

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 16, 2007

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

2007 NOV 16 PM 4: 26  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**RE: CITY OF BELLVILLE  
TCEQ DOCKET NO. 2007-0652-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Petition to Revoke Water Quality Permit No. WQ0010385002 in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Christina Mann".

Christina Mann, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

**TCEQ DOCKET NO. 2007-0652-IWD**

**IN THE MATTER OF A  
PETITION TO REVOKE  
WATER QUALITY  
PERMIT NO.  
WQ0010385002**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO PETITION  
TO REVOKE WATER QUALITY PERMIT NO. WQ0010385002**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY:

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas  
Commission on Environmental Quality (the Commission or TCEQ) and files this  
Response to Yulanda Turner's Petition to Revoke City of Bellville's Water Quality  
Permit No. WQ0010385002.

**I. Background**

The City of Bellville (City) is operating its wastewater plant under water quality  
permit no. WQ0010385002, which was renewed September 24, 2004. The permit was  
granted, even though the City had not yet complied with 30 TAC Section 309.13(e)  
requiring "sufficient evidence of legal restrictions prohibiting residential structures within  
the part of the buffer zone not owned by the applicant."<sup>1</sup> in fact, the City was granted a  
renewal for an existing permit, which should have required that legal restrictions  
establishing the buffer zone be in place *before construction* following the issuance of the  
initial permit. Nevertheless, the Executive Director granted the renewal application for  
the existing permit, with the following language, "Three of the four required buffer zone  
easements were submitted on March 3, 2004 and are located in the permit file. *The*

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<sup>1</sup> See 30 TAC § 309.13 (e)(3)

*remaining legal restriction shall be submitted to the Executive Director of the Commission in care of the Wastewater Permitting Section (MC 148) within 30 days after the permit issuance.”*<sup>2</sup> It appears that the City has yet to comply with the above permit condition.<sup>3</sup>

## **II. Ms. Turner’s Petition**

Since the date of issuance of the renewal in 2004, Yulanda Turner, an apparent owner of the piece of property referred to as the required “last legal restriction,” filed the subject petition to revoke the City’s permit because the City does not have a buffer zone as required by TCEQ regulations. Ms. Turner argues that the City is required to maintain a buffer zone and it has not done so. Further, she actually desires to place a residence on a portion of her property which would be closer than 150 feet from the wastewater treatment plant and she states that the City has not attempted to obtain her permission to use her property. She argues in favor of revocation of the City’s permit as allowed by 30 TAC § 305.66(a)(4) and 30 TAC § 305.66(a)(1). The According to Ms. Turner, the City misrepresented to the Commission that all requirements for an odor buffer zone have been met, and the City is in continuing violation of its permit.

## **III. Analysis**

### The City has not complied with 30 TAC § 309.13(e)

The City has chosen the alternative provided by 30 TAC § 309.13(e)(3) to comply with the “requirement to abate and control a nuisance of odor prior to construction of a

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<sup>2</sup> TPDES Permit No. WQ0010385002, issued September 24, 2004, Page 26, Other Requirements, No. 5.

<sup>3</sup> The City of Bellville passed an ordinance effective May 29, 2007 which states: No residential structure is permitted within a buffer zone as that term is used in 30 TAC § 309.13. OPIC is unaware if the City intends the Ordinance to satisfy the legal restriction requirement. See Attachment A.

new wastewater treatment plant unit, or substantial change in the function or use of an existing wastewater treatment unit.”

According to 30 TAC § 309.13(e)(3):

The permittee must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the applicant. Sufficient evidence of legal restriction may, among others, take the form of a suitable restrictive easement, right-of-way, covenant, deed restriction, deed recorded, or a private agreement provided as a certified copy of the original document. The request shall be submitted, prior to construction, either with a permit application and subject to review during the permitting process or submitted for executive director approval after the permitting process is completed.

A provision in the permit acknowledges that the City had not yet submitted sufficient evidence at the time of permit issuance of a fourth remaining legal restriction (presumably Ms. Turner’s property).<sup>4</sup> OPIC reviewed an ordinance passed by the City in May 2007, nearly three years after the City was directed to submit evidence of a legal restriction. First, OPIC notes that the City is attempting to retroactively create a buffer zone and notes that the City has been in violation of its permit, at least since it was renewed in 2004. Regardless of the timing of the ordinance, OPIC finds that it is insufficient evidence of a legal restriction. 30 TAC § 309.13(e)(3) provides a list of examples of acceptable restrictions, and an ordinance attempting to restrict home development is not found in the list. OPIC recognizes the rule intends the list to be non-exclusive. However, the list only includes options such as covenants, private agreements and deed restrictions- the kind of restrictions which have to be negotiated between two parties. This ordinance merely proclaims to restrict land use, and does not provide the commission with the kind of assurances necessary to provide a valid nuisance odor buffer zone.

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<sup>4</sup> TPDES Permit No. WQ0010385002, issued September 24, 2004, Page 26, Other Requirements, No. 5.

Initiation of Revocation Proceedings by the Commission is Not Yet Necessary

OPIC sympathizes with the obstacles faced by Ms. Turner in attempting to develop her property. Likewise, OPIC is frustrated by the lack of response from the City regarding the buffer zone requirements after its permit renewal was granted over three years ago. However, given the reality of municipal wastewater service, and the severity of a permit revocation, OPIC cannot support initiation of permit revocation proceedings at this time. OPIC recommends the Commission direct the City to provide evidence that it has initiated proceedings or good faith negotiations to meaningfully address Ms. Turner's property rights, rather than merely passing an ordinance which is likely to initiate further litigation. If the City is unable or unwilling to do so, following a continuance of this matter, OPIC would support initiation of permit suspension or revocation proceedings as directed by 30 TAC § 305.66.

**IV. Conclusion**

OPIC recommends the Commission continue the matter for approximately sixty days to allow time for the City to initiate negotiations or other proceedings to eventually satisfy the requirements of 30 TAC § 309.13(e)(3).

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
Christina Mann  
Assistant Public Interest Counsel  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2007 the original and eleven true and correct copies of the Office of the Public Interest Counsel's Response to Yulanda Turner's Petition to Revoke City of Bellville's Water Quality Permit No. WQ0010385002 were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail

  
Christina Mann  
Christina Mann



ATTACHMENT A

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 Alderman Kistler with 5 voting aye and 0 voting nay.

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

**THE CITY OF BELLVILLE, TEXAS**

Monte D. Richardson  
**Monte D. Richardson**  
MAYOR

**ATTEST:**

Betty Hollon  
**Betty Hollon**  
CITY SECRETARY

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TCEQ Docket No. 2007-0652-MWD

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