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January 15, 2009

Via Federal Express

Ms. LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
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Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JAN 16 AM 10:50
CHIEF CLERKS OFFICE

Re: TCEQ Docket No. 2008-1010-MWD; Application by Aransas County Municipal Utility District No. 1 for a Major Amendment to TPDES Permit No. WQ0011624001

Dear Ms. Castañuela:

Enclosed please find (1) original and (12) copies of **Protect Lamar Peninsula's Reply to the Executive Director, Office of Public Interest Counsel, and Applicant Aransas County Municipal Utility District No. 1's Response to Their Request for Contested Case Hearing**, for filing in the above referenced matter.

Please return a date filed stamped copy to our office in the enclosed self addressed and stamped envelope provided for your convenience.

Should you have any questions or concerns please call our office.

Sincerely,

BLACKBURN CARTER, P.C.

by Mary W. Carter
Mary W. Carter

Enclosures

c: Service list

TCEQ DOCKET NO. 2008-1010-MWD

APPLICATION BY ARANSAS COUNTY §
MUNICIPAL UTILITY DISTRICT NO. 1 §
FOR A MAJOR AMENDMENT TO TPDES §
PERMIT NO. WQ0011624001 §

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
JAN 16 AM 10: 50
CHIEF CLERKS OFFICE

**PROTECT LAMAR PENINSULA’S REPLY TO THE EXECUTIVE DIRECTOR,
OFFICE OF PUBLIC INTEREST COUNSEL, AND APPLICANT ARANSAS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 1’S RESPONSE TO THEIR REQUEST FOR
CONTESTED CASE HEARING**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

COMES NOW, Protect Lamar Peninsula (“PLP”) and files this its reply to the Executive Director (“ED”), Office of Public Interest Counsel (“OPIC”), and the Applicant Aransas County Municipal Utility District No. 1 (“Applicant or Aransas County”)’s responses to PLP’s request for a contested case hearing. The contested case hearing is requested to address the application by Aransas County for a major amendment to TPDES Permit No. WQ0011624001.

OFFICE OF PUBLIC INTEREST COUNSEL

PLP adopts in total, the Response to Request for Hearing and Request for Reconsideration filed by the OPIC in this matter. Accordingly in the following paragraphs, PLP will reply specifically to the Applicant and to the ED of the Texas Commission on Environmental Quality (“TCEQ”)’s responses to hearing requests.

ARANSAS COUNTY AND EXECUTIVE DIRECTOR

Aransas County has applied to the TCEQ for a major amendment to TCEQ Permit No. 11624-001 which would authorize the discharge of treated domestic wastewater to a receiving body of water. The amendment would also authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 0.088 million gallons per day (mgd), (currently authorized) to a daily average flow not to exceed 0.1351 million gallons per

day in the interim 2 phase, and to a daily average flow not to exceed 0.263 mgd in the final phase.

The amendment requests authorization to construct a new wastewater facility to be located northeast of the existing facility. Currently the treated wastewater effluent is discharged to the Goose Island Lake Estates Golf Course by surface irrigation on a 44.4-acre portion of the course. If approved, the treated effluent would no longer be discharged to the golf course and would instead be discharged to a series of 2 ponds located along State Highway 35, then to Aransas Bay in Segment No. 2471 of the bays and estuaries. The unnamed ponds are designated as high aquatic life uses and the designated uses for Segment No. 2471 are exceptional aquatic life uses, oyster waters, and contact recreation.

PLP identified Mr. Neil J. Adams, Mr. Marshall Lightman and Mr. Ken Ballard as members of PLP who have standing in their individual capacities to request a contested case hearing. Additionally, PLP was identified as a non-profit corporation organized to include promoting and protecting the environmental wellbeing of the Lamar Peninsula as well as safeguarding the environmental health of the nearby Aransas Pass Aquatic System. These goals may be reached by challenging any proposed or potential projects that may negatively impact the Lamar Peninsula and/or Aransas Bay. The interests that PLP seek to protect are germane to the purposes for which it was established and neither the claim asserted nor the relief requested require the participation of individual members in this case.

The Applicant challenges Mr. Adams, Mr. Ballard and Mr. Lightman as not having standing as individuals to request a contested case hearing on this application. The Applicant, however, appears to base its argument on the requirements to provide notice of the permit application (p. 13-14) rather than the requirements to determine an affected person. See 30

T.A.C. § 55.203. The Applicant states that “none of the remaining requesters fall under any of these categories [for notice]... Consequently none of the remaining requesters have established a personal justiciable interest warranting a contested case hearing. The Commissioners should deny all of the hearing requests of the remaining requesters.” (p. 14). According to the Applicant, Messrs. Adams, Lightman and Ballard have not established personal justiciable interests sufficient to warrant a contested case hearing. We disagree.

The ED notes that a party requesting the contested case hearing must be an affected person as determined by the non-exclusive factors listed in 30 T.A.C. § 55.203. One of the factors identified in 30 T.A.C. § 55.203(c) is “the likely impact of the regulated activity on use of the impacted resource by the person(s)”. The ED notes that although Neil Adams’, Ken Ballard’s and Mr. and Mrs. Lightman’s properties are bayshore properties, or on a channel, they are not within a “reasonable distance” from the discharge point and therefore they do not qualify as affected persons. (p. 8). Additionally, the ED believes their concerns are no different from those of the general public and therefore fail the requirement for personal justiciable interest not common to members of the general public. 30 T.A.C. § 55.203(a). (p. 8). We disagree. The likely impact of the regulated activity on the use of the resource, and the likely impact on the health and safety of these persons as well as their bay and channel properties distinguish these members of PLP from members of the general public.

In PLP’s request for contested case hearing, Mr. Adams, Mr. Lightman and Mr. Ballard are identified as persons who fish in and around the area of the proposed wastewater discharge facility. In fact fishing and water recreation are the primary reasons that these individuals purchased and owned their property. Mr. Adams identified in his letter dated November 21, 2006 that he and his family recreate in and on the waters of the bays surrounding the peninsula.

“We fish for seafood in the bays in and around our properties, the state park and off shore from other private properties. We consume our catch. Our contact with these public waters is significant and is fundamental to our use and enjoyment of our property.” Mr. Adams, Mr. Lightman and Mr. Ballard all fish in the area of the wastewater discharge, and this activity is not common to members of the general public. Furthermore, Mr. Adams specifically has waded and fished in the sea grass that is within approximately 200 yards of the proposed discharged point. This activity is also not common to the general public. In accordance with 30 TAC § 55.203(c)(5), the likely impact of the regulated activity on use of the impacted natural resource by Mr. Adams will be significant. Additionally, the impact of the “regulated activity” on health and safety of the person i.e. Mr. Adams could be negatively impacted by the proposed discharge. 30 T.A.C. § 55.203 (c)(4).

Therefore, we believe PLP has standing based on the individual standing of three of its members. They each own bayshore property or channel property and fish near the proposed discharge point.

ISSUES AND REQUEST

We believe the issues identified by the ED and OPIC are appropriate issues for the contested case hearing. We also recommend that the duration for the contested case hearing be 12 months between the preliminary hearing and the proposal for decision.

PLP respectfully requests that they be granted a contested case hearing and the matter be referred to the State Office of Administrative Hearings with the issues as listed in the OPIC’s and ED’s responses.

Restfully submitted,

BLACKBURN CARTER, P.C.

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TEXAS
 COMMISSION
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 QUALITY
 2009 JAN 16 AM 10:53
 CHIEF CLERKS OFFICE

CERTIFICATE OF SERVICE

On this 15th day of January, 2009, the undersigned hereby certifies that a true and correct copy of the foregoing instrument was served via U.S. first class mail, and/or facsimile, and/or federal express overnight to the following:

Mary W. Carter

 Mary W. Carter

FOR THE CHIEF CLERK:

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