

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 28, 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: AGUA SPECIAL UTILITY DISTRICT
TCEQ DOCKET NO. 2014-1339-MWD**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Petition to Revoke in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Eli Martinez".

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2014-1339-MWD

**PETITION TO REVOKE TCEQ WATER § BEFORE THE TEXAS
PERMIT NO. WQ0014415003 ISSUED § COMMISSION ON
TO AGUA SPECIAL UTILITY DISTRICT § ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO PETITION
TO REVOKE**

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) and files this response to *Petition to Revoke TPDES Permit* filed by the City of Mission in the above-referenced matter.

I. BACKGROUND

On September 24, 2012, Agua Special Utility District (Agua) submitted an application to the TCEQ's Water Quality Division for a new permit to construct a wastewater treatment plant and to discharge 7.55 million gallons of wastewater per day. In response to a question in the application asking for the "city where the site is located, or, if not in a city...the nearest city" Agua responded "Palmview, Texas." Agua also indicated in the "mailing list for notice" section of the application that the city to be notified of the plant was Palmview.

The TCEQ's Applications Review and Processing Team declared the Application administratively complete on November 9, 2012. The NORI was published in a newspaper of general circulation in Hidalgo County on November 19, 2012. On November 29, 2012, the Chief Clerk mailed the Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) to interested persons and landowners as identified in the application, including the mayor and chief health official of the City of Palmview. The Chief Clerk mailed the Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater (NAPD) to interested persons and landowners as identified in the application including the mayor and chief health official of the City of Palmview, on February 7, 2014. The NAPD was published in a newspaper

of general circulation in Hidalgo County on March 26, 2013. The comment period for the application ended on April 29, 2013. No comments were submitted to the TCEQ and the Executive Director signed TPDES Permit No. WQ0014415003 on May 17, 2013. No motions to overturn the Executive Director's decision to issue the permit were submitted to the TCEQ.

The chief clerk included the City of Mission on its list of landowners attached to the mailed notice for the Application, delivered to Mission City Hall. The notice was not specifically sent to the attention of Mission's mayor and senior health official.

II. PETITION TO REVOKE PERMIT NO. WQ0014415003

On September 12, 2014, the City of Mission (Petitioner or Mission) petitioned the TCEQ to revoke Agua Special Utility District's Permit No. WQ0014415003. Petitioner argues that the permit should be revoked because Agua misrepresented the fact that the proposed wastewater treatment plant, now authorized by permit, is actually in the corporate limits of the City of Mission. Because Agua made a false or misleading statement in their formal application, good cause now exists for permit revocation based on the failure to disclose fully all relevant facts. Furthermore, because Agua did not disclose that the proposed facility would be located in the City of Mission, the mayor and senior health official in Mission did not specifically receive mailed notice.

III. APPLICABLE RULES

A. Permit Revocation

"A permit or other order of the commission does not become a vested right and may be suspended or revoked for good cause at any time by order of the commission after opportunity for a public hearing is given."¹ Good cause for revocation includes "the

¹ 30 Texas Administrative Code (TAC) § 305.66(a).

permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time.”²

Additionally, the commission may revoke an original permit if the commission finds after notice and hearing that the permit holder or applicant “made a false or misleading statement in connection with an original application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees.”³

Revocation of a permit may be requested by “a person affected by the issuance of a permit or other order of the commission.” Affected persons “may initiate proceedings for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.”⁴ “In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission.”⁵

B. Notice

The chief clerk is required to mail notices of TPDES permit applications to “the mayor and health authorities of the city or town in which the facility is or will be located.”⁶

IV. DISCUSSION

As a preliminary matter, in order to petition for the revocation of a permit, the petition must be brought by “a person affected by the issuance of a permit or other order of the commission.”⁷ Petitioner argues that they are affected by the issuance of Agua’s

² 30 TAC § 305.66(a)(4); see also Texas Water Code § 7.302(b)(5).

³ 30 TAC § 305.66(f)(3).

⁴ 30 TAC § 330.66(d).

⁵ 30 TAC § 305.68(a).

⁶ 30 TAC § 39.413, .551(c).

⁷ 30 TAC § 330.66(d).

permit because the waste discharged pursuant to that permit will take place within Mission's jurisdiction. OPIC agrees. The location of the facility inside the city limits of Mission and the large volume of discharge authorized by the permit qualify Petitioner as an affected person for purposes of this petition to revoke.

Agua's misidentification of the city in which the facility would be constructed may constitute good cause grounds for permit revocation as a "misrepresentation of material fact" or a "false or misleading statement" in connection with its original application" under the rules. If Mission understood the full significance of the permitted operations it may have reviewed the application more critically, analyzing city ordinances, goals, and plans. Furthermore, if the notice had been directly mailed to Mission's health authorities and mayor in accordance with the rules, different departments may have become aware of the application and followed different protocol with respect to reviewing, commenting on, and perhaps contesting the permit. OPIC therefore recommends that the Commission refer the matter to the State Office of Administrative Hearings (SOAH) to allow the interested parties an opportunity to present evidence on whether there is good cause to revoke Permit No. WQ0014415003, and whether all relevant notice requirements have been met.

V. ISSUES RECOMMENDED FOR REFERRAL

OPIC recommends the following issues be referred to the State Office of Administrative Hearings for a contested case hearing:

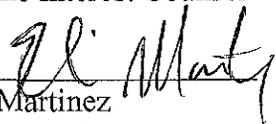
1. In relation to Permit No. WQ0014415003, did Agua SUD misrepresent a material fact by incorrectly stating that the facility was in or near the city limits of Palm City, and not identifying the City of Mission as the municipality where the facility is to be located?
2. In relation to Permit No. WQ0014415003, have the notice requirements of 30 TAC §39.413, .551(c) been correctly fulfilled?

VI. CONCLUSION

Petitioner may bring its petition to revoke, as it is affected by the permit at issue. In addition to hearing this petition, the Commission should refer several factual issues to SOAH, as interested parties should be given an opportunity to present evidence on whether there is good cause to revoke Agua's permit and whether there was sufficient mailed and published notice for the ED to approve Permit No. WQ0014415003.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on this October 28, 2014, the original document and seven copies were served upon 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.


Eli Martinez

MAILING LIST
AGUA SPECIAL UTILITY DISTRICT
TCEQ DOCKET NO. 2014-1339-MWD

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FOR ALTERNATIVE DISPUTE
RESOLUTION

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