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February 27, 2015

VIA PUC INTERCHANGE SERVER:
Public Utility Commission of Texas
1701 N Congress PO Box 13326
Austin, Texas 78711-3326

Re: Complaint of Carol D. Gillespie against Avalon Water Supply and Sewer Services Corporation; Public Utility Commission Docket No. 43146

Dear Public Utility Commission of Texas:

By order of Public Utility Commission (the "Commission") Administrative Law Judge Susan E. Goodson entered on February 2, 2015, Avalon Water Supply and Sewer Services Corporation ("Avalon") has been requested to reply to the five complaints filed with the Commission by Carol D. Gillespie. These complaints are dated July 14, 2014 (originally filed with the TCEQ but filed with the PUC on February 6, 2015), August 20, 2014 (filed with the PUC on August 25, 2014), September 29, 2014 (filed with the PUC on September 30, 2014), October 1, 2014 (filed with the PUC on October 6, 2014) and January 31, 2015 (filed with the PUC on February 3, 2015). This office and the undersigned attorney represent Avalon in this matter.

It is important to note that Ms. Gillespie did not send copies of any of her complaints at any time to Avalon or its attorney. Avalon first learned of the need to file a response to these complaints when its attorney received a copy of Order No. 2 Requiring Responses in the mail on February 13, 2015. In fact, Avalon never received a copy of Order No. 1 either. So as not to delay the proceedings and

deliberations of the Commission, Avalon and its attorney have diligently attempted to provide as full a response as possible to the complaints of Ms. Gillespie in the time available. Because we are still searching for additional relevant materials, Avalon reserves the right to amend and supplement this response.

Avalon is a small rural water supply and sewer service company located in the community of Avalon, Texas. Avalon currently has approximately 340 customers. The community of Avalon is an unincorporated farming community located at the intersection of F.M. 55 & Texas Highway 34 in southern Ellis County, Texas. Avalon is a Texas Water Code Chapter 67 rural water company and a Class C utility as defined by Texas Water Code Chapter 13. It has seven members on its Board of Directors, a president, vice president, secretary, treasurer, general manager, bookkeeper and operator. All directors and officers are unpaid volunteers. The general manager, bookkeeper and operator are paid part-time employees. Avalon is very sensitive to the requirements of the Open Meetings Act and the Public Information Act. All directors and officers have taken the required training and they are diligent in making sure their activities comport with the law at all times.

Ms. Gillespie has a meter from Avalon but it is not an active meter. She does not live in the Avalon community nor does she receive water or sewer service from Avalon. She and her sister live in Addison, Texas and have for some time. She has been filing complaints against Avalon with the TCEQ and the Ellis County District Attorney for several years. None of these complaints has ever resulted in a finding of wrongdoing or malfeasance on Avalon's part. Avalon is not a wealthy water and sewer company and the thousands of dollars spent to reply to Ms. Gillespie's repeated complaints have been a substantial burden on the company and its members. The nature and tenor of Ms. Gillespie's complaints suggest that she may be maintaining her water meter (and thus her membership) for the sole purpose of continuing her campaign of groundless complaints against Avalon. Regardless of her motivation, Avalon welcomes the chance to clarify the misunderstandings and inaccurate facts upon which these complaints are based.

Chapter 13 of the Texas Water Code prescribes a very narrow jurisdiction for the Public Utility Commission of Texas over Chapter 67 water supply or sewer service

corporations. That jurisdiction is defined by Section 13.004:

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS.

(a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

House Bill No. 1600 modified this jurisdictional statute somewhat, but not in a way that affects the Commission's jurisdiction over Ms. Gillespie's particular complaints. The relevant section of House Bill No. 1600 reads as follows:

SECTION 2.09. Section 13.004, Water Code, is amended to read as follows:

Sec. 13.004. JURISDICTION OF <u>UTILITY</u> COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS.

(a) Notwithstanding any other law, the <u>utility</u> commission has the same jurisdiction over a water supply or sewer service corporation that the <u>utility</u> commission has under this chapter over a water and sewer utility if the <u>utility</u> commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the <u>utility</u> commission's jurisdiction provided by this section ends.

None of Ms. Gillespie's individual complaints deal with Avalon's annual or special meetings or with the requirements for classification as a nonprofit water supply or sewer service corporation in Sections 13.002(11) and (24). Therefore, the Commission does not have jurisdiction over any of her complaints.

Avalon, for the record and strictly without waiver of Avalon's position that the Commission does not have jurisdiction of any of the Gillespie complaints, will respond to these complaints as fully as the short response time allows. Each of Ms. Gillespie's complaints will be addressed in turn and in chronological order. Because many of the complaints in subsequent letters are repetitive of complaints in earlier letters, the Avalon response to those complaints will not be repeated but will simply reference the earlier response. This response will use the same numbering as used in Ms. Gillespie's letters.

A. July 14, 2014 Gillespie Letter to TCEQ (filed with the Commission on February 6, 2015)

1. Ms. Gillespie alleges that an agenda item regarding the purchase of land for the May 8, 2014 board meeting did not constitute an emergency and so the notice given for this agenda item was insufficient.

   The need for this meeting was, in fact, an emergency and the emergency was caused by Ms. Gillespie's own behavior. Specifically, the following behavior by Ms. Gillespie caused a situation of urgent public necessity: 1) Ms. Gillespie's refusal to recognize the valid effluent line easement that was granted to Avalon by her father; 2) Ms. Gillespie's refusal to allow Avalon on their easement to repair the effluent line; 3) the time and expense necessary to respond to Ms. Gillespie's complaint to the TCEQ about the effluent line; 4) the time needed to respond to a TCEQ Notice of Potential Violation regarding the unrepaired effluent line; 5) Ms. Gillespie's opposition to Avalon's request for an amended TCEQ permit and for permission to upgrade its facilities, for which the repair of the effluent line was a requirement; and 6) the exceedingly contentious and drawn out

negotiations with Ms. Gillespie for the subsequent purchase by Avalon of the property upon which the easement was located.

Avalon's effluent line is located on a very small strip of land that is owned by Ms. Gillespie and her two sisters. Avalon has a recorded easement upon this property that was given to them by Ms. Gillespie's father many years ago. A copy of that easement and an option for an additional easement are attached as Exhibits A and B. The effluent line began to break down and was in need of repair. However, Ms. Gillespie categorically denied the validity of the easement and refused to allow Avalon employees to enter the property where the effluent line was located to repair the line. At the same time, Ms. Gillespie and her sisters filed complaints with the TCEQ regarding a number of items, including the lack of repairs to the effluent line. Copies of two of her complaints are attached as Exhibits C and D. In addition, Ms. Gillespie and her sisters also retained an attorney and threatened litigation against Avalon.

Avalon received notice of a potential violation of TCEQ regulations from the TCEQ on April 17, 2014. A copy of that notice is attached hereto as Exhibit E. The potential violation was the need to repair the effluent line. The deadline for compliance was May 17, 2014. In phone conversations, the TCEQ staff acknowledged the extraordinary circumstances faced by Avalon due to Ms. Gillespie's behavior, but said they felt constrained to issue a notice because of the pressure they were receiving from the federal Environmental Protection Agency.

Diligent attempts by Avalon to negotiate with the Gillespie sisters and their attorney for access to the property failed. Rather than escalate the conflict with Ms. Gillespie and her sisters by means of expensive and time-consuming litigation, (which would have been the next step and in which Avalon believed it would prevail), and given the pending TCEQ potential violation notice and the short deadline, Avalon instead opened negotiations with Ms. Gillespie and her sisters to purchase the area where the effluent line was located (which was the same property for which

they'd already been given an easement by Ms. Gillespie's father). Unfortunately, Ms. Gillespie and her sisters were contentious throughout the negotiations and as a result the negotiations were unnecessarily complex, difficult and drawn out. Finally, on or about May 4, 2014, an agreement between Ms. Gillespie and her sisters and Avalon was reached for the purchase of the property and the signed contract was sent to the designated title company. Avalon and its attorney did not receive a copy of the conformed title commitment and the title company's closing requirements until late in the afternoon on May 13, 2014. One of the title company's requirements was a corporate resolution signed by Avalon's directors authorizing the sale. I immediately notified the Avalon general manager of the need for these corporate resolutions.

The two hour notice of this agenda item by Avalon was done on my recommendation and advice to Avalon. While the substance of my discussions with Avalon's representatives is privileged and confidential, I can tell you that my advice was based upon: 1) the specific language of the Open Meetings Act; 2) the court decisions construing that Act; 3) the pressing TCEQ mandate with a deadline of May 17, 2014 and the potential for substantial fines which Avalon could not afford; and 4) the failing waste effluent line which in the opinion of Avalon constituted an imminent threat to public health and safety, the noticing of this meeting as an emergency meeting fell squarely within the language of Texas Government Code §551.045.

When friends of Ms. Gillespie, Chris and Candice Brewster, complained to Avalon about the two-hour notice, and in an effort to mollify their concerns, I personally contacted the TCEQ to request additional time to cure the potential violation and Avalon re-noticed this agenda item for a subsequent date, giving full notice of the subsequent meeting. The TCEQ did not respond. The second, full, notice was not done by Avalon as any kind of admission that the original notice was illegal or deficient in any way, because it was not. Instead, the re-notice was done in an attempt to avoid further time-consuming and expensive extraneous conflicts with Ms.

Gillespie and the Brewster's. At the second meeting, the corporate resolution was again presented and agreed upon. The resolution was unanimous.

Texas Government Code §551.045 provides in pertinent part:

(a) In an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this subchapter is sufficient if it is posted for at least two hours before the meeting is convened.

(b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety; or

(2) a reasonably unforeseeable situation.

In this particular situation, given the facts that I describe above, it is obvious that there was indeed an urgent public necessity due to a reasonably unforeseeable situation. There were breaks in the effluent line that had to be repaired *but Ms. Gillespie would not allow access to the Avalon operator to repair the line* and so this situation is also one which presented an imminent threat to public health and safety.

Not only is it important to look at the language of the statute itself, but it is also instructive to review Texas court decisions that construe §551.045. For example, substantial compliance with the notice requirements is in compliance with the statute. *Creedmoor Maha WSC. v. Barton Springs Conservation District*, 784 S.W.2d 79 (Tex.Civ.App.- Austin 1989, writ denied); *McConnell v. Alamo Heights ISD*, 576 S.W.2d 470 (Tex.Civ.App.- San Antonio 1978, writ ref'd n.r.e.); *Burton v. Ferrill*, 531 S.W.2d 197 (Tex.Civ.App.- Eastland 1975, writ dism'd); *Stelzer v. Huddleston*, 526

S.W.2d 710 (Tex.Civ.App.- Tyler 1975, writ dism'd). There is at least one Texas court that considered a substantially similar fact situation and determined that a two-hour notice was valid. See, e.g., *Markowski v. City of Marlin*, 940 S.W.2d 720 (Tex.Civ.App. - Waco 1997, writ denied). In the *Markowski* case, the Court noted that: "The city council found itself in the unexpected situation of being sued the day before a public hearing concerning Appellants' status was to be held. Appellants unexpectedly filed their lawsuit the day before (the) meeting, which they requested be open, was to be held. ... Consequently, this unforeseeable action by Appellants placed the council in a position of needing immediate advice from counsel because the council's actions at the public hearing could directly affect the lawsuit". In the Avalon case, it was a title commitment, not a lawsuit, that was delivered the day before the meeting, but I do not find this to be a legally significant difference and I believe the court decision in *Markowski* applies here.

As indicated previously, Avalon re-noticed the execution of the corporate consent required by the title company, and at the second meeting the corporate resolution was again presented, decided upon and signed. Texas courts have determined that a subsequent, full notice will cure any defect in the original notice and eliminate any violation. *Markowski v. City of Marlin*, 940 S.W.2d 720 (Tex.Civ.App. - Waco 1997, writ denied).

The Texas Government Code does not, as Ms. Gillespie alleges, state that the purchase of land is not an emergency item. To the contrary, Texas Government Code §551.045 specifically provides that an emergency meeting, with a two hour notice, is allowed if immediate action is required because of an imminent threat to public health or safety or a reasonably unforeseeable situation. As just described, both a threat to public health threat and a reasonably unforeseeable situation were presented by the situation.

Finally, it is important to note that Ms. Gillespie and Mr. and Mrs. Brewster presented this exact same complaint to the Ellis County District Attorney,

and the District Attorney concluded that no violation of law occurred.

Ms. Gillespie, although not present at the May 8, 2014 meeting, alleges that another member addressed the Board of Directors and was not treated with respect.

This allegation is false and without any basis. Avalon and its staff and directors and officers go out of their way to treat all members with courtesy and respect, even when, as sometimes occurs, comments addressed to the board are delivered in a loud and insulting manner. Ms. Gillespie does not give any details regarding the alleged disrespect and so no further response is possible.

2. Ms. Gillespie alleges that Avalon learned of her complaint to the Ellis County District Attorney and that was the reason that Avalon re-noticed the meeting regarding the purchase of her property by Avalon for May 15, 2014.

This allegation is false and without any basis. Avalon did not learn of the Public Information Act complaint filed at Ms. Gillespie's request with the Ellis County District Attorney by her friends, Chris and Candice Brewster, at her request until Avalon's attorney received a phone call from the District Attorney on May 21, 2014 describing the complaint. Neither Avalon nor its attorney were given a copy of the actual complaint. A copy of an email to the District Attorney confirming that phone conversation and a copy of the response by Avalon to that complaint are attached hereto as Exhibits F and G. Obviously, Avalon and its attorney did not know of this complaint until long after the May 8 and May 15, 2014 meetings.

3. Ms. Gillespie alleges that not all seven directors were present at both the May 8 and May 15, 2014 meeting but the Avalon corporate resolution authorizing the purchase of property for Ms. Gillespie and her sisters was signed by all seven directors.

This allegation is groundless. The number of directors who signed the resolution on May 8, 2014 constituted a quorum and the resolution was therefore binding and effective as of that date. That one director who was not at the May 8, 2014 meeting but who attended the May 15, 2014 meeting signed the resolution at that second meeting presents no violation of Texas corporate law and is entirely consistent and compliant with the corporate statues governing nonprofit corporations in Texas. In fact, Texas law specifically allows consents to be signed by the directors whether they are present at the meeting deciding on the resolution or not.

4. Ms. Gillespie complains that no meeting was held on June 12, 2014.

The meeting that would ordinarily have been held on June 12, 2014 had to be rescheduled for June 19, 2015. Ordinarily, this is due to issues beyond the control of individual directors that results in the lack of a quorum. In this particular case, Avalon does not have records that indicate why this particular rescheduling was necessary. The rescheduling of this meeting for one week later does not violate any applicable statute or rule.

5. Ms. Gillespie complains that the Avalon meeting agendas changed the name of the member and public input section of the meeting from "Visitor Comments and Concerns" to "Open Forum".

This basis for this complaint is not clear. Avalon sets aside a portion of every meeting for input and comments by members or visitors. There is no statute or administrative rule that dictates what this portion of the meeting is called. At no time has Avalon attempted to prohibit someone from speaking during this portion of the meeting. Of necessity, a time limit is imposed. Imposition of a time limit for public comment is well within the purview of the board and its presiding officer. The Avalon Bylaws provide, in Section 4, that the Avalon directors shall establish reasonable rules for member and public comment. A copy of the bylaws is attached as Exhibit H.

6. Ms. Gillespie complains that the notice for the Avalon meeting on July 10, 2014 included "assignment of responsibilities of personnel "as an agenda item but she believes that when the board voted to allow one of the directors to also function as a part-time, unpaid general manager, this was a violation of the Open Meetings Act.

This allegation is groundless. The action of the board in directing that one of the directors take on the responsibility of a volunteer, part-time, general manager is precisely within the parameters of the agenda item.

7. Ms. Gillespie complains that she has had difficulty obtaining financial reports from Avalon.

This complaint is groundless. Except for rare occasions when there was a computer or printer malfunction, financial reports are provided for members attending each Board of Directors meeting or can be requested directly from Avalon.

8. Ms. Gillespie complains that Avalon's 2012 audit was presented twice and that the 2013 audit was not done by July 14, 2014.

Avalon's former office manager failed to maintain some financial data in an organized way and he also made some errors in his accounting entries. Shortly thereafter, he terminated all connection with Avalon. In 2013, Avalon hired a new CPA and it took some time for the volunteer directors and the part-time employees to gather and reorganize financial data for the CPA and correct the errors. Finally, all information was gathered and organized, the errors were corrected and everything was given to the CPA. Subsequently, Avalon was given a complete and clean audit.

9. Ms. Gillespie complains that a certificate of deposit containing member deposits was pledged as collateral for a United States Department of Agriculture loan to Avalon and that one of Avalon's USDA loans is not fully secured.

This complaint is groundless. There is no statute or administrative rule that prohibits member deposits from being used as collateral for a loan for plant improvements. In fact, according to the USDA, this is *exactly* one of the appropriate uses of member deposits.

One of Avalon's loans has been fully paid. Avalon's remaining loan to the USDA is in good standing and fully secured as required by the terms of the loan. Obviously, a loan balance, and therefore the requisite security, decreases over time as payments are made.

10. Ms. Gillespie complains that on June 23, 2014, Avalon voted to accept a bid for repairs to one of its wells but did not have this full amount of money in their bank account at this time. She also complains that state law requires water supply corporations to have two working wells at all times.

This complaint is groundless. As a small rural water company, Avalon often struggles to make ends meet. Avalon's original equipment is quite old and is regularly in need of replacement and repair. The thousands of dollars that Avalon has incurred in attorney's fees over the last two years to respond to Ms. Gillespie's repetitive and groundless complaints to the TCEQ, the Ellis County District Attorney and now to the Public Utilities Commission, siphons away money that Avalon badly needs for water and sewer plant improvements and repairs. The community of Avalon is not a wealthy community and there is an upper limit to the amount that the Avalon's members can pay for water and sewer service.

There is no statute or administrative rule that requires that a water company have the full cost of a repair in the bank to pay for a repair at the time the repair is authorized by the Board of Directors. In addition, there is no legal requirement that Avalon have two working water wells at all times. The well that Ms. Gillespie references in her complaint was in fact repaired and the bill for the repair was paid in full.

11. Ms. Gillespie complains that Avalon's capital buy-in fee was $3500.00 in the past but was changed in November 2013 to $1858.64 and was changed in February 2014 to $1304.00.

This complaint is groundless. What Ms. Gillespie is referring to is the "Equity Buy-In Fee". As specifically explained in Avalon's Tariff, each applicant for new service with Avalon must pay an equity buy-in fee to achieve parity with the investment in equipment already paid for by existing members of Avalon. The formula for calculation of the Equity Buy-In Fee is described in paragraph 5 of Section G of Avalon's Tariff. The amount of the Equity Buy-In Fee changes from time to time as the value of assets, the amount of debt, the accumulated depreciation, the amount of developer contributions and the total number of members changes. A copy of Avalon's Tariff that contains this formula is attached as Exhibit I.

12. Ms. Gillespie complains that she has seen a copy of an older Avalon check that was signed by one person in one case, and in the another case was signed by two people but one of the signatories was not an officer. She states that the Bylaws require checks be signed by the secretary treasurer and the president or vice president.

The Bylaws of Avalon provide that the directors may appoint an employee to assist the Secretary-Treasurer in all official duties (which would include signing checks) and they did so. The signature of Teresa Wimbish on one of these checks, and the sole signature of the Treasurer, Robin Donaldson, on the other are based on this delegation of authority by the Board of Directors. However, since the current directors and officers have been in office (approximately March 2012), all checks are signed by the Secretary-Treasurer and the President or Vice-President.

13. In her closing paragraph, Ms. Gillespie states that she fears that Avalon is becoming insolvent and that the members cannot afford to pay the legal expenses incurred by the Board of Directors.

While Avalon does indeed struggle from time to time, especially with some of the capital requirements imposed in the past by the TCEQ, Avalon is not insolvent. Ironically, the exhibits Ms. Gillespie attaches to her letter demonstrate that Avalon is not insolvent. However, Avalon's financial situation is severely exacerbated by the legal expenses incurred to respond to Ms. Gillespie's complaints. In fact, the *only* legal expenses incurred by Avalon in the last few years have been legal expenses incurred to respond to Ms. Gillespie's complaints. Ms. Gillespie is correct that the members of Avalon cannot afford legal expenses incurred in responding to repetitive, duplicative and groundless complaints.

It is important to note that the only complaints that Avalon has received are from Ms. Gillespie and her friends the Brewster's. No other members of Avalon have agreed with her frivolous complaints. In fact, many Avalon members have expressed anger at Ms. Gillespie's behavior, at the unnecessary expense to Avalon as a direct result of her behavior and at the time and effort spent responding to her complaints by Avalon's directors, officers and employees, time and effort which could be spent on the many legitimate challenges that Avalon and any small rural water company face.

B. August 20, 2014 Gillespie Letter to TCEQ (filed with the Commission on August 25, 2014)

Ms. Gillespie states on the first page of this letter that she has filed several complaints with the Ellis County District Attorney but that the District Attorney "chose not to prosecute". Ms. Gillespie is not being truthful. As she is well aware, the District Attorney "chose not to prosecute" because he found no violation of the Open Meetings Act or the Public Information Act. Ms. Gillespie also indicates that "others have filed complaints, too." Again, Ms. Gillespie is being less than forthright. The truth is that the only other complaint filed has been one complaint filed by her friends, Chris and Candice Brewster, at Ms. Gillespie's request. As with Ms. Gillespie's complaints, no violation of law was found by the District Attorney.

On page 2 of her letter, she lists ten alleged violations of the Open Meetings Act. Some of these allegations concern behavior that does not violate any statute or rule. Other of the allegations are simply false. All of the allegations are so general and lacking in any particulars that it is impossible to respond except to say that Avalon, and its directors, officers and employees, take their duties under the Open Meetings Act and the Public Information Act very seriously, have taken the requisite training and are diligent in making sure their activities comport with the law at all times.

Also on page 2 of her letter, Ms. Gillespie lists three occasions that she believes exhibit violations of the Open Meetings Act. These allegations have already been addressed in this letter as shown below:

1. Please see item A-1 of this response for Avalon's response.

2. Please see item A-1 of this response for Avalon's response.

3. Please see item A-6 of this response for Avalon's response.

On the bottom of page 2, Ms. Gillespie begins to number her remaining allegations once again from the beginning:

1. Ms. Gillespie claims no copies of the agenda were available at the Avalon August 14, 2014 meeting.

While there is no requirement to do so in the Open Meetings Act or anywhere else for that matter, as a courtesy Avalon always makes copies of the meeting notice or agenda available for members attending the meeting. Occasionally, more people attend a meeting than expected and there are not enough copies to go around. On rare occasion, Avalon may experience a computer or printer problem that prevents bringing copies of the notice to the meeting.

2. Ms. Gillespie claims that the use of a "consent agenda" format was not

discussed in open meeting or voted on and that the use of the consent agenda is a "drastic change away from transparency."

There is no requirement for any specific meeting format in the Open Meetings Act or anywhere else for that matter. In addition, it is not a violation of law for the Avalon Board of Directors to hold a simple vote on items where no discussion is necessary, such as for approval of a financial report or minutes of a prior meeting. If a member has a question, that question can always be posed during the Open Form segment of the meeting or it can be provided to the directors in writing at the meeting or it can be addressed to the company in correspondence. There is nothing about this procedure that is un-transparent.

One of the problems that give rise to many of Ms. Gillespie's complaints is that she misconstrues the role of the Board of Directors during a directors meeting. The directors are present to consider (in some cases with discussion and in some cases without), on occasion to openly discuss (except in the case of confidential matters as defined by the Open Meetings Act), and then to vote, upon those matters listed on the meeting notice. Ms. Gillespie's behavior at meetings and her complaints reflect that she believes that the directors are there to explain every nuance in every document to her, to answer unlimited questions about items on the agenda, to respond to her contentious and argumentative comments, to obtain either her approval or her permission for actions taken by the Board of Directors, and to be available to be grilled by her about perceived slights from the past.

Even though there is no requirement that directors read out loud and discuss each item they vote on (although they often do), that does not mean that members do not have input, because they clearly do. Members can express their positions and ask questions during the "Open Forum" segment of the meeting, they can present written questions to the board either at the meeting or at any other time, or they can address the Board of Directors with their views or questions by written correspondence.

Obviously, some questions cannot be addressed if to do so would violate the Open Meetings Act. As is illustrated by the exhibits attached to some of Ms. Gillespie's letters on file with the Commission, she has regularly communicated with the Avalon board through correspondence.

3. Ms. Gillespie complains that reports by the president, the general manager and the operator were verbal rather than written and that the meeting does not follow her concept of a consent agenda.

   These reports are not required to be delivered in writing. All meetings are recorded and so a record of the report is made and available to the member. The format of the meeting is not unlawful simply because it does not follow Ms. Gillespie's preconceived idea of how the Avalon directors meetings should proceed. So long as the requirements of the Open Meeting Act are met, the format to be used is up to the discretion of the directors and the presiding officers.

4. Ms. Gillespie complains that the Avalon directors should have been required to discuss and vote on the format of the meeting prior to their August 14, 2014 meeting. Then, incredibly, she states that this behavior would have been a violation of the Open Meetings Act.

   This complaint is groundless and irrational and Avalon is unable to respond.

5. Ms. Gillespie complains that Avalon began in August 2014 to keep a record of its meetings in electronic format on a CD. She notes that the Avalon Bylaws require that the Secretary-Treasurer shall keep regular books and shall keep minutes of all meetings.

   Nothing in the Open Meetings Act or any other statute or rule prohibits maintaining records electronically. With written minutes, someone must transcribe the contents of the meeting, which is time-consuming. Because Avalon only has only two part time office employees, a general manager

and a bookkeeper, transcribing minutes takes time away from their many other duties, such as assisting members with questions and requests, assembly of member usage information, preparing and transmitting bills to members, and organizing and preparing Avalon's bills for payment. Any member is free to request a copy of the CD containing the minutes at any time.

Avalon's Bylaws, in Article III, state that the Secretary-Treasurer "shall keep minutes of all meetings of Members and Directors". The Bylaws do not specify any specific form for the minutes. Consequently, electronic recording and storage of minutes in no way violates the Bylaws.

6. Ms. Gillespie complains that she has not received a copy of the July 2014 directors meeting minutes.

   All copies of minutes that have ever been appropriately requested by Ms. Gillespie have been delivered to her in a timely manner.

7. Ms. Gillespie complains that Avalon is trying to keep members from having copies of the directors meeting minutes so members can use the minutes for their complaints to the Ellis County District Attorney and TCEQ.

   To our knowledge, Ms. Gillespie and her friends, Chris and Candice Brewster, are the only members who have filed any complaints regarding Avalon with the TCEQ or the Ellis County District Attorney. Once again, all copies of minutes that have ever been appropriately requested by Ms. Gillespie or any other member have been furnished to them in a timely manner.

8. Ms. Gillespie complains that the agenda for the August 14, 2014 meeting lists the approval of the "Minutes of June 10, 2014" meeting. She points out that there was no meeting on June 10, 2014.

This notice for the August 14, 2014 meeting does appear to contain a typographical error. Avalon's volunteer officers and directors (who all have full-time jobs aside from their volunteer positions with Avalon) and the part-time office employees are often spread quite thin. Being human, they do make errors occasionally. This error does not violate any relevant statute or rule.

9. Ms. Gillespie complains that the financial report given during the August 14, 2014 meeting did not meet her criteria for a financial report.

The fact that the financial report given at this or any other directors meeting does not meet Ms. Gillespie's personalized requirements for financial report does not violate any statute or law. Copies of financial reports are customarily available to members at monthly meetings, barring computer or printer problems. There is no requirement that the report be "read into the record" and that the amount of money held in Avalon's bank accounts be publicly announced.

10. Ms. Gillespie complains that there was no financial report given to members at the August 14, 2014 meeting and that the financial report was not read aloud.

Please see response in Paragraph 9 above.

11. Ms. Gillespie complains that the financial report was controversial and should have been a major topic on the Avalon directors meeting agenda.

As previously discussed, while the directors usually honor occasional questions from a member, there is no legal requirement that the directors engage in an extended discussion with members in the audience regarding a financial report.

12. Ms. Gillespie complains that the Avalon financial reports (which she previously claimed she was not given a copy of) show a deposit for an

even amount of $10,000. She states that deposits are never for even amounts and are never that large.

The $10,000 deposit represented the proceeds from an Avalon certificate of deposit. Ms. Gillespie in fact, accurately characterizes this deposit as proceeds from a certificate of deposit. (See Gillespie correspondence to the Commission, dated September 29, 2014, page 2, second paragraph). It is unclear why she claims ignorance about where the deposit comes from.

13. Ms. Gillespie complains that she does not know the source of the $10,000 deposit.

Please see response in Paragraph 12 above.

14. Ms. Gillespie complains that the deposit she questions may have been from a loan or a renegotiated loan that Avalon did not decide upon in the meeting.

Please see response in Paragraph 12 above.

15. Ms. Gillespie complains that she did not think an audit had been done for Avalon for calendar year 2013.

Please see response in Paragraph A-8 above.

16. Ms. Gillespie complains that someone's meter was removed without notice and when they were not delinquent.

Avalon's previous operator removed the meter. When questioned, he said that he was given verbal direction by the previous volunteer general manager. When questioned, the volunteer general manager said that he did not direct the operator to remove the meter. During the same meeting in which this error was brought to their attention, the directors instructed its

current operator to reinstall the meter immediately. The meter was restored within 24 hours. There was no active service to the residence where the meter was located at the time this occurred. Neither the operator nor the volunteer general manager involved in this error work for Avalon any longer.

17. Ms. Gillespie complains that an agenda item pertained to the discussion of compensation to employees as a group and that this should not have been done in a closed session.

Both the agenda item and the discussion in closed session dealt with compensation to specific, individual, employees. As Ms. Gillespie is well aware, Avalon does not have "groups" of employees. It has three part-time employees. The closed session was to discuss compensation for those three individual employees. The Open Meeting Act specifically authorizes this procedure and Texas Attorney General Opinions approve of this procedure.

18. Ms. Gillespie complains that when the board came back to the open session after the closed session, they voted on the new compensation but did not announce to her what the amount of the compensation for certain employees was.

There is nothing in this procedure that violates any relevant statute or rule.

19. Ms. Gillespie complains that: 1) she is not always given a copy of the financial report which prohibits her from asking the board about the report; 2) Avalon called the sheriff because she was disorderly during the June 2012 meeting; and 3) she is now afraid to address the board.

As indicated previously, financial reports are made available to members at monthly meetings and are also available by appropriate request by a member. Secondly, a board of directors meeting is not a forum for Ms. Gillespie to argue with directors about the financial report, which she

commonly attempts to do anyway. Finally, Ms. Gillespie has never been shy about expressing her opinions or asking questions at board meetings and so it appears that she is not, in fact, "afraid to address the board".

20. Ms. Gillespie complains that in the August 14, 2014 meeting, she did not get the financial report until after the meeting which prohibited her from questioning the directors about it. She also complains that Avalon gave contradictory information about whether a member had to make a Public Information Act request to obtain a copy of the financial report.

See response to paragraph 19 above.

21. Ms. Gillespie complains that the Avalon board of directors should not be approving raises to the employees when Avalon has very little money.

The Avalon Board of Directors is aware that they are the custodian of members' funds and they are very careful in how the funds of Avalon are spent. Avalon's part-time employee salaries are extremely modest. However, one of the most important expenses that Avalon incurs is for competent, part time employees to prepare members bills, to see that bills are sent out promptly and correctly, to make sure that bills that Avalon owes are timely paid, etc. These responsibilities are critical to the proper functioning of a water company and to compliance with all relevant rules and statutes, and therefore these three employees are critical to Avalon's operation. They deserve to be paid a reasonable amount.

22. Ms. Gillespie complains that the Avalon Bylaws require that the date of the next subsequent meeting should be announced at each meeting.

Ms. Gillespie is not being forthright in this complaint. The Avalon Bylaws do not "require" that the time and place of the next meeting be announced at the end of each meeting. In fact, what the Bylaws actually state is that "Regular meetings... shall be held at such time and place as the Board may determine at the next previous regular meeting..." (Emphasis added).

Notwithstanding the permissive language of the Bylaws, it is the practice of the Avalon Board of Directors to announce the date of the next meeting at the end of each meeting.

C. September 29 2014 Gillespie Letter to TCEQ (filed with the Commission on September 30, 2014)

Most of the items in this letter are complaints that are repeated from Ms. Gillespie's letter to the Commission dated August 20, 2014. Only complaints that are not repetitions of earlier letters will be addressed here.

1. Ms. Gillespie complains that: 1) Avalon attempted to use eminent domain to "take" her land illegally; 2) the discussions about this illegal procedure were held in closed session and were not voted on in open session; 3) this illegal action was retaliation for her meetings with the TCEQ regarding the renewal of Avalon's wastewater permit; and 4) she did not receive an answer to her letter requesting information about the Avalon 2012 tax return.

   Regarding Ms. Gillespie's claim of illegal eminent domain, as a Texas Water Code Chapter 67 water supply company, Avalon does have the power of eminent domain to acquire property necessary for its operation. Therefore, should it have decided to do so, Avalon could have proceeded legally with condemnation procedures to acquire this property.

   The fact is, however, that this Board of Directors has never discussed acquiring Ms. Gillespie's property by eminent domain. Therefore, there were no "closed session discussions" and no votes on eminent domain. Similarly, no funds have been expended for attorney's fees for eminent domain. However, substantial funds have been expended for the required responses to Ms. Gillespie's complaints to the Ellis County District Attorney, the TCEQ and now the Public Utilities Commission of Texas.

2. Ms. Gillespie claims that the mythical threats of eminent domain were

retaliation for her complaints regarding Avalon filed with the Ellis County District Attorney.

Regarding her claim of retaliatory action, Avalon is not aware of any retaliatory action taken by Avalon directors or employees against Ms. Gillespie or her family at any time or for any reason. She has every right to meet with the TCEQ. Avalon was not even aware that she had done so until sometime after her meeting occurred.

3. Ms. Gillespie claims that she has not gotten a response to her most recent Public Information Act request and to her questions about Avalon's 2012 tax return.

Avalon responded to Ms. Gillespie's last Public Information Act request through its attorney's letter to her dated September 12, 2014. A copy of that letter is attached hereto as Exhibit J. In addition, Avalon responded to Ms. Gillespie's questions about the 2012 tax return in its attorney's letter dated September 12, 2014, a copy of which is attached hereto as Exhibit K.

There are several reasons that Avalon is responding to requests by Ms. Gillespie through its attorney. First, the Avalon Bylaws, in Article V, Section 5, provide that the Avalon directors shall be entitled to rely on the opinions of Avalon's attorney. That the directors and employees of Avalon rely on the recommendation by their attorney that all communications with Ms. Gillespie and her family be routed through Avalon's attorney is their right. Secondly, the Avalon directors and employees are not tax professionals. They rely on Avalon's CPA to prepare and file accurate and appropriate tax returns to the state and the federal government. Therefore, it is not appropriate to require them to answer Ms. Gillespie's tax return questions directly. Third, Avalon's directors and employees have almost continually operated under the burden of a pending complaint by Ms. Gillespie and the threat of potential fines and liability sought by Ms. Gillespie as a result of those complaints. Some of the Gillespie

complaints, such as the Open Meetings Act and Public Information Act complaints to the Ellis County District Attorney, carry potential individual criminal penalties, including incarceration and monetary fines. Because of the pending adversary proceedings over the past two years, and because so many statements they have made in the past to Ms. Gillespie have been misconstrued, mischaracterized, twisted or taken out of context, Avalon and its attorney determined that all communications to and from Ms. Gillespie must go through their attorney.

Ms. Gillespie was informed of the requirement that she communicate with Avalon through me in my letter to Ms. Gillespie and her sisters dated September 12, 2014. A copy of that letter is attached hereto as Exhibit L. This action was necessary as a direct result of Ms. Gillespie's own actions.

Ms. Gillespie can obtain the answers to her questions about the Avalon tax return by consulting her own tax professional. If she wants to talk to the CPA retained by Avalon, Avalon is glad for her do so. However, the CPA charges for his time. It is not fair for other members of Avalon to pay for Ms. Gillespie to get answers to her tax questions that she could easily get from her own tax professional's review of Avalon's return. Because of the pending adversarial proceedings, it is necessary that I be present to monitor the discussion. As already indicated, it is not fair for other members of Avalon to pay this cost on behalf of Ms. Gillespie.

Ms. Gillespie appears to assert that Avalon's tax returns should be discussed and analyzed in an open meeting before they are filed. This is simply not the case. Tax returns are not based on the consensus of the organization that files them, but instead are based on specific federal law and IRS rules. The tax returns are prepared by a tax professional knowledgeable in these areas and retained by Avalon.

D. <u>October 1 2014 Gillespie Letter to TCEQ (filed with the Commission on October 6, 2014)</u>

This letter repeats complaints already discussed. Please see the responses in paragraph C above.

E. January 20, 2015 Gillespie Letter to TCEQ (filed with the Commission on February 3, 2015)

1. Ms. Gillespie complains that a waterline was laid on her property without her permission.

   The water line in question was entirely laid in the Ellis County 30 foot right-of-way and was not on Ms. Gillespie's property. Every Texas county has a 30 foot right-of-way or easement on each side of all roads within the county that are maintained by the county. That is simply the law, whether Ms. Gillespie agrees with it or not. The purpose for the right-of-way is for road expansion and for utilities.

2. Ms. Gillespie complains that the line was not installed in a quality manner.

   The contractor hired by Avalon installed the line in a good and workmanlike manner and in compliance with all relevant statutes and rules.

3. Ms. Gillespie complains that a new water company membership was not discussed in an open meeting, but merely voted on.

   There is no requirement in any relevant statute or rule that applications for new memberships be "discussed". In fact, since a rural water company is required by Texas law to provide water service to each applicant within its CCN, assuming no capacity issue, there really is nothing to discuss. The application for new service was approved by a vote in an open meeting, as is required.

Avalon has been repeatedly puzzled by the more or less continuous barrage of

complaints by Ms. Gillespie, especially when the complaints are sometimes contradictory and mutually exclusive. While it may not be directly relevant, we have wondered at her motive for this course of action. The only evidence we have with respect to her motive comes from statements by Ms. Gillespie and her sisters. The statements were made during a settlement conference with the Gillespie's attorney in their attorney's office and were made to Avalon's attorney. Specifically, Ms. Gillespie and her sisters told this attorney that they hated Avalon because they believed that, long ago, Avalon caused the premature death of their father by harassing him, that Avalon has "turned members of the community of Avalon against them" and that as a result they are committed to "making Avalon pay" for these perceived misdeeds.

We have diligently attempted to address each complaint asserted by Ms. Gillespie, subject to our belief an allegation that the Commission has no jurisdiction over any of these complaints. As we indicated previously, the time we were given for response was quite short. Therefore, if the Commission determines that something has not been addressed, or if the Commission desires further detail in any area, we will be happy to comply promptly.

Very truly yours,

Law Offices of Aimee Hess P.C.

Aimee Hess

By: _____

Aimee Hess

CC: VIA EMAIL: Ms. Carol Gillespie (w/Exhibits)

CC: VIA EMAIL: Ms. Katherine Gross (w/Exhibits)

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A. Pete Gillespie Easement to Avalon

B. Pete Gillespie Option to Avalon

C. Gillespie Complaint to TCEQ (May 1, 2012)

D. Gillespie Complaint to TCEQ (May 9, 2013)

E. TCEQ Notice of Potential Violation

F. Email from Aimee Hess to Ellis County District Attorney

G. Correspondence from Aimee Hess to Ellis County District Attorney

H. Avalon's Tariff

I. Avalon's Bylaws

J. Correspondence to Carol Gillespie (Information Requests)

K. Correspondence to Carol Gillespie (Tax Return)

L. Correspondence to Carol Gillespie (Communications)

EXHIBIT A

#4319 Easement Gilles[illegible] et ux to Avalon Water S upply and [illegible]r Service corp.

545

THE STATE OF TEXAS
COUNTY OF ELLIS } KNOW ALL MEN BY THESE PRESENTS: 4319

That We, Pete Gillespie and wife, Mary Lou Gillespie,

of the County of Ellis, State of Texas, hereinafter called "Grantor", for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Avalon Water and Sewer Service Supply/Corporation, hereinafter called "Association", a perpetual easement and right-of-way for the purpose of constructing, operating and maintaining a/~~water~~ sewer pipe line over and across Grantor's land in Ellis County School Land Survey, Abstract No. 329, Ellis County, Texas, more particularly described in deed from Joe L. Gillespie et ux. to Pete Gillespie et ux. dated October 9, 1959, and recorded in Volume 471 Page 70 of the Deed Records of said County and containing 40.5 acres.

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~
~~xxxxxxxxxxx~~.

Being a strip of land across the tract referred to above, ten (10) feet in width, with the Grantee herein being hereby authorized to designate the course of the easement herein conveyed, except that when the pipe line is installed, the easement herein granted shall be limited to a strip of land ten (10) feet in width, with the centerline thereof being the pipe line as installed.

Ned. Griffith & Lumpkins
Waco, Texas
10/21/70

Together with the right of ingress and egress over Grantor's adjacent lands to or from said right-of-way for the purpose of constructing, improving, reconstructing, repairing, inspecting, maintaining and removing said/~~water~~ sewer line and appurtenances; the right to relocate said line in the same relative position to any adjacent road, if same is widened in the future; the right to prevent possible interference with the operation of said line and to remove possible hazard thereto; the right to prevent the construction, for a distance of one-half the width of the easement on each side of the actual center of where said/~~water~~ sewer line is laid, of any building, structures or other obstructions which may endanger or interfere with the efficiency, safety or convenient operation of said/~~water~~ sewer line and its appurtenances. If such buildings, structures or other obstructions are constructed by Grantor, as above mentioned, without written consent of the Association, then the Association shall have the right to remove same from such space, and this agreement, together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the Association, its successors and assigns.

The right is reserved to Grantor to use the land over which a right-of-way or easement is herein granted for the general agricultural and grazing purposes, provided such use shall not include the growing of trees thereon or any other use which might interfere with the exercise by the Association of the rights hereby granted. The consideration recited herein shall constitute payment in full for all damages sustained by Grantor by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises.

TO HAVE AND TO HOLD the above described easement and rights unto the said Avalon Water Supply and Sewer Service Corporation ~~Water Supply Corporation~~, its successors and assigns, forever.

And Grantor does hereby bind himself, his heirs and legal representatives, to Warrant and Forever Defend all and singular the above described easement and rights unto the said Association, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED THIS 13 day of May, 1970. 723

Pete Gillespie
(Pete Gillespie)

Mary Lou Gillespie
(Mary Lou Gillespie)

D-4

545

724

(JOINT ACKNOWLEDGMENT)

THE STATE OF TEXAS }
COUNTY OF }

Before me, the undersigned authority, on this day personally appeared
and his wife, both known to me to be the persons whose names are subscribed
to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein
expressed. And the said wife of said
having been examined by me privily and apart from her husband, and having the same by me fully explained to her, she, the
said acknowledged such instrument to be her act and deed, and she declared
that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office on this the day of , A. D. 19

Notary Public in and for County, Texas.

(~~CIRCLE~~ ACKNOWLEDGMENT)

THE STATE OF TEXAS }
COUNTY OF ELLIS }

Before me, the undersigned authority, on this day personally appeared Pete Gillespie and Mary Lou Gillespie, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 13 day of May , A.D. 1970.

Herschel H. Smith
Notary Public in and for Ellis County, Texas.

4319

EASEMENT

PETE GILLESPIE ET UX,

to

AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION

WATER SUPPLY CORPORATION

ELLIS COUNTY ABSTRACT & TITLE CO., INC.
402 FERRIS AVENUE
P. O. BOX 561
WAXAHACHIE, TEXAS 75165

FILED FOR RECORD
at 4:30 o'clock P. M.
SEP 29 1970
Fee $ 1.50
CHAS. W. HUFF
Clerk County Court, Ellis Co., Texas

GRIFFITH & LUMPKINS
ATTORNEYS AT LAW
WAXAHACHIE, TEXAS

Filed for Record on the 29 day of Sept A.D. 1970 at 4:30 o'clock P M.
Recorded this the 16 day of Oct A.D. 1970 at 4:30 o'clock P M.
By Velta McPherson Deputy

CHAS. W. HUFF, COUNTY CLERK
ELLIS COUNTY, TEXAS

EXHIBIT B

THE STATE OF TEXAS I

COUNTY OF ELLIS I KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Pete Gillespie and wife, Mary Lou Gillespie, of Ellis County, Texas, for and in consideration of the sum of $1.00 to us cash in hand paid by Avalon Water Supply and Sewer Service Corporation, the receipt and sufficiency of which is hereby acknowledged, do hereby give and grant to Avalon Water Supply and Sewer Service Corporation, the option to purchase the hereinafter described property, on the following terms and conditions:

(1) The term of this option shall begin May 2, 1970, and shall end November 1, 1970.

(2) This option may be exercised by said Corporation giving notice in writing to Grantors of their exercise thereof.

(3) In the event of exercise of said option within the option term, Grantors agree to convey the hereinafter described property to said Corporation by General Warranty Deed in exchange for the sum of $750.00 per acre, for a total purchase price for 3.564 acres of $2,673.00 to be paid by said Corporation as the total purchase price for said property to Grantors at the time of closing.

(4) The property covered by this option is described as follows, as surveyed by Joel D. Wilkinson, Professional Engineer 29312, on April 27, 1970:

> All that certain lot, tract or parcel of land out of the Ellis County School Land Survey, Subdivision 37, Abstract 339, and being a part of and out of that certain 40.5 acre tract of land conveyed to Pete and Mary Lou Gillespie by Joe L. Gillespie and described in Deed recorded in Volume 471, Page 70 of the Deed Records of Ellis County, Texas, said lot, tract, or parcel of land being more fully described as follows, to-wit:
>
> BEGINNING at an iron pin set on said Pete Gillespie East property line from which its Northeast corner bears North 30 West 654.5 feet for the Northeast corner of this;
>
> THENCE along said Pete Gillespie East property line South 30 East 305.8 feet to his Southeast corner, set an iron pin for the Southeast corner of this;
>
> THENCE along Pete Gillespie South property line South 58 deg. 48 min. West, 498.3 feet set an iron pin for the Southwest corner of this;
>
> THENCE North 31 deg. 43 min. West 311.6 feet set an iron pin for Northwest corner of this;
>
> THENCE North 59 deg. 28 min. East, 507.5 feet to the place of BEGINNING and containing 3.564 acres of land, more or less.

(5) In addition, for the consideration herein stated, Grantors further agree to execute without further payment easements as required by the Corporation for a sewer line and an outfall line across the 40.5 acre tract of which the above described premises form a part.

WITNESS OUR HANDS this 2nd day of May, 1970.

Pete Gillespie

Mary Lou Gillespie

THE STATE OF TEXAS I

COUNTY OF ELLIS I

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Pete Gillespie and wife, Mary Lou Gillespie, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 2nd day of May, A. D., 1970.

C.W.McLaughlin

C. W. McLaughlin
Notary Public, Ellis County, Texas.

EXHIBIT C

CAROL D. GILLESPIE
caroldgillespie@earthlink.net ✓
PO Box 2049
Waxahachie, TX 75168
214 536-1784 (cell) ✓

MWD 81867

May 1, 2012

REVIEWED
MAY 04 2012
By

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2012 MAY -3 PM 3:59
CHIEF CLERKS OFFICE

Office of the Chief Clerk, MC105
TCEQ
PO Box 13087
Austin, TX 78711-3087

RE: Avalon Water Supply and Sewer Services Corporation
Permit Amendment Application Comments
WQ0013981001

To Whom It May Concern:

My two sisters (Mary Grace Gillespie Bates, Marcia Gillespie) and I own land adjacent to the Avalon waste water plant. I am the spokesperson for our family. Our land is listed on the adjacent landowner list as Mary Bates, etal.

Attached to this letter are our comments regarding the Permit Amendment Application which was recently submitted to the TCEQ. I have also attached supporting documentation. My contact information is at the top of this page. My preferred method of contact is either email or regular mail.

Unfortunately, AWS&SSC has chosen to use their right of eminent domain to "take" a portion of our land. While doing so, they have committed numerous violations of the Texas Open Meeting Act. A number of these violations involve discussing the waste water plant and the proposed upgrades in Executive Session. This has denied my family our rights as landowners and members of the AWS&SSC. (We own two memberships in AWS&SSC, since we own two homes in Avalon.)

At this point in time, we do not know which land they are targeting for eminent domain or exactly how much. Plus, we do not know exactly why they are "taking" our land since they

are stating it is for restricted easements that the TCEQ requires. However, the application is asking for variances instead of restricted easements. Something is not right.

Please carefully read our comments, and take appropriate action.

Sincerely,

Carol Gillespie

Carol Gillespie

cc: Gregory Wilhelm, JD, MA
Senator Brian Birdwell
Representative Jim Pitts
Curt Olson, *Texas Budget Source*

Comments Regarding Permit # WQ0013981001
Avalon Water Supply and Sewer Service Corporation
RE: Restrictive Easements.

In Attachment 2A – Domestic Technical Report 1.0, Avalon Water Supply and Sewer Services Corporation states, "As of March 15, 2012 the permittee has not obtained the necessary buffer zone in accordance with 30 TAC 309.13(e)(3). The current landowners are unwilling to grant restrictive buffer zone easements and are requesting that the permittee purchase their entire tracts of land. Due to the cost-prohibitive nature of the land purchase, Avalon Water Supply & Sewer Service Corporation would like to request a variance to the buffer zone requirements."

This is not entirely accurate. I am an adjoining landowner. And, I have stated to the Board that I am, "greatly opposed to restrictive easements since we feel that they violate our rights as land owners and greatly reduce the value of our land." However, not once has the AWS&SSC made an offer to *purchase* restrictive easements from our family. The Board of Directors of AWS&SSC seems to have difficulty understanding the difference between "easements" and "restrictive easements."

As a conciliatory gesture on January 5, 2012, our family offered to enter into negotiations to sell the AWS&SSC eleven acres of pasture. This land adjoins the current waste water plant on the west and north sides. This is NOT our entire tract of land. We own 36 acres near the waste water plant. While in our hearts we did not wish to sell land that has been in our family for over 100 years, we felt it would resolve the conflict that we have had with AWS&SSC.

Even though AWS&SSC have not been good neighbors, we were willing to sell our pasture to them. Their permit for the waste water plant expired on January 1, 1998 resulting in a loss of the grandfathering of the plant. AWS&SSC has been promising the TCEQ for years that they would have restrictive easements on our property, yet we were never notified by AWS&SSC or the TCEQ. *This is not being a good neighbor.*

AWS&SSC has been trespassing on our land for years. They have an unauthorized pipeline carrying effluent across our property to a small stream on my property. They do not have an easement or a lease for this access. They have been fined for exceeding the allowed effluent limits. Yet, neither the TCEQ nor AWS&SSC informed us of this violation. *This is not being a good neighbor.*

AWS&SSC does have a legal easement across our land for a pipeline to carry raw sewage to the plant. However, they are not maintaining this easement. On April 10, 2012 I filed a complaint with the TCEQ regarding a raw sewage leak on my property. The leak had obviously been there some time, yet it had not been repaired. A three and a half to four foot hole had been created around one of the concrete pipe/manhole covers. It was in plain sight of anyone going to the plant. I know nothing about sewer operations, yet I noticed it as soon as I drove down the driveway leading to the plant.

Not only was there an obvious leak that had not been repaired, all the pipes are in terrible shape. The concrete pipes around the manhole covers are cracked. A collapse could happen at any time. It is so bad, I am considering increasing my liability insurance. I am attaching photographs to illustrate my point, so the permitting department can see for themselves how bad this is. The permit should be denied unless AWS&SSC agrees to repair or replace the pipes and concrete going across my property.

(Prior to mailing this document, I have received a copy of the Investigation Report from TCEQ stating that AWS&SSC is in violation again.)

Plus, this legal easement goes across my pasture. The access to the pipes are sitting so high up, that I cannot mow the easement with a tractor and stalk cutter. It needs to be cut using a weed eater. AWS&SSC should be doing this. I should not have to hire someone to clean up around their pipes. And, my fence has been damaged. Our legal agreement giving AWS&SSC an easement across our land has been violated.

The easement reads in part, "The right is reserved to Grantor to use the land over which a right-of-way or easement is herein granted for the general agricultural and grazing purposes, provided such use shall not include the growing of trees thereon or any other use which might interfere with the exercise by the Association of the rights hereby granted. Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantor's premises." *This is not being a good neighbor.*

I believe that AWS&SSC has let the vegetation on the easement grow up so tall, so that neither I nor the TCEQ can see just how bad the pipes are damaged. I do not know how the recent smoke test was completed.

Since AWS&SSC is already using our land (whether they have legal access or not) as their own, our family decided that rather than sell restrictive easements or a portion of the land that we would offer to sell the entire area that they are currently using. This is the eleven acre pasture. We do not wish to sell less than the eleven acres. The legal easement that is in such bad shape runs along the entire north section. The pipe carrying effluent runs to the west. AWS&SSC is already using the entire eleven acres! Plus, my family cannot keep selling our pasture piece by piece until we no longer have enough land for a profitable business venture. Our pasture was 15 acres prior to the existing plant being built in 1970. Now, we are down to eleven acres. If the acreage is reduced to less than 11 acres, I will be paying property taxes on land that is not usable for agriculture use. It could also leave me with acreage that I have no legal access to.

Purchasing this land would take care of the trespassing issue, the lack of maintenance of the legal easement, and the restrictive easements on the west and the north sides. It would also give AWS&SSC room for future growth. However, they chose not to make an offer.

But what is so interesting is that while AWS&SSC has asked the TCEQ for variances, they have started legal proceedings against my family to take our land by eminent domain. From the minutes of their March 8, 2012 meeting, "Board went into Executive Session at 7:45pm, returned from Executive Session at 8:25 pm. Patsy Russell stated that after discussion with attorney the Board had agreed to go ahead and practice their right of eminent domain. There will be an appraisal done to find fair market value for varying buffer zone of five hundred to eight hundred feet. There

will be a letter sent to surrounding land owners advising them of the findings and offer." **(Minutes of the Board Meeting are attached.)**

First of all, I understood TCEQ required buffer zones of either 150 or 500 feet easements. I do not understand why eight hundred feet may be requested by AWS&SSC. Second, 500 feet includes almost all of my 11 acre pasture. Eight hundred feet actually crosses over my land and into someone else's property on the north side.

If AWS&SSC intends to "take" all of my pasture by eminent domain, why didn't they just purchase it instead declaring eminent domain? Legally, they should have made an offer of fair market value prior to declaring eminent domain. I do not know the answer to this because AWS&SSC is now conducting all discussion regarding the waste water plant in Executive Session in their meetings. This is in violation of the Texas Open Meeting Act. This and other numerous violations have been turned over to the Ellis County District Attorney's office for investigation and possible prosecution. (See the accompanying newspaper article.) Currently the Board is under criminal investigation. They have until May 4th to respond to the District Attorney's office.

Obviously, the TCEQ cannot force the AWS&SSC to follow eminent domain laws and the Texas Open Meeting Act. However, the TCEQ should take a close look at what AWS&SSC is doing. The TCEQ should not be a party to these illegal acts. The TCEQ should also realize that AWS&SSC is continuing the pattern of deception that has been going on for years in regards to adjacent landowners.

Attachment 2A - Domestic Technical Report 1.0

Item 3.e Other Requirements: Other Permit Actions (pg 2 of 44)

TPDES Permit No. WQ0013981001 other requirement No. 4 stipulates the following:

Within 60 days of permit issuance, the permittee shall submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30TAC Section 309.13(e)(3). The evidence of legal restriction shall be submitted to the executive director in care of the TCEQ Wastewater Permitting Section (MC 148). The permittee shall comply with the requirements of 30 TAC Section 309.13(a) through (d).

As of March 15, 2012 the permittee has not obtained the necessary buffer zone in accordance with 30 TAC 309.13(e)(3). The current landowners are unwilling to grant restrictive buffer zone easements and are requesting that the permittee purchase their entire tracts of land. Due to the cost-prohibitive nature of the land purchase, Avalon Water Supply & Sewer Service Corporation would like to request a variance to the buffer zone requirements.

Avalon Water and Sewer Service Corp

Board of Directors Meeting
March 8, 2012

MINUTES

The Board of Directors of Avalon Water and Sewer Service Corporation met for their regularly scheduled meeting at the First Baptist Church Avalon, Texas 7:00 pm on Thursday March 8, 2012.

Directors present for this meeting were Patsy Russell, Robin Donaldson, Denice Wimbish, Harrison Romero, Avalon employee Gregg Rodriguez and Dean Carrell Sewer Plant Consultant, Wendy Frank Assistant to Dean Carrell. Present from HILCO Electric Cooperative was Kent Smith Water Operations Manager and Abby Bason Water Customer Service Representative.

Meeting was called to order at 7:10 p.m. by Board President Patsy Russell and determined the presence of a quorum.

There were two members present Marcia & Carol Gillespie. Visitors present were Cindy Sutherland with the Neo-Tribune of Italy and Scott Hoelzle with KSA.

With a motion by Harrison Romero, David Walshes was appointed to fill John Goodwyn's unexpired term. Second by Denice Wimbish, motion carried unanimously.

Minutes of the Special Meeting held January 5, 2012 were approved with a motion by Harrison Romero, second by Denice Wimbish. Motion carried unanimously.

Minutes of previous meeting of February 9, 2012 approved with a motion by Harrison Romero, second by Robin Donaldson. Motion carried unanimously.

Harrison Romero made a motion to approve the financial report for payment of current expenses, second by Denice Wimbish. Motion carried unanimously.

Harrison Romero made a motion to approve the repair invoices, second by Robin Donaldson. Motion carried unanimously.

Dean Carrell updated the Board on the sewer plant; stated smoke test had been done and machine returned, advised that there were several areas of concern. There was four thousand gallons of sludge taken to the Italy plant. Upgrades on sewer plant are going well. Scott Hoelzle with KSA stated that permit renewal was denied by TCEQ; permit was amended and done as a new permit increasing gallonage to forty thousand per day from twenty-five thousand per day. Application/administration fee will be approximately three hundred and fifty dollars.

President Patsy Rus[redacted] sed Board that USDA Loan was pul[redacted] ue to nothing being done. Patsy asked that Item #13 of the agenda concerning the G[redacted] spie Land Purchase be discussed in Executive Session.

2. Harrison Romero made a motion to hire Attorney Jesse Mungula, second by Denice Wimbish. Motion carried unanimously. Attorney Mungula advised Board that there usually was a one hundred twenty-five dollar retainer but in this case will bill monthly at two hundred dollars an hour. Contract will be presented at April's Board meeting.

Harrison Romero made a motion to hire Everett Russell III (Trey) to help Gregg with reading meters and Trey will be paid ten dollars an hour, second by Robin Donaldson. Motion carried unanimously.

Issue of Health Insurance for Employee Gregg Rodriguez was tabled.

Kent Smith informed Board that a Matt Hamilton had asked about a meter(s) near Scott Green's and since we still owe Scott Green meters he told Mr. Hamilton we could not provide him with a meter at this time.

Harrison Romero made a motion to purchase an additional pump, second by Robin Donaldson. Motion carried unanimously.

Board went into Executive Session at 7:45 pm, returned from Executive Session at 8:25 pm. Patsy Russell stated that after discussion with attorney the Board had agreed to go ahead and practice their right with eminent domain. There will be an appraisal done to find fair market value for varying buffer zone of five hundred to eight hundred feet. There will be a letter sent to surrounding land owners advising them of the findings and offer.

With there being no further business the meeting was adjourned at 8:30 p.m. with a motion by Robin Donaldson, second by Denice Wimbish. Motion carried unanimously.

APPROVED BY THE BOARD OF DIRECTORS THIS _____ DAY OF _____ 2012.

Patsy Russell, President

Robin Donaldson, Sec/Trea

Copy of letter read to the Board at their January 5, 2012 meeting.

GILLESPIE and BATES
P. O. Box 204
Avalon, TX 76623

January 5, 2012

Avalon Water Supply and Sewer Services Corporation
P.O. 246
Itasca, TX 76055

Dear Board,

We have been carefully listening to the issues affecting the Avalon Water Supply and Sewer Services Corporation. We have weighed all the facts after consulting with attorneys, real estate professionals, the TCEQ, the Texas Attorney General's office, and the Texas Comptroller of Public Accounts. Now, we would like to be heard before any decisions are made on any updates to the current sewer plant.

We have been told that since we are not full time residents of Avalon that we have no say in matters relating to the community. However, we own two homes with water meters with the Avalon Water Supply and Sewer Services Corporation and one home is on the sewer system. We are also adjacent land owners to the current sewer plant on the north and west sides. Even if we are not registered to vote in this community, we have a right to state our opinion.

After attending several meetings of the Avalon Water Supply and Sewer Services Corporation during the past four months, we are of the opinion that the Board does not seem have a clear understanding of the difference between "easements" and "restrictive easements." While the TCEQ uses the term "restrictive easements" on their form for permit renewal applications and your consultant, Dean Carrell, refers to "restrictive easements," the Board members continue talk of "easements." In fact, in a letter to all affected landowners from the Board dated October 7, 2011, the word "easement" is used rather than the term, "restrictive easements."

According to our attorney, "easements" and "restrictive easements" are two completely different legal terms. There are affirmative easements and there are negative easements. Affirmative easements are the most common and are simply referred to as "easements." This type of easement gives a second party the right to do something on another person's property. Affirmative easements are typically used for such actions as driving cattle across another person's property or installing water or sewer lines.

Negative easements are typically referred to as "restrictive easements." Negative easements are used when a landowner is prevented from performing an otherwise lawful activity on their own property. "Restricted easements" significantly reduce a land's value and can make the property difficult to sell, according to several real estate professionals that we have spoken with. Because of their nature "restricted easements" are very expensive to purchase from a landowner. Our attorney has told us that in the majority of cases he has been involved with in Ellis County

and surrounding areas that it was less expensive for the second party to purchase the land than obtain a "restrictive easement" from the land owner.

After checking with the County Clerk's office and looking at every document filed regarding easements that the Avalon Water Supply and Sewer Services Corporation has obtained during its' 40+ years in existence, we have determined that not once has the Board obtained "restrictive easements." Even the easement that was purchased in 1999 from Jerry and Charlotte Wilson for $8,400 was simply an affirmative easement. All of the previous easements obtained by the Board call for either 10 or 12 feet wide easements for the laying of pipes for either water lines or sewer lines. None of these affirmative easements have the impact on a land's value as the "restrictive easements" that the Board is considering on our land.

We are respectfully requesting that the Board call these negative easements by the correct legal term, "restrictive easements," in all future meetings and correspondence so there is no misunderstanding by Board members, land owners, or any visitors present.

Our family first learned of the Board's plan to obtain "restrictive easements" on our land during a Board Meeting held in September of 2011. According to the TCEQ, buffer zones are required because of a law passed in 1990. When we asked why buffer zones were being required for a waste water plant built in 1970, the TCEQ told us that Avalon Water Supply and Sewer Services had neglected to obtain a renewal of their permit and let it expire. Therefore, the grandfathering was lost on the current plant. Of course, this is all irrelevant since you will now need buffer zones because of upgrades/modifications to the plant. However, it does show negligence on the Board's part to be forthright.

The TCEQ was very surprised to learn that our family did not know about the "restrictive easements" until September of 2011 when we attended a "Special Meeting." They were shocked to learn that the Avalon Water Supply and Sewer Services never once discussed "restrictive easements" with our family since the Board had promised the TCEQ to have them by June of 2007. They were also shocked to learn that members of our family have owned the property in question for over 100 years and the current owners have owned it since 1997. Apparently, a representative from the TCEQ was told that the land was recently inherited and the current owners were unknown to the Board.

The TCEQ understood our reasons for being upset with the Avalon Water Supply and Sewer Services Board. At the end of our meeting in October, the TCEQ told us that they would work with the Board to find a solution that did not require "restrictive easements" from us, but would use one of the other options for buffer zones. And, they did. Yet, the Board continues to search for less expensive solutions that may in the long run cost as much money as the proposed plan by the TCEQ since the Board will have to purchase restrictive easements from several landowners.

Rather than spend several hundred thousand dollars on a short term solution to your capacity issue that will only last 10-15 years, the Board needs to consider the long-term. No matter which option you choose, you will be in debt for many years. You need to consider an option that will last for many years allowing you to payoff that debt before another major improvement is needed. And, our family does not wish to have the land issue come up again in 10 or 15 years. We are the second generation to have to deal with the Avalon Water Supply and Sewer Services Corporation. We do not wish to pass this burden on to a third generation.

We are greatly opposed to "restrictive easements" since we feel that they violate our rights as land owners and greatly reduce the value of our land. Therefore, we are willing to enter into

negotiations with the Board to purchase our pasture land. However, as we have stated in the past we will not sell a portion of our pasture. We cannot continue to sell the Avalon Water Supply and Sewer Services Corporation our land piece by piece until there is not enough left for us to continue a profitable business venture. We owned 15 acres before the current waste water plant was built in 1970. Now, we have just eleven acres. Any negotiations will have to be for the entire remaining eleven acres.

We would also like to take this opportunity to mention that while reviewing the Avalon Water Supply and Sewer Services application for renewal, we noticed on the maps that an outfall line is located on our property. After a thorough review of existing documents in the County Clerk's office, it appears that the Avalon Water Supply and Sewer Services Corporation never obtained the necessary legal permission for outfall line placement on our property. The only easement on our property is the exact same easement every homeowner in the community gave the Board back in 1970. Thus, the Avalon Water Supply and Sewer Services Corporation is currently using our property without legal permission.

Even if you did have legal permission to have the outfall line on our property, any easement given in the past could be terminated based on the fact that the Avalon Water Supply and Sewer Services Corporation has performed illegal activity on our property by polluting. Evidence of this are the violations levied by the TCEQ.

After consulting with several attorneys who specialize in eminent domain and several attorneys at state agencies, we are confident that Avalon Water Supply and Sewer Services Corporation does not have the authority to obtain "restrictive easements" or condemn our land. However, if the Board does attempt to condemn our land we will have no choice but to pursue the trespassing issue and compensation for damages to our land.

Purchasing the eleven acres will give the Avalon Water Supply and Sewer Services Corporation the buffer zones needed on the north and west sides. It will also resolve the trespassing issue, and it will give you room for growth in the future. And, it will keep us all from going to court. Rest assured this conciliatory gesture has not evolved out of fear, but more a suggestion to resolve this issue once and for all.

Any offer for the purchase of our land will need to be in writing. Offers for less than fair market value will not be considered.

Sincerely,

Mary Bates

Marcia Gillespie

Carol Gillespie

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 18, 2012

Ms. Carol Gillespie
P.O. Box 204
Avalon, TX 76623

Re: Investigation Request at:
Avalon WSC Collection System, Avalon (Ellis County), Texas
Incident No. 167034

Dear Ms. Gillespie:

The Texas Commission on Environmental Quality (TCEQ) Dallas-Fort Worth Region Office has completed an investigation of the above referenced incident. The enclosed report describes the findings that were noted during the investigation, and the TCEQ's response.

Thank you for contacting the TCEQ with your concerns. If you have questions feel free to contact Ms. Karen Smith of my staff directly at 817-588-5850 or the office at 817-588-5800.

Sincerely,

Sid Slocum, Water Section Manager
DFW Region Office

SS:ks

Enclosure: Investigation Report #997291

MWD/WQ0013981-001/CO

Texas Commission on Environmental Quality
Investigation Report
Avalon Water Supply And Sewer Service Corporation
CN600788590

AVALON WATER SUPPLY & SEWER SER CORP

RN101511863

Investigation # 997291
Investigator: KAREN SMITH
Conducted: 04/11/2012 -- 04/11/2012
Program(s): WASTEWATER

Incident # 167034
Site Classification
DOMESTIC MINOR
NAIC Code: 221320
SIC Code: 4952

COPY

Investigation Type : Compliance Investigation

Location : 1,100 FT WEST OF SH 55 AND APPROX 1,900 FT SOUTH OF THE INTERSECTION OF SH 35 AND SH 55 IN AVALON

Additional ID(s) : WQ0013981001
TX0020567

Address: ; ,

Activity Type : REGION 04 - DFW METROPLEX
WWCMPL - WW Complaint

Principal(s) :

Role	Name
RESPONDENT	AVALON WATER SUPPLY AND SEWER SERVICE CORP

Contact(s) :

Role	Title	Name	Phone	
Participated in Investigation	MANAGER OF WATER CO.	MR GREG RODRIGUEZ	Other	(254) 379-0478
Regulated Entity Contact	OPERATOR	MR DEAN CARRELL	Work	(972) 483-6212

Other Staff Member(s) :

Role	Name
Supervisor	SIDNEY SLOCUM
QA Reviewer	SIDNEY SLOCUM

Associated Check List

Checklist Name
WQ COMPLAINT INVESTIGATION

Unit Name
Avalon Complaint

Investigation Comments :

INTRODUCTION
On April 9, 2012, the TCEQ/DFW Region Office received a complaint which alleged that wastewater was leaking and/or bubbling near a manhole on a mainline leading to the Avalon WSC treatment plant. The operator of the system, Dean Carrell, was promptly notified and later reported no issues or sewer overflows were observed within two hours of being notified of the complaint. The complainant submitted photographs of the collection system problems on April 11, 2012 and a site investigation was conducted by Karen Smith on April 11, 2012. As a result of the investigation findings, an exit interview form was emailed to Mr. Carrell, Consultant and Operator,

and Mr. Gregg Rodriguez, Field Manager and Operator on April 11, 2012. A Notice of Violation was issued on April 16, 2012 to facilitate compliance, and to solicit a response due date of May 16, 2012.

GENERAL FACILITY AND PROCESS INFORMATION
Avalon WSC owns and operates a wastewater collection and treatment system that serves the Avalon, Ellis County community. Most of the collection system is comprised of clay tile lines which only have a limited lifespan. The Hydroxyl package treatment plant has been poorly operated and maintained for a number of years. Recently, the new operator reported that the plant was cleaned out, modified, and is operating more efficiently. A mandatory comprehensive compliance investigation (CCI) will be conducted of this system before the end of TCEQ's fiscal year which ends in August 2012.

BACKGROUND
Avalon's collection system has had a long history of storm water inflow and infiltration (I&I) which inundates the collection and treatment systems during periods of heavy rainfall. This condition is not unique to Avalon, and is an issue that almost every city in the DFW metroplex and other parts of the State is dealing with. The condition results in sanitary sewer overflows and higher influent and effluent flows at treatment systems. The permittee is aware of this I/I problem which has been cited as a violation in TCEQ investigation reports. The permittee is currently in the process of amending its permit to increase its daily average flow limit from the current limit of 25,000 gallons per day to a higher unknown amount which is still pending approval.

Avalon WSC is currently under enforcement for several permit violations as documented in Docket No. 2011-1488-MWD-E. The last CCI was conducted by the Region Office on July 6, 2011, and resulted in the citation of 5 violations. Following the investigation, the permittee was referred back to the Enforcement Division for failure to comply with previous Administrative Order, Docket No. 2008-1716-MWD-E, and for continued permit violations.

ADDITIONAL INFORMATION
During the site investigation, an exposed main line was observed in the vicinity of the second manhole upstream of the plant. This manhole receives wastewater from two clay tile lines that flows east and south to the treatment plant. Severe erosion was noted around the manhole. The first manhole upstream and about 50 feet from the plant had severe damage to the brick structure. No evidence of a sanitary sewer overflow was observed in the vicinity of either manhole. The two clay tile influent lines are approximately 8 or 10-inch and approximately 4-5 feet in depth. These lines, as well as others in the system, were reportedly smoke-tested to assess their condition about three months ago. The smoke test results indicated major deterioration in both lines and plans are being made to find the funding (in excess of $500,000) to replace the clay tile lines leading to the plant, as well as other locations in the system, which will no doubt require additional funding.

The TCEQ will continue to track Avalon's progress to upgrade their collection and treatment systems. As required, a letter and a copy of the complaint investigation report will be mailed to the complainant on April 18, 2012.

NOV Date	Method
04/16/2012	WRITTEN

OUTSTANDING ALLEGED VIOLATION(S) ASSOCIATED TO A NOTICE OF VIOLATION

Track No: 463944 **Compliance Due Date: 05/16/2012**
Violation Start Date: 4/11/2012

30 TAC Chapter 305.125(5)

PERMIT , WQ0013981-001
Operational Requirements, No. 1, page 9.

Alleged Violation: