

Investigation: 997291

Comment Date: 04/13/2012

Failure to adequately maintain collection system. Exposed 8-inch clay tile line in the vicinity a sewer manhole that connects two influent lines just prior to the wastewater treatment plant. Also, due to wet weather conditions and infiltration, severe erosion has developed around the manhole. The brick around a second manhole in the vicinity and just prior to the plant with significant deterioration.

**Recommended Corrective Action:** In the short term, repair exposed line, fill in area of erosion around first manhole, and repair damaged brick around the second manhole. In the long term, secure funding to replace clay tile influent lines to the plant. Please submit emergency repair corrective action documentation to the TCEQ DFW Region Office by May 16, 2012. Also, submit a compliance plan and schedule to replace the old clay tile influent lines to the plant.

Signed Karen Smith  
Environmental Investigator

Date 4/13/2012

Signed Bob Smith  
Supervisor

Date 4/16/12

**Attachments: (in order of final report submittal)**

- ☐ Enforcement Action Request (EAR)
- ☒ Letter to Facility (specify type): NOR
- ☐ Investigation Report
- ☐ Sample Analysis Results
- ☐ Manifests
- ☐ NOR

**In agency files:**

- ☐ Maps, Plans, Sketches
- ☐ Photographs
- ☐ Correspondence from the facility
- ☐ Other (specify): Exit Interview

Picture 1

Fence is the  
property line  
My property is  
to the right.

Pictured

Again, fence  
is property line  
Gillespie property  
is to the right  
The picture shows  
the huge hole on  
my property



Picture 3

Gillespie property  
is to the right of  
the fence. This  
picture show the  
large hole and  
the concrete  
pipe sitting way  
above ground.





Picture 4

Another picture  
of Gillespie property  
showing large hole  
and broken pipe  
at bottom of hole

Picture 5

Sewer plant.



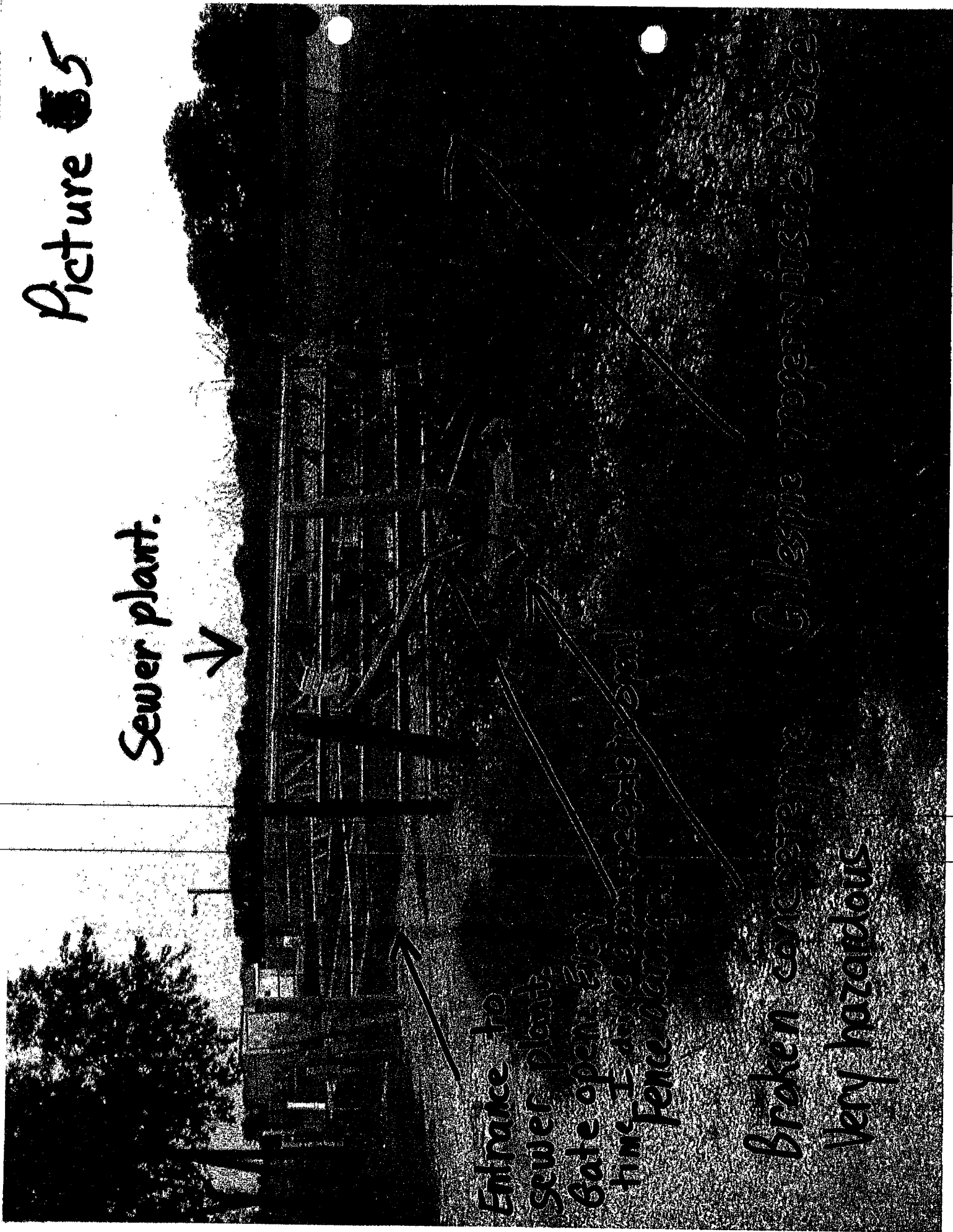
Entrance to  
sewer plant.

Gate open. Easy

to get in. Gate is open.

Broken concrete fence. Gillespie property inside fence.

Very hazardous



Gillespie  
pasture.

Location of  
raw sewage leak.  
It was noticeable

Picture 31

Driveway to  
waste water  
plant.



Notice the difference in way pasture  
and easement. Easement is not  
maintained.



# Picture #7



View of easement  
and Gillespie pasture.  
Notice how overgrown  
the easement is.

International fence  
damage.

Picture 8

Gillespie  
property.

Again, notice  
how the  
casing is  
overgrown  
making  
manholes  
and pipes  
difficult



that is dangerous If  
is on Gillespie property



# Picture 10

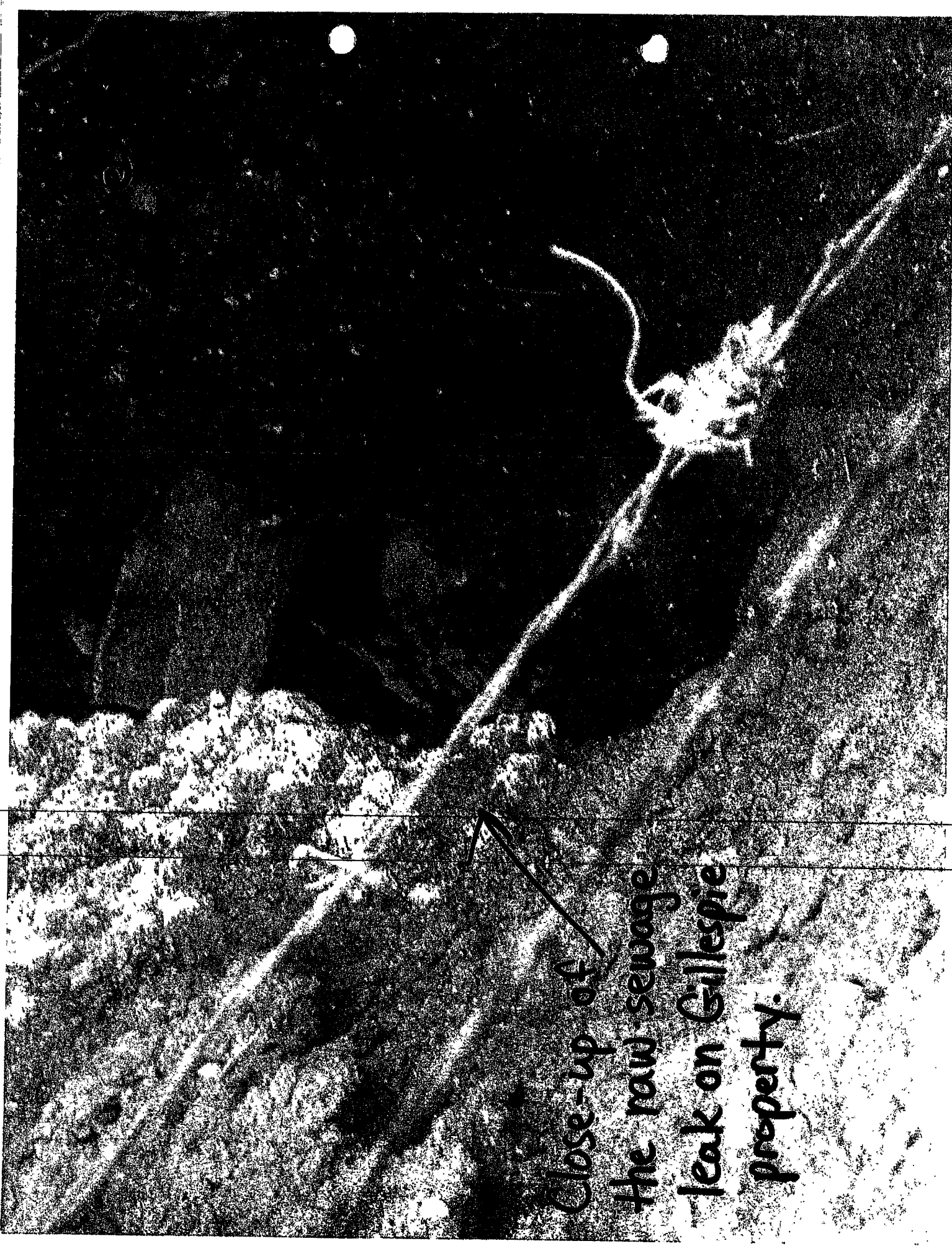
This picture shows  
just how far above  
ground the concrete  
is. It is impossible  
to move with a trowel.

Picture 11

Concrete

pipe





Close-up of  
the raw sewage  
leak on Gillespie  
property.





Overgrown  
Easement.



Property  
line.



This picture is  
taken from  
near the  
plant facing  
north. My fence  
line is near the  
utility poles. The  
easement is not  
usable although our  
legal agreement states it should be.

Picture of easement  
facing south. Easement  
is unusable for  
agricultural use  
because the pipes  
sit too far above  
ground for a

tractor to go over

Gilkespie  
land

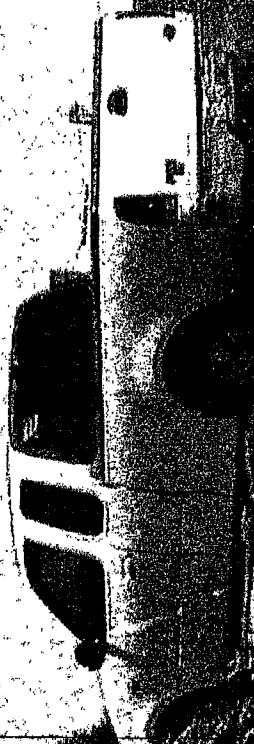
Sewer plant.



15

Fence line.

Sewer  
property.





Waxahachie

THURSDAY

April 19, 2012  
16 Pages  
1 Section

# Daily Light

75

Cents



www.waxahachie.com

## Helping paws

Fundraiser event set for May 19  
to help purchase aide dog



Carli Hunsbrey, 19, of Waxahachie, has been battling diabetes since she was a freshman in college. She has had several seizures and has been told she would be an aide dog.

## Race weekend

Flag drops on 10th annual Lions Club Mini Grand Prix Saturday

By AARON SCHWABER  
Daily Light staff writer

Ladies and gentlemen start your engines! The Waxahachie Lions Club will host the 10th anniversary of its Mini Grand Prix at 7:30 a.m. Saturday, April 21, on the square in historic downtown Waxahachie.

This year's Mini Grand Prix will feature 15 teams and 20 cars racing through downtown Waxahachie, taking hairpin turns, colliding and vying for the trophy.

Everyone involved is excited about the new competition and increased number of

drivers on the track.

"This is our 10-year anniversary and could be the best in at least the past six years with new teams and more excitement," Lions Club Race Director Tim Bass said.

The competition is expected to be fierce and as in years past, collision and wrecks

See RACE, Page 9

The 10th annual Lions Club Mini Grand Prix returns to downtown Waxahachie Saturday, April 21.

can pay insurance, garnish income (from the supplier) effective May 1," City Manager Doug Young said.

He told the members of the council he received a letter

See PALMER, Page 2

is working against us. We only have a limited air supply and if that air supply is exhausted then it is basically body recovery." En-

See RESCUE, Page 14

Firefighters check the condition of a downed firefighter before attempting a move during Tuesday's Rapid Intervention training which was held for multiple fire departments in Ellis County.

See SANCHEZ, Page 2

# Open Meetings Act complaints filed against special district

## 'You're a Good Man, Charlie Brown'

By CURT OLSON  
Times-Journal Staff Writer

AUSTIN, Texas — Ellis County District Attorney Patrick Wilson has received three complaints from resident Carol Gillespie regarding allegations of open meetings violations with the Avalon Water Supply and Sewer Services Corp.

Gillespie's written complaints that accompany this article outline actions by the special district's governing board that may conflict with the Texas Open Meetings Act (TOMA).

Ellis County District Attorney Patrick Wilson would not confirm or deny that his office has opened an investigation against the special district's governing board.

TOMA violations are a misdemeanor punishable by jail time and a \$500 fine.

The Avalon Water Supply & Sewer Services Corp. (AWS&SSC) serves about 90 residents with sewer and a couple hundred with water in Avalon in Ellis County.

The Gillespie property abuts the Avalon Water Supply & Sewer Services Corp. Both properties sit between Farns-to-Market 55 and Jack Eastman Road, just a few hundred yards south of Highway 34.

Patsy Russell, who served as the AWS&SSC president until the vote at the annual meeting one week ago when she was moved to vice president, said all but two of the seven members have received

open meetings training. Gillespie sent a letter to the special district's governing board on Feb. 9 alerting them it hasn't followed the 72-hour notice of a public meeting as required by law.

"I have spoken with the State Attorney General's Office and have been advised to talk with the District Attorney in Ellis County about misconduct by the board," Gillespie wrote in the letter.

"However, I am giving the board the courtesy of bringing this matter to the attention of all members before taking such action. Hopefully, the board will take action to correct this and I will not have to speak with Mr. Wilson."

Gillespie said the situation intensified in March with talk

of eminent domain because the special district needs land for a state-required buffer from the water and sewer plant. The board has targeted the Gillespie property, which Carol and her two sisters had transferred to them in the late 1990s prior to the deaths of their parents.

Gillespie has hired an attorney to take up the expected legal fight with the special district. This emphasizes the key part of her complaints: decisions apparently being made in executive session, not a public session.

Consider the March meeting minutes approved on April 9.

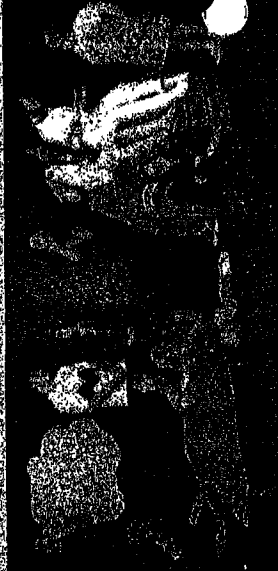
See TOMA, Page 2

OCS performance April 27-28

OVALLA — The fine arts department of Ovals Christian School will perform "You're a Good Man, Charlie Brown" at the spring musical April 27-28 at Ovals Christian School. Tickets are \$5.

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See OCS, Page 2



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The performances are scheduled for 7 p.m. April 27 and 28; and at 2 p.m. April 28. Admission is \$10 and includes concessions. For more information about the musical or to purchase tickets, contact Ovilla Christian School at 972-617-1177.

Contact Melissa at 469-517-1450 or [melissa.cade@winnews.com](mailto:melissa.cade@winnews.com).

## anchez

ued from Page 1

may be a little strenuous," Sanchez said. "Like backpacking and traveling and doing things like that, this was the thought."

Sanchez said he was most of the tremendous growth the college has experienced during his years here, a student numbers and size, with a large extension in Ellis County.

lege Board Chairman Huffman acknowledged the growth that has place under Sanchez's ship, and said he will

be missed. "He's been a wonderful president," Huffman said. "He is totally, 100 percent dedicated to what's good for the school, to grow the school, and what's good for the students."

Huffman also pointed to several programs he said Sanchez was responsible for, including the "Opening Doors to Success" program that creates college opportunities for first-generation college students, and the "Elegance" fund-raisers.

Bob Belcher may be reached by email at [belcher@corsicanadaily.com](mailto:belcher@corsicanadaily.com). Story republished with permission.



interior or multi-family," Young said, giving an example of the effect the change will have on a residential customer. "For a customer that

## TOMA

Continued from Page 1

"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 the 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."

There is no record of a public vote to pursue eminent domain if the Gillespie property in those now-approved

March meeting minutes.

Bill Aleshire, an Austin attorney who provides input on legal matters on the Texas Open Meetings Act with the Freedom of Information Foundation of Texas, said the board can't do that.

"Before they take final action, they've got to come out of executive session and put that vote on the record," Aleshire said.

Board attorney Jesse Joe Munguia said he must discuss these matters with the board before speaking publicly about it.

He acknowledged if the board has done the wrong thing it would get back and correct it.

Aleshire said the law gives the board the opportunity to fix a closed-door decision by voting in a public session. Additionally, Gillespie and at least one other eyewitness grew concerned about the board not stating the purpose for its executive session on April 9 during the regular meeting that followed the board annual meeting.

Aleshire said the board must cite the section of the Open Meetings Act with some explanation for the closed session.

Another complaint filed by Gillespie against the district is nepotism.

Munguia is a grandson to Russell and is a nephew to

another board member, Santos Munguia.

Jesse Munguia, who was hired in March, could not address the matter of nepotism. He said he is still waiting for board by-laws.

Curt Olson is a journalist with Texas Budget Source, a nonprofit journalism project of the Austin-based Texas Public Policy Foundation, with funding from the Franklin Center for Government and Public Integrity. Texas Budget Source is on Facebook and Twitter at [TXBudgetSource](https://www.facebook.com/TXBudgetSource).

# PARENTS? GRANDPARENTS, FAMILY & FRIENDS

The Waxahachie Daily Light will be publishing the Class of 2012 senior photos in the Waxahachie Daily Light on Sunday, May 27th and the Midlothian Mirror on Wednesday May 30th.



## ELLIS COUNTY & DISTRICT ATTORNEY

PATRICK M. WILSON

ELLIS COUNTY COURTS BUILDING • 109 S. JACKSON • WAXAHACHIE, TX 75165 • (972) 825-5035 • Fax (972) 825-5047

April 23, 2012

Avalon Water Supply and Sewer Service Corp.  
115 E. Main Street  
P.O. Box 246  
Itasca, Texas 76055-0246  
Via CMRRR: 7006 3450 0002 9323 8208

Jesse Joe Munguia, Jr.  
Jimenez Law Firm  
1660 S. Stemmons Freeway, Suite 285  
Lewisville, Texas 75067  
Via CMRRR: 7006 3450 0002 9323 8215

Re: Alleged violation of Texas Open Meetings Act

Dear Mr. Munguia and Board of Directors:

This office is in receipt of three written complaints regarding alleged violations of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code. The complaints pertain to multiple meetings of the Avalon Water Supply and Sewer Service Corporation (AWS&SSC), which is a governmental body for the purposes of the Texas Open Meetings Act pursuant to Section 551.003(3)(K) of the Texas Government Code. Copies of the complaints are attached. This letter is being sent to you, as is done with all local governmental entities, to provide you the opportunity to promptly respond to the allegations against you.

The initial complaint dated March 15, 2012, enumerates sixteen alleged violations pertaining to regular and special meetings of the AWS&SSC which occurred on November 21, 2011, December 1, 2011, December 8, 2011, January 5, 2012, February 9, 2012, and March 8, 2012. The second complaint dated April 5, 2012, addresses additional concerns pertaining to the regular meeting on March 8, 2012. The third complaint dated April 10, 2012, enumerates thirteen alleged violations pertaining to the regular meeting on April 9, 2012. These meetings apparently took place in Ellis County, Texas, at the First Baptist Church in Avalon.

The allegations of concern within the complaints relate to the notice provisions of the Texas Open Meetings Act and "executive sessions" (or "closed meetings" as that term is used within the Texas Open Meetings Act). The complaints allege that the AWS&SSC intentionally circumvented the notice provisions of the Texas Open Meetings Act to deprive the public of adequate notice of matters for proposed discussion and action, specifically pertaining to the acquisition of land for a new waste water plant. Additionally, the AWS&SSC is alleged to have inappropriately discussed matters in closed meetings for which no exception to the Texas Open Meetings Act applied, and it alleged to have taken final action on matters during closed meetings.

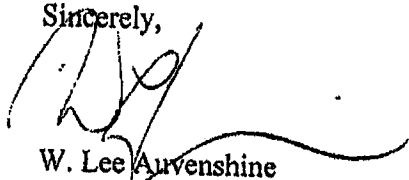


Mr. Jesse Joe Munguia, Jr.  
and Avalon Water Supply and Sewer Service Corp.  
April 23, 2012  
Page 2

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The allegations against you are serious. As stated above, this letter is being sent to you to provide an opportunity to respond to the serious allegations against you. A prompt response is necessary. Please provide a written response to this office no later than Friday, May 4, 2012. I will await your written reply.

Sincerely,



W. Lee Auvenshine  
Assistant County & District Attorney

Enclosure: Written Complaints dated March 15, 2012, April 5, 2012, and April 10, 2012

cc: Carol D. Gillespie  
P.O. Box 204  
Avalon, Texas 76623  
*without enclosure*

# DA's office seeks answers from special district on allegations

By CURT W. OLSON  
*Texas Budget Source*

AUSTIN, Texas — The Ellis County District Attorney's Office is investigating allegations of violations of the Texas Open Meetings Act committed by the Avalon Water Supply & Sewer Service Corp.

Assistant Ellis County District Attorney W. Lee Auvenshine wrote a letter dated April 23 to Jesse Joe Mungula, attorney for the non-profit corporation, to request written response by May 4 to allegations the Avalon Water Supply & Sewer Service Corp. (AWS&SSC) board has repeatedly violated the Open Meetings Act.

"The allegations against you are serious," Auvenshine writes. "As stated above, this letter is being sent to you to provide an opportunity to respond to the serious allegations against you."

This action stems from three letters sent to Ellis County DA Patrick Wilson from Carol Gillespie, who owns land that abuts property owned by the special district. Both properties sit between Farm-to-Market 55 and Jack Eastham Road, just a few hundred yards south of Highway 34.

The AWS&SSC provides water and sewer service in

the unincorporated community of Avalon and is one of more than 2,200 special districts in Texas.

The AWS&SSC seeks ways to expand the buffer zone around the plant and the special district's board has targeted property owned by Gillespie to pursue by eminent domain.

However, the AWS&SSC board has a problem.

While the seven-member board discussed the matter in March during a closed session, the approved March meeting minutes show the board never took a public vote on exercising the right of eminent domain against Gillespie.

Issues cannot be decided in a closed session without coming out of that closed session and taking a public vote on the issue.

The multitude of TOMA complaints in Gillespie's letters to Wilson, dated March 15, April 5, and April 10, identify improper procedure for posting notices, discussing meetings in a closed session for which there is no exception in the law, and taking final actions in a closed session.

Violations of the Open Meetings Act, which are misdemeanors, are punishable with jail time and a fine.

Mungula previously said to Texas Budget Source that he must talk to the board before responding to allegations of violations of the Open Meetings Act. Gillespie also has hired an attorney over the expected eminent domain fight.

Meanwhile, the AWS&SSC board posted a meeting notice for 7 p.m. Friday to conduct an "emergency meeting."

The following is the agenda:

- Call meeting to order
- Approval of April 9, 2012 minutes
- Discuss and act upon accepting pro bono legal representation
- Executive session to formulate response of alleged TOMA violations; and formulate response "of blackmail threat."

However, it's possible this "emergency meeting" also violates the TOMA.

Here are the reasons for an emergency meeting as outlined in the Open Meetings Act handbook by the Office of Attorney General:

- An imminent threat to public health and safety; or
- A reasonably unforeseeable situation.

It's unknown at this point if the AWS&SSC board fol-

See TOMA, Page 8A

## TOMA

Continued from Page 5A

lows through with the meeting if it would complicate matters for them.

Curt Olson is a journalist

with Texas Budget Source, a nonprofit journalism project of the Austin-based Texas Public Policy Foundation, with funding from the Franklin Center for Government and Public Integrity. Texas Budget Source is on Facebook and Twitter @TXBudgetSource.

# Board adds 'vacancies' to agenda

## District

Continued from Page 1

However, Mungula would not confirm or deny vacancies on the board Monday.

The meeting set for this evening is the same agenda the board scheduled for its "emergency meeting." However, there is one addition: "Discuss and act on board vacancies."

The board also is scheduled to meet in executive session to respond to Assistant DA W. Lee Auvenshine's request for a response on alleged Open Meetings violations. Auvenshine gave Mungula until Friday to respond to the multiple complaints of open meetings violations directed at the AWS&SSC board.

"The allegations against you are serious," Auvenshine writes in a letter dated April 23. "As stated above, this letter is being sent to you to provide an opportunity to respond to the serious allegations against you."

This action stems from three recent letters Carol Gillespie sent to Ellis County

DA Patrick Wilson. Gillespie, who with two sisters maintain their deceased parents' property, owns land that abuts property owned by the AWS&SSC. Both properties sit between Farm-to-Market 55 and Jack Eastham Road, just a few hundred yards south of Highway 34.

The AWS&SSC provides water and sewer service in the unincorporated community of Avalon, serving more than 300 customers with water and about 90 with sewer service.

The AWS&SSC seeks ways to expand the buffer zone around the plant and the special district's board has targeted property owned by

Gillespie to pursue by eminent domain.

However, the special district's directors have a problem.

While the seven-member board discussed the matter in March during a closed session, the approved March meeting minutes show the board never took a public vote to exercise the right of eminent domain against Gillespie.

Members of public bodies must cast public votes on matters such as eminent domain.

Gillespie's TOMA complaints identify improper procedure for posting notices; discussion of items in a

closed session for which there is no exception in the law; and final action on items behind closed doors.

Violations of the Open Meetings Act, which are misdemeanors, are punishable with jail time and a fine.

*Curt Olson is a journalist with Texas Budget Source, nonprofit journalism project of the Austin-based Texas Public Policy Foundation with funding from the Franklin Center for Governance and Public Integrity. Text Budget Source is on Facebook and Twitter @TXBUgetSource.*

**Comments Regarding Permit # WQ0013981001  
Avalon Water Supply and Sewer Service Corporation  
RE: Increased Flow.**

**Page 1**

**Attachment 1 – Page 2 of 18**

**"Avalon would like to increase permitted flow from 25,000 to 40,000 gallons per day or more."**

**I am very concerned that the increased flow will cause the small ditch (or stream) on my property where the effluent is dumped to overflow. Currently, the majority of my farmland is used to grow food products such as wheat, corn, soybeans, and sunflowers (oil and seed types).**

**The part of my land that is closest to the waste water plant is pasture. The stream where is effluent is being dumped is the water supply for our livestock. Due to concerns about the high level of contamination of the stream, we are currently using the pasture for hay production and animals are not kept on the property at this time. However, if I maintain ownership of the property I would like to have the option of using the property for livestock.**

**If AWS&SSC wants to increase the flow to the plant, that is another reason that they should purchase my 11 acres.**

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**Attachment 1 - Page 2 of 18**

The existing treatment plant consists of a manual bar screen, two emergency storage ponds, one oxidation ditch that serves as an equalization basin, one Hydroxyl package unit (dissolved air floatation, fixed bed bioreactor, moving bed bioreactor, and two cone bottom clarifier tanks), and chlorine contact chamber.

Avalon would like to increase permitted flow from 25,000 gallons per day to 40,000 gallons per day or more. To facilitate this increase in permitted flow Avalon is proposing to make the following changes to its wastewater treatment plant:

- Convert existing equalization basin back to an oxidation ditch, including making repairs to the oxidation ditch and installing new aeration devices.
- Upgrade pumps to transfer effluent from the oxidation ditch to Hydroxyl unit.

Avalon is also considering several options to increase clarifier capacity to manage peak flows, including the construction of an additional clarifier to serve as a partial bypass of the Hydroxyl unit during periods of high flow.

**Comments Regarding Permit # WQ0013981001  
Avalon Water Supply and Sewer Service Corporation  
RE: DMR Contact .**

**Page 1**

**DMR Contact Information lists Dean Carrell as the Operator for Avalon Water Supply and Sewer Services Corporation.**

**Mr. Carrell is the full-time Public Works Director at Italy, TX. Since Mr. Carroll is employed by the City of Italy Monday-Friday from 8AM to 5PM and on call the remaining time, I do not see how he can be the operator of the Avalon waste water plant.**

**When I called TCEQ on April 10<sup>th</sup> to report a raw sewage leak on my property, Mr. Carroll was working in Italy. Karen Smith called me back and said he was at the property, but could not find the leak. The leak was very noticeable by both sight and smell. In fact, it would have been difficult to drive into the plant without seeing the hole.**

**I live less than 2 minutes away, immediately drove to the plant and Mr. Carrell was not there. No one was there. I would have passed anyone leaving the plant on my way.**

**I do not believe Mr. Carrell checked out the leak when it was reported as he stated.**

**I also do not believe the complete, accurate results of the recent smoke test were reported to TCEQ. This leak and the four foot deep hole had been there for a long time.**

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Check on or both: ☐ Administrative contact

☒ Technical Contact

**4. DMR CONTACT INFORMATION** (Instructions Page 22)

Contact Responsible for Discharge Monitoring Reports (EPA 3320-1)

Provide the name of the person and their complete mailing address delegated to receive and submit Discharge Monitoring Report Forms.

Prefix: Mr.

(Mr. Ms, Miss)

First/Last Name: Dean Carrell

Suffix: \_\_\_\_\_

Title: Operator

Credential: TX WW Op. C - WW0026733

Organization Name: Avalon Water Supply & Sewer Service Corporation

Mailing Address: P.O. Box 246

Internal Routing (Mail Code, Etc.): \_\_\_\_\_

City: Itasca

State: Texas

ZIP Code: 76055

Mailing Information if outside USA.

Territory: \_\_\_\_\_

Country Code: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Phone No.: (254) 687-2331

Extension: \_\_\_\_\_

Fax No.: (254) 687-2428

E-mail Address: \_\_\_\_\_



**Did you know you can submit DMR data on line?**

Go to Sign up now at:

<http://www.tceq.texas.gov/permitting/steers/steers.html>

Establish an electronic reporting account when you get your permit number.

**5. PERMIT CONTACT INFORMATION** (Instructions, Page 22)

Provide two names of individuals that can be contacted throughout the permit term.

Prefix: Ms.

(Mr. Ms, Miss)

First/Last Name: Patsy Russell

Suffix: \_\_\_\_\_

Title: President

Credential: \_\_\_\_\_

Organization Name: Avalon Water Supply & Sewer Service Corporation

Mailing Address: P.O. Box 246

Internal Routing (Mail Code, Etc.): \_\_\_\_\_

City: Itasca

State: TX

ZIP Code: 76055

Mailing Information if outside USA.

Territory: \_\_\_\_\_

Country Code: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Phone No.: (254) 687-2331

Extension: \_\_\_\_\_

Fax No.: (254) 687-2428

E-mail Address: buglady06@valomet.com



**Comments Regarding Permit # WQ0013981001**  
**Avalon Water Supply and Sewer Service Corporation**  
**RE: Public Place Information.**

**Page 1**

Public Place Information lists the County Records Building in Waxahachie. (The County Clerk's name is Cindy Polley, not Cindy Poller.) Last summer the application was available for public viewing in the Dunlap Library in Italy, TX. *Why the change?*

Waxahachie is at least 12 miles from Avalon. Italy is 5 miles from Avalon.

The County Clerk's office charges \$1 per page for copies. The library charges 10 cents per page. I spent over \$30 obtaining copies in the County Clerk's office.

The library has tables and chairs for people to sit and read. The County Clerk's office does not. There are chairs but no tables. I had to read the application standing over a file cabinet of property deeds.

The County Clerk's office is only open from 8:00 to 4:30 on Monday through Friday. The libraries have weekend and/or evening hours available for people who work.

I also had to wait over 30 minutes on the day I went in, because the documents could not be located. I never had this problem at the library.

Since Avalon Water Supply and Sewer Services Corporation has been maintaining for years that Avalon is a low income community whose residents cannot afford an increase in sewer rates (and cannot afford to buy my land or restrictive easements), this does not seem logical. I find it interesting that the public viewing place would be changed to a location that is over twice as far from Avalon, is not convenient for the working class, and charges ten times the amount for copies.

Perhaps the real reason that AWS&SSC did not want the document available for Public Viewing in Italy is that the City of Italy's Public Works Director has been hired by AWS&SSC to be their operator. I do not think that the residents and city officials of Italy will be very happy about their full-time Public Works Director being employed by Avalon. The residents that I have talked with are under the impression Mr. Carrell is a consultant for Avalon only providing advice and spending limited time on Avalon's issues.

Also, the residents of Italy that I have talked with did not know that Avalon's sludge is going to Italy's waste water plant.

**c. Contact in the Notice**

Prefix: Ms.  
(Mr, Ms, Miss)  
First/Last Name: Patsy Russell  
Suffix: \_\_\_\_\_  
Title: President Credential: \_\_\_\_\_  
Organization Name: Avalon Water Supply & Sewer System Corporation  
Phone No.: (254) 887-2331 Extension: \_\_\_\_\_

**d. Public Place Information**

*If the facility and/or outfall is located in more than one county, a public viewing place for each county must be provided.*

Public Building name: County Records Building  
Location within the building: 2nd Floor  
Physical address of building: 109. S. Jackson St.  
City: Waxahachie County: Ellis  
Contact Name: Cindy Poller  
Phone No.: (972) 826-8070 Extension: \_\_\_\_\_

**e. Bilingual Notice Requirements:**

**For new permit applications, major amendment and renewal applications. Not applicable for minor amendment or minor modification applications.**

Please call the bilingual/ESL coordinator at the nearest elementary and middle schools and obtain the following information to determine if an alternative language notice is required:

1. Is a bilingual education program required by the Texas Education Code at the nearest elementary or middle school to the facility or proposed facility?  
☐ Yes ☒ No (If No, alternative language notice publication is not required; skip to item 4. FACILITY INFORMATION.)
2. Are the students who attend either the elementary school or the middle school enrolled in a bilingual education program at that school?  
☐ Yes ☒ No
3. Do the students at these schools attend a bilingual education program at another location?  
☐ Yes ☒ No
4. Would the school be required to provide a bilingual education program but the school has waived out of this requirement under 19 TAC §89.1205(g)?  
☒ Yes ☐ No

**Comments Regarding Permit # WQ0013981001**  
**Avalon Water Supply and Sewer Service Corporation**  
**RE: Owner of Effluent Disposal Site.**

**Page 1**

**Owner of effluent disposal site: AWS&SSC answered N/A.**  
**(If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years.)**

**Avalon Water Supply and Sewer Services Corporation owns 3.54 acres where the waste water plant is located. However, the pipe carrying effluent and the small stream (or ditch) where it is discharged are on the Gillespie land. AWS&SSC never obtained a legal easement or a lease to put the pipe on our land or to discharge on our property.**

**This should be resolved before AWS&SSC is granted a new permit. They need to pay for an easement, buy the land, or move the pipe.**

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**Section B: Enter the site location information.**

If no physical address (Street Number & Street Name), provide a written location access description to the site:

located approximately 1,100 feet west of TX F.M. Road 55 and approximately 1,900 feet south of the TX F.M. Road 55 and State Highway 34 Intersection in the Community of Avalon in Ellis County

(Ex.: located 2 miles west from intersection of Hwy 290 & IH35 accessible on Hwy 290 South)

- e. City where the site is located or, if not in a city, what is the nearest city:

Community of Avalon

- f. ZIP Code where the site is located: 76623

- g. County where the site is located: Ellis

- h. Latitude: 32° 11' 58.57"

Longitude: -96° 47' 26.53"

- i. In your own words, briefly describe the primary business of the Regulated Entity:

(Do not repeat the SIC and NAICS code)

water distribution, wastewater collection, water treatment, wastewater treatment provider

- j. Owner of treatment facility: Avalon Water Supply & Sewer Service Corporation

Ownership of Facility: ☐ Public ☒ Private ☐ Both ☐ Federal

- k. Owner of land where treatment facility is/will be: Avalon Water Supply & Sewer Service Corporation

(If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years. In some cases, a lease may not suffice - see instructions.)

- X** l. Owner of effluent disposal site: N/A

(If not the same as the facility owner, there must be a long term lease agreement in effect for at least six years.)

- m. Owner of sewage sludge disposal site: N/A

(Required only if authorization is sought in the permit for sludge disposal on property owned/controlled by the applicant.)

**8. DISCHARGE/ DISPOSAL INFORMATION** (Instructions, Page 27)

- a. Is the point of discharge and discharge route in the existing permit correct?

☒ Yes ☐ No

If no, or a new or amendment permit application, please give an accurate description.

The point of discharge in the current permit will remain the same. The amendment does not seek to change the discharge point.

**Comments Regarding Permit # WQ0013981001  
Avalon Water Supply and Sewer Service Corporation  
RE: Penalties.**

**Page 1**

On Page 13 of 18 of the Administrative Report, AWS&SSC answered that they did NOT owe any penalties to the TCEQ. They also left the Enforcement Order Number blank.

I have already discussed this issue through email and phone calls with numerous TCEQ representatives. The TCEQ's response is that AWS&SSC did NOT have to state that they owe penalties to the TCEQ, because AWS&SSC completed paperwork over six months ago (October/November 2011) stating financial hardship. However, AWS&SSC was fined \$68,525 on October 13, 2011. The fine was later reduced, but only to approximately \$65,000. The fine has NOT been paid.

After a lengthy exchange of emails (and several phone calls) from the TCEQ regarding this matter, the final response from Jaya Zyman-Ponebshek of the TCEQ reads, *"As a follow-up, our legal department has checked with the appropriate sections in enforcement and came to the conclusion that Avalon currently does not owe fees or penalties to the TCEQ. However, there is an enforcement action pending against Avalon. As part of the action and negotiations to resolve the action, there is a penalty amount that is being discussed. Until an agreed order is signed by Avalon, the penalty amount will not take effect. Accordingly, Avalon is correct when it checked "no" to the questions in the application form whether it currently owe fees to the TCEQ or whether it currently owe penalties to the TCEQ. Additionally, if there is a question about whether an enforcement action is currently pending against Avalon, Avalon would be required to answer "yes" to that question."*

1. Does claiming financial hardship allow entities to incur violations, yet never have to pay the associated fines? Apparently not, according to a letter from Susan Johnson, Manager of the Enforcement Division of TCEQ. In a letter to AWS&SSC dated October 13, 2011, she states, *"Please be aware that if financial inability is proven to the satisfaction of staff, discussions pertaining to the penalty amount adjustment will focus only on deferral and not on waiver of the penalty amount."* Deferral, not waiver. They still owe the fine!
2. How long does it take the TCEQ to review financial inability documents? It would seem that ~~this needs to be a priority since AWS&SSC's permit expired on December 1, 2011 and they have submitted a Permit Amendment Application which is currently under review. If they cannot afford to pay the fine, then how can they afford the upgrades to the existing plant that they are detailed in the application?~~ The violations and fines from October 2011 need to be resolved prior to the approval of this Permit Amendment Application.
3. It should also be noted that AWS&SSC is still under enforcement from violations from March 2009. And, they were recently (April 2012) found in violation for damage on my property.

- n. Is/will the treated wastewater discharge to a city, county, or state highway right-of-way, or a flood control district drainage ditch? ☐ Yes ☒ No

If Yes, indicate by a check mark if:

- ☒ Authorization granted ☐ Authorization pending

(For new and amendments, provide copies of letters that show proof of contact and the approval letter upon receipt.)

- o. Is the facility located on or does the treated effluent cross American Indian Land?

☐ Yes ☒ No

**9. MISCELLANEOUS INFORMATION** (Instructions, Pages 30)

- a. List each person formerly employed by the TCEQ who represented your company and was paid for service regarding the application:

None

- b. Do you owe fees to the TCEQ? ☐ Yes ☒ No

If yes, please provide:

Account number: \_\_\_\_\_ Amount past due: \_\_\_\_\_

- c. Do you owe any penalties to the TCEQ? ☐ Yes ☒ No

If yes, please provide:

Enforcement order number \_\_\_\_\_ Amount past due \_\_\_\_\_

## FW: Avalon Water/Sewer Question

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**From:** Jaya Zyman-Ponebshek <jaya.zyman-ponebshek@tceq.texas.gov>  
**To:** Carol Gillespie  
**Cc:** Charles Maguire <charles.maguire@tceq.texas.gov>, Barbara Erickson <Barbara.Erickson@senate.state.tx.us>, Karen Smith <karen.smith@tceq.texas.gov>  
**Subject:** FW: Avalon Water/Sewer Question  
**Date:** Apr 9, 2012 3:47 PM

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Carol,

We spoke with the Enforcement Coordinator assigned to this case and we were told by him that Avalon has a proposed enforcement action pending against them due to being in violation of another agreed order. The proposed Docket No. is 2011-1488-MWD-E. Avalon has filed a financial inability to pay claim regarding the administrative proposal and the Revenues section is reviewing the inability to pay claim. We spoke with the team leader and were told that the action is still pending. Because it has not been finalized, we were not able to see fees owed in the database; therefore, we moved forward with the permit application.

Please let me know if you need anything else.

Jaya

-----Original Message-----

**From:** Jaya Zyman-Ponebshek  
**Sent:** Monday, April 09, 2012 11:58 AM  
**To:** Carol Gillespie  
**Cc:** Barbara Erickson; Charles Maguire; Karen Smith  
**Subject:** RE: Avalon Water/Sewer Question

Carol,

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It appears that you are correct, the applicant checked "no" to owing the TCEQ fees or penalties. When we review the applications, we check for delinquent/outstanding fees and if the Basis 2 Transaction Detail Report doesn't show the permittee to be delinquent or to owe any fees/penalties at the time that we check the database, we move the applications forward. We checked the database and couldn't find any fees or penalties owed by Avalon. One of our staff has a call into our Revenues section to see if they show fees owed, but we are waiting on a call back. I will get back to you as soon as I get a response back from Revenues.

Thanks

Jaya

-----Original Message-----

**From:** Charles Maguire  
**Sent:** Monday, April 09, 2012 9:42 AM



To: Carol Gillespie; Karen Smith  
Cc: Barbara Erickson; Jaya Zyman-Ponebshek  
Subject: RE: Avalon Water/Sewer Question

Carol

I have forwarded your message to my Assistant Division Director (Jaya Zyman-Ponebshek) here in the Water Quality Division. I have been reassigned to the Radioactive Materials Division as their new Director. Jaya will check on this for you.

Thank you  
Charles

-----Original Message-----

From: Carol Gillespie [mailto:caroldgillespie@earthlink.net]  
Sent: Monday, April 09, 2012 9:19 AM  
To: Charles Maguire; Karen Smith  
Cc: Barbara Erickson  
Subject: Avalon Water/Sewer Question

Mr. Maguire and Ms. Smith,

I was hoping one of you could answer a question for me. On the Permit Amendment Application on page 13, Avalon checked "No" that they do not owe any penalties to the TCEQ. They also left the enforcement order number blank. How could they leave this blank considering they were fined \$68,525 in October of 2011?

I realize this document is still under administrative review, but I am just trying to understand the process. This just does not seem correct to me.

AWS&SSC is either having their monthly meeting tonight or Thursday night. I'm not sure which. The notice states, "Thursday, April 9, 2012." Some people just can't seem to get anything right.

Thank you for your assistance,  
Carol Gillespie

Carol Gillespie  
caroldgillespie@earthlink.net  
214-536-1784

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**Comments Regarding Permit # WQ0013981001  
Avalon Water Supply and Sewer Service Corporation  
RE: Buffer Zones.**

**Page 1**

On Page 16 of 18 of the Administrative Report, AWS&SSC checks "Variance" under the question of how the buffer zone requirement be met. Yet, in their March 8, 2012 Regular Meeting, AWS&SSC announced that they were "taking" our land by eminent domain to satisfy buffer zone requirements. The President also stated they needed 500 to 800 feet of our land to satisfy buffer zones. Previously, it was stated 150 feet or 500 feet for buffer zones. I have attached documentation (Meeting Minutes) to prove that 500 to 800 was stated.

All discussion of the waste water plant is now held in Executive Session. I have no idea why the Board is "taking" my land under the pretense of needing it for restricted easements, yet asking the TCEQ for variances. In fact, I have not heard any updates about the waste water plant since early February.

I have filed several complaints with the Ellis County District Attorney regarding violations to the Texas Open Meeting Act by AWS&SSC, including what topics can be discussed in Closed Sessions. The Board is currently under investigation for these violations.

My family is at a big disadvantage since we are being kept from hearing the plans for the waste water plant. Our rights as landowners have been violated. Our rights as citizens have been violated. Laws have been broken. The TCEQ should not approve AWS&SSC's application until this matter is resolved.

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- e. As required by Texas Water Code §5.115, is any permanent school fund land affected by this application? ☐ Yes ☒ No

If yes, provide the location and foreseeable impacts and effects this application has on the land(s).

**2. BUFFER ZONE MAP** (Instructions, Page 84)

- a. Provide a buffer zone map on 8.5 x 11-inch paper. The applicant's property line and the buffer zone line may be distinguished by using different colors and appropriate labels. Indicate by a check mark that all the following information is included on the map.
- ☒ The applicant's property boundary
  - ☒ The required buffer zone
  - ☒ Each treatment unit
  - ☒ The distance from each treatment unit to the property boundaries

- b. How will the buffer zone requirement be met?

- ☐ Ownership
- ☐ Restrictive easement
- ☐ Nuisance odor control
- ☒ Variance

- c. Does the facility comply with the requirements regarding unsuitable site characteristic found in 30 TAC §309.13(a) through (d)?

- ☒ Yes ☐ No

**3. ORIGINAL PHOTOGRAPHS** (Instructions, Page 37)

Provide original ground level photographs. Indicate by checking that the following information is provided.

- ☐ At least one original photograph of the new or expanded treatment unit location
- ☐ At least two photographs of the existing/proposed point of discharge and as much area downstream (photo 1) and upstream (photo 2) as can be captured.
- ☐ If the discharge is to an open water body (e.g., lake, bay), the point of discharge should be in the right or left edge of each photograph showing the open water and with as much area on each respective side of the discharge as can be captured.
- ☐ At least one photograph of the existing/proposed effluent disposal site
- ☐ A plot plan or map showing the location and direction of each photograph

**Comments Regarding Permit # WQ0013981001  
Avalon Water Supply and Sewer Service Corporation  
RE: History of Facility.**

**Page 1**

Attachment 2 – Page 18 of 18 states that the original facility was built sometime during the 1950's. That is incorrect. Construction on the waste water plant was started in 1970 and completed in 1971. The land that the plant sits on belonged to the Gillespie family until September 1970. It was part of our pasture until then.

Prior to that time, all the homes in Avalon had septic tanks.

This is proof that AWS&SSC does not have good records, and the Board members do not know what they are doing or signing.

Why were the adjacent landowners including my family not notified "in 2001 when the oxidation ditch was abandoned as a treatment unit and the Avalon WSSC install a packaged treatment plant made by Hydroxyl Systems, Inc. and chlorine contact chamber? " This was a major change to the plant, and seems to be the turning point when the plant started having so many issues. We should have been notified.

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### History of Facility

The original facility was constructed sometime during the 1950's and consisted of two (2) oxidation ponds. In the mid 1970's the oxidation ponds were replaced by a an oxidation ditch with a single fixed aerator. In 2001 the oxidation ditch was abandoned as a treatment unit and the Avalon WSSC install a packaged treatment plant made by Hydroxyl Systems, Inc. and chlorine contact chamber.

Currently the oxidation ditch is serving as a equalization basin for the Hydroxyl Systems treatment plant. The Hydroxyl package plant (dissolved air floatation, fixed bed bioreactor, moving bed bioreactor, and two cone bottom clarifier tanks) has undergone some refurbishing under the direction of the new operator and is functioning at full capacity.



**Comments Regarding Permit # WQ0013981001**  
**Avalon Water Supply and Sewer Service Corporation**  
**RE: Sludge Disposal.**

**Page 1**

AWS&SSC states that the sludge will be hauled to the City of Italy waste water treatment plant. The permit also states that a written statement or contractual agreement is attached. However, I found no such agreement.

I would like to see the agreement. Residents of Italy are paying \$16 a month per household for sewer debt in addition to regular charges. They are concerned that taking in sludge from another facility on a regular basis will make their plant obsolete before it is paid for.

I have read the minutes from City Council Meetings in Italy and can find no record of this being approved.

This was not discussed in Open Session in the AWS&SSC's meetings. However, it was in the minutes. It must have been discussed in Executive Session.

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**5. FACILITY OPERATOR (Instructions, Page 41)**

Provide the name and operator certification number for the facility operator:

Dean Carrell - TX WW Op. B - WW0026733

**6. SEWAGE SLUDGE MANAGEMENT AND DISPOSAL (Instruction, Page 41)**

- a. Please check the current sludge disposal method or methods. More than one method can be checked.

Permitted landfill

Permitted or Registered land application site for beneficial use

Land application for beneficial use authorized in the wastewater permit

Marketing and distribution as authorized in the wastewater permit

Composting as authorized in the wastewater permit

Permitted surface disposal site (sludge monofill)

Surface disposal site (sludge monofill) authorized in the wastewater permit

- ✓ Transported to another permitted wastewater treatment plant or permitted sludge processing facility (a current statement or agreement is required, see the item below)

- ✓ Written statement/contractual agreement from the wastewater treatment plant or permitted sludge processing facility accepting the sludge is attached

Other method (provide description):

- b. Provide the following information for the sludge site:

Disposal site name: City of Italy WWTP

TCEQ Permit or Registration Number: RN102336310

County where the site is located: Ellis

- c. Provide the following:

Method of transportation (truck, train, pipe, other): Truck

Name of the hauler: Russell Brothers

Hauler Registration Number: TCEQ 23947

Transported in: ☒ liquid ☐ semi-liquid ☐ semi-solid ☐ solid state

Land application for: ☐ Reclamation ☐ Soil Conditioning

**7. PERMIT AUTHORIZATION FOR SEWAGE SLUDGE DISPOSAL (Instructions, Page 41)**

- a. Does the existing permit include authorization for land application of sewage sludge for beneficial use? ☐ Yes ☒ No

If yes, are you requesting to continue this authorization to land apply sewage sludge for beneficial use: ☐ Yes ☒ No

If yes, is the completed **APPLICATION FOR PERMIT FOR BENEFICIAL LAND USE OF SEWAGE SLUDGE (TCEQ Form No. 10451)** attached to this permit renewal application (see the instructions for details): ☐ Yes ☒ No

**Comments Regarding Permit # WQ0013981001**  
**Avalon Water Supply and Sewer Service Corporation**  
**RE: Technical Report.**

**Page 1**

Since I am not an engineer and do not understand how waste water plants operate, I am having difficulty understanding the Technical Report. A big part of this is the fact that AWS&SSC is not discussing any of the upgrades or changes to the plant in Open Session.

Since AWS&SSC is violating the Texas Open Meeting Act by not discussing anything concerning their application in Open Session, I believe the only fair solution is for the TCEQ to hold a public hearing on the application. The landowners deserve a chance to know what is going on. Our rights have been violated.

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Gillespie

P.O. Box 2049

Waxahachie, TX 75168



7010 3090 0003 2667 02A



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# **EXHIBIT D**



**COMMENTS TO  
DRAFT PERMIT #WQ0013981001  
APRIL 2013**

**LACK OF EASEMENT MAINTENANCE:**

This is an update to a comment with pictures that I sent to TCEQ on May 1, 2012. However, my original comment references a still outstanding issue and TCEQ has placed it under "Hearing Request" rather than as a comment.

Avalon Water Supply & Sewer Services Corporation (AWS&SSC) has a legal easement across our land for a pipeline to carry raw sewage (influent) 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 the easement. The leak had obviously been there some time, yet it had not been repaired. A three and a half to four foot deep hole had been created around one of the concrete pipe/manhole covers. A broken pipe was clearly visible at the bottom of the hole with raw sewage bubbling out of it. In addition, the concrete around that manhole cover and another one nearby were severely cracked.

The hole 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 it visible, the smell was overpowering even though the windows on my car were up. I was later surprised to read a TCEQ report written by Karen Smith that stated, "The operator of the system, Dean Carrell, was promptly notified and later reported no issues or sewer overflows were observed within 2 hours of being notified of the complaint." Only after I forwarded pictures to the TCEQ the next day was my complaint taken seriously.

All of AWS&SSC's influent pipes are on my family's property. AWS&SSC has a legal easement to go down our fence line with the pipes. We were very distressed to see that during the last annual inspection (January 31, 2013) that the collection system was not part of the inspection. This still open violation was referred to as "old." ***Why was the collection system not included in the annual inspection?***

This easement goes down the fence line of my pasture. The access to the pipes are sitting so high up, that I cannot mow the easement with a tractor and mower. My pasture is used for hay production at this time. However, I am unable to use this strip of land because the manhole covers sit so high up. 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 manhole covers. 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."

I believe that AWS&SSC has let the vegetation on the easement grow up so tall, so that neither I nor the TCEQ could view the condition of the collection system. The short-term repair that AWS&SSC made to the concrete around the manhole covers is already cracking. They simply poured Sakrete® on top of the old concrete.

The permit should be denied, or delayed, unless AWS&SSC replaces the pipes and concrete going across my property as ordered by the TCEQ, and clean up the easement where I can use it again.

**ENCROACHMENT ISSUE:**

This is an update to a comment that I sent to TCEQ on May 1, 2012. However, my original comment references a still outstanding issue and TCEQ has placed it under "Hearing Request" rather than as a comment.

AWS&SSC has been encroaching on our land for years. They have an unauthorized outfall pipe carrying effluent across our property to a small stream on my property. They do not have an easement or a lease for this access. This pipe is underground and we would not have known of its existence had the restrictive easement issue not come up.

Once the facts came out about AWS&SSC needing to have restrictive easements on our land, and promising them to TCEQ for years, I obtained copies of current and past permit applications. Apparently, AWS&SSC has needed the restrictive easements since 1998 but had not told our family. We only found out by attending a "special meeting" of the Board in September of 2011. I also completed my own search in the County Clerk's office of ALL easements ever obtained by AWS&SSC in its 40+ years of existence. AWS&SSC has no legal access to this property.

AWS&SSC has been fined for exceeding the allowed effluent limits. Yet, neither the TCEQ nor AWS&SSC informed us of this violation. And, it's on our land! I believe that TCEQ should have notified our family since the violation occurred on our land.

AWS&SSC needs to purchase this land or move their pipe prior to obtaining the new permit. If TCEQ grants the permit first, AWS&SSC will never resolve this issue. My family will not grant an easement because the existing easement that they have is not being maintained, and due to liability issues.

**Closed Meetings/Request Public Meeting.**

**This is an update to a comment that I sent to TCEQ on May 1, 2012. However, my original comment references a still outstanding issue and TCEQ has placed it under "Hearing Request" rather than as a comment.**

From March 2012 through December 2012, AWS&SSC held almost all discussions of their waste water plant and permit application process in closed session of their regular monthly meetings. These discussions were in violation of the Texas Open Meetings Act (TOMA). Even after being the subject of an investigation by the Ellis County District Attorney, the Board continued to violate the law. This is surprising, considering their attorney was present for almost every meeting. By their actions, the Board of AWS&SSC has denied members and affected land owners their right to know exactly what is happening with the waste water plant.

These violations of the law were meant to keep my family from knowing about the plant and the permit. We believe it was also to harass our family. From March through August my family owned two memberships in the AWS&SSC. As of August 2012, we own one membership. So, we are members as well as adjacent land owners.

If the Board was so willing to continue to violate the Texas Open Meetings Act and commit criminal acts, then they must have something to hide. The Board has lost all credibility with us. They cannot be trusted.

TCEQ will probably say that members and landowners can go to the library and read the application and draft permit. However, the application was a work-in-process and has been modified many times. And, we are not engineers and do not understand the technical aspects of the permit.

To resolve this, the TCEQ needs to schedule a meeting in the community to discuss the application/permit with members of the corporation and the affected landowners.

**Violation (167034) Not Resolved**

**This is an update to a comment that I sent to TCEQ on May 1, 2012. However, my original comment references a still outstanding issue and TCEQ has placed it under "Hearing Request" rather than as a comment.**

This violation has not been resolved, yet is now over a year old. I discovered a raw sewage leak on our property on April 10, 2012. TCEQ inspected and found that short-term repairs were needed immediately, and long-term repairs were necessary. Subsequent smoke tests indicated repairs were necessary in other areas of the 43 year old collection system which is comprised of clay tile pipes.

AWS&SSC recently (April 2013) sent letters to home owners with issues discovered on private property.

However, the short-term repairs completed last year to easement on my property are already failing. Sakrete® was poured over the crumbling concrete at the top of man holes. It is already cracked.

On February 19, 2013 I sent an email to Karen Smith at TCEQ in Ft. Worth asking for an update on the violation. On February 21, 2013 I received the following response, "I assume they are still trying to find the funds/grants to repair the WSC issues that were found, including the replacement of the line leading to the plant and upgrades to associated manholes. I have no idea how close they are in this effort to find funds and how the repair projects will be prioritized.

That's all I know so far. The region office will continue to track their progress during the rest of the year."

From her response, it doesn't seem the regional office is doing a very good job of tracking. And, why was it not inspected during the annual inspection on January 31, 2013? The report written by the inspector cites the violation as "old." It seems very unusual that TCEQ would allow a violation to become over a year old, and not take some type of action when no progress is being made. Why did it take AWS&SSC from April 2012 until December 2012 to submit the results of a smoke test that TCEQ ordered? Has AWS&SSC even applied for grants or loans to repair the system?

This needs to be resolved **before** AWS&SSC's permit is issued. Otherwise, it will never be completed. Avalon will continue to state that they have no money for repairs. If they are fined by TCEQ, the fine will be deferred due to financial hardship.

**Proposed Increase of Daily Average Flow Limit from 25,000 to 40,000 gallons.**

This is an update to a comment that I sent to TCEQ on May 1, 2012. However, my original comment references a still outstanding issue and TCEQ has placed it under "Hearing Request" rather than as a comment.

AWS&SSC has applied to increase the Daily Average Flow limit from 25,000 gallons to 40,000 gallons. This is a 62% increase for a system with only 92 subscribers. As adjacent landowners, my family is very concerned with this proposed increase. AWS&SSC has an outfall pipe going across our property illegally. The pipe dumps effluent into a small stream on our property. ***Have tests been run to see if the stream can handle this increase? Will the stream overflow onto our property if the maximum is reached?*** We use our land to grow cotton, wheat, sunflowers, soybeans, and corn. Four of these crops are for human consumption.

AWS&SSC has been found in violation for exceeding effluent limits, but they have never reached anywhere near 40,000 gallons. ***Why such a large increase?*** The community has shown no measurable growth since the plant was first established in 1970. Less than a dozen new houses have been built. Most of those were built on land, or next to land, where another house had been torn down to make room for the new house. Several homes have been demolished and will not be re-built, including three

for expansion of the school and one next to the fire station. One church has been demolished, leaving only two in the community. Several houses are vacant.

Several businesses in the community have closed or have reduced business since 1970. The post office now has only one employee and the hours have recently been cut in half. In 1970, Avalon had both a grocery store and a gas station. There is no longer a gas station or a grocery store. There is a business on the property of the former gas station, but I believe it is a small store/eating establishment with not near the business that there was in 1970. The barber shop has closed. The farm store has closed.

Since 1970 Avalon welcomed three new businesses. The landfill once did a huge business, but no longer does. Rumor is that it will be completely closed before long. Coal City Cob moved to Waxahachie several years ago. Of the three, only PSC remains open.

The only real growth for the community of Avalon has been the school system. With an enrollment of approximately 325, there are twice as many students in school today that there were in 1970. However, a large portion of these are transfer students from other areas. Without building additional facilities and hiring more teachers, that growth has leveled off.

TCEQ inspectors in a document dated April 11, 2012 cite "storm water inflow and infiltration (I&I) which inundates the collection and treatment systems during period of heavy rainfall." However, the community of Avalon, like most of North Texas, has been under extreme drought conditions during most of the past few years.

More than likely the increase in Average Daily Flow causing AWS&SSC to exceed their 25,000 gallon per day limit, was the cause of improper use of the plant, neglect of the facility, and lack of maintenance. In a memo to Karen Smith at the TCEQ on January 13, 2012, Dean Carrell (consultant to ASW&SSC) states, "After cleaning the plant and running tests, the(sic) discovered the flow is now below the maximum levels allowed."

Another factor in increasing the Average Daily Flow is the aging collection system. AWS&SSC is already in violation concerning the collection system. It is made up of 40+ year old clay tile pipes. Twenty plus problem locations with multiple issues were found during the last smoke test. Some were on private property, and others belong to AWS&SSC. A portion of this is the easement on my family's land. In fact, all influent lines run across my family's property. AWS&SSC does not have the financial means to repair the system. If the collection system is having issues now, it cannot handle an increased flow of 62%!

AWS&SSC's new permit will be backdated to when their last permit expired – December 1, 2011. The new permit will expire on December 1, 2016. If the community of Avalon has shown no appreciable growth in the last 43 years, there will more than likely be none in the next 3 years. There is no need for a 62% increase in the Daily Average Flow. Perhaps a small increase can be made, with close supervision



by TCEQ to make sure that there are no issues. If none, then perhaps another small increase can be revisited at the time of the next renewal.

To increase the Daily Average Flow by 62% would be to just simply increase the limit so that AWS&SSC will never be in violation again. In other words, just increase the limit so it is never exceeded again. Is that really what TCEQ needs to do?

#### **Trespassing by TCEQ.**

AWS&SSC's outfall line is on our property. This underground outfall pipe carries effluent to a small stream on our property. AWS&SSC has no legal permission to be on our land. There is no lease or no easement. In February 2012, my sister and I met with Greg Diehl and Karen Smith at the TCEQ office in Ft. Worth. We informed them that the outfall line was on our property. They showed no concern. Mr. Diehl said that this happens all the time. Some "old codger" will give permission, he dies, and then his heirs try to contest it but it's been too long.

During the January 31, 2013 inspection, the TCEQ inspector trespassed on my property. I had given prior written notice to TCEQ that I was to be notified in advance of any need to go on my property due to liability issues. In response, I was told that the inspector would not be going on my property during the inspection. However, the report that I received states that the inspector did go on our property and so did Dean Carrell, consultant for AWS&SSC.

When I inquired why I was told that the inspector would not go on my property, and then he did, I was answered with a very rude response from TCEQ indicating that the entity does not care about private property rights. Really?

Entering private property without permission is against TCEQ policy and trespassing is against the law. This needs to be resolved before AWS&SSC is given their permit.

#### **Dishonest, Unethical, and Illegal Behavior.**

In October 2010 our family was approached by AWS&SSC. The President wanted land for a new waste water plant, and stated that they needed land adjoining the current plant. We turned her down stating that we had a 15 acre pasture in 1970 before being forced to sell almost 4 acres to them for the current plant. If we lost another 4 acres, we would not have enough land left for a profitable business venture.

Our other concern was the fact that AWS&SSC admitted to us that they didn't have any money. This is the same issue that came up in 1970 when our father sold land for the original plant. The community pressured him for months to "donate" the land. In fact, this is the third time in my lifetime that members of the community have threatened my family's land with eminent domain. All three times, it was expected that the land be a gift.