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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 MAR 26 AM 10:38

CHIEF CLERKS OFFICE

March 24, 2008

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
PO Box 13087
Austin, Texas 78711

Re: TCEQ Docket No. 2007-0652-MWD; Petition to Revoke filed by Yulonda Turner seeking revocation of TPDES Permit No. WQ0010385002, issued to the City of Bellville, Austin County

Dear Ms. Castañuela:

Prior to December 20, 2007 I represented Yulonda Turner in the above referenced matter on a pro bono basis. At Mrs. Turner's request, this representation ended on December 20, 2007. Thus, I will not be appearing on behalf of Mrs. Turner at the April 16th, 2008 agenda consideration of Mrs. Turner's Petition to Revoke. Mrs. Turner's address is as follows:

Yulonda Turner
392 West Chatham
Bellville, Texas 77418

Phone: (979) 865-9144

My firm has repeatedly left messages with Mrs. Turner informing her of the Commission's scheduled consideration of the matter, and we have forwarded by mail a copy of the notice of the meeting.

While I no longer represent Mrs. Turner in this matter, please keep my name on the mailing list as an interested person. Feel free to call me if you have any questions.

Sincerely,


Eric Allmon

cc: Yulonda Turner
John Williams, TCEQ Executive Director Staff Attorney
Christina Mann, TCEQ Office of the Public Interest Counsel Staff Attorney
Charley Smith, City of Bellville City Attorney

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April 23, 2007

Lynn S. Roberts, City Administrator
City of Bellville
30 S. Holland
Bellville, Texas 77418

Re: Petition to Revoke City's Water Quality Permit No, WQ0010385002

Dear Mr. Roberts:

Attached please find a copy of the Petition to Revoke that we plan to file with the Executive Director of the Texas Commission on Environmental Quality on behalf of Ms. Yulanda Turner. If you have any questions or need any additional information, I can be reached at the number listed above.

Sincerely,


Eric Allmon

Attachment

cc: Executive Director, TCEQ
Office of Public Interest Council, TCEQ
Chief Clerk's Office, TCEQ

2017 APR 24 AM 10: 21

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PETITION TO REVOKE

COMES NOW, Yulanda Turner, and files this Petition to Revoke Permit No. WQ0010385002, which authorizes the City of Bellville to operate a wastewater treatment plant at what has been described as 307 W. Hickory in Bellville, Texas. Ms. Turner is the owner of an interest in real property located adjacent to the wastewater treatment plant authorized by this permit. The City of Bellville has not fully disclosed all relevant facts during the permitting process, and is in ongoing violation of the requirements contained in the permit and applicable rules.

I. Mrs. Turner is an Affected Person

Mrs. Turner is the owner of an interest in real property located adjacent to the wastewater treatment plant owned by the City of Bellville. She also resides on this property.

II. The City of Bellville Is Required to Demonstrate and Maintain Buffer Zones

Chapter 309 of the TCEQ rules requires that a wastewater treatment plant, such as that owned by the City of Bellville, establish and maintain certain buffer zones around the facility. 30 TAC § 309.13(e) provides that an applicant must either (1) maintain buffer zones of no less than 150 feet from all wastewater treatment plant units to the nearest property line; (2) submit a nuisance odor prevention request to TCEQ prior to construction, sealed by a professional engineer, establishing how the facility will prevent interference with anticipated land uses; or (3) provide sufficient evidence of legal

restrictions within the buffer zone not owned by the applicant to prohibit the construction of residential structures in that area. The City's wastewater treatment plant units are located less than 150 feet from the property line, and no nuisance odor prevention request in conformance with TCEQ rules has been submitted. Instead, the City has represented to TCEQ that it has obtained legal restrictions within the buffer zone to prohibit the construction of residential structures in order to meet the requirements of this rule.

III. The City of Bellville Cannot Demonstrate Compliance with Applicable Buffer Zone Requirements

The City has never obtained the permission of Mrs. Turner, or any other person with which she shares an interest in her adjacent property, to use her property as a buffer zone. The City's own engineer noted that the property owned by Ms. Turner, which she owns together with her siblings including Annette Brown, was within the 150 foot buffer zone and that an easement should be obtained for use of this property as a buffer zone.¹

The position of Mrs. Turner's property within the buffer zone is demonstrated in Attachment B, and is undisputed.² Not only has Mrs. Turner *not* agreed to refrain from constructing a residential structure in the buffer zone, she actively desires to install a residence within the area where the City asserts that it has established a buffer zone. Mrs. Turner purchased a mobile home and attempted to place it upon the property that she owns; however, City personnel have actively interfered with her attempts to do so.

Mrs. Turner is of limited means, and has made great sacrifice in her attempts to place a home on her property. The purchase of the home has required that she diligently save money made by her husband through his current work in Iraq. Yet, the City has

¹ Attachment A.

² Mrs. Turner disputes the characterization of other property within the buffer zone as not owned by her, but it is undisputed that she owns an interest in some real property located within the buffer zone.

demonstrated nothing but contempt for her desire to rightfully exercise her vested property rights. Mrs. Turner and her predecessors in interest have owned property adjacent to the current wastewater treatment plant site since decades before construction of the plant involved was even conceived by the City. The City simply does not respect her right to use her property, and thus has not considered it necessary to obtain her permission for its use of her property. TCEQ, however, cannot legally exercise the same blatant disregard for her property rights in determining whether the buffer zone requirements have been met.

IV. The City of Bellville's Permit Should be Revoked

At 30 TAC § 305.66(a)(4), TCEQ rules provide that the Commission may revoke a permit due to "the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time." The City of Bellville has misrepresented to the commission that all requirements for an odor buffer zone have been met. Moreover, 30 TAC § 305.66(a)(1) provides that TCEQ may revoke a permit if the permittee "has failed or is failing to comply with the conditions of the permit." The City of Bellville has failed to meet the odor buffer zone requirements of the permit, and is in continuing violation of those requirements. Because the City has made misrepresentations to TCEQ regarding the buffer zone, and because it is in continuing violation of the permit, TCEQ is justified in revoking the City's permit.

V. Prayer

For these reasons, Mrs. Yulonda Turner respectfully prays that the Texas Commission on Environmental Quality suspend and revoke Permit No. WQ0010385002, held by the City of Bellville.

Respectfully Submitted,

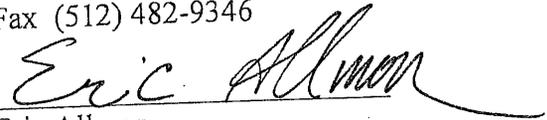
LOWERRE & FREDERICK

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Eric Allmon

State Bar No. 24031819

ATTACHMENT A
FEBRUARY 9, 2000 LETTER FROM O'MALLEY ENGINEERS TO MS. LYNN
ROBERTS OF CITY OF BELLVILLE
(Excerpted as provided by City)



February 9, 2000

Richard J. "Dick" O'Malley, P.E.
Richard J. O'Malley, P.E.
Craig Kankel, P.E.
Robert C. Schmidt, P.E.
Ed Addicks, P.E.

Ms. Lynn Roberts
City of Bellville
30 S. Holland
Bellville, Texas 77418

Re: Bellville Wastewater Treatment Plant Expansion
Major Permit Amendment Application
OE Job No. 195.11 - SH

Dear Ms. Roberts:

Enclosed are four (4) separate buffer zone easements, with exhibits, for the above referenced project. Each easement will need to be executed by the appropriate person(s) and recorded with the Austin County Clerk.

The Texas Natural Resource Conservation Commission (TNRCC) requires that wastewater treatment plant facilities have a 150-ft buffer zone around all plant structures when applying for a major permit amendment. No residential structures are allowed to be located within the 150-ft buffer zone. The buffer zone easements are an alternative that the TNRCC allows plant owners to utilize in order to meet this residential restriction within the 150-ft buffer zone. The four (4) landowners whose property is within the 150-ft buffer zone at the Bellville Wastewater Treatment Plant are:

- 1. Wayne Browning, ✓
- 2. Myrtle Taylor Everline, ✓
- 3. Annette Brown, et al, and *did not sign.*
- 4. Gilmore Huebner, ✓

*DEL. BUFFER ZONE EASEMENT
(4 SETS) TO ANNETTE BROWN
ON MARCH 9th, 2000.*

The actual easements that we have prepared and enclosed are similar to easements that our other clients have used to meet the above mentioned TNRCC buffer zone requirements. Before having the easements executed and recorded, I suggest that you have your City Attorney review the easements and have him contact me if there are any questions or problems regarding the easements. Our experience is that the enclosed easements are adequate for the purpose intended.

Once the easements have been executed and recorded I will need a copy for submission to the TNRCC. It is not necessary to have the easements executed and recorded when the permit amendment application is submitted to the TNRCC. We generally submit copies of the executed and recorded easements

\\OE00\Clerical\195-11\SH\letter\Lynn Roberts 2.doc

P. O. Box 1976 1306 North Park Street Brenham, Texas 77834-1976 (409) 836-7937 FAX (409) 836-7936

ATTACHMENT B
MAP OF BELLVILLE WASTEWATER TREATMENT PLANT UNITS
INDICATING EXTENT AND OWNERSHIP OF 150 FOOT BUFFER ZONE

