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Chairman H.S. Buddy Garcia OLD BUSINESS AGENDA
Commissioner Larry R. Soward
Commissioner Bryan W. Shaw, Ph.D. Wednesday, November 19, 2008

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

Item continued from the November 5, 2008 agenda.

Item 1. [Docket No. 2008-0465-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Texas Port Recycling LP** in **Harris County**; RN101474955; 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. (Terry Murphy, Bryan Sinclair)

Approve the Agreed Order. LS/BS; all agree.

AGENDA

Wednesday, November 19, 2008

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. 2008-0772-WR](#). Consideration of the application of the **City of Waco** for Water Right Permit No. 5840 to use the bed and banks of the Brazos River, the Brazos River Basin to convey 42,344 acre-feet per year of return flows and any future return flows from the Waco Metropolitan Area Regional Sewage System Wastewater Treatment Plant approximately 14.35 river miles downstream to a diversion point located on the Brazos River in McLennan County and to divert and use not to exceed 42,175 acre-feet of the 42,344 acre-feet per year of permitted return flows for agricultural (irrigation), industrial (electric power plant cooling) and municipal purposes within the City's service area. This effluent is 12.9% groundwater-based. The discharge point is located on the southwest bank of the Brazos River, approximately 4.5 miles downstream from the crossing of Interstate Highway 35 and the Brazos River bearing N 68.196°E, 54,720 feet from the northwest corner of the Carlos O'Campo Survey, Abstract No. 32, in **McLennan County**, at 31.518°N Latitude, 97.063°W Longitude and the downstream diversion point is located on the Brazos River bearing N 86.552°E, 54,420 feet from the northwest corner of the Ignacio Galindo Survey, Abstract No. 16 in **McLennan County** at 31.411°N Latitude, 97.018°W Longitude. The Commission will also consider hearing requests and filings related to the application. (Craig Mikes, Ross Henderson)

Grant the hearing request submitted by the Dow Chemical Company and refer the application to SOAH for a hearing. LS/BS; all agree.

- Item 2. [Docket No. 2008-0927-MWD](#). Consideration of the application by **Montgomery County Utility District No. 2** for an amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011271001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 550,000 gallons per day and change the outfall location. The wastewater treatment facility is located on the east side of Lake Conroe, immediately south of Farm-to-Market Road 830 and approximately 500 feet east of Kingston Cove Lane in **Montgomery 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. (Robert Brush, Michael Redda)

Deny the hearing request filed by John DeCesare, issue the draft permit approving the major amendment, and adopt the Executive Director's Response to Comments. LS/BS; all agree.

AGRICULTURAL ENFORCEMENT AGREED ORDER

Item 3. [Docket No. 2008-0728-AGR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Jon Stowater and James Pool dba S&P Dairy in Hopkins County**; RN103043816; 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, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

AIR QUALITY ENFORCEMENT AGREED ORDERS

Item 4. [Docket No. 2008-0906-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties against **Magellan Pipeline Terminals, L.P. in Ector County**; RN100244979; 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. (Terry Murphy, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 5. [Docket No. 2008-0817-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Rhodia Inc. in Harris County**; RN100211317; 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. (Bryan Elliott, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 6. [Docket No. 2008-0122-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Viron International Corporation in Bell County**; RN100223254; 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. (Jeremy Escobar, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 7. [Docket No. 2008-0008-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties against **Texas Port Recycling LP in Harris County**; RN101474955; 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. (Terry Murphy, Bryan Sinclair)

Approve the Agreed Order. LS/BS; all agree.

Item 8. [Docket No. 2008-0916-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Chevron Phillips Chemical Company LP in Hutchinson County**; RN102320850; 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. (Jorge Ibarra, P.E., Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 9. [Docket No. 2008-0893-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Valero Refining-Texas, L.P. in Galveston County**; RN100238385; 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. (Roshondra Lowe, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 10. [Docket No. 2008-0944-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties against **TOTAL PETROCHEMICALS USA, INC. in Harris County**; RN100212109; 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. (Roshondra Lowe, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 11. [Docket No. 2008-0766-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Sherwin Alumina, L.P. in San Patricio County**; RN102318847; 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. (John Muennink, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 12. [Docket No. 2008-0635-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Shell Oil Company and Shell Chemical LP in Harris County**; RN100211879; 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, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 13. [Docket No. 2008-0636-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties against **U.S. Department of the Army Corpus Christi Army Depot in Nueces County**; RN100223197; 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. (Samuel Short, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 14. [Docket No. 2008-0381-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Top Gun Gunite Company-GP, LLC in Harris County**; RN105376057; 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. (J. Craig Fleming, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 15. [Docket No. 2008-0435-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **The Premcor Refining Group Inc. in Jefferson County**; RN102584026; 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, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 16. [Docket No. 2008-0781-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **ExxonMobil Oil Corporation in Jefferson County**; RN100542844; 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. (Nadia Hameed, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 17. [Docket No. 2008-0641-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Exxon Mobil Corporation in Harris County**; RN102579307; 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. (John Muennink, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 18. [Docket No. 2008-1073-AIR-E](#). Consideration of an Agreed Order assessing administrative penalties against **Explorer Pipeline Company in Jefferson County**; RN101954394; 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. (Daniel Siringi, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

DRY CLEANER ENFORCEMENT DEFAULT ORDER

- Item 19. [Docket No. 2006-1146-DCL-E](#). Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Carol Bailey dba C & T Qunique Cleaners in Harris County**; TCEQ ID No. RN100879881; for a dry cleaner registration violation pursuant to Tex. Health & Safety Code ch. 374, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Jacquelyn Boutwell, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

EDWARDS AQUIFER ENFORCEMENT AGREED ORDER

Item 20. [Docket No. 2008-0400-EAQ-E](#). Consideration of an Agreed Order assessing administrative penalties against **Robert Rotter in Hays County**; RN104945217; 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. (Lauren Smitherman, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

FIELD CITATIONS

Item 21. [Docket No. 2008-1357-PST-E](#). Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **Samy Retail Services Inc. dba Stop & Go 10 in Webb County**; RN102379443; 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. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

Item 22. [Docket No. 2008-1335-WOC-E](#). Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **Billy Jones in Limestone County**; RN105552814; for occupational licensing violations pursuant to Tex. Water Code chs. 7 and 37 and the rules of the Texas Commission on Environmental Quality. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

Item 23. [Docket No. 2008-1330-WOC-E](#). Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **Jimmy L. Rodriguez in Ellis County**; RN103364360; for occupational licensing violations pursuant to Tex. Health & Safety Code ch. 341, Tex. Water Code ch. 37, and the rules of the Texas Commission on Environmental Quality. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

Item 24. [Docket No. 2008-1332-WOC-E](#). Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **Rhonda C. Vanover in Lubbock County**; RN103270385; for occupational licensing violations pursuant to Tex. Health & Safety Code ch. 341, Tex. Water Code ch. 37, and the rules of the Texas Commission on Environmental Quality. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

Item 25. [Docket No. 2008-1338-WQ-E](#). Consideration of a Field Citation assessing administrative penalties and requiring certain actions of the **City of Dallas Parks and Recreation Department in Dallas County**; RN105492193; 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. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

Item 26. [Docket No. 2008-1336-WQ-E](#). Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **WM Group LP dba R&W Sand and Gravel in San Jacinto County**; RN104876529; 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. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

Item 27. [Docket No. 2008-1339-WR-E](#). Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **Range Resources Corporation in Tarrant County**; RN105295463; for water rights violations pursuant to Tex. Water Code ch. 11 and the rules of the Texas Commission on Environmental Quality. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

INDUSTRIAL HAZARDOUS WASTE ENFORCEMENT DEFAULT ORDER

Item 28. [Docket No. 2008-0233-IHW-E](#). Consideration of a Default Order assessing administrative penalties against **Xklen Corporation in Brazoria County**; TCEQ ID No. RN100701507; for industrial hazardous 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. (Lena Roberts)

Approve the Default Order. BS/LS; all agree.

INDUSTRIAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS

Item 29. [Docket No. 2008-0768-IWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Smith & Coffman, Ltd. dba Running W Truck Stop in Smith County**; RN104435821; 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. (J. Craig Fleming, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 30. [Docket No. 2008-0701-IWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Shell Chemical LP and Equilon Enterprises LLC in Harris County**; RN100209832; 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, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

LICENSED IRRIGATORS ENFORCEMENT DEFAULT ORDERS

Item 31. [Docket No. 2007-1888-LII-E](#). Consideration of a Default Order assessing administrative penalties and requiring certain actions of **John Hunt in Harris County**; TCEQ ID No. RN103447306; for landscape irrigator installer violations pursuant to Tex. Water Code chs. 7 and

37, Tex. Occ. Code ch. 1903, and the rules of the Texas Commission on Environmental Quality.
(Anna M. Cox, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

Item 32. [Docket No. 2007-0936-LII-E](#). Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Javier R. Martinez in Fort Bend County**; TCEQ ID No. RN103450953; for landscape irrigator installer violations pursuant to Tex. Water Code chs. 7 and 37, Tex. Occ. Code ch. 1903, and the rules of the Texas Commission on Environmental Quality. (Rudy Calderon, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

MULTI-MEDIA MATTER ENFORCEMENT AGREED ORDERS

Item 33. [Docket No. 2008-0668-MLM-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **John Deguire dba Deguire Auto Salvage Yard in Bell County**; RN103005914; for municipal solid waste and water quality violations pursuant to Tex. Water Code chs. 7 and 26, Tex. Health & Safety Code ch. 361, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Danielle Porras, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 34. [Docket No. 2007-1841-MLM-E](#). Consideration of an Agreed Order assessing administrative penalties against **Fox Tree & Landscape Nursery, Inc. dba Mother Earth Landscape Materials in Nueces County**; TCEQ ID No. RN104751177; for municipal solid waste, air quality, and water quality violations pursuant to Tex. Water Code chs. 7 and 26, Tex. Health & Safety Code chs. 361 and 382, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

Item 35. [Docket No. 2006-0328-MLM-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Shell Chemical LP and Shell Oil Company in Harris County**; TCEQ ID No. RN100211879; for industrial hazardous waste and air quality violations pursuant to Tex. Health & Safety Code chs. 361 and 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Laurencia Fasoyiro, Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

MUNICIPAL SOLID WASTE ENFORCEMENT AGREED ORDERS

Item 36. [Docket No. 2008-1049-MSW-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Maurice Rosas in Scurry County**; RN105385645; 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. (Ross Fife, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 37. [Docket No. 2008-0659-MSW-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Ben Gregory in Tarrant County**; RN105444525; 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. (John Shelton, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 38. [Docket No. 2007-1093-MSW-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Herman Hinson and Mary Hinson in Hardin County**; TCEQ ID No. RN104541560; 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. (Gary K. Shiu, Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

Item 39. [Docket No. 2008-1000-MSW-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **COWTOWN REDI MIX, INC. in Tarrant County**; RN105373294; 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. (John Shelton, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

MUNICIPAL SOLID WASTE ENFORCEMENT DEFAULT ORDER

Item 40. [Docket No. 2005-1141-MSW-E](#). Consideration of a Default Order assessing administrative penalties and requiring certain actions of **P Johnston Ventures, Inc. in Montgomery County**; TCEQ ID No. RN100869254; 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. (Alfred Oloko, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

MUNICIPAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS

Item 41. [Docket No. 2008-0689-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Burkburnett in Wichita County**; RN101920452; 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. (J. Craig Fleming, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 42. [Docket No. 2008-0841-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Northwest Harris County Municipal Utility District No. 20** in **Harris County**; RN103907002; 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. (Mark Oliver, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 43. [Docket No. 2007-0447-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Oakwood** in **Leon County**; RN102075553; 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. (Tel Croston, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 44. [Docket No. 2008-0612-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Groesbeck** in **Limestone County**; RN101613206; 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. (Heather Brister, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 45. [Docket No. 2008-0523-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Kendall County Water Control and Improvement District No. 1** in **Kendall County**; RN102837028; 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. (Lauren Smitherman, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 46. [Docket No. 2008-0352-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Bellevue** in **Clay County**; RN101720779; 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. (J. Craig Fleming, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 47. [Docket No. 2008-0740-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Huntsville** in **Walker County**; RN101609568; 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. (Harvey Wilson, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 48. [Docket No. 2008-1014-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Keene in Johnson County**; RN101241164; 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. (Mark Oliver, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 49. [Docket No. 2008-0548-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Walnut Springs in Bosque County**; RN101918472; 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. (Heather Brister, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 50. [Docket No. 2008-0825-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Windthorst in Archer County**; RN101512747; 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. (Steve Villatoro, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 51. [Docket No. 2008-0842-MWD-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Aqua Utilities, Inc. in Hays County**; RN101513729; 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, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

PETROLEUM STORAGE TANKS ENFORCEMENT AGREED ORDERS

- Item 52. [Docket No. 2008-1174-PST-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **SHERA CORPORATION dba Dairy Way Food Mart in Dallas County**; RN102049632; for petroleum storage tank 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. (Rajesh Acharya, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

- Item 53. [Docket No. 2008-0682-PST-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Youngmi Hwang dba R&N Valley Ranch Conoco in Dallas County**; RN101545622; 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. (Rajesh Acharya, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 54. [Docket No. 2008-0406-PST-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Manuel D. Perez** in **Midland County**; RN101784338; 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. (Rajesh Acharya, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 55. [Docket No. 2008-0570-PST-E](#). Consideration of an Agreed Order assessing administrative penalties against **Penske Truck Leasing Co., L.P.** in **Nueces County**; RN102048949; 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. (Jeremy Escobar, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 56. [Docket No. 2008-0320-PST-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **ALLINA BUSINESS, INC. dba Five Star Food Mart** in **Harris County**; RN101778272; 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. (Rajesh Acharya, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 57. [Docket No. 2006-1844-PST-E](#). Consideration of an Agreed Order assessing administrative penalties against **A & L Partners, LLC dba Hurst Food Mart** in **Tarrant County**; TCEQ ID No. RN101539930; 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. (Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

Item 58. [Docket No. 2005-1241-PST-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Mohamed Ahmed Al Bataineh dba Harvest Food Store** in **Harris County**; TCEQ ID No. RN100925064; 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. (Gary K. Shiu, Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

PETROLEUM STORAGE TANKS ENFORCEMENT DEFAULT ORDERS

Item 59. [Docket No. 2005-1128-PST-E](#). Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Joey Nguyen dba Stop & Shop in Tarrant County**; TCEQ ID No. RN102060803; for petroleum storage tank violations pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 382, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Jacquelyn Boutwell, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

Item 60. [Docket No. 2005-1601-PST-E](#). Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Arnoldo Perez dba Perez Fuel Stop in Hidalgo County**; TCEQ ID No. RN101445310; 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. (Dinniah M. Chahin, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

Item 61. [Docket No. 2007-1744-PST-E](#). Consideration of a Default Order assessing administrative penalties and requiring certain actions of **William M. James in Palo Pinto County**; TCEQ ID No. RN101562858; 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. (Tracy Chandler, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

PUBLIC WATER SYSTEM ENFORCEMENT AGREED ORDERS

Item 62. [Docket No. 2008-0764-PWS-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Coolidge in Limestone County**; RN101402485; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Christopher Keffer, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 63. [Docket No. 2008-0987-PWS-E](#). Consideration of an Agreed Order assessing administrative penalties against **Zion Lutheran Church of Mission Valley, Texas in Victoria County**; RN105518682; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Stephen Thompson, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 64. [Docket No. 2006-1755-PWS-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **City of Galveston in Galveston County**; TCEQ ID No. RN101274249; for public water supply violations pursuant to Tex. Water Code ch. 7, Tex. Health

& Safety Code ch. 341, and the rules of the Texas Commission on Environmental Quality. (Lena Roberts)

Item remanded to the Executive Director.

Item 65. [Docket No. 2008-1007-PWS-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Hartmut Mueller dba Hofbrau RV Park in Blanco County**; RN105502793; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Amanda Henry, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 66. [Docket No. 2008-0857-PWS-E](#). Consideration of an Agreed Order assessing administrative penalties against **Jefferson County Water Control Improvement District 10 in Jefferson County**; RN101407930; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Tel Croston, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 67. [Docket No. 2008-1079-PWS-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Chicken House Flea Market, Inc. in Erath County**; RN104966049; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Amanda Henry, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 68. [Docket No. 2008-0898-PWS-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Cynthia Moretti dba Cynthia's Kitchen in Liberty County**; RN101207124; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Pamela Campbell, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

WATER QUALITY ENFORCEMENT AGREED ORDERS

Item 69. [Docket No. 2008-0703-WQ-E](#). Consideration of an Agreed Order assessing administrative penalties against **Weatherford 202, LLP in Parker County**; RN105272157; 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. (James Nolan, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 70. [Docket No. 2008-0889-WQ-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Nash Trucking & Construction, Ltd.** in **Upshur County**; RN105383004; 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, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 71. [Docket No. 2008-0704-WQ-E](#). Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Micobe, Inc.** in **Coryell County**; RN102573326; 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. (Heather Brister, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 72. [Docket No. 2008-0996-WQ-E](#). Consideration of an Agreed Order assessing administrative penalties against **Cliff Lewis Custom Homes, LLC** in **Denton County**; RN105205975; 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. (Lauren Smitherman, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

MISCELLANEOUS MATTER

Item 73. [Docket No. 2005-1994-RAW](#). Consideration of **Waste Control Specialists LLC's** "Petition to the Commission to Request the Attorney General to Institute Condemnation Proceedings" filed pursuant to Texas Health & Safety Code § 401.204 and the rules of the Texas Commission on Environmental Quality. The Commission will also consider supplements, responses, and replies to the petition. This matter concerns a site located at Section 25, Block A-29, Public School Land Survey, **Andrews County**, Texas. The Commission may also discuss procedural issues concerning the licensing of a low-level radioactive waste disposal facility under Texas Health & Safety Code ch. 401 and 30 Texas Administrative Code ch. 336.

To promote protection of health, safety, and the environment and to provide for the safe management and disposal of low-level radioactive waste, the construction, operation, and proper closure of a low-level radioactive waste disposal facility site is a necessary public use. The proposed location of the radioactive waste disposal facility site is on property identified as Section 25, Block A-29, Public School Land Surveys, Andrews County, Texas (Section 25). The condemnation of mineral interests underlying Section 25 is necessary to acquire a fee simple title to the entire surface and mineral estate, as provided by Texas Health & Safety Code Sections 401.204, 401.205, and 401.209. The following mineral interests underlie Section 25 and should be condemned because they are needed to accomplish the necessary public use: 1) Bank of America, Trustee for V.P. Baker Trust, 1/96 interest in the Northeast Quarter and South Half; 2) Linda Rae Caperton, 1/576 interest in all of Section 25; 3) Ashley Crawford Strouth, 1/36 in the Northwest Quarter; 4) Gerald R. Geisler, 1/128 interest in the Northeast Quarter and South Half; 5) John Geisler, 1/384 interest in the Northeast Quarter and South Half; 6) Lana Kay Martinez, 1/576 interest in all of Section 25; 7) Daniel Joe Pike, 1/576 interest in all of Section 25; and 8) Alfred Cooper, Trustee, 2/151

interest in the Northwest Quarter. Waste Control Specialists LLC has attempted to purchase and/or exchange the mineral interests underlying Section 25 to acquire fee simple title to said mineral interests. In addition, Waste Control Specialists has offered each of the above mineral interest owners the ability to enter into a surface use agreement pursuant to Texas Health & Safety Code § 401.204(b). Waste Control Specialists and the individuals/entities listed above were unable to agree on the damages to be paid for those interests or on an acceptable surface use agreement. The Executive Director of the Commission is ordered to transmit a request on behalf of the Commission to the Attorney General of the State of Texas to file against any and all owners or lien holders of any interests of the mineral rights underlying Section 25 on which the low-level radioactive waste disposal facility site is proposed to be located, proceedings in eminent domain on behalf of the Commission to acquire fee simple title to the mineral rights underlying Section 25 and the Executive Director is authorized to consult with the Attorney General on the condemnation proceeding and to undertake actions necessary to satisfy the requirements of Texas Property Code Chapter 21. BS/BG; LS opposed.

USE DETERMINATION

Item 74. [Docket Nos. 2008-0208-MIS-U, 2008-0209-MIS-U, 2008-0210-MIS-U, AND 2008-0211-MIS-U.](#) Consideration of the appeals filed by **Redi-Mix, L.L.C.** with regard to four use determinations issued by the Executive Director regarding Frisco Ready Mix (**Collin County**), Prosper Ready Mix (**Collin County**), and Alliance Ready Mix (**Denton County**). The use determination applications were assigned numbers 07-11103 (Frisco Ready Mix), 07-11104 (Prosper Ready Mix), 07-11121 (Frisco Ready Mix), and 07-11122 (Alliance Ready Mix). The Commission will also consider all responses and reply briefs.

Set aside the Executive Director's four use determinations and remand these four applications back to the Executive Director for new determinations consistent with the previous application of the 2006 guidelines on this issue. LS/BS; all agree.

RULE MATTER

Item 75. [Docket No. 2008-1601-RUL.](#) Consideration of a petition for rulemaking under Section 20.15 of 30 TAC Chapter 20, Rulemaking. The commission received a petition on October 1, 2008, from the Barton Springs/Edwards Aquifer Conservation District and the City of Austin. The petition proposes the adoption of a new subchapter in **30 TAC Chapter 311** entitled "Water Quality Management of the Onion Creek and Barton Creek Watersheds" to define water quality areas and watersheds of Onion and Barton Creeks, prohibit the discharge of pollutants into these water quality areas, and allow any new or expanded wastewater treatment facilities in the water quality areas disposal without discharge so long as the facility satisfies specific requirements. (Mark Fisher, Kathy Humphreys) (Rule Project No. 2009-002-PET-NR)

Deny the petition for rulemaking as pending. Instruct the Executive Director to institute and implement a stakeholder process that would convene on all the issues raised in the petition and any other issues relevant to the issues raised in the petition, and take appropriate action, as a result of that stakeholder input. Instruct the Executive Director to report back with a status report six months from now, unless there has been a separate rulemaking proceeding instituted. LS/BS; all agree.

EXECUTIVE MEETING

Item 76. **Docket No. 2008-0001-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 77. **Docket No. 2008-0002-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 78. **Docket No. 2008-0003-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 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. 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/cgi-bin/tnrcc.cgi](http://www.texasadmin.com/cgi-bin/tnrcc.cgi)

AGENDA

Wednesday, November 19, 2008

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

1:00 P.M.

12100 Park 35 Circle

Room 201S, Bldg. E

- Item 1. [TCEQ Docket No. 2007-0204-WDW; SOAH Docket No. 582-07-2673](#). Consideration of the Administrative Law Judges' Proposal for Decision and Order regarding the application of **TexCom Gulf Disposal, L.L.C.** for Underground Injection Control Permit Nos. WDW410, WDW411, WDW412, and WDW413 pursuant to rules of the Texas Commission on Environmental Quality in Texas Water Code Chapter 27 and 30 TAC Chapter 331 to authorize four Class I underground injection wells to dispose of nonhazardous industrial wastewater. The proposed facility would be located at 16185 Creighton Road on the corner of Creighton Road and FM 3080, southeast of the City of Conroe, in **Montgomery County**, Texas. The Commission will also consider timely public comments and the Executive Director's Response to such comments; the application and related filings, exceptions and replies. (John E. Williams and J. Diane Goss)

Remand the matter back to SOAH, with instructions to abate the hearing in order for the analysis to be conducted using the 80.9 milidarcy permeability and assumption that the fault in question is non-transmissive in the horizontal direction and to hold a hearing with that new modeling, information on the public interest, and alternative disposal options. The ALJ is then directed to draft an Amended Proposal for Decision and bring that back to the Commission. BS/LS; all agree

- Item 2. [TCEQ Docket No. 2007-0362-IHW; SOAH Docket No. 582-07-2674](#). Consideration of the Administrative Law Judges' Proposal for Decision and Order regarding the application of **TexCom Gulf Disposal, L.L.C.** for nonhazardous Industrial Solid Waste Permit No. 87758 pursuant to rules of the Texas Commission on Environmental Quality in Texas Health and Safety Code Chapter 361 and 30 TAC Chapters 37, 305 and 335 to authorize the operation of a commercial nonhazardous industrial solid waste management facility for the storage and processing of Class I and Class II nonhazardous industrial solid waste generated on-site and received from off-site sources on a commercial basis. The proposed facility would be located at 16185 Creighton Road on the corner of Creighton Road and FM 3080, southeast of the City of Conroe, in **Montgomery County**, Texas. The Commission will also consider timely public comments and the Executive Director's Response to such comments; the application and related filings, exceptions and replies. (John E. Williams and J. Diane Goss)

Remand back to SOAH and direct to utilize Chapters 305, 331, and 335 and taking any additional evidence needed to fully consider whether the surface facility permit satisfies applicable standards and issue a supplemental Proposal for Decision on the ALJ's findings within six months from the preliminary hearing. BS/LS; all agree.

Item 3. [TCEQ Docket No. 2007-1833-UCR; SOAH Docket No. 582-08-0990](#). Consideration of the Administrative Law Judge's Proposal for Decision and Order regarding the plea of the jurisdiction of Wellborn Special Utility District (Wellborn) of Brazos County regarding the application of the **City of College Station** pursuant to Tex. Water Code § 13.255(a) to decertify a portion of Certificate of Convenience and Necessity No. 11340 of Wellborn and to amend CCN No. 10169 in **Brazos County**, Texas (Application No. 35717-C). The Commission will also consider timely public comments, the application, related filings, exceptions and replies. (Brian MacLeod)

Adopt the ALJ's Proposal for Decision and issue the proposed Order with the following changes: 1) modify Finding of Fact No. 20 to read "Wellborn filed an original Plea to the Jurisdiction and Answer on March 3, 2008 and an amended Plea to the Jurisdiction and Answer on April 25, 2008 requesting dismissal of College Station's application on the basis of sovereign immunity, res judicata, and collateral estoppel"; 2) amend Conclusion of Law No. 2 to add the words "or jurisdiction" between the words "special expertise" and "of the Commission"; 3) delete Conclusion of Law No. 3; 4) delete Ordering Provision No. 1; and 5) renumber accordingly. LS/BS; all agree.

Item 4. [TCEQ Docket No. 2008-0648-UCR](#). Consideration of a request for a Commission Order approving a contract designating service areas between the **Lower Colorado River Authority** (LCRA), sewer certificate of convenience and necessity (CCN) No. 20769, and the City of Smithville, sewer CCN No. 20377, in **Bastrop County**, Texas, pursuant to section 13.248 of the Texas Water Code. The City of Smithville is purchasing sewer facilities from LCRA that serve the area being transferred and will provide service to the customer being transferred. Under the contract, LCRA will transfer a portion of its sewer CCN to the City of Smithville along with the purchased facilities. (Stefanie Skogen, Heidi Graham)

Approve the contract between the City of Smithville and LCRA under Texas Water Code § 13.248 which will result in the transfer of approximately 6,456 acres from LCRA's sewer CCN to Smithville's sewer CCN No. 20377 and issue the Executive Director's proposed Order but add a sentence in paragraph 2 to identify that the transfer area is approximately 6,456 acres. BS/LS; all agree.

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REGISTRATION FOR AGENDA STARTS AT 12:30 P.M. AND WILL CONTINUE UNTIL 1:00 P.M. PLEASE REGISTER BETWEEN THESE TIMES. LATE REGISTRATION COULD RESULT IN YOUR MISSING THE OPPORTUNITY TO COMMENT ON YOUR ITEM.

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/s/ Tracy Gross
Assistant General Counsel,
Tracy Gross

12/01/2008
Date