

Chairman Kathleen White
Commissioner Ralph Marquez
Commissioner Larry Soward

OLD BUSINESS AGENDA

Wednesday, October 13, 2004

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

Continued from the July 14, 2004 & August 25, 2004 agendas.

- Item 1. **Docket No. 2004-0642-MWD.** Consideration of the application by **Aquasource Development Company** for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014346001, to authorize the discharge of treated domestic wastewater at an Interim I volume not to exceed a daily average flow of 0.055 million gallons per day (MGD), an Interim II volume not to exceed a daily average flow of 0.11 MGD, and a Final volume not to exceed a daily average flow of 0.22 MGD. The facility will be located approximately 775 yards east of the intersection of Schluter Road and Old Stony Road in **Denton 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. (Todd Burkey, Firoj Vahora)

Continued to the December 1, 2004 agenda.

Continued from the September 15, 2004 agenda.

- Item 2. **Docket No. 2002-1254-OSI-E.** Consideration of a Default Order revoking the OSSF installer license and requiring certain actions of **Kenneth Raska dba Ken's Backhoe Service** in **Fort Bend County**; TCEQ ID No. OS 228; for on-site sewage installer violations pursuant to Tex. Health & Safety Code ch. 366, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality. (Alfred Okpohworho, David Van Soest)

Remanded to the Executive Director.

Continued from the September 29, 2004 agenda.

- Item 3. **Docket No. 2003-1380-MWD-E.** Consideration of an Agreed Order assessing administrative penalties against **Eli Sasson** in **Harris County**; Texas Pollutant

Discharge Elimination System Permit No. 0011414-002, Regulated Entity Reference No. RN101525137; 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. (A. Sunday Udoetok, Tel Croston)

Approve the Agreed Order. KW/RM; all agree.

Continued from the September 15, 2004 agenda.

Item 4. **Docket No. 2004-0181-RUL.** Consideration for the adoption of amendments to Sections 37.901, 37.911, 37.921, and 37.931 of **30 TAC Chapter 37**, Financial Assurance; amendments to Sections 328.4 and 328.5 of **30 TAC Chapter 328**, Waste Minimization and Recycling; amendments to Sections 330.3 and 330.280, new Section 330.282, and the repeal of existing Section 330.282 of **30 TAC Chapter 330**, Municipal Solid Waste; amendments to Sections 332.34 and 332.47 of **30 TAC Chapter 332**, Composting; and amendments to Section 335.24 of **30 TAC Chapter 335**, Industrial Solid Waste and Municipal Hazardous Waste. The adopted rulemaking implements House Bill 1823, 78th Legislature, Regular Session, 2003.

The adoption would require the owner or operator of an affected recycling facility to have sufficient financial assurance to properly operate and close a facility. The adoption would apply to recycling facilities that store combustible material outdoors and recycling facilities that pose a significant risk to public health and safety. The proposed rules were published in the April 23, 2004 issue of the *Texas Register* (29 TexReg 3909). (Arthur Denny, Anthony Tatu, Alan Watts, Debi Dyer) (Rule Project No. 2004-002-037-AD)

Approve adoption of amendments to Sections 37.901, 37.911, 37.921, and 37.931 of 30 TAC Chapter 37, amendments to Sections 328.4 and 328.5 of 30 TAC Chapter 328, amendments to Sections 330.3 and 330.280, new Section 330.282, and the repeal of existing Section 330.282 of 30 TAC Chapter 330, amendments to Sections 332.34 and 332.47 of 30 TAC Chapter 332, and amendments to Section 335.24 of 30 TAC Chapter 335. KW/LS; all agree.

AGENDA

Wednesday, October 13, 2004

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

HEARING REQUESTS AND/OR REQUESTS FOR RECONSIDERATION

- Item 1. **Docket No. 2004-1178-WR.** Consideration of Application No.08-4976C by the **Tarrant Regional Water District** (TRWD) to amend Certificate of Adjudication No. 08-4976 to authorize the diversion of historic and future return flows of water from the Trinity River in **Kaufman and Henderson Counties**. The return flows which will be reused will be those which are attributable to water first stored in TRWD reservoirs pursuant to its existing water rights. The return flows will be diverted from the Trinity River into an off-channel wetland impoundment to be constructed in Henderson County to be constructed and used for water quality treatment purposes. This wetland impoundment will have a surface area of approximately 1,800 acres with an average depth of 1.5 feet (2,700 acre-feet storage capacity) when completed, and will have an estimated evaporative loss of 6,705 acre-feet of water per year. The water would then be delivered into Cedar Creek Reservoir in Kaufman and Henderson Counties in an amount sufficient to increase the water supply-yield of Cedar Creek Reservoir by 52,500 acre-feet per annum to be diverted and used for any of the purposes authorized by Certificate of Adjudication No. 08-4976. The Executive Director has recommended special conditions in the amendment to protect in-stream uses and aquatic habitat. The commission will consider any hearing requests and replies and responses. (Robin Smith and David Koinm)

Continued to the January 12, 2005 agenda.

- Item 2. **Docket No. 2004-1561-WR.** Consideration of Application No.08-5035C by the **Tarrant Regional Water District** (TRWD) to amend Certificate of Adjudication No. 08-5035 to authorize the diversion of historic and future return flows of water from the Trinity River in **Navarro and Freestone Counties**. The return flows which will be reused will be those which are attributable to water first stored in TRWD reservoirs pursuant to its existing water rights. The return flows will be diverted from the Trinity River into an off-channel wetland impoundment in Navarro County to be constructed and used for water quality treatment purposes. This wetland impoundment will have a surface area of approximately 2,000 acres with an average depth of 1.5 feet (3,000 acre-feet storage capacity) when completed, and will have an estimated evaporative loss of 7,449 acre-feet of water per year. The water would then be delivered into Richland-Chambers Reservoir in Navarro and Freestone Counties in an amount sufficient to increase the water supply-yield of Richland-Chambers Reservoir by 63,000 acre-feet per annum to be diverted and

used for any of the purposes authorized by Certificate of Adjudication No. 08-5035. Applicant also requests authorization to use a two-mile segment of the bed and banks of Alligator Creek to convey water from the constructed wetland impoundment in an amount not to exceed 11,398 acre-feet per month in any given month and not to exceed 100,465 acre-feet per year at a discharge rate not to exceed 192 cubic-feet-per-second (86,170 gallons-per-minute) for storage in Richland-Chambers Reservoir. The Executive Director has recommended special conditions in the amendment to protect in-stream uses and aquatic habitat. The commission will consider any hearing requests and replies and responses. (Robin Smith and David Koinm)

Continued to the January 12, 2005 agenda.

- Item 3. **Docket No. 2004-1200-MWD.** Consideration of the application by the **Duncan Group, Inc.** for a new permit (proposed Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0014391001) to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,350 gallons per day via drip irrigation of 2.03 acres of public access land. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,821 gallons per day via drip irrigation of 2.03 acres of public access land. This draft permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located approximately 0.75 mile northeast of the intersection of Ranch Road 620 and Lohmans Crossing Road and approximately 4.1 miles southwest of the intersection of Ranch Road 620 and Ranch Road 2222 in **Travis 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. (Matt Beeter/Julian Centeno, Jr.)

Approve the hearing request for Travis County WCID No.17 and refer to ADR for a period of 4-6 weeks then, if necessary, to SOAH for a period of 4 months on the issues of: whether the area to be serviced by the proposed facility can be served by the District's facilities, which are either in place or under construction; and whether the draft permit requires adequate storage facilities to handle emergency wet-weather conditions. KW/RM; all agree.

AGRICULTURAL ENFORCEMENT AGREED ORDERS

- Item 4. **Docket No. 2003-1300-AGR-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Sunrise Dairies, Inc.** in **Hidalgo County**; Water Quality Permit No. 02452; 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. (Sandy VanCleave, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

- Item 5. **Docket No. 2004-0123-AGR-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Willis Carroll Beyer Estate Trust dba Producers Compost** in **Erath County**; RN103144622; 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]. (Jorge Ibarra, P.E., Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

AIR QUALITY ENFORCEMENT AGREED ORDERS

Item 6. **Docket No. 2003-1304-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **Brazos Valley Energy L.P. dba Brazos Valley Electric Generating Facility in Fort Bend County**; Air Account No. FG-0595-L; 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. (Chad Blevins, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 7. **Docket No. 2004-0233-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **CMS Taurus Field Services, LP in Callahan County**; Air Account No. CC0005U; 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. (Lawrence King, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 8. **Docket No. 2004-0383-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **FAMCOR Oil, Inc. in Polk County**; Air Account ID No. PF0031I; 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. (Terry Murphy, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 9. **Docket No. 2004-0551-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **Polimeri Europa Americas, Inc. in Harris County**; Air Account No. HG-3757-A, Regulated Entity Reference No. RN102325974; 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]. (Ronnie Kramer, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 10. **Docket No. 2004-0033-AIR-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Southwest Convenience Stores, LLC dba 7 Eleven 57625 in El Paso County**; TCEQ ID No. EE1174C; 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. (Mauricio Olaya, Joseph Daley)

Remanded to the Executive Director.

Item 11. **Docket No. 2004-0278-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **Morgan Trailer Mfg. Co. in Navarro County**; Air Account No. NB-0102-T, Regulated Entity ID No. RN100741735; 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, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 12. **Docket No. 2004-0441-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **Chevron USA Inc. in Harris County**; Air Account No. HX-1786-O, Regulated Entity Reference No. RN102507043; 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. (Erika Fair, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 13. **Docket No. 2004-0356-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **Therma Foam, Inc. in Tarrant County**; Air Account No. TA-0374-V, Regulated Entity Reference No. RN102297348; 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. (Lori Thompson, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 14. **Docket No. 2003-1334-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **Xexes, Inc. in Harris County**; RN102995099; 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. (Stacey Young, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 15. **Docket No. 2004-0440-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **Vintage Petroleum, Inc. in Chambers County**; Air Account No. CI-0189-J, Regulated Entity Reference No. RN102510757; 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. (Erika Fair, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 16. **Docket No. 2003-1487-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **TM Chemicals, L.L.C. in Harris County**; Air Account No. HG3043A, Regulated Entity Reference No. RN102844271; 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. (Erika Fair, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

EDWARDS AQUIFER ENFORCEMENT AGREED ORDERS

Item 17. **Docket No. 2003-0359-EAQ-E.** Consideration of an Agreed Order assessing administrative penalties against **AT&T Wireless Services, Incorporated in Travis County**; Edwards Aquifer Protection Program File No. 02010901; for Edwards Aquifer 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. (Lawrence King, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 18. **Docket No. 2004-0684-EAQ-E.** Consideration of an Agreed Order assessing administrative penalties against **Mr. Frank Smith dba Discovery Office Park in Williamson County**; Edwards Aquifer Registration Number 11-03082902, Regulated Entity ID No. RN104151980; for Edwards Aquifer 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. (Leila Pezeshki, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

IRRIGATOR ENFORCEMENT AGREED ORDER

Item 19. **Docket No. 2003-1538-IRR-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Wiltshire Brothers, Inc. dba Perfect Lawns of Austin in Travis County**; Regulated Entity ID No. RN104067129; for licensing/certification violations pursuant to Tex. Water Code chs. 7 and 34 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Lori Thompson, Joseph Daley)

Remanded to the Executive Director.

INDUSTRIAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS

Item 20. **Docket No. 2003-0340-IWD-E.** Consideration of an Agreed Order assessing administrative penalties against **Kobra Mirhaj dba East Mount Houston Mobile Home Park Wastewater Treatment Facility in Harris County**; Texas Pollutant Discharge Elimination System Permit No. WQ0013955001; 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. (Kimberly Morales, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

- Item 21. **Docket No. 2003-1559-IWD-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Lufkin Industries Inc.** in **Angelina County**; Texas Pollutant Discharge Elimination System Permit No. 001268000; 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. (Terry Murphy, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

MUNICIPAL SOLID WASTE ENFORCEMENT AGREED ORDERS

- Item 22. **Docket No. 2003-1463-MSW-E.** Consideration of an Agreed Order assessing administrative penalties against **Robert Wittenbach dba J & R Mud Pumping Service** in **Cameron County**; Sludge Transporter Registration No. 21143; 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 Texas Administrative Code ch. 60. (Chris Friesenhahn, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

- Item 23. **Docket No. 2004-0336-MSW-E.** Consideration of an Agreed Order assessing administrative penalties against **W W Cattle Feeds, Inc. dba W W Cattle Feeds** in **Parker County**; Municipal Solid Waste Registration No. 47026; for municipal solid waste 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 Texas Administrative Code ch. 60. (Jorge Ibarra, P.E., Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

MUNICIPAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS

- Item 24. **Docket No. 2004-0353-MWD-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Aqua Texas, Inc.** in **Harris County**; Texas Pollutant Discharge Elimination System Permit No. 12519-001, Regulated Entity ID No. RN102341559; 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. (Michael Meyer, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 25. **Docket No. 2004-0104-MWD-E.** Consideration of an Agreed Order assessing administrative penalties against **City of Seagoville in Dallas County**; Texas Pollutant Discharge Elimination System Permit No. 10370-001; 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. (Erika Fair, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 26. **Docket No. 2003-0220-MWD-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Kingsland Municipal Utility District in Llano County**; Texas Pollutant Discharge Elimination System Permit No. 11549-001; 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. (Rebecca Clausewitz, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 27. **Docket No. 2003-0098-MWD-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **William D. Smith dba Kingmont Mobile Home Park in Harris County**; Texas Pollutant Discharge Elimination System Permit No. 13770-001; 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. (Catherine Albrecht, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 28. **Docket No. 2003-0444-MWD-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Holland in Bell County**; Texas Pollutant Discharge Elimination System Permit No. 10897-001; 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. (Merrilee Hupp, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 29. **Docket No. 2004-0554-MWD-E.** Consideration of an Agreed Order assessing administrative penalties against the **City of Galena Park in Harris County**; Texas Pollutant Discharge Elimination System Permit No. 10831-001, Regulated Entity No. RN101701324; 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. (Pamela Campbell, Joseph Daley)

Remanded to the Executive Director.

PETROLEUM STORAGE TANK ENFORCEMENT AGREED ORDERS

Item 30. **Docket No. 2003-0666-PST-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Ashmal, Incorporated dba East 1st Grocery in Travis County**; Petroleum Storage Tank Facility ID No. 11315; 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 Texas Administrative Code ch. 60. (Lawrence King, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 31. **Docket No. 2003-0281-PST-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Dream Enterprises, Inc. dba Barbin's Super Store in Fort Bend County**; Petroleum Storage Tank Facility ID No. 0044911; 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 Texas Administrative Code ch. 60. (Catherine Sherman, Joseph Daley)

Approve the Agreed Order. KW/RM; LS oppose.

Item 32. **Docket No. 2003-1207-PST-E.** Consideration of an Agreed Order assessing administrative penalties against **PNI Distribution, Inc. in Dallas and Tarrant Counties**; Regulated Entity No. 103081055; 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 Texas Administrative Code ch. 60. (Catherine Sherman, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 33. **Docket No. 2003-1248-PST-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Robert Heath Trucking, Inc. in Lubbock County**; PST Facility ID No. 1040; 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. (Sherry Smith, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 34. **Docket No. 2003-0163-PST-E.** Consideration of an Agreed Order assessing administrative penalties against **Tideport Petroleum, Inc. in Hidalgo County**; TCEQ ID No. RN102485349; 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. (Benjamin de Leon, Lisa Lemanczyk)

Remanded to the Executive Director.

Item 35. **Docket No. 2004-0143-PST-E.** Consideration of an Agreed Order assessing administrative penalties against **Chapman Inc.** in **Collin County**; TCEQ ID No. RN103711321; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality. (Gitanjali Yadav, Lisa Lemanczyk)

Approve the Agreed Order. KW/RM; all agree.

Item 36. **Docket No. 2003-1096-PST-E.** Consideration of an Agreed Order assessing administrative penalties against **V. W. Convenience, Inc. dba Super Stop Food Mart** in **Polk County**; PST Facility No. 19638; 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. (Sheila Smith, Joseph Daley)

Remanded to the Executive Director.

Item 37. **Docket No. 2003-1059-PST-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Saidul Kabir dba Super Shop No. 2** in **Houston County**; Petroleum Storage Tank Facility ID No. 8704; 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 Texas Administrative Code ch. 60. (Kimberly Morales, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 38. **Docket No. 2004-0145-PST-E.** Consideration of an Agreed Order assessing administrative penalties against **Star Tex Gasoline & Oil Distributors, Inc.** in **Nueces County**; Regulated Entity ID No. RN103949434; 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 Texas Administrative Code ch. 60. (Sushil Modak, Joseph Daley)

Remanded to the Executive Director.

Item 39. **Docket No. 2003-1556-PST-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Sattar Investments, Inc. dba CFM Florence** in **Williamson County**; Petroleum Storage Tank Facility ID No. 70929; 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. (Jorge Ibarra, P.E., Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 40. **Docket No. 2004-0397-PST-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Sarbali Oil, Inc. dba Jasper Fuels Company** in **Jefferson County**; Petroleum Storage Tank Facility ID Nos. 37326

and 48536; for petroleum storage tank violations pursuant to Tex. Health & Safety Code ch. 382, 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. (John Barry, Joseph Daley)

Remanded to the Executive Director.

Item 41. **Docket No. 2004-0177-PST-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Richmond in Fort Bend County**; Petroleum Storage Tank Facility ID No. 14112; 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 Texas Administrative Code ch. 60. (Rebecca Johnson, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 42. **Docket No. 2004-0154-PST-E.** Consideration of an Agreed Order assessing administrative penalties against **Mansoorali G. Chunara dba Lucky 7 Quick Stop in Navarro County**; Petroleum Storage Tank Facility ID No. 64498; 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 Texas Administrative Code ch. 60. (Audra Ruble, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

PETROLEUM STORAGE TANK ENFORCEMENT DEFAULT ORDER

Item 43. **Docket No. 2003-1030-PST-E.** Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Barker Business, Inc. dba Speedy Mart in Galveston County**; TCEQ ID No. 35281; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26, Tex. Health & Safety Code ch. 382, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Wendy Cooper, Lisa Lemanczyk)

Remanded to the Executive Director.

PUBLIC WATER SYSTEM ENFORCEMENT AGREED ORDERS

Item 44. **Docket No. 2002-0984-PWS-E.** Consideration of an Agreed Order assessing administrative penalties against **Adventure Camp, Inc. dba Y. O. Adventure Camp in Kerr County**; TCEQ ID Nos. 1330116 and RN101194561; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Alfred Okpohworho, Lisa Lemanczyk)

Approve the Agreed Order. KW/RM; all agree.

Item 45. **Docket No. 2002-0985-PWS-E.** Consideration of an Agreed Order assessing administrative penalties against **Richard Hutt dba Westlake Village Mobile Home Park** in **Johnson County**; TCEQ ID Nos. 1260098 and RN103023677; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Ashley T. Keever, Lisa Lemanczyk)

Approve the Agreed Order. KW/RM; LS oppose.

Item 46. **Docket No. 2003-1424-PWS-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Leona** in **Leon County**; Public Water Supply ID No. 1450008; for water rights and drinking water quality violations pursuant to Tex. Health & Safety Code ch. 341, Tex. Water Code ch. 11, and the rules of the Texas Commission on Environmental Quality. (Elvia Maske, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 47. **Docket No. 2004-0463-PWS-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **William E. Hartzog dba Lone Willow Mobile Home Park West** in **Harris County**; Public Water Supply No. 1010663; for drinking water quality violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Kimberly Morales, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

Item 48. **Docket No. 2003-1329-PWS-E.** Consideration of an Agreed Order assessing administrative penalties against **Cody Lewis dba Water Works 1 Floyd Acres** in **Llano County**; Public Water Supply No. 1500018, Regulated Entity Reference No. RN102685633; for drinking water quality violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Lori Thompson, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

WATER QUALITY ENFORCEMENT AGREED ORDERS

Item 49. **Docket No. 2003-1568-WQ-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Debra K. Smith and Terry M. Sinclair dba City Cabinet Shop** in **Tom Green County**; Texas Pollutant Discharge Elimination System Permit No. None, RN102962008; for water quality 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. (David Van Soest, Joseph Daley)

Remanded to the Executive Director.

Item 50. **Docket No. 2004-0292-WQ-E.** Consideration of an Agreed Order assessing administrative penalties against **Williams Brothers Construction Co., Inc. dba Market Street Precast Yard in Harris County**; Texas Pollutant Discharge Elimination System Multi-Sector General Permit No. TXR05M585; 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. (Catherine Albrecht, Joseph Daley)

Approve the Agreed Order. KW/RM; all agree.

RULE MATTERS

Item 51. **Docket No. 2004-1397-RUL.** Consideration of a petition for rulemaking under 30 TAC Section 20.15.

The petition was filed by the Greater Houston Builders Association. The petitioner requests amendments to eight existing sections and the adoption of three new sections of **30 TAC Chapter 291**, Utility Regulations, Subchapter G, Certificate of Convenience and Necessity. The requested amendments would provide for the following: landowner consent to having property included in a certificate of convenience and necessity (CCN) area; additional information in applications for CCNs and amendments; required written notice of certain actions to landowners and purchasers; requirements for the commission to consider additional factors in granting CCNs and amendments; requirements for commission approval before CCN holders apply for federal grants or loans; petitions from landowners to have the commission order a CCN holder to pay off federal debt; recording requirements for CCNs in the county real property records; requirement for a public hearing if requested by an interested party; and amendment of CCNs upon request by a landowner who did not consent to inclusion in the CCN and who is not receiving continuous and adequate service from the CCN holder. (Michelle Abrams, Lara Nehman, Joseph Thomas) (Rule Project No. 2004-099-PET-NR)

Direct staff to initiate rulemaking and include a stakeholder group in the process with a goal of holding the initial stakeholder meeting within 90 days. The ED should report back on the stakeholder groups' progress at the 12/17/04 worksession.

In addition, as an interim measure for pending CCN applications which have not yet been noticed under 30 TAC §291.106, the applicant must also provide mailed notice to landowners in areas newly sought in the proposed CCN. The mailed notice should be provided on the basis of the county appraisal district tax rolls for the county or counties in which the proposed CCN lies and a substantial compliance standard will apply. KW/LS; all agree.

Item 52. **Docket No. 2004-1379-RUL.** Consideration of a petition for rulemaking under 30 TAC Section 20.15.

The petition was filed by the Texas Petroleum Marketers and Convenience Store Association. The petitioners seek to amend **30 TAC Chapter 114**, Subchapter H, Low Emission Fuels, Division 2, Low Emission Diesel, Section 114.319, Affected Counties

and Compliance Dates, to delay the effective dates. (Scott Carpenter, John Minter, Clifton Wise) (Rule Project No. 2004-095-PET-NR)

Direct staff to initiate rulemaking with a 6 month extension along with the recommendations provided by the Executive Director. RM/KW; all agree.

Item 53. **Docket No. 2004-1024-RUL.** Consideration for publication of, and hearing on, proposed amended Sections 293.1, 293.11, 293.41, 293.44, 293.51, 293.59, 293.80, 293.83, 293.113, 293.201, and 293.202 of **30 TAC Chapter 293**, Water Districts; and proposed amended Sections 301.1 - 301.4, 301.6, 301.21, 301.31, 301.38, 301.43, 301.45, 301.51, 301.71, 301.73, and 301.74 and proposed repealed Sections 301.5, 301.22, and 301.23 of **30 TAC Chapter 301**, Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements. The proposed rulemaking implements Senate Bill 624, Senate Bill 898, House Bill 1541, and House Bill 2887, 78th Legislature, 2003.

In Chapter 293, the proposed rulemaking would amend the agency's rules on construction and funding of district facilities and the commission's process for creation, bond issue, and other district applications. In Chapter 301, the proposed rulemaking would delete all references to "plans of reclamation." (Randy Nelson, Geoff Kirshbaum, Debra Barber) (Rule Project No. 2004-015-293-WT)

Approve publication of, and hearing on, proposed amendments to 30 TAC Chapter 293 and 30 TAC Chapter 301. KW/RM; all agree.

Item 54. **Docket No. 2004-1234-RUL.** Consideration for publication of proposed new Section 7.126, Memorandum of Understanding Between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality, of **30 TAC Chapter 7**, Memoranda of Understanding; and approval of the negotiated memorandum of understanding that will be proposed through rulemaking by the Texas Department of Licensing and Regulation.

The proposed rulemaking would incorporate by reference a memorandum of understanding with the Texas Department of Licensing and Regulation concerning the capping and plugging of abandoned or deteriorated water wells. The proposed rulemaking and memorandum of understanding implement Senate Bill 279, Section 19.015, which requires the two agencies to enter into the memorandum of understanding concerning the referral and investigation of abandoned or deteriorated wells and for groundwater conservation districts to join if abandoned or deteriorated wells are located within their borders. (Mary Ambrose, Jason Haas, Joseph Thomas) (Rule Project No. 2004-059-007-AD)

Approve publication of proposed new Section 7.126, Memorandum of Understanding Between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality, of 30 TAC Chapter 7, Memoranda of Understanding. KW/LS; all agree.

- Item 55. **Docket No. 2003-1377-RUL.** Consideration of the adoption of amended Sections 334.2, 334.5, 334.7 - 334.10, 334.12, 334.14, 334.46, 334.50, 334.55, 334.56, 334.302, 334.306 - 334.310, 334.313 - 334.315, 334.322, 334.530 - 334.535, and 334.560 of **30 TAC Chapter 334**, Underground and Aboveground Storage Tanks.

The rulemaking revises the standard for the reimbursement of eligible cleanup expenses related to leaking petroleum storage tank sites. Accountability provisions are added to the reimbursement rules and administrative changes are made to be consistent with Texas Register requirements and with other agency rules. In addition, the rules update and clarify existing rules regarding general provisions, technical standards, reimbursement, and overpayment. The proposed rules were published in the April 30, 2004 issue of the *Texas Register* (29 TexReg 4083). (Anton Rozsypal, Fred Meyers, David Green, Michael Bame) (Rule Project No. 2002-071-334-WS)

Continued to the October 27, 2004 agenda.

EXECUTIVE SESSION

- Item 56. **Docket No. 1998-1154-EXE.** The Commission will meet in closed session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director, 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 session 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 57. **Docket No. 1999-0024-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 session to take action on a 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 58. **Docket No. 1999-0025-EXE.** The Commission will conduct a closed session 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 session 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 TWO (2) 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.)

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

OLD BUSINESS AGENDA

Wednesday, October 13, 2004

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

1:00 P.M.
12100 Park 35 Circle
Room 201S, Bldg. E

Continued from the September 29, 2004 agenda

- Item 1. **TCEQ Docket No. 2002-0175-IHW-E; SOAH Docket No. 582-03-3352.** Consideration of the Administrative Law Judge's Proposal for Decision and Order assessing administrative penalties of **J & L Plating, Inc. and Frankie E. Porter dba J & L Plating in Rockwall County**, Texas; TCEQ ID No.23715; regarding industrial hazardous waste violations pursuant to 30 Tex. Admin. Code §§ 335.4, 335.9, 335.62, and 335.69(f); and 40 C.F.R. §§ 262.11 and 262.34(d)(4) and the rules of the Texas Commission on Environmental Quality.

Adopt the ALJ's Order with the following changes: (1) modify Conclusion of Law No. 17 to replace the citation "30 Tex. Admin Code 335.69(f)" with "30 Tex. Admin Code 335.62"; (2) modify Ordering Provision No. 3 to add the phrase "and Mr. Porter's compliance with all of the terms and conditions set forth in this order" after "the imposition of this administrative penalty..."; (3) modify Ordering Provision No. 8 to eliminate the phrase "...by certified mail"; (4) delete Findings of Fact numbers 58 & 60; (5) delete Conclusions of Law numbers 18-21; and modify Ordering Provision #1 with a multi-level replacement that includes: (A.) Respondent is assessed an administrative penalty of \$23,500.00 for violations of 30 TAC Chapters 335.9 & 335.62; (B.) Payment to TCEQ is deferred so long as Respondent files an annual report regarding his payments to the City of Rockwall pursuant to the requirements of the criminal penalty; (C.) Upon Respondent's showing that \$23,500.00 dollars of the criminal penalty fine has been paid to the City of Rockwall, any further administrative penalty to TCEQ will be discharged; and (D.) Upon any finding by the City of Rockwall that Respondent is in default of paying his criminal penalty, Respondent would be required to pay the full \$23,500.00 administrative penalty to TCEQ LS/RM; all agree.

/s/ Elaine Lucas
Assistant General Counsel,
Elaine Lucas

12/08/2004
Date