

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 14, 2009

**TO: Persons on the Attached Mailing List**

**RE: Docket No. 2009-1970-MWD  
City of Vernon  
Request(s) filed on Permit No. WQ0004868000**

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 **January 27, 2010**. 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 **December 30, 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 **January 15, 2010**.

All responses and replies must be filed with the Chief Clerk of the TCEQ. Responses and replies may be filed with the Chief Clerk electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and 7 copies with the Chief Clerk of the TCEQ. The mailing 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 filing and serving responses and replies are located in 30 TAC Chapters 1 (§§1.10-11) and 55 (§55.209) of the commission's rules. The hardcopy filing requirement is waived by the General Counsel pursuant to 30 TAC §1.10(h). Copies of these rules may be obtained by calling the Office of Public Assistance toll free at 1-800-687-4040.

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,

A handwritten signature in cursive script, reading "LaDonna Castañuela".

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  
CITY OF VERNON  
DOCKET NO. 2009-1970-MWD; PERMIT NO. WQ0004868000**

FOR THE APPLICANT:

Mitch Grant  
City of Vernon  
1725 Wilbarger Street  
Vernon, Texas 76384-4741  
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Dwight Brandt  
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FOR THE EXECUTIVE DIRECTOR:

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Environmental Law Division, MC-173  
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FOR PUBLIC INTEREST COUNSEL:

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Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
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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

***See attached list of Requesters/Interested  
Persons.***

**REQUESTER(S)**

KEN & LISA ADERHOLT  
10016 CR 123 N  
OKLAUNION TX 76373

ISMAEL & MARY ANN CORTEZ  
3027 MORTON ST  
VERNON TX 76384-4265

TOMMY & TRICIA ALANIZ  
12675 FM 1763 E  
VERNON TX 76384

CAROLYN & JAMES KOONTZ  
14627 FM 1763 E  
OKLAUNION TX 76373-3505

BUFFY & MALCOLM BORGER  
PO BOX 176  
DICKENS TX 79229-0176

DANE MOUNT  
PO BOX 1826  
VERNON TX 76385-1826

ANDY BRUMLEY  
9427 COUNTY ROAD 99 S  
VERNON TX 76384-8020

JAY H PIERCE  
8354 FM 1763 E  
VERNON TX 76384-9015

LON BYARS  
2304 HILLTOP DR  
VERNON TX 76384-4927

LUIS & MARY RANGEL  
2325 MAIN ST  
VERNON TX 76384-8157

GLORIA & JOSE L CARDENAS  
15209 US HIGHWAY 70 N  
OKLAUNION TX 76373-3526

TERRY WEAVER  
7677 FM 1763 E  
VERNON TX 76384-9056

JOSE L CARDENAS  
15209 US HIGHWAY 70 N  
OKLAUNION TX 76373-3526

EDNA & ELTON ZOCH  
17611 COUNTY ROAD 126 E  
HARROLD TX 76364-2017

LEE CASTLEBERRY  
7591 FM 1763 E  
VERNON TX 76384-9057

**INTERESTED PERSON(S)**

RUSSELL BROWNLOW  
2003 BISMARCK ST  
VERNON TX 76384-6129

MARY CASTLEBERRY  
7591 FM 1763 E  
VERNON TX 76384-9057

SHERI BRUMLEY  
9427 COUNTY ROAD 99 S  
VERNON TX 76384-8020

SHANE CASTLEBERRY  
2629 FANNIN ST  
VERNON TX 76384-6841

RUDY CARDONA  
4207 YAMPARIKA ST  
VERNON TX 76384-4952

TOBY CASTLEBERRY  
2600 MANSARD ST  
VERNON TX 76384-6033

JIMMY DENNIS  
CITY COMMISSIONER, CITY OF VERNON  
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VERNON TX 76384-5810

BOBBY & MARTHA DILLINGHAM  
2805 BISMARCK ST  
VERNON TX 76384-5960

LINDA SHIVERS  
2501 SUMMEROUR RD  
VERNON TX 76384-7112

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8919 COUNTY ROAD 107 N  
VERNON TX 76384-9003

MRS WALTER SMITH  
2617 HIGHLAND PARK DR  
VERNON TX 76384-6716

CLYDE HARLIN  
PO BOX 342  
DAVIDSON OK 73530-0342

JIM B SPEARS  
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VERNON TX 76384-6001

ANNETTE HATLEY  
2812 MONTGOMERY CIR  
VERNON TX 76384-6719

TRACY TAYLOR  
2401 CRESCENT DR  
VERNON TX 76384-4908

MIKE HERCHMAN  
PO BOX 1975  
VERNON TX 76385-1975

TOMMY WEAVER  
7797 FM 1763 E  
VERNON TX 76384-9055

KURT LEMON  
9891 FM 1763 N  
OKLAUNION TX 76373

DON & PATSY WILSON  
2220 TEXAS ST  
VERNON TX 76384-7735

RICKEY MARSHALL  
PO BOX 396  
DAVIDSON OK 73530-0396

RICHARD & SARA MCDUFF  
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VERNON TX 76384-8004

ANDREW PENNINGTON  
3709 BUFFALO ST  
VERNON TX 76384-3269

RUSTY RIDDLE  
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KARYL SCHWARZ  
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