



DAVIDSON
TROILO
REAM
GARZA

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2013 JUN -3 PM 3:01

CHIEF CLERKS OFFICE

JOHN W. DAVIDSON ARTHUR TROILO CHEREE TULL KINZIE R GAINES GRIFFIN RICHARD E. HETTINGER
PATRICK W. LINDNER RICHARD D. O'NEIL J. MARK CRAUN LEA A. REAM FRANK J. GARZA
JAMES C. WOOD RICHARD L. CROZIER R. JO RESER STEVEN M. PEÑA PAUL M. GONZÁLEZ
LISA M. GONZALES DYLAN O. DRUMMOND BRYAN M. KORRI WILLIAM A. FAULK III
OF COUNSEL J. TERRY TOPHAM KEITH A. KENDALL DAVID R. RANGEL

ATTORNEYS AT LAW

May 30, 2013

ELECTRONICALLY FILED www.tceq.texas.gov/about/comments.html and
CERTIFIED MAIL RETURN RECEIPT REQUESTED

Bridget C. Bohac, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

REVIEWED

JUN 03 2013

By H

Re: New Way Land Development, LLC
TD PES Permit No. WQ0015058001

Dear Ms. Bohac:

Pursuant to 30 Tex. Admin. Code § 55.201(c), (d), please consider the City of Cotulla's and John W. and Mildred Allen's request for a contested case hearing on the proposed permit in the manner prescribed by law.

- 1) The Protestants are the City of Cotulla, Texas and John W. and Mildred Allen who may be reached at the following addresses:

City of Cotulla, Texas
c/o Steven M. Peña, Sr.
7550 W. IH10, Ste. 800
San Antonio, Texas 78229

(210)349-6484 work
(210)349-0041 facsimile
spena@dtrglaw.com

John W. and Mildred Allen
16 S. Hwy 81
P.O. Box 556
Cotulla, Texas 78014

(830) 879-3494 Home

MAINTAINING A TRADITION OF TEXAS VALUES SINCE 1962

7550 W. INTERSTATE 10, SUITE 800 SAN ANTONIO, TX 78229-5815 T 210.349.6484 F 210.349.0041 DTRGLAW.COM

- 2) The Allen family has consented to join the City with whom their interests are aligned in protesting TDPEs permit WQ0015058001. Communications may be directed to Steven M. Peña, Sr., 7550 W. IH 10, Ste. 800, San Antonio, Texas 78229, (210) 349-6484 telephone, (210) 349-0041 facsimile. Mr. Peña will forward all communications to the Allen family.
- 3) The applicant is New Way Land Development, LLC
TDPEs Permit No. WQ0015058001
- 4)

ALLEN FAMILY STANDING

The Allen family owns and resides upon 16+- acres of land immediately adjacent and contiguous to the property upon which the proposed wastewater treatment facility and the discharge point are to be located. Under state law, the Allen family has standing to protest the application as it will have a detrimental impact upon the use and enjoyment of their property due to the discharge of pollutants, noxious odors and air pollution.

The operation of a wastewater treatment facility at the proposed location constitutes a private nuisance for which they complain herein. The proposed plant is unnecessary, redundant, and is an unwarranted intrusion and trespass upon their right of quiet and peaceful enjoyment of their home and property for which no authorization or justification in law is granted.

CITY OF COTULLA STANDING

The proposed wastewater treatment facility is to be located within the City's one (1) mile extra-territorial jurisdiction ("ETJ"). On its face, the location of the proposed facility within the City's ETJ is sufficient to provide the City standing to protest the proposed permit.

Under Texas law, the City is granted the following exclusive statutory authority in its ETJ to wit:

The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.

Tex. Loc. Gov't Code Ann. § 42.021.

In determining whether the City is an affected person, the TCEQ is specifically required to determine the:

(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.

30 Tex. Admin. Code § 55.203 (5), (6).

To the City's knowledge, the Applicant does not have a certificate of convenience and necessity ("CCN") in the area where the proposed wastewater facility is to be located and operated. The City of Cotulla is granted CCN No. 20991 to operate a wastewater utility. To lawfully operate a wastewater treatment facility, the Applicant must obtain a CCN. *See* 30 Tex. Admin. Code § 291.101. Granting the wastewater permit is not legally permissible until the CCN is granted.

The City operates a municipal wastewater treatment facility in which it has invested large amounts of public dollars. The City has sufficient wastewater treatment capacity to fully supply Applicant's needs. By allowing the Applicant to construct an onsite wastewater treatment facility within the City's ETJ, the TCEQ is encouraging others to follow suit and construct redundant treatment capacity over which the City will have no regulatory control.

Allowing the proposed development is directly contrary to the TCEQ's stated regionalization policy which provides in part:

Whenever the formation of a regional system is the least expensive long-term solution for providing quality service, we will require proponents of new systems to form a regional system instead. Only a system with adequate financial, managerial, and technical capacity can reliably provide good quality drinking water in sufficient quantities and basic sanitation service that meets regulatory standards.

The Feasibility of Regionalizing Water and Wastewater Utilities: A TCEQ Policy Statement at 9. (2003).

The City has the treatment capacity and legal authority to extend a sufficiently sized sewer main to the proposed development. Under the general law of the state, the City is authorized to adopt any ordinance, rule, or regulation which is for the benefit of its citizens and the good governance of the municipality. As part of its demonstrated program of environmental stewardship, the City sells its treated reclaimed effluent water for beneficial purposes. The water from the proposed development should be disposed of in the City's current treatment facility so that it can be sold and not disposed of in the Nueces River. The wasteful and unnecessary discharge of water into the Nueces River is clearly an "impact" on the regulated activity because that

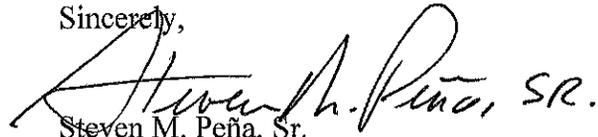
water should be processed by the City's existing wastewater plant. It is also directly contrary to TCEQ's regionalization policy.

The application should be denied because the City is ready, willing and able to provide all required wastewater services to the development.

**REQUESTS FOR CONTESTED CASE HEARING BY AFFECTED
PERSON/GOVERNMENTAL ENTITY**

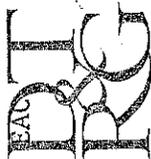
1. John W. and Mildred Allen request a contested case hearing.
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Sincerely,


Steven M. Peña, Sr.
For the Firm

SMP/ec

Cc: John W. and Mildred Allen
Hon. Jose Javier Garcia, Mayor
Hon. Joel B. Rodriguez, Jr., La Salle County Judge
Larry Dovalina, City Administrator
Richard Muller



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REAM &
GARZA PC
ATTORNEYS AT LAW

7550 W. INTERSTATE 10, SUITE 800
SAN ANTONIO, TX 78229-5815

ADDRESS CORRECTION REQUESTED PLEASE FORWARD

CERTIFIED MAIL

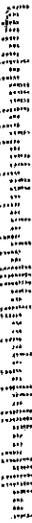


7176 9008 9111 8859 2860



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TCEQ MAIL CENTER
AR
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



78711308787



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May 30, 2013

MWD
85309

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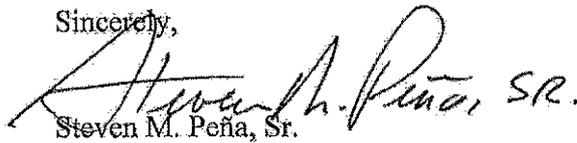
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Steven M. Peña, Sr.

For the Firm

SMP/ec

Cc: John W. and Mildred Allen
Hon. Jose Javier Garcia, Mayor
Hon. Joel B. Rodriguez, Jr., La Salle County Judge
Larry Dovalina, City Administrator
Richard Muller

Marisa Weber

From: PUBCOMMENT
Sent: Thursday, January 31, 2013 4:37 PM
To: PUBCOMMENT-OCC2
Subject: FW: Public comment on Permit Number WQ0015058001

H

From: PUBCOMMENT-OCC
Sent: Thursday, January 31, 2013 3:08 PM
To: PUBCOMMENT
Subject: FW: Public comment on Permit Number WQ0015058001

*MWD
05309*

From: spena@dtrglaw.com [<mailto:spena@dtrglaw.com>]
Sent: Thursday, January 31, 2013 3:00 PM
To: donotReply@tceq.state.tx.us
Subject: Public comment on Permit Number WQ0015058001

REGULATED ENTITY NAME NEW WAY DEVELOPMENT WWTP

RN NUMBER: RN106555311

PERMIT NUMBER: WQ0015058001

DOCKET NUMBER:

COUNTY: LA SALLE

PRINCIPAL NAME: NEW WAY LAND DEVELOPMENT LLC

CN NUMBER: CN604164327

FROM

NAME: MR Steven M Pena, SR

E-MAIL: spena@dtrglaw.com

COMPANY: City of Cotulla, Texas c/o Davidson Troilo Ream Garza, P.C.

ADDRESS: 7550 W IH 10 800
SAN ANTONIO TX 78229-5803

PHONE: 2103496484

FAX: 2103490041

Mr

COMMENTS: The City of Cotulla has received notice that an application for a wastewater permit has been requested by New Way Land Development LLC. The City wishes to protest the application and requests a contested case hearing before the State Office of Administrative Hearings.