

**TCEQ DOCKET NO. 2013-1036-MWD**

<b>APPLICATION OF NEW WAY LAND DEVELOPMENT, LLC FOR NEW TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM TDPES PERMIT NO. WQ0015058001</b>	§ § § § §	<b>BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>
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**REQUESTORS JOINT RESPONSE TO EXECUTIVE DIRECTOR'S AND THE OFFICE OF PUBLIC INTERESTS COUNCIL'S RESPONSE TO JOINT HEARING REQUEST**

John W. and Mildred Allen and the City of Cotulla (sometimes hereinafter referred to collectively as REQUESTOR(S)) files this joint response to the Executive Director's (ED) and Office of Public Interest Council's (OPIC) response to REQUESTORS hearing requests dated August 30, 2013.

**I.  
FACILITY DESCRIPTION**

New Way Land Development applied to the TCEQ for new TDPES Permit No. WQ0015058001 to authorize the discharge of treated domestic wastewater effluent at a daily average flow not to exceed 200,000 gallons per day.

**II.  
BACKGROUND**

New Way Land Development (NEW WAY) is developing a mixed use land development south of the City of Cotulla known as the Kemosabe Business Park (KBP). It is advertised as an architecturally planned 100 acre development. The TCEQ's (Commission) map attached as Attachment "A" to the ED's response dated August 30, 2013 shows KBP is within the City of Cotulla's one (1) mile extra territorial jurisdiction (ETJ). Neither the ED nor OPIC have provided any statement that NEW WAY notified either the City or the Allen(s) of their application for the TDPES permit. The City found out by anecdotal evidence and the discovery of site work being performed at the KBP for which no plat had been filed with either the City or La Salle County. It was only after inquiry by the City and the County that the exact plans for the KBP were discovered. The City was precluded from providing any public comment because it simply did not have any information about their plans. The Allen(s) are retirees who have limited access to public information and should not be denied their ability to protest the application.

In order to provide public comment one must have notice of the matter upon which comment is requested. If the REQUESTORS were never notified, how can they be expected to have provided public comment? It is a denial of fundamental fairness and due process of law to deny REQUESTORS the opportunity to challenge the application due to a "technical" violation of an administrative rule **for which no harm has been shown or complained of.**

Neither applicant, nor the ED or OPIC have addressed the fact that REQUESTORS were not properly notified of an interest in which the Commission itself has found they were affected parties. The Allen(s) are retirees both of whom have limited access to technology; John W. Allen has stated that he does not have access to the internet. It is presumed that Mrs. Allen is similarly affected based upon Mr. Allen's statements. The Commission and New Way presume that elderly retirees living in small town Texas should be aware at all times of what is published in the newspaper, what is available online and should they falter in their attempts to remain apprised of all happenings they must accept the ED and OPIC's decision that they failed to provide public comment as the **only** reason why their request for a contested case hearing should be denied. Neither New Way, the ED or OPIC has provided any evidence of harm that would occur as a result of affording REQUESTORS their due process rights.

### III. REGULATIONS

Both the ED and OPIC point out the fact that the REQUESTORS provided no public comment, yet, the COMMISSION'S rules provide that late filed hearing requests and public comment must be accepted to wit:

g) Late Filed Hearing Requests and Public Comment, Extensions.

(1) A hearing request or public comment shall be processed under § 55.26 of this title (relating to Hearing Request Processing) or under § 55.25 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline for hearing requests and public comment. The chief clerk shall accept a hearing request or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed for filing a hearing request.

30 Tex. Admin. Code § 55.21

Additionally,

(3) Any person who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under this subsection, and failed to participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under § 50.19 of this title (relating to Notice of Commission Action, Motion for Rehearing) or § 55.27 of this title (relating to Commission Action on Hearing Request) or § 80.271 of this title (relating to Motion for Rehearing) or may file a motion for reconsideration under § 50.39 of this title (relating to Motion for Reconsideration) only to the extent of the changes from the draft permit to the final permit decision.

Both the COMMISSION rule and the Texas Administrative Code contemplate that the general public does not have unlimited resources and attorneys on retainer to file contested case hearings and object to waste water discharge permits that are literally in their back yard by allowing such affected persons the right to contest the application even if their objections are late. Wastewater discharge permits by their nature are filed for locations which are sparsely populated as no one desires to have a wastewater plant in their back yard, and those people who live at or near these locations are generally less informed and less economically able to raise their objections. Yet, the decisions of the COMMISSION will have long lasting effects on the quality of their lives, the quality of their children's lives and the value of their properties. It is wrong and unfair to construe Texas law to deny these individuals any meaningful opportunity to protect their homes, their health and the health of their children because they were unaware, uninformed or simply too overwhelmed to provide public comment.

New Way stands to make a substantial profit for the installation of the wastewater plant for which the REQUESTORS will receive no direct benefit. Because of the rural nature of the land and its location, its cost was almost assuredly less than other similarly situated property wastewater service is available. Simply stated, if a burden should be placed for the costs associated with the installation of a wastewater treatment plant, those costs must be borne by those who will profit from the installation. The costs should not be borne by innocent neighbors who will be stuck with the nuisance of a wastewater treatment plant located in their back yard.

#### IV. CONCLUSION

Because the request for a contested case hearing was timely filed which provided the factual basis for both a determination that the Allen(s) were affected parties and the subject matter upon which SOAH would decide, the fact that the information was tardy (with a valid explanation) must be excused and the REQUESTORS should be allowed an opportunity to protest the application. The COMMISSION and New Way have both been apprised of the exact basis for the objection and the suggestion that a contested case hearing should be denied because there is nothing for SOAH to decide is disingenuous, unfair, and denies REQUESTORS their property rights guaranteed by law.

No one wants a wastewater plant in their backyard. No one should be required to live with such a plant without the opportunity to raise their objections in a meaningful way in a meaningful forum. The State of Texas has enacted vast and complex regulations for approving the type of permit requested herein. The reason for these regulations is to make sure that those who are affected by such installations are afforded their basic rights. If the Commission follows the recommendations of the ED and OPIC, it will have chosen administrative efficiency over fundamental fairness to these affected parties. This should not and cannot be the aim of the Commission whose stated mission is: "*Protecting Texas by Reducing and Preventing Pollution.*"

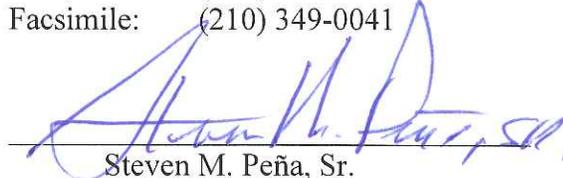
Respectfully submitted,

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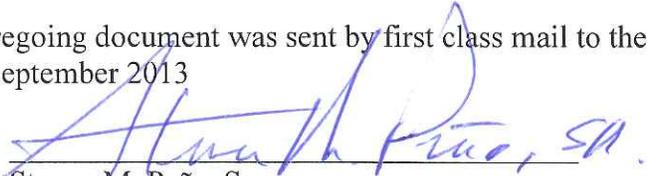
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**ATTORNEYS FOR JOINT REQUESTORS  
THE CITY OF COTULLA TEXAS, JOHN W.  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was sent by first class mail to the to the following persons on the 13<sup>th</sup> day of September 2013

  
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