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Updates to backup documents will be noted by a purple indicator. Please note that some documents such as those of irregular size (i.e. oversized maps) cannot be viewed here and that color documents will be posted here in black and white. Finally, parties are still required to submit an original and 7 copies of documents filed for Commission consideration (30 TAC § 1.10(d)).

Chairman Bryan W. Shaw, Ph.D.
Commissioner H.S. Buddy Garcia
Commissioner Carlos Rubinstein

AGENDA

January 25, 2012

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

9:30 A.M.
12100 Park 35 Circle
Room 201S, Bldg. E

PROPOSAL FOR DECISION

Item 1 **[TCEQ Docket No. 2005-1490-WR; SOAH Docket No. 582-10-4184.](#)**

Consideration of the Administrative Law Judge's Proposal for Decision regarding the application of Brazos River Authority (BRA) for a new permit pursuant to rules of the Texas Commission on Environmental Quality and Tex. Water Code Chapter 11 to authorize a new appropriation of state water in the amount of 421,449 acre-feet per year, which includes existing and future return flows in the basin for multiple uses including domestic, municipal, agricultural, industrial, mining, and other beneficial uses on a firm basis in the Brazos River Basin. BRA requests use of up to 90,000 acre-feet of water per year of its firm supply (part of the 421,449 acre-feet of firm water requested above) to produce, along with other unappropriated flows, an interruptible water supply of 670,000 acre-feet per year and the appropriation of that interruptible water supply (which also includes existing and future return flows); an exempt interbasin transfer authorization to transfer and use, on a firm and interruptible basis, such water in the adjoining San Jacinto-Brazos Coastal Basin and the Brazos-Colorado Coastal Basin, and to transfer such water to any county or municipality or the municipality's retail service area that is partially within the Brazos River Basin for use, on a firm and interruptible basis, in that part of the county or municipality and the municipality's retail service area not within the Brazos River Basin. BRA's service area includes the following counties: Parmer, Castro, Swisher, Bailey, Lamb, Hale, Floyd, Cochran, Hockley, Archer, Lubbock,

Crosby, Baylor, Dickens, King, Knox, Jack, Terry, Lynn, Mitchell, Chambers, Young, Garza, Throckmorton, Kent, Haskell, Stonewall, Parker, Palo Pinto, Dawson, Scurry, Borden, Fisher, Stephens, Jones, Shackelford, Johnson, Hood, Nolan, Erath, Eastland, Taylor, Callahan, Somervell, Hill, Comanche, Bosque, Brown, Freestone, Hamilton, McLennan, Limestone, Mills, Coryell, Leon, Falls, Lampasas, Robertson, Bell, Madison, Milam, Burnet, Brazos, Grimes, Williamson, Burleson, Travis, Lee, Washington, Bastrop, Fayette, Waller, Harris, Austin, Colorado, Fort Bend, Galveston, Matagorda, Wharton, and Brazoria. The Commission will also consider the record, timely related filings, exceptions and replies. (Robin Smith, Ron Ellis)

Remand this matter to the State Office of Administrative Hearings (SOAH) pursuant to 30 Texas Admin. Code Section 80.265 and Texas Gov't Code Section 2003.047(m) with instructions to abate the hearing to allow the Applicant to provide additional information to the Executive Director related to their permit application in the form of a Water Management Plan. 2) Require BRA to submit its Water Management Plan to the Executive Director within 10 months from the date of this Order. If BRA does not meet this requirement within this timeframe, then the Commission directs the ALJs to draft a proposed Order denying BRA's permit application that is consistent with the ALJs' analysis and conclusions that BRA did not meet the requirements for issuance of the requested permit. The ALJs should focus the proposed Order on the issues that led to their recommended denial. 3) Provide 7 months for the Executive Director's review of the Water Management Plan including necessary supplemental information and compliance with applicable additional public participation requirements. BRA shall promptly respond to any requests for additional information by the Executive Director within 20 days of any such requests. 4) Upon completion of the Executive Director's review and compliance with additional applicable public participation requirements, direct the ALJs to reopen the record and hold a hearing on the new information, including the proposed permit application, as modified by the Water Management Plan pursuant to applicable legal requirements including Tex. Water Code Sections 11.134 and 5) Direct the ALJs draft a revised Proposal for Decision and proposed Order within 24 months from the date of this Order and allow parties an opportunity to file Exceptions and Replies in accordance with TCEQ rules. CR/BG; all agree.

HEARING REQUESTS/REQUESTS FOR RECONSIDERATION

Item 2 **[Docket No. 2011-2093-MWD.](#)**

Consideration of the application by City of Victoria for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010466002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 6.6 million gallons per day. The facility will be located along Hand Road, between Southwest Ben Jordan Street and Odem Street; 1.5 miles west of the intersection of US Highway 87 and US Highway 59, south of the City of Victoria city limits in Victoria County, Texas. The Commission will also consider requests for hearing or reconsideration, related responses and replies, public comment, and the Executive Director's Response to Comments. (Kathy Humphreys, Julian Centeno, Jr.)

Grant the hearing requests filed by Kevin McNary and Henry Perez; refer the hearing requests to SOAH with a concurrent referral to ADR on the following issues: A) Whether the facility can comply with the nuisance odor control requirements at 30 TAC Section 309.13(e); B) Whether

the Applicant has met the buffer zone requirements in 30 TAC Section 309.13(c); C) Whether the facility will have a negative impact on the health of the requestors and their families; D) Whether the proposed flows will have a negative impact on the aquatic life and contact recreational uses in the Guadalupe River; E) Whether the proposed flows will have a negative impact on public water supply and nearby private water wells; F) Whether the application is complete; and G) Whether the facility will adversely impact endangered species; Specify a hearing duration of 9 months; Direct the Executive Director to participate as a party in the contested case hearing; and deny all requests for reconsideration. BG/CR; all agree.

Item 3 [TCEQ Docket No. 2011-1490-MWD.](#)

Consideration of the application by City of Denison for renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010079003 which authorizes the discharge of treated domestic wastewater with a daily average flow not to exceed 6,000,000 gallons per day. The wastewater treatment facility is located east of the City of Denison approximately 1600 feet east and 2,200 feet north of the intersection of Center Street and Farm-to-Market Road 120 in Grayson County, Texas. The Commission will also consider requests for hearing or reconsideration, related responses and replies, public comment, and the Executive Director's Response to Comments. (Alicia Ramirez, Donald J. Camp, P.E.)

Deny the request for reconsideration and the hearing request filed by Mrs. James Clement pursuant to Tex. Water Code Section 26.028(d); issue the Executive Director's draft permit renewal to the City of Denison; and adopt the Executive Director's Response to Comments. CR/BG; all agree.

Item 4 [TCEQ Docket No. 2011-1847-DIS.](#)

Consideration of a petition from Farmersville Investors, LP. (Petitioner), for the creation of Lakehaven Municipal Utility District of Collin County, Texas, pursuant to Texas Water Code Chapters 49 and 54. The proposed District would contain approximately 375.9 acres of land just west of State Highway 78 and north of County Road 550, south of County Road 553 and west of County Road 551 in southeastern Collin County, on the eastern side of Lavon Lake. The proposed District is a few miles southwest of the City of Farmersville and not located within the corporate boundaries or extraterritorial jurisdiction of any municipality. The Commission will also consider requests for hearing and related responses and replies. (Christiaan Siano, Craig Barnes)

Grant the hearing request of Collin County; refer the matter to ADR concurrent with the SOAH scheduling process. BG/CR; all agree.

EMERGENCY ORDER

Item 5 [TCEQ Docket No. 2011-0976-UCR-E.](#)

Consideration of whether to affirm, modify, or set aside the Emergency Order issued on December 12, 2011 by the Executive Director of the Texas Commission on Environmental Quality pursuant to Tex. Water Code chs. 5 and 13, Tex. Health & Safety Code ch. 341, and the rules of the Texas Commission on

Environmental Quality, to address the abandonment of a retail public utility (Utility) by Leann Baker, Allan Stuart, Terri Stuart, Lee Willis, and Pleasure Point Homeowners Association, Inc. in Angelina County; TCEQ ID Nos. RN101281749; RN101217982; CCN11734 to ensure continued operation of the Utility and to provide continuous and adequate service to the customers. The Emergency Order renewed the appointment of Kelley Holcomb as temporary manager of the Utility. (Peipey Tang)

Affirm the Executive Director's second Emergency Order renewing the appointment to Kelly Holcomb as temporary manager for the public water system serving Pleasure Point subdivision. CR/BG; all agree.

MISCELLANEOUS MATTERS

Item 6 **[TCEQ Docket No. 2011-0175-UCR.](#)**

Consideration of a request for a Commission Order approving a contract designating service areas between the City of McAllen (McAllen), Certificate of Convenience and Necessity (CCN) No. 20524, and the City of Mission (Mission), CCN No. 20768, in Hidalgo County, Texas, pursuant to Section 13.248 of the Texas Water Code. The contract transfers from McAllen approximately 387 acres of its CCN area to Mission and from Mission approximately 64.7 acres of its CCN to McAllen. (Christiaan Siano, Kamal Adhikari)

Approve the contract designating service areas between the City of McAllen and the City of Mission under Tex. Water Code Section 13.248 which will result in transfers of approximately 387 acres of service area to Mission's sewer CCN and approximately 64.7 acres of service area to McAllen's sewer CCN; and issue the Executive Director's proposed Order. BG/CR; all agree.

Item 7 **[TCEQ Docket No. 2011-1949-MIS.](#)**

Consideration of gifts and donations of \$500.00 or more in value given to the TCEQ, submitted for approval in accordance with Chapter 575 of the Government Code, concerning acceptance of gifts by certain state agencies. (Elizabeth West)

Approve issuance of the resolution that acknowledges Executive Director's acceptance of these gifts. CR/BG; all agree.

Item 8 **[Docket No. 2011-1789-MIS.](#)**

Consideration for authorization to publish for public comment a proposed update to the Texas Nonpoint Source Management Program. This document is required to be submitted through the Governor's Office to the United States Environmental Protection Agency for continued eligibility for Section 319 Nonpoint Source Grant funds under the federal Clean Water Act. This document represents the joint submission of both the Texas Commission on Environmental Quality and the Texas State Soil and Water Conservation Board. (Monica Harris) (Project No. 2012-006-MIS-NR)

Approve publication of, and hearing on, the proposed update to the Texas Nonpoint Source Management Program, as recommended by the Executive Director. BG/CR; all agree.

AIR QUALITY ENFORCEMENT AGREED ORDERS

Item 9 **[Docket No. 2011-0891-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Arrowhead Pipeline, L.P. and Hilcorp Energy Company in Brazoria County; RN100212000; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Rebecca Johnson, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 10 **[Docket No. 2011-0712-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Ballard Exploration Company, Inc. in Liberty County; RN106062771; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Miriam Hall, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 11 **[Docket No. 2011-1119-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Davis Gas Processing, Inc. in Reagan County; RN100217686; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Rebecca Johnson, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 12 **[Docket No. 2011-0711-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Ballard Exploration Company, Inc. in Liberty County; RN106062946; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Miriam Hall, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 13 [Docket No. 2011-0713-AIR-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Ballard Exploration Company, Inc. in Harris County; RN106077985; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Miriam Hall, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 14 [Docket No. 2011-0429-AIR-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Enterprise Products Operating LLC in Chambers County; RN102323268; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Rebecca Johnson, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

INDUSTRIAL OR HAZARDOUS WASTE ENFORCEMENT AGREED ORDER

Item 15 [Docket No. 2011-0215-IHW-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Andrew Pena dba A-One Aircraft Paint in Ellis County; RN105121891; for industrial and hazardous waste violations pursuant to Tex. Health & Safety Code ch. 361, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Mike Pace, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

INDUSTRIAL WASTE DISCHARGE ENFORCEMENT AGREED ORDER

Item 16 [Docket No. 2011-0775-IWD-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Pegasus Polymers Benelux Inc. in Harris County; RN100692144; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jorge Ibarra, P.E., Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

MULTI-MEDIA MATTER ENFORCEMENT DEFAULT ORDER

Item 17 [Docket No. 2010-1935-MLM-E.](#)

Consideration of a Default Order assessing administrative penalties and

requiring certain actions of Lonnie Bearden, Sr. d/b/a The Tireman in Tom Green County; RN105949028; for scrap tire and municipal solid waste violations pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Jeffrey Huhn, Lena Roberts)

Approve the Default Order. CR/BG; all agree.

MUNICIPAL SOLID WASTE ENFORCEMENT DEFAULT ORDERS

Item 18 [Docket No. 2011-0534-MSW-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Michael Parma in Dewitt County; RN106078256; for municipal solid waste violations pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Xavier Guerra, Lena Roberts)

Approve the Default Order. CR/BG; all agree.

Item 19 [Docket No. 2011-0533-MSW-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Terry F. Lee in Dewitt County; RN106078256; for municipal solid waste violations pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Xavier Guerra, Lena Roberts)

Approve the Default Order. CR/BG; all agree.

MUNICIPAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS

Item 20 [Docket No. 2011-1238-MWD-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Willow Park in Parker County; RN101920585; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Cheryl Thompson, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 21 [Docket No. 2011-1032-MWD-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Commerce in Hunt County; RN102178233; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Cheryl Thompson,

Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 22 [**Docket No. 2011-1162-MWD-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Hubbard in Hill County; RN101918480; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jennifer Graves, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 23 [**Docket No. 2011-1116-MWD-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Nacogdoches in Nacogdoches County; RN101611283; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jorge Ibarra, P.E., Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 24 [**Docket No. 2011-1131-MWD-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Madisonville in Madison County; RN101719821; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Lanae Foard, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

MUNICIPAL WASTE DISCHARGE ENFORCEMENT DEFAULT ORDER

Item 25 [**Docket No. 2011-0564-MWD-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of City of Elsa in Hildago County; RN101610251; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Rudy Calderon, Lena Roberts)

Remanded to the Executive Director. CR/BG; all agree.

PETROLEUM STORAGE TANKS ENFORCEMENT DEFAULT ORDERS

Item 26 [**Docket No. 2011-0397-PST-E.**](#)

Consideration of a Default Order assessing administrative penalties against

Teresa Reid d/b/a Laursens Car Care & Keene Auto in Johnson County; RN102225406; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Xavier Guerra, Lena Roberts)

Approve the Default Order. CR/BG; all agree.

Item 27 [**Docket No. 2011-0382-PST-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Bhaskar R. Patel in Brazoria County; RN100929124; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Phillip M. Goodwin, P.G., Lena Roberts)

Approve the Default Order. CR/BG; all agree.

Item 28 [**Docket No. 2011-0513-PST-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Charlsie Ann Evans Wilkins in Grayson County; RN105600159; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Phillip M. Goodwin, P.G., Lena Roberts)

Approve the Default Order. CR/BG; all agree.

Item 29 [**Docket No. 2011-0759-PST-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Prudencia Andrade d/b/a Paredes Line Grocery in Cameron County; RN102063146; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Xavier Guerra, Lena Roberts)

Approve the Default Order. CR/BG; all agree.

PETROLEUM STORAGE TANKS ENFORCEMENT DEFAULT AND SHUTDOWN ORDERS

Item 30 [**Docket No. 2011-0921-PST-E.**](#)

Consideration of a Default and Shutdown Order assessing administrative penalties and requiring certain actions of Abrams Business Inc. d/b/a Power Mart 18 in Tarrant County; RN102366358; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin.

Code ch. 60. (Kari L. Gilbreth, Lena Roberts)

Remanded to the Executive Director. CR/BG; all agree.

Item 31 **[Docket No. 2011-0638-PST-E.](#)**

Consideration of a Default and Shutdown Order assessing administrative penalties and requiring certain actions of M & K PANTRY, LLC (f/k/a M & K Pantry, L.C.) d/b/a M & K Pantry 4 in Hardin County; RN102444890; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Xavier Guerra, Lena Roberts)

Approve the Default and Shutdown Order. CR/BG; all agree.

PUBLIC WATER SYSTEM ENFORCEMENT AGREED ORDERS

Item 32 **[Docket No. 2011-1028-PWS-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Princess, Inc. in Harris County; RN101225142; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Cheryl Thompson, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 33 **[Docket No. 2011-1084-PWS-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Margarito Flores and Lucia Flores dba Royal Oaks Apartments in Gillespie County; RN101261006; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Michaelle Sherlock, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

Item 34 **[Docket No. 2011-1044-PWS-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Rochester in Haskell County; RN101192243; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Katy Schumann, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

PUBLIC WATER SYSTEM ENFORCEMENT DEFAULT ORDERS

Item 35 **[Docket No. 2011-1102-PWS-E.](#)**

Consideration of a Default Order assessing administrative penalties and

requiring certain actions of Shauna Lynn McGee LLC d/b/a Bert & Ernie's General Store in Travis County; RN101182459; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Stephanie J. Frazee, Lena Roberts)

Approve the Default Order. CR/BG; all agree.

Item 36 [**Docket No. 2011-0641-PWS-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Robert Black DBA Alta Vista Mobile Home Park and Melissa Black DBA Alta Vista Mobile Home Park in Erath County; RN105874556; for public drinking water violations pursuant to Tex. Water Code ch. 5, Tex. Health & Safety Code ch. 341, and the rules of the Texas Commission on Environmental Quality. (James Sallans, Lena Roberts)

Approve the Default Order. CR/BG; all agree.

WATER QUALITY ENFORCEMENT AGREED ORDER

Item 37 [**Docket No. 2011-0420-WQ-E.**](#)

Consideration of an Agreed Order assessing administrative penalties against the City of Killeen and Central Texas - Killeen Memorial Park, Inc. in Bell County; RN106076508; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Samuel Short, Debra Barber)

Approve the Agreed Order. CR/BG; all agree.

WATER QUALITY ENFORCEMENT DEFAULT ORDER

Item 38 [**Docket No. 2011-0698-WQ-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Hall and Sons Transport Inc in Bexar County; RN106031685; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Rudy Calderon, Lena Roberts)

Approve the Default Order. CR/BG; all agree.

RULE MATTER

Item 39 [**Docket No. 2010-1862-RUL.**](#)

Consideration of the adoption of an amendment to 30 Texas Administrative Code (TAC) Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter A, Visible Emissions and Particulate Matter, Division 4, Materials Handling, Construction, Roads, Streets, Alleys, and

Parking Lots, Section 111.147 and corresponding revisions to the state implementation plan. The adoption will amend Section 111.147(1)(E) to remove the requirement to pave alleys at the rate of 15 miles per year and replace it with the following requirements: 1) all new alleys must be paved; 2) unpaved alleys may not be used for residential garbage and recycling collection; and 3) the use of reclaimed asphalt pavement may be used as an alternate means of particulate matter control for alleys. The rulemaking will also amend Section 111.147(2) to change the street sweeping frequency requirement from four times per year to three times per year in the city limits, and from six times per week to four times per week in the central business district. The proposed rules were published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5640). (Terry Salem, Peter A. Ogbeide) (Rule Project No. 2010-046-111-EN)

Joint Motion for Items 39, 40 and 41

Adopt the amendments to 30 TAC Section 111.147, the revised Memorandum of Agreement (MOA) between the Texas Commission on Environmental Quality and the City of El Paso and the revisions to the state implementation plan, as recommended by the Executive Director. BG/CR; all agree.

MISCELLANEOUS MATTER

Item 40 [Docket No. 2011-0899-MIS.](#)

Consideration of the adoption of a Memorandum of Agreement (MOA) between the Texas Commission on Environmental Quality (TCEQ) and the City of El Paso. The 2001 MOA with the City of El Paso has been revised to reflect the respective responsibilities of the City of El Paso and the TCEQ under the State Implementation Plan (SIP) for particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) and the alternative control measures revised in a concurrent rulemaking for 30 TAC Section 111.147 (Rule Project No. 2010-046-111-EN). The revised MOA and rule revision are being incorporated as a revision of the SIP (Non-Rule Project No. 2011-010-SIP-NR). (Terry Salem, Shelley Naik) (Non-Rule Project No. 2011-026-MIS-NR)

Joint Motion for Items 39, 40 and 41

Adopt the amendments to 30 TAC Section 111.147, the revised Memorandum of Agreement (MOA) between the Texas Commission on Environmental Quality and the City of El Paso and the revisions to the state implementation plan, as recommended by the Executive Director. BG/CR; all agree.

STATE IMPLEMENTATION PLAN

Item 41 [Docket No. 2011-0707-SIP.](#)

Consideration of the adoption of a revision to the SIP to incorporate a revised MOA with the City of El Paso. The adopted SIP revision will incorporate the changes to 30 TAC Section 111.147 in a concurrent rulemaking (Rule Project No. 2010-046-111-EN) and the revised MOA between the City of El Paso and the TCEQ (Project No. 2011-026-MIS-NR) into the SIP for particles with an

aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). The 2001 MOA with the City of El Paso has been revised to reflect the alternative control measures in the revisions to 30 TAC Section 111.147 and the respective responsibilities of the City of El Paso and the TCEQ under the SIP. (Terry Salem, Shelley Naik) (Non-Rule Project No. 2011-010-SIP-NR)

Joint Motion for Items 39, 40 and 41

Adopt the amendments to 30 TAC Section 111.147, the revised Memorandum of Agreement (MOA) between the Texas Commission on Environmental Quality and the City of El Paso and the revisions to the state implementation plan, as recommended by the Executive Director. BG/CR; all agree.

RULE MATTERS

Item 42 [**Docket No. 2011-1251-RUL.**](#)

Consideration for publication of, and hearing on, proposed amendments to Sections 60.1, 60.2, and 60.3 of 30 TAC Chapter 60, Compliance History. The proposed rulemaking would implement House Bill 2694, Articles 4.01 - 4.05 and 4.07, 82nd Legislature, 2011, Regular Session, which amends Texas Water Code (TWC), Sections 5.751 - 5.754 and 5.756. The amendments to TWC require the TCEQ to make changes to the compliance history rule. This proposed rulemaking would revise Chapter 60. The purpose of this proposed rulemaking is to allow the Commission to use new standards instead of the existing uniform standard for evaluating and using compliance history. In addition, the proposed rulemaking modifies the components and formula of compliance history in order to provide a more accurate measure of regulated entities' performance and make compliance history a more effective regulatory tool. (Anna Treadwell, David Van Soest) (Rule Project No. 2011-032-060-CE)

Approve publication of, and hearing on, amendments to 30 TAC Chapter 60 regarding Compliance History, as recommended by the Executive Director with the following change: Direct staff to include language in the preamble specifically soliciting public comment on amended 30 TAC Section 60.2(e)(2) with regard to how the Agency can account for various sized regulated entities within the program areas or media other than those program areas or media currently contemplated by the proposed rule language. BS/CR; all agree.

Item 43 [**Docket No. 2011-1254-RUL.**](#)

Consideration for publication of proposed new Sections 90.1, 90.2, 90.3, 90.10 - 90.16, 90.20 - 90.24, 90.30, and 90.31 and repealed Sections 90.1, 90.2, 90.10, 90.12, 90.14, 90.16, 90.18, 90.20, 90.30, 90.32, 90.34, 90.36, 90.38, 90.40, 90.42, 90.44, 90.50, 90.52, 90.54, 90.56, 90.58, 90.60, 90.62, 90.64, 90.66, 90.68, 90.70, and 90.72 of 30 TAC Chapter 90, Innovative Programs. The proposed rulemaking would implement HB 2694, Articles 4.01, 4.06, and 4.08, 82nd Legislature, 2011, Regular Session, which amends the TWC, §§5.751, 5.755, and 5.758. The amendments to TWC changed the standard for TCEQ to manage its environmental incentives and innovative programs. Therefore, TCEQ proposes to consolidate and reorganize its rules regarding these

environmental incentives and innovative programs into a single subchapter, deleting duplicative requirements on applicants and the agency. The proposed rulemaking would also provide clarity and remove unnecessary restrictions on the TCEQ's ability to issue Regulatory Flexibility Orders and to recognize Environmental Management Systems. (Amie Dutta Richardson, David Greer) (Rule Project No. 2011-047-090-AD)

Approve publication of proposed new Sections of, and the repeal of existing Sections within, Chapter 90, Innovative Programs, as recommended by the Executive Director. BG/CR; all agree.

PUBLIC COMMENT SESSION

- Item 44 The Commission will receive comments from the public on any matters within the jurisdiction of the TCEQ, with the exception of pending permitting matters or other contested cases which are subject to the ex parte prohibition found in Texas Government Code §2001.061. In the interest of time, speakers will be limited to three minutes each, with the total time for public comment limited to one hour.

No Action Taken.

EXECUTIVE MEETING

- Item 45 **Docket No. 2012-0001-EXE.**

The Commission will conduct a closed meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director and General Counsel, as permitted by Section 551.074 of the Texas Open Meetings Act, Chapter 551 of the Government Code. The Commission may also meet in open meeting to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commission did not meet in an Executive Meeting.

- Item 46 **Docket No. 2012-0002-EXE.**

The Commission will conduct a closed meeting to receive legal advice and will discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific Commission employees, as permitted by Sections 551.071 and 551.074, the Open Meetings Act, codified as Chapter 551 of the Government Code. The Commission may also meet in open meeting to take action on legal or personnel matters considered in the closed meeting as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commission did not meet in an Executive Meeting.

- Item 47 **Docket No. 2012-0003-EXE.**

The Commission will conduct a closed meeting to discuss their duties, roles, and responsibilities as Commissioners of the TCEQ pursuant to Section 551.074

