

Marisa Weber

From: PUBCOMMENT-OCC
Sent: Monday, November 23, 2015 4:28 PM
To: PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC
Subject: FW: Public comment on Permit Number WQ0014670001
Attachments: SAWS Request.pdf

H
RFR

*MWD
95426*

From: jfreeland@mandf.com [mailto:jfreeland@mandf.com]
Sent: Monday, November 23, 2015 4:10 PM
To: DoNot Reply
Subject: Public comment on Permit Number WQ0014670001

REGULATED ENTY NAME TIMBERWOOD DEVELOPMENT

RN NUMBER: RN104814959

PERMIT NUMBER: WQ0014670001

DOCKET NUMBER:

COUNTY: BEXAR

PRINCIPAL NAME: THE VILLAS AT TIMBERWOOD HOMEOWNERS ASSOCIATION

CN NUMBER: CN604095778

FROM

NAME: Joe Freeland

E-MAIL: jfreeland@mandf.com

COMPANY: Mathews & Freeland, LLP

ADDRESS: 8140 N MOPAC EXPY Ste 2-260
AUSTIN TX 78759-8837

PHONE: 5124047800

FAX:

COMMENTS: See attached Request for Contested Case Hearing/Reconsideration

MWD

MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

JIM MATHEWS
JOE FREELAND

Westpark II, Suite 260
8140 North MoPac Expressway
AUSTIN, TEXAS 78759

(512) 404-7800
FAX: (512) 703-2785

November 23, 2015

Via Electronic Submission & Mail

Bridget C. Bohac, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Request for Contested Case Hearing/Reconsideration - TPDES Permit No. WQ0014670001 Villas at Timberwood HOA Homeowners Association

Dear Ms. Bohac:

We are legal counsel for the San Antonio Water System ("SAWS") and have been authorized by SAWS to make the following request for contested case hearing/reconsideration of the TPDES Permit No. WQ0014670001 requested by Villas at Timberwood Homeowners Association ("Timberwood HOA").

Request for Contested Case Hearing

By May 13, 2105 letter, SAWS filed comments regarding the referenced application, (Attachment A). Subsequently, the Executive Director drafted his response to comments and made changes to the draft permit to address some, but not all, of SAWS comments. SAWS disputes the Executive Director's determination. Furthermore, the Chief Clerk by letter dated October 27, 2015, included instructions for filing a request for a contested case hearing. In conformance with those instructions, SAWS requests a contested case hearing for the reasons discussed below.

Identity of Requester

SAWS is the water and sewer utility for the City of San Antonio, which is a home-rule municipality located in Bexar County, Texas. SAWS' contact information for this proceeding is as follows:

SAWS Contact
Mr. Keith Martin
San Antonio Water System
2800 US Highway 281 N.
San Antonio, TX 78212
Fax: (210) 233-3867

Authorized Representative
Mr. Joe Freeland
Mathews & Freeland, LLP
8140 N. Mo-Pac Expwy Ste 2-260
Austin, Texas 78759
Fax: (512) 703-2785 Phone: (512) 404-7800
jfreeland@mandf.com

SAWS' Demonstration of Affected Person Status

SAWS has interests related to legal rights, duties, privileges, powers, or economic interests affected by Timberwood HOA's application. Some of SAWS' specific interests are as follow:

1. Timberwood HOA's proposed treatment facility will apply treated effluent to land that is located immediately above the Edwards Aquifer recharge zone and will create additional pollutant loading on the aquifer; and
2. Timberwood HOA's proposed treatment facility is located in San Antonio's extraterritorial jurisdiction and subject to San Antonio's Aquifer Protection Ordinance, which is administered by SAWS.

Facts

SAWS believes that the following facts are undisputed:

- Timberwood Development Corporation, the original developer of the Villas at Timberwood subdivision, obtained Permit No. WQ0014670001 on July 12, 2006. At that time, no homes had been constructed in the subdivision.
- Permit No. WQ0014670001 was renewed on May 10, 2010. At that time, approximately two houses had been constructed in the subdivision.
- Permit No. WQ0014670001 was transferred from Timberwood Development Corporation to Timberwood HOA on June 21, 2012. At that time, approximately 10 houses had been constructed in the subdivision.
- Based on effluent monitoring data submitted by the applicant (Attachment A), significant flows to the plant did not begin until February 2013. At which time, approximately 35 houses had been constructed.
- Existing Permit No. WQ0014670001 contains a single effluent limitation (BOD-5 - 65 mg/l). Based on effluent monitoring data submitted by the applicant (Attachment A), the applicant began exceeding that limit beginning in September 2013, and has exceeded the limits every month since September 2013. Since September 2013, the monitored BOD-5 has ranged from a low of 86 mg/l (132% of the limit) to a high of 164 mg/l (252% of the limit).
- Existing Permit No. WQ0014670001 requires the permittee to report any effluent violation that deviates from the permitted effluent limitation by more than 40%. SAWS could find no record that applicant reported any deviation from permitted effluent limitations.

SAWS' Disputed Issue

In its comments, SAWS questioned the Executive Director's recommendation to renew the permit without changes, despite the fact that the applicant revealed that it was not complying with the only applicable effluent limit, failed to notify the Commission of this noncompliance as required by its permit, and failed to offer any explanation for the noncompliance in its renewal application. As SAWS stated in its comments – **"The Commission should not blindly renew a permit when the application demonstrates that the permittee cannot comply with the existing permit."** To address these concerns, SAWS recommended that the Executive Director amend the permit to contain provisions to force Timberwood HOA to come into compliance with its permit, including a requirement that Timberwood HOA identify the cause of its noncompliance within 90 days after issuance of the renewed permit and to complete necessary changes to the plant to achieve compliance within 180 days after issuance of the renewed permit.

In response to SAWS' comments, the Executive Director stated that Timberwood HOA had an obligation to report noncompliance, and could be subject to enforcement for noncompliance. The Executive Director did not state that the applicant had in fact reported any noncompliance or that the Executive Director had commenced any enforcement. The Executive Director also stated, "It is notable that the effluent limits for BOD5 submitted with the application exceeded the permit limit." The Executive Director wholly failed to determine whether Timberwood HOA has the ability to comply with the draft permit. Instead, the Executive Director changed the draft permit to (1) reduce the permit term, (2) require daily inspections of the facility by a licensed operator, and (3) a schedule of activities to ensure compliance within 18 months after permit issuance.

While SAWS appreciates the changes made by the Executive Director to the draft permit, SAWS does not believe that they go far enough to protect water quality and the Edwards Aquifer. SAWS recognizes that the Commission may include compliance schedules in TPDES permits, but under Commission rules, such schedules "shall require compliance as soon as possible."¹ Also, the rules specify that if the schedule of compliance exceeds one year, the permit must contain interim requirements and dates for their achievement.² The Executive Director's changes to the draft permit fail to meet either of these requirements. Timberwood HOA should be able to come into compliance in far less than 18 months. Timberwood HOA has known about the problems with the plant since at least September 2013. Timberwood HOA could build an entirely new plant in less than 18 months. Additionally, the compliance period in the permit exceeds one year and the permit does not contain interim requirements, such as those suggested by SAWS, or dates for their achievement.

Moreover, SAWS asserts that the Executive Director failed to meet his obligation to determine whether the applicant is capable of meeting the conditions of the permit. Based on Timberwood HOA's compliance history, SAWS questions whether the applicant is capable of meeting the conditions of the permit. Rather than issuing the permit and hoping that Timberwood HOA can begin to comply, SAWS asserts that the Commission should determine whether Timberwood HOA has the ability to comply before issuing the permit.

¹ 30 TAC §305.127(3)(A).

² 30 TAC §305.127(3)(D)(iii).

SAWS requests a contested case hearing to determine whether Timberwood HOA is capable of meeting the effluent limitations contained in the permit, and if not, to establish a compliance schedule to require compliance as soon as possible. As stated in its comments, SAWS is deeply concerned about the quality of the effluent from this plant. The location of Timberwood HOA's application site is immediately upstream of the Edwards Aquifer recharge zone, the source of most of SAWS' drinking water.

Bases for Granting Contested Case Hearing under §26.028(d)

Texas Water Code §26.028(d) and 30 TAC 55.201(i)(5) set out some bases on which the Commission may approve an application to renew or amend a TPDES permit without a contested case hearing. SAWS asserts that Timberwood HOA's application does not satisfy these bases.

The Commission may approve a TPDES renewal application without a contested case hearing only if the Commission determines that the applicant's compliance history raises no issue regarding the applicant's ability to comply with a material term of the permit. Additionally, the Commission's Edwards Aquifer rules expressly state that permits for land application systems shall not be renewed for facilities that become noncompliant.³ Timberwood HOA's prior conduct clearly raises issues regarding its ability to comply with the permit. Timberwood HOA has been in violation of its existing permit for more than two years, almost from the day it went into operation. Timberwood HOA failed to report its significant noncompliance for more than two years. Timberwood HOA did not even bother trying to offer an explanation for its noncompliance in its renewal application. All of these compliance issues raise concerns regarding Timberwood HOA's ability to comply with its permit, and justify the need for a contested case hearing.

Request for Reconsideration of ED's Determination

In its comments, SAWS requested that the Executive Director modify the draft permit to add provisions to require Timberwood HOA to identify the cause of its noncompliance within 90 days after the issuance of the renewed permit and to complete necessary changes to its plant within 180 days after issuance of the renewed permit. The Executive Director declined to accept SAWS' recommendation. SAWS respectfully requests the Commission to reconsider the Executive Director's determination and modify the permit as requested by SAWS.

As discussed above, the provisions added to the draft permit by the Executive Director do not even meet the Commission's rules regarding compliance periods. More importantly, Timberwood HOA does not need 18 months to find identify the problems with its plant and to find a solution. Timberwood HOA has known of these problems since September 2013 (more than two years ago), and Timberwood HOA is benefitting from the length of the renewal process.

SAWS requests that the Commission reconsider the Executive Director's decision and modify the permit to require Timberwood HOA to identify the cause of its noncompliance within

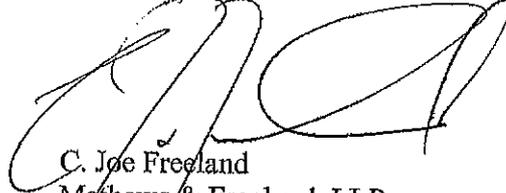
³ 30 TAC §3213.6(b)(2).

90 days after the issuance of the renewed permit and to complete necessary changes to its plant within 180 days after issuance of the renewed permit.

Summary

SAWS has a justiciable interest in the TCEQ's decision on Timberwood HOA's application, and SAWS could be adversely affected if the TCEQ were to grant the requested permit. As such SAWS is an "affected person." SAWS requests a contested case hearing to address the issues raised by Timberwood HOA's application as set forth in the comments made on the draft permit. Alternatively, SAWS requests that the Commission modify the permit to require Timberwood HOA to identify the cause of its noncompliance within 90 days after the issuance of the renewed permit and to complete necessary changes to its plant within 180 days after issuance of the renewed permit.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Joe Freeland', written over a large, stylized, circular scribble.

C. Joe Freeland
Mathews & Freeland, LLP
ATTORNEYS FOR
SAN ANTONIO WATER SYSTEM

ATTACHMENT A

SAWS COMMENTS

May 13, 2015

MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

JIM MATHEWS
JOE FREELAND

Westpark II, Suite 260
8140 North MoPac Expressway
AUSTIN, TEXAS 78769

(512) 404-7800
FAX: (512) 708-2785

May 13, 2015

Via Electronic Submission & Mail

Bridget C. Bohac, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: SAWS Comments on Preliminary Decision and Draft TPDES Permit No. WQ0014670001 requested by The Villas at Timberwood Homeowners Association, Inc.

Dear Ms. Bohac:

On behalf of the San Antonio Water System ("SAWS") we are providing comments on the Executive Director's Preliminary Decision and the Draft TPDES Permit no. WQ0014670001 requested by The Villas at Timberwood Homeowners Association, Inc. ("Timberwood").

Background

Timberwood has filed an application to renew its TPDES Permit No. WQ0014670001 with no changes to the permitted parameters. The permit would authorize Timberwood to dispose of treated domestic wastewater at a daily average flow not to exceed 0.018 million gallons per day via a non-public access subsurface drip irrigation system with a minimum irrigation area of 4.13 acres. The permit also contains a maximum daily average for BOD-5 limit of 65 mg/l. The irrigation field is located within five miles of the Edwards Aquifer recharge zone.

Preliminary Decision

The Executive Director's Preliminary Decision ("Preliminary Decision") states that the following items were considered in developing the draft permit:

1. Application submitted with letter dated October 27, 2014 and additional information submitted with letter dated November 3, 2014;
2. Existing TCEQ permit: Permit No. WQ0014670001 issued May 10, 2010; and

3. Interoffice Memorandum from the Water Quality Assessment Team, Water Quality Assessment & Standards Section, Water Quality Division.

The Preliminary Decision also states that the Executive Director reviewed Timberwood's monthly effluent reports for the period August 2012 through July 2014. According to the Preliminary Decision, the average of the daily average value for BOD-5 as reported by Timberwood was calculated to be 74.8 mg/l for that period.

Comments

Information submitted by Timberwood in its application clearly demonstrates that it has been in substantial violation of its BOD-5 parameter from September 2013 through at least July 2014.¹ (Attachment A). The Executive Director calculated an average of the daily average value for BOD-5 in Timberwood's treated wastewater for purposes of determining whether it was compliant with its permit limitations. As noted, the value calculated by the Executive Director to identify whether Timberwood has been in compliance with the BOD-5 limitation is 74.8 mg/l, which is a clear violation of the permit limit of 65 mg/l. However, that value does not accurately reflect the most recent data as submitted by Timberwood in its application. In fact, during the period from September 2013 through at least July 2014 the average of the daily average value for BOD-5 in Timberwood's treated wastewater was 117.8 mg/l, which is almost twice the permitted limit, with a high value of 146 mg/l. It is indisputable that Timberwood was in substantial violation of its BOD-5 limitation in each of the last 11 months for which it submitted self-reporting data.

The application form included a request for a discussion of all persistent excursions to permitted parameters and corrective actions taken. Interestingly, Timberwood responded with "n/a." Timberwood was given the opportunity to explain the problems with its plant and the steps taken to correct the problem, and Timberwood chose to ignore the question. It is SAWS' understanding that no enforcement action has been initiated against Timberwood for these violations.

The Commission should not blindly renew a permit when the application demonstrates that the permittee cannot comply with the existing permit. Commission rules allow for the suspension or revocation of a permit, or denial of a renewal application, if the permittee is failing or has failed to comply with conditions in the permit.² Moreover, the Commission may amend a permit on renewal to address noncompliance. SAWS is concerned that the information contained in Timberwood's renewal application indicates that the plant is inadequate in size or is being improperly operated. SAWS asserts that the Commission should not renew the permit unless the Commission includes provisions in the renewed permit designed to force Timberwood to come into compliance with the existing permit limits.

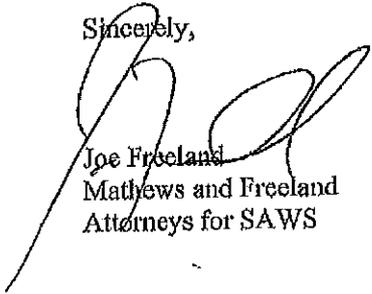
¹ The application does not contain information regarding BOD-5 concentrations subsequent to July 2014.

² 30 TAC §§305.65(5) and 305.66(a)(1).

Because Timberwood has demonstrated its repeated inability to meet the BOD-5 standard SAWS recommends that the Commission amend the permit to include a schedule for coming into compliance with the permit limits. SAWS recommends that Timberwood be required to identify the cause of its non-compliance within 90 days after issuance of the renewed permit and to complete necessary changes to its plant to achieve compliance within 180 days after issuance of the renewed permit.

SAWS is deeply concerned about the quality of the effluent from this plant. The location of Timberwood's application site is immediately upstream of the Edwards Aquifer recharge zone, the source of most of SAWS' drinking water. SAWS hopes that the Commission shares this concern and will work with SAWS and the permittee to ensure compliance.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Freeland", is written over the typed name and title.

Joe Freeland
Mathews and Freeland
Attorneys for SAWS

Attachment A

8. EFFLUENT MONITORING DATA (Instructions, Page 6A)

Date (mo/yr)	Flow (30-day avg. in GPD)	BOD in mg/l	TSS in mg/l	TKN in mg/l	Conductivity ds/m *	Phosphorus mg/l	Total acres irrigated
7/14	10,676	99	n/a	n/a	n/a	n/a	4.13
6/14	9,066	86	n/a	n/a	n/a	n/a	4.13
5/14	9,486	131	n/a	n/a	n/a	n/a	4.13
4/14	9,180	130	n/a	n/a	n/a	n/a	4.13
3/14	9,016	130	n/a	n/a	n/a	n/a	4.13
2/14	7,898	164	n/a	n/a	n/a	n/a	4.13
1/14	8,898	128	n/a	n/a	n/a	n/a	4.13
12/13	8,903	100	n/a	n/a	n/a	n/a	4.13
11/13	10,466	97	n/a	n/a	n/a	n/a	4.13
10/13	7,666	146	n/a	n/a	n/a	n/a	4.13
9/13	6,366	101	n/a	n/a	n/a	n/a	4.13
8/13	5,676	29	n/a	n/a	n/a	n/a	4.13
7/13	12,190	29	n/a	n/a	n/a	n/a	4.13
6/13	4,880	36	n/a	n/a	n/a	n/a	4.13
5/13	4,890	31	n/a	n/a	n/a	n/a	4.13
4/13	3,160	34	n/a	n/a	n/a	n/a	4.13
3/13	2,180	40	n/a	n/a	n/a	n/a	4.13
2/13	6,813	60	n/a	n/a	n/a	n/a	4.13
1/13	n/a	52	n/a	n/a	n/a	n/a	4.13
12/12	n/a	27	n/a	n/a	n/a	n/a	4.13
11/12	n/a	n/a	n/a	n/a	n/a	n/a	4.13
10/12	n/a	n/a	n/a	n/a	n/a	n/a	4.13
9/12	n/a	8	n/a	n/a	n/a	n/a	4.13
8/12	n/a	4	n/a	n/a	n/a	n/a	4.13

*ds/m is equivalent to mmhos/cm

Provide a discussion of all persistent excursions to permitted parameters and corrective actions taken:

n/a

POLLUTANT ANALYSIS OF TREATED EFFLUENT (Instructions Page 2)

Provide an analysis of the treated effluent for the following pollutants (data must be taken within 1 year of the date of application submission: (Not required for new permit applications unless the facility is in operation)

For discharges from water treatment plants provide the following pollutant analysis: Total Suspended Solids, Total Dissolved Solids, pH, aluminum, and fluoride instead of the table below.

	POLLUTANT	CONCENTRATION		NUMBER OF SAMPLES	TYPE OF SAMPLE	SAMPLE DATE/TIME
		AVG.	MAX.			
(1)	CBOD ₅ , mg/l	95	95	1	Grab	9/2/14 @ 1300
(2)	Total Suspended Solids, mg/l	NA	NA	NA	NA	NA
(3)	Ammonia-Nitrogen, mg/l	35.1	35.1	1	Grab	9/2/14 @ 1300
(4)	Nitrate-Nitrogen, mg/l	<0.1	<0.1	1	Grab	9/2/14 @ 1300
(5)	Total Kjeldahl Nitrogen, mg/l	48	48	1	Grab	9/2/14 @ 1300
(6)	Sulfate, mg/l	12	12	1	Grab	9/2/14 @ 1300
(7)	Chloride, mg/l	434	434	1	Grab	9/2/14 @ 1300
(8)	Total Phosphorus, mg/l	4.41	4.41	1	Grab	9/2/14 @ 1300
(9)	pH, standard units	6.8	6.8	1	Grab	9/2/14 @ 1300
(10)	Dissolved Oxygen, mg/l	NA	NA	NA	NA	NA
(11)	Chlorine Residual, mg/l	1.2	1.2	1	Grab	9/2/14 @ 1300
(12)	<i>E. coli</i> (colonies/100ml) freshwater discharge	>2,419	>2,419	1	Grab	9/2/14 @ 1300
(13)	Enterococci (colonies/100ml) saltwater discharge	NA	NA	NA	NA	NA
(14)	Total Dissolved Solids, mg/l	1,130	1,130	1	Grab	9/2/14 @ 1300
(15)	Elec. Conductivity, (µmhos/cm)	2,236	2,236	1	Grab	9/2/14 @ 1300
(16)	Oil and Grease, mg/l	NA	NA	NA	NA	NA

3. Interoffice Memorandum from the Water Quality Assessment Team, Water Quality Assessment & Standards Section, Water Quality Division.

The Preliminary Decision also states that the Executive Director reviewed Timberwood's monthly effluent reports for the period August 2012 through July 2014. According to the Preliminary Decision, the average of the daily average value for BOD-5 as reported by Timberwood was calculated to be 74.8 mg/l for that period.

Comments

Information submitted by Timberwood in its application clearly demonstrates that it has been in substantial violation of its BOD-5 parameter from September 2013 through at least July 2014.¹ (Attachment A). The Executive Director calculated an average of the daily average value for BOD-5 in Timberwood's treated wastewater for purposes of determining whether it was compliant with its permit limitations. As noted, the value calculated by the Executive Director to identify whether Timberwood has been in compliance with the BOD-5 limitation is 74.8 mg/l, which is a clear violation of the permit limit of 65 mg/l. However, that value does not accurately reflect the most recent data as submitted by Timberwood in its application. In fact, during the period from September 2013 through at least July 2014 the average of the daily average value for BOD-5 in Timberwood's treated wastewater was 117.8 mg/l, which is almost twice the permitted limit, with a high value of 146 mg/l. It is indisputable that Timberwood was in substantial violation of its BOD-5 limitation in each of the last 11 months for which it submitted self-reporting data.

The application form included a request for a discussion of all persistent excursions to permitted parameters and corrective actions taken. Interestingly, Timberwood responded with "n/a." Timberwood was given the opportunity to explain the problems with its plant and the steps taken to correct the problem, and Timberwood chose to ignore the question. It is SAWS' understanding that no enforcement action has been initiated against Timberwood for these violations.

The Commission should not blindly renew a permit when the application demonstrates that the permittee cannot comply with the existing permit. Commission rules allow for the suspension or revocation of a permit, or denial of a renewal application, if the permittee is failing or has failed to comply with conditions in the permit.² Moreover, the Commission may amend a permit on renewal to address noncompliance. SAWS is concerned that the information contained in Timberwood's renewal application indicates that the plant is inadequate in size or is being improperly operated. SAWS asserts that the Commission should not renew the permit unless the Commission includes provisions in the renewed permit designed to force Timberwood to come into compliance with the existing permit limits.

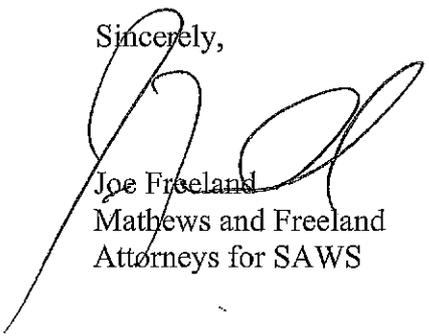
¹ The application does not contain information regarding BOD-5 concentrations subsequent to July 2014.

² 30 TAC §§305.65(5) and 305.66(a)(1).

Because Timberwood has demonstrated its repeated inability to meet the BOD-5 standard SAWS recommends that the Commission amend the permit to include a schedule for coming into compliance with the permit limits. SAWS recommends that Timberwood be required to identify the cause of its non-compliance within 90 days after issuance of the renewed permit and to complete necessary changes to its plant to achieve compliance within 180 days after issuance of the renewed permit.

SAWS is deeply concerned about the quality of the effluent from this plant. The location of Timberwood's application site is immediately upstream of the Edwards Aquifer recharge zone, the source of most of SAWS' drinking water. SAWS hopes that the Commission shares this concern and will work with SAWS and the permittee to ensure compliance.

Sincerely,



Joe Freeland
Mathews and Freeland
Attorneys for SAWS

Attachment A

8. EFFLUENT MONITORING DATA (Instructions, Page 58)

Date (mo/yr)	Flow (30-day avg. in GPD)	BOD in mg/l	TSS in mg/l	TKN in mg/l	Conductivity ds/m *	Phosphorus mg/l	Total acres Irrigated
7/14	10,576	93	n/a	n/a	n/a	n/a	4.13
6/14	9,066	86	n/a	n/a	n/a	n/a	4.13
5/14	9,486	131	n/a	n/a	n/a	n/a	4.13
4/14	9,180	130	n/a	n/a	n/a	n/a	4.13
3/14	9,016	130	n/a	n/a	n/a	n/a	4.13
2/14	7,893	164	n/a	n/a	n/a	n/a	4.13
1/14	8,896	128	n/a	n/a	n/a	n/a	4.13
12/13	8,903	100	n/a	n/a	n/a	n/a	4.13
11/13	10,466	87	n/a	n/a	n/a	n/a	4.13
10/13	7,666	146	n/a	n/a	n/a	n/a	4.13
9/13	6,366	101	n/a	n/a	n/a	n/a	4.13
8/13	5,676	29	n/a	n/a	n/a	n/a	4.13
7/13	12,190	29	n/a	n/a	n/a	n/a	4.13
6/13	4,880	36	n/a	n/a	n/a	n/a	4.13
5/13	4,890	31	n/a	n/a	n/a	n/a	4.13
4/13	3,160	34	n/a	n/a	n/a	n/a	4.13
3/13	2,180	40	n/a	n/a	n/a	n/a	4.13
2/13	6,813	60	n/a	n/a	n/a	n/a	4.13
1/13	n/a	52	n/a	n/a	n/a	n/a	4.13
12/12	n/a	27	n/a	n/a	n/a	n/a	4.13
11/12	n/a	n/a	n/a	n/a	n/a	n/a	4.13
10/12	n/a	n/a	n/a	n/a	n/a	n/a	4.13
9/12	n/a	8	n/a	n/a	n/a	n/a	4.13
8/12	n/a	4	n/a	n/a	n/a	n/a	4.13

*ds/m is equivalent to mmhos/cm

Provide a discussion of all persistent excursions to permitted parameters and corrective actions taken.

n/a

4. POLLUTANT ANALYSIS OF TREATED EFFLUENT (Instructions, Page 40)

Provide an analysis of the treated effluent for the following pollutants (data must be taken within 1 year of the date of application submission: (Not required for new permit applications unless the facility is in operation))

For discharges from **water treatment plants** provide the following pollutant analysis: Total Suspended Solids, Total Dissolved Solids, pH, aluminum, and fluoride instead of the table below.

	POLLUTANT	CONCENTRATION		NUMBER OF SAMPLES	TYPE OF SAMPLE	SAMPLE DATE/TIME
		AVG.	MAX.			
(1)	CBOD ₅ mg/l	95	95	1	Grab	9/2/14 @ 1300
(2)	Total Suspended Solids, mg/l	NA	NA	NA	NA	NA
(3)	Ammonia-Nitrogen, mg/l	35.1	35.1	1	Grab	9/2/14 @ 1300
(4)	Nitrate-Nitrogen, mg/l	<0.1	<0.1	1	Grab	9/2/14 @ 1300
(5)	Total Kjeldahl Nitrogen, mg/l	48	48	1	Grab	9/2/14 @ 1300
(6)	Sulfate, mg/l	12	12	1	Grab	9/2/14 @ 1300
(7)	Chloride, mg/l	434	434	1	Grab	9/2/14 @ 1300
(8)	Total Phosphorus, mg/l	4.41	4.41	1	Grab	9/2/14 @ 1300
(9)	pH, standard units	6.8	6.8	1	Grab	9/2/14 @ 1300
(10)	Dissolved Oxygen, mg/l	NA	NA	NA	NA	NA
(11)	Chlorine Residual, mg/l	1.2	1.2	1	Grab	9/2/14 @ 1300
(12)	<i>E. coli</i> (colonies/100ml) freshwater discharge	>2,419	>2,419	1	Grab	9/2/14 @ 1300
(13)	Enterococci (colonies/100ml) saltwater discharge	NA	NA	NA	NA	NA
(14)	Total Dissolved Solids, mg/l	1,130	1,130	1	Grab	9/2/14 @ 1300
(15)	Elec. Conductivity, umhos/cm	2,236	2,236	1	Grab	9/2/14 @ 1300
(16)	Oil and Grease, mg/l	NA	NA	NA	NA	NA

Mathews & Freeland LLP
8140 N. Mopac Expressway
Building 2, Suite 260
Austin, TX 78759

AUSTIN
TX 787
13 MAY '15
PM 2 L



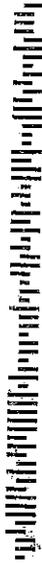
06290005881220

\$0.480
US POSTAGE
FIRST-CLASS
FROM 78759
MAY 12 2015
stamps.com

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2015 MAY 15 AM 10: 02

CHIEF CLERKS OFFICE



Bridget Bohac
MC-105
P.O. Box 13087
Austin TX 78744-3087

RECEIVED

MAY 15 2015

TCEQ MAIL CENTER
JR

Marisa Weber

From: PUBCOMMENT-OCC
Sent: Wednesday, May 13, 2015 11:19 AM
To: PUBCOMMENT-OCC2
Subject: FW: Public comment on Permit Number WQ0014670001
Attachments: SAWS Comments Timberwood.pdf

*MWD
95426*

From: jfreeland@mandf.com [mailto:jfreeland@mandf.com]
Sent: Tuesday, May 12, 2015 4:28 PM
To: DoNot Reply
Subject: Public comment on Permit Number WQ0014670001

REGULATED ENTY NAME TIMBERWOOD DEVELOPMENT

RN NUMBER: RN104814959

PERMIT NUMBER: WQ0014670001

DOCKET NUMBER:

COUNTY: BEXAR

PRINCIPAL NAME: THE VILLAS AT TIMBERWOOD HOMEOWNERS ASSOCIATION

CN NUMBER: CN604095778

FROM

NAME: Joe Freeland

E-MAIL: jfreeland@mandf.com

COMPANY: Mathews & Freeland LLP

ADDRESS: 8140 N MOPAC EXPY Ste 2-260
AUSTIN TX 78759-8837

PHONE: 5124047800

FAX:

COMMENTS: See attached comments.

MWD

MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

JIM MATHEWS
JOE FREELAND

Westpark II, Suite 260
8140 North MoPac Expressway
AUSTIN, TEXAS 78759

(512) 404-7800
FAX: (512) 703-2785

May 13, 2015

Via Electronic Submission & Mail

Bridget C. Bohac, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: SAWS Comments on Preliminary Decision and Draft TPDES Permit No. WQ0014670001 requested by The Villas at Timberwood Homeowners Association, Inc.

Dear Ms. Bohac:

On behalf of the San Antonio Water System ("SAWS") we are providing comments on the Executive Director's Preliminary Decision and the Draft TPDES Permit no. WQ0014670001 requested by The Villas at Timberwood Homeowners Association, Inc. ("Timberwood").

Background

Timberwood has filed an application to renew its TPDES Permit No. WQ0014670001 with no changes to the permitted parameters. The permit would authorize Timberwood to dispose of treated domestic wastewater at a daily average flow not to exceed 0.018 million gallons per day via a non-public access subsurface drip irrigation system with a minimum irrigation area of 4.13 acres. The permit also contains a maximum daily average for BOD-5 limit of 65 mg/l. The irrigation field is located within five miles of the Edwards Aquifer recharge zone.

Preliminary Decision

The Executive Director's Preliminary Decision ("Preliminary Decision") states that the following items were considered in developing the draft permit:

1. Application submitted with letter dated October 27, 2014 and additional information submitted with letter dated November 3, 2014;
2. Existing TCEQ permit: Permit No. WQ0014670001 issued May 10, 2010; and

3. Interoffice Memorandum from the Water Quality Assessment Team, Water Quality Assessment & Standards Section, Water Quality Division.

The Preliminary Decision also states that the Executive Director reviewed Timberwood's monthly effluent reports for the period August 2012 through July 2014. According to the Preliminary Decision, the average of the daily average value for BOD-5 as reported by Timberwood was calculated to be **74.8 mg/l** for that period.

Comments

Information submitted by Timberwood in its application clearly demonstrates that it has been in substantial violation of its BOD-5 parameter from September 2013 through at least July 2014.¹ (Attachment A). The Executive Director calculated an average of the daily average value for BOD-5 in Timberwood's treated wastewater for purposes of determining whether it was compliant with its permit limitations. As noted, the value calculated by the Executive Director to identify whether Timberwood has been in compliance with the BOD-5 limitation is 74.8 mg/l, which is a clear violation of the permit limit of 65 mg/l. However, that value does not accurately reflect the most recent data as submitted by Timberwood in its application. In fact, during the period from September 2013 through at least July 2014 the average of the daily average value for BOD-5 in Timberwood's treated wastewater was 117.8 mg/l, which is almost twice the permitted limit, with a high value of 146 mg/l. It is indisputable that Timberwood was in substantial violation of its BOD-5 limitation in each of the last 11 months for which it submitted self-reporting data.

The application form included a request for a discussion of all persistent excursions to permitted parameters and corrective actions taken. Interestingly, Timberwood responded with "n/a." Timberwood was given the opportunity to explain the problems with its plant and the steps taken to correct the problem, and Timberwood chose to ignore the question. It is SAWS' understanding that no enforcement action has been initiated against Timberwood for these violations.

The Commission should not blindly renew a permit when the application demonstrates that the permittee cannot comply with the existing permit. Commission rules allow for the suspension or revocation of a permit, or denial of a renewal application, if the permittee is failing or has failed to comply with conditions in the permit.² Moreover, the Commission may amend a permit on renewal to address noncompliance. SAWS is concerned that the information contained in Timberwood's renewal application indicates that the plant is inadequate in size or is being improperly operated. SAWS asserts that the Commission should not renew the permit unless the Commission includes provisions in the renewed permit designed to force Timberwood to come into compliance with the existing permit limits.

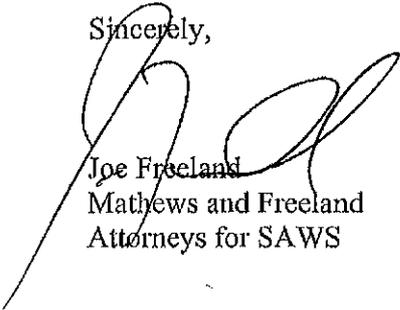
¹ The application does not contain information regarding BOD-5 concentrations subsequent to July 2014.

² 30 TAC §§305.65(5) and 305.66(a)(1).

Because Timberwood has demonstrated its repeated inability to meet the BOD-5 standard SAWS recommends that the Commission amend the permit to include a schedule for coming into compliance with the permit limits. SAWS recommends that Timberwood be required to identify the cause of its non-compliance within 90 days after issuance of the renewed permit and to complete necessary changes to its plant to achieve compliance within 180 days after issuance of the renewed permit.

SAWS is deeply concerned about the quality of the effluent from this plant. The location of Timberwood's application site is immediately upstream of the Edwards Aquifer recharge zone, the source of most of SAWS' drinking water. SAWS hopes that the Commission shares this concern and will work with SAWS and the permittee to ensure compliance.

Sincerely,



Joe Freeland
Mathews and Freeland
Attorneys for SAWS

Attachment A

8. EFFLUENT MONITORING DATA (Instructions, Page 58)

Date (mo/yr)	Flow (30-day avg. in GPD)	BOD in mg/l	TSS in mg/l	TKN in mg/l	Conductivity ds/m *	Phosphorus mg/l	Total acres Irrigated
7/14	10,576	93	n/a	n/a	n/a	n/a	4.13
6/14	9,066	86	n/a	n/a	n/a	n/a	4.13
5/14	9,486	131	n/a	n/a	n/a	n/a	4.13
4/14	9,180	130	n/a	n/a	n/a	n/a	4.13
3/14	9,016	130	n/a	n/a	n/a	n/a	4.13
2/14	7,893	164	n/a	n/a	n/a	n/a	4.13
1/14	8,896	128	n/a	n/a	n/a	n/a	4.13
12/13	8,903	100	n/a	n/a	n/a	n/a	4.13
11/13	10,466	87	n/a	n/a	n/a	n/a	4.13
10/13	7,866	146	n/a	n/a	n/a	n/a	4.13
9/13	6,366	101	n/a	n/a	n/a	n/a	4.13
8/13	5,676	29	n/a	n/a	n/a	n/a	4.13
7/13	12,190	29	n/a	n/a	n/a	n/a	4.13
6/13	4,880	36	n/a	n/a	n/a	n/a	4.13
5/13	4,890	31	n/a	n/a	n/a	n/a	4.13
4/13	3,160	34	n/a	n/a	n/a	n/a	4.13
3/13	2,180	40	n/a	n/a	n/a	n/a	4.13
2/13	6,813	60	n/a	n/a	n/a	n/a	4.13
1/13	n/a	52	n/a	n/a	n/a	n/a	4.13
12/12	n/a	27	n/a	n/a	n/a	n/a	4.13
11/12	n/a	n/a	n/a	n/a	n/a	n/a	4.13
10/12	n/a	n/a	n/a	n/a	n/a	n/a	4.13
9/12	n/a	8	n/a	n/a	n/a	n/a	4.13
8/12	n/a	4	n/a	n/a	n/a	n/a	4.13

*ds/m is equivalent to mmhos/cm

Provide a discussion of all persistent excursions to permitted parameters and corrective actions taken.

n/a

4. POLLUTANT ANALYSIS OF TREATED EFFLUENT (Instructions, Page 10)

Provide an analysis of the treated effluent for the following pollutants (data must be taken within 1 year of the date of application submission: (Not required for new permit applications unless the facility is in operation))

For discharges from **water treatment plants** provide the following pollutant analysis: Total Suspended Solids, Total Dissolved Solids, pH, aluminum, and fluoride instead of the table below.

	POLLUTANT	CONCENTRATION		NUMBER OF SAMPLES	TYPE OF SAMPLE	SAMPLE DATE/ TIME
		AVG.	MAX.			
(1)	CBOD ₅ mg/l	95	95	1	Grab	9/2/14 @ 1300
(2)	Total Suspended Solids, mg/l	NA	NA	NA	NA	NA
(3)	Ammonia-Nitrogen, mg/l	35.1	35.1	1	Grab	9/2/14 @ 1300
(4)	Nitrate-Nitrogen, mg/l	<0.1	<0.1	1	Grab	9/2/14 @ 1300
(5)	Total Kjeldahl Nitrogen, mg/l	48	48	1	Grab	9/2/14 @ 1300
(6)	Sulfate, mg/l	12	12	1	Grab	9/2/14 @ 1300
(7)	Chloride, mg/l	434	434	1	Grab	9/2/14 @ 1300
(8)	Total Phosphorus, mg/l	4.41	4.41	1	Grab	9/2/14 @ 1300
(9)	pH, standard units	6.8	6.8	1	Grab	9/2/14 @ 1300
(10)	Dissolved Oxygen, mg/l	NA	NA	NA	NA	NA
(11)	Chlorine Residual, mg/l	1.2	1.2	1	Grab	9/2/14 @ 1300
(12)	<i>E. coli</i> (colonies/100ml) freshwater discharge	>2,419	>2,419	1	Grab	9/2/14 @ 1300
(13)	Enterococci (colonies/100ml) saltwater discharge	NA	NA	NA	NA	NA
(14)	Total Dissolved Solids, mg/l	1,130	1,130	1	Grab	9/2/14 @ 1300
(15)	Elec. Conductivity, umhos/cm	2,236	2,236	1	Grab	9/2/14 @ 1300
(16)	Oil and Grease, mg/l	NA	NA	NA	NA	NA