LAW OFFICE OF
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November 14, 2007

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087

RE: TCEQ Docket No. 2007-0652-MWD; Petition to Revoke TPDES Permit No. WQ0010385002 submitted on behalf of Yulanda Turner; Before the Texas Commission on Environmental Quality.

To the Honorable Clerk:

Enclosed please find the original and eleven (11) copies of the Permit Holder's Response to Petition to Revoke in the above-referenced matter.

A copy has been mailed to each party on the mailing list.

Respectfully,

Tracey A. Garcia

Tracey A. Garcia
Secretary to Charley L. Smith

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 NOV 15 PM 2: 39
CHIEF CLERKS OFFICE

Enclosures

cc: All Parties on Mailing List

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ Docket No. 2007-0652-MWD

2007 NOV 15 PM 2:41

Petition to	§	Before the
REVOKE	§	CHIEF CLERKS OFFICE
TPDES Permit No. WQ0010385002	§	**TEXAS COMMISSION ON**
submitted on behalf of	§	
YULANDA TURNER	§	**ENVIRONMENTAL QUALITY**

PERMIT HOLDER'S RESPONSE TO PETITION TO REVOKE

I. Introduction

The City of Bellville files this Response to a Petition to Revoke Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010385002 issued to the City of Bellville, filed by Eric Allmon on behalf of Yulanda Turner (Petitioner).

II. Motion to Dismiss as Moot

The City has passed an ordinance which prohibits residential structures within the part of the buffer zone that is not owned by the City. The ordinance fulfills the requirements of 30 TAC §309.13 (e) (3). A copy of the ordinance is attached hereto as Exhibit "A".

III. Motion to Dismiss or Abate

This administrative proceeding should be dismissed or, in the alternative, abated because there is currently a case pending in the 155th Judicial District Court in Austin County, Texas under Cause No. 2007 V - 0049 seeking condemnation of the property that would serve as the buffer zone that is owned in part by the Petitioner. The suit also seeks declaratory judgment to determine the exact location and ownership of the road that runs between the permitted site and the property owned in part by the Petitioner. The District Court has the exclusive jurisdiction to determine the issue of ownership and concurrent jurisdiction with the Austin County Court at Law to determine issues related to condemnation. Following the condemnation, the easement in question will clearly be owned by the City and the lack of easement would be moot.

IV. Material Misrepresentation of Facts in the Petition

The Petition contains two material representations of facts that are just not true and which could be construed as a deliberate attempt to mislead the commission. The first is that "Mrs. Turner and her predecessors in interest have owned property adjacent to the current wastewater treatment plant site decades before the plant involved was even conceived by the City." The plant has been operating in the same location since the 1940's. Based on the deed found in Vol. 435, Page 838 of the Real Property Records of Austin County, Texas, the Petitioner, together with her sisters and brother acquired their interest in the property on November 28, 1980 almost 40 years after the City's property was used as a waste water treatment site. It is axiomatic that a person may not move next to a nuisance and then complain.

The second assertion of fact is that Petitioner has been unable to use her property as a location for her mobile home. To the contrary, the Petitioner has located her mobile home on her property and currently uses the premises as her home. The land that is the subject of the easement is a small fraction of the property owned by the Petitioner, approximately 1/7 of the property. (As pointed out below, the area that has to be in the buffer zone may be considerable less, perhaps as little as 1/14 of the property.) A substantial portion of the property that would be subject to the easement is under fence and incorporated into the front yard of the property where the Petitioner lives.

V. Admission of Tardiness

The City admits that it was tardy in obtaining the required easement. Although it is not a legally sufficient excuse, the requirement that the City pass an ordinance restricting residential construction in the easement was set out on page 26 of the permit. It was simply overlooked by the attorney and administration for the City. The oversight was corrected at the very next meeting of the City council held after the oversight was noticed.

VI. The spirit of the regulations, if not the letter, would dictate that no Buffer Zone should be required.

Under 30 TAC 309.13 (h) and (g) a permitted facility permitted before March 1, 1990, that is undergoing renewal of an existing permit with no change in design is not required to have a buffer zone. The City renovations to the permitted facility served only to move any potential nuisance further away from the Petitioner. Prior to the redesign, the primary treatment unit was approximately 139 feet from the property of the Petitioner. After the renovation, the new primary treatment plant is located approximately 217 feet from the property line of the Petitioner. The bar screen/ drip channel was relocated away from the Petitioner's property. The original treatment unit was converted to two-cell digestor unit. Each of these measures were positive steps toward insuring that the Petitioner's property was more protected from odor than the risk that existed prior to the reconstruction. It would seem illogical that a positive improvement would bring on the burden of acquiring a buffer zone, when no improvement at all would cause no such requirement. It should be implied, if not stated, that a change in function or use of an existing wastewater treatment unit, that reduces the potential for nuisance should not require the additional burden of a buffer zone.

The original buffer zone map, submitted to the Commission, is attached hereto as Exhibit "B". The amount of the Petitioner's land that is inside the cross hatch is .144 acres. A closer look at the map shows that the surveyor, for convenience, used a straight line. In truth, the amount of land that must be required for a buffer zone is much less. There are two radial arcs shown on the map. The solid line is measured from the blower slab that is used as a platform for the stand-by generator. The generator is, arguably, not a wastewater treatment plant unit and measurement from the generator is not required. The second arc is measured from the closest point on the two-cell digestor, shown (approximately) by the dotted line. The area within the arc measured from what is now the two-cell generator, takes up approximately 30' of frontage rather than the 97.57' as originally drawn. It appears that the area would be less than .04 of an acre. The purpose of the rule is to "abate and control a nuisance of odor" The area included within the radius of the arc measured from the

digestor is so small that it practically could have no effect on the abatement of odor. However, the City, and its taxpayers, must bear the same procedural burden and expense to create a buffer zone that will do no practical good.

The regulations clearly contemplate that some circumstances, e.g. buffer zones for land used to dispose of treated effluent, on a case-by-case basis. In light of all the changes being toward positive improvement and the very small amount of land involved, it would appear that administrative economy would best be served by stating that, under these circumstances, no buffer zone is needed.

VII. Conclusion

There comes a time when things must be put in prospective. The failings of the City were, in the overall scheme of a multimillion dollar renovation, were technical in nature and have been corrected. The purposes of the regulations have been fulfilled. The Petitioner is asking the Commission for a drastic measure that is just not warranted. The potential harm and cost far outweigh any benefit. The City requests that the Commission deny the Petition.

Respectfully submitted,

CHARLEY L. SMITH
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Bellville, Texas 77418
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Fax: (979) 865-3732

CHARLEY L. SMITH
State Bar No. 18552800

Certificate of Service

I certify that on November 14, 2007, the original and eleven copies of the **PERMIT HOLDER'S RESPONSE TO PETITION TO REVOKE** for Permit No. WQ0010385002 were filed with the Texas Commission on Environmental Quality, and a complete copy was mailed to all persons on the attached mailing list.

Charley L. Smith

Eric Allmon
Lowerre & Frederick
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Austin, Texas 78701

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City of Bellville
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Docket Clerk
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Austin, Texas 78711-3087

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 NOV 15 PM 2:44
CHIEF CLERKS OFFICE

No. 1349

AN ORDINANCE AMENDING CHAPTER 3 OF THE CITY CODE OF ORDINANCES BY ADDING ARTICLE 3.16 REGULATING THE CONSTRUCTION OF RESIDENTIAL STRUCTURES WITHIN A BUFFER ZONE.

Section 1. Chapter 3 of the Bellville Code of Ordinances is amended by adding the following article:

No residential structure is permitted within a buffer zone as that term is used in 30 Texas Administrative Code §309.13.

Section 2. This ordinance is declared an emergency and shall take effect immediately upon passage.

Motion of Alderman Browning and the second by Alderwoman Kistler with 5 voting aye and Ø voting nay.

PASSED, APPROVED and **ADOPTED** this 29th day of May, 2007.

THE CITY OF BELLVILLE, TEXAS

Monte D. Richardson
MAYOR

ATTEST:

Betty Hollon
CITY SECRETARY

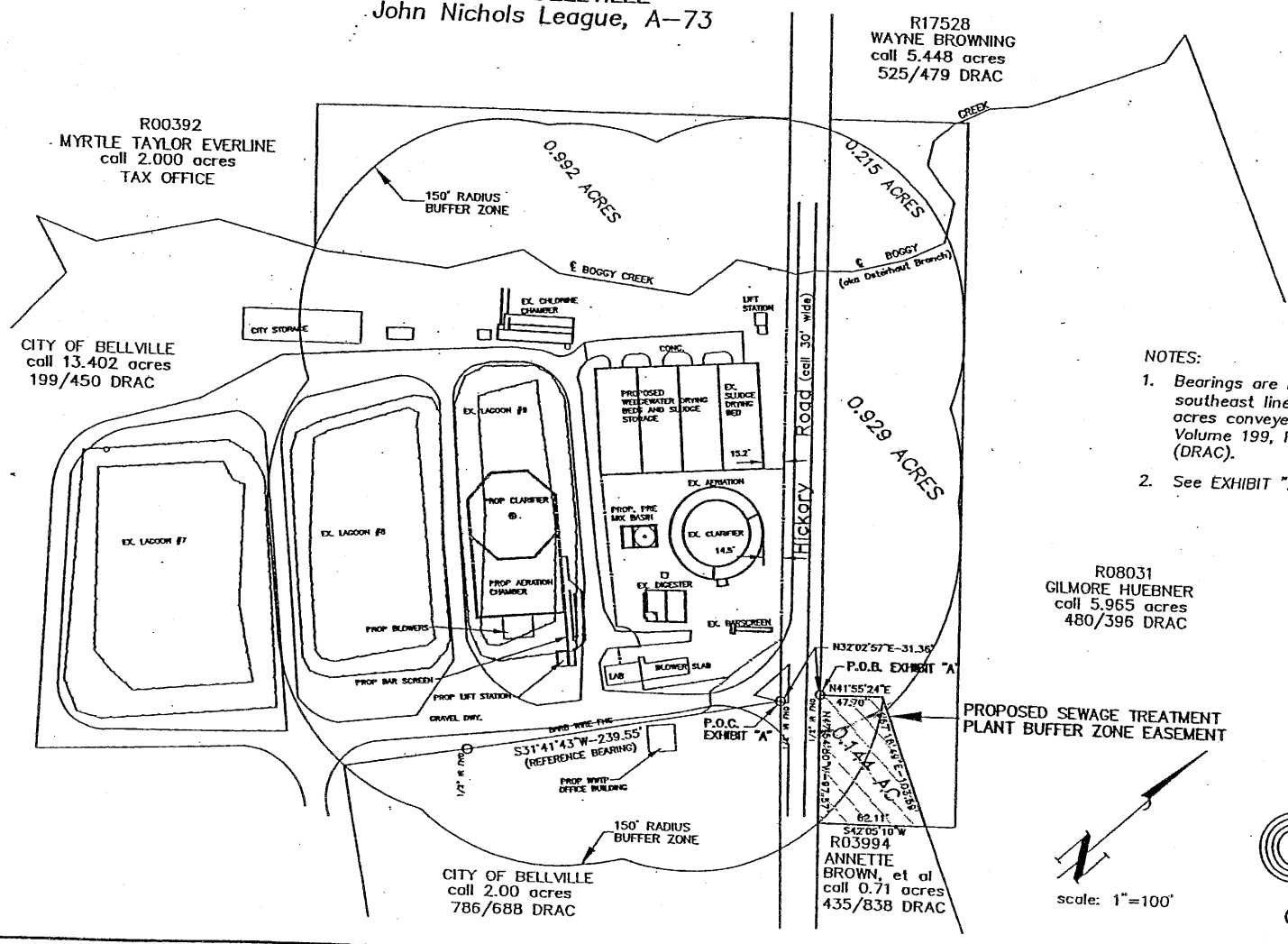
Exhibit "A"

Exhibit "B"

AUSTIN COUNTY, TEXAS

CITY OF BELLVILLE

John Nichols League, A–73



NOTES:

1. Bearings are based on call bearing (S31°41'43"W) on a southeast line of a tract of land said to contain 13.402 acres conveyed to City of Bellville by deed recorded in Volume 199, Page 450, Deed Records Austin County (DRAC).
2. See EXHIBIT "A" for Metes and Bounds Description.

EXHIBIT "B"

PROPOSED SEWAGE TREATMENT PLANT BUFFER ZONE EASEMENT, A 0.144 ACRE TRACT IN JOHN NICHOLS LEAGUE, A–73 CITY OF BELLVILLE, AUSTIN COUNTY, TEXAS

scale: 1"=100'

O'MALLEY ENGINEERS
1306 NORTH PARK BRENHAM, TEXAS
(409) 836-7937 FAX (409) 836-7936

JOB NO. 0195.11SA DWG. NO. 144ac.DWG