

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 15, 2008

**TO: Persons on Attached Mailing List**

**RE: Docket No. 2008-0772-WR  
City of Waco  
Hearing Requests filed on City of Waco  
Permit No. WRPERM 5840**

This letter is being sent due to an error regarding the enclosed protestant correspondence in the agenda setting letter dated October 14, 2008. Enclosed are the correct hearing request letters and hearing request withdrawal letter that were received in the Office of Chief Clerk for the City of Waco; Permit No. WRPERM 5840. All other information in the October 14, 2008 letter remains the same, including the agenda date of November 19, 2008 at 9:30 a.m.

I apologize for any inconvenience this may have caused. If you have any questions, please do not hesitate to contact me or Melissa Chao at (512) 239-3300.

Sincerely,

  
LaDonna Castañuela, Chief Clerk

**MAILING LIST  
CITY OF WACO  
DOCKET NO. 2008-0772-WR; PERMIT NO. WRPERM 5840**

FOR THE APPLICANT:

Monica Jacobs  
Kelly Hart & Hallman  
301 Congress Ave. Suite 2000  
Austin, Texas 78701  
Tel: (512) 495-6400  
Fax: (512) 495-6401

FOR THE EXECUTIVE DIRECTOR:

Todd Galiga, Senior Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512) 239-0606

Craig A. Mikes, Technical Staff  
Texas Commission on Environmental Quality  
Water Supply Division, MC- 160  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-5049  
Fax: (512) 239-2214

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE

RESOLUTION:

Mr. Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4010  
Fax: (512) 239-4015

## REQUIREMENTS FOR WATER RIGHTS HEARING REQUESTS

Commission Rules in 30 TAC Section 55.251 (b) and (c) require a hearing request to:

- (1) be in writing and be filed with the Office of the Chief Clerk during the public comment period;
- (2) give the name, address, and daytime telephone number of the person who files the request;
- (3) identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public; and
- (4) request a contested case hearing.

A hearing request must comply with requirement (1) above and "substantially comply" with requirements (2) through (4). In addition, a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right,
- (2) the interests the group or association seeks to protect are germane to the organization's purpose,
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

A request for a contested case hearing must be granted if the request is made by an affected person and the request: (A) complies with the requirements of 30 TAC Section 55.251; (B) is timely filed; and (C) is pursuant to a right to hearing authorized by law.

An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to the general public does not constitute a justiciable interest. To determine whether a person is an affected person, all relevant factors must be considered, including but not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; and
- (5) the likely impact of the regulated activity on the use of the impacted natural resource by the person.

30 TAC Section 55.256(c).

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 14, 2008

**TO: Persons on Attached Mailing List**

**RE: Docket No. 2008-0772-WR  
City of Waco  
Hearing Requests filed on City of Waco, Water Rights  
Permit No. WRPERM 5840**

The above-referenced application and all timely filed hearing requests filed on the application will be considered by the Commissioners of the Texas Commission on Environmental Quality during the public meeting on **November 19, 2008**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas.

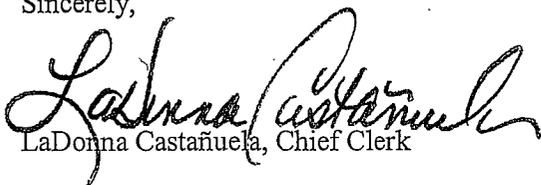
In accordance with Commission rules, copies of the hearing request(s) have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. They may file written responses to these hearing requests on or before 5:00 p.m. on **October 27, 2008**. Persons who filed hearing requests (hearing requesters) may file a written reply to responses on or before 5:00 p.m. on **November 10, 2008**. All responses and replies must be filed with the Chief Clerk of the TCEQ, and sent on the same day to all individuals on the attached mailing list. The address of the Chief Clerk's Office is: Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 (Fax 512/239-3311). The procedures for evaluating hearing requests and for filing responses and replies are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter G (Sections 55.250-55.256) and 30 TAC Sections 1.10-1.11.

The Commissioners will not take oral argument or additional public comment on this matter, but may wish to ask questions of the applicant, hearing requesters or staff. The Commissioners will make their decision based on the hearing requests, written responses to the hearing requests, any written replies to those responses, and any response to questions.

Copies of all public comment and hearing requests have also been referred to the Alternative Dispute Resolution Office, where they will be evaluated to determine if informal, voluntary mediation might help resolve any dispute.

Individual members of the public may seek further information concerning the application, public participation, the processing of hearing requests, copies of Commission rules, or the attachment, by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,

  
LaDonna Castañuela, Chief Clerk

**MAILING LIST  
CITY OF WACO  
DOCKET NO. 2008-0772-WR; PERMIT NO. WRPERM 5840**

FOR THE APPLICANT:

Monica Jacobs  
Kelly Hart & Hallman  
301 Congress Ave. Suite 2000  
Austin, Texas 78701  
Tel: (512) 495-6400  
Fax: (512) 495-6401

FOR THE EXECUTIVE DIRECTOR:

Todd Galiga, Senior Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512) 239-0606

Craig A. Mikes, Technical Staff  
Texas Commission on Environmental Quality  
Water Supply Division, MC- 160  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-5049  
Fax: (512) 239-2214

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-6363  
Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE  
RESOLUTION:

Mr. Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4010  
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

REQUESTERS:

Donald McArthur, Vice President of  
Environmental Affairs  
NRG Texas Power L.L.C.  
P.O. Box 4710  
Houston, Texas 77210-4710

Steve Morton  
Moltz, Morton, O'Toole L.L.C.  
106 E. 6<sup>th</sup> St. The Littlefield Bldg. Ste. 700  
Austin, Texas 78701-3659

WITHDRAW OF REQUEST:

Lawrence L. Bellatti  
Andrews Kurth L.L.P.  
600 Travis St. Ste. 4200  
Houston, Texas 77002-3009

## REQUIREMENTS FOR WATER RIGHTS HEARING REQUESTS

Commission Rules in 30 TAC Section 55.251 (b) and (c) require a hearing request to:

- (1) be in writing and be filed with the Office of the Chief Clerk during the public comment period;
- (2) give the name, address, and daytime telephone number of the person who files the request;
- (3) identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public; and
- (4) request a contested case hearing.

A hearing request must comply with requirement (1) above and "substantially comply" with requirements (2) through (4). In addition, a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right,
- (2) the interests the group or association seeks to protect are germane to the organization's purpose,
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

A request for a contested case hearing must be granted if the request is made by an affected person and the request: (A) complies with the requirements of 30 TAC Section 55.251; (B) is timely filed; and (C) is pursuant to a right to hearing authorized by law.

An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to the general public does not constitute a justiciable interest. To determine whether a person is an affected person, all relevant factors must be considered, including but not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) the likely impact of the regulated activity on the health, safety, and use of property of the person; and
- (5) the likely impact of the regulated activity on the use of the impacted natural resource by the person.

30 TAC Section 55.256(c).