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Larry R. Soward, *Commissioner*  
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Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 12, 2007

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

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 NOV 12 PM 3:38  
CHIEF CLERKS OFFICE

**RE: CITY OF GRANDVIEW  
TCEQ DOCKET NO. 2007-1160-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Hearing Request in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Vic McWherter".

Vic McWherter, Senior Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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**TCEQ DOCKET NO. 2007-1160-MWD**

**IN THE MATTER OF  
THE APPLICATION OF  
THE CITY OF  
GRANDVIEW FOR  
RENEWAL OF PERMIT  
NO. WQ0010180001**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO HEARING REQUEST**

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

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 Hearing Request in the above-referenced matter.

**I. INTRODUCTION**

The City of Grandview has applied for renewal of permit no. WQ0010180001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. Applicant's facility is located on County Road 102, approximately 1.5 miles southeast of the City of Grandview in Johnson County Texas. Applicant operates an activated sludge process plant with treatment units which include a lift station, screening device, aeration basin, reaeration basin, final clarifier, sludge digester, sludge drying beds, equalization pond, and two chlorine contact chambers. The permit authorizes the disposal of sludge at a TCEQ-authorized land application site. Applicant's discharge of treated effluent flows into Segment No. 0814 of the Trinity River Basin. The designated uses of Segment No. 0814 are high aquatic life, public water supply, and contact recreation.

The current permit was issued December 17, 2002. The renewal application was received on November 20, 2006 and declared administratively complete on December 29,

2006. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit Renewal (NORI) was published in the *Grandview Tribune* on January 12, 2007. Following technical review of the renewal application, the Notice of Application and Preliminary Decision (NAPD) was published in the same newspaper on April 6, 2007. The comment period ended on May 5, 2007. The Executive Director's Decision and Response to Comments was mailed by the TCEQ Chief Clerk's office on June 12, 2007. During the public comment period, Mr. Tom Lyon filed a hearing request stating that the request was filed on his behalf, as well as on behalf of other landowners impacted by the application, Phouc H. Dang and Carniceria Mi Pueblo Corporation.

## II. REQUIREMENTS OF APPLICABLE LAW

No right to a hearing exists on a renewal or amendment application under Chapter 26 of the Texas Water Code if:

- (1) the applicant is not applying to:
  - (A) increase significantly the quantity of waste authorized to be discharged; or
  - (B) change materially the pattern or place of discharge;
- (2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (3) any required notice and opportunity for a public meeting has been given;
- (4) consideration and response to all timely received and significant public comment has been given; and
- (5) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.<sup>1</sup>

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code § 5.556 added by Acts 1999, 76<sup>th</sup> Leg., ch. 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the

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<sup>1</sup> TEX. WATER CODE § 26.028(d); 30 TAC § 55.201(i)(5).

following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of application. 30 TEXAS ADMINISTRATIVE CODE (TAC) § 55.201(d). Under 30 TAC § 55.203(a), 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." This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(c) also provides relevant factors that will be considered in determining whether a person is affected. These factors include:

- (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, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

The Commission shall grant an affected person's timely filed hearing request if:

- (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that

are relevant and material to the commission's decision on the application. 30 TAC

§55.211(c).

Accordingly, pursuant to 30 TAC § 55.209(e), 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 law;
- (4) whether the issues were raised during the public comment period;
- (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 Comment;
- (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.

### III. DISCUSSION

As an initial matter, the Commission must determine whether a right to hearing exists under the provisions of Texas Water Code Section 26.028(d). Upon reviewing these statutory provisions, OPIC concludes that the Commission may issue this permit without holding a public hearing. According to the information reviewed by the OPIC, Applicant's renewal application satisfies each of the requirements of §26.028(d). The application seeks to renew a permit governed by Chapter 26 of the Water Code. This application does not propose to increase the amount of effluent authorized to be discharged, nor does it change the pattern or place of discharge. The Executive Director's Technical Summary dated February 6, 2007 states that effluent limitations and monitoring requirements in the draft permit remain the same as those contained in the existing permit. Therefore, the renewed permit can be expected to maintain the quality of waste authorized to be discharged. All notices were given properly and the Executive

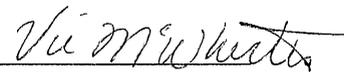
Director's Response to Public Comment was filed with the Chief Clerk's Office and mailed to all commenters. The Applicant has an entity compliance rating and a site compliance rating of 2.29 which is classified as an "average" compliance history. The Applicant's compliance history raises no issue regarding its ability to comply with the terms of its renewed permit. For these reasons, OPIC concludes that there is no right to contested case hearing on the Applicant's application for renewal of its permit.

Furthermore, even if a right to hearing did exist, the pending hearing request does not satisfy the requirements for establishing that the requestor or the persons he purports to represent are affected persons. Mr. Lyon's hearing request states that the permitted activities are "affecting more of our property than we feel necessary." The request provides no information as to the interests being affected or the manner in which the property owners' interests are being affected. For these reasons, OPIC could not find that the requestor is an affected person nor recommend specific issues that could be referred to the State Office of Administrative Hearings, even assuming a right to contested case hearing exists.

#### IV. CONCLUSION

For the reasons stated above, OPIC recommends that the Commission find that no right to a hearing exists on the pending application and deny the pending hearing request.

Respectfully submitted,  
Blas J. Coy, Jr.  
Public Interest Counsel

By   
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Senior Attorney  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 2007 the original and eleven true and correct copies of the Office of the Public Counsel's Response to Request for Hearing 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.

*Vic McWherter*

Vic McWherter

**MAILING LIST  
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TCEQ DOCKET NO. 2007-1160-MWD**

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