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2007 NOV 20 AM 11:52

CHIEF CLERKS OFFICE

November 20, 2007

*Via Facsimile: (512) 239-3311
and Federal Express*

Ms. LaDonna Castañuela
Office of the Chief Clerk
Texas Commission on Environmental Quality, MC-105
12100 Park 35 Circle
Austin, Texas 78711-3087

Re: Proposed Permit No. WQ0014728001; Application by Gray Utility Service,
L.L.C. for a proposed TPDES Permit

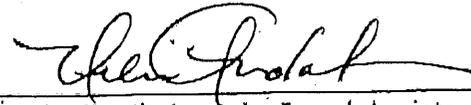
Dear Ms. Castañuela:

Enclosed for filing in the above referenced matter are an original and eleven copies of a Reply to the Applicant, The Executive Director, and The Office of the Public Interest Counsel's Responses to Request for Hearing filed on behalf of Ms. Lin Neese. All parties of record are being copied concurrently via facsimile and U.S. First Class Mail in accordance with the Certificate of Conference attached to the enclosed document.

Should you have any questions or concerns, please feel free to contact me.

Sincerely,

BLACKBURN CARTER, P.C.

by 
Velia Andaverde, Legal Assistant
to Mary W. Carter

Enclosure

c: Service List

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TCEQ DOCKET NO. 2007-1713-MWD

2007 NOV 20 AM 11:53
BEFORE THE

TEXAS COMMISSION OFFICE
ON ENVIRONMENTAL QUALITY

IN THE MATTER OF THE APPLICATION §
OF GRAY UTILITY SERVICE, L.L.C. §
FOR WATER QUALITY PERMIT NO. §
WQ0014728001 §

**REPLY TO THE APPLICANT, THE EXECUTIVE DIRECTOR, AND THE OFFICE OF
PUBLIC INTEREST COUNSEL'S RESPONSES TO REQUEST FOR HEARING**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COMES NOW, Lin Neese, Requestor in the above referenced case and files this her reply to the responses filed by the Applicant Gray Utility Service, L.L.C., the Executive Director and the Office of Public Interest Counsel. In reply Ms. Neese would respectfully show the following:

We agree with the Executive Director and the Office of Public Interest Counsel's description of the facility.

The Requestor also agrees with the Office of Public Interest Counsel and the Executive Director that she is an affected person with a personal judiciable interest not common to the general public. In accordance with 30 T.A.C. § 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." Ms. Neese's personal judiciable interest is related to an "economic interest" affected by the application by virtue of the fact she owns 65 acres a mere 50 yards downstream from the proposed discharge point. Additionally, the discharge route, which includes Icet Gulley (a/k/a Icet Bayou), traverses her property. The Executive Director notes that Ms. Neese is on the affected landowners list provided by the applicant, and owns 65 acres approximately 50 yards downstream of the proposed facility. Ms. Neese is an affected person

due to the likely impact of the regulated activity on the use of her property and its natural resources.

Furthermore, the relevant factors found in 30 T.A.C. § 55.203(c) provide information that will be considered in determining whether a person is affected. These factors also indicate that Ms. Neese is an affected person. For example, the impact of the discharge on the health, safety, and use of her property is a factor. The Commission shall grant an affected person's request if the request is made pursuant to a right to hearing authorized by law and the request raises disputed issues of fact raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 T.A.C. § 55.211(c). No one disputes that Ms. Neese timely filed her request for a contested case hearing.

The Requestor agrees with the Office of Public Interest Counsel and the Executive Director's disputed issues of fact that are recommended be referred to the State Office of Administrative Hearings for a Contested Case Hearing: (1) Will the proposed activities negatively impact the water quality or existing uses of the receiving waters; (2) Is the discharge route adequate to properly convey the wastewater to the receiving waters; and (3) Has the applicant complied with the State policy promoting the development and use of regional and area wide waste collection (regionalization requirements); (4) Whether the proposed discharge will negatively impact wildlife in the surrounding environment?

We strongly disagree with the applicant's argument that Ms. Neese is not an affected person. As the Executive Director and the Office of Public Interest Counsel stated, Ms. Neese's property is within 50 yards of the discharge point and the discharge will cross her property. Whether or not the applicant has permission to cross her property is a separate issue, which was not the basis for her request for a contested case hearing. The applicant suggests that there

must be particular facts raised to support a finding of affected person. The particular facts are that Ms. Neese is an affected person by virtue of the location of her property in relation to the proposed discharge point.

The applicant appears to argue that the requestor needs to present evidence in her request for a contested case hearing in order to become an affected person entitled to a contested case hearing. The applicant states furthermore issues of existing use and surrounding ground and surface water contamination were already considered by the TCEQ as required by 30 T.A.C. § 309.12 when granting the permit. This is incorrect. The permit is a Draft Permit, subject to change in response to any evidence that may be presented at the Contested Case Hearing.

Accordingly, we respectfully request that the Commission grant Ms. Neese's request for a contested case hearing and refer the issues as discussed above to the State Office of Administrative Hearings.

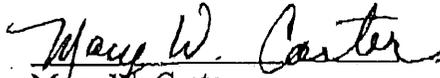
Respectfully submitted,

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by Mary W. Carter
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CERTIFICATE OF SERVICE

On this 20th day of November, 2007, the undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on all attorneys/parties of record as indicated below for each.


Mary W. Carter

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Date: November 20, 2007

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From: Mary W. Carter
BLACKBURN CARTER, P.C.

Sent by: VA

Client/Matter: Proposed Permit No. WQ 0014728001

No. of Pages Including the Cover Sheet: 6

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