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 2, 2009

TO: Persons on Attached Mailing List

RE: Docket No. 2009-0680-AGR
Cottonwood Auction Barn, LLC
Requests filed regarding WQ0004136000

The above-referenced application and all timely filed hearing requests/requests for reconsideration on the above-referenced application will be considered by the commissioners of the Texas Commission on Environmental Quality (TCEQ) during the public meeting on **August 12, 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 timely hearing requests/requests for reconsideration have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. Each of these persons is entitled to file a formal written response to the hearing requests/requests for reconsideration on or before 5:00 p.m. on **July 14, 2009**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses on or before 5:00 p.m. on **July 28, 2009**.

An original and 7 copies of any response or reply must be filed with the Chief Clerk of the TCEQ. The address of the Chief Clerk is: Office of Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087 [Fax number (512) 239-3311]. On the same day any response is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, the Applicant and the requesters at their addresses listed on the attached mailing list. On the same day any reply is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, and other requesters and the applicant at their addresses listed on the attached mailing list.

The procedures for evaluating hearing requests/requests for reconsideration are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F (§§55.200-211) of the commission's rules. The procedures for the filing of responses and replies are located in 30 TAC Chapters 1 (§§1.10-11) and 55 (§55.209) of the commission's rules. Copies of these rules may be obtained by calling the Office of Public Assistance toll free at 1-800-687-4040.

printed on recycled paper using soy-based ink

The commissioners will not take oral argument or additional comment on this matter at the public meeting. Therefore, it is important to address the sufficiency of the requests in timely filed written responses and requesters' replies. At the public meeting, the commissioners may ask questions of the applicant, requesters, or TCEQ staff. The commissioners will make a decision on the request(s) during the meeting and will base that decision on the timely written requests, public comments, any written responses and replies, any responses to questions during the meeting, and applicable statutes and rules. Copies of all timely public comments and requests have been forwarded to the Office of Alternative Dispute Resolution to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand how the TCEQ processes and evaluates hearing requests and requests for reconsideration. To obtain additional information, or to ask questions about anything in this letter, please call the TCEQ's Office of Public Assistance toll-free at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk

Enclosures: Copies of protestant correspondence to Applicant, Executive Director, Office of Public Interest Counsel, Office of Public Assistance and Alternative Dispute Resolution.

ATTACHMENT

Procedures Concerning Requests for Reconsideration and Requests for Contested Case Hearing

The purpose of this document is to describe commission procedures for evaluating requests for reconsideration and requests for contested case hearing. This document is not intended to be a comprehensive guide to public participation at the TCEQ.

The three commissioners determine the validity of requests for reconsideration and requests for contested case hearing and vote to grant or deny the requests during a public meeting. These public meetings are usually held every other Wednesday in Austin. Prior to the meeting, the following occurs:

1) the written requests are distributed to the executive director, the public interest counsel, and the applicant. These persons may file a response at least 23 days before the meeting;
2) the requester may then file a reply to the responses at least 9 days before the meeting. This is the requester's opportunity to address any deficiencies in the request that have been identified by TCEQ staff or the applicant. The requester must submit any information he or she wishes the commissioners to consider (ex: maps or diagrams showing requester's location relative to the applicant's proposed activities) by this deadline; and
3) the commissioners read the requests, the responses to requests, and the replies, before the public meeting. Then, during the public meeting, the commissioners vote to grant or deny the requests.

Requests for Reconsideration

A request for reconsideration must expressly state that the person is requesting that the commission reconsider the executive director's decision and state the reasons why the commission should reconsider the executive director's decision. The commission will consider a request for reconsideration at a scheduled public meeting and grant or deny the request.

Requests for Contested Case Hearing

A contested case hearing is an evidentiary proceeding, similar to a hearing in civil court. The law allows for holding a contested case hearing on certain types of applications.

A valid request for a contested case hearing must:

1) demonstrate that the requester is an "affected person" with a "personal justiciable interest" related to a legal right, duty, privilege, power or economic interest which would be affected by the application in a manner not common to the general public;
2) if the request is made by a group or association, identify one or more members who have standing to request a hearing, and the interests the group or association seeks to protect;

3) expressly request a contested case hearing;
4) raise disputed issues of fact that are relevant and material to the commission's decision on the application which were raised during the comment period and not withdrawn prior to the filing of the Executive Director's Response to Comment; and
5) include any other information as specified in public notices.

The commission is authorized to protect human health and safety, and natural resources. The commission cannot address other matters outside the commission's authority, such as the effect of the existence of a proposed facility on nearby property values.

When the commissioners deny hearing requests, they often proceed to vote on approval or denial of the application. Alternatively, they may remand the application to the executive director for final action. If a hearing request is granted and the application is referred to the State Office of Administrative Hearings (SOAH), the commissioners will specify a list of issues which will be the subject of the hearing and an expected date for the SOAH judge's proposal for decision. The SOAH judge will conduct the hearing and submit a proposal to the commission to approve or deny the application.

The Alternative Dispute Resolution Office may contact requesters to determine their interest in informal discussions with the permit applicant and a mediator.

By necessity this document gives a very general description of commission procedures. If you have any questions, please call OPA toll-free at 1-800-687-4040.

MAILING LIST
COTTONWOOD AUCTION BARN, LLC
DOCKET NO. 2009-0680-AGR; PERMIT NO. WQ0004136000

FOR THE APPLICANT:
Larry Gibson
Cottonwood Auction Barn, LLC
9862 E. State Highway 6
Dublin, Texas 76446-5327

J. Baker
Lowther Consulting, Inc.
P.O. Box 78
Dublin, Texas 76446-0078
Tel: (713) 923-2014

Michael Martin
580-D W. Lingleville Road
Stephenville, Texas 76401

FOR THE EXECUTIVE DIRECTOR:
Alicia Lee, Staff 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

Jamie Saladiner, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division, MC-150
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-5021
Fax: (512) 239-4430

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 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 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

REQUESTER(S):
Eric Allmon
Lowerre Frederick Perales Allmon & Rockwell
707 Rio Grande Street, Suite 200
Austin, Texas 78701

INTERESTED PERSON(S):
Thomas J. Cloud, Jr.
Field Supervisor
U.S. Fish & Wildlife Service
711 Stadium Drive, Ste. 252
Arlington, Texas 76011-6247

Martin Rochelle
Lloyd Gosselink Blevins Rochelle & Townsend, P.C.
816 Congress Ave., Ste. 1900
Austin, Texas 78701