

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 10, 2013

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

Re: In the matter concerning the application by New Way Land Development, LLC for new TPDES Permit No. WQ0015058001; TCEQ Docket No. 2013-1036-MWD.

The above-referenced matter is scheduled to be considered by the Texas Commission on Environmental Quality (Commission) at its December 11, 2013 public meeting. However, on December 10, 2013, Abe Salinas, P.E., on behalf of New Way Land Development, LLC (Applicant) and with the agreement of the Allens and the City of Cotulla (Requestors), filed a request for an indefinite abatement of this matter. Mr. Salinas states that a settlement between the Applicant and the Requestors is highly likely and requests additional time to finalize this settlement.

In light of the Applicant's request and likelihood of settlement, and learning that there is no opposition to this request from the Requestors and the attorneys who represent the Office of Public Interest Counsel and the Executive Director, I have determined to grant the request in the form of a continuance. Accordingly, this matter is hereby continued to the Commission's public meeting set for **Wednesday, January 15, 2014** beginning at **9:30 A.M.**, pursuant to the Commission's Resolution issued on February 2, 2009 in Docket No. 2009-0059-RES. The meeting will take place in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

If you have any questions about this matter, please contact Gregory S. Merrell, Assistant General Counsel, at 512/239-0669.

Respectfully,

A handwritten signature in cursive script that reads "Anne Idsal".

Anne Idsal
General Counsel

Mailing List

Mailing List
New Way Land Development, LLC
TCEQ Docket No. 2013-1036-MWD

Hector Castaneda, EIT
LNV Engineering
801 Navigation Boulevard, Suite 300
Corpus Christi, Texas 78408
361/883-1984 FAX 361/883-1986

Blas Coy
TCEQ Office of Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377

Abe Salinas, P.E.
Project Engineer
LNV Engineering
8918 Tesoro Drive, Suite 401
San Antonio, Texas 78217
210/822-2232 FAX 210/822-4032

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

Betty Martin
New Way Development, LLC
722 Enford Court
Katy, Texas 77450
281/492-0899

Brian Christian
TCEQ SBEA Division
Public Participation and Education Program MC 108
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4000 FAX 512/239-5678

Steven M. Peña, Sr.
Davidson Troilo Ream & Garza
7550 IH-10 West, Suite 800
San Antonio, Texas 78229-5815
210/349-6484 FAX 210/349-0041
spena@dtrglaw.com

Kyle Lucas
TCEQ Alternative Dispute Resolution MC 222
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4010 FAX 512-239-4015

John W. and Mildred Allen
16 South Highway 81
P.O. Box 556
Cotulla, Texas 78014

Stefanie Skogen
TCEQ Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0466 FAX 512/239-0606

David Akoma
TCEQ Water Quality Division MC 148
PO Box 13087
Austin, Texas 78711-3087
512/239-4671 FAX 512/239-4430

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 20, 2013

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

Re: In the matter concerning the application by New Way Land Development, LLC for new TPDES Permit No. WQ0015058001; TCEQ Docket No. 2013-1036-MWD.

The above-referenced matter is scheduled to be considered by the Texas Commission on Environmental Quality (Commission) at its September 24, 2013 public meeting. However, on September 19, 2013, Abe Salinas, P.E., on behalf of New Way Land Development, LLC (Applicant) and with the agreement of the Allens and the City of Cotulla (Requestors), filed a request for an indefinite abatement of this matter. Mr. Salinas states that a settlement between the Applicant and the Requestors is highly likely and requests additional time to finalize this settlement.

In light of the Applicant's request and likelihood of settlement, and learning that there is no opposition to this request from the Requestors and the attorneys who represent the Office of Public Interest Counsel and the Executive Director, I have determined to grant the request in the form of a continuance. Accordingly, this matter is hereby continued to the Commission's public meeting set for **Wednesday, December 11, 2013** beginning at **9:30 A.M.**, pursuant to the Commission's Resolution issued on February 2, 2009 in Docket No. 2009-0059-RES. The meeting will take place in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

If you have any questions about this matter, please contact Gregory S. Merrell, Assistant General Counsel, at 512/239-0669.

Very truly yours,

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

Les Trobman
General Counsel

Mailing List

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

How is our customer service? tceq.texas.gov/customersurvey

Mailing List
New Way Land Development, LLC
TCEQ Docket No. 2013-1036-MWD

Hector Castaneda, EIT
LNV Engineering
801 Navigation Boulevard, Suite 300
Corpus Christi, Texas 78408
361/883-1984 FAX 361/883-1986

Amy Swanholm
TCEQ Office of Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377

Abe Salinas, P.E.
Project Engineer
LNV Engineering
8918 Tesoro Drive, Suite 401
San Antonio, Texas 78217
210/822-2232 FAX 210/822-4032

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

Betty Martin
New Way Development, LLC
722 Enford Court
Katy, Texas 77450
281/492-0899

Brian Christian
TCEQ SBEA Division
Public Participation and Education Program MC 108
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4000 FAX 512/239-5678

Steven M. Peña, Sr.
Davidson Troilo Ream & Garza
7550 IH-10 West, Suite 800
San Antonio, Texas 78229-5815
210/349-6484 FAX 210/349-0041
spena@dtgrglaw.com

Kyle Lucas
TCEQ Alternative Dispute Resolution MC 222
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4010 FAX 512-239-4015

John W. and Mildred Allen
16 South Highway 81
P.O. Box 556
Cotulla, Texas 78014

Stefanie Skogen
TCEQ Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0466 FAX 512/239-0606

David Akoma
TCEQ Water Quality Division MC 148
PO Box 13087
Austin, Texas 78711-3087
512/239-4671 FAX 512/239-4430



engineers | architects | contractors

SOLUTIONS TODAY WITH
A VISION FOR TOMORROW

September 19, 2013

Kyle Lucas, MC 222
TCEQ
P.O. Box 13087
Austin, TX 78711-3087

TO: Mr. Kyle Lucas, Attorney-Mediator

**RE: Request for Abatement; Docket No. 2013-1036-MWD; New Way Land Development, LLC;
TPDES Permit No. WQ0015058001**

On behalf of the Applicant, New Way Development, LLC, and with the agreement of the Requester, the City of Cotulla, I am requesting an indefinite abatement of the September 24th Commission consideration of this matter. I believe that a settlement between New Way Development and the Requesters is highly likely, but would like additional time to finalize.

I appreciate your assistance. Please feel free to contact me if you have any questions.

Sincerely,

Abe Salinas, P.E., Project Engineer
pp Russell Morkovsky, P.E., Vice President

cc: Larry Dovalina, City of Cotulla
Steve Pena, Law Offices of Davidson Trollo Ream & Garza
Robert Anthony, New Way Land Development, LLC

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 19, 2013

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087, MC-101
Austin, Texas 78711-3087

via hand delivery

**Re: New Way Land Development, LLC; Application for Permit WQ0015058001
TCEQ Docket No. 2013-1035-MWD**

General Counsel Trobman:

On behalf of the parties to this matter, in accordance with the attached request from Applicant, and Pursuant to 30 TAC §10.4, the Alternative Dispute Resolution (ADR) Program of the Texas Commission on Environmental Quality (TCEQ) requests that consideration of this matter, currently scheduled for the Commission's September 24, 2013 agenda meeting, be abated indefinitely to allow the parties additional time for settlement efforts. I have spoken with Executive Director representative Chris Ekoh, OPIC representative Amy Swanholm, neither of whom have any objection to this abatement request. Should the parties later need to proceed with Commission consideration of this matter, Applicant shall request a new setting.

Thank you for your attention to this matter. Should you have any questions, please contact me at 512/239-0687.

Respectfully,

A handwritten signature in black ink, appearing to read "Kyle Lucas".

Kyle Lucas, Attorney-Mediator
Alternative Dispute Resolution Program, Office of General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087, MC-222
Austin, Texas 78711-3087
512/239-0687 FAX 512/239-4015

CHIEF CLERKS OFFICE

2013 SEP 19 PM 4:45

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Cc (via email service only): TCEQ Executive Director rep Chris Ekoh, OPIC rep Amy Swanholm; Applicant rep Russell Morkovsky, Protestants' rep Steve Pena

Bryan W. Shaw, Ph.D, *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 16, 2013

TO: Persons on the Attached Mailing List

**RE: Docket No. 2013-1036-MWD
New Way Land Development, LLC
Request(s) filed on Permit No. WQ0015058001**

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 **September 24, 2013**. 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 **August 30, 2013**. 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 **September 13, 2013**.

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 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, 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 Public Education Program 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 Public Education Program toll free at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Bridget C. Bohac". The signature is written in a cursive, flowing style.

Bridget C. Bohac
Chief Clerk

Enclosures: Copies of protestant correspondence to Applicant, Executive Director, Office of Public Interest Counsel, 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 the Public Education Program toll free at 1-800-687-4040.

**MAILING LIST
NEW WAY LAND DEVELOPMENT, LLC
DOCKET NO. 2013-1036-MWD; PERMIT NO. WQ0015058001**

FOR THE APPLICANT:

Hector Castaneda, EIT
LNV Engineering
801 Navigation Boulevard, Suite 300
Corpus Christi, Texas 78408
Tel: (361) 883-1984
Fax: (361) 883-1986

Betty Martin
New Way Development, LLC
722 Enford Court
Katy, Texas 77450
Tel: (281) 492-0899

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Stefanie Skogen, 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

David Akoma, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-1444
Fax: (512) 239-4430

Brian Christian, Director
Texas Commission on Environmental
Quality
Small Business and Environmental
Assistance Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-5678

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

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**
via electronic mail:

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. Bridget C. Bohac
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):

City of Cotulla, Texas
c/o Steven M. Pena, Sr.
Davidson Troilo Ream Garza, P.C.
7550 W. IH-10, Suite 800
San Antonio, Texas 78229

John W. and Mildred Allen
16 South Highway 81
P.O. Box 556
Cotulla, Texas 78014