

Ms. Kalisek's Direct Line: (512) 322-5847
lkalisek@lglawfirm.com

December 29, 2014

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Bldg. F – 1st Floor
Austin, Texas 78711-3087

VIA ELECTRONIC FILING

Re: West Park Municipal Utility District's Response to Hearing Request regarding the
Application for TPDES Permit No. WQ0012346001;
TCEQ Docket No. 2014-1417-MWD

Dear Ms. Bohac:

Please find enclosed West Park Municipal Utility District's Response to Hearing Request
for filing in the above-referenced matter.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,



Lauren Kalisek

LJK/lmr
Enclosure

cc: H. Brock Hudson
Eric D. Johnson, P.E.
David J. Ross, P.E.
Service List

TCEQ DOCKET NO. 2014-1417-MWD

**APPLICATION BY WEST PARK § BEFORE THE TEXAS COMMISSION
MUNICIPAL UTILITY DISTRICT FOR § ON
TPDES PERMIT NO. WQ0012346001 § ENVIRONMENTAL QUALITY**

**WEST PARK MUNICIPAL UTILITY DISTRICT'S
RESPONSE TO HEARING REQUEST**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, the applicant, West Park Municipal Utility District (the "District") and files its Response to Hearing Request in the above-referenced matter, and would respectfully show the following:

I. INTRODUCTION

The District requests that the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") deny the hearing request submitted by Annette Baldwin and approve the District's application for an amendment to Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012346001 (the "Permit"). Ms. Baldwin's request fails to indicate how she is an affected person with a personal justiciable interest affected in a manner not common to the general public. In addition, all of the issues raised during the public comment period are either not relevant or material to the Commission's consideration of the Application (defined below) or do not raise disputed issues of fact requiring referral.

II. BACKGROUND AND PROCEDURAL HISTORY

On November 5, 2013, the District applied to the TCEQ for a major amendment to the Permit, that will authorize an increase in the discharge of treated domestic wastewater from a

daily average flow not to exceed 0.5 million gallons per day to a daily average flow not to exceed 0.99 million gallons per day (the “Application”).

The Executive Director of TCEQ (the “ED”) declared the application administratively complete on January 8, 2014. The “Notice of Receipt of Application and Intent to Obtain Water Quality Permit,” (the “NORI”) was mailed by the Office of the Chief Clerk and published by the District in the *Houston Chronicle* and in Spanish in *La Voz de Houston* on January 19, 2014. The Application was available for inspection by the public at the TCEQ, Region 12 Office, 5425 Polk Street, Suite H, Houston, Texas.

After completing his technical review of the Application, the ED prepared a “Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision” (“ED Technical Summary”) and issued an initial Draft Permit on March 6, 2014. The “Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater” (the “NAPD”) was mailed by the Office of the Chief Clerk and published by the District in the *Houston Chronicle* and in Spanish in *La Voz de Houston* on April 20, 2014. Ms. Baldwin submitted her comments on March 8, 2014. The ED filed his Response to Public Comments on August 22, 2014. The opportunity to request a contested case hearing or request reconsideration of the ED’s decision on the Application expired on September 22, 2014.¹

III. EVALUATION OF HEARING REQUEST

Section 5.556 of the Texas Water Code expressly provides that in order to grant a hearing request the Commission must determine that: (1) the request was filed by an affected person;

¹ There was one additional hearing request submitted by Sherilyn McQuinn on October 13, 2014. According to TCEQ’s Commissioners’ Integrated Database, Ms. McQuinn also submitted the same October 13, 2014 hearing request via U.S. mail, received by TCEQ on October 20, 2014. However, as Ms. McQuinn’s comments and hearing requests were received after the deadline of September 22, 2014, they were not addressed in the ED’s Response to Comments and are not considered in this Response.

and (2) that the issue: (a) involves a disputed issue of fact; (b) was raised during the public comment period; and (c) is relevant and material to the decision on the Application.² In this instance, both of these statutory prongs are not met: Ms. Baldwin is not an affected person and no issues are presented that meet all elements required by Section 5.556.

Affected Person

Ms. Baldwin's request does not show how she has a personable justiciable interest related to a "legal right, duty, privilege, power, or economic interest, affected by the administrative hearing."³ Rather, the hearing request expresses her concerns about flooding of the "Memorial area of Houston and Downtown Houston" in general without specific reference to impacts to herself or her property. The interests she raises are those that are common to members of the general public, and, therefore, should not serve as a basis for a contested case hearing.⁴ In addition, Ms. Baldwin is not included as one of the landowners at Attachment 2 of the Application listing adjacent property owners and property owners 1 mile downstream of the discharge.

Issues not Relevant and Material

In addition, several of the issues raised during the public comment period are not relevant and material to the Commission's decision as they relate to flooding concerns (Comment 1); alternatives to or changes in the discharge route (Comments 2 and 3); profit motive of the Applicant (Comment 4); impacts to price of flood insurance (Comment 6); and a requirement for a "utility study" to determine impacts on existing neighborhoods (Comment 12). As noted in the ED's Response to Comments, none of these issues fall within the scope of the Commission's consideration of the Application.

² TEX. WATER CODE ANN. § 5.556(d) (West 2008).

³ *Id.* at §5.115(a).

⁴ *Id.*

No Disputed Fact Issues

Of the remaining issues, the comments and hearing request fail to raise any dispute with the information provided in the record before the Commission, including the Application, the ED's Response to Comments, or the ED's Technical Summary. (These comments include the effects of the discharge on the environment, water quality or human health [Comment 5]; treatment of medical waste [Comment 7]; odor concerns [Comment 8]; potential for stagnant water [Comment 13]; and emergency backup systems [Comment 14]). Therefore, the Commission may move forward with approval of the Application. The remaining Comments 9-11 relate to general questions regarding the application and level of review that did not raise specific factual questions or issues.

IV. OTHER ELEMENTS OF RULE 55.209(e)

Section 55.209(e) of the Commission's procedural rules also requires this Response to address several other related factors in the consideration of hearing requests, and the District's evaluation of such factors are set forth below.

(1) Whether the requestor is an affected person:

The requestor is not an affected person. See discussion at Part III above.

(2) Which issues raised in the hearing request are disputed:

The hearing request does not raise disputed issues within the scope of the Commission's consideration of the Application. Ms. Baldwin raised general flooding concerns. See discussion at Part III above.

(3) Whether the dispute involves questions of fact or law:

The hearing request does not raise disputed fact or law issues within the scope of the Commission's consideration of the Application. Ms. Baldwin raised general flooding concerns. See discussion at Part III above.

(4) Whether the issues were raised during the public comment period:

Ms. Baldwin's comments 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 ED's Response to Comments:

No comments have been withdrawn.

(6) Whether the issues are relevant and material to the decision on the Application:

Although some issues raised by other commentors during public comment are relevant and material to the Commission's decision, there are no related disputed issues of fact to support a referral to a contested case hearing. See discussion at Part III above.

(7) A maximum expected duration for the contested case hearing:

If, in the alternative, a hearing is granted, the District proposes a period of no greater than 90 days.

V. CONCLUSION

Because Ms. Baldwin is not an affected person and the issues raised in public comment do not meet the statutory requirements for referral pursuant to Section 5.556 of the Texas Water Code, the District respectfully requests that the Commission deny the request and approve the Application.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900

Austin, Texas 78701

TELEPHONE: (512) 322-5847

FAX: (512) 472-0532

By: Lauren Kalisek ^{lmr}

LAUREN KALISEK

State Bar No. 00794063

**ATTORNEYS FOR
WEST PARK MUD**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of West Park Municipal Utility District's Response to Hearing Request was served on the following by U.S. Regular Mail, Certified Mail (return receipt requested), electronic mail, hand delivery and/or facsimile at the address listed below on this 29th day of December, 2014.

FOR THE EXECUTIVE DIRECTOR:

Brian Christian, Director
Texas Commission on Environmental Quality
Small Business and Environmental Assistance
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087

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

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

FOR THE PUBLIC INTEREST COUNSEL:

Vic McWherter, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

PROTESTANTS/INTERESTED PERSONS:

See attached list.


Lauren Kalisek^{ime}
Lauren Kalisek

ANDERSON , ERIC V
19718 SAN GABRIEL DR
HOUSTON TX 77084-5219

BAKER , MALCOLM
2207 MISSION MILL CIR
HOUSTON TX 77084-6033

BALDWIN , ANNETTE
PO BOX 218481
HOUSTON TX 77218-8481

BALDWIN , ANNETTE MENNEN
WESTLAKE CIVIC IMPROVEMENT ASSOCIATION
19702 SAN GABRIEL DR
HOUSTON TX 77084-5219

BRADFORD , SHEILA M
19615 MOONHOLLOW DR
HOUSTON TX 77084-5210

BRYANT , MRS CYNTHIA ANN
2403 CYPRESSVINE DR
HOUSTON TX 77084-5228

BRYANT , MR DAVID T
2403 CYPRESSVINE DR
HOUSTON TX 77084-5228

CLARK , MRS SHERRYL R
19415 GAGELAKE LN
HOUSTON TX 77084-4640

ETZEL , MS ELIZABETH I
2307 HAZY CREEK DR
HOUSTON TX 77084-5236

MARQUARDT , MR FRANKLIN
19414 SOUTHAVEN DR
HOUSTON TX 77084-5269

MILLER , LORNA
1914 BRUSHY CREEK CIR
HOUSTON TX 77084-4796

PREATOR , C A
2102 WESTLAKE WAY
HOUSTON TX 77084-4845

REDDITT , STEVE
19714 SAN GABRIEL DR
HOUSTON TX 77084-5219

REKTORIK , BRENN A
2419 CYPRESSVINE DR
HOUSTON TX 77084-5228

RICHARDSON , MR JEROME D
2427 CYPRESSVINE DR
HOUSTON TX 77084-5228

SCHOLWINSKI , MRS CARLA
2418 CROOKED LN
HOUSTON TX 77084-5250

SNITOF SKY , MS ROBIN
19510 FRANZ RD
HOUSTON TX 77084-5256

STRANGE , MRS JEANNE C
2022 WESTLAKE WAY
HOUSTON TX 77084-4843

THOMPSON , SHERRY
19734 SAN GABRIEL DR
HOUSTON TX 77084-5219

VANCE , JIMMY
19702 SOUTHAVEN DR
HOUSTON TX 77084-5223

WEIDO , MR FRANK
2430 CYPRESSVINE DR
HOUSTON TX 77084-5229