

*The Agenda document below includes hyperlinks (docket numbers highlighted in blue) that enable the user to view agenda backup documents [documents pertaining to a particular matter that have been filed with the Office of the Chief Clerk (OCC)]. To view all agenda backup in person including those documents not found in the hyperlinks below, please visit OCC at 12100 Park 35 Circle, Building F, Suite 1101 (30 TAC § 1.10).*

*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., P.E.  
Commissioner Toby Baker  
Commissioner Jon Niermann

## **AGENDA**

September 21, 2016

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

#### **HEARING REQUESTS/REQUESTS FOR RECONSIDERATION**

Item 1 **[Docket No. 2015-1645-WR.](#)**

Consideration of an application by Popek & Son for new Water Use Permit No. 12496 seeking authorization to: 1) maintain an existing dam and 4.2 acre-foot-capacity reservoir on an unnamed drainage ditch, tributary of Hardeman Slough, tributary of Caney Creek, Brazos-Colorado Coastal Basin in Matagorda County, Texas and 2) use the bed and banks of the reservoir to convey 200 acre-feet of groundwater for subsequent diversion for agricultural purposes to irrigate 60 acres out of a 123.08 acre tract in Matagorda County. The Commission will consider all timely filed hearing requests and related responses and replies. (Chris Kozlowski, Dinniah Tadema)

Grant the hearing request filed by David Minze; Refer the hearing request filed by John S. Runnells, III to the State Office of Administrative Hearings for an affectedness determination; Deny the hearing request filed by Barrett Franz; Refer this matter to

the Commission's Alternative Dispute Resolution Program for a four week period prior to the SOAH scheduling process; and Direct the Chief Clerk to refer the application to the State Office of Administrative Hearings to conduct a contested case hearing. TB/JN; all agree.

Item 2 **Docket No. 2016-0532-WR.**

Consideration of an application for Temporary Water Use Permit 12452 by Robert D. Rogers, Jr. to divert and use not to exceed 900 acre-feet of water within a period of three years from a reservoir (Flood Prevention Dam No. 9) authorized by a Certificate of Adjudication No. 08-3401 on Cottonwood Creek, tributary of Soap Creek, tributary of Mountain Creek, tributary of West Fork Trinity River, tributary of Trinity River, Trinity River Basin, at a maximum diversion rate of 0.334 cfs (150 gpm) for mining purposes in Ellis County. The Commission will consider all timely filed hearing requests and related responses and replies. (Sarah Henderson, Linda Horng)

Deny the hearing request of Debra Markwardt and Issue Temporary Water Use Permit No. 12452 to Robert D. Rogers, Jr. as recommended by the Executive Director. JN/TB; all agree.

Item 3 **Docket No. 2016-0469-WR.**

Consideration of an application for Water Use Permit 12510 by Montgomery County Municipal Utility District Nos. 8 & 9 (the Districts) to use the bed and banks of the West Fork San Jacinto River (Lake Conroe), tributary of the San Jacinto River, San Jacinto River Basin, to convey their present and future groundwater-based return flows for subsequent diversion and reuse. The return flows are discharged under the Districts' TPDES Permit No. WQ0011371001 at a discharge rate of 0.9 MGD from two outfall points into Lake Conroe. The Districts indicate that the water will be diverted, less carriage losses, from diversion points at or inland of the perimeter of Lake Conroe at a maximum combined diversion rate of 3,422 cfs for municipal, industrial, and agricultural purposes within the Districts' service areas in Montgomery County in the San Jacinto River Basin. Lake Conroe is authorized by Certificate of Adjudication No. 10-4963, issued jointly to the San Jacinto River Authority and the City of Houston. The Commission will consider the application and all timely filed hearing requests and responses. (Chris Kozlowski, Robin Smith)

Grant the hearing requests of the San Jacinto River Authority and the City of Houston; Refer the matter to SOAH for a contested case hearing on the application; and Provide an initial four to six week ADR referral period prior to the

commencement of the SOAH preliminary hearing scheduling process. TB/JN; all agree.

#### **MISCELLANEOUS MATTER**

Item 4 [\*\*Docket No. 2016-0554-MIS.\*\*](#)

Discussion of the Office of Public Interest Counsel's Annual Report to the Commission made pursuant to Texas Water Code, Section 5.2725, Annual Report; Performance Measures. (Vic McWherter)

No action taken.

#### **AIR QUALITY ENFORCEMENT AGREED ORDERS**

Item 5 [\*\*Docket No. 2016-0324-AIR-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Orion Engineered Carbons LLC in Orange County; RN100209386; 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 Tex. Admin. Code ch. 60. (Carol McGrath, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

Item 6 [\*\*Docket No. 2016-0130-AIR-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Targa Downstream LLC in Chambers County; RN100222900; 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 Tex. Admin. Code ch. 60. (Carol McGrath, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

#### **MULTI-MEDIA MATTER ENFORCEMENT AGREED ORDER**

Item 7 [\*\*Docket No. 2014-0019-MLM-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Hale Center in Hale County; RN101918670; for municipal solid waste and water quality violations

pursuant to Tex. Health & Safety Code ch. 361, 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. (Caleb Olson, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

**MUNICIPAL SOLID WASTE ENFORCEMENT AGREED ORDER**

Item 8 **[Docket No. 2015-1686-MSW-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of IESI TX Landfill LP in Johnson County; RN100825462; for municipal solid 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 Tex. Admin. Code ch. 60. (Margarita Dennis, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

**MUNICIPAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS**

Item 9 **[Docket No. 2016-0012-MWD-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Arlington in Tarrant County; RN104950134; 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. (Farhaud Abbaszadeh, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

Item 10 **[Docket No. 2016-0021-MWD-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of City of Kingsville in Kleberg County; RN101612877; 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. (Melissa Castro, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

Item 11 [\*\*Docket No. 2016-0103-MWD-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Poteet in Atascosa County; RN102078417; 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. (Alex Laje, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

Item 12 [\*\*Docket No. 2015-1605-MWD-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of San Marcos in Hays County; RN100838648; 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. (Ronica Rodriguez, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

Item 13 [\*\*Docket No. 2016-0166-MWD-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Harris County Municipal Utility District No. 71 in Harris County; RN102177656; 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. (Melissa Castro, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

**PETROLEUM STORAGE TANK ENFORCEMENT AGREED ORDER**

Item 14 [\*\*Docket No. 2016-0301-PST-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of A & K ENTERPRISES, INC. dba Country Food Store in Wharton County; RN101183861; for petroleum storage tank violations pursuant to Tex. Water Code chs. 5, 7, and 26

and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Danielle Porras, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

**PETROLEUM STORAGE TANK ENFORCEMENT DEFAULT AND SHUTDOWN ORDER**

Item 15 [Docket No. 2015-0701-PST-E.](#)

Consideration of a Default and Shutdown Order assessing administrative penalties against and requiring certain actions of ALAUDDIN INVESTMENTS, INC. d/b/a Kwik Trip Food Store 2 in Bexar County; RN101759520; 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. (Elizabeth Lieberknecht, Ryan Rutledge)

Adopt the Default and Shutdown Order. JN/TB; all agree.

**PUBLIC WATER SYSTEM ENFORCEMENT AGREED ORDERS**

Item 16 [Docket No. 2016-0082-PWS-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Laredo in Webb County; RN100524099; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Jim Fisher, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

Item 17 [Docket No. 2016-0129-PWS-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Zavalla in Angelina County; RN101386100; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Steven Hall, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

## **WATER QUALITY ENFORCEMENT AGREED ORDERS**

Item 18

### **[Docket No. 2016-0199-WQ-E.](#)**

Consideration of an Agreed Order assessing administrative penalties against the City of Grapevine in Tarrant County; RN101385193; 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. (Melissa Castro, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

Item 19

### **[Docket No. 2015-0824-WQ-E.](#)**

Consideration of an Agreed Order assessing administrative penalties against Daniel R. Soto and DRS Rock Materials, LLC in Hudspeth County; RN106963036 and RN106962020; for aggregate production operation violations pursuant to Tex. Water Code chs. 7 and 28A and the rules of the Texas Commission on Environmental Quality. (Jason Fraley, Michael Parrish)

Adopt the Agreed Order. JN/TB; all agree.

## **MONTHLY ENFORCEMENT REPORT**

Item 20

### **[Docket No. 2016-1361-MIS.](#)**

Consideration of the Texas Commission on Environmental Quality Monthly Enforcement Report, submitted for discussion in accordance with Texas Water Code § 7.003. (Bryan Sinclair, Melissa Cordell)

No action taken.

## **RULE MATTERS**

Item 21

### **[Docket No. 2015-1532-RUL.](#)**

Consideration for publication of, and hearing on, proposed amended Sections 290.38, 290.42, 290.46, 290.47, 290.102 – 290.104, 290.106 – 290.119, 290.121, 290.122, 290.272, and 290.275 of 30 TAC Chapter 290, Public Drinking Water. The proposed rulemaking would incorporate the new federal Revised Total Coliform Rule (RTCR) requirements; address comments from the United States Environmental Protection Agency regarding state implementation of the federal Ground Water Rule; clarify state implementation of the

federal Lead and Copper Rule, Total Organic Carbon Rule, and Public Notification Rule; clarify the state monitoring requirements for nitrite during a compliance period and compliance cycle; amend state analytical requirements as required under the federal RTCR; clarify and streamline existing state rules; and would make other minor changes for internal consistency, grammatical correction, and compliance with Texas Register Requirements. (James Beauchamp, Ruth Takeda) (Rule Project No. 2015-035-290-OW)

Approve for the publication of, and hearing on, proposed amendments to 30 Texas Administrative Code Chapter 290, Public Drinking Water, as recommended by the Executive Director. TB/JN; all agree.

Item 22      **[Docket No. 2016-0956-RUL.](#)**

Consideration for publication of, and hearing on, proposed amended Sections 115.112, 115.114, 115.118, and 115.119 of 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds; and corresponding revisions to the state implementation plan. The proposed rulemaking would update the reasonably available control technology (RACT) requirements for storage tanks in the Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties). The proposed rule changes include: updating the control efficiency requirement for control devices other than vapor recovery units or flares; expanding the applicability to include the aggregate of storage tanks at a pipeline breakout station into the control requirements prescribing flashed gas controls; and adding inspection, repair, and recordkeeping requirements for consistency with existing requirements in the Dallas-Fort Worth (DFW) area. The proposed rulemaking would also include other revisions to conform to *Texas Register* style and formatting requirements. (Graham Bates, Amy Browning) (Rule Project No. 2016-039-115-AI)

Approve the publication of, and hearing on the proposed amended Sections of 30 Texas Administrative Code Chapter 115 as recommended by the Executive Director. JN/TB; all agree.

**STATE IMPLEMENTATION PLANS**

Item 23      **[Docket No. 2016-1243-SIP.](#)**

Consideration for publication of, and hearing on, the proposed Houston-Galveston-Brazoria (HGB) Attainment Demonstration State Implementation Plan (SIP) revision to meet the 2008 Eight-Hour Ozone National Ambient Air Quality Standard. To meet Federal Clean

Air Act requirements, the proposed SIP revision would include a photochemical modeling analysis, a weight of evidence analysis, a reasonably available control technology (RACT) analysis, a reasonably available control measures analysis, a motor vehicle emissions budget for 2017, and a contingency plan. This SIP revision would also include revisions to the 30 Texas Administrative Code Chapter 115 rules to update RACT for major source volatile organic compound storage tanks in the HGB area. (Lola Brown, John Minter) (Non-Rule Project No. 2016-016-SIP-NR)

Joint Motion for Items 23 and 24.

Approve for publication and hearing on, the proposed Houston-Galveston-Brazoria Attainment Demonstration State Implementation Plan and the Reasonable Further Progress State Implementation Plan revisions as recommended by the Executive Director. TB/JN; all agree.

Item 24      **Docket No. 2016-1244-SIP.**

Consideration for publication of, and hearing on, the proposed Houston-Galveston-Brazoria (HGB) Reasonable Further Progress (RFP) State Implementation Plan (SIP) revision to meet the 2008 Eight-Hour Ozone National Ambient Air Quality Standard (NAAQS). To meet Federal Clean Air Act requirements, the proposed SIP revision would include an analysis of reasonable further progress toward attainment of the 2008 eight-hour ozone NAAQS, demonstrating a 15% emissions reduction in ozone precursors from the 2011 base year through the 2017 attainment year, a 3% emissions reduction for contingency in 2018, and updated RFP motor vehicle emissions budgets. (Dan Robicheaux, Terry Salem) (Non-Rule Project No. 2016-017-SIP-NR)

Joint Motion for Items 23 and 24.

Approve for publication and hearing on, the proposed Houston-Galveston-Brazoria Attainment Demonstration State Implementation Plan and the Reasonable Further Progress State Implementation Plan revisions as recommended by the Executive Director. TB/JN; all agree.

#### **EXECUTIVE MEETING**

Item 25      **Docket No. 2016-0001-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.

No action taken.

Item 26      **Docket No. 2016-0002-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.

No action taken.

Item 27      **Docket No. 2016-0003-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 of the Open Meetings Act, Codified as 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.

No action taken.

**(PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE TCEQ AGENDA AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, LARGE PRINT, OR BRAILLE ARE REQUESTED TO CONTACT OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST SIX (6) WORK DAYS PRIOR TO THE AGENDA, SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. PERSONS WHO DESIRE THE ASSISTANCE OF AN INTERPRETER IN CONJUNCTION WITH THEIR ORAL PRESENTATION AT THIS TCEQ AGENDA**

**ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.)**

**SECTION 46.035 OF THE TEXAS PENAL CODE PROHIBITS HANDGUN LICENSEES FROM CARRYING THEIR HANDGUNS AT GOVERNMENT MEETINGS SUCH AS THIS ONE. THIS PROHIBITION APPLIES TO BOTH CONCEALED CARRY AND OPEN CARRY BY HANDGUN LICENSEES.**

**REGISTRATION FOR AGENDA STARTS AT 8:45 A.M. AND WILL CONTINUE UNTIL 9:30 A.M. PLEASE REGISTER BETWEEN THESE TIMES. LATE REGISTRATION COULD RESULT IN YOUR MISSING THE OPPORTUNITY TO COMMENT ON YOUR ITEM.**

**THE PUBLIC CAN VIEW LIVE AND ARCHIVED TCEQ MEETINGS ON THE INTERNET AT NO COST, AT:  
[HTTP://WWW.TEXASADMIN.COM/tceqa.shtml](http://www.texasadmin.com/tceqa.shtml)**

/s/ Greg Merrell  
Assistant General Counsel  
Greg Merrell

9/28/2016  
Date