

1984 ~~25 Years~~ 2009

Mr. Gershon's Direct Line: (512) 322-5872
Email: mgershon@lglawfirm.com

September 29, 2009

Ms. LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk (MC-105)
12100 Park 35 Circle, Building F
Austin, Texas 78753

VIA FACSIMILE AND
FIRST CLASS MAIL

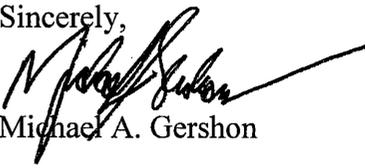
Re: In the Matter of Glidden Fresh Water Supply District No. 1's Request for Emergency Order Pursuant to 30 Tex. Admin. Code § 291.14 and Tex. Water Code § 13.041(b)(2); reference also SOAH Docket No. 582-09-2555; TCEQ Docket No. 2009-0120-UCR (Appeal of the Wholesale Rates of the City of Columbus, Texas)

Dear Ms. Castañuela:

In accordance with TCEQ Rule 1.10, please find enclosed for filing the Glidden Fresh Water Supply District's Request for Emergency Order. Please find enclosed with the hard copy of this filing (1) a copy of this pleading and (2) a self-addressed, stamped return envelope. Please file stamp and return this copy in the return envelope.

Thank you in advance for your attention to this important matter.

Sincerely,


Michael A. Gershon

MAG/mab
3003/00/ltr090929mag

- Encl.: (1) Request for Emergency Order (fax copy)
(2) Original and one copy of Request for Emergency Order (hard copy)
(3) Self-addressed, prepaid return envelope (hard copy)

cc: Todd Burkey, Esq.
Office of General Counsel
Texas Commission on Environmental Quality

Official SOAH Service List
Kristen S. Olson, Esq. of the firm
Ms. Erin D. Zoch of the firm

CHIEF CLERKS OFFICE

2009 OCT -8 PM 3: 04

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ DOCKET NO. _____

2009 OCT -8 PM 3:05

IN THE MATTER OF
GLIDDEN FRESHWATER SUPPLY
DISTRICT NO. 1'S REQUEST FOR
EMERGENCY ORDER

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHIEF CLERK'S OFFICE

**GLIDDEN FRESHWATER SUPPLY DISTRICT NO. 1'S
REQUEST FOR EMERGENCY ORDER**

TO THE HONORABLE COMMISSIONERS:

Glidden Freshwater Supply District No. 1 ("GFWS") seeks emergency relief pursuant to Title 30, Texas Administrative Code, Section 291.14(a)(2) and Section 13.041(d)(2) of the Texas Water Code, requiring the City of Columbus to maintain an interconnection for the treatment of wastewater of GFWS's retail customers, and would show as follows:

I. BACKGROUND AND INTRODUCTION

The City Council of the City of Columbus (the "City") took formal action on Thursday, September 24, 2009, not to extend the contract in place with GFWS for the provision of wastewater service and also ordered the City Manager to cease acceptance of wastewater from GFWS beginning at midnight (12:00 a.m.) on October 1, 2009. GFWS was notified by letter on Friday, September 25, 2009, of the City Council's decision not to extend the interim contract and the City's intent to terminate service on October 1, 2009 (attached hereto as "Exhibit A"). The City has indicated that it intends to prevent GFWS from piping wastewater to the City's wastewater treatment plant by sealing the pipe with concrete on October 1, 2009.

The City has accepted municipal wastewater from GFWS for treatment at the City's wastewater treatment plant since 1974. The City and GFWS originally entered into a contract for the City to provide wholesale wastewater service to GFWS in 1976. In 2007 the parties renewed their contract ("2007 contract") allowing GFWS to send municipal wastewater to the City for treatment, which contract expired on January 27, 2009 (attached hereto as "Exhibit B").

On February 2, 2009, the parties entered into an temporary contract extending the 2007 contract for ten days, beginning January 27, 2009, and expiring on February 6, 2009 (attached hereto as “Exhibit C”) and also entered into an interim contract effective February 6, 2009, and expiring on October 1, 2009 (attached hereto as “Exhibit D”). The parties entered into the interim contract to allow the parties to continue negotiations to develop a long-term wholesale wastewater contract between GFWSO and the City.

Meanwhile, on January 15, 2009, GFWSO submitted a Petition for Appeal of Decision of Provider of Sewer Service to the Texas Commission on Environmental Quality (“TCEQ”) pursuant to Section 13.043(f) of the Texas Water Code to appeal the City’s rate decision. This appeal is currently pending before the State Office of Administrative Hearings (“SOAH”), Docket Number 582-09-2555.

II. APPLICABLE STANDARD

Pursuant to Section 13.041(d)(2) of the Texas Water Code and Title 30, Texas Administrative Code, Section 291.14(a)(2), the Commission may issue Emergency Orders to compel a retain public utility to provide emergency interconnection with a neighboring retail public utility for the provision of temporary sewer service, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred. It is apparent from the formal action of the City’s Council on September 24, 2009, and GFWSO’s belief that discontinuance of its wastewater service is imminent. As discussed in more detail in Section III below, this authority to issue an Emergency Order is necessary and applies to GFWSO’s current circumstances.

III. BASIS FOR REQUEST FOR RELIEF

GFWSD generates approximately 50,000 gallons per day of municipal wastewater. GFWSD owns and operates a wastewater collection system that interconnects with the wastewater treatment plant owned by the City.

In light of the current circumstances, GFWSD has evaluated whether there are any alternative options available for the treatment of its municipal wastewater. Unfortunately, no other providers of wastewater treatment are located in the immediate vicinity to accept the municipal wastes. The only other alternative is to have its wastewater hauled by truck to another municipality or entity willing to accept GFWSD's wastewater for treatment at its wastewater treatment plant. Since it learned of the City Council's action late afternoon Friday, September 25th, GFWSD has endeavored to locate a company or companies capable of hauling its wastewater to another treatment plant by truck. Unfortunately, GFWSD has not yet uncovered an option for hauling its 50,000 gallons of wastewater per day. As noted, there are no other nearby cities or political subdivisions to which GFWSD has a pipeline connection for the distribution of wastewater for treatment at a wastewater treatment plant.

The circumstances presented are quite unfortunate, and certainly it is apparent that the possibility of great harm to human health and the environment is threatened in the event that the City physical disables its capability to receive the effluent of GFWSD's customers.

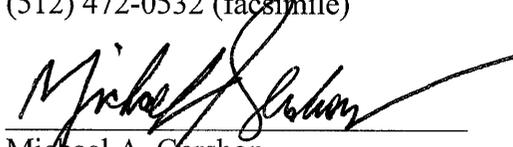
PRAYER

For the foregoing reasons, Glidden Freshwater Supply District No. 1 respectfully requests the Texas Commission on Environmental Quality to issue an Emergency Order to compel the City of Columbus to maintain an emergency interconnection allowing Glidden Freshwater Supply District No. 1 to continue sending its municipal wastewater to the City of Columbus's

wastewater treatment plant for 90 days in order to protect the public health, safety, and welfare, until such time as the two parties may negotiate a solution to receiving, treating, and disposing of these wastes.

Respectfully submitted,

LLOYD GOSSELINK ROCHELLE
& TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800 (phone)
(512) 472-0532 (facsimile)



Michael A. Gershon
State Bar No. 24002134
Kristen S. Olson
State Bar No. 24065845

SMITH, MURDAUGH, LITTLE &
BONHAM, L.L.P.

Melissa Kilpatrick
State Bar No. 15525735

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE
TCEQ Docket No. _____

I hereby certify that on this the 29th day of September, 2009, an original of the foregoing document was filed with the TCEQ Chief Clerk, and a true and correct copy of the foregoing document was provided by hand delivery, first class mail, or facsimile to the Office of General Counsel for the Commission c/o Mr. Todd Burkey, and the persons listed on the attached official SOAH Service List.



Michael A. Gershon

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 OCT -8 PM 3:05
CHIEF CLERKS OFFICE

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF COLORADO §

BEFORE ME, the undersigned authority, on this day personally appeared Edward Pavlicek, President of Glidden Fresh Water Supply District No. 1, who, after being by me duly sworn, did state upon his oath that he read the following Glidden Freshwater Supply District No.1's Request for Emergency Order, and that each and every statement made therein is true and correct to the best of his knowledge.

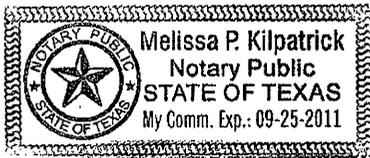


Edward Pavlicek

SUBSCRIBED AND SWORN to before me on this 29 day of September,
2009 by Edward Pavlicek.



Notary Public, State of TEXAS



STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: GLIDDEN FRESH WATER SUPPLY DISTRICT NO 1
SOAH DOCKET NUMBER: 582-09-2555
REFERRING AGENCY CASE: 2009-0120-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ WENDY KL. HARVEL**

REPRESENTATIVE / ADDRESS

PARTIES

BLAS J. COY, JR.
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
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(512) 239-6377 (FAX)
bcoy@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

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STAFF ATTORNEY
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ENVIRONMENTAL LAW DIVISION
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(512) 239-0606 (FAX)
sskogen@tceq.state.tx.us

TCEQ EXECUTIVE DIRECTOR

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(512) 320-5638 (FAX)
bboulware-wells@txcityattorney.com

CITY OF COLUMBUS

MELISSA P. KILPATRICK
SMITH, MURDAUGH, LITTLE & BONHAM, L.L.P.
1100 LOUISIANA ST., SUITE 400
HOUSTON, TX 77002-5211
(713) 652-6500 (PH)
(713) 652-6515 (FAX)
mkilpatrick@smithmur.com

GLIDDEN FRESH WATER SUPPLY DISTRICT NO. 1

cc: Docket Clerk, State Office of Administrative Hearings

EXHIBIT A

Akers & Boulware-Wells, LLP

ATTORNEYS AT LAW

September 25, 2009

Ms. Melissa P. Kilpatrick
Smith, Murdaugh, Little & Bonham, LLP
1100 Louisiana Street
Suite 400
Houston, Texas 77002-5211

*Via Facsimile (713) 652-6515
and e-mail mkilpatrick@smithmur.com*

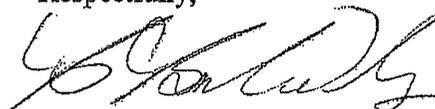
Re: City of Columbus Sewer Treatment Services for Glidden Fresh Water Supply
District No. 1 – NOTICE OF TERMINATION/NON-EXTENSION

Dear Melissa:

This letter is to notify you and the Glidden Fresh Water Supply District No. 1 (“Glidden”) that the City Council for the City of Columbus (“City”) last night voted to not extend the contract between the parties to provide sewer treatment services which is set to expire on September 30, 2009 and that effective October 1, 2009, the City will no longer accept sewage from Glidden for treatment.

Please feel free to contact me should you have any questions.

Respectfully,



Barbara Boulware-Wells

BBW

cc: Stefanie Skogen, TCEQ Staff Attorney, via facsimile and e-mail
David Meisel, City Manager, City of Columbus, via e-mail
Patti Glaeser, City Secretary, City of Columbus, via e-mail

EXHIBIT B

THE STATE OF TEXAS,

COUNTY OF COLORADO

WHEREAS, the GLIDDEN FRESH WATER SUPPLY DISTRICT NO. 1 (hereinafter called "DISTRICT") desires to construct a sanitary sewer system and to have its sewage treated by the City of Columbus, Texas, (hereinafter called "CITY"), and it is deemed advisable that an agreement be entered into by these parties; and

WHEREAS, the City desires to sell sewage treatment services to the District;

NOW, THEREFORE, WITNESS THE AGREEMENT OF THE PARTIES HERETO:

1. DEFINITIONS.

A. Domestic Sewage. Sewage from buildings such as residences and commercial stores as is acceptable for discharge according to the then prevailing Ordinances of the City and The District. Where these two Ordinances differ, the stricter shall prevail.

2. ~~POINT OF DELIVERY.~~ ~~The sewage shall be delivered by the District to the City at intersection of Montezuma Drive and King Drive. The City will transport the sewage from the point of delivery to its treatment facilities.~~

3. FLOW MEASUREMENT. The District agrees to meter the volume of sewage discharged to the Columbus system at the point of delivery. The District also agrees to furnish necessary metering equipment.

4. PRICES AND TERMS. In return for sewage treatment services, the District agrees to pay to the City the fixed rate of Three Thousand Five Hundred Dollars (\$3,500.00) per month. This rate shall apply only to domestic sewage. This contract does not include industrial waste. Discharges of industrial waste will be taken by the City only if approved by the City and the District. The terms of acceptance and charges for each industrial user shall be in accordance with City and District ordinances, existing or hereafter adopted. Payment for treatment service shall be due and payable on or before the tenth (10th) day of the month following the services.

5. TERM OF CONTRACT. This contract shall continue in force and effect for a period of twenty-four (24) months from the date of January 27, 2007. The parties

EXHIBIT "A"

agree to reasonably negotiate as to the extension of this contract after the expiration of said twenty-four (24) month period, but shall not be obligated to extend the term.

6. **ASSIGNMENT.** This contract may be assigned by the District to the United States of America, acting by and through the Farmers Home Administration, its successors or assigns.

7. **MODIFICATION.** This contract may be changed or modified only with the consent of the governing bodies of both City and District. Such modification may be requested by either party, in which event a joint meeting of such governing body shall be held not less than ninety (90) days after the giving of such notice, at which joint meeting the requested changes or modifications shall be considered and discussed. City specifically reserves the right to modify or limit the amount of sewage from the District that City shall take under this contract, if the growth of the District and increased amount of sewage therefrom together with the increased amount of sewage from City exceeds or is in danger of exceeding the capacity of the treatment facilities of City then in use.

8. **REGULATORY BODIES.** This contract shall be subject to all rules, regulations and Laws applicable hereto, passed or promulgated by the United States of America, the State of Texas, or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

9. **NOTICES.** All notices or communications provided for herein shall be either delivered or sent by certified mail, return receipt requested.

10. **ANNEXATION.** It is further understood and agreed that in event the City annexes an area which includes a portion of the system, the District, if required by the City and at City's option, will sell the sewer lines within the annexed area to the City at their reasonable cash market value, but in no event for a sum less than the loan against that portion of the system, and only with the express written permission of the Farmers Home Administration, its successors or assigns, if then a mortgage holder or holder of a security interest.

IN WITNESS WHEREOF, the parties hereto, acting under authority in their respective governing bodies, have caused this Contract to be duly executed in several counterparts, each of which shall constitute an original, all effective as of January 27, 2007.

CITY OF COLUMBUS, TEXAS


R. Richard Heffley, Mayor

ATTEST:



City Secretary

GLIDDEN FRESH WATER SUPPLY
DISTRICT NO. 1

BY: _____

President

ATTEST:

STATE OF TEXAS *

COUNTY OF COLORADO *

This instrument was acknowledged before me on the 6th day of December, 2006, by R. RICHARD BEFFLEY, Mayor of the City of Columbus, Texas, in the capacity therein stated.

Margie Seidl
Notary Public, State of Texas.



STATE OF TEXAS *

COUNTY OF COLORADO *

This instrument was acknowledged before me on the _____ day of _____, 2006, by _____, President of Glidden Fresh Water Supply District No. 1, in the capacity therein stated.

Notary Public, State of Texas.

EXHIBIT C

**Glidden Fresh Water Supply District No. 1
P.O. Box 85
Columbus, Texas 78934**

February 2, 2009

Honorable Mayor and City Council Members,
City of Columbus
P.O. Box 87
Columbus, Texas 78934

Re: Agreement for temporary extension of agreement for sewer treatment services

Mr. Mayor and Council Members:

During the term of a written agreement effective January 27, 2007 ("2007 Agreement;" copy attached) between Glidden Fresh Water Supply District No. 1 ("Glidden") and the City of Columbus ("Columbus"), Glidden sent sewage to the City for treatment at a rate of \$3,500 per month. The term of the 2007 Agreement expired January 27, 2009, and the parties had not by then and to date have not agreed on the rate for service under a new long-term agreement. Glidden and Columbus have indicated a desire to enter into a new agreement for sewage treatment services, with the rate to be determined by the Texas Commission on Environmental Quality. In the meantime, Glidden desires to enter into an agreement for continued sewage treatment service, and Columbus has agreed to provide such services on a temporary basis.

In light of the above, and for the mutual benefits to be derived by each, Glidden and Columbus agree as follows:

1. The 2007 Agreement is hereby extended for ten (10) days, from January 27, 2009 through February 6, 2009.
2. During the above period, Columbus shall accept and treat sewage collected from within Glidden's boundaries and from the two (2) Texas Department of Transportation rest areas located to the west of Glidden.

3. Columbus shall charge Glidden a rate of \$2,300 for provision of sewage treatment services during such period.

4. Glidden shall include Columbus as an additional insured on Glidden's general liability insurance policy (see attached Certificate of Insurance) to provide coverage in the event harmful discharges into the Glidden sanitary sewage collection system cause damage to the sewage treatment facilities of Columbus.

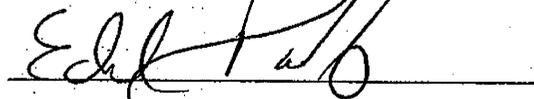
5. Except for the above provisions which differ from the 2007 Agreement, the terms and conditions of the 2007 Agreement shall continue in full force and effect throughout February 6, 2009.

If the above agreement is satisfactory, please sign two originals of this letter in the space below and return one fully executed original for Glidden's files.

Thank you for your attention to this matter.

Sincerely,

Glidden Fresh Water Supply District No. 1



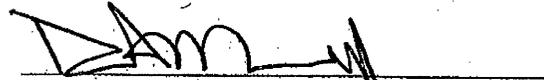
Edward Pavlicek, President

AGREED TO AND ACCEPTED this 6TH day of FEBRUARY, 2009.
CITY OF COLUMBUS, TEXAS

ATTEST:



City Secretary



~~R. Richard Heffley, Mayor~~
David Meisell, City Manager

EXHIBIT D

**Glidden Fresh Water Supply District No. 1
P.O. Box 85
Columbus, Texas 78934**

February 2, 2009

Honorable Mayor and City Council Members,
City of Columbus
P.O. Box 87
Columbus, Texas 78934

Re: Interim agreement for sewer treatment services ("Interim Agreement")

Mr. Mayor and Council Members:

Glidden Fresh Water Supply District No. 1 ("Glidden") and the City of Columbus ("Columbus") were parties to that certain agreement effective January 27, 2007 ("2007 Agreement;" copy attached) for treatment by Columbus of the sanitary sewage of Glidden. The term of the 2007 Agreement expired January 27, 2009 but was extended by letter agreement through February 6, 2009. Glidden and Columbus have indicated a desire to enter into a new agreement for sewage treatment services, with the rate to be determined by the Texas Commission on Environmental Quality; in the interim, however, Glidden desires to enter into an agreement for continued sewage treatment service, and Columbus has agreed to provide such service on a temporary basis.

In light of the above, and for the mutual benefits to be derived by each, Glidden and Columbus agree as follows:

1. Glidden and Columbus hereby enter into this Interim Agreement for a term beginning February 6, 2009, and ending October 1, 2009, during which term Glidden and Columbus shall continue to operate in accordance with the terms and provisions of the 2007 Agreement, except as set out below.

2. The term of this Interim Agreement shall expire prior to October 1, 2009 if before such date Columbus and Glidden execute a new contract for sewage treatment services at a rate set by the Texas Commission on Environmental Quality. If such a new contract is executed, then this Interim Agreement shall expire on the effective date of the new contract.

3. During the term of the Interim Agreement, Columbus shall accept and treat sewage collected from within Glidden's boundaries and from the two (2) Texas Department of Transportation rest areas located to the west of Glidden.

4. Columbus shall charge Glidden a rate of \$7,000 per month ("Interim Rate") for provision of sewage treatment services during the term of this Interim Agreement. Notwithstanding the foregoing, when a rate for sewage treatment services under a new contract is finally determined ("New Contract Rate"), then the New Contract Rate shall be retroactively

applied to the months or portions thereof during which this Interim Agreement was in effect, and either (a) Glidden shall pay Columbus the additional amount due for those months if the New Contract Rate is higher than the Interim Rate, or (b) Columbus shall refund or credit to Glidden the amount overpaid by Glidden for those months if the New Contract Rate is lower than Interim Rate.

5. Glidden shall include Columbus as an additional insured on Glidden's general liability insurance policy (see attached Certificate of Insurance) to provide coverage in the event harmful discharges into the Glidden sanitary sewage collection system cause damage to the sewage treatment facilities of Columbus.

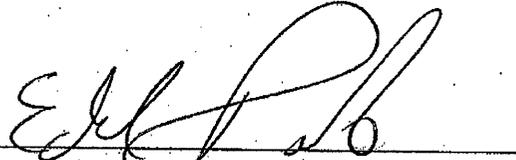
6. Except for the provisions of this Interim Agreement which differ from the 2007 Agreement, the terms and conditions of the 2007 Agreement shall continue in full force and effect through the term of this Interim Agreement.

If the above terms are satisfactory, please sign two originals of this letter in the space below and return one fully executed original for Glidden's files.

Thank you for your attention to this matter.

Sincerely,

Glidden Fresh Water Supply District No. 1



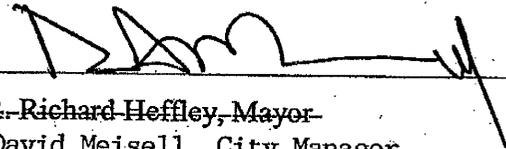
Edward Pavlicek, President

AGREED TO AND ACCEPTED this 6TH day of FEBRUARY, 2009.
CITY OF COLUMBUS, TEXAS

ATTEST:



City Secretary



R. Richard Heffley, Mayor-
David Meisell, City Manager