

**LOWERRE, FREDERICK, PERALES,**  
**ALLMON & ROCKWELL**

2009 JUN -1 PM 4: 56

CHIEF CLERKS OFFICE

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June 1, 2009

Via Hand-Delivery

Ms. La Donna Castañuela  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

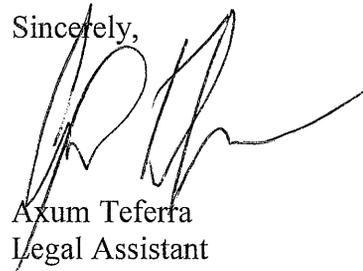
Re: TCEQ Docket No. 2009-0290-MWD; Petition to Revoke TPDES Permit No. WQ0014555002 and Request for Enforcement Action by Suzanne O'Neal, Judith Spencer and Everett Simmons.

Dear Ms. Castañuela:

Petitioners Suzanne O'Neal, Judith Spencer and Everett Smith file the enclosed original and seven copies of their **Reply to Responses to the Petition to Revoke**. Please contact us if you have any questions.

Thank you for your assistance in this matter.

Sincerely,



Axum Teferra  
Legal Assistant

CC: Certificate of Service

TCEQ DOCKET NO. 2009-0290-MWD

2009 JUN -1 PM 4: 56

PETITION TO REVOKE TCEQ	§	BEFORE THE TEXAS
WATER QUALITY PERMIT NO.	§	COMMISSION ON CHIEF CLERKS OFFICE
WQ0014555002 ISSUED TO FAR	§	ENVIRONMENTAL QUALITY
HILLS UTILITY DISTRICT	§	

**PETITIONERS' REPLY TO RESPONSES TO PETITION TO REVOKE**

COMES NOW, Suzanne O'Neal, Judith Spencer, and Everett Simmons ("Petitioners"), and files this reply to responses filed by Far Hills Utility District ("Far Hills"), the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ"), and the Office of the Public Interest Counsel ("OPIC"), and would respectfully show the following:

**I. Introduction**

The circumstances in this case justify the revocation of the water quality permit held by Far Hills Utility District. The responses of the Executive Director and OPIC confirm that a hearing to explore these issues is justified. Far Hills has not contested any of the relevant facts in this matter, and has certainly not presented any reason to deny Petitioners a hearing on their petition. So, the appropriate next step would be referral of the matter to the State Office of Administrative Hearings.

Petitioners also recognize that due to Far Hills' success in pushing its permit application through the permitting process based on false information, the ultimate disposition of this matter, whether during such a revocation hearing, or a later proceeding, is likely to be a settlement between the parties that leaves the wastewater treatment plant in place. A settlement sooner rather than later would be most efficient for the agency and all parties involved.

Settlement discussions cannot move ahead productively, however, until the Commission has clarified its position on the Petition and the legal issues that it raises. So, Petitioners ask that

the Commission facilitate the settlement of this matter by referring the matter for a hearing, confirming the Commission's position on certain questions of law and policy that have been called into question by Far Hills, and providing the parties with time to engage in settlement discussions prior to the commencement of the hearing on the petition to revoke. Of course, Petitioners cannot guarantee that a settlement will be reached at any particular time, as that requires a reasonable approach to settlement negotiations by all persons involved.

## II. Affected Person Status of Petitioners

Far Hills' Response equates "affected persons" with those entitled to receive mailed notice of an application, and essentially argues that a person is not affected unless they own property adjacent to the treatment plant site, or own property adjacent to the discharge route.<sup>1</sup> This is contrary to well-established law and policy on at least two grounds.

First, Petitioners agree with the Executive Director that it is important not to equate the question of whether a person is affected with a question of whether that person is entitled to receive mailed notice. The need for the Commission to send persons mailed notice largely stems from the requirements of procedural due process, which requires an administrative body to provide notice that is reasonably calculated to inform parties of proceedings impacting them,<sup>2</sup> and federal NPDES program requirements that the TCEQ employ methods reasonably calculated to give actual notice to the persons potentially affected by the permitting decision.<sup>3</sup> Mailed notice must reflect an attempt to reach the persons potentially affected by a permitting action, but

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<sup>1</sup> Far Hills' Response at p. 1.

<sup>2</sup> *City of Waco, et al. v. Roddey*, 613 S.W.2d 360, 364 (Tex. App. – Waco, 1981) citing *Armstrong v. Manzo*, 380 U.S. 545 (1965).

<sup>3</sup> 40 CFR § 124.10

this mailing list has never been intended as an all-encompassing list of affected persons with respect to any application. Petitioners in this case were entitled to be included on the mailing list for the application, but this is not Petitioners' basis for claiming to be affected persons.

Second, Far Hills confuses the question of whether a person holds a vested property right with a question of whether they are affected. Certainly, an impact on a person's property is one way a person can be affected, and such an impact exists in this case. Other impacts, however, such as an impact on a person's use of groundwater, or a recreational interest, may not involve property ownership at all, but still constitute a valid basis for finding a person to be "affected." Petitioners in this case do hold vested property rights impacted by the application, but they also use groundwater that will be potentially impacted, and engage in recreational activities that would be impacted by the application.

Far Hills' arguments that Petitioners are not "affected" is flatly contradicted by Far Hills' own materials. A house exists on the property where the wastewater treatment facility is proposed to be located, and this house is approximately the same distance from the proposed wastewater treatment plant units as the residence owned by Suzanne O'Neal. The appraisal for the facility property notes the existence of this home, but also notes that its use for residential purposes is prohibited due to the proximity to the wastewater treatment plant units.<sup>4</sup> So, the appraiser provides an estimate for the demolition of this home as part of her evaluation of the property's value.<sup>5</sup> Far Hills is asking the TCEQ to agree that a home on the facility property that is outside of the plant footprint will be so dramatically impacted that it must be destroyed, but

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<sup>4</sup> Attachment I to Far Hills' Brief, at Addendum p. 1.

<sup>5</sup> Attachment I to Far Hills' Brief, at Addendum p. 1.

that there is not even the potential for Ms. O’Neal’s residence to be impacted, although it is only a few feet farther away.

### III. Mailed Notice

#### A. Far Hills Misconstrues TCEQ’s Mailed Notice Requirements by Confusing the Property Boundaries of the Facility with the Boundaries of the Site

In its response, Far Hills asserts that Petitioners have claimed to be adjacent to the wastewater treatment plant “site,” and goes on to discuss how Petitioners are not adjacent to the area Far Hills hopes will one day be the boundaries of the “site.” By focusing on the boundaries of the *site*, Far Hills’ argument does not address the issue at hand.

A review of the petition filed by Petitioners demonstrates that they have alleged that they are adjacent to the *facility*, and the property upon which it is located.<sup>6</sup> This is because TCEQ rules require a landowners map to show the *facility*, any location regarding the *facility*, and the ownership of tracts of land adjacent to the *facility* or within a reasonable distance of the discharge *or other activity* (such as treatment).<sup>7</sup> Likewise, TCEQ’s directions for completing the

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<sup>6</sup> See, e.g., Petition at p. 6 (“Far Hills did **not** own the property on which the facility was to be located, and Petitioners were in fact adjacent to the property where the facility is proposed to be located.”)

<sup>7</sup> 30 TAC § 305.48(a)(2) (“[T]he application shall show the ownership of tracts of land adjacent to the treatment *facility*.”[emphasis added])

305.45(a)(6) & 305.45(a)(6)(E):

Each Application for a permit must include the following:

\* \* \*

a topographic map, ownership map, county highway map, or a map prepared by a registered professional engineer or a registered surveyor which shows the *facility* and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of

landowners map consider this to be *facility* information.<sup>8</sup> Furthermore, the map required by TCEQ rules is required to show the boundaries of the tract of land owned or to be used by the applicant.<sup>9</sup> Far Hills' response spills much ink in describing fictional boundaries of the plant "site," but this boundary is not relevant when determining whether a person is an adjacent landowner to be included in the landowners map.

TCEQ's written interpretation of its own rules, as embodied in the instructions for the wastewater permit application form, could not possibly be clearer on this point. In compiling the landowners map used for mailed notice, those instructions specifically instruct the applicant that the map must clearly show "the applicant's *property* boundaries" and "the property boundaries of landowners surrounding the applicant's *property*."<sup>10</sup> Adherence to these instructions is required by TCEQ rule.<sup>11</sup> Whatever an applicant may claim to be the boundaries of the "site", the TCEQ is interested in providing notice to all persons adjacent to the applicant's property. This point is made explicit in the example adjacent and downstream landowners map provided in the TCEQ instructions for the application form, which reflects the boundaries of the *site* as being

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**land owned or to be used by the applicant** and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

\* \* \*

**the ownership of tracts of land adjacent to the *facility* and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity.** [emphasis added]

<sup>8</sup> TEXAS COMMISSION ON ENVIRONMENTAL QUALITY. "INSTRUCTIONS FOR COMPLETING THE DOMESTIC WASTEWATER PERMIT APPLICATION; MARCH 2009; FORM TCEQ-10053-INSTRUCTIONS" at p. 14. (Excerpts in Attachment A to this brief).

<sup>9</sup> 30 TAC § 30.45(a)(6).

<sup>10</sup> Attachment A, at p. 19. [emphasis added].

<sup>11</sup> 30 TAC § 305.45(a)(6)(E).

different from the boundaries of the applicant's *property*, and clearly requires that all landowners adjacent to the applicant's property be included in the landowners map, without regard to whether they are adjacent to the *site*.<sup>12</sup>

Thus, Far Hills' extensive discussion of the boundaries of the plant *site* is simply irrelevant to the question of whether petitioners should have been included on the mailing list.

**B. Far Hills Response Only Confirms that It Provided False Information to TCEQ Regarding Mailed Notice**

Since the adjacent landowners list depends on a determination of the applicant's property boundaries, it is important to know what those boundaries are. Partly for this reason, the TCEQ requires that a person applying for a wastewater permit either own the property upon which the plant will be located, or provide a long-term lease agreement for the life of the facility.<sup>13</sup> This enables the TCEQ to determine the boundaries of all contiguous land owned or controlled by the Applicant, and determine the owners of property adjacent to those boundaries. Established TCEQ policy has required that the landowners map (and landowners list) contained in the application include all persons adjacent to any contiguous property owned by the Applicant. At one point in its response, Far Hills claims that it was an adjacent landowner to its own site. Since the TCEQ treats all contiguous property owned by the applicant to be unified with the property where the facility is to be located, this would be impossible.

Petitioners have noted that Far Hills convinced the ED that it met this requirement during the permitting process by making the outright false claim that it was the owner of the property

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<sup>12</sup> Attachment A, at p. 60.

<sup>13</sup> Attachment A, at p. 14.

where the facility was proposed to be built.<sup>14</sup> Far Hills' response elaborately discusses how it *hoped* to own the property, *intended* to own the property, or was *in the process* of perhaps buying the property, but what is notably missing from Far Hills' response is any claim that Far Hills' statements to the TCEQ during the permitting process claiming to own the property, and setting forth the boundaries of the property it claimed to own, were true. On this point, Petitioners compliment Far Hills' attorneys for holding themselves to higher standards of accuracy than Far Hills' engineers.

All evidence still indicates that the tract of land where the facility was to be located, and is now being built, is the full 10 acre tract adjacent to each of the petitioners. Far Hills does not contest that the tract of land where the facility was to be located was the unified 10 acre tract adjacent to each of the Petitioners at the time of application. While the property transactions occurring after the issuance of the permit only go to confirm that the relevant tract of land for determining the adjacent landowners is the full 10 acres, those transactions are irrelevant.<sup>15</sup> TCEQ determines who is entitled to receive mailed notice based who is adjacent to the boundaries of the tract of land where the plant is proposed to be located at the time of application, not the property boundaries as an applicant hopes or claim they will someday exist. Any consideration of recent real estate market conditions demonstrates why TCEQ insists on

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<sup>14</sup> As noted in the Petition, this claim was made on p. 3 of the Checklist for initial review of wastewater discharge application, p. 3, provided with Far Hills' Application for Permit No. WQ0014555002, and by Far Hills' depiction of its "Property Boundaries" on the landowners map.

<sup>15</sup> Even if the Commission were to consider the transactions Far Hills has now entered, and even those transactions it speculates that it will eventually enter, the information presented by Far Hills shows that Ms. O'Neal would still clearly be an adjacent property owner. This is demonstrated on the appraisal form presented as Exhibit I to Far Hills' Response Brief, which does not indicate the sale of the 30' strip of property separating Ms. O'Neal from the Far Hills treatment plant property.

determining the facility property boundaries based upon transactions that have already occurred, not real estate transactions an applicant speculates will occur in the future.

Far Hills attempts to justify its final landowners map by claiming that the ED approved it as acceptable. Of course, Far Hills had provided false information regarding its property ownership to the ED, and this false information formed the basis of the ED's approval. Given the resource limitations of the TCEQ, the ED staff must be able to trust in the accuracy of the information provided to them by applicants.

### **C. The Undisputed Facts Support the Petition to Revoke on the Basis of Inadequate Mailed Notice**

Petitioners do not object to the referral of this matter for a hearing to allow an administrative law judge to formally determine the relevant facts. It is worth noting, however, that the facts relevant to the consideration of mailed notice remain undisputed in the pleadings:

- (1) At the time of the application for Permit No. WQ0014555002, Far Hills did not own the tract of land on which the wastewater treatment was proposed to be located.
- (2) The tract of land upon which the wastewater treatment plant was proposed to be located was a 10.00± acre contiguous tract of land, entirely owned at the time of application by Broussard-Christie, L.P.
- (3) At the time of application, Suzanne O'Neal owned property adjacent to the 10.00± acre contiguous tract of land owned by Broussard-Christie, L.P., upon which the wastewater treatment plant was proposed to be located.
- (4) At the time of application, Judith Spencer owned property adjacent to the 10.00± acre contiguous tract of land owned by Broussard-Christie, L.P., upon which the wastewater treatment plant was proposed to be located.

- (5) At the time of application, Everett Simmons owned property adjacent to the 10.00± acre contiguous tract of land owned by Broussard-Christie, L.P., upon which the wastewater treatment plant was proposed to be located.
- (6) Suzanne O’Neal, Judith Spencer, and Everett Simmons were each not included on the mailing list used to provide mailed notice of the application for the notice of receipt of application and administrative completeness, and were also each not included on the mailing list used to provide mailed notice of the draft permit.
- (7) Suzanne O’Neal, Judith Spencer, and Everett Simmons were each not provided mailed notice of the application, or the draft permit.

Since TCEQ law and policy clearly establish that all landowners adjacent to the tract of land owned by the applicant must be included on the affected landowners map,<sup>16</sup> and the persons on this map must receive mailed notice of the application and of the draft permit,<sup>17</sup> these facts alone establish that Petitioners were not provided the mailed notice to which they were each entitled. None of these facts have been disputed by Far Hills in its response to the petition or any other materials.

Regarding mailed notice, Far Hills’ responsive argument rests entirely on a legal proposition that it was not required to include persons on the affected landowner list who were adjacent to the contiguous tract of land on which the wastewater treatment plant was proposed to

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<sup>16</sup> 30 TAC § 305.45(a)(6); TCEQ Instructions for Completing the Domestic Wastewater Permit Application, at p. 19.

<sup>17</sup> 30 TAC §§ 39.413(1); 39.418(2); 39.419(c).

be located, but instead that it was sufficient for Far Hills to only include landowners adjacent to the boundaries of the “site” as it now describes those boundaries.<sup>18</sup>

#### IV. Published Notice

##### A. Far Hills Misconstrues the Regulatory Requirements for Published Notice

The Texas Water Code, and TCEQ rules, establish published notice requirements that depend on whether or not a proposed facility is located within a municipality. If a proposed facility is not located in a municipality, then notice must be published in the paper of largest circulation in the county where the facility is proposed to be located.<sup>19</sup> If a proposed facility is located in a municipality, then notice may be published in a newspaper of general circulation within that municipality.<sup>20</sup>

Far Hills’ proposed facility is *not* located in a municipality. It is located in neither Willis, nor Montgomery.<sup>21</sup> So, Far Hills was required to publish both notices of the permit in the paper of largest circulation within Montgomery County. Instead of arguing that Far Hills met this requirement, Far Hills’ response claims that while it is not located within any municipality, it sufficiently met the requirements by publishing in a paper of general circulation in the *nearest* city. Far Hills’ arguments on this issue border on the absurd. Of course, TCEQ rules do not

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<sup>18</sup> Petitioners note that “Site” is defined in TCEQ rules as “The land or water area where any facility or activity is physically located or conducted, **including adjacent land used in connection with the facility or activity.**” Since the property adjacent to Ms. O’Neal was to be used as a private drive in connection with the wastewater treatment plant, she would even be considered adjacent to the “site.” Since TCEQ’s rules and policies for mailed notice do not consider the “site” boundaries, it is not necessary to reach this question.

<sup>19</sup> 30 TAC § 39.405(f)(1).

<sup>20</sup> Id.

<sup>21</sup> Attachment B is a certified copy of the city limits of Willis, Texas provided to Petitioners by the City of Willis. Attachment C is an uncertified copy of the city limits of Montgomery, Texas provided by to the Petitioners by the City of Montgomery.

simply allow an applicant outside any City to publish in the *nearest* city. For a facility located outside any city, the applicable law is unambiguous that notice must be published in the paper of **largest circulation in the county**, and Far Hills does not even claim to have done so. Far Hills' argument is based on what it wishes the law was, which is why its response regarding published notice contains no reference to any statute or rule.

Even if publication in a paper of general circulation in the nearest city was adequate, Far Hills has only *claimed* that the *Montgomery County News* in which it published notice, is of general circulation in Willis, Texas. The only affidavit Far Hills can produce states that the *Montgomery County News* is of general circulation in the City of Montgomery. Far Hills is unable to produce an affidavit that the *Montgomery County News* is of general circulation in Willis because this claim is simply false. While the citizens of Willis surely pass no judgment on the journalistic worth of the *Montgomery County News*, they don't read it. It is exceedingly difficult, if not impossible, to locate a copy of the *Montgomery County News* within the City of Willis. After diligent effort, Petitioners have failed to find a single outlet for the *Montgomery County News* within the City of Willis. Contrary to Far Hills' assertions, the *Montgomery County News* is not a paper of general circulation in the City of Willis.

Far Hills seems to indicate that it was authorized to publish in a paper of general circulation in Willis by communications from the TCEQ's Chief Clerk's Office. It bears attention that the referenced communication from the TCEQ Chief Clerk's Office regarding publication of the initial notice occurred *after* that notice was published.<sup>22</sup> When publishing in the *Montgomery County News*, Far Hills had not even yet received the correspondence that it

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<sup>22</sup> July 10<sup>th</sup>, 2007 letter from Chief Clerk's Office to Far Hills, regarding June 27<sup>th</sup> publication in Montgomery County News.

now claims authorized it to publish in that paper. Of course, Far Hills was in a position to know whether the proposed facility was within the City of Willis, while the Chief Clerk's Office could only rely on what they were told by Far Hills. By all appearances, Far Hills' communications with the Chief Clerk's Office indicated that the proposed facility would be located in Willis, and the fax from the Chief Clerk's office simply incorporates this representation they had received.

Most importantly, neither the Legislature nor the Commission has delegated the authority to the Chief Clerk's Office to alter statutory notice requirements. Far Hills is responsible for ensuring that it has met the notice requirements, and any competent engineer for Far Hills would have known that being located outside of any city, Far Hills was required to publish notice in the paper of largest circulation in Montgomery County.

**B. The Undisputed Facts Support the Petition to Revoke on the Basis of Inadequate Published Notice**

Petitioners do not object to the referral of this matter for a hearing to allow an administrative law judge to formally determine the relevant facts. It is worth noting, however, that the facts relevant to the consideration of published notice also remain undisputed in the pleadings:

- (1) The wastewater treatment plant proposed to be authorized by TPDES Permit No. WQ0014555002 is located in Montgomery County.
- (2) The wastewater treatment plant proposed to be authorized by TPDES Permit No. WQ0014555002 is not located in a municipality.
- (3) Far Hills' published all notices related to its application for TPDES Permit No. WQ0014555002 in the *Montgomery County News*.

(4) The *Montgomery County News* is not the paper of largest circulation in Montgomery County.

Since the applicable law, and TCEQ policy, are unambiguous that notice related to an application for a facility proposed not to be located in a municipality must be published in the paper of largest circulation in the county where the facility is proposed to be located, these facts alone establish that published notice for Far Hills' application failed to meet the requirements of the TCEQ rules.

Far Hills' response is based wholly on the legal proposition that being *near* a city entitles an applicant to publish notice in a paper of general circulation within that city. This legal proposition is simply wrong.

**V. Intent is Solely Relevant to Violations of Tex. Water Code § 7.149**

In their petition, Petitioners requested that the Commission pursue an enforcement action against persons associated with Far Hills who may have violated Tex. Water Code § 7.149 in association with Far Hills' second permit application. This statute involves the act of intentionally or knowingly providing false information to the TCEQ.

In contrast to Tex. Water Code § 7.149, the TCEQ rules regarding a petition to revoke do not require that someone *intentionally* provide the TCEQ with false information for the revocation of a permit to be justified. A petition to revoke may be granted if it is found that a permit holder made a false statement in connection with an application, without regard to whether the permit holder knew the information to be false.<sup>23</sup> Likewise, the revocation of a permit is justified if an applicant failed to disclose all relevant facts.<sup>24</sup> The mere failure to

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<sup>23</sup> 30 TAC § 305.66(f)(3).

<sup>24</sup> 30 TAC § 305.66(a)(4).

provide information does not necessarily require that someone intentionally omitted the information.

Petitioners raise this distinction because the Executive Director has included in his list of potential issues for referral, questions involving Far Hills' intent to exclude Petitioners from the mailing list, or intent to publish inadequate notice. While Petitioners believe that Far Hills' acts were intentional, it would be inappropriate for the TCEQ to apply a standard derived from a criminal statute to a decision under a TCEQ rule that includes no such standard. The TCEQ permitting process requires reliance on both the honesty *and competence* of an applicant at each stage of the process. With regard to TCEQ rules governing a petition to revoke, it is irrelevant whether a permit holder intentionally deceived the TCEQ, or simply provided false information as the result of incompetence. To be clear, Petitioners are not saying that a permit should be revoked if any minor mistake is later discovered in an application. But, where a piece of information is significant to the processing of a permit application, TCEQ rules governing a petition to revoke incorporate an expectation that the information provided will be true, and establish consequences if it is not.

## **VI. What Goes Around Comes Around**

Far Hills' response concludes with a plea for sympathy, recounting how it believes granting the petition to revoke would inflict immeasurable hardship on it, as if Far Hills is a helpless victim. Of course, the possibility that Far Hills' permit will be revoked is directly attributable to Far Hills' failure to ensure that it complied with TCEQ rules during the permitting process. Furthermore, Far Hills' actions have imposed hardship on Petitioners.

Suzanne O'Neal purchased her property as one of the highest points in Montgomery County, providing beautiful views of Lake Conroe on several sides. Until September, the tract of

land adjacent to her simply held a house with a large front yard. In fact, these properties are jointly subject to restrictive covenants that were intended to preserve the nature of the neighborhood, with prohibitions on residences such as mobile homes. (The thought that someone would construct a wastewater treatment plant on one of these residential lots was unimaginable when the restrictive covenants were written). Suzanne keeps show horses on the property, and has frequently given English-style horse riding lessons to children. She often has enjoyed peaceful dinners on her porch, enjoying the views of Lake Conroe available from her property. Suzanne has long looked forward to retiring on this property.

Suzanne's plans for retirement have been abruptly shattered by Far Hills, and Far Hills is in no position to complain that the exercise of her rights is inconvenient for the District. She does not assert any right interfere with Far Hills' own property rights, or to veto Far Hills' plans, but she does hold a reasonable expectation that fundamental notice of TCEQ's decision would be provided, and she reasonably expects that she would have had the same opportunity to provide input on this decision that any other similarly situated person would have received. Of course, TCEQ attempted to perform this duty, but was frustrated by Far Hills' failure to provide the TCEQ with accurate information.

Far Hills' ability to skirt the public participation requirements of the TCEQ permitting process is now catching up with it. Given Far Hills' historically loose treatment of the facts, and track record of poorly developed permit applications, there is no guarantee that its permit would have been granted if effectively subjected to public scrutiny. The regionalization issues which an administrative law judge believed justified denial of Far Hills' original application still existed. Far Hills has shared a plant with Montgomery County Utility District No. 2 for decades, and the creation of two plants instead of expanding an existing one undermines Texas'

regionalization policy. Likewise, the water quality issues in Lake Conroe had not disappeared. Far Hills' prior draft permit was revised by the Executive Director in response to public comments even before a hearing was held. Had the persons with the greatest interest in the application been provided an opportunity to comment on the proposed permit, it would likely look significantly different than it does today.

Petitioners have no sympathy for Far Hills, and neither should the Commission. The very integrity of the permitting process is undermined if there is no consequence for obtaining a permit based on false information. The Commission has repeatedly stressed the trust it places in regulated entities, and the professionals they employ, to provide the Commission with accurate information. Far Hills betrayed that trust.

## **VII. Conclusion & Prayer**

As noted, the response filed by Far Hills turns on two erroneous propositions of law:

- (1) That the landowners map in a water quality permit application is only concerned with landowners adjacent to a "site," and not those adjacent to the property boundaries of the tract of land upon which a facility is proposed to be located.
- (2) That an applicant for a proposed facility located outside any city may publish notice in a paper of general circulation in the nearest municipality, and is not required to publish notice in the paper of largest circulation in the county.

Since these arguments raise issues of law that it is appropriate for the Commission to rule upon without an evidentiary hearing, Petitioners ask that the Commission affirm its following positions which have been expressed in both rules and written policy:

- (1) The landowners map in a water quality permit must include, *inter alia*, all persons adjacent to the tract of land on which the facility is proposed to be located.

- (2) If a wastewater facility is located or proposed to be located outside of any city, then the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located.

After clarifying these issues of law, Petitioners pray that the Commission refer the petition for a hearing at the State Office of Administrative Hearings on the following issues:

- (1) With respect to mailed notice of Far Hills Utility District's application for Permit No. WQ0014555002, did Far Hills Utility District fail to fully disclose all relevant facts, misrepresent any relevant facts, or make any false or misleading statements?
- (2) With respect to published notice of Far Hills Utility District's application for Permit No. WQ0014555002, did Far Hills Utility District fail to fully disclose all relevant facts, misrepresent any relevant facts, or make any false or misleading statements?
- (3) Did Far Hills Utility District publish notice of its application for TPDES Permit No. WQ0014555002 in the proper newspaper?
- (4) Were Petitioners entitled to mailed notice of Far Hill Utility District's application for Permit No. WQ0014555002?
- (5) Did Petitioners receive mailed notice of Far Hills Utility District's application for Permit No. WQ0014555002?
- (6) Should TPDES Permit No. WQ0014555002 issued to Far Hills Utility District be revoked?

Petitioners further pray that the Commission provide time prior to the commencement of a hearing at the State Office of Administrative Hearings in order to allow the parties an opportunity to engage in settlement discussions.

Respectfully Submitted,

**LOWERRE, FREDERICK, PERALES,  
ALLMON & ROCKWELL**

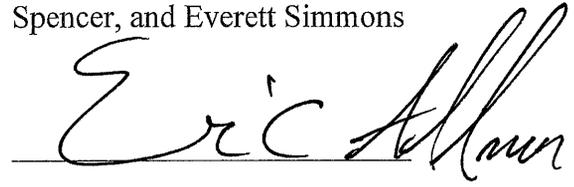
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Attorneys for Suzanne O'Neal, Judith  
Spencer, and Everett Simmons

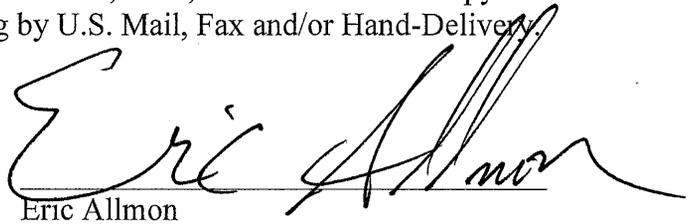
A handwritten signature in black ink that reads "Eric Allmon". The signature is written in a cursive style and is positioned above a horizontal line.

Eric Allmon

State Bar No. 24031819

**CERTIFICATE OF SERVICE**

By my signature below, I certify that on the 1st day of June, 2009, a true and correct copy of the foregoing document was served upon the following by U.S. Mail, Fax and/or Hand-Delivery.



Eric Allmon

For the Chief Clerk:

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

For the Attorney of the Permit Holder:

Alan P. Petrov  
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For the Executive Director:

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For the Office of Public Interest Counsel:

Amy Swanholm, Attorney  
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Office of Public Interest Counsel- MC- 103  
P.O. Box 13087  
Austin, Texas 78711-3087

For State Senator Robert Nichols:

Honorable Robert Nichols  
Senate District 3  
P.O. Box 12068, Capitol Station  
Austin, Texas 78711  
Phone: 512-463-0103

For State Representative Brandon Creighton:

Honorable Brandon Creighton  
House District 16  
P.O. Box 2910  
Austin, Texas 78768  
Phone: 512-463-0726

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 JUN - 1 PM 4: 56  
CHIEF CLERKS OFFICE

# Attachment A



March 2009  
Form TCEQ-10053-Instruction

**TCEQ**

**INSTRUCTIONS FOR  
COMPLETING THE  
DOMESTIC WASTEWATER  
PERMIT APPLICATION**

Printed on  
Recycled Paper

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**Texas Commission on Environmental Quality**

c. Provide the person's name, company name, mailing address, telephone number, email, and fax number of the one individual that will be identified as the notice contact in the two notices that are mailed out and published as part of the permitting process. This individual may be contacted by the public to answer general and specific questions about all aspects of the permit application. If the mailing address is a P.O. Box, insert the P.O. Box number within the space provided. Insert suite numbers within the line provided for the street name.

d. Provide the name, physical address, and county for the public place where the application information will be available for viewing and copying. If the facility and/or outfall are located in more than one county, a public viewing place for each county must be provided. The information requested in this portion of the application regards a public place where the complete application and draft permit and Technical Summary/Statement of Basis, and Fact Sheet, if applicable, must be made available for viewing and copying by the general public by the date the first notice is published. The public place must be located within the county in which the facility is/will be located. The address must be a physical address. **Post office box addresses are not acceptable.**

e. Bilingual notice may be required for new permit applications, major amendment applications and renewal applications, (not applicable for minor amendment or minor modification applications). If an elementary school or middle school nearest to the facility offers a bilingual program, notice may be required to be published in an alternative language. The Texas Education Code, upon which the TCEQ alternative language notice requirements are based, triggers a bilingual education program to apply to an entire school district should the requisite alternative language speaking student population exist. However, there may not exist any bilingual-speaking students at a particular school within a district which is required to offer the bilingual education program. For this reason, the requirement to publish notice in an alternative language is triggered if the nearest elementary or middle school, as a part of a larger school district, is required to make a bilingual education program available to qualifying students and the school either has students enrolled at such a program on-site, or has students who attend such a program at another location in satisfaction of the school's obligation to provide such a program as a member of a triggered district.

The applicant is required to call the bilingual/ESL coordinator for the nearest elementary and middle schools and obtain information to determine if an alternative language notice is required. If it is determined that a bilingual notice is required, the applicant is responsible for ensuring that the publication in the alternate language is complete and accurate in that language.

#### **4. FACILITY INFORMATION**

This section of the application provides nontechnical information on the facility name, address, associated permits, and ownership.

a. Provide the TCEQ Permit No. and the EPA Identification No. if the facility has an existing permit. For new facilities, this space should be marked N/A.

Provide the facility Regulated Entity Number. Since a proposed or existing wastewater or water treatment facility is associated with this application, you need to provide a Regulated Entity Number (RN). Each treatment facility will have a unique number (e.g., City of the Sea's wastewater treatment plant and water treatment plants will have separate RNs). If this facility does not have an RN, complete the TCEQ Core Data Form (Form 10400). See the instructions to that form for more information on completing and submitting the form.

b. Provide the plant name. If the facility does not have a name, mark the space N/A. Provide the county in which the plant is located and the county in which the outfall is located. The zip code(s) for the location of the wastewater treatment plant must also be provided. In addition, provide the name of the municipality closest to the facility.

c. Provide the name of the owner of the treatment plant; the plant owner must be the applicant for the permit (same as item 1).

d. Provide the name and mailing address of the owner of the land where the facility is located. If the mailing address is a P.O. Box, insert the P.O. Box number within the space provided. If the owner of the land is not the same as the applicant, a long term lease agreement for the life of the facility must be provided. A lease agreement can only be submitted if the facility is not a fixture of the land (e.g., aboveground package plant).

If the facility is considered a fixture of the land (e.g., ponds, units halfway in the ground), there are two options. The owner of the land can apply for the permit as a co-permittee or a copy of an executed deed recorded easement must be provided. A long term lease agreement is not sufficient if the facility is considered a fixture of the land.

Both the long term lease agreement and the deed recorded easement must give the facility owner sufficient rights to the land for the operation of the treatment facility.

e. Provide the name and mailing address of the owner of the effluent disposal site (e.g., irrigation, evaporation), if applicable. If the mailing address is a P.O. Box, insert the P.O. Box number within the space provided. This item is only applicable for effluent disposal sites (e.g., irrigation, subsurface drip irrigation, evaporation). It is not for the point of discharge to the receiving waters. If the owner of the land is not the same as the applicant, a long term lease agreement must be provided. The lease agreement must give the facility owner use of the land for effluent disposal. If the term of the lease agreement is less than five years, the permit may be drafted for a term equivalent to the term of the lease.

If ponds (i.e., holding ponds, evaporation ponds) are located on land not owned by the applicant, there are two options. The owner of the land can apply for the permit as a **co-permittee** or a **copy of an executed deed recorded easement must be provided**. The deed recorded easement must give the facility owner sufficient rights to the land for the operation of the facility and must be recorded in the county where the facility is located.

If the land is to be acquired by the facility owner, a copy of an executed option to purchase agreement must be submitted. The option to purchase must give a legal description of the land to be purchased and identify when the option to purchase agreement expires. An option to purchase may only be submitted with a new permit application.

f. Provide the name and mailing address of the owner of the sewage sludge disposal site. The owner of the sewage sludge disposal site only needs to be provided if authorization for the disposal of sewage sludge on property owned or under the direct control of the applicant is being sought in the permit. If the owner of the land where the sewage sludge disposal site is located is not the same as the applicant, a long term lease agreement for at least the term of the permit must be provided. If sludge is hauled by a registered transporter to a separate site that is permitted or registered by the TCEQ, such as a municipal solid waste landfill or a permitted or registered land application site, ownership information does not need to be provided.

## 5. LOCATION INFORMATION

The following information provides specific location information used in describing the location of the facility, the discharge route, the effluent disposal site, and other information relevant to the treatment facility.

a. Provide a location description of the facility and include an address for the facility if available, (address must be validated through the US Postal Service or your local police (911 service) as a valid address. **Provide the zip code(s) where the facility and outfall(s) are located.** If the location description is not accurate or this is a new permit application, please provide an accurate description. Do not provide directions to the facility. The location description must use easily identifiable landmarks found on the USGS map submitted with the application. The description must include the direction and distance in feet or miles from road intersections. **If the existing permit includes an accurate description, indicate so by checking yes on the application form.** If, however, the application is for a new facility or the description is inaccurate, provide an accurate description. Examples of acceptable descriptions are: 1) The facility is located 2,600 feet southwest of the intersection of State Highway 20 and Farm-to-Market Road 1200; 2) The facility is located at 13232 West Avenue, Georgetown, Texas and approximately 1.2 miles east of the intersection of Farm-to-Market Road 345 and County Road 10.

b. Provide a description of the effluent discharge route. The discharge route must follow the flow of effluent from the point of discharge to the nearest major watercourse (from the point of discharge to a classified segment as defined in 30 TAC Chapter 307). **If the existing permit includes an accurate description, indicate so by checking yes on the application form.** Examples of a discharge route are: 1) through a six-inch pipe to a county drainage ditch; thence to Doe Creek; thence to the Brazos River, or; 2) from the plant site to an unnamed tributary of Joe Creek; thence to Joe Creek; thence to Quail Creek; thence to the Jane River Below Charles Lake. Classified segments can be found in 30 TAC Section 307.10 Appendix A and segment location descriptions can be found in 30 TAC Section 307.10 Appendix C. The issuance of a permit does not grant a permittee the right to use the specific discharge route. The issuance of a permit does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route; the permittee must acquire all property rights as may be necessary to use the discharge route.

c. Provide a location description of the effluent disposal site (e.g., irrigation, subsurface drip irrigation, evaporation). Do not provide directions to the disposal site. The location description must use easily identifiable landmarks found on the USGS map submitted as an attachment to the application. The description must include the distance in feet or miles from road intersections. **If the existing permit includes an accurate description, indicate so by checking yes on the application form.** If, however, the application is for a new facility or the description is inaccurate, provide an accurate location description. Two examples of acceptable location descriptions are: 1) The effluent disposal site is located 2,600 feet southwest of the intersection of State Highway 20 and Farm-to-Market Road 1200; 2) The effluent disposal site is located 1.2 miles east of the intersection of Farm-to-Market Road 345 and County Road 10.

## INSTRUCTIONS FOR DOMESTIC ADMINISTRATIVE REPORT 1.1

**THE FOLLOWING ITEMS ARE REQUIRED ONLY FOR NEW PERMIT APPLICATIONS AND MAJOR AMENDMENT APPLICATIONS; THE FOLLOWING ITEMS ARE NOT REQUIRED FOR RENEWAL AND MINOR AMENDMENT APPLICATIONS.**

### 1. AFFECTED LANDOWNER INFORMATION

a. The following information is required for the affected landowners list and other interested parties. Please use the format described below. **Examples of landowners maps have been provided for review and assistance.** Affected landowner information is critical to the processing of the application and any errors may cause significant delays in the processing of the application.

The landowners list is used by the TCEQ to notify affected landowners by mail of the application. These individuals, as well as others, can provide comments on the application or request a contested case hearing on the application.

1. All applicants must submit a map that clearly shows the following:
  - the applicant's property boundaries
  - the location of the treatment facility within the applicant's property
  - the property boundaries of landowners surrounding the applicant's property
  - the required buffer zone if the buffer zone requirement is not satisfied by ownership; see buffer zone requirement on Page 21 of the instructions or within 30 TAC Section 309.13(e)
2. For applications discharging treated effluent to waters in the state, in addition to the landowners in item a above, the map must clearly show the following:
  - the point of discharge
  - the highlighted discharge route for one mile downstream from point of discharge
  - the property boundaries of all landowners surrounding the point of discharge and on both sides of the discharge route for one full stream mile downstream of the point of discharge
  - If the point of discharge is to a lake, bay estuary, or affected by tides, the property boundaries of landowners along the shoreline for a one-half mile radius from point of discharge
3. For applications using land disposal of effluent, in addition to the landowners in item a above, the map must clearly show the following:
  - the property boundaries of the effluent disposal sites
  - all effluent holding/storage/evaporation ponds
  - the property boundaries of all landowners surrounding the disposal site.
4. For sewage sludge beneficial use land application site; the map must clearly show the following:
  - the property boundaries of the beneficial use land application site within the applicant's property boundaries
  - the property boundaries of the landowners **surrounding** the applicant's property boundaries where the beneficial use land applications site is located
5. For sewage sludge disposal (monofill), the map must clearly show the following:
  - the property boundaries of the sludge disposal site within the applicant's boundaries.
  - the property boundaries of the landowners within **one-half mile** in all directions from the applicant's property boundaries where the sewage sludge disposal site is located

Each type of affected landowner must be identified on the above maps. For example, an application to increase flow, landowners from items 1 and 2 above must be shown. For increases in flow at a plant and disposal of treated effluent via irrigation, landowners from items 1 and 3 above must be shown. If the application is for a new permit in which irrigation and beneficial land application of sewage sludge is being proposed, landowners from items 1, 3, and 4 must be shown. If there are questions as to which landowners must be identified, call the Wastewater Permitting Section staff.

The landowners map should be a USGS map, a city or county plat, or another map sketch, or drawing **with a scale adequate enough to show the cross-referenced affected landowners.** The landowners map must include a scale so that the TCEQ can verify that all landowners within the required distances have been identified.

Two examples of affected landowner maps have been provided as Example 7. The first map shows a proposed beneficial land application site. The map also shows all landowners surrounding the applicant's property. In this map, landowners 1-10 must be identified as affected landowners with the landowner's name and mailing address submitted with the application in the format described in item b. below. If the application area was for irrigation of treated effluent, the same landowners would be affected land and the landowner information would be submitted with the application. The second map shows all the landowners adjacent to the applicant's property, surrounding the point of discharge, and all landowners along the discharge route for a distance of one mile downstream. In this map, landowners 1-10 must be identified as affected landowners with the landowner's name and mailing address submitted with the application in the format described in item b. below.

b. In an effort to expedite processing of the application, the TCEQ requires applicants to provide the mailing list in one of the following formats. Either submit the mailing list electronically on a 3 ½-inch computer diskette or a read/write Compact Disk (CD-RW) using MicroSoft Word, as allowed by 30 TAC 39.5(b), or if more convenient, four sets of printed labels of the list may be provided in lieu of an electronic submission. One of these two methods of providing the affected landowners mailing addresses (electronically or printed labels) must be used. The application cannot be declared Administratively Complete until one of the two is received.

Please label the diskette or CD-RW with the applicant's name and permit number. Within the file stored on the diskette or CD-RW, identify the permit number and applicant's name on the top of the document. Names and addresses must be typed in the format indicated below according to U. S. Postal Service regulations for machine readability. Each letter in the name and address must be capitalized, contain no punctuation, and the appropriate two-character abbreviation must be used for the state. Each entity listed must be blocked and spaced consecutively as shown below.

EXAMPLES:

SHARMAN DUNN  
RR 1 BOX 34  
SEA TX 76724

MR AND MRS EDWARD PEABODY  
1405 MONTAGUE LN  
SEA TX 76710-1234

BRIAR LP  
PO BOX 249  
SEA TX 76710-0249

A list submitted electronically should be the only item on that diskette or CD-RW. Do not submit a list on a diskette or CD-RW that includes maps or other materials submitted with your application.

If you choose to submit the mailing list in Microsoft Word format, it must be in **Avery 5160 label** format (3 columns across, 10 columns down, for a total of 30 labels per page).

If you provide the list on printed labels, please use sheets of labels containing 30 labels per page. Please provide four complete sets of labels of the adjacent landowners list.

Each name and corresponding address must appear only once on the mailing labels or computer disk even if the entity owns more than one tract of land identified on the landowners map. Please eliminate duplicate names and addresses.

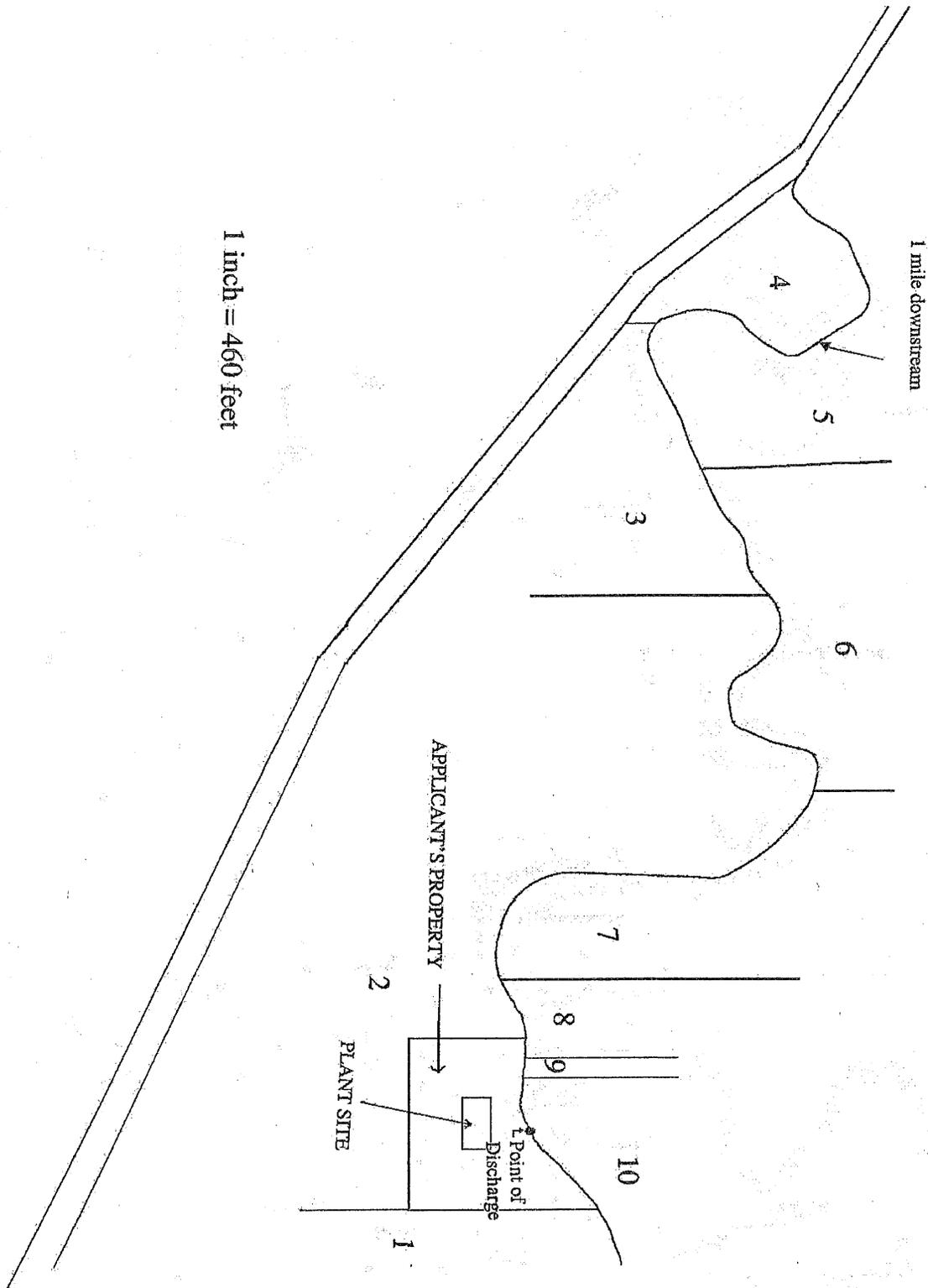
c. All landowners identified must be clearly cross-referenced to a list of the landowners names and complete mailing addresses. The cross reference must be in consecutive numeric order (1, 2, 3). The complete list of affected landowners must be provided on a separate sheet of 8 ½" by 11" paper. DO NOT USE PROPERTY TAX TRACT NUMBERING SYSTEM.

d. Answer the question yes or no whether any permanent school fund land is affected by this application. This information is required by the Texas Water Code Section§ 5.115. If yes, provide the location of the property and foreseeable impacts and effects this application has on the land(s).

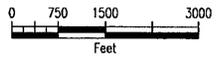
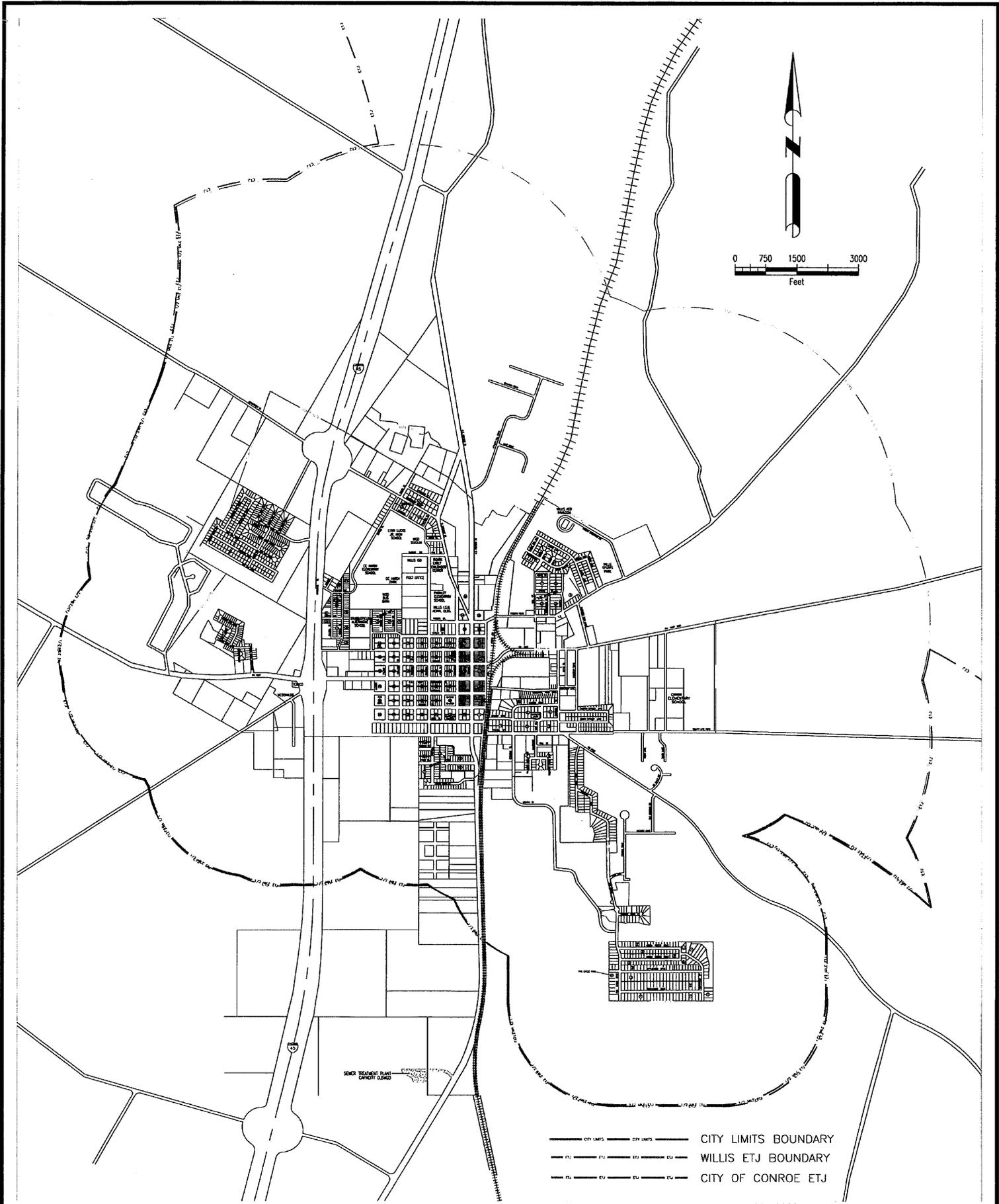
## 2. BUFFER ZONE MAP

The buffer zone map is used to show how the applicant will comply with the requirements of 30 TAC Section 309.13(e). This part of the regulations pertains to abating and controlling nuisance odor conditions from wastewater treatment plants. The buffer zone, either 150 or 500 feet from the treatment units (depending on the type of treatment unit) can be met by ownership, legal restrictions preventing residential structures within the buffer zone, an approved nuisance odor prevention plan, or a variance to the buffer zone. Ownership means that the applicant owns all the land surrounding the treatment units that fall within the buffer zone. The other three alternatives pertain to the portion of the buffer zone that is not owned by the applicant.

EXAMPLE 7 – ADJACENT AND DOWNSTREAM LANDOWNERS



# Attachment B



\_\_\_\_\_ CITY LIMITS    \_\_\_\_\_ CITY LIMITS    \_\_\_\_\_ CITY LIMITS BOUNDARY  
 - - - - - ETJ    - - - - - ETJ    - - - - - ETJ    \_\_\_\_\_ WILLIS ETJ BOUNDARY  
 . . . . . ETJ    . . . . . ETJ    . . . . . ETJ    \_\_\_\_\_ CITY OF CONROE ETJ

Jan 20, 2009 - 11:19am

Prepared by  
**PUBLIC MANAGEMENT, INC.**  
 P.O. Box 1827  
 Cleveland, Texas 77328-1827  
 (281) 592-0439

THE PREPARATION OF THIS DOCUMENT WAS FINANCED THROUGH PROVISIONS OF A TEXAS COMMUNITY DEVELOPMENT PROGRAM GRANT FROM THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.  
 FINANCED THROUGH THE DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS OF THE STATE OF TEXAS.

EXHIBIT  
**B**  
 17x22

**2009**  
**CITY OF WILLIS, TEXAS**  
**BASE MAP & ETJ**

**CITY OF WILLIS**

**CITY LIMIT MAP**

**CERTIFICATION OF CITY SECRETARY**

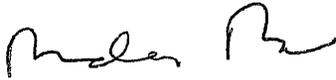
STATE OF TEXAS

COUNTY OF MONTGOMERY

CITY OF WILLIS

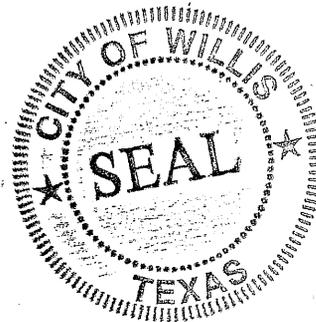
I, Brenda Burns, City Secretary of the City of Willis, Texas do hereby certify that the attached city limit boundary map is a true and correct copy of the City of Willis, Texas boundaries and extra-territorial jurisdiction dated January 20, 2009.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 26<sup>th</sup> day of May, 2009.

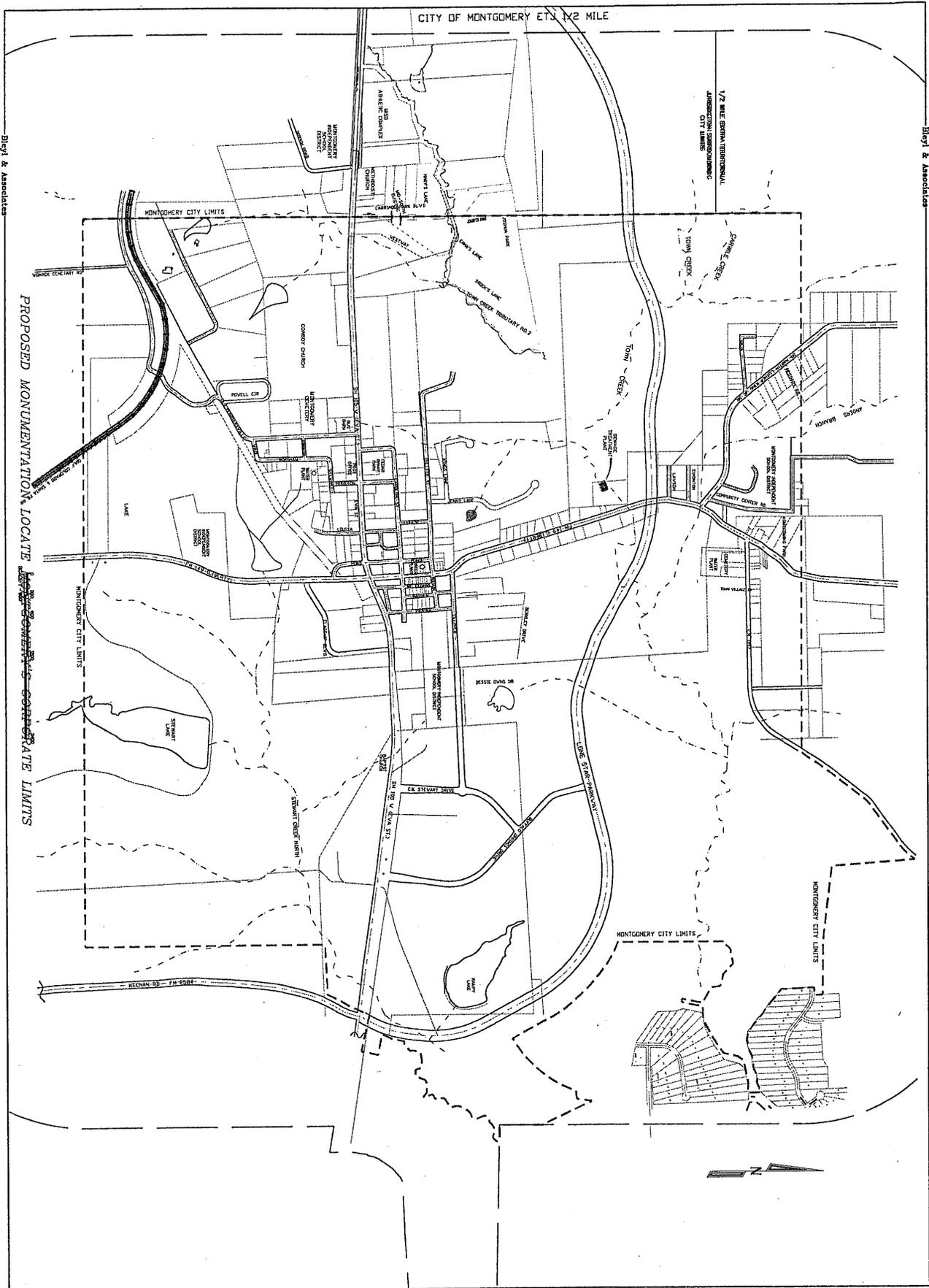


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Brenda Burns, City Secretary



# Attachment C



Bleyl & Associates

Bleyl & Associates

PROPOSED MONUMENTATION LOCATE ~~AS SHOWN IN THE ATTACHED CORRELATE LIMITS~~

FILE NAME: 2008 MONT.MS.DWG	PROJECT NUMBER: 1210
SHEET: 1	REV: 1

**CITY LIMITS AND  
ETJ BOUNDARY**

**CITY OF MONTGOMERY  
WITH 2008 ANNEXATIONS  
MONTGOMERY COUNTY, TEXAS**

REV. MAY 2009

**Bleyl & Associates**  
Project Engineering & Management

100 NUGENT STREET  
CONROE, TEXAS 77301  
832-441-7833 PHONE  
832-760-3533 FAX  
ENGINEERING FIRM: F-578

REV	DATE	BY	APP	COMMENT

PREPARED FOR:  
REVISED MAY 2009

SCALE: 1"=500'  
DATE: MAY 2009  
DRAWN BY: CBA  
PROJECT MANAGER: MKX