NOV SRV Comp Other	Description	TNRCC Action	Applicable Statute, TNRCC Rule and/or Permit Condition	Source
1-05-01	SRV	Lift station discharged sewage over into drainage area. Caused by power loss due to blown fuse in box on pole.	AqS added bleach mix to standing water and added about 6 gallons of anti-bacterial solution to all standing water and area. Also, replaced bad fuses, checked all electronic components, and placed spare fuses in control box. No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS Files - Noncompliance Notification reported 1/5/01
12-26-00	SRV	Townhouse lift station in Woodcreek Phase I discharged from destroyed concrete slabs about 500 gallons caused by power loss due to demolition crew.	Rainwater washed out discharge. AqS added disinfectant to pools that remained, ran temporary power supply, and will be placing permanent fixture. No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS Files - Noncompliance notification reported 12/27/00
12-1-00 ¹	Other	Leak caused by Time Warner Cable hitting service line near main	AqS prepared service order (WK16606) to repair leak	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS files - Service Order completed 12/1/00

*Indicates date of alleged violation unless otherwise noted as following: 1 - indicates date notified or reported 2 - indicates date investigated 3 - indicates agenda date

NOV = Notice of Violation
ltr = Letter

SRV = Self-Reported Violation
AqS = AquaSource

Comp = Complaint

TWC = Texas Water Code

TAC = Texas Administrative Code

11-00	Other	.089 MGD flow average for November exceeded permit level.	No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 11-00
10-00	Other	0.58 MGD flow average for October exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 10-00
9-00	Other	0.088 MGD flow average for September exceeded permit level.	No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 9-00
8-00	Other	0.17 MGD flow average for August exceeded permit level.	No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 8-00
6-00	Other	No data for the MGD flow average for June.	No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V.B, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 6-00

* Indicates date of alleged violation unless otherwise noted as following: 1 - indicates date notified or reported 2 - indicates date investigated 3 - indicates agenda date

NOV = Notice of Violation
ltr = Letter

SRV = Self-Reported Violation
AqS = AquaSource

Comp = Complaint

TWC = Texas Water Code

TAC = Texas Administrative Code

5-00	Other	0.53 MGD flow average for May exceeded permit level.	No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 5-00
5-03-00	SRV	Effluent discharged onto golf course. Pump station destroyed by fire caused by lightening. Next day, AqS diverted water from holding pond and flooded golf course with about 50,000 gallons of effluent because fire in effluent dispersing system prevented compliance with TNRCC rules.	AqS hauled about 45,000 gallons to another holding pond and applied antibacterial spray to areas of human contact. Golf course installed temporary pump to irrigate and AqS plans to install disinfection system. No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, VI.4, VI.5, VI.6, VII.1 & VII.3	AqS Files - Water Quality Noncompliance Notification reported 5/3/00
4-24-00 ¹	Comp	Eddie Gumbert saw a leak in one of the treated effluent lines & thought it might impact Cypress Creek.	AqS repaired line late 4/22 after Mr. Gumbert reached AqS. No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	TNRCC Files - Phone Memo dated 4/24/00
3-00	Other	0.59 MGD flow average for March exceeded permit level.	No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 3-00

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3-3-00	SRV	Backside of 4-Plex and RR-12, broken clean out on 2" pressure main leaking 50-75 gal of sewage on ground.	No action by TNRCC noted. AqS cleaned up debris after repairing, added CL2 to effected area & determined that capping off to prevent recurrence was unnecessary since it was pressure main.	TWC § 26.121 30 TAC §§ 305.1 & 305.125; Permit: IV, VI.4, VII.1 & VII.3	TNRCC Files - Noncompliance Notification reported 3-3-00
2-00	Other	0.064 MGD flow average for February exceeded permit level.	No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 2-00
1-00	Other	0.065 MGD flow average for January exceeded permit level.	No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1 & 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 1-00
1-18-00	Comp	Lift station overflows constantly; sewage residue and big mess left when pipes are cleaned; area constantly smells of sewage.	TNRCC called AqS Regional Manager who told TNRCC that they try to do their best to clean up an area after any sanitary overflow and disinfect w/ granular choline. TNRCC records show that AqS routinely reports overflows. TNRCC determined no further action was necessary since lift station would be taken out of service when new plant comes on line July - Sept 2000.	TWC § 26.121 30 TAC §§ 305.1, 305.125, & 317.3 Permit: IV, VI.4, VII.1 & VII.3	TNRCC Files - Compliant Investigation Addendum for Complaint No. 110000148

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1-17-00	NOV Other	Permit renewal not submitted and permit expired as of 1/17/00.	TNRCC ltr to Woodcreek Utilities notifying it that any activity after 1/17/00 is a violation subject to administrative penalties.	TWC § 26.121 30 TAC §§ 305.1, 305.63, 305.65 & 305.125 Permit: IV, VII.1, VII.3 & VII.6	TNRCC File - Ltr dated 7/28/00
12-26-99	SRV	3" Clean out behind residence and next to golf course (#18 Woodcreek Dr.) broke when hit by a golf cart, about 50 gal of sewage ran down vacant lot towards Woodcreek Dr.	AqS treated area w/ Cl ² HTH, disposed of debris, capped off riser pipe on 3" force main & covered up to prevent problem occurring again. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	TNRCC File Copy - Noncompliance Notification faxed 12-26-99.
11-9-99	SRV	Behind Goforth Wastewater plant manhole overflow. Estimated 3000-5000 gal. Caused by someone opening up manhole and putting board inside blocking manholes exit pipe.	AqS cleaned up debris/water on ground & disinfected area. No action noted to prevent recurrence of problem. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VI.15, VII.1 & VII.3	TNRCC Files - Noncompliance Notification reported 11/10/99
10-27-99 ³	Other	Agreed Order - Docket No. 1998-0514-MWD-E	For details, see 2/19/98 Inspection below		TNRCC Files - Agreed Order

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10-25-99 ²	NOV	Unsatisfactory compliance w/ flow limits - exceeded 8 out of 8 months (2/99-9/99). TNRCC did not evaluate irrigation practices.	NOV ltr sent 12/17/99.	TWC § 26.121 30 TAC §§ 305.125, 317.3 Permit: V, VI.4, VII.1 & VII.3	TNRCC Files - 12/17/99 NOV & Compliance Review Inspection Report signed 12/17/99
10-9-99	SRV	Lift station at Town House Circle overflowed retaining wall and discharged sludge, debris and sewage. 20-50 gallons reached creek edge. Pumps pumped station dry and lost prime because floats were hung up on debris.	AqS removed debris, washed down area, and treated area with bleach mix. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: V, VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 10/11/99
7-19-99	SRV	Phase I effluent pond overflowed banks discharging about 500-1000 gallons onto parking lot and golf course. Caused by flows from plant, pumps being down, rain and failure to open all irrigation heads.	AqS added slight bleach mix to area and stated that irrigation station is under going work, replacing pumps, etc. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VI.8, VII.1 & VII.3	AqS files - Noncompliance Notification reported 7/20/99

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7-13-99	Other	AqS lacks control of operation, maintenance and disposal of treated effluent by irrigation.	AqS signed Amended and Restated Water Use Agreement thereby transferring control of operation, maintenance and disposal of treated effluent by irrigation to the Woodcreek Country Club golf course.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VI.5, VI.6, VI.7, VI.8, VI.11, VI.14, VI.15, VII.1, VII.3 & VII.6	AqS files - 1999 Amended and Restated Water Use Agreement signed 7-13-99.
6-29-99	SRV	#6 Fairway discharged about 20 gallons caused by operator hitting force main while trenching area for Oak Wilt.	AqS treated area with bleach mix and exposed other 2" force main so contractor can avoid it. No Action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 6/30/99
5-30-99	SRV	Effluent pond overflowed banks discharging about 100 gallons into cart barn and CL2 room. Caused by personnel not irrigating system properly.	AqS informed personnel to turn on irrigation system and had water hauled from pond to lower level. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VI.8, VII.1 & VII.3	AqS files - Noncompliance Notification reported 5/30/99
5-29-99	SRV	Effluent pond overflowed banks discharging about 100 gallons into cart barn and CL2 room caused by lack of irrigation personnel and irrigating properly.	AqS informed personnel of situation and to turn on irrigation system to lower pond level. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VI.8, VII.1 & VII.3	AqS files - Noncompliance Notification reported 5/29/99
5-15-99	SRV	Manhole invert at 101 Overlook Circle backed up discharging about 20-25 gallons of sewer. Caused by grease blockage.	AqS removed debris, applied bleach mix, washed down area, flushed manhole, and informed customer of grease usage in sewer system. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 5/15/99.

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4-13-99	SRV	Broken sewer clean out behind #6 Deer Field. Route towards wooded area. Cause unknown	AqS applied CL2 & water mixture to area and installed new fittings. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	TNRCC Files - Noncompliance Notification reported 4/13/99.
3-20-99	SRV	About 20-25 gallons of sewage discharged 20' into drainage ditch behind #3 Country Court. Damaged pipe was probably hit by golf course mower.	AqS lightly applied CL2 and H2O to area. Cut out section of damaged pipe (2" by 3") and installed new pipe & fittings. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	TNRCC files - Noncompliance Notification reported 3/22/99.
2-26-99	SRV	Woodcreek lift station between Town House Circle & Cypress Creek. Manhole overflowed spewing 20-50 gallons of sewage into retaining wall. Caused by electrical controls failure that shut down pumps and allowed lift station pit to fill up & spew over.	AqS removed small amount of debris, washed down area w/ potable water, added new controls & wires, and hauled wastewater over to Phase II.	TWC § 26.121 30 TAC §§ 305.125, 317.3 Permit: VI.4, VII.1 & VII.3	TNRCC Files- Phone Memo dated 2/26/99 and Noncompliance Notification Report faxed 3/3/99
2-9-99 ²	NOV	Unsatisfactory compliance w/ flow limits - exceeded 11 out of 11 months (3/98-1/99). TNRCC did not evaluate irrigation practices.	No action by TNRCC noted. Only referred to notice of enforcement sent and Agreed Order (Docket No. 98-0514-MWD-E) prepared as a result of 2/18/99 inspection violations.	TWC § 26.121(c) 30 TAC § 305.125 Permit: V, VI.4, VII.1 & VII.3	TNRCC files - Compliance Review Inspection Report signed 4/8/99.

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11-25-98	SRV	3" clean out broken, 1000 gallons of sewage spilled & debris at golf course's #3 green at end of Deer Field. Caused by lawn mower on golf course hitting clean out.	AqS added 3 gallons diluted CL2 to affected area. Replaced clean out cap, roped off area & cleaned up debris.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	TNRCC Files - Noncompliance Notification Reported 11/25/98
11-18-98	SRV	Customer's grinder pump at 6 Woodcreek Drive had broken pipe behind cut off valve spreading about 300-500 gallons of sewage over 150 sq.ft.	Customer spread Clorox & flushed w/ chlorinated potable water. Plumber replaced valve & piping.	TWC § 26.121 30 TAC §§ 305.125, 317.2 Permit: VI.4, VII.1 & VII.3	TNRCC Files- Noncompliance Notification reported 11/19/98
9-20-98 9-21-98 ²	Comp	Complaint observed manhole overflowing into ditch. Also stated that AqS was on site and attempted to pump out the sewage and applied Clorox, but AqS left without finishing and leaving sewage on the ground.	TNRCC investigated, observed water pooled on road, and noted faint odor of raw sewage. No AqS personnel was at the site. TNRCC called AqS. AqS said water was disinfected wash down water. TNRCC told AqS to re-check the condition. AqS called TNRCC after recheck and stated that water still on road was primarily wash down water containing disinfectant. It was AqS's professional opinion that clean up was satisfactory. In future will consider vacuum truck instead of wash down. No violation confirmed.	TWC § 26.121 30 TAC § 305.125 Permit: V, VI.4, VII.1, & VII.3	TNRCC Files- Complaint No. 119900028 & Investigation Report dated 9/21/98

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9-18-98	SRV	Effluent irrigation pond overflowed discharging about 5000 gallons. 200 gallons reached fresh water irrigation pond used for fire protection and irrigation. Cause not identified.	AqS had water transported to Phase II plant, installed site gauge for pond level, and added a daily check to system rounds by operators. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: V, VI.4, VI.8, VII.1 & VII.3	AqS files - Noncompliance Notification reported 9/21/98
6-03-98	SRV	150 gallons of sewage discharged and flowed downhill 15 feet from lift station at Country Cabin #1 because rag was caught in check valve and plugged the discharge line.	AqS sprayed diluted bleach solution on wet ground, flushed with potable water, re-piped discharge lines and cleaned pump basin. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 6/4/98.

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<p>2-19-98²</p>	<p>NOV Agreed Order</p>	<p>Compliance Inspection conducted on 2/19/98 found <u>Unsatisfactory compliance with flow limits</u>: between 1/97-12/97 facility exceeded 100% of permitted 30-day average flow limit. Furthermore, AqS made no changes to resolve earlier exceedances of 100% of permitted 30-day average flow from 1/96-9/96. <u>Unsatisfactory compliance with 75/90 Rule</u>: Permittee failed to comply with requirements of this provision 9/91- present (which was 3/24/98).</p>	<p>NOV sent and enforcement initiation requested on 3/24/98. Proposed settlement ltr sent 4/8/99. Agreed Order for settlement was signed 9/2/99 & 9/22/99 and came before the Commission on 10/27/99. It settled the enforcement action for violations documented during the inspection on 2/19/98. Agreed Order terms: 1) Administrative penalty \$2500 - already paid 2) SEP w/ conditionally remitted \$1250 of the assessed \$2500 administrative penalty. 3) Refrain from adding new wastewater connection to Phase 1 from outside CCN until certification of facility being in compliance with permit within 300 days (by 8/30/00) is submitted.</p>	<p>TWC § 26.121 30 TAC §§ 305.125, 305.126 Permit: V, VI.4, VII.1, VII.3 & VII.7</p>	<p>TNRCC Files - NOV 3/24/99; Compliance Review Inspection Report signed 3/24/98; TNRCC Enforcement Referral Action dated received 3/25/98; Proposed Settlement ltr dated 4/8/99; Agreed Order: Docket No. 1998-0514-MWD-E; and TNRCC ltr dated 11/4/99</p>
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11-15-96 ²	NOV	Compliance Inspection Report for inspection conducted on 10/09/96 found: <u>Unsatisfactory compliance with flow limits</u> : Exceeded permitted flows. Average daily flows for 1996 were: Jan 0.064MGD, Feb 0.060 MGD, March 0.062 MGD, April 0.062 MGD, May 0.062 MGD, June 0.061 MGD, July 0.070 MGD, Aug 0.053 MGD, Sept 0.061 MGD. <u>Unsatisfactory compliance w/ 75/90 Rule</u>	Regional Office sent NOV ltr to AqS on 11/15/96 and forwarded inspection report to enforcement section to follow up on plans for correcting flow exceedance.	TWC § 26.121 30 TAC §§ 305.125, 305.126 Permit: V, VI.4, VII.1, VII.3 & VII.7	TNRCC Files - NOV 11/15/96 & Compliance Review Inspection Report signed 11/15/96.
3-21-96 ¹	NOV	Woodcreek failed to submit soil sample analysis in 9/95	NOV issued requesting that delinquent reports be submitted.	TWC §§ 26.121, 26.042 30 TAC §§ 305.125, 319.1 - 319.11 Permit: VI.10, VII.1 & VII.3	TNRCC Files - NOV 3/21/96
2-27-96 ¹	SRV	Phone call from Woodcreek - Spill caused by ants in breaker box. 200-300 gallons flowed about 200 ft into bar ditch, but didn't make it to creek or road.	AqS cleaning it up (no descriptions of clean up). No action by TNRCC noted	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	TNRCC Files - Phone memo dated 2/27/96

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12-11-95 ¹	Other	When Woodcreek requested to combine Phase I & II permits into one permit, TNRCC reviewed application and found two problems: long term lease required for wastewater disposal site if not owner, but Water Use Agreement expired on 5/12/94 ; and application indicates that Woodcreek Resort allows irrigation on only 63.2 acres of land in contrast to 100 acres specified by both permits.	TNRCC sent response ltr explaining it can't process the application request because the facilities are not contiguous.	TWC § 26.121 30 TAC § 305.125 Permit: IV, VI.11, VII.1 & VII.3	TNRCC Files - TNRCC ltr dated 12/11/95
3-09-95 ¹	NOV	Woodcreek failed to submit soil sample analysis for 9/94	TNRCC sent 2 nd notice ltr on 3/9/95 requesting that delinquent reports be submitted.	TWC §§ 121.26, 26.042 30 TAC §§ 305.125, 319.1 - 319.11 Permit: VI.10, VII.1 & VII.3	TNRCC Files - TNRCC ltr dated 3/9/95
01-20-95 ¹	NOV	Woodcreek failed to submit soil sample analysis for 9/94	TNRCC sent ltr requesting that delinquent reports be submitted	TWC §§ 26.121, 26.042 30 TAC §§ 305.125, 319.1 - 319.11 Permit: VI.10, VII.1 & VII.3	TNRCC Files - TNRCC ltr dated 1/20/95

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8-28-94 9-14-94 ²	Comp	Complainant stated that sewage was going into pond not approved for that purpose and pond is overflowing onto complainant's property.	TNRCC investigated and found no violations. Report stated that no sewage being discharged into pond; therefore, only fresh water is overflowing.		TNRCC Files - TNRCC ltr dated 9/14/94; Complaint Investigation Report of Complaint No. 119500302
7-25-94 ²	NOV	Annual Inspection conducted on 7/25/94: <u>Unsatisfactory compliance w/ flow limits:</u> Facility operating at over 100% of permitted flow as follows 3/94 - .059 MGD, 4/94 - .062 MGD, 5/94 - .074 MGD, 6/94 - .074 MGD; <u>Unsatisfactory compliance w/ 75/90 Rule;</u> and <u>Chlorine</u> below permitted level.	NOV sent on 8/26/94 requiring Woodcreek to respond by 10/26/94. Inspection forwarded to the enforcement section to follow up on flow exceedance.	TWC § 26.121 30 TAC §§ 305.125, 305.126 30 TAC § 317.6	TNRCC Files - NOV dated 8/26/94; Inspection Report signed 8/28/94.
07-11-94 ¹	NOV	Woodcreek failed to submit reports concerning effluent quality for 9/93.	NOV issued 7/11/94 requesting delinquent reports.	TWC §§ 26.121, 26.042 30 TAC §§ 305.125, 319.1 - 319.11 Permit: V.B, VI.4, VII.1 & VII.3	TNRCC Files - NOV dated 7/11/94

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7-7-94 ¹ 7-25-94 ²	Comp	Phone complaint about chronic problem with strong foul odor from low water crossing area in vicinity of wastewater package plant.	TNRCC inspected complaint on 7/25/94 and did not detect any odors at that time. Report stated that both plants were found in compliance with permit parameters; however, it also stated that violations are noted in the inspection report (see above 7/25/94 inspection). Odors only from naturally decaying vegetation.	TWC §§ 26.121, 26.042 30 TAC §§ 305.125, 305.126 Permit: V, VI.4, VII.1, VII.3, VII.7	TNRCC Files - TNRCC ltr dated 8/29/94; Investigation Report dated 8/29/94, EF# 940700460
6-28-94 ¹	Comp	Phone complaint about odor problems from sewage treatment plant caused by effluent used to irrigate golf course	TNRCC inspected complaint on 7/25/94 and did not detect any odors at that time; however, violations were noted. TNRCC to monitor and follow up. Facility to reply by 10/26/94 (unable to locate in TNRCC files).	TWC § 26.121 30 TAC §§ 305.125, 305.126 Permit: V, VI.4, VII.1, VII.3, VII.7	TNRCC Files - TNRCC ltr dated 8/29/94; Investigation Report dated 8/29/94, EF # 940800842
9-24-91 ¹	Comp	Effluent holding pond overflows when it rains & runs into golf course & creek	TNRCC resolved complaint on 1/21/92 stating permittee has completed extensive modifications to plant that should prevent overflows.	31 TAC § 305.125 Permit: V, VI.4, VI.5, VI.8 VII.1, & VII.3	On-line search - Investigation No. 910900018
04-23-91 ¹	Comp	Strong odors coming from treatment plant	TNRCC resolved complaint 6/25/91 stating that no odors noticed on several visits.	31 TAC § 305.125 Permit: VI.4, VI.5, VII.1 & VII.3	On-line search - Investigation No. 910400694

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04-04-91 ¹	Comp	Nuisance odors - bad odors especially at night	TNRCC conducted annual inspection on 4/16/91 and unannounced site visit on 5/21/9. No odor problems detected.	31 TAC § 305.125 Permit: VI.4, VI.5, VII.1 & VII.3	TNRCC Files - TNRCC ltr dated 6/27/91 On-line search - Investigation No. 910400458
05-02-90 ¹	NOV	Golf course allows 2 holding ponds to overflow; irrigates course w/ effluent	TNRCC sent NOV ltr; district waiting response	31 TAC § 305.125 Permit: V, VI.4, VI.8, VII.1 & VII.3	On-line search - Investigation No. 900500002

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AQUASOURCE/WOODCREEK UTILITIES - PHASE II
PERMIT #11790-001
Hays County

Date*	NOV SRV Comp Other	Description	TNRCC Action	Applicable Statute/Rule	Source
1-2-01	SRV	Discharge of about 350 gallons on the ground at Arrow Point Circle caused by someone digging up the sewer service line and pulling gasket pipe apart.	AqS sprinkled HTH on the ground to disinfect, repaired service line, and reburied. (No mention of notifying authorities about vandalism). No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 1/4/01.
12-20-00 ¹	Comp	Main is leaking	AqS prepared service order (WK17987) to repair leak	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS files - Service Order completed 12/20/00
12-18-00 ¹	Comp	Leak and sewer problem reported by demolition crew needing water turned off.	AqS prepared service order (SV12713) to turn water off and repair leak.	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS files - Service Order completed 12/18/00

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12-15-00 ¹	Comp	Leak from ruptured service line reported by demolition crew.	AqS prepared service order (WK17718) to repair leak	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS files - Service Order completed 12/15/00
12-1-00 ¹	Comp	Customer complained of leak spewing everywhere	AqS prepared service order (WK16623) to repair leak	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS files - Service Order completed 12/1/00
11-00	Other	0.037 MGD flow average for November exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 11-00
11-5-00	SRV	Woodacre lift station discharged about 50 gallons of sewage into roadway at Woodacre Dr. and Pleasant Valley. Caused by pumps being down because of bad capacitors.	AqS chlorinated area and replaced capacitors. No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 11/6/00
10-00	Other.	0.092 MGD flow average for October exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 10-00

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9-00	Other	0.055 MGD flow average for September exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 9-00
9-30-00	SRV	Discharge of about 20 gallons caused by grinder station backing up and running over because blockage in 3" force main caused station not to pump down.	AqS vacuumed up debris, added bleach mix to area, and repaired pipe. AqS also video taped line with camera. No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 9/30/00
8-00	Other	0.055 MGD flow average for August exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 8-00
8-16-00	SRV	Discharge of about 1500 gallons on golf course fairway because golf course personnel were trying to fix a leak they believed to be caused by the irrigation line. Instead it was an effluent line, and they struck it while digging.	AqS added 2 gallons of bleach to area, made repairs as necessary to correct problem, and advised golf course personnel of where lines are and that they should contact AqS before digging. No action by TNRCC noted.	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, VI.4, VI.5, VII.1 & VII.3	AqS files - Noncompliance Notification reported 8/17/00
7-00	Other	0.104 MGD flow average for July exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 7-00

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6-00	Other	0.0356 MGD flow average for June exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 6-00
5-00	Other	0.064 MGD flow average for May exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 5-00
5-27-00	SRV	Wood Acre Lift station spewed about 20 gallons of sewage over into roadway. Caused by electrical problems, pump down.	AqS added CL2 mix and electricians working on system. No action noted by TNRCC.	TWC § 26.121 30 TAC §§ 305.1, 305.125, 317.3(e) Permit: IV, VI.4, VII.1 & VII.3	TNRCC Files - Noncompliance Notification reported on 5/27/00.
4-22-00 ¹	SRV	Complaint called AqS about leak in treated effluent line between treatment plant and effluent holding pond. Treated effluent leaked off of AqS property about 50 feet south of Cypress Creek's bank and traversed an area of 200 yards by 10 yards, approximately 50,000 gallons. The time the leak started was unknown.	AqS applied antibacterial spray to affected areas, added top soil to areas most saturated, and repaired pipe, but also stated that there was no way to guarantee another leak will not recur. No action by TNRCC noted.	TWC §§ 26.121, 26.039 30 TAC §§ 305.1, 305.125, 327.1-327.5 Permit: IV, V, VI.4, VI.5, VII.1, VII.2.a & VII.3	AqS files - Noncompliance Notification reported 5/3/00

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3-00	Other	0.042 MGD flow average for March exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 3-00
2-00	Other	0.043 MGD flow average for February exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 2-00
1-00	Other	0.042 MGD flow average for January exceeded permit level.	No action by TNRCC noted	TWC § 26.121 30 TAC §§ 305.1, 305.125 Permit: IV, V, VI.4, VII.1 & VII.3	AqS files - No Discharge Monthly Report for 1-00
1-17-00	NOV Other	Permit renewal not submitted and permit expired as of 1/17/00.	TNRCC ltr to Woodcreek Utilities notifying it that any activity after 1/17/00 is a violation subject to administrative penalties.	TWC § 26.121 30 TAC §§ 305.1, 305.63, 305.65 & 305.125 Permit: IV, VII.1 & VII.3	TNRCC File - Ltr dated 7/28/00

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10-25-99 ²	NOV	Compliance Inspection Report on 10/25/99: Unsatisfactory compliance with flow limits - exceeded 8 out of 8 months. (TNRCC did not evaluate irrigation practices).	NOV ltr sent 12/17/99.	TWC § 26.121 30 TAC § 305.125 Permit: V, VI.4, VII.1 & VII.3	TNRCC Files - NOV dated 12/17/99 & Compliance Review Inspection Report dated 12/17/99
7-13-99	Other	AqS lacks control of operation, maintenance and disposal of treated effluent by irrigation.	AqS signed Amended and Restated Water Use Agreement thereby transferring control of operation, maintenance and disposal of treated effluent by irrigation to the Woodcreek Country Club golf course.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VI.5, VI.6, VI.7, VI.8, VI.14, VI.15, VI.18, VII.1, VII.3 & VII.6	AqS files - 1999 Amended and Restated Water Use Agreement signed 7-13-99.
5-15-99	SRV	3' sewer line blocked w/ grease, spewed out of customer's clean out about 10 gals.	AqS used sewer snake to remove blockage; cleaned up debris and applied CL2 mix to area.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	TNRCC files - Noncompliance Notification reported 5/15/99
2-13-99	SRV	Discharge onto roadway towards wooded area about 500 gallons of sewage out of Woodacre Dr & Pleasant Valley Lift Station's pit caused by vandals that cut seal on the electric box and shut off the main breaker.	AqS sprayed pavement with diluted chlorine solution and flushed with potable water. Reported to Sheriff's Dept. Local Security and locked bottom panel out. Restored power back to lift station.	TWC § 26.121 30 TAC §§ 305.125, 317.7 & 317.3(e) Permit: V, VI.4, VII.1 & VII.3	TNRCC Files - Noncompliance Notification reported on 2/13/99

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2-9-99 ²	NOV	Compliance Inspection Report on 2/9/99: <u>Unsatisfactory compliance with flow limits.</u> From 3/98 to 1/99 plant exceeded flows 6 out of 11 months. TNRCC did not evaluate irrigation practices.	NOV ltr issued 4/8/99.	TWC § 26.121 30 TAC § 305.125 Permit: V, VI.4, VII.1 & VII.3	TNRCC Files - Compliance Review Inspection Review signed 4/8/99 & NOV dated 4/8/99
1-18-99	SRV	About 3-500 gallons of raw sewage flowed out of clean out on the main and ran down vacant lot on Woodacre Dr. Caused by grease & trash plug in main line.	AqS cleaned up paper & trash; raked ground to mix sewer with soil; disinfected with small amount of chlorinated water; called in hydro-jet truck from Cap-Tex to clean the main line twice because a grease & trash plug formed.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	TNRCC Files - Noncompliance Notification reported on 1/19/99.
11-25-98	SRV	Discharge of sewage at clean out caused by rocks and debris backing up sewage line.	AqS jetted out lines and manholes; removed debris; cleaned spill area; disinfected; and covered spill with dirt.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	TNRCC Files - Noncompliance Notification reported on 11/30/98.
9-20-98	SRV	Woodacre lift station overflowed and discharged about 1000 gallons across intersection of Woodacre & Pleasant Valley to uncleared lot because of faulty float switch.	AqS put HTH on ponded water then flushed with potable water off the street on to vacant uncleared land. Also replaced all floats and other electrical problems on 9-21-98. No TNRCC action noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 9/21/98

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3-18-98	SRV	About 4000 gallons of sewage flowed from Force main's clean out tee traveling 1 ½ blocks down Country Place to Woodcreek intersection. Caused by failing to install proper clean out. Tee was duct taped and buried, but the tape blew off when it got older.	AquaSource excavated hole to catch sewage ahead of flow. Collected sewage was transported to waste water plant and diluted bleach was sprayed on ponded water. Also, a 6" cap was glued on clean out tee. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.4, VII.1 & VII.3	AqS files - Noncompliance Notification reported 3/19/98
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2-19-98 ²	NOV	<p>Compliance Inspection conducted on 2/19/98: <u>Unsatisfactory Unauthorized discharges:</u> Leak from manhole on effluent transfer line observed. Reported by public. At the time of inspection, line no longer in use and valved off. Fall in the line created enough pressure to cause the manhole to leak. Also, public alleged that the effluent holding pond had overflowed (complaint not in TNRCC file). Could not be substantiated during inspection, but noticed recent work on pond levy to ensure maintenance of 2 foot freeboard. <u>Compliance w/ 75/90 Rule:</u> 1/97-12/97, facility exceeded 75% of permitted flow for Mar., July, Aug., Sept., & Oct.</p>	NOV ltr issued 3/24/98.	<p>TWC §26.121 30 TAC §§ 305.125, 305.126 Permit: V, VI.4, VI.8 VII.1, VII.3 & VII.7</p>	<p>TNRCC Files - Compliance Review Inspection Report signed 3/24/98 & NOV dated 3/24/98</p>
11-10-97 ²	Comp	<p>Phone call complaint that no check valve installed at grinder pump connection at sewer main</p>	<p>TNRCC contacted and advised Woodcreek of requirements for 2 backflow prevention devices on grinder pump installations.</p>	<p>30 TAC §§ 305.125, 317.2 Permit: VI.4, VII.1 & VII.3</p>	<p>TNRCC Files - Complaint No. 119800113 investigation report</p>

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10-9-96 ²	Other	Compliance Review Inspection Report conducted on 10/9/96 - no violations/deficiencies			TNRCC Files - TNRCC ltr dated 11/15/96 & Compliance Review Inspection Report signed 11/15/96
3-21-96 ¹	NOV	Woodcreek failed to submit soil sample analysis for 9/95	TNRCC sent NOV ltr requesting delinquent report	TWC § 26.121(c) and § 26.042 30 TAC §§ 305.125, 319.1-319.11 Permit: VI.10, VII.1 & VII.3	TNRCC Files - TNRCC ltr dated 3/21/96
3-9-95 ¹	NOV	Woodcreek failed to submit soil sample for 9/94	TNRCC sent second NOV ltr requesting delinquent report	TWC § 26.121(c) & § 26.042 30 TAC §§ 305.125, 319.1 - 319.11 Permit: VI.10, VII.1 & VII.3	TNRCC Files - TNRCC ltr dated 3/9/95
1-20-95 ¹	NOV	Woodcreek failed to submit reports concerning effluent quality for 9/94	TNRCC sent NOV ltr requesting delinquent report	TWC § 26.121(c) 30 §§ TAC 305.125, 319.1 - 319.11 Permit: V.B, VI.4, VII.1 & VII.3	TNRCC Files - TNRCC ltr dated 1/20/95

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7-25-94 ²	Other	Compliance Review Inspection Report conducted on 7/25/94 - no violations/deficiencies			TNRCC Files - TNRCC ltr dated 8/26/94 & Annual Inspection Report 8/29/94
7-11-94 ¹	NOV	Woodcreek failed to submit soil sample for 9/93	TNRCC sent NOV ltr requesting delinquent report	TWC § 26.121(c) & § 26.042 30 TAC §§ 305.125, 319.1-319.11 Permit: VI.10, VII.1 & VII.3	TNRCC Files - TNRCC ltr dated 7/11/94

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AQUASOURCE/WOODCREEK UTILITIES - PHASE III
PERMIT #13989-001
Hays County

Date*	NOV SRV Comp Other	Description	TNRCC Action	Applicable Statute/Rule	Source
1-05-01 ¹	Other	Brookshire Brothers lift station overflowed discharging a stream of sewage onto community center's property. Time lapse of spill unknown. Caused by blown power fuse.	AqS contained spill and covered with powdered chlorine. No action by TNRCC noted.	TWC § 26.121 30 TAC § 305.125 Permit: VI.3, VII.1, VII.2.b, VII.3 & VII.6	Wimberley View Newspaper Articles 1/10/01 and 1/13/01
7-13-99	Other	AqS lacks control of operation, maintenance and disposal of treated effluent by irrigation.	AqS signed Amended and Restated Water Use Agreement thereby transferring control of operation, maintenance and disposal of treated effluent by irrigation to the Woodcreek Country Club golf course.	TWC § 26.121 30 TAC § 305.125 Permit: VI.3, VI.4, VI.5, VI.6, VI.7, VI.14, VI.15, VI.20, VII.1, VII.2.b, VII.3, VII.4 & VII.6	AqS files - 1999 Amended and Restated Water Use Agreement signed 7-13-99.

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Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.

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OPA *g*

JAN 30 2001

CHIEF CLERKS OFFICE

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TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

January 29, 2001

Ms. LaDonna Castanuela
Chief Clerk (MC 105)
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087
FAX Number: 512-239-3311

RE: The Village of Wimberley's Public Comments, Request for a Public Meeting, and Request for a Contested Case Hearing concerning the Application of Woodcreek Utilities, Inc., TNRCC Permit Number 13989-001

Dear Ms. Castanuela:

On behalf of the Village of Wimberley (Wimberley), I submit the following public comments and requests for a public meeting and contested case hearing regarding the above-referenced application.

Wimberley is concerned about Woodcreek Utilities, Inc.'s (Woodcreek Utilities), and its parent corporation's, AquaSource Utility, Inc., commitment to protecting Wimberley's creeks and streams. This concern, in part, stems from the fact that AquaSource has refused to work with its host city, Wimberley, on various environmental protection concerns related to its wastewater treatment plant, lift stations, collection lines, and disposal methods. It appears that Woodcreek Utilities and AquaSource are not committed to protecting Wimberley's creeks and streams. It is for this reason, Wimberley submits the following comments and requests for hearing.

I. Comments on Relevant and Material Disputed Issues of Law and Fact

A. Woodcreek Utilities' Compliance Record

The Village of Wimberley questions Woodcreek Utilities' ability to properly operate its wastewater treatment plant and associated facilities. Woodcreek Utilities has a history of poor regulatory compliance. See compliance history of TNRCC Permit Numbers 11431-001 and 11790-001 and TNRCC Agreed Order No. 1998-0514-MWD-E. Its compliance record includes numerous unauthorized discharges, the most recent of which occurred on or about January 5, 2001. Because of this concern, Wimberley requests that the TNRCC carefully and fully review all the compliance

Austin • Dallas

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Ms. Castanuela
January 29, 2001
Page 2

records of the many facilities operated by Aquasource, as required by Texas Water Code § 26.0281. (It appears that AquaSource operates about 114 wastewater treatment facilities in Texas.)

Additionally, because Woodcreek Utilities has a history of poor compliance, Wimberley requests that additional provisions, such as reporting requirements and adequate spill response and contingency plans, be added to the permit to ensure proper TNRCC oversight of Woodcreek Utilities facilities.

Further, it appears that the wastewater collection, transport, and treatment facilities may have been inadequately designed and constructed. For example, on January 5, 2001, the Brookshire Brother lift station had an unlawful discharge of about 500 gallons of untreated sewage, which flowed onto neighboring property. A spill of this magnitude could possibly have been prevented if Woodcreek Utilities had designed the facility with sufficient capacity to ensure that no discharge of untreated wastewater would occur, and Woodcreek Utilities had installed a warning system, like an auto-dialer, to notify the system's operator of the problem.

This permit should not be renewed until the potential problems with Woodcreek Utilities' facilities have been resolved.

B. The Irrigation of the Golf Course.

Wimberley is also concerned that the areas irrigated by Woodcreek Utilities do not have adequate soil depth and/or appropriate crops to ensure that no effluent is discharged from the irrigated areas. Should the swallow soils become too saturated, effluent will be discharged from the property into creek and streams that run through the Village of Wimberley. The draft permit contains no requirements that Woodcreek Utilities measure the soil moisture. The permit only requires that Woodcreek Utilities not apply wastewater during rainfall events or when the ground is frozen or saturated. However, given Woodcreek Utilities compliance problems, additional permit provisions should be included to ensure that this provision is met.

II. Request for a Public Meeting and Contested Case Hearing

Wimberley respectfully requests that a public meeting be held in Wimberley to allow Wimberley and its citizens to provide additional written and oral comments about this application, and to ask questions about the application.

Further, the TNRCC should not act on this permit without providing an opportunity for a contested case hearing because, as previously explained, Woodcreek Utilities' compliance history for the previous five years raises serious concerns regarding its ability to comply with the material terms of the permit.

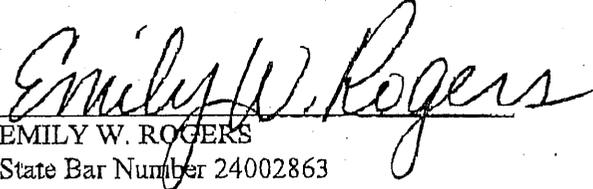
Ms. Castanuela
January 29, 2001
Page 3

Upon receipt of the Executive Director's Response to Comments and Decision on the Application, if Wimberley's concerns are not adequately addressed by the Executive Director, Wimberley will request a contested case hearing to consider this application.

Thank you for your attention to this matter.

Respectfully submitted,

BICKERSTAFF, HEATH, SMILEY, POLLAN
KEVER & MC DANIEL, L.L.P.
1700 Frost Bank Building
816 Congress Avenue
Austin, Texas 78701
(512) 472-8021
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OPA
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DALLAS OFFICE

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Further, the TNRCC should not act on this permit without providing an opportunity for a contested case hearing because, as previously explained, Woodcreek Utilities' compliance history for the previous five years raises serious concerns regarding its ability to comply with the material terms of the permit.

Ms. Castanuela
January 29, 2001
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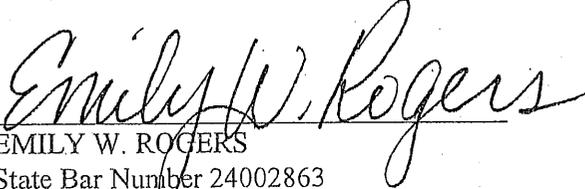
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