

# Request for Contested Case Hearing & Reconsideration of Executive Director's Decision

To: Melissa Chao, Acting Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

OPA  
AUG 23 2011  
BY BP

From: Mrs. James A. ("Patsy") Clement  
1267 Georgetown Road  
Pottsboro, Texas 75076-6905  
903-786-9413 and 903-786-2751  
Fax: 903-870-0066

MWD  
75545

CHIEF CLERK'S OFFICE

2011 AUG 19 PM 2:56

TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY

Applicant: City of Denison, Texas

Permit No.: WQ0010079003

**I request a contested case hearing. I also request that the Executive Director reconsider his decision.**

I am an affected person in that I own real property that is adversely affected by the requested discharge of treated wastewater the subject of Permit No. WQ0010079003. Specifically, but without limitation, I own real property at and immediately adjacent to the location where the Applicant's requested discharge of treated wastewater enters Red River in Grayson County, Texas. Attached hereto as exhibit "A" is an aerial depiction of the area where the Applicant's discharge enters Red River. I own the real property at this location as well as the real property immediately across Red River. Under applicable law, Oklahoma real property boundaries extend to the vegetation line on the south bank of Red River. As a result, the Applicant's discharge flows across my real property boundary as a matter of law before it enters into Red River. My damaged real property is therefore at the point of the activity about which I complain ("0" feet) and continuing for a distance of several hundred feet up and down the north bank of Red River.

The nutrient laden wastewater and the unnatural man-made volume of that waste water has created a manmade island and peninsulas extending out into the channel of Red River near the mouth of Paw Paw Creek and Red River, the point where the Applicants wastewater enters Red River. I own the real property at this location. The nutrient laden wastewater and its increased flow and sediments are manmade and sufficient to support the growth of trees and other vegetation in the natural river channel of Red River. One or more islands have been created and/or enlarged and peninsulas created which extend out into the river channel of Red River. When the natural flow of Red River collides with these manmade obstructions (islands, peninsulas, trees, vegetation and other obstructions caused by Applicant) in Red River, the water flowing in Red River is diverted and this diverted water, along with the subject waste water, flows onto/into my real property and impacts my real property in a way that causes unnatural growth of vegetation in some places and erosion in others. I have lost top soil, several trees and

*[Handwritten signature]*

diminished useable real estate as a result of this erosion. Trees and top soil have washed down Red River as a result of the activities of Applicant for which they seek a permit.

On days when the flow of Red River is low, which is more often than not, the discharge flow from Paw Paw Creek can be so overwhelming to Red River that the discharge flow migrates upstream before turning back downstream. The nutrient and sediment can be seen suspended in the flow from Paw Paw Creek upstream of the location where Paw Paw Creek and the Applicants outflow enters Red River. This nutrient rich sediment ultimately gives rise to the manmade islands, peninsulas, trees and vegetation that is obstructing the natural flow of Red River.

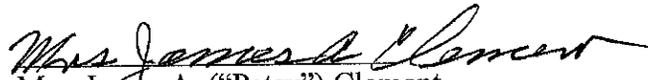
I am listed in the file as a Protestant/Interested Person. I raised these issues during the comment period. My comments have not been withdrawn.

Clement disputes and contests the following factual findings and/or conclusions of the Executive Director pertaining to Clement's comments: (Finding 1) Discharge is relatively small compared to the size of the receiving water body. Clement disputes and would show that the flow of Red River is intermittent and on most days the discharge is not relatively small compared to the size of the receiving water body. Rather, the discharge flow is greater than Red River. (Finding 2) The island near the confluence of Paw Paw Creek and Red River is pre-existing. Clement disputes and would show that the island causing the flow of Red River to be diverted toward, onto/into and causing erosion and damage to Clement's real property is not pre-existing. Photos of the confluence of Paw Paw Creek and Red River are attached hereto as Exhibit "A". These clearly show the buildup of vegetation and sediments at and around the mouth of Paw Paw Creek and the outflow of Applicant's discharge. This condition is not preexisting and has increased as the nutrient rich discharge flow from Applicant has increased. It impedes the natural flow of Red River. (Finding 3) The Applicant's outfall seems to be downstream of the island. Clement disputes and would show that Applicant's outfall is at the point of the island and peninsulas. Clement would also show that Applicant's discharge often migrates and flows upstream before turning back downstream. (Finding 4) The natural deposition of deposits is the most likely cause of the island and associated trees. Clement disputes and would show that the natural deposition of deposits is not the most likely cause of the island and associated trees. The most likely cause of the island and associated trees is the ever increasing man-made flow of nutrient rich discharge from Applicant.

Fact questions. (1) Whether the nutrient rich flow from Applicant's waste water activities is causing the manmade growth of trees and other vegetation in the channel of Red River; (2) Whether the growth of trees and vegetation caused by the nutrient rich flow from Applicant's waste water activities is creating the manmade development of islands and peninsulas in the channel of Red River; (3) Whether the manmade growth and development of trees and vegetation, together with the resulting islands and peninsulas in and along Red River, is diverting the natural flow of water in Red River; (4) Whether the diverted water flow of Red River caused by Applicants activities is causing or increasing the erosion of Clement's real property; (5) Whether the nutrient rich flow from Applicant's waste water activities is changing the composition and/or chemical makeup of Red River water such that it becomes more conducive to the growth of trees and vegetation including algae and moss; (6) Whether the diversion of the

natural flow of water in Red River caused by the growth and development of trees, vegetation, islands and peninsulas is causing damages to the real property of Clement; (7) Whether the activities of Applicant are creating or aiding to the creation of manmade obstructions to the flow of Red River that diverts the flow of Red River and erodes or increases erosion of Clement's real property; (8) Whether the activities of Applicant are causing or increasing the erosion of Clement's real property; and (9) Whether the nutrient rich flow from Applicant's waste water across Clement's real property as it enter Red River is causing damage to Clement.

Respectfully Requested,

  
Mrs. James A. ("Patsy") Clement  
August 18, 2011

Counsel for Affected Person:

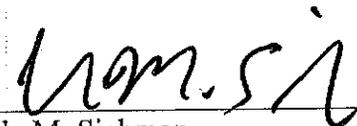
  
Clyde M. Siebman  
Siebman, Burg, Phillips & Smith, LLP  
300 North Travis St.  
Sherman, Texas 75090  
(903) 870-0070  
clydesiebman@siebman.com



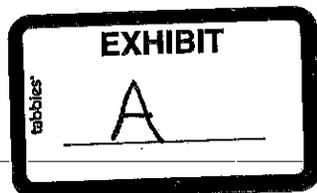
Image © 2011 GeoEye  
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Google

Imagery Date: 6/18/2010

33°46'23.17" N, 96°29'58.06" W, elev: 507 ft

Eye alt: 1052 ft





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Mrs. James A. Clement	
1267 Georgetown Road	
Pottsboro, Texas 75076-4745	
AUG 18 2011	

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WQ0010079003

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

OPA

MAY 13 2011

2011 MAY 13 AM 9:58

To the Chief Clerk

BY

KY

CHIEF CLERKS OFFICE

I am asking for you to  
hear my input. Not a  
complaint, about the water  
discharge in Paw Paw Creek  
in Grayson County Texas, 75021  
in segment NO 0202 of Red  
River Basin.

Dear Sir or Miss & Mrs:  
The discharge water into  
the river on our West  
side, we own  $\frac{3}{4}$  mile on  
Red River. We are not asking  
for this to stop, for it has  
to go somewhere. But our  
concern is the water is so  
rich, that trees are growing  
out in the River, so that  
put the flow to other side  
and we are losing our banks  
to this already 40 or more  
feet. If they could somehow  
turn the water as it hits  
the river to the Texas side  
that would be wonderful.

Over

MJD

may take the trees  
out and that would  
make it river flow like  
it should. We have a  
large island in front of  
the Creek that is getting  
biger + bigger.  
Please take this in your  
disision.

Mr James R Clement  
1267 Georgetown Rd  
Patterson Texas 75076

Phone | 903.786.2757  
or 903.786-9413



**From:** PUBCOMMENT-OPA  
**To:** PUBCOMMENT-OCC2  
**Date:** 8/22/2011 8:47 AM  
**Subject:** Fwd: Public comment on Permit Number WQ0010079003  
**Place:** PUBCOMMENT-OCC2  
**Attachments:** Signed Request for Contested Case Hearing1.pdf

MWD  
75545

H  
RFR

>>> PUBCOMMENT-OCC 8/19/2011 2:08 PM >>>

>>> <siebman@siebman.com> 8/19/2011 2:10 PM >>>

**REGULATED ENTITY NAME PAW PAW PLANT**

**RN NUMBER:** RN102992567

**PERMIT NUMBER:** WQ0010079003

**DOCKET NUMBER:**

**COUNTY:** GRAYSON

**PRINCIPAL NAME:** CITY OF DENISON

**CN NUMBER:** CN600457428

**FROM**

**NAME:** Clyde M Siebman

**E-MAIL:** siebman@siebman.com

**COMPANY:** Siebman, Burg, Phillips & Smith, LLP

**ADDRESS:** 300 N TRAVIS ST

SHERMAN TX 75090-5925

**PHONE:** 9038700070

**FAX:** 9038700066

**COMMENTS:** Attached is a Request for Contested Case Hearing & Reconsideration of Executive Director's Decision regarding Permit No. WQ0010079003. We mailed yesterday via U. S. Express Mail a Request for Contested Case Hearing & Reconsideration of Executive Director's Decision regarding the above Permit Number. Out of an abundance of caution, we are attaching said Request hereto in order to make sure you receive the Request in a timely manner. Thanks.

CM

## **Request for Contested Case Hearing & Reconsideration of Executive Director's Decision**

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TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

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1267 Georgetown Road  
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903-786-9413 and 903-786-2751  
Fax: 903-870-0066

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**Permit No.:** WQ0010079003

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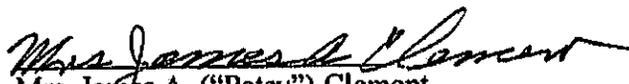
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Respectfully Requested,

  
Mrs. James A. ("Patsy") Clement  
August 18, 2011

Counsel for Affected Person:

  
Clyde M. Siebman  
Siebman, Burg, Phillips & Smith, LLP  
300 North Travis St.  
Sherman, Texas 75090  
(903) 870-0070  
clydesiebman@siebman.com

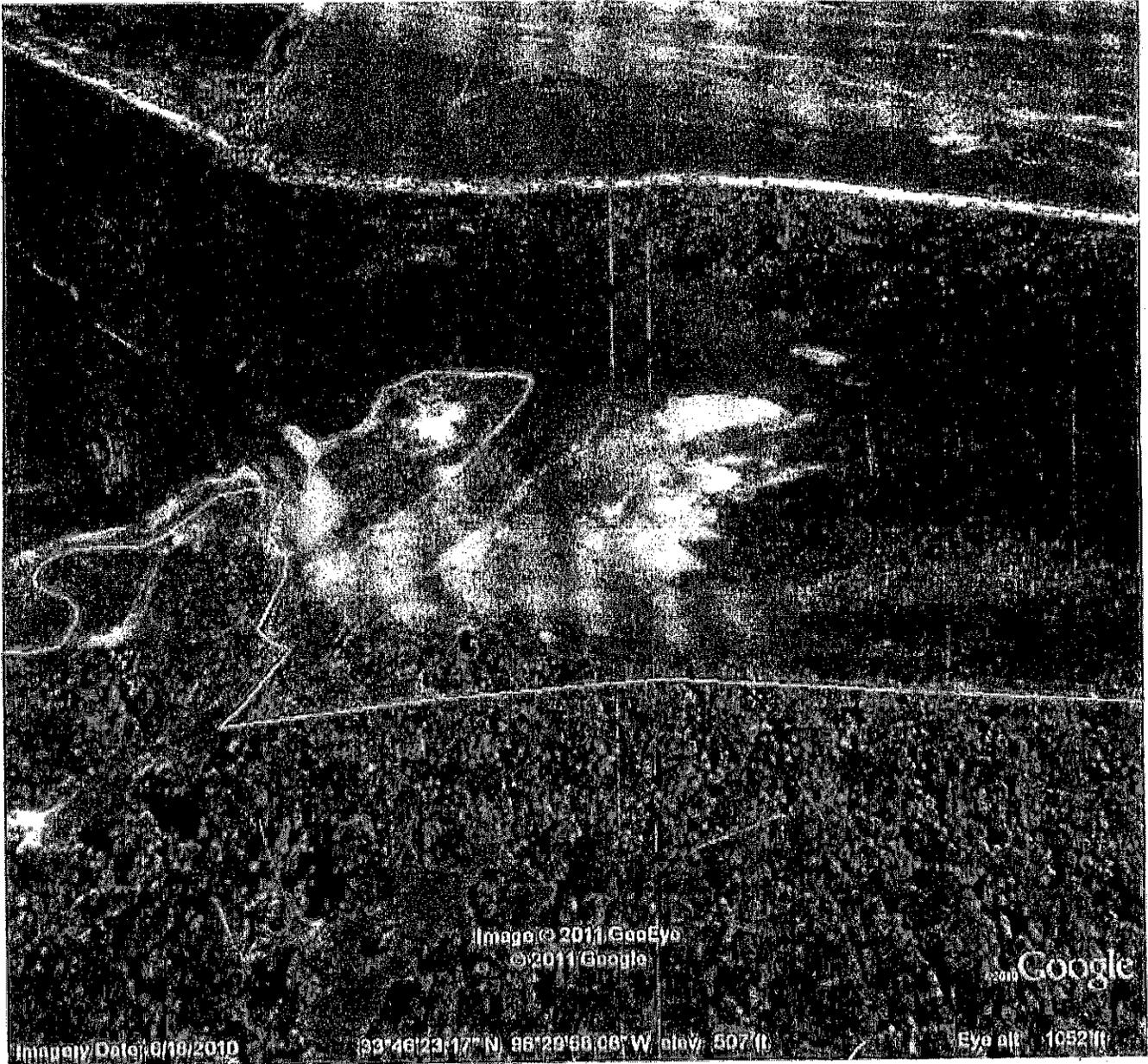


EXHIBIT  
A