

TCEQ DOCKET NO. 2024-0670-MWD

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| APPLICATION BY MUNICIPAL | § | BEFORE THE |
| OPERATIONS, LLC FOR TEXAS | § | TEXAS COMMISSION ON |
| POLLUTION DISCHARGE | § | |
| ELIMINATION SYSTEM PERMIT NO. | § | ENVIRONMENTAL QUALITY |
| WQ0016171001 | | |

MUNICIPAL OPERATIONS, LLC’S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Applicant Municipal Operations, LLC (Applicant) and files this Response to Hearing Requests relating to the issuance of proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016171001, and would respectfully show the following:

I. SUMMARY OF RESPONSE

The Texas Commission on Environmental Quality (TCEQ or Commission) received timely hearing requests from 30 individuals, one environmental group, and three governmental entities. As explained more fully below, of the 30 individual requests, Applicant has shown that none of the requestors meet the definition of an affected person. Furthermore, the hearing requests filed by Greater Edwards Aquifer Alliance (GEAA), the San Antonio Water System (SAWS), the San Antonio Metropolitan Health District (Met Health), and the City of Grey Forest (Grey Forest) should not be granted. Accordingly, the Commission should deny all hearing requests, and if it refers this case to the State Office of Administrative Hearings (SOAH) for hearing, direct that the proceeding not exceed 180 days consistent with section 2003.047(e-2)(1) of the Texas Water Code.

II. BACKGROUND

Applicant seeks authorization to discharge treated domestic wastewater from a wastewater treatment plant (WWTP) that will serve single family homes in a residential development, Guajalote Ranch, located in northwest Bexar County, Texas in the extraterritorial jurisdiction of the City of San Antonio and approximately 2.6 miles from Grey Forest. Applicant proposes to place the discharge point on its own property, and the discharge will flow over a mile on the Guajalote Ranch before it leaves the tract.

The proposed TPDES permit would allow a daily average flow of 0.20 million gallons per day (MGD) in the Interim I phase, 0.40 MGD in Interim II phase, and 1.0 MGD in the Final phase. The Draft Permit proposes effluent limitations in all phases of 5 mg/L carbonaceous biochemical oxygen demand five-day (CBOD₅), 5 mg/L total suspended solids (TSS), 2 mg/L ammonia-nitrogen (NH₃-N), 0.15 mg/L total phosphorus (TP), 126 colony forming units (CFU) of *E. coli* per 100 ml, and 4.0 mg/L minimum dissolved oxygen (DO),¹ which is considered tertiary treatment in all phases of operation.

According to the Executive Director (ED), these limits comply with the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan, and the proposed discharge will not impair existing water quality, which the ED's staff confirmed through a Tier 1 and 2 antidegradation review. Treated effluent will be discharged via pipe to Helotes Creek, thence to a pond, thence to Helotes Creek, thence to Culebra Creek, thence to Lower Leon Creek in Segment No. 1906 of the San Antonio River Basin. The unclassified receiving water uses are minimal aquatic life use for Helotes Creek (upstream of unnamed tributary) and limited aquatic life use for the pond and for Helotes Creek (downstream of unnamed tributary). The designated uses for Segment No. 1906 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code (TAC) § 307.5 and TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Lower Leon Creek, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. In all technical respects, the proposed permit complies with all Commission rules and policy.

III. AUTHORITY

Hearing requests must meet the criteria set out in 30 TAC § 55.201, including the requirements that the request be based on comments not withdrawn and the request identified the

¹ January 5, 2024 Executive Director's Response to Public Comment (RTC) at 3.

requestor's location and distance relative to the proposed facility or activity. 30 TAC § 55.201(c), (d)(2). In addition, "for applications filed on or after September 1, 2015, [the hearing request] must be based only on the requestor's timely comments." 30 TAC § 55.201(c).

For a hearing request to be granted, an "affected person" with a personal justiciable interest must demonstrate a non-speculative injury resulting from the granting of the permit. Section 55.203 provides the standing criteria for the individual requestors in this case, as follows:²

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Except as provided by § 55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

² The map attached as **Exhibit A** shows the physical location of all individual requestors relative to the proposed site.

- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
 - (1) the merits of the underlying application and supporting documentation in the commission’s administrative record, including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the executive director; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor. . . .

For associational standing, the Texas Water Code requires that a group must meet several requirements before the Commission can find that the group is an affected person. The Commission “may not find that a group or association is an affected person unless the group or association identifies, by name and physical address in a timely request for a contested case hearing, a member of the group or association who would be an affected person in the person’s own right” Tex. Water Code § 5.115(a-1)(2)(A). The Commission’s rules set forth in 30 TAC § 55.205(b) require:

- (b) For applications filed on or after September 1, 2015, a request by a group or association for a contested case may not be granted unless all of the following requirements are met:
 - (1) comments on the application are timely submitted by the group or association;
 - (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
 - (3) the interests the group or association seeks to protect are germane to the organization’s purpose; and
 - (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

IV. RESPONSE TO HEARING REQUESTS

Applicant makes the following recommendations regarding the individual hearing requests.

A. Deny All Hearing Requests

As shown by the application and attached map (Attachment “A”), over a mile of the initial discharge route is on land owned by the Applicant and will be part of the Guajalote Ranch development. Applicant intends to maximize the opportunities for beneficial reuse of the treated water by keeping the water onsite. If reuse is not appropriate in the event of seasonal rains, any discharge will take advantage of the increased assimilative capacity of the stream. Therefore, those hearing requestors beyond the Guajalote tract cannot be affected persons. *See* Tex. Water Code § 5.115.

Denial of these individual requests is also consistent with the Agency’s notice rules in 30 TAC ch. 39. The TCEQ’s application instructs an applicant to include a landowner map that includes all landowners on both sides of the discharge route for one full stream-mile downstream of the discharge point. In addition, the TCEQ’s rules require mailed notice to those landowners named on the application map. 30 TAC § 39.413(1). This rule reflects the Commission’s determination that those landowners either directly adjacent to the plant site or within one mile directly downstream of the discharge may be affected by the discharge. As all the hearing requestors are not directly adjacent to the plant site and are more than a mile downstream of the discharge point, the Commission deny all the hearing requests from individuals.

B. In the Alternative, Grant One Individual Hearing Request

In the event the Commission disagrees that all the individual hearing requests should be denied, Applicant recommends that the Commission grant the following hearing request, as she has complied with the TCEQ’s public comment requirements and appears to be closest to the Guajalote tract, even though she is located more than a mile downstream of the discharge point.

1. **Toepperwein, Elizabeth Ann**, 21082 Sams Ranch Rd, Helotes, TX, 78023-3325: Grant hearing request because she filed public comments at a public meeting, and

her property appears to be on the discharge route immediately downstream of the Guajalote tract. Tex. Water Code § 5.115; 30 TAC § 55.203(c).

Concerns: Erosion along Helotes Creek and flooding of her property; the inability to cross the creek to access property; impact on her wells; contamination of springs; recreational use of Helotes Creek; impact to wildlife drinking from wastewater in Helotes Creek, foul odor from the creek.

C. Deny Individual Hearing Requests

1. **Armstrong, Jane**, PO Box 700, Helotes, TX, 78023-0700: Deny hearing request as the property is substantially downstream and located in Grey Forest, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
2. **Ayraud, John P**, 20627 Helotes Creek Rd, Helotes, TX, 78023-2907: Deny hearing request because requestor did not specify in his public comment or hearing request how and why the requestor believes he will be adversely affected by the proposed facility in accordance with 30 TAC § 55.201(d)(2).
3. **Berkley, Candy Rowan**, 9888 Escondida Road, Helotes, TX, 78023: Deny hearing request as her property is located too far downstream of the discharge point, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
4. **Bowman, Natalie T**, 18207 Lake Shore Dr, Helotes, TX, 78023-3139: Deny hearing request as requestor did not indicate where her property is located and did not submit public comment, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC § 55.201(c), (d)(2).
5. **Carriles, Luis**, 23208 Eagle Gap, San Antonio, TX, 78255-2101: Deny hearing request as he did not public comment, did not provide the location of his property, and has not shown how he would be affected, in accordance with Texas Water Code § 5.115 and 30 TAC §§ 55.203(c), (d)(2), .205.
6. **Comeaux, Elizabeth Anne**, 5545 Mount McKinley Dr, San Antonio, TX, 78251-3626: Deny hearing request because requestor is not located on the discharge route and did not submit public comments, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC §§ 55.201(c), (d)(2), .203(c).
7. **Cunningham, Patricia Kyle**, PO Box 591, Helotes, TX, 78023-0591: Deny hearing request as her property appears to be significantly downstream and within the City of Grey Forest, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).

8. **Feist, John Russell**, 18419 Sherwood Trl, Helotes, TX, 78023-3131: Deny hearing request as requestor does not appear to be a downstream landowner, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
9. **Ferguson, Kelley**, 3219 River Frio, San Antonio, TX, 78253: Deny hearing request as request does not specify that requestor owns property along or near the discharge route or WWTP, in accordance with Texas Water Code § 5.115 and 30 TAC §§ 55.201(d)(2) .203(c).
10. **Galm, Samuel**, 20851 Sams Ranch Road, Helotes, Texas 78023: Deny hearing request because requestor did not submit public comments in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC § 55.201(c).
11. **Golobek, Kelli**, 18922 Sherwood Trl, Helotes, TX, 78023-3252: Deny hearing request as requestor's property appears to be significantly downstream of discharge point and requestor did not submit public comments, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC §§ 55.201(c), .203(c).
12. **Gottwald, Donna**, 19203 Scenic Loop Rd, Helotes, TX, 78023-9211: Deny hearing request as her property is significantly downstream on the discharge route located in Grey Forest, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
13. **Hanes, Martha Ann**, 16803 Camino Del Vis, Helotes, TX, 78023-8000: Deny hearing request as land appears to be located significantly downstream of the City of Grey Forest, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
14. **Hanson, Jeff**, 19226 Scenic Loop Rd, Helotes, TX, 78023-9268: Deny hearing request as the property appears to be located significantly downstream from the discharge point in the City of Grey Forest, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
15. **Hough, Timothy Patrick**, 9757 Menchaca Rd, Helotes, TX, 78023-9235: Deny hearing request as requestor does not own property along or near the discharge route or WWTP and did not submit public comments, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC §§ 55.201(c), .203(c).
16. **Leidner, Karen**, 20924 Sams Ranch Rd, Helotes, TX, 78023-3324: Deny hearing request because requestor failed to show location of property and failed to submit comments in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC §§ 55.201(c), (d)(2).
17. **Luckett, Kelly D.**, 19516 Scenic Loop Rd, Helotes, TX, 78023-9222: Deny hearing request as requestor did not submit public comments and appears to be

located significantly downstream on Helotes Creek, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC §§ 55.201(c), .203(c).

18. **Massey, Cynthia**, 10547 Rocking M Trl, Helotes, TX, 78023-4031: Deny hearing request as request does not specify that requestor owns property along or near the discharge route or WWTP, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.201(d)(2).
19. **McCord, Justin**, 23205 Edens Cyn, San Antonio, TX, 78255-4431: Deny hearing request as he did not provide location of his property and has not shown how he would be affected, in accordance with Texas Water Code § 5.115 and 30 TAC §§ 55.203(c), (d)(2), .205.
20. **McEntire, Annie**, 18510 Sherwood Trl, Helotes, TX, 78023-3104: Deny hearing request because of the hearing request did not show location of the property, in accordance with 30 TAC § 55.201(d)(2).
21. **Minihan Joe & Sharon**, 19904 High Bluff Rd and 19924 High Bluff Rd, Helotes, TX 78023; **Minihan Brian J & Brooke B** -19914 High Bluff Rd, Helotes, TX 78023: Deny hearing request because the Minihans did not submit comments on the application, in accordance with Texas Water Code § 5.115(a-1)(2)(B) and 30 TAC § 55.201(c).
22. **Munson, Merrie Lynette**, 21285 Sams Ranch Rd, Helotes, TX, 78023-3334: Deny hearing request because requestor did not submit public comments, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC § 55.201(c).
23. **Muyres Pack, Lisa**, 15760 Scenic Loop Rd, Helotes, TX, 78023-3729: Deny hearing request as her property is located significantly downstream of the discharge point, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
24. **Nottingham, Jennifer and Jeff Davis**, 18134 Hilltop Dr, Helotes, TX, 78023-3141: Deny hearing request as her property is on Lee Creek and not on the discharge route, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
25. **Phillips, Michael**, 18418 Hilltop Dr, Helotes, TX, 78023-3114: Deny hearing request because property is not located on discharge route, in accordance with Texas Water Code § 5.115; 30 TAC § 55.203(c).
26. **Roan, Christine**, 21705 Scenic Loop Rd, San Antonio, TX, 78255-3463; **Roan, Casey**, 21705 Scenic Loop Rd, San Antonio, TX, 78255; **Roan, Harrison**, 21705 Scenic Loop Rd, San Antonio, TX, 782553463; **Roan, Sydney**, 21705 Scenic Loop Rd, San Antonio, TX, 78255-3463; **Roan, Avery**, 21705 Scenic Loop Rd, San Antonio, TX, 78255-3463: Deny hearing requests because the requestors did not submit public comments, and their property is not on the discharge route or within

a mile of the WWTP, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC §§ 55.201(c), (d)(2), .203(c).

27. **Rosen, Daniel**, PO Box 847, Helotes, TX, 78023-0847: Deny hearing request because requestor is not located on the discharge route, in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c).
28. **Sams, Jane**, 21035 Sams Ranch Rd, Helotes, TX, 78023-3325: Deny hearing request because she did not submit public comments, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC § 55.201(c).
29. **Soukup, Steven**, 20124 High Bluff, Helotes, TX 78023: Deny hearing request because Mr. Soukup did not submit public comments on the application, in accordance with Texas Water Code § 5.115(2-1)(2)(B) and 30 TAC § 55.201(c).

D. Deny Hearing Requests by Governmental Entities

1. San Antonio Metropolitan Health District (Met Health)

Met Health is an “administrative department” of the City of San Antonio. Met Health is under the directorship of one individual, not a board of directors. Sections 15-269, 26-16, 13-3 of the City of San Antonio Code of Ordinances provide that Met Health oversees various programs, including smoking regulations, building safety, and food safety. In its May 8, 2023 comment letter, Met Health claimed to have the authority to “enforce all laws of the state and ordinances and regulations relating to public health,” and “monitor and address public health issues relating to sewer lines.” At no time did Met Health actually request a contested case hearing.

As a department of a municipality, had Met Health requested a hearing, it would still have had to demonstrate that it had “statutory authority over or interest in the issues relevant to the application” be considered an affected person. 30 TAC § 55.203(c)(7). Met Health lacks any authority, statutory or otherwise, over the issues raised by the application. Accordingly, Applicant recommends that the Commission not consider Met Health’s comment letter an actual hearing request. Tex. Water Code § 5.115; 30 TAC §§ 55.201(c)(7), .203(c).

2. San Antonio Water System (SAWS)

SAWS is the City of San Antonio’s retail water utility, and the groundwater from the Edwards Aquifer is a significant portion of SAWS’ water supply. SAWS is a public utility company and is governed by a board of directors. Section 34-2.01 of the City of San Antonio

Code of Ordinances states that the SAWS board is “the Board of Trustees of the San Antonio Water System, a water, wastewater and wastewater reuse agency of the City of San Antonio, established and created pursuant to the provision of Ordinance No. 75686 and the Texas Revised Civil Statutes Annotated Article 11115.” SAWS claims that the City of San Antonio adopted its Water Quality Ordinance to maintain or improve the quality of water entering the Edwards Aquifer and to prevent the risk of contaminants entering the Edwards Aquifer and posing a risk to the public health. The proposed discharge is in the contributing zone and upstream of the Edwards Aquifer recharge zone.

SAWS did not submit public comments as required by both statute and rule, but instead is wholly relying on Met Health’s May 8, 2023 public comment letter to “get through the door.” This is improper and ignores that SAWS is an independent body, separate from Met Health. Likewise, although the City of San Antonio requested that the ED reconsider her final recommendation on the permit, the City did **not** request a hearing and did not submit public comment during the comment period. The legislature specifically states that the Commission “may not find that . . . a hearing requestor is an affected person *unless the hearing requestor timely submitted comments on the permit application.*” Tex. Water Code § 5.115(a-1)(2)(B); *see also* 30 TAC § 55.201(c) (“for applications filed on or after September 1, 2024, [hearing requests] must be based *only* on the requestor’s timely comments” (emphasis added)). As SAWS did not submit public comments in accordance with TCEQ rules and the Texas Water Code, the Commission cannot find that SAWS is an affected person, nor can it find SAWS has standing vicariously through Met Health, which did not request a hearing. Accordingly, in applying Texas Water Code § 5.115(a-1)(2)(B), SAWS’ hearing request should be denied as it cannot meet the definition of an affected person.

3. City of Grey Forest

Grey Forest is a Type A general-law municipality with an extra-territorial jurisdiction statutorily-limited to one-half mile³; however, it is approximately 2.6 miles downstream of the discharge point. The discharge route runs over a mile before leaving the Guajalote tract and another 1.6 miles before it flows within Grey Forest’s boundaries. Therefore, Applicant recommends denial of Grey Forest’s hearing request as it is too far downstream from the discharge

³ Tex Loc. Gov’t. Code § 42.021(a)(1).

point to be an affected person and it has not shown that it has its statutory authority to address issues relevant to the discharge permit. Tex. Water Code § 5.115; 30 TAC § 55.203(c).

E. GEAA's Request for Contested Case Hearing

GEAA submitted a combined hearing request with Grey Forest. However, as set out above, Grey Forest's request for hearing should be denied.

Annalise Peace submitted comments on behalf of GEAA and set out its concerns with the application. In its hearing request, GEAA identified the following members of GEAA who it claims would be affected persons in their own right. According to GEAA's hearing request:

1. Wade and Ward Saathoff are members of GEAA and own property at 20654 Low Bluff Road, 300 feet south of the proposed facility.
2. Chrystal Galm Woodcock is a member of GEAA and owns property at 20915 Sams Ranch Rd, approximately 0.8 miles south of the proposed facility. She also has a well on her property approximately 70 yards from the creek.
3. Shawn and Sam Galm are members of GEAA and own property within one mile of the proposed WWTP. They live at 20851 Sams Ranch Road, one mile southeast of the property WWTP. They also have a water well.
4. Jane Sams is a member of GEAA and owns property within one mile of the proposed WWTP. She lives at 21035 Sams Ranch Road, approximately 0.8 miles south of the proposed WWTP.

GEAA has submitted no evidence demonstrating that any of the aforementioned individuals are actually members of the group. GEAA neither proved that their interests are germane to GEAA's purpose nor that the relief requested does not require the participations of its members. Accordingly, Applicant recommends that GEAA's hearing request be denied.

V. RELEVANT AND MATERIAL ISSUES FOR REFERRAL

As previously stated, since the discharge route will flow for over a mile on Applicant's own property, none of the hearing requests should be granted. However, in the event the Commission disagrees with Applicant's position and grants the hearing requests of Ms. Toepperwein, SAWS, Met Health, Grey Forest, or GEAA, Applicant will address the issues raised in their hearing requests.

As stated in Texas Water Code § 5.556, the Commission may not refer an issue to SOAH that was not raised during the public comment period. Furthermore, a hearing request must “be based only on [its] timely comments.” 30 TAC 55.201(c).

Elizabeth Ann Toepperwein. For the issues set out in Ms. Toepperwein’s hearing request, Applicant recommends the Commission refer to SOAH only the issues relevant to the application and were set out in their public comments.

1. Whether the draft permit is adequately protective of surface and groundwater quality in accordance with applicable rules, including the Texas Surface Water Quality Standards;
2. Whether the draft permit would be protective of aquatic and terrestrial life, human health, and the environment;
3. Whether the draft permit adequately controls odor in accordance with TCEQ rules; and,
4. Whether the draft permit has appropriate effluent discharge limits in accordance with applicable rules.

As flooding, erosion, and loss of business concerns are not within the TCEQ’s jurisdiction, the Commission should not refer those issues to SOAH.

GEAA and Grey Forest. These two entities submitted a joint hearing request. In its written and oral public comments, GEAA raised a number of concerns, such as the stringency of discharge limits in the draft permit, including a total phosphorus limit of 0.50 mg/L;⁴ the requirement to use beneficial reuse; the use of ultraviolet disinfection instead of chlorine;⁵ the impact of the effluent on surrounding wells; notice to adjacent landowners, compliance with the buffer zone requirements, compliance with the Texas regionalization policy, cumulative impacts from future wastewater discharges; emerging contaminants, and endangered species. Grey Forest raised similar concerns in its public comments. If the Commission grants either GEAA’s or Grey Forest’s hearing requests, Applicant recommends the referral of the following issues to SOAH, in addition to those issues set out for Ms. Toepperwein:

⁴ The ED has recommended a more stringent effluent for total phosphorus limit of 0.15 mg/L. RTC at 14.

⁵ Applicant will use an ultraviolet light system for disinfection. RTC at 4.

5. Whether the TCEQ should require Applicant to monitor effluent, influent, and biosolids for per- and polyfluoroalkyl substances, or PFAs;
6. Whether the application complies with the buffer zone requirements in 30 TAC § 309.13(e);
7. Whether the application and draft permit were properly noticed; and,
8. Whether the application is consistent with the TCEQ's regionalization policy.

However, in their February 12, 2024 hearing request, GEAA and Grey Forest seek to refer issues regarding identification of the operator of the plant and compliance with applicable location standards in 30 TAC ch. 309, including floodplain protection and protection against active geologic processes. As GEAA and Grey Forest did not raise these issues in their public comments, the issues cannot be referred to SOAH. Tex. Water Code § 5.556; 30 TAC 55.201(c).

SAWS and Met Health. In its May 8, 2023 public comments, Met Health stated that it was concerned with the lack of data for the Tier 2 antidegradation review; incidents in the area that have led to human illness attributed contamination of wells; the karst creek system including caves, invertebrates, and endangered species; and air quality and nonattainment for ozone.

As previously stated, SAWS did not file public comments. Nonetheless, SAWS' hearing request asked to refer the following issues: adverse effects on groundwater quality and the impact on wells and the Edwards Aquifer; the adequacy of the ED's Tier 2 antidegradation review, with streams over the recharge zone reviewed as high-quality waters; a Tier 2 antidegradation review on whether the groundwater quality in the Edwards Aquifer would be degraded; protection of endangered species and whether an incidental take will occur; and the need for a Class A operator.

Many of the issues raised by SAWS in its hearing request are addressed in the issues set out above. In the event the Commission grants SAWS' hearing request, Applicant recommends the following relevant issues be referred to SOAH:

9. Whether the ED's antidegradation review is adequate and complies with the Texas Surface Water Quality Standards and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010).

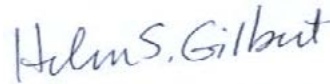
However, SAWS also raises issues that are beyond the jurisdiction of the TCEQ. For example, SAWS wants several issues related to endangered species referred, including whether there will

be an incidental take. Those issues are under the jurisdiction of the US Fish and Wildlife Service and the National Marine Fisheries Service, 16 USC § 1531 *et seq.* In addition, SAWS raised issues regarding a Class A operator; however, Met Health did not raise operator concerns in its comments. Therefore, these issues cannot be referred to SOAH. Tex. Water Code § 5.556; 30 TAC 55.201(c).

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully prays that the Commission deny all hearing requests; and if it grants any hearing requests, that the case be referred only on the issues identified in Section V above for no longer than 180 days.

Respectfully submitted,



By: _____

Helen S. Gilbert
State Bar No. 00786263
Randall B. Wilburn
State Bar No. 24033342
BARTON BENSON JONES, PLLC
7000 N. MoPac Expwy, Suite 200
Austin, Texas 78731
Telephone: (512) 565-4995
Telecopier: (210) 600-9796
hgilbert@bartonbensonjones.com
rwilburn@bartonbensonjones.com

**ATTORNEYS FOR MUNICIPAL
OPERATIONS, LLC**

MAILING LIST / LISTA DE CORREO
for / para
Municipal Operations, LLC
TPDES Permit No. WQ0016171001/ TPDES Permit No. WQ0016171001

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on this 22nd day of July 2024:

FOR THE APPLICANT / PARA EL SOLICITANTE:

Keith Arrant, Officer
Municipal Operations, LLC P.O. Box 1689
Spring, Texas 77383

Integrated Water Services, Inc.
4001 North Valley Drive Longmont, Colorado 80504

Troy Hotchkiss, P.E.
6226 Reiger Avenue
Dallas, Texas 75214

FOR PUBLIC INTEREST COUNSEL / PARA ABOGADOS DE INTERÉS PÚBLICO via
electronic mail / por correo electrónico:

Mr. Garrett Arthur
Public Interest Counsel
Office of the Public Interest Counsel
TCEQ-MC 103
P.O. Box 13087
Austin, TX 78711-3087
Garrett.Arthur@tceq.texas.gov

FOR THE EXECUTIVE DIRECTOR / PARA EL DIRECTOR EJECUTIVO via electronic mail
/ por correo electrónico:

Mr. Fernando Salazar Martinez, Staff Attorney
Office of Legal Services
TCEQ-MC 173
P.O. Box 13087
Austin, TX 78711-3087
Fernando.Martinez@tceq.texas.gov

Mr. Brad Eckhart, Staff Attorney
Office of Legal Services
TCEQ-MC 173
P.O. Box 13087

Austin, TX 78711-3087
Bradford.Eckhart@tceq.texas.gov

Deba P. Dutta,
Technical Staff Texas Commission on Environmental Quality
Water Quality Division
MC-148 P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK / PARA EL SECRETARIO OFICIAL
via electronic mail por correo electrónico:

Laurie Gharis,
Chief Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk
MC-105 P.O. Box 13087
Austin, Texas 78711-3087

INTERESTED PERSONS / PERSONAS INTERESADAS:

Ms. Annalisa Peace, Executive Director
Greater Edwards Aquifer Alliance
1809 Blanco Rd.
San Antonio, TX 78212-2616
Annalisa@aquiferalliance.org

Nathan Glavy,
PO Box 15618
San Antonio, Texas, 78212-8818

Allmon , Eric
Perales Allmon & Ice PC
1206 San Antonio St
Austin Tx 78701-1834

Joe Freeland
Mathews & Freeland, LLP
8140 North MoPac Expressway
Austin, Texas 78759

Phillips, Michael
18418 Hilltop Dr,
Helotes, Tx, 78023-3114

Muyres Pack, Lisa,
15760 Scenic Loop Rd,

Helotes, Tx, 78023 3729

Ayraud, John P,
20627 Helotes Creek Rd,
Helotes, Tx, 78023 -2907

Daniel Rosen,
19706 Grey Forest Dr.
Helotes, TX 78023-0847.

Hough, Timothy Patrick,
9757 Menchaca Rd,
Helotes, TX, 78023 -9235

Berkley, Candy Rowan,
9888 Escondida Road,
Helotes, TX, 78023:

Steven Soukup,
20124 High Bluff, Helotes, TX 78023

Minihan Joe & Sharon
19924 High Bluff Rd
Helotes, TX 78023

Minihan Joe & Sharon
19904 High Bluff Rd
Helotes, TX 78023

Minihan Brian J & Brooke B
19914 High Bluff Rd,
Helotes, TX 78023

McEntire, Annie,
18510 Sherwood Trl,
Helotes, TX, 78023 -3104

Leidner, Karen,
20924 Sams Ranch Rd,
Helotes, Tx, 78023 -3324

Phillips, Michael,
18418 Hilltop Dr,
Helotes, Tx, 78023-3114

Feist, John Russell,

18419 Sherwood Trl,
Helotes, Tx, 78023 -3131

Sams, Jane,
21035 Sams Ranch Rd,
Helotes, Tx, 78023 -3325

Roan, Christine,
21705 Scenic Loop Rd,
San Antonio, Tx, 78255 -3463

Roan, Casey,
21705 Scenic Loop Rd,
San Antonio, Tx, 78255

Roan, Harrison,
21705 Scenic Loop Rd,
San Antonio, Tx, 78255 -3463

Roan, Sydney,
21705 Scenic Loop Rd,
San Antonio, Tx, 78255 -3463

Roan, Avery,
21705 Scenic Loop Rd,
San Antonio, Tx, 78255 -3463

Cunningham, Patricia Kyle,
PO Box 591,
Helotes, Tx, 78023 -0591

Toepperwein, Elizabeth Ann,
21082 Sams Ranch Rd,
Helotes, Tx, 78023 3325

Munson, Merrie Lynette,
21285 Sams Ranch Rd,
Helotes, Tx, 78023 3334

Muyres Pack, Lisa,
15760 Scenic Loop Rd,
Helotes, Tx, 78023 3729

Nottingham, Jennifer and Jeff Davis,
18134 Hilltop Dr,
Helotes, Tx, 78023 -3141

Hanson, Jeff,
19226 Scenic Loop Rd,
Helotes, Tx, 78023 -9268

Luckett, Kelly D,
19516 Scenic Loop Rd,
Helotes, Tx, 78023 -9222

Bowman, Natalie T,
18207 Lake Shore Dr,
Helotes, Tx, 78023-3139

Armstrong, Jane,
PO Box 700,
Helotes, TX, 78023 -0700

Samuel Galm,
20851 Sams Ranch Road,
Helotes, Texas 78023

Gottwald, Donna,
19203 Scenic Loop Rd,
Helotes, Tx, 78023 -9211

Rosen, Daniel,
PO Box 847,
Helotes, Tx, 78023-0847

Comeaux, Elizabeth Anne,
5545 Mount Mckinley Dr,
San Antonio, Tx, 78251 -3626

Hough, Timothy Patrick,
9757 Menchaca Rd,
Helotes, Tx, 78023 -9235

Ferguson, Kelley,
3219 River Frio,
San Antonio, TX, 78253 -457

Massey, Cynthia,
10547 Rocking M Trl,
Helotes, TX, 78023 -4031

Hanes, Martha Ann,

16803 Camino Del Vis,
Helotes, Tx, 78023-8000

Golobek, Kelli,
18922 Sherwood Trl,
Helotes, Tx, 78023-3252

Ayraud, John P,
20627 Helotes Creek Rd,
Helotes, Tx, 78023 -2907

Carriles, Luis
23208 Eagle Gap
San Antonio, Tx, 78255 -2101

McCord, Justin
23205 Edens Cyn
San Antonio, Tx, 78255 -4431

Helen S. Gilbert

By: _____
Helen S. Gilbert

ATTACHMENT "A"

