

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 23, 2007

TO: Persons on the attached mailing list.

RE: Gray Utility Service L.L.C.
TPDES Permit No. WQ0014728001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Chambers County Clerk's Office, 404 Washington Street, Anahauc, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

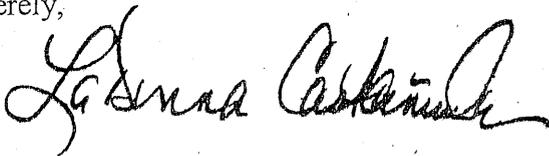
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
GRAY UTILITY SERVICE L.L.C.
PERMIT NO. WQ0014728001

FOR THE APPLICANT:

Walter M. Gray, Jr.
Gray Utility Service L.L.C.
P.O. Box 2099
Mount Belvieu, Texas 77580

George H. Neill, P.E.
George H. Neill & Associates, Inc.
P.O. Box 512
Stafford, Texas 77477

PROTESTANTS/INTERESTED PERSONS:

Mary W. Carter
Blackburn Carter, P.C.
4709 Austin
Houston, Texas 77004

Lin Neese
5150 Hidalgo Street #604
Houston, Texas 77056

FOR THE EXECUTIVE DIRECTOR:

Timothy J. Reidy, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

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

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

TCEQ PROPOSED PERMIT NO. WQ0014728001

APPLICATION BY

GRAY UTILITY SERVICE, L.L.C.

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BEFORE THE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Gray Utility Service, L.L.C. application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from the following person: Mary W. Carter, representing Lin Neese. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Gray Utility Service, L.L.C. (the Applicant) has applied to the TCEQ for a new permit that would authorize the Applicant to discharge treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The wastewater treatment plant will serve the Icet Cove Subdivision.

The treated effluent would be discharged to an unnamed tributary (Icet Bayou); thence to Old River; thence to Old River Lake; thence to Old River; thence to Trinity Bay in Segment No. 2422 of the Bays and Estuaries. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary (Icet Bayou) and high aquatic life use for the unnamed tributary (Icet Bayou-tidal). The designated uses for Segment No. 2422 are high aquatic life use, oyster waters, and contact recreation. The facility would be located approximately 2,500 feet west of Farm-to-Market Road 565 and approximately 3,500 feet north of Interstate Highway 10 in Chambers County, Texas.

Procedural Background

The application was received on June 30, 2006, and declared administratively complete on July 26, 2006. Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on August 12, 2006 in the *Baytown Sun*. The TCEQ Executive Director completed the technical review of the application on November 6, 2006, and prepared a draft permit. Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published on February 22, 2007 in the *Baytown Sun*. The public comment period ended on March 26, 2007. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1

On behalf of Lin Neese, Mary Carter comments that there is no such tributary known as Icet Bayou, but that the receiving water referred to in the draft permit as Icet Bayou is in fact locally known as "Icet Gully."

RESPONSE 1

By signing the permit application the Applicant certifies that to the best of his or her knowledge and belief that the information contained therein is true, accurate, and complete. The information provided by the Applicant identifies the receiving water as Icet Bayou. The Executive Director relies upon the accuracy and completeness of the information supplied by the Applicant. Furthermore, regardless of the name of the watercourse, the Executive Director's staff has conducted an analysis of the proposed discharge. The Executive Director has independently drafted a permit to protect the water quality in that watercourse to protect existing uses.

COMMENT 2

Mary Carter comments that Lin Neese owns Icet Gully where it flows through her property, and therefore the proposed discharge route will flow through her property. She further states that Lin Neese has not granted Gray Utility Service, L.L.C. permission to convey wastewater along this discharge route.

RESPONSE 2

The issuance of this permit does not grant the permittee the right to use private or public property to convey wastewater along the discharge route described therein. This includes property belonging to any individual, partnership, corporation, or any other entity. This permit does not authorize any invasion of personal rights, or any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire any property rights that may be necessary to use the discharge route.

COMMENT 3

Mary Carter comments that the Applicant will need to enter Lin Neese's property and place a pipe across it in order to reach Icet Gully. She states that Lin Neese has not granted Gray Utility Service, L.L.C. permission to either enter her property or place a pipe across it.

RESPONSE 3

The permit application indicates that the point of discharge will be located on the Applicant's property. The information provided does not indicate that the Applicant plans to either enter or place a pipe across Lin Neese's property.

COMMENT 4

On behalf of Lin Neese, Mary Carter comments that the proposed wastewater treatment facility is contrary to the state policy, enumerated in Section 26.081 of the Texas Water Code, of encouraging and promoting the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

RESPONSE 4

All applicants for a new wastewater discharge permit are required to review a three-mile area surrounding the proposed facility to determine if there is an existing wastewater treatment plant or sewer collection lines within the area that the applicant can utilize. If there is such a facility in existence, the permittee must have sufficient existing capacity to accept the additional waste.

In this case the Applicant identified three wastewater treatment facilities located within three miles from the proposed site. As required by the permit application, the Applicant provided a response from the City of Mont Belvieu which stated that the City did not have sewer service at the time of Gray Utility Service, L.L.C.'s request. Within three miles of the proposed facility was another facility that was awaiting TCEQ authorization to discharge treated domestic wastewater at a volume not to exceed a daily average flow of 0.005 million gallons per day (MGD). No response was received from this facility during the permitting process as to whether they could accept the volume of wastewater that the Applicant was proposing. However, since the facility was seeking authorization to treat wastewater not in excess of 0.005 MGD, the facility could not accept the volume of wastewater the Applicant requested without amending their permit. The third facility is located at 5601 Farm-to-Market Road 565 South, in the City of Baytown, in Chambers County. The third facility is permitted to discharge wastewater at a volume not to exceed 0.6 MGD. The facility provides wastewater service to a mobile home park. According to the facility's response to the Applicant's request, it does not have the additional capacity to accept the volume of wastewater proposed.

The Commission also addresses the issue of regionalization through applications for Certificates of Convenience and Necessity (CCN). The Applicant has applied for and received a CNN to provide the sewage disposal services for the area to be served by this proposed facility.

COMMENT 5

On behalf of Lin Neese, Mary Carter comments that Icet Gully will be negatively impacted by the discharge of wastewater. She further states that the discharge will impact existing water uses and degrade water quality in violation of Sections 307.4, 307.5, and 307.7 of Chapter 30 of the Texas Administrative Code. Additionally, Mary Carter states that the discharge may negatively impact the wildlife and birds on Lin Neese's property.

RESPONSE 5

The proposed draft permit was developed in accordance with the Texas Surface Water Quality Standards. These standards are designed to maintain the quality of water in the state and protect both human health and wildlife. As part of the permitting process the TCEQ must determine the uses of the waters receiving the discharge, and based upon those determinations set appropriate effluent limits.

In this case, the discharge route for the permit is to an unnamed tributary (Icet Bayou); thence Old River; thence Old River Lake; thence Old River; thence to Trinity Bay in Segment 2422 of the Bays and Estuaries. The designated uses of Segment 2422 according to Appendix A of the Texas Surface Water Quality Standards (30 TAC §§ 307.4(h)(2) & 307.10) are contact recreation, oyster use, and high aquatic life use. Pursuant to 30 TAC § 307.5, 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 the unnamed tributary (Icet Bayou), unnamed tributary (Icet Bayou-tidal), or Old River. Unnamed tributary (Icet Bayou) is classified as having a limited aquatic life use, while unnamed tributary (Icet Bayou-tidal) is designated as having a high aquatic life use. Existing uses will be maintained and protected. This preliminary determination can be reexamined and may be modified if new information is received.

COMMENT 6

Mary Carter comments that because the gully is narrow with fallen trees and debris that any discharge will flow over the banks of the gully and onto Lin Neese's property. She states that the gully meanders across Ms. Neese's property, and "is not a 'straight shot.'" She also comments that the discharge by the proposed wastewater treatment facility will contribute to the erosion of the meandering gully.

RESPONSE 6

The issues of flooding and erosion are outside the purview of the normal evaluations of water quality for wastewater permit applications. The permitting process is limited to controlling the discharge of pollutants into state waters and protecting the water quality of the state's rivers, lakes, and costal waters. The draft permit includes effluent limits and monitoring requirements that the Applicant must meet during rainfall events and periods of flooding to ensure that the proposed discharge meets applicable water quality standards. As previously stated, the issuance of this permit does not grant the permittee the right to use private or public property to convey wastewater along the discharge route described therein. It is the permittee's responsibility to acquire any property rights that may be necessary to use the discharge route.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division

By

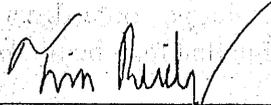


Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0969

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on July 19, 2007, the "Executive Director's Response to Public Comment" for Permit No. WQ0014728001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069