



Phone: 512.600.3800 Fax: 512.600.3899  
July 12, 2013

Ms. Bridget Bohac  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, Texas 78711-3087

Re: Hays County MUD #5; TCEQ Permit Renewal Application; TPDES Permit Number WQ 0014358-001

Dear Ms. Bohac:

This firm represents Hays County MUD No. 5 (the District) in this matter and we are filing this, the District's Response to Request for Contested Case Hearing by Save our Springs Alliance (SOS). The District urges the Texas Commission on Environmental Quality (TCEQ) to deny the SOS request.

The District bases this Response on (1) Section 26.028(d), *Water Code*, and the rules promulgated thereunder and (2) the Executive Director's (ED) Response To Comments (RTC) in this matter.

In short, Section 26.028(d) and 30 TAC Section 55.201(i)(5) each hold that there is no right to a contested case hearing for renewal applications if certain criteria are met. This application is for a renewal and does not change the quantity of waste to be disposed. In addition, proper notice was given and the public had ample opportunity for public meetings.

### **Current Permit and Renewal Application**

The District has applied to the TCEQ for a renewal to its Texas Land Application Permit (TLAP). The District has also requested certain changes to the Interim Phases of the Permit. These changes are requested to reflect the growth in the subdivision and do not alter the total amount authorized. The District sits over the HighPointe Subdivision in a fast growth part of Northern Hays County and growth has been more rapid than initially expected.

The plant and disposal sites are located approximately 2.3 miles south of U.S. Highway 290, and approximately 6,500 feet east of Sawyer Ranch Road. The disposal sites are located

throughout the HighPointe Subdivision. The entrance to the subdivision is located on the east side of Sawyer Ranch Road, approximately 1.7 miles along Sawyer Ranch Road, south of the intersection of U.S. Highway 290 and Sawyer Ranch Road. Sawyer Ranch Road is located 8.2 miles west of the intersection of U.S. Highway 290 and Texas Highway 71 (the “Y” in Oak Hill), and 5.5 miles east of Dripping Springs in Hays County, Texas 78737. The wastewater treatment facility and disposal sites are located in the drainage basin of Onion Creek in Segment No. 1427 of the Colorado River Basin.

As stated, Permit No. 14358-001 authorizes the District, in Final Phase, to dispose treated domestic wastewater at a daily average flow not to exceed 300,000 gallons via public access subsurface drip irrigation with a minimum area of 68.87 acres. The permit also contains two interim phases--40,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 9.18 acres in the Interim I phase, 120,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 27.55 acres in the Interim II phase.

Due to the pattern of growth, the District would like to change the Interim Phases to reflect, at least somewhat more accurately, the flow demands. As such, the Application requested the removal of the 40,000 gallons per day Interim I phase and the addition of a proposed 150,000 gallons per day Interim II phase.

Thus, the new Interim Phases would be:

Interim Phase I--120,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 27.55 acres;

Interim Phase II--150,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 34.44 acres.

Again, the current final volume of 300,000 gallons per day is not changed. Of course, the renewed permit, like the current permit, will not authorize the discharge of pollutants to water in the state.

### **Legal Standard**

Turning first to the statutory provision, Section 26.028(d), *Water Code*, holds as follows:

**(d) Notwithstanding any other provision of this chapter, the commission, at a regular meeting without the necessity of holding a public hearing, may approve an application to renew or amend a permit if:**

**(1) the applicant is not applying to:**

**(A) increase significantly the quantity of waste authorized to be**

**discharged; or**

**(B) change materially the pattern or place of discharge;**

**(2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;**

**(3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment; and**

**(4) the commission determines that an applicant's compliance history under the method for using compliance history developed by the commission under Section 5.754 raises no issues regarding the applicant's ability to comply with a material term of its permit.**

The District is not increasing the quantity of waste authorized to be discharged nor is the District changing the pattern or place of discharge. In fact, as described below, the District does not discharge—Permit No. WQ 0014358-001 is a TLAP or no-discharge permit. Further, as mentioned earlier, proper notice was provided—by publishing in newspapers—Spanish and English—on July 19, 2012. The ED timely filed his RTC.

Concerning compliance history, the District's record raises no issues as to its ability to comply with the permit. Finally, the Application complies with Section 26.028(d)(2) in that the treatment levels will remain the same. That is, the quality of the waste to be disposed remains the same.

Section 26.028(d)(3) does not apply as this permit is not part of the NPDES programs. Nonetheless, as discussed above, SOS had the opportunity to request a public meeting. Their request was properly denied for lack of public interest.

The TCEQ has implemented this statutory provision in 30 TAC Section 55.201(i)(5). Similar to the discussion regarding Section 26.028(d), the District's renewal application, all provisions are met which prohibit a contested case hearing.

### **SOS concerns and ED Response to Comments**

SOS makes a number of claims and points to some sampling results which SOS claims link certain elevated constituents to the District's subsurface drip irrigation. The ED, in his Response to Comments, addresses those concerns. The District, not surprisingly, concurs with the ED's RTC while SOS, also not surprisingly, disagrees.

Rather than re-address each point, the District will point out that, as the ED noted, the sampling results that SOS cite do not have a conclusive source. Instead, SOS is pointing out an issue that is discussed and re-discussed in most every development—what is the cause of any change or impact to a stream? Nitrates can occur in any number of ways including sunlight and fertilizer. No doubt that the abnormally dry and hot conditions in this part of Texas play a role.

These points are not intended to be a scientific rebuttal but are intended to illustrate that SOS' concern seems to be with the overall development in Central Texas and not just on single “no-discharge” plant. Further, their concerns seem more in the nature of enforcement or rule changing than on focusing on permit parameters.

The District takes its wastewater treatment and disposal responsibilities seriously. Further, the District is quite sensitive to the well-being of its neighbors. As such, the District has incurred great expense to comply and exceed the permit conditions. Here, the subsurface drip is strictly limited on its application rate and must be properly managed which the District does.

Very truly yours,

(signed)

Andrew N. Barrett

Cc: Mailing list attached

**MAILING LIST**

**HAYS COUNTY MUNICIPAL UTILITY DISTRICT NO. 5  
DOCKET NO. 2013-0820- MWD; PERMIT NO.  
WQ0014358001**

**FOR THE APPLICANT:**

Sue Horne  
Austin, Texas 78701

Hays Cou

Robert Callegari  
Austin, Texas 78737 Tel: (512) 432-1015 Fax: (512) 432-1000

CM A Enginee

**FOR THE EXECUTIVE DIRECTOR via electronic mail:**

Timothy Reidy, Staff Attorney  
Environmental Quality  
P.O. Box 13087  
0600 2f 239(5)606

Texas Commission on  
- Environmental L  
- 13087 in, Texas 78711 - Tel: (512) 239

Dex Dean, Technical Staff  
Quality  
13087  
(512) 239-4430

Texas Com  
- Water Quality Division, M C  
- 13087 in, Texas 78711 - 4570(512) 239 Fax:

Brian Christian, Director  
Quality  
Division  
13087  
(512) 239-5678

Texas Com  
Small Business and  
- Pollution Prevention Program, M C  
- 13087 in, Texas 78711 - 4600(512) 239 Fax:

**FOR PUBLIC INTEREST COUNSEL via electronic mail:**

Mr. Blas J. Coy, Jr., Attorney  
Environmental Quality  
Box 13087  
6363

Commission on  
- Public Interest Counsel  
- 13087 in, Texas 78711 - Tel: (512) 239  
- 6363 (512) 239

FOR ALTERNATIVE DISPUTE RESOLUTION  
mail:

via electroni

Mr. Kyle Lucas  
Quality

Texas Commission on  
Alternative Dispute Resolution,

MC-222 P.O. Box 13087  
239-4010

-4015 (512) 239

-3087 in, Texas 78711

REQUESTER:  
Springs Alliance

Bill Bunch Executive  
-4881 Box 684881

Bill Bunch  
Austin, Texas 78704-5395

Springs Alliance 905 W. Oltorf St. Ste. A