

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 13, 2014

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

**RE: LA VILLA INDEPENDENT SCHOOL DISTRICT
TCEQ DOCKET NO. 2013-2211-UCR**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to La Villa ISD's First Amended Application for Emergency Order in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Aaron Tucker".

Aaron Tucker, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2013-2211-UCR

**IN THE MATTER OF
THE LA VILLA
INDEPENDENT
SCHOOL DISTRICT'S
APPLICATION FOR
EMERGENCY ORDER**

§
§
§
§
§
§
§

**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO LA VILLA
ISD'S FIRST AMENDED APPLICATION FOR EMERGENCY ORDER**

I. INTRODUCTION

Applicant La Villa Independent School District ("La Villa ISD") filed a request with the Texas Commission on Environmental Quality ("TCEQ") on January 6, 2014 for the issuance of an emergency order to compel the City of La Villa ("City") in Hidalgo County to provide continuous and adequate water and sewer service pursuant to Texas Water Code § 13.041(d). The City's discontinuance of water and sewer services to La Villa ISD schools presents an imminent and substantial threat to the health and safety of students, faculty, and staff that must be addressed immediately. The Office of Public Interest Counsel ("OPIC") recommends the Commission approve the issuance of an emergency order.

A. Background

The City operates a municipal water and sewer system within the corporate limits of La Villa. The City is recognized as a Public Water System, identified by number P1401. The public water supply is located at Third and Nogales Street in La Villa, Hidalgo County, Texas. The public water supply facility is identified by the TCEQ with

Public Water Supply Identification Number 1080023. The wastewater treatment facility is located approximately 1,300 feet west of the western levee of the Northern Floodway and 2,500 feet north of State Highway 107, just east of La Villa, Hidalgo County, Texas. The wastewater treatment facility is identified with Wastewater Certificate of Convenience and Necessity ("CCN") Identification Number 20803. The City has Texas Pollutant Discharge Elimination Permit No. WQ0014781002, Permit to Discharge Wastes, City of La Villa. Over the past decade, TCEQ has documented numerous violations of state regulations by the City. In 2008, TCEQ obtained an Agreed Final Judgment and Permanent Injunction against the City. TCEQ currently has a pending enforcement case against the City (TCEQ Docket No. 2013-1387-PWS-E.).

The City provides water and sewer service to La Villa ISD, which operates four schools with 688 students, faculty, and staff. The City charges La Villa ISD the institutional rate for water and sewer service. The rate structure for institutional customers is a per gallon fee and a per capita fee. On December 14, 2012, the City approved an ordinance to increase its per gallon fee by one dollar to \$6.00 per 1,000 gallons and its per capita rate from \$6.00 per person per campus (\$3.00 for water service and \$3.00 for sewer service) to \$14.00 per person per campus (\$7.00 for water service and \$7.00 for sewer service) for institutional customers.

La Villa ISD opposes the City's water and sewer service rate increase and has refused to pay the new rate. La Villa ISD has continued to submit payment based on the old rate. Over the past year, the parties have failed to resolve their dispute and a civil suit is currently pending before the Thirteenth Court of Appeals. On or about December 25, 2013, the City shut off water and sewer service to the La Villa ISD schools. Students

were scheduled to start the spring semester on Monday, January 13, 2013, but as a result of the discontinuance of water and sewer services La Villa ISD schools are closed until further notice. In response to the shut off, La Villa ISD filed a request with the TCEQ on January 6, 2014 for the issuance of an emergency order compelling the City to provide continuous and adequate water and sewer service. The matter is set for consideration by the Commission at a public meeting to be held on Wednesday, January 15, 2014, at 9:30 a.m. in Room 201s, Building E, 12100 Park 35 Circle, Austin, Texas 78753.

II. APPLICABLE LAW

The TCEQ may regulate and supervise the business of every water and sewer utility within its jurisdiction and may do all things, whether specifically designated or implied in Chapter 13 of the Water Code, necessary and convenient to the exercise of this power and jurisdiction. Tex. Water Code § 13.041(a). Furthermore, Section 13.041(d) of the Texas Water Code empowers the TCEQ to “issue emergency orders, with or without a hearing: (1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act.” *See also* 30 Tex. Admin. Code § 291.14(a). Texas Water Code § 13.002(21) defines “service” as “any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.” Texas Water Code § 13.002(19) defines “retail public utility” as “any person, corporation, public

utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.” If the Commission issues an emergency order “without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.” Tex. Water Code § 13.041(f).

III. DISCUSSION

TCEQ has both jurisdiction and cause to issue an emergency order to compel the City to provide continuous and adequate water and sewer service to La Villa ISD. Section 13.041(d) of the Texas Water Code gives TCEQ the authority to “issue emergency orders, with or without a hearing: (1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act.” *See also* 30 Tex. Admin. Code § 291.14(a).

The present situation satisfies both of the elements necessary to give TCEQ jurisdiction to issue such an order. First, the City is “a water or sewer service provider that has obtained . . . a certificate of public convenience and necessity to provide continuous and adequate . . . sewer service.” The City is a retail public utility as defined under Texas Water Code § 13.002(19) and holds a Certificate of Public Convenience and Necessity (Number 20803) to provide continuous and adequate sewer service. Second, the discontinuance of water and sewer service to La Villa ISD has occurred because of

the City's actions. In December, the City discontinued water and sewer service to La Villa ISD schools.

Section 13.041(d) of the Texas Water Code gives TCEQ broad discretionary authority to intervene when the situation warrants it. The present situation is one such example. The discontinuance of water and sewer service to La Villa ISD presents an imminent and serious threat to public health and safety that must be corrected. Tex. Health and Safety Code § 341.065(b) requires that “[a] school building must be properly ventilated and provided with an adequate supply of drinking water, an approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities that conform to established standards of good public health engineering practices.” The City's decision to discontinue water and sewer services has resulted in unsafe and unlawful conditions at the schools. This is unacceptable. As a result, La Villa ISD schools are currently closed until further notice. TCEQ should exercise its authority to issue an emergency order to restore water and sewer service while the parties work to resolve this issue.

IV. CONCLUSION

OPIC recommends the Commission approve La Villa ISD's Application for an Emergency Order to compel the City of La Villa to provide continuous and adequate water and sewer service to the La Villa ISD schools. The discontinuance of water and sewer service to La Villa ISD schools presents a serious and imminent threat to the health and safety of the students, teachers, and staff.

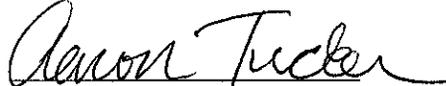
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: 
Aaron B. Tucker
Assistant Public Interest Counsel
State Bar No. 24088553
(512) 239-6823 PHONE
(512) 239-6377 FAX

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2014 the original and seven true and correct copies of the Office of the Public Interest Counsel's Response to La Villa ISD's First Amended Application for Emergency Order were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.


Aaron B. Tucker

Mailing List
LA VILLA INDEPENDENT SCHOOL DISTRICT
TCEQ DOCKET NO. 2013-2211-UCR

Miguel A. Saldana
Walsh, Anderson, Gallegos, Green, &
Trevino, P.C.
105 E. 3rd Street
Weslaco, Texas 78596
956/647-5122 Fax: 956/647-5421

Robert J. Salinas
Attorney at Law
2101 Wood Avenue
Donna, Texas 78537
956/464-2460 Fax: 956/464-2494

Richard W. Fryer
Fryer & Hansen, PLLC
1352 West Pecan Blvd.
McAllen, Texas 78501
956/686-6606 Fax: 956/686-6601

Jaime A. Garza, Director
TCEQ Harlingen Regional Office
MC R-15
1804 W. Jefferson Ave.
Harlingen, Texas 78550-5247
956/425-6010 Fax: 956/412-5059

Mark Harmon
TCEQ Intergovernmental Relations
Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3500 FAX 512/239-3335

Todd Galiga
TCEQ Environmental Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0600

Tammy Benter
TCEQ Water Supply Division MC 153
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4691 FAX 512/239-2214

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

Brian Christian
TCEQ SBEA Division
Public Participation and Education
Program MC 108
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4000 FAX 512/239-5678

