

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

July 22, 2009

TO: Persons on Attached Mailing List

**RE: Docket No. 2009-0168-WR
Lower Neches Valley Authority
Hearing Requests filed on Permit No. ADJ 4411F**

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 **August 26, 2009**. 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 **August 3, 2009**. Persons who filed hearing requests (hearing requesters) may file a written reply to responses on or before 5:00 p.m. on **August 17, 2009**. 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,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela, Chief Clerk

MAILING LIST
LOWER NECHES VALLEY AUTHORITY
DOCKET NO. 2009-0168-WR; PERMIT NO. ADJ 4411F

FOR THE APPLICANT:

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FOR OFFICE OF PUBLIC ASSISTANCE:

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Texas Commission on Environmental Quality
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Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE
RESOLUTION:

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

FOR THE CHIEF CLERK:

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Tel: (512) 239-3300
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Please see attached for complete list of requesters and commenters.

REQUESTER(S)

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PO BOX 1870
JACKSONVILLE TX 75766-1870

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NACOGDOCHES COUNTY
101 W MAIN ST STE 170
NACOGDOCHES TX 75961-4807

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WITHDRAW OF REQUEST(S)

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WHITEHOUSE TX 75791-0776

INTERESTED PERSON(S)

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8500 BLUFFSTONE CV STE B104
AUSTIN TX 78759-7811

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

April 13, 2009

To: Persons on the attached mailing list (By mail and facsimile as indicated)

Re: Application of Lower Neches Valley Authority to amend Permit No. 4411F; TCEQ Docket No. 2009-0168-WR.

The above-named matter is scheduled to be considered by the Texas Commission on Environmental Quality at its May 6, 2009 public meeting. On April 9, 2009, the Lower Neches Valley Authority (Applicant or LNVA) requested that this matter be continued until June of 2009. The request states that the City of Lufkin (Lufkin) holds a portion of Permit No. 4411, has also filed an application to amend its portion of the Permit to make the exact same changes as LNVA has requested, that the exact same requesters have protested both permits, and that Lufkin and LNVA therefore desire that the two applications be considered simultaneously. The request states that LNVA has discussed the continuance with the Office of Public Interest Counsel, who supports the request, and with the Executive Director, who does not oppose it. The request confirms that Lufkin supports the request because of its desire for the two applications to be considered simultaneously.

Accordingly, this matter is hereby continued to a future agenda, to be determined. At such time as this matter is set on a future agenda, a separate letter will be sent notifying the parties of the agenda date, and setting forth the new briefing deadlines associated with the matter.

If you have any questions about this matter, please contact Anne Rowland, Assistant General Counsel, at 512/239-6376.

Very truly yours,

A handwritten signature in black ink, appearing to read "Les Trobman".

Les Trobman
General Counsel

Mailing List

Mailing List
Lower Neches Valley Authority
TCEQ Docket No. 2009-0168-WR

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Cherokee County
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Kyle Lucas
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Vinson & Elkins

Molly Cagle mcagle@velaw.com
Tel 512.542.8552 Fax 512.236.3280

April 9, 2009

Via Facsimile 512.239.3311
& Hand-Delivery 4/10/2009

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

Re: TCEQ Docket No. 2009-0168-WR
Application of Lower Neches Valley Authority, Jefferson County, Texas

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 APR -9 PM 4:40
CHIEF CLERKS OFFICE

Dear Ms. Castañuela:

Enclosed please find an original and 7 copies of Applicant's Motion for Continuance, along with an extra copy to be file-marked for our records.

Sincerely,


Molly Cagle

Enclosure(s)

cc: Celeste Baker
TCEQ General Counsel's Office

TCEQ DOCKET NO. 2009-0168-WR

**APPLICATION BY
LOWER NECHES VALLEY
AUTHORITY
JEFFERSON COUNTY, TEXAS**

§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

CHIEF CLERKS OFFICE

2009 APR -9 PM 4: 40

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

APPLICANT'S MOTION FOR CONTINUANCE

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

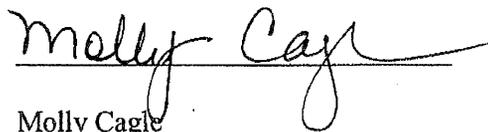
The Lower Neches Valley Authority ("LNVA") has filed with the Texas Commission on Environmental Quality ("TCEQ") and application to amend Permit No. 4411F (TCEQ Docket No. 2009-0168-WR), its water right permit. Several entities protested that application. Presently, the protestants' requests for hearing are set to be considered by the Commission on May 6, 2009. For the reasons discussed below, LNVA requests that its agenda setting and the briefing on the requests for a contested case hearing be delayed slightly.

The City of Lufkin ("Lufkin") holds a portion of Permit No. 4411. It too has filed an application to amend its portion of Permit No 4411, seeking the exact same changes to its permit as LNVA. Its pending application has drawn hearing requests from a subset of the exact same entities that seek a hearing on LNVA's application. Lufkin's draft permit amendment was issued today, April 9, 2009. As such, within the next few months, Lufkin's identical hearing requests will be set for consideration by the Commission. Lufkin and LNVA representatives desire that the State consider their applications simultaneously. Doing so will prevent duplicative briefing and save the Commission's resources as well of those of each party and each protestant and interested person.

Accordingly, LNVA requests that consideration of the requests for a contested case hearing on its pending application to amend Permit No. 4411F be continued until June, 2009. A June setting would provide ample time for the required 35-day notice on the Lufkin application (See 30 Tex. Admin. Code § 55.254(d)). In addition, LNVA requests that the deadlines for filing briefs under 30 Tex. Admin. Code § 55.254(e)-(f), regarding the requests for contested case hearing, be correspondingly continued so that LNVA and Lufkin, as well as the Office of Public Interest Counsel, the Executive Director and various protestants, can consolidate briefing.

LNVA has discussed this request for continuance with the Office of Public Interest Counsel, who supports this request, and the Executive Director, who has no objection to this request for continuance. As Lufkin desires that the State consider the two applications simultaneously, it also supports this motion for continuance.

Respectfully submitted,



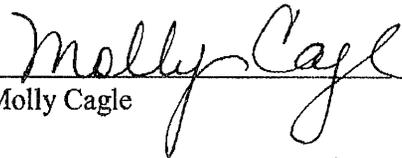
Molly Cagle
 State Bar No. 03591800
 VINSON & ELKINS LLP
 2801 Via Fortuna, Suite 100
 Austin, Texas 78746
 Telephone: 512.542.8552
 Facsimile: 512.236.3280

Attorney for Lower Neches Valley Authority

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2009, a true and correct copy of the foregoing document was filed with the Texas Commission on Environmental Quality Chief Clerk's Office, Austin, Texas; and, I further certify that on the same date a true and correct copy of foregoing document was hand-delivered, regular/electronically mailed and/or faxed to the following parties:

All Parties on the Attached Mailing List


Molly Cagle

MAILING LIST
LOWER NECHES VALLEY AUTHORITY DOCKET NO.
2009-0168-WR; PERMIT NO. ADJ 4411F

FOR THE EXECUTIVE DIRECTOR:

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FOR ALTERNATIVE DISPUTE
RESOLUTION:

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FOR THE CHIEF CLERK:

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101 W. Main St. Ste. 170
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INTERESTED PERSON(S):

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Austin, Texas 78759-7811

Vinson & Elkins

Facsimile

FAX FILING

From:	Date:	Client/Matter No.
Molly Cagle	April 9, 2009	LOW320.81001
Regarding:	Number of Pages	Hard Copy Follows
TCEQ Docket No. 2009-0168-WR Applicant's Request for Continuance	1	As noted below
To:	Fax:	Phone:
La Donna Castañuela TCEQ Chief Clerk	512.239.3311 & <i>Via Hand-Delivery 4/10/2009</i>	512.239.3300
William Todd Galiga TCEQ Senior Attorney	512.239.0606	512.239.0600
Iliana Delgado TCEQ Team Leader	512.239.2214	512.239.3678
Esteban Ramos TCEQ Technical Staff	512.239.2214	512.239.6538
Blas Coy TCEQ Public Interest Counsel	512.239.6377	512.239.6363
Bridget Bohac TCEQ Office of Public Assistance Director	512.239.4007	512.239.4000
Kyle Lucas TCEQ Alternative Dispute Resolution	512.239.4015	512.239.4010
Celeste Baker TCEQ General Counsel's Office	512.239.5533	512.239.5527

Confidentiality Notice: The information contained in this FAX may be confidential and/or privileged. This FAX is intended to be reviewed initially by only the individual named above. If the reader of this TRANSMITTAL PAGE is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this FAX or the information contained herein is prohibited. If you have received this FAX in error, please immediately notify the sender by telephone and return this FAX to the sender at the below address. Thank you.

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

April 1, 2009

TO: Persons on Attached Mailing List

RE: Docket No. 2009-0168-WR
Lower Neches Valley Authority
Hearing Requests filed on Water Rights
Permit No. ADJ 4411F

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 **May 6, 2009**. 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 **April 13, 2009**. Persons who filed hearing requests (hearing requesters) may file a written reply to responses on or before 5:00 p.m. on **April 27, 2009**. 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 Castanuela, Chief Clerk

MAILING LIST
LOWER NECHES VALLEY AUTHORITY
DOCKET NO. 2009-0168-WR; PERMIT NO. ADJ 4411F

FOR THE APPLICANT:

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Robert Stroder, PE
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FOR ALTERNATIVE DISPUTE
RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
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FOR THE CHIEF CLERK:

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REQUESTER(S):

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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).