

TCEQ DOCKET NO. 2023-0384-IWD

**APPLICATION BY AQUA
UTILITES, INC. FOR NEW
TPDES PERMIT NO.
WQ0005206000**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the application by Aqua Utilities Inc. (Aqua) for new TPDES permit WQ0005206000.

I. Summary of Recommendation

The Executive Director recommends the Commission grant the hearing request of Aqua refer the following issues to the State Office of Administrative Hearings:

1. Whether the effluent limits for total dissolved solids and sulfate were properly calculated; and
2. Whether the geographic locations of water quality data used to calculate the permit limits are consistent with the rules.

II. Background

The Executive Director received a hearing request from the Applicant, Aqua Utilities (Aqua). In 2016 Aqua applied for a new TPDES permit to discharge reverse osmosis reject wastewater. The Executive Director prepared a draft permit that complies with all applicable rules. Aqua did not accept the draft permit because, according to Aqua, the draft permit includes effluent limits for Total Dissolved Solids (TDS) and sulfate that are too stringent and unachievable. After considering Aqua's comments and requested changes, the Executive Director determined that the changes Aqua requested would cause a violation of the water quality criteria for Segment No. 1903; therefore, the draft permit retains the originally proposed effluent limitations for TDS and sulfate.

III. Description of the Proposed Wastewater Treatment Facility

Aqua proposes to continue operating the existing Aqua Utilities Inc., Country View Estates WTP, a water treatment plant. Aqua applied to the TCEQ for new TPDES

Permit No. WQ0005206000 to authorize the existing discharge of water treatment wastewater at a daily average flow not to exceed 55,000 gallons per day via Outfall 001.

The facility is located on Country Scene Road, approximately two miles north of Park Road 37 and 2.5 miles north of State Highway 16, northeast of the City of Helotes, Medina County, Texas 78023. The effluent is discharged to an unnamed tributary of San Geronimo Creek, thence to San Geronimo Creek, thence to Medina River Below Medina Diversion Lake in Segment No. 1903 of the San Antonio River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary of Geronimo Creek (upstream of Indian Mound Springs) and limited aquatic life use for the unnamed tributary of Geronimo Creek (downstream of Indian Mound Springs). The designated uses for Segment No. 1903 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use.

The effluent is discharged to an unnamed tributary of San Geronimo Creek, thence to San Geronimo Creek, thence to Medina River Below Medina Diversion Lake in Segment No. 1903 of the San Antonio River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary of Geronimo Creek (upstream of Indian Mound Springs) and limited aquatic life use for the unnamed tributary of Geronimo Creek (downstream of Indian Mound Springs). The designated uses for Segment No. 1903 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use.

IV. Procedural Background

TCEQ received the application for a new permit on August 3, 2016, and declared it administratively complete September 26, 2016. Aqua published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Hondo Anvil Herald* on October 13, 2016, and in Spanish in the *Hondo Anvil Herald* on October 27, 2016. Aqua published the Notice of Application and Preliminary Decision on August 5, 2021 in the *Hondo Anvil Herald*. The comment period ended September 7, 2021; however, Aqua did not accept the draft permit. The Executive Director continued to work with the applicant but was unable to obtain the Applicant's acceptance of the draft permit. As required by 30 TAC § 39.551(c)(2)(B) the Office of Chief Clerk mailed the NAPD to the updated mailing list on October 7, 2022, and extended the comment

period to November 7, 2022.¹ The Executive Director's Response to Comments was mailed on December 12, 2022, and the Hearing Request/Request for Reconsideration period ended on January 11, 2023. Aqua submitted a hearing request on January 11, 2023.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. Senate Bill 709 amended the requirements for comments and contested case hearings. This application is subject to those changes in the law.

V. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

1. whether the requestor is an affected person;
2. which issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or of law;
4. whether the issues were raised during the public comment period;

¹ 30 TAC § 39.551(c)(2)(B) provides: If the notice of the receipt of application and intent to obtain a permit was mailed more than two years prior to the time that notice of application and preliminary decision is scheduled by the executive director to be mailed, the applicant must submit an updated landowner map, landowner list, and any associated information for mailing the notice of application and preliminary decision. Notwithstanding this requirement, the Executive Director may require an updated landowner map, landowner list, and any associated information for mailing the notice of the application and preliminary decision if circumstances in the area have significantly changed that warrant updated lists.

5. whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comments;
6. whether the issues are relevant and material to the decision on the application; and
7. a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

1. give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
2. identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
3. request a contested case hearing;

4. for applications filed on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
5. provide any other information specified in the public notice of application.
30 TAC § 55.201(d).

Requirement that Requestor be an Affected Person/"Affected Person" Status

Applicants are entitled to a request a contested case hearing, and the rules require the hearing request must be granted. 30 TAC § 55.201(b); 30 TAC § 55.211(c).

Referral to the State Office of Administrative Hearings

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

1. involves a disputed question of fact or a mixed question of law and fact;
2. was raised during the public comment period by an affected person whose hearing request is granted; and
3. is relevant and material to the decision on the application.

30 TAC § 50.115(c).

VI. Analysis of the Requests

A. Analysis of the Hearing Requests

Aqua requested a contested case hearing on its application. As required by 30 TAC § 55.201(d), Aqua provided its relevant contact information, identified issues, and specifically requested a contested case hearing. Aqua also provided a list of relevant

and material issues to be referred to hearing. The Executive Director recommends the Commission find that Aqua has a right to a contested case hearing on its application pursuant to 30 TAC § 55.211(c).

B. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

1. Whether the effluent limits for total dissolved solids and sulfate were properly calculated. (RTC Comment No. 1)

This issue involves a disputed question of fact, was raised by Aqua Texas during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.

The Executive Director recommends the Commission refer this issue to SOAH.

2. Whether the geographic locations of water quality data used to calculate the permit limits are consistent with the rules. (RTC Comment No. 1)

This issue involves a disputed question of fact, was raised by Aqua Texas during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit.

The Executive Director recommends the Commission refer this issue to SOAH.

VII. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that as that applicant Aqua Utilities, Inc. is entitled to a Contested Case Hearing.
2. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

3. If referred to SOAH, refer the following issues raised by Aqua Utilities, Inc.:
 - a. Whether the effluent limits for total dissolved solids and sulfate were properly calculated;
 - b. Whether the geographic locations of water quality data used to calculate the permit limits are consistent with the rules.

Respectfully submitted,

Texas Commission on Environmental
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REPRESENTING THE EXECUTIVE
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CERTIFICATE OF SERVICE

I certify that on April 3, 2023, the “Executive Director’s Response to Hearing Requests” for Aqua Utilities, TPDES permit No. WQ0005206000, was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the mailing list provided by the Office of the Chief Clerk via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Kathy Humphreys

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TCEQ Docket No. 2023-0384-IWD; Permit No. WQ0005206000

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