

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 15, 2009

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

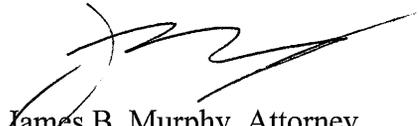
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JUN 15 PM 2:06
CHIEF CLERKS OFFICE

**RE: NORTHWEST HARRIS COUNTY MUD NO. 19
TCEQ DOCKET NO. 2009-0409-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing in the above-entitled matter.

Sincerely,


James B. Murphy, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2009-0409-MWD

2009 JUN 15 PM 2:06

**IN THE MATTER OF
THE APPLICATION OF
NORTHWEST HARRIS
COUNTY MUNICIPAL
UTILITY DISTRICT
NO. 19 FOR TPDES
PERMIT NO.
WQ0014908002**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

CHIEF CLERKS OFFICE

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUEST FOR HEARING**

TO THE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on
Environmental Quality (Commission or TCEQ) files this Response to Request for
Hearing in the above-referenced matter and respectfully shows the following.

I. INTRODUCTION

A. Background of Facility

Northwest Harris County Municipal Utility District No. 19 (Applicant) has
applied to the TCEQ for a new TPDES permit authorizing Applicant to discharge treated
domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The
facility was previously permitted under TPDES permit No. WQ0012153001, which
expired March 1, 2008. The facility is located at 25714 Steeple Canyon Road, Spring,
Harris County, Texas. The facility serves the Augusta Pines and Coventry Subdivisions
within Northwest Harris County Municipal Utility District No. 19.

The treated effluent is discharged to Harris County Flood Control District (HCFCD) ditch M104-00-00; thence to Willow Creek; thence to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for HCFCD ditch M104-00-00 and high aquatic life uses for Willow Creek. The designated uses for Segment No. 1008 are high aquatic life uses, public water supply, and contact recreation.

In accordance with 30 TEXAS ADMIN. CODE (TAC) § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review preliminary determined existing water quality uses will not be impaired by this permit action and numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review preliminarily determined no significant degradation of water quality is expected in Willow Creek, which has been identified as having a high aquatic life use, and existing uses will be maintained and protected.

B. Procedural Background

TCEQ received this application on June 6, 2008. On July 23, 2008, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain Water Quality Permit (NORI) was published on August 13, 2008 in the *Houston Chronicle* in English and on August 13, 2008 in the *La Voz De Houston* in Spanish. The ED completed the technical review of the application on September 11, 2008,¹ and prepared a draft permit. The ED issued the Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater (NAPD) on October 23, 2008, and it was published on November 19, 2008 in the *Houston Chronicle*

¹ This date differs from the ED's Response to Comments, which shows September 16, 2008.

in English and November 19, 2008 in the *La Voz De Houston* in Spanish. The public comment period ended on December 19, 2008. On February 19, 2009, the ED filed its decision and Response to Comments, which the Chief Clerk's office mailed on February 23, 2009. The deadline to request a contested case hearing was March 25, 2009.

TCEQ received one timely comment and request for contested case hearing from Shaun Phillip Lopez on October 16, 2008. OPIC recommends denying the hearing request submitted by Mr. Lopez.

II. APPLICABLE LAW

This application was declared administratively complete on July 23, 2008. Because the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of Texas Water Code section 5.556, added by Act 1999, 76th Leg., ch. 1350 (commonly known as "House Bill 801").

Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during

the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), an “affected person” is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” This justiciable interest does not include an interest common to the general public. *Id.* Relevant factors considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

The Commission shall grant an affected person’s timely filed hearing request if:

(1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission’s decision on the application. 30 TAC § 55.211(c).

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;

- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

III. DISCUSSION

A. Determination of Affected Person Status

The TCEQ received one request for a contested case hearing from Shaun Phillip Lopez. Mr. Lopez resides at 6626 Radley Drive, Spring, Texas. Mr. Lopez expresses concern about evasive conduct by Applicant and TCEQ regarding the public notification process, and about collaboration between Applicant and TCEQ to cause pollution with the proposed discharge permit. He also expresses concern about adverse effects caused by the proximity of both the facility and discharge route to his residence. In addition, he states that paragraph seven (7) in the NAPD, which requires a specific description of how he is adversely affected by the facility in a way not common to the general public, applies to Applicant and not him. He also objects to deposit of wastewater in any form or fashion. He reiterates his request for a contested case hearing irrespective of technical review of the permit application or of the level of public interest in the application.

Mr. Lopez does not satisfy the requirements of 30 TAC § 55.203 (Determination of Affected Person). Mr. Lopez states his location as being three (3) miles from the facility and 100 yards from the discharge route; however, the map provided by the ED staff shows Mr. Lopez's property as located approximately eight (8) miles from the

facility and discharge route. Moreover, Mr. Lopez's property appears to be located upstream of the intersection of Cypress Creek and the discharge route. Based on the location of Mr. Lopez's property relative to the facility and discharge route, Mr. Lopez has not shown a likely impact on his property. *See* 30 TAC § 55.203(c)(4). His objection to the deposit of wastewater in any form or fashion is "[a]n interest common to members of the general public and does not qualify as a personal justiciable interest." 30 TAC § 55.203(a). For these reasons, OPIC concludes Mr. Lopez is not an affected person entitled to a contested case hearing.

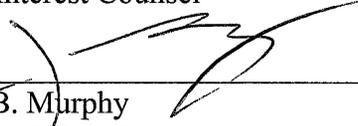
Mr. Lopez may submit more information about the location of his property and the nature of his interests in this matter by filing a Reply to this Response to Request for Hearing pursuant to 30 TAC § 55.209(g). The Reply must be filed with the Chief Clerk no later than June 29, 2009 and served on the same day to the ED, OPIC, and Applicant. OPIC will evaluate any information provided in such a Reply.

IV. CONCLUSION

OPIC recommends denying the hearing request filed by Shaun Phillip Lopez.

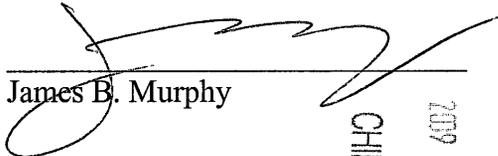
Respectfully submitted,

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Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2009 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.



James B. Murphy

CHIEF CLERKS OFFICE

2009 JUN 15 PM 2:06

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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TCEQ DOCKET NO. 2009-0409-MWD

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