

**Marisa Weber**

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**From:** PUBCOMMENT-OCC  
**Sent:** Thursday, November 05, 2015 11:28 AM  
**To:** PUBCOMMENT-WQ; PUBCOMMENT-ELD; PUBCOMMENT-OCC2; PUBCOMMENT-OPIC  
**Subject:** FW: Public comment on Permit Number WQ0013594001  
**Attachments:** 20151105 Withdrawal of Hearing Request2.pdf

WH

MWD  
9/31/15

**From:** [david@allawgp.com](mailto:david@allawgp.com) [mailto:[david@allawgp.com](mailto:david@allawgp.com)]  
**Sent:** Thursday, November 05, 2015 11:25 AM  
**To:** DoNot Reply  
**Subject:** Public comment on Permit Number WQ0013594001

**REGULATED ENTY NAME** LAKE POINTE WWTP

**RN NUMBER:** RN102077989

**PERMIT NUMBER:** WQ0013594001

**DOCKET NUMBER:**

**COUNTY:** TRAVIS

**PRINCIPAL NAME:** WEST TRAVIS COUNTY PUA

**CN NUMBER:** CN604021980

**FROM**

**NAME:** David J Tuckfield

**E-MAIL:** [david@allawgp.com](mailto:david@allawgp.com)

**COMPANY:** The AL Law Group, PLLC

**ADDRESS:** 12400 W HIGHWAY 71 Suite 350-150  
BEE CAVE TX 78738-6517

**PHONE:** 5125762481

**FAX:** 5123669949

**COMMENTS:** See attached for withdrawal of hearing request and notice of appearance.

MWD



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David J. Tuckfield  
12400 W. Highway 71, Suite 350-150  
Austin, Texas 78738

Of Counsel  
(512) 576-2481  
Fax: (512) 366-9949

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November 5, 2015

**Via Electronic Filing**

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

**Re: Notice of Appearance AND  
Withdrawal of Hearing Request  
Application of West Travis County Public Utility Agency  
Renewal of Water Quality Permit No. WQ0013594001  
CN604021980**

Dear Ms. Bohac:

Please accept this letter as notice that the following will now be representing the Lake Austin Lake Pointe Homeowners Association, Inc. ("Lake Pointe HOA") on the above-referenced matter:

David Tuckfield  
The AL Law Group, PLLC  
12400 West Highway 71  
Suite 350-150  
Austin, TX 78738

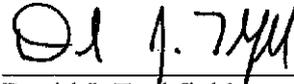
Please send any future correspondence for the Lake Pointe HOA to David Tuckfield at the address identified above.

In addition, the Lake Pointe HOA hereby withdraws its request for a hearing on the above-referenced matter. To clarify, the Lake Pointe HOA does not withdraw the comments that it has already made. Nevertheless, it no longer seeks a hearing in this matter.

Please don't hesitate to contact me if you have any questions.

Sincerely,

The AL Law Group, PLLC

A handwritten signature in black ink, appearing to read "D.J. Tuckfield", written over a horizontal line.

David J. Tuckfield

Attorneys for the Lake Austin Lake Pointe  
Homeowners Association, Inc.

cc: Brady Ortego ([bortego@rmwbhlaw.com](mailto:bortego@rmwbhlaw.com))  
David Klein ([dklein@lglawfirm.com](mailto:dklein@lglawfirm.com))



RECEIVED  
AUG 13 2015  
AT PUBLIC MEETING

6000 Shepherd Mountain Cove  
Suite 2107  
Austin, Texas 78730

Telephone: 512.394.7121  
Facsimile: 512.394.7145  
cindy@smileylawfirm.com

May 7, 2015

**VIA ELECTRONIC FILING**

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

Re: Comments and Requests for Public Meeting and Contested Case Hearing on Application of West Travis County Public Utility Agency for Renewal of Water Quality Permit No. WQ0013594001; CN604021980

Dear Ms. Bohac:

This letter is filed on behalf of the Lake Austin Lake Pointe Homeowners Association, Inc. ("Lake Pointe HOA" or "HOA"), an association of approximately 945 homeowners in a residential neighborhood located in western Travis County. Owners of the subdivision lots within the Lake Pointe neighborhood (except for the owners of common areas and municipal utility district lots) are automatically members of the HOA, and the retail wastewater services for the entire neighborhood are provided by the West Travis County Public Utility Agency ("PUA" or "Applicant"). The Lake Pointe neighborhood is the "host" location for the Applicant's largest wastewater treatment facility: the Lake Pointe Wastewater Treatment Plant ("WWTP") located at 3100 Napa Drive, Austin, 78738.

The Lake Pointe WWTP is located within the Lake Pointe subdivision on a residential street, in a residential neighborhood, within a short distance of a neighborhood park, and in close proximity to the homes of the HOA's members. The Lake Pointe WWTP is currently authorized for treatment of up to 675,000 gallons per day ("gpd"), and it was originally permitted in 1992.

The PUA's existing Water Quality Permit (Permit No. WQ0013594001, the "Permit") was issued in 2009, and was a renewal of its prior Permit issued in 2006. In addition to the 675,000 gpd authorized for treatment at the Lake Pointe WWTP, the Permit authorizes treatment of up to 325,000 gpd at the PUA's new Bohls Plant (located in a non-residential area along Bee Cave Parkway). We understand that this plant is operational and is handling some of the wastewater generated by the PUA's customers. Importantly, however, the majority of the wastewater from

*mu*

the PUA's diverse universe of customers (including single-family residences, multi-family residences, office buildings, car washes, entertainment venues, restaurants, retail stores, shopping centers, hotels, fast food eateries, and grocery stores) enters the PUA's vast collection system and is conveyed to the Lake Pointe WWTP for treatment.

In recent years, HOA members have experienced (and continue to experience) multiple events of nuisance odors and raw sewage spills emanating from the Lake Pointe WWTP. HOA members have repeatedly advised the PUA Board and its management of these events, and Lake Pointe residents have also notified the TCEQ of these events. The decisions made by the PUA with respect to the operation and management of the Lake Pointe WWTP, and the terms of the PUA's TCEQ-issued Permit for its treatment and disposal of wastewater effluent, are critically important to the health and welfare of the HOA and its members. Recognizing the serious consequences of the PUA's actions, the HOA Board of Directors voted to file these comments, request public meetings and public hearings, and participate in the TCEQ proceedings associated with the PUA's application for renewal of its Permit. A resolution of the Lake Pointe HOA's Board is attached to this letter and incorporated by reference. The resolution provides additional details on the HOA, its corporate status, and its interests in this proceeding.

#### **Comments on the PUA's Renewal Application and the ED's Draft Permit**

In response to the PUA's June 2014 application (the "Application") to renew its Permit, the Lake Pointe HOA submitted comments to the TCEQ in a letter dated September 5, 2014. To the extent that the concerns expressed in its prior letter continue to apply, the HOA incorporates its September 5, 2014 letter by reference.

The draft amended permit issued by the TCEQ Executive Director ("ED") on April 2, 2015 (the "Draft Permit") appears to include five new provisions within the Special Conditions section that seem to be intended to address some of the Lake Pointe HOA's concerns (see Pages 34 and 35 of the Draft Permit). The text of these provisions is copied below (in italics), followed by the HOA's concerns or responses to each new provision. Please review and consider these comments regarding the Draft Permit:

*25. The permittee shall install and maintain an automatic emergency power transfer.*

The Lake Pointe HOA appreciates the addition of this provision. To avoid confusion, we request that the provision be clarified to specify what is meant by an "automatic emergency power transfer," as well as the timeframe for implementing this system.

*26. The permittee shall use its best professional judgment to monitor and maintain operational dissolved oxygen concentrations for the aeration basins, equalization basins and sludge digesters as required by 30 TAC §217.*

The Lake Pointe HOA appreciates the addition of this provision.

*27. The permittee shall operate and maintain the odor abatement equipment according to the facility's operations and maintenance manual. All maintenance records shall be available for inspection by authorized representatives of the commission for at least three years. This permit condition shall expire at the end of the current permit term.*

The Lake Pointe HOA appreciates the addition of this provision, but is concerned by ambiguities that allow overly broad interpretation of this provision. To address this concern, this provision could be revised to refer to a specific manual, by date, and to allow the PUA to revise the manual only in a manner that does not diminish or decrease its obligations with respect to the operations and maintenance of odor abatement equipment. Alternatively, the Permit could require the PUA to implement the odor prevention plan submitted to the TCEQ's enforcement division in June 2014 in accordance with deadlines established in the Permit. There may be other alternatives to resolve this concern.

Due to the historical and ongoing odor problems caused by the Lake Pointe WWTP, the HOA also requests that the last sentence of this provision be modified. Rather than having this time limit, the Permit would connect the removal of this requirement to the solution of the problem it is intended to address. For example, the Permit could allow this requirement to be removed in a future permit if the PUA can demonstrate that its odor abatement equipment is no longer needed.

*28. The permittee shall timely respond to odor complaints, made directly to the permittee and shall maintain a record of these responses. Documentation should include the cause of the odor and the corrective action. These records shall be available for inspection by authorized representatives of the commission for at least three years. This permit condition shall expire at the end of the current permit term.*

The Lake Pointe HOA appreciates the addition of this provision. At the same time, we request that this provision be modified with some clarifying language to require the PUA to provide and publicize where and how complaints should be logged and that the method is in keeping with modern and accessible communication. For instance, the PUA could add an odor complaint form to its website and also include an odor hotline. The web page should be mobile-friendly, since most odors will be detected when people are walking.

The HOA also requests that the last sentence of this provision be modified to remove the expiration date. Based on the historical and ongoing odor issues, we request that this provision continue in perpetuity and only be removed in future permits if the PUA demonstrates an undue hardship in combination with a clean record regarding odors.

*29. The permittee shall continue to implement its program for retail and commercial customers to address grease and rag build-up within the collection system and lift station.*

The HOA agrees that this provision addresses a significant issue. But we request that the metric of compliance be tied to the metric of performance. Our understanding is the PUA measures suspended solids in solution as opposed to merely grease concentrations. We request that this provision be modified to reflect their current measurement method.

**Request for Public Meeting on PUA's Application for Renewal of its Wastewater Permit**

**On behalf of its approximately 945 members, the Lake Pointe HOA requests that a public meeting be held regarding the Application of the West Travis County Public Utility Agency for Renewal of Water Quality Permit No. WQ0013594001. We respectfully request that the public meeting be held within a reasonable distance from the Lake Pointe community,**

since the largest facility that is the subject of this Application, the Lake Pointe WWTP, is located within the Lake Pointe neighborhood.

**Request for Contested Case Hearing on PUA's Application for Renewal of its Wastewater Permit**

**The Lake Pointe HOA requests a contested case hearing regarding the Application of the West Travis County Public Utility Agency for Renewal of Water Quality Permit No. WQ0013594001.**

The address and phone numbers for the Lake Pointe HOA are:

Lake Pointe HOA  
P.O. Box 342585  
Austin, Texas 78734  
Phone: 512.266.6771  
Fax: 512.266.6791

Under the TCEQ rules governing eligibility for a hearing, 30 Texas Administrative Code ("TAC") §55.205 lists three requirements that an association must meet in order to have standing to request a contested case hearing:

- (1) One or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) The interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) Neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

**Standing of Individual Members.**

Many of the members of the Lake Pointe HOA have standing to request a hearing in their own right. These members include, but are not limited to:

Ms. M.E. Cook  
12310 Carlsbad Drive  
Austin, TX 78738  
Phone: (512) 633-8042

Ms. Cook and her family live in her home at the above address approximately 0.2 miles downgradient from the Lake Pointe WWTP. As documented in numerous complaints filed with the TCEQ in recent years, Ms. Cook has been negatively affected by nuisance odors caused by the Lake Pointe WWTP. On several occasions, Ms. Cook has been unable to use and enjoy her property due to horrible sewage odors in her yard and the neighborhood streets and parks she uses on a regular basis. Odor issues are likely to continue under the terms of the Draft Permit, which does not appear to address all of the issues that have led to the repeated (and recent) odor problems.

Ms. Laurie Heronemus  
12302 Carlsbad Drive  
Austin, TX 78738  
Phone: (512) 514-0126

Ms. Heronemus and her family live in the home at the above address approximately 0.1 miles downgradient from the Lake Pointe WWTP. As documented in complaints filed with the TCEQ on numerous occasions in 2013, 2014, and 2015, Ms. Heronemus has been negatively affected by nuisance odors caused by the Lake Pointe WWTP. On several occasions, Ms. Heronemus has been unable to use and enjoy her property due to horrible sewage odors in her yard and the neighborhood streets and parks she uses on a regular basis. Odor issues are likely to continue under the terms of the Draft Permit, which does not appear to address all of the issues that have led to the repeated (and recent) odor problems.

The Lake Pointe HOA's Interests are Germane to its Purpose.

The Lake Pointe HOA's Articles of Incorporation were filed on January 12, 1996 with the Texas Secretary of State's Office. As stated in its Articles of Incorporation, the general purposes and powers of the Lake Pointe HOA include, but are not limited to, the promotion of the common good, health, safety and general welfare of the residents within the Lake Pointe development in western Travis County. A copy of the Articles of Incorporation is attached as ATTACHMENT A.

Additionally, the HOA owns a buffer lot directly adjacent to the PUA's Lake Pointe WWTP on Napa Drive. This 0.867-acre lot is shown on the PUA's Buffer Zone Map (Attachment B of the Draft Permit) as the lot between two LCRA properties with frontage on the west side of Napa Drive.

Clearly, the interests that are affected by the pending PUA Application to renew its Water Quality Permit for the Lake Pointe WWTP, which is located within the Lake Pointe neighborhood, are germane to the Lake Pointe HOA's purpose to promote the common good, health, safety and general welfare of its residents, as stated in its Articles of Incorporation and demonstrated by its past and ongoing efforts to address its members' concerns regarding the Lake Pointe WWTP. For example, abatement of noxious odors permeating the neighborhood is essential to promoting the HOA's members' ability to enjoy their own property and the common areas in the neighborhood. Likewise, prevention of sewage spills in neighborhood streets promotes the health and safety of the HOA's members, who could come into contact with spilled sewage that may contain pathogens such as bacteria and viruses.

The HOA's interests are also affected as a real property owner adjoining the property where the Lake Pointe WWTP is located. The operation of the WWTP under the Draft Permit has the potential to limit the HOA's and its members' use and enjoyment of this property by limiting the uses to which the HOA's property can be applied (for example, if odors are not sufficiently controlled).

The Lake Pointe HOA Represents its Members.

There is no participation required of the Lake Pointe HOA's individual members for the claim asserted or the relief requested in this case. Because retail wastewater services for the entire neighborhood are provided by the PUA, the adequacy of the PUA's wastewater treatment facilities and operations is a universal concern for its members. Further, the attached Resolution memorializes the decision by the HOA's Board of Directors for the HOA to participate in all matters and all proceedings relating to the application of the PUA for renewal of TCEQ Permit No. WQ0013594001. The President of the Lake Pointe HOA Board of Directors, Mr. Craig Andrews, and his designees, including Ms. M.E. Cook (a Lake Pointe resident and member of the HOA), will act as representatives for Lake Pointe HOA in this matter. Additionally, the Smiley Law Firm will act as legal representation for the Lake Pointe HOA. The Board of Directors has taken specific action to file these comments and request a hearing, as shown in the Board Resolution dated August 18, 2014 at ATTACHMENT B.

Based upon the information presented above, we respectfully request the TCEQ's concurrence that the Lake Pointe HOA has demonstrated its interests in this important proceeding on behalf of its members who are directly impacted by the adequacy of the PUA's wastewater treatment facilities and operation of those facilities. The Lake Pointe HOA seeks the TCEQ's determination that it is an affected person and its hearing request should be granted, so that it may become a party to the TCEQ proceedings on this Application.

**Contact Information for the Lake Pointe HOA**

Please send all official communications and documents for the Lake Pointe HOA relating to this permit proceeding to the following:

Cynthia C. Smiley  
**Smiley Law Firm, P.C.**  
6000 Shepherd Mountain Cove #2107  
Austin, Texas 78730  
Phone number (512) 394-7121  
Fax number (512) 394-7145  
Email: [cindy@smileylawfirm.com](mailto:cindy@smileylawfirm.com)

The Lake Point HOA also respectfully requests that its general counsel be added to the mailing list for this application as follows:

Brady E. Ortego  
Roberts Markel Weinberg Butler Hailey, PC  
2800 Post Oak Blvd., 57th Floor  
Houston, Texas 77056  
Toll Free: (844) 775-9344  
Email: [bortego@rmwbhlaw.com](mailto:bortego@rmwbhlaw.com)

The Lake Pointe HOA appreciates your consideration of these comments and requests the granting of its requests for a public meeting and for a contested case hearing. We hope to continue working with the Applicant as well as the TCEQ in the coming months to craft permit provisions that are mutually agreeable and address the HOA's concerns. Please feel free to contact me at the phone number and e-mail address listed above if you have any questions regarding these requests.

Sincerely,

*Shana L. Horton w/p for*

Cynthia C. Smiley  
Smiley Law Firm, P.C.

ATTORNEYS FOR THE LAKE POINTE HOA

Attachment A: Articles of Incorporation Filed with Secretary of State on January 12, 1996

Attachment B: Resolution of Lake Pointe HOA Board of Directors Dated August 18, 2014

cc: Mr. Craig Andrews, President, Lake Pointe HOA  
Ms. M.E. Cook, Chair, Wastewater Committee, Lake Pointe HOA  
Mr. David Klein, Lloyd Gosselink, Attorney for WTCPUA

**ATTACHMENT A:**

**ARTICLES OF INCORPORATION**

FILED  
In the Office of the  
Secretary of State of Texas  
JAN 12 1996  
Corporations Section

ARTICLES OF INCORPORATION

OF

LAKE AUSTIN LAKE POINTE HOMEOWNERS ASSOCIATION, INC.

The undersigned natural person of the age of eighteen (18) years or more, acting as a sole incorporator of a corporation (the "Corporation") under the Texas Non-Profit Corporation Act (the "Act"), hereby adopts the following Articles of Incorporation for the Corporation:

ARTICLE I

NAME

The name of the Corporation is <sup>Lake Austin</sup> /Lake Pointe Homeowners Association, Inc.

ARTICLE II

NON-PROFIT CORPORATION

The Corporation is one which does not contemplate pecuniary gain or profit to its members, and it is organized solely for non-profit purposes.

ARTICLE III

DURATION

The period of duration of the Corporation is perpetual.

ARTICLE IV

PURPOSES AND POWERS

1. The Corporation is organized and shall be operated exclusively as a homeowners association within the meaning of Section 528 of the Internal Revenue Code of 1986, as amended, or the corresponding provision or provisions of any subsequent

United States Internal Revenue law or laws (the "Code"). The primary purposes for which the Corporation is formed are to own, lease or license the Common Area (as defined in the Declaration) located in Lake Pointe, a development consisting primarily of single family residential lots in Travis County, Texas ("Lake Pointe"), to govern, operate and maintain the Common Area, and to provide architectural control and compliance with the covenants and restrictions set forth in the Lake Pointe Declaration of Covenants, Conditions and Restrictions (the "Declaration") dated as of June 29, 1995, executed by Southwest Travis County, Ltd., a Texas limited partnership, and Bon Terre-B, Ltd., a Texas limited partnership, and recorded in Volume 12474, Page 1631 of the Real Property Records of Travis County, Texas.

2. Within the scope of the foregoing purposes, and not by way of limitation thereof, the general purposes and powers of the Corporation are:

(a) To promote the common good, health, safety and general welfare of the residents within the property covered by the Declaration (the "Property");

(b) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Corporation arising from the Declaration applicable to the Property, as amended from time to time, the Declaration being incorporated herein by reference for all purposes;

(c) To enforce applicable provisions of the Declaration, the Bylaws of <sup>Lake Austin</sup> Lake Pointe Homeowners Association, Inc. (the "Bylaws"), any rules and regulations

of the Corporation and any other instrument for the management and control of the Property;

(d) To fix, levy and collect, by any lawful means, all fees and assessments pursuant to the terms of the Declaration;

(e) To contract for and pay all expenses in connection with the maintenance, landscaping, utilities, materials, supplies and services relating to the Common Area and facilities thereon; to employ personnel reasonably necessary for administration and control of the Property, including lawyers and accountants where appropriate; and to pay all office and other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes and special assessments which are or would become a lien on any portion of the Property;

(f) To acquire (by purchase, grant, lease, license or otherwise), annex and merge, hold, improve, operate, maintain, convey, sell, lease, license, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation;

(g) To borrow money and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred in connection with the affairs of the Corporation; and

(h) To have and exercise any and all powers, rights and privileges, including delegation of powers as permitted

by law, which the Corporation under the Act may now or hereafter have or exercise.

The foregoing statement of purposes shall be construed as a statement both of purposes and of powers, and the purposes and powers in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. Notwithstanding any of the above statements of purposes and powers, the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Corporation or that are inconsistent with its qualification as a homeowners association under Section 528 of the Code.

#### ARTICLE V

##### REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Corporation is 5450 West Bee Cave Road, Building 1, Suite F, Austin, Texas 78746; and the name of its initial registered agent at such address is Don Walden.

#### ARTICLE VI

##### INITIAL BOARD OF DIRECTORS

The initial Board of Directors of the Corporation shall consist of three members; thereafter, the number of directors of the Corporation shall be fixed in accordance with the Bylaws adopted by the Corporation. The names and addresses of the persons who shall serve as directors until the first annual

meeting of members or until their successors shall have been elected and qualified are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Stephen W. Gurasich, Jr.	One Cielo Center, Suite 400 1250 Capital of Texas Highway South Austin, Texas 78746
Don Walden	5450 West Bee Cave Road Building 1, Suite F Austin, Texas 78746
Joel H. Robuck	3816 Bryn Mawr Dallas, Texas 75225

#### ARTICLE VII

##### INCORPORATOR

The name and street address of the incorporator of the Corporation is:

<u>NAME</u>	<u>ADDRESS</u>
Samuel D. Byars	2600 One American Center 600 Congress Avenue Austin, Texas 78701

#### ARTICLE VIII

##### MEMBERSHIP

The authorized number of and qualifications for membership in the Corporation along with the appurtenant voting rights and other privileges due members of the Corporation shall be as set out in the Bylaws.

#### ARTICLE IX

##### NO PRIVATE INUREMENT

No part of the net earnings of the Corporation shall inure to the benefit of any member, director or officer of the Corporation, or any private individual; provided however, that

reasonable compensation may be paid for services rendered to or for the Corporation and expenses may be reimbursed or paid in furtherance of one or more of its purposes.

#### ARTICLE X

##### **ACTION BY WRITTEN CONSENT**

Any action required or permitted to be taken at any meeting of members, directors or committee members of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by a sufficient number of members, directors or committee members, as the case may be, as would be necessary to take that action at a meeting at which all persons entitled to vote on the action were present and voted. Prompt notice of the taking of any action by members, directors or a committee without a meeting by less than unanimous written consent shall be given to those members, directors or committee members who did not consent in writing to the action.

#### ARTICLE XI

##### **DISSOLUTION**

In the event the Corporation is dissolved, the members shall, after all liabilities and obligations of the Corporation are paid or provision is made therefor, adopt a plan for the distribution of the remaining assets of the Corporation in such manner as will carry out the purposes of the Corporation as a homeowners association within the meaning of Section 528 of the Code. The foregoing provision is intended to govern the

distribution of the assets of the Corporation in the event of its dissolution in lieu of Article 1396-6.02.A(3) of the Act.

#### ARTICLE XII

#### INDEMNIFICATION

The Corporation shall indemnify any person who was, is or is threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person (i) is or was a director or officer of the Corporation or (ii) while a director or officer of the Corporation, is or was serving at the request of the Corporation as a trustee, officer, partner, venturer, proprietor, director, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, to the fullest extent that a corporation may grant indemnification to a director under the Act, as the same exists or may hereafter be amended. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Act, as the same exists or may hereafter be amended. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Corporation within 90 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to also be paid the expenses

of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense is not permitted under the Act, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors or any committee thereof, special legal counsel or members) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Corporation (including its Board of Directors or any committee thereof, special legal counsel or members) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible. In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of such person's heirs, executors, administrators and personal representatives. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of members or directors, agreement or otherwise. To the extent permitted by then applicable law, the grant of mandatory indemnification to any person pursuant to this Article shall extend to proceedings involving the negligence of such person. The Corporation may additionally indemnify any person covered by the grant of mandatory indemnification contained in this Article to such further extent as is permitted

by law and may indemnify any other person to the fullest extent permitted by law. The Corporation may purchase and maintain insurance or a similar arrangement (including, but not limited to, a trust fund, self-insurance, a security interest or lien on the assets of the Corporation, or a letter of credit, guaranty or surety arrangement) on behalf of any person who is serving the Corporation (or another entity at the request of the Corporation) against any liability asserted against such person and incurred by such person in such a capacity or arising out of status as such a person, whether or not the Corporation would have the power to indemnify such person against that liability under this Article or by statute. Notwithstanding the other provisions of this Article, the Corporation may not indemnify or maintain insurance or a similar arrangement on behalf of any person if such indemnification or maintenance of insurance or similar arrangement would subject the Corporation to income or excise tax under the Code.

#### ARTICLE XIII

##### LIMITATION OF DIRECTOR LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for any act or omission in such director's capacity as a director, except that this Article does not authorize the elimination or limitation of the liability of a director to the extent the director is found liable for: (i) a breach of the director's duty of loyalty to the Corporation; (ii) an act or omission not in good faith that constitutes a breach of duty of the director to

the Corporation or an act or omission that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or (iv) an act or omission for which the liability of a director is expressly provided by an applicable statute. The foregoing elimination of liability to the Corporation and its members shall not be deemed exclusive of any other rights, limitations of liability or indemnity to which a director may be entitled under any other provision of the Articles of Incorporation or Bylaws of the Corporation, contract or agreement, vote of members or directors, principle of law or otherwise. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or amendment. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the foregoing provisions of this Article, the liability of a director shall be eliminated to the full extent permitted by any amendment to the Texas Miscellaneous Corporation Laws Act or the Act hereafter enacted that further eliminates or permits the elimination of the liability of a director.

IN WITNESS WHEREOF, I have executed these Articles of  
Incorporation on ~~October~~ <sup>January</sup> 12, 1996.

Samuel D. Byars  
Samuel D. Byars

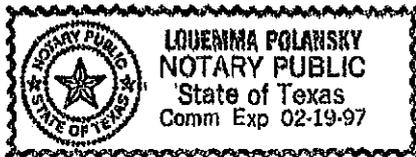
THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

I, the undersigned authority, a Notary Public in and for the  
said County and State, do hereby certify that on this ~~12th~~ <sup>12th</sup> day of  
~~October~~ <sup>January</sup>, 1996, personally appeared before me, Samuel D. Byars,  
who being by me first sworn, declared that he is the person who  
signed the foregoing documents as Incorporator, and that the  
statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the  
date and year above written.

[SEAL]

Louenna Polansky  
Notary Public in and for  
the State of Texas



**ATTACHMENT B:**

**RESOLUTION OF LAKE POINTE  
HOA BOARD OF DIRECTORS**

RESOLUTION OF LAKE AUSTIN LAKE POINTE HOMEOWNERS ASSOCIATION, INC.  
REGARDING PARTICIPATION IN SUBMITTAL OF PUBLIC COMMENTS, REQUESTS  
FOR PUBLIC MEETINGS, AND REQUESTS FOR CONTESTED CASE HEARINGS ON  
APPLICATION OF WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY FOR  
RENEWAL OF TCEQ PERMIT NO. WQ0013594001

WHEREAS, the Lake Austin Lake Pointe Homeowners Association, Inc. ("Lake Pointe HOA" or "HOA") is a Texas non-profit corporation holding a Certificate of Incorporation issued by the Texas Secretary of State's Office dated and effective on January 12, 1996;

WHEREAS, under the HOA's corporate documents, persons who own a platted lot in the Lake Pointe subdivision (except for lots designated as common areas or as municipal utility district lots) are automatically members of the HOA, and membership in the HOA is appurtenant to the land;

WHEREAS, the general purposes and powers of the HOA include, but are not limited to, the promotion of the common good, health, safety and general welfare of the residents within the Lake Pointe development in western Travis County;

WHEREAS, the West Travis County Public Utility Agency ("PUA") is the sole provider of retail water and wastewater services to the Lake Pointe neighborhood, and the HOA's members receive water and wastewater utility services from the PUA;

WHEREAS, the PUA provides wastewater services to all of its wastewater customers using a wastewater treatment plant ("WWTP") located at 3100 Napa Drive in Austin, Travis County, 78738 (the "Lake Pointe WWTP");

WHEREAS, the Lake Pointe WWTP is located within the Lake Pointe subdivision on a residential street, in a residential neighborhood, within a short distance of a neighborhood park, and in close proximity to the homes of the HOA's members;

WHEREAS, in recent years, HOA members have experienced (and continue to experience) multiple events of nuisance odors and raw sewage spills emanating from the Lake Pointe WWTP and its collection system;

WHEREAS, the Lake Pointe HOA and its members are directly impacted by and deeply concerned about the PUA's operation and management of its wastewater services and the Lake Pointe WWTP;

WHEREAS, on June 3, 2014, the PUA filed an application with the Texas Commission on Environmental Quality ("TCEQ") to renew its existing Permit No. WQ0013594001, issued on December 15, 2009, which currently authorizes the treatment and disposal of domestic wastewater effluent at a daily average flow not to exceed 1,000,000 million gallons per day ("gpd") using two treatment facilities: 1) the Lake Pointe WWTP (at a daily average flow not to exceed 675,000 gpd; and 2) a new facility, not yet fully operational, known as the Bohl's Plant (at a daily average flow not to exceed 325,000 gpd);

WHEREAS, the HOA Board of Directors has reviewed the "Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal" for Permit No. WQ0013594001 (issued by the TCEQ on July 14, 2014);

WHEREAS, the permit application under consideration would merely renew the PUA's existing TCEQ wastewater permit (referenced above) to authorize the disposal of treated wastewater at a volume not to exceed a daily combined average flow of 1,000,000 gallons per day ("gpd") via surface irrigation of 350 acres of public access land;

WHEREAS, the HOA has identified a number of issues associated with the operation, management, and permitting of the PUA's wastewater facilities, including the Lake Pointe WWTP;

WHEREAS, the HOA and its members are extremely concerned that they will suffer additional harm and adverse effects if the PUA's renewal application is approved and the PUA is authorized to operate under its existing TCEQ Permit, without essential amendments;

WHEREAS, the PUA's renewal application submitted to the TCEQ on June 3, 2014 is clearly not sufficient to satisfy the PUA's obligations under its Permit and the TCEQ rules;

WHEREAS, at its Board meeting on August 18, 2014, the HOA Board voted to participate in the administrative proceedings relating to the TCEQ's consideration of the PUA's pending application for renewal of its wastewater permit. More specifically, the HOA Board voted to file written comments, request public meetings and hearings, and to participate in meetings, hearings, and other proceedings relating to the PUA's application for renewal of the above-referenced TCEQ Permit;

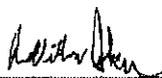
NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lake Pointe HOA that the HOA Board has nominated, designated, and authorized its President (Mr. Tony Bennett) and his designees (including Ms. M.E. Cook (a Lake Pointe resident and member of the HOA)), as well as the Smiley Law Firm, to effectuate the vote of the Board and to represent the HOA by filing comments, requesting public meetings and hearings, and participating in all matters and all proceedings relating to the application of the PUA for renewal of TCEQ Permit No. WQ0013594001.

DULY PASSED AND APPROVED ON AUGUST 18<sup>th</sup>, 2014:



Tony Bennett  
President, Lake Pointe Homeowners Association, Inc.

ATTEST:



Will Jenks  
Secretary, Lake Pointe Homeowners Association, Inc.

Lake Pointe HOA  
P.O. Box 342585  
Austin, Texas 78734  
Phone: 512.266.6771  
Fax: 512.266.6791

**Marisa Weber**

---

**From:** PUBCOMMENT-OCC  
**Sent:** Thursday, May 07, 2015 4:48 PM  
**To:** PUBCOMMENT-OCC2  
**Subject:** FW: Public comment on Permit Number WQ0013594001  
**Attachments:** Lake Pointe HOA Comment Letter re WQ0013594001 with Attachments1.pdf

PM  
H

*MWD  
93175*

**From:** [cindy@smileylawfirm.com](mailto:cindy@smileylawfirm.com) [mailto:[cindy@smileylawfirm.com](mailto:cindy@smileylawfirm.com)]  
**Sent:** Thursday, May 07, 2015 4:44 PM  
**To:** DoNot Reply  
**Subject:** Public comment on Permit Number WQ0013594001

**REGULATED ENTITY NAME** LAKE POINTE WWTP

**RN NUMBER:** RN102077989

**PERMIT NUMBER:** WQ0013594001

**DOCKET NUMBER:**

**COUNTY:** TRAVIS

**PRINCIPAL NAME:** WEST TRAVIS COUNTY PUA

**CN NUMBER:** CN604021980

**FROM**

**NAME:** Cindy Smiley

**E-MAIL:** [cindy@smileylawfirm.com](mailto:cindy@smileylawfirm.com)

**COMPANY:** Smiley Law Firm

**ADDRESS:** 6000 SHEPHERD MOUNTAIN CV 2107  
AUSTIN TX 78730-4923

**PHONE:** 5123947121

**FAX:** 5123947145

**COMMENTS:** Please see the attached letter providing comments and requesting a public meeting and contested case hearing.

*MWD*



6000 Shepherd Mountain Cove  
Suite 2107  
Austin, Texas 78730

Telephone: 512.394.7121  
Facsimile: 512.394.7145  
cindy@smileylawfirm.com

May 7, 2015

**VIA ELECTRONIC FILING**

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

Re: Comments and Requests for Public Meeting and Contested Case Hearing on Application of West Travis County Public Utility Agency for Renewal of Water Quality Permit No. WQ0013594001; CN604021980

Dear Ms. Bohac:

This letter is filed on behalf of the Lake Austin/Lake Pointe Homeowners Association, Inc. ("Lake Pointe HOA" or "HOA"), an association of approximately 945 homeowners in a residential neighborhood located in western Travis County. Owners of the subdivision lots within the Lake Pointe neighborhood (except for the owners of common areas and municipal utility district lots) are automatically members of the HOA, and the retail wastewater services for the entire neighborhood are provided by the West Travis County Public Utility Agency ("PUA" or "Applicant"). The Lake Pointe neighborhood is the "host" location for the Applicant's largest wastewater treatment facility: the Lake Pointe Wastewater Treatment Plant ("WWTP") located at 3100 Napa Drive, Austin, 78738.

The Lake Pointe WWTP is located within the Lake Pointe subdivision on a residential street, in a residential neighborhood, within a short distance of a neighborhood park, and in close proximity to the homes of the HOA's members. The Lake Pointe WWTP is currently authorized for treatment of up to 675,000 gallons per day ("gpd"), and it was originally permitted in 1992.

The PUA's existing Water Quality Permit (Permit No. WQ0013594001, the "Permit") was issued in 2009, and was a renewal of its prior Permit issued in 2006. In addition to the 675,000 gpd authorized for treatment at the Lake Pointe WWTP, the Permit authorizes treatment of up to 325,000 gpd at the PUA's new Bohls Plant (located in a non-residential area along Bee Cave Parkway). We understand that this plant is operational and is handling some of the wastewater generated by the PUA's customers. Importantly, however, the majority of the wastewater from

the PUA's diverse universe of customers (including single-family residences, multi-family residences, office buildings, car washes, entertainment venues, restaurants, retail stores, shopping centers, hotels, fast food eateries, and grocery stores) enters the PUA's vast collection system and is conveyed to the Lake Pointe WWTP for treatment.

In recent years, HOA members have experienced (and continue to experience) multiple events of nuisance odors and raw sewage spills emanating from the Lake Pointe WWTP. HOA members have repeatedly advised the PUA Board and its management of these events, and Lake Pointe residents have also notified the TCEQ of these events. The decisions made by the PUA with respect to the operation and management of the Lake Pointe WWTP, and the terms of the PUA's TCEQ-issued Permit for its treatment and disposal of wastewater effluent, are critically important to the health and welfare of the HOA and its members. Recognizing the serious consequences of the PUA's actions, the HOA Board of Directors voted to file these comments, request public meetings and public hearings, and participate in the TCEQ proceedings associated with the PUA's application for renewal of its Permit. A resolution of the Lake Pointe HOA's Board is attached to this letter and incorporated by reference. The resolution provides additional details on the HOA, its corporate status, and its interests in this proceeding.

#### **Comments on the PUA's Renewal Application and the ED's Draft Permit**

In response to the PUA's June 2014 application (the "Application") to renew its Permit, the Lake Pointe HOA submitted comments to the TCEQ in a letter dated September 5, 2014. To the extent that the concerns expressed in its prior letter continue to apply, the HOA incorporates its September 5, 2014 letter by reference.

The draft amended permit issued by the TCEQ Executive Director ("ED") on April 2, 2015 (the "Draft Permit") appears to include five new provisions within the Special Conditions section that seem to be intended to address some of the Lake Pointe HOA's concerns (see Pages 34 and 35 of the Draft Permit). The text of these provisions is copied below (in italics), followed by the HOA's concerns or responses to each new provision. Please review and consider these comments regarding the Draft Permit:

*25. The permittee shall install and maintain an automatic emergency power transfer.*

The Lake Pointe HOA appreciates the addition of this provision. To avoid confusion, we request that the provision be clarified to specify what is meant by an "automatic emergency power transfer," as well as the timeframe for implementing this system.

*26. The permittee shall use its best professional judgment to monitor and maintain operational dissolved oxygen concentrations for the aeration basins, equalization basins and sludge digesters as required by 30 TAC §217.*

The Lake Pointe HOA appreciates the addition of this provision.

*27. The permittee shall operate and maintain the odor abatement equipment according to the facility's operations and maintenance manual. All maintenance records shall be available for inspection by authorized representatives of the commission for at least three years. This permit condition shall expire at the end of the current permit term.*

The Lake Pointe HOA appreciates the addition of this provision, but is concerned by ambiguities that allow overly broad interpretation of this provision. To address this concern, this provision could be revised to refer to a specific manual, by date, and to allow the PUA to revise the manual only in a manner that does not diminish or decrease its obligations with respect to the operations and maintenance of odor abatement equipment. Alternatively, the Permit could require the PUA to implement the odor prevention plan submitted to the TCEQ's enforcement division in June 2014 in accordance with deadlines established in the Permit. There may be other alternatives to resolve this concern.

Due to the historical and ongoing odor problems caused by the Lake Pointe WWTP, the HOA also requests that the last sentence of this provision be modified. Rather than having this time limit, the Permit would connect the removal of this requirement to the solution of the problem it is intended to address. For example, the Permit could allow this requirement to be removed in a future permit if the PUA can demonstrate that its odor abatement equipment is no longer needed.

*28. The permittee shall timely respond to odor complaints, made directly to the permittee and shall maintain a record of these responses. Documentation should include the cause of the odor and the corrective action. These records shall be available for inspection by authorized representatives of the commission for at least three years. This permit condition shall expire at the end of the current permit term.*

The Lake Pointe HOA appreciates the addition of this provision. At the same time, we request that this provision be modified with some clarifying language to require the PUA to provide and publicize where and how complaints should be logged and that the method is in keeping with modern and accessible communication. For instance, the PUA could add an odor complaint form to its website and also include an odor hotline. The web page should be mobile-friendly, since most odors will be detected when people are walking.

The HOA also requests that the last sentence of this provision be modified to remove the expiration date. Based on the historical and ongoing odor issues, we request that this provision continue in perpetuity and only be removed in future permits if the PUA demonstrates an undue hardship in combination with a clean record regarding odors.

*29. The permittee shall continue to implement its program for retail and commercial customers to address grease and rag build-up within the collection system and lift station.*

The HOA agrees that this provision addresses a significant issue. But we request that the metric of compliance be tied to the metric of performance. Our understanding is the PUA measures suspended solids in solution as opposed to merely grease concentrations. We request that this provision be modified to reflect their current measurement method.

### **Request for Public Meeting on PUA's Application for Renewal of its Wastewater Permit**

**On behalf of its approximately 945 members, the Lake Pointe HOA requests that a public meeting be held regarding the Application of the West Travis County Public Utility Agency for Renewal of Water Quality Permit No. WQ0013594001. We respectfully request that the public meeting be held within a reasonable distance from the Lake Pointe community,**

since the largest facility that is the subject of this Application, the Lake Pointe WWTP, is located within the Lake Pointe neighborhood.

**Request for Contested Case Hearing on PUA's Application for Renewal of its Wastewater Permit**

**The Lake Pointe HOA requests a contested case hearing regarding the Application of the West Travis County Public Utility Agency for Renewal of Water Quality Permit No. WQ0013594001.**

The address and phone numbers for the Lake Pointe HOA are:

Lake Pointe HOA  
P.O. Box 342585  
Austin, Texas 78734  
Phone: 512.266.6771  
Fax: 512.266.6791

Under the TCEQ rules governing eligibility for a hearing, 30 Texas Administrative Code ("TAC") §55.205 lists three requirements that an association must meet in order to have standing to request a contested case hearing:

- (1) One or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) The interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) Neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

**Standing of Individual Members.**

Many of the members of the Lake Pointe HOA have standing to request a hearing in their own right. These members include, but are not limited to:

Ms. M.E. Cook  
12310 Carlsbad Drive  
Austin, TX 78738  
Phone: (512) 633-8042

Ms. Cook and her family live in her home at the above address approximately 0.2 miles downgradient from the Lake Pointe WWTP. As documented in numerous complaints filed with the TCEQ in recent years, Ms. Cook has been negatively affected by nuisance odors caused by the Lake Pointe WWTP. On several occasions, Ms. Cook has been unable to use and enjoy her property due to horrible sewage odors in her yard and the neighborhood streets and parks she uses on a regular basis. Odor issues are likely to continue under the terms of the Draft Permit, which does not appear to address all of the issues that have led to the repeated (and recent) odor problems.

Ms. Laurie Heronemus  
12302 Carlsbad Drive  
Austin, TX 78738  
Phone: (512) 514-0126

Ms. Heronemus and her family live in the home at the above address approximately 0.1 miles downgradient from the Lake Pointe WWTP. As documented in complaints filed with the TCEQ on numerous occasions in 2013, 2014, and 2015, Ms. Heronemus has been negatively affected by nuisance odors caused by the Lake Pointe WWTP. On several occasions, Ms. Heronemus has been unable to use and enjoy her property due to horrible sewage odors in her yard and the neighborhood streets and parks she uses on a regular basis. Odor issues are likely to continue under the terms of the Draft Permit, which does not appear to address all of the issues that have led to the repeated (and recent) odor problems.

The Lake Pointe HOA's Interests are Germane to its Purpose.

The Lake Pointe HOA's Articles of Incorporation were filed on January 12, 1996 with the Texas Secretary of State's Office. As stated in its Articles of Incorporation, the general purposes and powers of the Lake Pointe HOA include, but are not limited to, the promotion of the common good, health, safety and general welfare of the residents within the Lake Pointe development in western Travis County. A copy of the Articles of Incorporation is attached as ATTACHMENT A.

Additionally, the HOA owns a buffer lot directly adjacent to the PUA's Lake Pointe WWTP on Napa Drive. This 0.867-acre lot is shown on the PUA's Buffer Zone Map (Attachment B of the Draft Permit) as the lot between two LCRA properties with frontage on the west side of Napa Drive.

Clearly, the interests that are affected by the pending PUA Application to renew its Water Quality Permit for the Lake Pointe WWTP, which is located within the Lake Pointe neighborhood, are germane to the Lake Pointe HOA's purpose to promote the common good, health, safety and general welfare of its residents, as stated in its Articles of Incorporation and demonstrated by its past and ongoing efforts to address its members' concerns regarding the Lake Pointe WWTP. For example, abatement of noxious odors permeating the neighborhood is essential to promoting the HOA's members' ability to enjoy their own property and the common areas in the neighborhood. Likewise, prevention of sewage spills in neighborhood streets promotes the health and safety of the HOA's members, who could come into contact with spilled sewage that may contain pathogens such as bacteria and viruses.

The HOA's interests are also affected as a real property owner adjoining the property where the Lake Pointe WWTP is located. The operation of the WWTP under the Draft Permit has the potential to limit the HOA's and its members' use and enjoyment of this property by limiting the uses to which the HOA's property can be applied (for example, if odors are not sufficiently controlled).

The Lake Pointe HOA Represents its Members.

There is no participation required of the Lake Pointe HOA's individual members for the claim asserted or the relief requested in this case. Because retail wastewater services for the entire neighborhood are provided by the PUA, the adequacy of the PUA's wastewater treatment facilities and operations is a universal concern for its members. Further, the attached Resolution memorializes the decision by the HOA's Board of Directors for the HOA to participate in all matters and all proceedings relating to the application of the PUA for renewal of TCEQ Permit No. WQ0013594001. The President of the Lake Pointe HOA Board of Directors, Mr. Craig Andrews, and his designees, including Ms. M.E. Cook (a Lake Pointe resident and member of the HOA), will act as representatives for Lake Pointe HOA in this matter. Additionally, the Smiley Law Firm will act as legal representation for the Lake Pointe HOA. The Board of Directors has taken specific action to file these comments and request a hearing, as shown in the Board Resolution dated August 18, 2014 at ATTACHMENT B.

Based upon the information presented above, we respectfully request the TCEQ's concurrence that the Lake Pointe HOA has demonstrated its interests in this important proceeding on behalf of its members who are directly impacted by the adequacy of the PUA's wastewater treatment facilities and operation of those facilities. The Lake Pointe HOA seeks the TCEQ's determination that it is an affected person and its hearing request should be granted, so that it may become a party to the TCEQ proceedings on this Application.

**Contact Information for the Lake Pointe HOA**

Please send all official communications and documents for the Lake Pointe HOA relating to this permit proceeding to the following:

Cynthia C. Smiley  
**Smiley Law Firm, P.C.**  
6000 Shepherd Mountain Cove #2107  
Austin, Texas 78730  
Phone number (512) 394-7121  
Fax number (512) 394-7145  
Email: [cindy@smileylawfirm.com](mailto:cindy@smileylawfirm.com)

The Lake Point HOA also respectfully requests that its general counsel be added to the mailing list for this application as follows:

Brady E. Ortego  
Roberts Markel Weinberg Butler Hailey, PC  
2800 Post Oak Blvd., 57th Floor  
Houston, Texas 77056  
Toll Free: (844) 775-9344  
Email: [bortego@rmwbhlaw.com](mailto:bortego@rmwbhlaw.com)

The Lake Pointe HOA appreciates your consideration of these comments and requests the granting of its requests for a public meeting and for a contested case hearing. We hope to continue working with the Applicant as well as the TCEQ in the coming months to craft permit provisions that are mutually agreeable and address the HOA's concerns. Please feel free to contact me at the phone number and e-mail address listed above if you have any questions regarding these requests.

Sincerely,

*Shana L. Horton w/p for*

Cynthia C. Smiley  
Smiley Law Firm, P.C.

ATTORNEYS FOR THE LAKE POINTE HOA

Attachment A: Articles of Incorporation Filed with Secretary of State on January 12, 1996

Attachment B: Resolution of Lake Pointe HOA Board of Directors Dated August 18, 2014

cc: Mr. Craig Andrews, President, Lake Pointe HOA  
Ms. M.E. Cook, Chair, Wastewater Committee, Lake Pointe HOA  
Mr. David Klein, Lloyd Gosselink, Attorney for WTCPUA

**ATTACHMENT A:**

**ARTICLES OF INCORPORATION**

ARTICLES OF INCORPORATION  
OF

LAKE AUSTIN LAKE POINTE HOMEOWNERS ASSOCIATION, INC.

FILED  
In the Office of the  
Secretary of State of Texas  
JAN 12 1996  
Corporations Section

The undersigned natural person of the age of eighteen (18) years or more, acting as a sole incorporator of a corporation (the "Corporation") under the Texas Non-Profit Corporation Act (the "Act"), hereby adopts the following Articles of Incorporation for the Corporation:

ARTICLE I

NAME

The name of the Corporation is <sup>Lake Austin</sup> /Lake Pointe Homeowners Association, Inc.

ARTICLE II

NON-PROFIT CORPORATION

The Corporation is one which does not contemplate pecuniary gain or profit to its members, and it is organized solely for non-profit purposes.

ARTICLE III

DURATION

The period of duration of the Corporation is perpetual.

ARTICLE IV

PURPOSES AND POWERS

1. The Corporation is organized and shall be operated exclusively as a homeowners association within the meaning of Section 528 of the Internal Revenue Code of 1986, as amended, or the corresponding provision or provisions of any subsequent

United States Internal Revenue law or laws (the "Code"). The primary purposes for which the Corporation is formed are to own, lease or license the Common Area (as defined in the Declaration) located in Lake Pointe, a development consisting primarily of single family residential lots in Travis County, Texas ("Lake Pointe"), to govern, operate and maintain the Common Area, and to provide architectural control and compliance with the covenants and restrictions set forth in the Lake Pointe Declaration of Covenants, Conditions and Restrictions (the "Declaration") dated as of June 29, 1995, executed by Southwest Travis County, Ltd., a Texas limited partnership, and Bon Terre-B, Ltd., a Texas limited partnership, and recorded in Volume 12474, Page 1631 of the Real Property Records of Travis County, Texas.

2. Within the scope of the foregoing purposes, and not by way of limitation thereof, the general purposes and powers of the Corporation are:

(a) To promote the common good, health, safety and general welfare of the residents within the property covered by the Declaration (the "Property");

(b) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Corporation arising from the Declaration applicable to the Property, as amended from time to time, the Declaration being incorporated herein by reference for all purposes;

(c) To enforce applicable provisions of the Declaration, the Bylaws of <sup>Lake Austin</sup> Lake Pointe Homeowners Association, Inc. (the "Bylaws"), any rules and regulations

of the Corporation and any other instrument for the management and control of the Property;

(d) To fix, levy and collect, by any lawful means, all fees and assessments pursuant to the terms of the Declaration;

(e) To contract for and pay all expenses in connection with the maintenance, landscaping, utilities, materials, supplies and services relating to the Common Area and facilities thereon; to employ personnel reasonably necessary for administration and control of the Property, including lawyers and accountants where appropriate; and to pay all office and other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes and special assessments which are or would become a lien on any portion of the Property;

(f) To acquire (by purchase, grant, lease, license or otherwise), annex and merge, hold, improve, operate, maintain, convey, sell, lease, license, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation;

(g) To borrow money and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred in connection with the affairs of the Corporation; and

(h) To have and exercise any and all powers, rights and privileges, including delegation of powers as permitted

by law, which the Corporation under the Act may now or hereafter have or exercise.

The foregoing statement of purposes shall be construed as a statement both of purposes and of powers, and the purposes and powers in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. Notwithstanding any of the above statements of purposes and powers, the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Corporation or that are inconsistent with its qualification as a homeowners association under Section 528 of the Code.

#### ARTICLE V

##### **REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the initial registered office of the Corporation is 5450 West Bee Cave Road, Building 1, Suite F, Austin, Texas 78746; and the name of its initial registered agent at such address is Don Walden.

#### ARTICLE VI

##### **INITIAL BOARD OF DIRECTORS**

The initial Board of Directors of the Corporation shall consist of three members; thereafter, the number of directors of the Corporation shall be fixed in accordance with the Bylaws adopted by the Corporation. The names and addresses of the persons who shall serve as directors until the first annual

meeting of members or until their successors shall have been elected and qualified are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Stephen W. Gurasich, Jr.	One Cielo Center, Suite 400 1250 Capital of Texas Highway South Austin, Texas 78746
Don Walden	5450 West Bee Cave Road Building 1, Suite F Austin, Texas 78746
Joel H. Robuck	3816 Bryn Mawr Dallas, Texas 75225

#### ARTICLE VII

##### INCORPORATOR

The name and street address of the incorporator of the Corporation is:

<u>NAME</u>	<u>ADDRESS</u>
Samuel D. Byars	2600 One American Center 600 Congress Avenue Austin, Texas 78701

#### ARTICLE VIII

##### MEMBERSHIP

The authorized number of and qualifications for membership in the Corporation along with the appurtenant voting rights and other privileges due members of the Corporation shall be as set out in the Bylaws.

#### ARTICLE IX

##### NO PRIVATE INUREMENT

No part of the net earnings of the Corporation shall inure to the benefit of any member, director or officer of the Corporation, or any private individual; provided however, that

reasonable compensation may be paid for services rendered to or for the Corporation and expenses may be reimbursed or paid in furtherance of one or more of its purposes.

#### ARTICLE X

##### **ACTION BY WRITTEN CONSENT**

Any action required or permitted to be taken at any meeting of members, directors or committee members of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by a sufficient number of members, directors or committee members, as the case may be, as would be necessary to take that action at a meeting at which all persons entitled to vote on the action were present and voted. Prompt notice of the taking of any action by members, directors or a committee without a meeting by less than unanimous written consent shall be given to those members, directors or committee members who did not consent in writing to the action.

#### ARTICLE XI

##### **DISSOLUTION**

In the event the Corporation is dissolved, the members shall, after all liabilities and obligations of the Corporation are paid or provision is made therefor, adopt a plan for the distribution of the remaining assets of the Corporation in such manner as will carry out the purposes of the Corporation as a homeowners association within the meaning of Section 528 of the Code. The foregoing provision is intended to govern the

distribution of the assets of the Corporation in the event of its dissolution in lieu of Article 1396-6.02.A(3) of the Act.

ARTICLE XII

INDEMNIFICATION

The Corporation shall indemnify any person who was, is or is threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person (i) is or was a director or officer of the Corporation or (ii) while a director or officer of the Corporation, is or was serving at the request of the Corporation as a trustee, officer, partner, venturer, proprietor, director, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, to the fullest extent that a corporation may grant indemnification to a director under the Act, as the same exists or may hereafter be amended. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Act, as the same exists or may hereafter be amended. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Corporation within 90 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to also be paid the expenses

of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense is not permitted under the Act, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors or any committee thereof, special legal counsel or members) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Corporation (including its Board of Directors or any committee thereof, special legal counsel or members) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible. In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of such person's heirs, executors, administrators and personal representatives. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of members or directors, agreement or otherwise. To the extent permitted by then applicable law, the grant of mandatory indemnification to any person pursuant to this Article shall extend to proceedings involving the negligence of such person. The Corporation may additionally indemnify any person covered by the grant of mandatory indemnification contained in this Article to such further extent as is permitted

by law and may indemnify any other person to the fullest extent permitted by law. The Corporation may purchase and maintain insurance or a similar arrangement (including, but not limited to, a trust fund, self-insurance, a security interest or lien on the assets of the Corporation, or a letter of credit, guaranty or surety arrangement) on behalf of any person who is serving the Corporation (or another entity at the request of the Corporation) against any liability asserted against such person and incurred by such person in such a capacity or arising out of status as such a person, whether or not the Corporation would have the power to indemnify such person against that liability under this Article or by statute. Notwithstanding the other provisions of this Article, the Corporation may not indemnify or maintain insurance or a similar arrangement on behalf of any person if such indemnification or maintenance of insurance or similar arrangement would subject the Corporation to income or excise tax under the Code.

#### ARTICLE XIII

##### LIMITATION OF DIRECTOR LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for any act or omission in such director's capacity as a director, except that this Article does not authorize the elimination or limitation of the liability of a director to the extent the director is found liable for: (i) a breach of the director's duty of loyalty to the Corporation; (ii) an act or omission not in good faith that constitutes a breach of duty of the director to

the Corporation or an act or omission that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or (iv) an act or omission for which the liability of a director is expressly provided by an applicable statute. The foregoing elimination of liability to the Corporation and its members shall not be deemed exclusive of any other rights, limitations of liability or indemnity to which a director may be entitled under any other provision of the Articles of Incorporation or Bylaws of the Corporation, contract or agreement, vote of members or directors, principle of law or otherwise. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or amendment. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the foregoing provisions of this Article, the liability of a director shall be eliminated to the full extent permitted by any amendment to the Texas Miscellaneous Corporation Laws Act or the Act hereafter enacted that further eliminates or permits the elimination of the liability of a director.

IN WITNESS WHEREOF, I have executed these Articles of  
Incorporation on ~~October~~ <sup>January</sup> 12, 1996.

Samuel D. Byars  
Samuel D. Byars

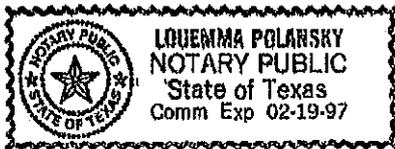
THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

I, the undersigned authority, a Notary Public in and for the  
said County and State, do hereby certify that on this ~~12th~~ <sup>12th</sup> day of  
~~October~~ <sup>January</sup>, 1996, personally appeared before me, Samuel D. Byars,  
who being by me first sworn, declared that he is the person who  
signed the foregoing documents as Incorporator, and that the  
statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the  
date and year above written.

[SEAL]

Louenna Polansky  
Notary Public in and for  
the State of Texas



**ATTACHMENT B:**

**RESOLUTION OF LAKE POINTE  
HOA BOARD OF DIRECTORS**

RESOLUTION OF LAKE AUSTIN LAKE POINTE HOMEOWNERS ASSOCIATION, INC.  
REGARDING PARTICIPATION IN SUBMITTAL OF PUBLIC COMMENTS, REQUESTS  
FOR PUBLIC MEETINGS, AND REQUESTS FOR CONTESTED CASE HEARINGS ON  
APPLICATION OF WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY FOR  
RENEWAL OF TCEQ PERMIT NO. WQ0013594001

WHEREAS, the Lake Austin Lake Pointe Homeowners Association, Inc. ("Lake Pointe HOA" or "HOA") is a Texas non-profit corporation holding a Certificate of Incorporation issued by the Texas Secretary of State's Office dated and effective on January 12, 1996;

WHEREAS, under the HOA's corporate documents, persons who own a platted lot in the Lake Pointe subdivision (except for lots designated as common areas or as municipal utility district lots) are automatically members of the HOA, and membership in the HOA is appurtenant to the land;

WHEREAS, the general purposes and powers of the HOA include, but are not limited to, the promotion of the common good, health, safety and general welfare of the residents within the Lake Pointe development in western Travis County;

WHEREAS, the West Travis County Public Utility Agency ("PUA") is the sole provider of retail water and wastewater services to the Lake Pointe neighborhood, and the HOA's members receive water and wastewater utility services from the PUA;

WHEREAS, the PUA provides wastewater services to all of its wastewater customers using a wastewater treatment plant ("WWTP") located at 3100 Napa Drive in Austin, Travis County, 78738 (the "Lake Pointe WWTP");

WHEREAS, the Lake Pointe WWTP is located within the Lake Pointe subdivision on a residential street, in a residential neighborhood, within a short distance of a neighborhood park, and in close proximity to the homes of the HOA's members;

WHEREAS, in recent years, HOA members have experienced (and continue to experience) multiple events of nuisance odors and raw sewage spills emanating from the Lake Pointe WWTP and its collection system;

WHEREAS, the Lake Pointe HOA and its members are directly impacted by and deeply concerned about the PUA's operation and management of its wastewater services and the Lake Pointe WWTP;

WHEREAS, on June 3, 2014, the PUA filed an application with the Texas Commission on Environmental Quality ("TCEQ") to renew its existing Permit No. WQ0013594001, issued on December 15, 2009, which currently authorizes the treatment and disposal of domestic wastewater effluent at a daily average flow not to exceed 1,000,000 million gallons per day ("gpd") using two treatment facilities: 1) the Lake Pointe WWTP (at a daily average flow not to exceed 675,000 gpd; and 2) a new facility, not yet fully operational, known as the Bohl's Plant (at a daily average flow not to exceed 325,000 gpd);

WHEREAS, the HOA Board of Directors has reviewed the "Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal" for Permit No. WQ0013594001 (issued by the TCEQ on July 14, 2014);

WHEREAS, the permit application under consideration would merely renew the PUA's existing TCEQ wastewater permit (referenced above) to authorize the disposal of treated wastewater at a volume not to exceed a daily combined average flow of 1,000,000 gallons per day ("gpd") via surface irrigation of 350 acres of public access land;

WHEREAS, the HOA has identified a number of issues associated with the operation, management, and permitting of the PUA's wastewater facilities, including the Lake Pointe WWTP;

WHEREAS, the HOA and its members are extremely concerned that they will suffer additional harm and adverse effects if the PUA's renewal application is approved and the PUA is authorized to operate under its existing TCEQ Permit, without essential amendments;

WHEREAS, the PUA's renewal application submitted to the TCEQ on June 3, 2014 is clearly not sufficient to satisfy the PUA's obligations under its Permit and the TCEQ rules;

WHEREAS, at its Board meeting on August 18, 2014, the HOA Board voted to participate in the administrative proceedings relating to the TCEQ's consideration of the PUA's pending application for renewal of its wastewater permit. More specifically, the HOA Board voted to file written comments, request public meetings and hearings, and to participate in meetings, hearings, and other proceedings relating to the PUA's application for renewal of the above-referenced TCEQ Permit;

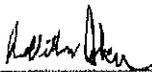
NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lake Pointe HOA that the HOA Board has nominated, designated, and authorized its President (Mr. Tony Bennett) and his designees (including Ms. M.E. Cook (a Lake Pointe resident and member of the HOA)), as well as the Smiley Law Firm, to effectuate the vote of the Board and to represent the HOA by filing comments, requesting public meetings and hearings, and participating in all matters and all proceedings relating to the application of the PUA for renewal of TCEQ Permit No. WQ0013594001.

DULY PASSED AND APPROVED ON AUGUST 18<sup>th</sup>, 2014:



Tony Bennett  
President, Lake Pointe Homeowners Association, Inc.

ATTEST:



Will Jenks  
Secretary, Lake Pointe Homeowners Association, Inc.

Lake Pointe HOA  
P.O. Box 342585  
Austin, Texas 78734  
Phone: 512.266.6771  
Fax: 512.266.6791