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

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

AGENDA

March 28, 2012

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

PROPOSAL FOR DECISION

Item 1 **[TCEQ Docket No. 2011-0025-PST-E; SOAH Docket No. 582-11-7891.](#)**

Consideration of the Administrative Law Judge's Proposal for Decision and Order assessing administrative penalties and requiring certain actions of Joe Westmoreland d/b/a Athens Radiator & Tire in Henderson County, Texas; RN101800621; 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. The Commission will also consider the record, timely related filings, exceptions and replies. (Sharesa Alexander)

Adopt the ALJ's Proposed Order with the Executive Director's proposed changes Nos. 1, 6-11, and 13-14 from the March 7, 2012 Exceptions and make the following additional changes: 1) Revise Finding of Fact No. 22 to indicate that the violation has a potential for a major harm; 2) Add an additional Finding of Fact stating that: "On November 30, 2011, ALJ, Lilo D. Pomerleau, issued Order No. 2 stating that the Executive Director requests for admissions 1-25 by Respondent were deemed and admitted because Respondent failed to timely and adequately file Responses to Executive Director's Written Discovery requests. This included admission no. 18, indicating that

the USTs contained a regulated substance at the time of their investigation."; and 3) Renumber the remaining Findings of Fact accordingly. CR/BG; all agree.

HEARING REQUESTS/REQUESTS FOR RECONSIDERATION

Item 2 **Docket No. 2011-2134-WR.**

Consideration of the application by The Golf Club at Circle C, LP for new Water Use Permit No. 5852 to maintain four reservoirs (Reservoirs 1-4) with a combined storage capacity of 27.8 acre-feet of water on an unnamed tributary of Danz Creek and on Danz Creek within the Colorado River Basin; to maintain an off-channel reservoir (Reservoir 5) with a capacity of 50.6 acre-feet of water within the Colorado River Basin; to divert and use not to exceed 262 acre-feet of state water pursuant to a contract from the Lower Colorado River Authority for agricultural purposes to irrigate 115 acres of land within the Colorado River Basin; to use the bed and banks of an unnamed tributary of Danz Creek, Danz Creek, and four reservoirs thereon to convey groundwater or maintain the reservoirs with storm water and diffused surface water discharged directly to the off-channel reservoir; to use the bed and banks of Reservoir 1 on Danz Creek to convey groundwater, storm water, and diffused surface water discharged from the off-channel reservoir; and to use each permitted reservoir for in-place recreational use in Travis County. The Commission will also consider requests for hearing or reconsideration, related responses and replies, public comment, and the Executive Director's Response to Comments. (James Aldredge, Sonia Crawford)

Grant the hearing requests of Lower Colorado River Authority, City of Austin, and Ira Jon Yates; Refer the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing on the application with a concurrent referral to ADR during the SOAH scheduling process; and Direct the Executive Director to participate in the contested case hearing. BG/CR; all agree.

Item 3 **Docket No. 2012-0204-IWD.**

Consideration of the application by East Texas Electric Cooperative, Inc. for a new TPDES Permit No. WQ0004949000 to authorize the discharge of cooling tower blowdown, previously monitored effluents (low volume wastewater via internal Outfall 101 and metal cleaning wastes via internal Outfall 201), process area storm water, and steam condensate at a daily average flow not to exceed 240,000 gallons per day via Outfall 001. The facility is located west of U.S. Highway 287, at the intersection of County Road 1020 and County Road 1030, approximately one mile south of the City of Woodville, Tyler County, Texas. The Commission will also consider requests for hearing or reconsideration, related responses and replies, public comment, and the Executive Director's Response to Comments. (Kathy Humphreys, Satya Dwivedula).

Deny all hearing requests filed in this matter; Issue new TPDES Permit No. WQ0004949000 to East Texas Electric Cooperative, Inc.; and adopt the Executive Director's Response to Comments. CR/BG; all agree.

AIR QUALITY ENFORCEMENT AGREED ORDERS

Item 4 **[Docket No. 2011-1597-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Chevron Phillips Chemical Company LP in Jefferson County; RN100209857; 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. (Kimberly Morales, Debra Barber)

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

Item 5 **[Docket No. 2011-1683-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. (Heather Podlipny, Debra Barber)

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

Item 6 **[Docket No. 2011-1691-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Eastman Chemical Company in Harrison County; RN100219815; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Miriam Hall, Debra Barber)

Remanded to the Executive Director.

Item 7 **[Docket No. 2010-0756-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties against ACI Partners, LLC in Bexar County; RN105804413; for air quality 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. (Jeffrey Huhn, Lena Roberts)

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

Item 8 **[Docket No. 2011-1351-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Ace World Companies Ltd. in Tarrant County; RN102267721; 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. (Heather Podlipny, Debra Barber)

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

Item 9 [**Docket No. 2011-0714-AIR-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Ballard Exploration Company, Inc. in Harris County; RN106078058; for air violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Miriam Hall, Debra Barber)

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

Item 10 [**Docket No. 2011-1477-AIR-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Total Petrochemicals USA, Inc. in Jefferson County; RN102457520; 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, Debra Barber)

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

Item 11 [**Docket No. 2011-1316-AIR-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Enterprise Products Operating LLC in Chambers County; RN102984911; 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, Debra Barber)

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

Item 12 [**Docket No. 2010-1895-AIR-E.**](#)

Consideration of an Agreed Order assessing administrative penalties against KMTEX Properties, Inc. in Jefferson County; RN100640283; 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. (Audra Benoit, Debra Barber)

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

Item 13 [**Docket No. 2011-0918-AIR-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Huntsman Petrochemical LLC in Jefferson County;

RN100219252; 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. (Audra Benoit, Debra Barber)

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

IRRIGATION LICENSING ENFORCEMENT DEFAULT ORDER

Item 14 [Docket No. 2011-0809-LII-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Chris G. Moreno d/b/a Knights Irrigation in Dallas County; RN105012041; for landscape irrigation installation 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. BG/CR; all agree.

MUNICIPAL SOLID WASTE ENFORCEMENT AGREED ORDERS

Item 15 [Docket No. 2011-0946-MSW-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Kevin Lokey dba Lokey Earth Moving in Lubbock County; RN105791172; 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. (Thomas Greimel, Debra Barber)

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

Item 16 [Docket No. 2011-0626-MSW-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Victoria in Victoria County; RN100212968; 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. (Clinton Sims, Debra Barber)

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

MUNICIPAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS

Item 17 [Docket No. 2011-1628-MWD-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Hudspeth County Water Control and Improvement District No. 1 in Hudspeth County; RN102181849; 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, Debra Barber)

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

Item 18 [**Docket No. 2011-1664-MWD-E.**](#)

Consideration of an Agreed Order assessing administrative penalties against the City of Kerrville in Kerr County; RN100844802; 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. (JR Cao, Debra Barber)

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

Item 19 [**Docket No. 2011-1768-MWD-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of City of Refugio in Refugio County; RN103913935; 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. (Jill Russell, Debra Barber)

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

PETROLEUM STORAGE TANKS ENFORCEMENT AGREED ORDERS

Item 20 [**Docket No. 2010-1576-PST-E.**](#)

Consideration of an Agreed Order assessing administrative penalties against Amirali Ladhani and Fatima Ladhani DBA Rick's Drive Inn in Atascosa County; RN101907780; 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. (Tammy L. Mitchell, Lena Roberts)

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

Item 21 [**Docket No. 2010-1487-PST-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of FVC Food Mart Inc. in Fort Bend County; RN102701117; 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. (James Sallans, Lena Roberts)

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

Item 22 [**Docket No. 2011-1590-PST-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of TEXAS RENAISSANCE FESTIVALS, INC. in Grimes County; RN102860368; 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. (Danielle Porras, Debra Barber)

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

Item 23 [**Docket No. 2011-0921-PST-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Abrams Business Inc. d/b/a Power Mart 18 in Tarrant County; RN102366358; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Kari L. Gilbreth, Lena Roberts)

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

Item 24 [**Docket No. 2010-2032-PST-E.**](#)

Consideration of an Agreed Order assessing administrative penalties against SIMONE STORES INC d/b/a Millennium Grocery in Hardin County; RN101874600; 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. (Xavier Guerra, Lena Roberts)

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

Item 25 [**Docket No. 2011-1357-PST-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Jackie Wheeler and Becky Wheeler in Lamar County; RN101798312; 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. (Mike Pace, Debra Barber)

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

Item 26 [**Docket No. 2011-1663-PST-E.**](#)

Consideration of an Agreed Order assessing administrative penalties against NIXON PARTNERS LLC. dba Happy Sac in Gonzales County; RN106116882; 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. (Mike Pace, Debra Barber)

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

Item 27 [**Docket No. 2011-0355-PST-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of NOORANI & BROTHERS, INC. d/b/a Shop N Go in Harris County; RN103020822; 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. (Sharesa Y. Alexander, Lena Roberts)

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

PUBLIC WATER SYSTEM ENFORCEMENT AGREED ORDERS

Item 28 [**Docket No. 2011-1526-PWS-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Esther E. Boroff dba Williams Trailer Court in Ector County; RN101212421; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Rebecca Clausewitz, Debra Barber)

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

Item 29 [**Docket No. 2011-1045-PWS-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Sahil Management Ltd. dba Shady Acres Trailer Park in Bexar County; RN101458990; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Katy Schumann, Debra Barber)

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

Item 30 [**Docket No. 2010-1837-PWS-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Danny J. Dolen dba Green Lake Estates Water Supply in Limestone County; RN104443734; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Epi Villarreal, Debra Barber)

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

Item 31 [**Docket No. 2011-1483-PWS-E.**](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Gerardo M. Romero and Marivel Romero dba Sol Y Mar in Hidalgo County; RN105377410; for public water supply violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Epifanio Villarreal, Debra Barber)

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

PUBLIC WATER SYSTEM ENFORCEMENT DEFAULT ORDERS

Item 32 [**Docket No. 2011-0824-PWS-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of David Fenoglio d/b/a Sunset Water System in Montague County; RN102693579; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Kari L. Gilbreth, Lena Roberts)

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

Item 33 [**Docket No. 2011-0764-PWS-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Ms. Molly's LLC in Colorado County; RN104909882; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Rudy Calderon, Lena Roberts)

Continued to the April 11, 2012 Agenda. BG/CR; all agree.

Item 34 [**Docket No. 2011-1333-PWS-E.**](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Curtis White d/b/a El Pinon Estates Water System in San Augustine County; RN102675303; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341, Tex. Water Code ch. 5, and the rules of the Texas Commission on Environmental Quality. (Sharesa Alexander, Lena Roberts)

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

RULE MATTERS

Item 35 [**Docket No. 2011-1253-RUL.**](#)

Consideration for publication of, and hearing on, proposed amendments to Sections 70.1, 70.3, and 70.6; the proposed repeal of Section 70.11; and proposed new Sections 70.11 and 70.12 of 30 Texas Administrative Code (TAC) Chapter 70, Enforcement. The proposed rulemaking would implement House Bill 2694 (Section 4.09), 82nd Legislature, 2011, Regular Session. Specifically, the proposed rulemaking would adopt a general enforcement policy that describes the Commission's approach to enforcement. (David Van Soest, Gitanjali Yadav) (Rule Project No. 2011-034-070-CE)

Approve publication of, and hearing on, proposed new, amended, and repealed Sections of 30 Texas Administrative Code Chapter 70, Enforcement, as recommended by the Executive Director with the following changes: 1) Add new Subsection (b) (6) to proposed Section 70.11 to read as follows: "indifference to legal duty"; and 2) Direct the Executive Director to make the necessary changes to proposed Section 70.11 and the preamble needed to effectuate the addition of this new Subsection. CR/BG; all agree.

Item 36 [**Docket No. 2011-1261-RUL.**](#)

Consideration of the adoption of amended Sections 334.5(b) and 334.84; and new Section 334.19, of 30 TAC Chapter 334, Underground and Aboveground Storage Tanks. The adoption would implement House Bill 2694, TCEQ Sunset Legislation, from the 82nd Legislature, 2011, Regular Session, pertaining to Petroleum Storage Tank regulation. The proposed rules were published in the November 18, 2011 issue of the *Texas Register* (36 TexReg 7795). (Jonathan Walling, Cullen McMorrogh) (Rule Project No. 2011-038-334-WS)

Adopt the amendments to 30 Texas Administrative Code Sections 334.5 and 334.84 and the addition of new Section 334.19, as recommended by the Executive Director. BG/CR; all agree.

Item 37 [**Docket No. 2011-0845-RUL.**](#)

Consideration of the adoption of the repeal of 30 TAC Chapter 101, General Air Quality Rules, Subchapter H, Emissions Banking and Trading, Division 5, System Cap Trading, Sections 101.380, 101.382, 101.383, and 101.385; and the amendments to Chapter 117, Control of Air Pollution from Nitrogen Compounds, Sections 117.1020, 117.1120, 117.1220, 117.3020, and 117.9800. Sections 117.1020, 117.1120, 117.1220, 117.3020, and 117.9800 will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan. The adopted rulemaking will repeal all rules pertaining to the System Cap Trading program specified in Chapter 101, Subchapter H, Division 5, Sections 101.380, 101.382, 101.383, and 101.385. In addition, Chapter 117, Sections 117.1020, 117.1120, 117.1220, 117.3020, and 117.9800 will be amended to remove references to the Chapter 101 System Cap Trading program rules and the state implementation plan will be revised to include these amendments. The proposed rules were published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7124 and 36 TexReg 7138). (Shantha Daniel, Amy Browning) (Rule Project No. 2011-018-101-EN)

Adopt the repeal and amendment to certain Sections of 30 Texas Administrative Code Chapters 101 and 117, and corresponding revisions to the state implementation plan, as recommended by the Executive Director. CR/BG; all agree.

Item 38 [**Docket No. 2011-0988-RUL.**](#)

Consideration of the adoption of new Subchapter J of 30 TAC Chapter 328, Waste Minimization and Recycling, comprising new Sections 328.161, 328.163, 328.165, 328.167, 328.169, 328.171, 328.173, 328.175, 328.177, 328.179, 328.181, 328.183, 328.185, 328.187, 328.189, 328.191, 328.193, 328.195, and 328.197. The adoption would implement Senate Bill 329 from the 82nd Legislature, Regular Session, 2011, relating to a program for the recycling of certain television equipment. The proposed rules were published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7782). (Cynthia Carter, Tim Reidy) (Rule Project No. 2011-028-328-AD)

Adopt new Subchapter J of 30 Texas Administrative Code Chapter 328, as recommended by the Executive Director. BG/CR; all agree.

Item 39 **Docket No. 2011-1219-RUL.**

Consideration of the adoption of an amendment to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles, Section 114.622, Incentive Program Requirements, and corresponding revisions to the state implementation plan. The adoption would implement part of House Bill (HB) 3399, 82nd Legislature, 2011, Regular Session, relating to requirements for receiving an incentive grant under the Diesel Emissions Reduction Incentive Program. The revisions to Chapter 114, as required by HB 3399, incorporate changes and additions to the program eligibility criteria, including: changes to the period over which a grant-funded vehicle must be operated; establish specific criteria for decommissioning a vehicle or vehicle engine under the program; and add provisions to allow a vehicle that has been leased or otherwise commercially financed to be replaced under the program. The revisions also include provisions, as required by HB 3399, that the executive director shall waive eligibility requirements on a finding of good cause. The proposed rules were published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7468). (Steve Dayton, Betsy Peticolas) (Rule Project No. 2011-050-114-EN)

Joint Motion for Item 39 and Item 40

Adopt the amendments to 30 Texas Administrative Code Section 114.622 and 114.650-114.654 and corresponding revisions to the state implementation plan, as recommended by the Executive Director. CR/BG; all agree.

Item 40 **Docket No. 2011-1220-RUL.**

Consideration of the adoption of amendments to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, Division 5, Texas Clean Fleet Program, Sections 114.650 - 114.654, and corresponding revisions to the state implementation plan. The adoption would implement part of House Bill (HB) 3399, 82nd Legislature, 2011, Regular Session, relating to requirements for receiving an incentive grant under the Texas Clean Fleet Program. The revisions to Chapter 114, as required by HB 3399, incorporate changes and additions to the program eligibility criteria, including: changes to the number of vehicles that must be included in a grant and that may be awarded funding by the Commission; changes to allow a vehicle that has been leased or commercially financed to be replaced under the program; changes to the time period over which a grant-funded vehicle must be operated; and establishing criteria for decommissioning a vehicle or vehicle engine replaced under the program. In addition, the revisions include provisions, as required under HB 3399, that the Executive Director shall waive the ownership and use requirements for the vehicle being replaced, upon a finding of good cause. The proposed rules were published in the November 4,

2011, issue of the *Texas Register* (36 TexReg 7472). (Steve Dayton, Betsy Peticolas) (Rule Project No. 2011-051-114-EN)

Joint Motion for Item 39 and Item 40

Adopt the amendments to 30 Texas Administrative Code Section 114.622 and 114.650-114.654 and corresponding revisions to the state implementation plan, as recommended by the Executive Director. CR/BG; all agree.

Item 41 [**Docket No. 2011-1221-RUL.**](#)

Consideration of the adoption of a new Division 6, Alternative Fueling Facilities Program, Sections 114.660 - 114.662 of 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs. The rulemaking implements part of Senate Bill 385, 82nd Legislature, 2011, Regular Session, relating to establishing the criteria for prioritizing facilities to receive grants under the Alternative Fueling Facilities Program. Facilities eligible to receive grants under the program include a facility to store, compress, or dispense alternative fuels in a nonattainment area. Under the program, alternative fuels are defined as a fuel, other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85% methanol by volume. The proposed rules were published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7476). (Steve Dayton, Betsy Peticolas) (Rule Project No. 2011-052-114-EN)

Joint Motion for Item 41 and 42

Adopt new Sections 114.660-114.662 and new Division 7, Texas Natural Gas Vehicle Grant Program, in Subchapter K of 30 Texas Administrative Code Chapter 114, as recommended by the Executive Director. BG/CR; all agree.

Item 42 [**Docket No. 2011-1222-RUL.**](#)

Consideration of the adoption of a new Division 7, Texas Natural Gas Vehicle Grant Program, Sections 114.670 - 114.672 of 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs. The rulemaking implements part of Senate Bill 385, 82nd Legislature, 2011, Regular Session, relating to establishing the criteria for prioritizing qualifying vehicles eligible to receive grants under the Texas Natural Gas Vehicle Grant Program. The proposed rules were published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7480). (Steve Dayton, Bruce McAnally) (Rule Project No. 2011-053-114-EN)

Joint Motion for Item 41 and 42

Adopt new Sections 114.660-114.662 and new Division 7, Texas Natural Gas Vehicle Grant Program, in Subchapter K of 30 Texas Administrative Code Chapter 114, as recommended by the Executive Director. BG/CR; all agree.

Item 43 [Docket No. 2011-1244-RUL.](#)

Consideration for publication of, and hearing on, proposed amended Section 298.290 and new Sections 298.300, 298.305, 298.310, 298.315, 298.320, 298.325, 298.330, 298.335, 298.340, 298.350, 298.355, 298.360, 298.365, 298.370, 298.375, 298.380, 298.385, and 298.390 of 30 TAC Chapter 298, Environmental Flow Standards for Surface Water. The proposed rulemaking would implement House Bill 3 and Senate Bill 3, 80th Legislature, 2007, Regular Session, relating to the establishment of environmental flow standards included in a permit or amended water right in the river and bay systems consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays, and the Guadalupe, San Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas, and San Antonio Bays. Additionally, the rulemaking will amend the schedule for the revision of standards for the Sabine and Neches Rivers and Sabine Lake Bay. (Ron Ellis, Robin Smith) (Rule Project No. 2011-059-298-OW)

Approve publication of, and hearing on, proposed amendment and new Sections of 30 TAC Chapter 298, Environmental Flow Standards for Surface Water, as recommended by the Executive Director, but with the following amendments: 1) Insert the following sentence on page 8 of the preamble at the end of the sentence that carries over from the previous page: "The final environmental flow standards may either be higher or lower than the environmental flow standards in this proposed rule and may include additional components such as more levels of pulse flows, an additional large inflow pulse to Lavaca Bay, and a narrative standard for inflows to East Matagorda Bay consistent with the recommendations of the Stakeholder Committee. The Commission invites comments on all aspects of the full Stakeholder Committee recommendations."; 2) Insert the following paragraph on page 15 of the preamble between the first and second paragraphs of the section entitled "Section 298.330 Environmental Flow Standards": "The stakeholders expressed strong concern about the reduction of freshwater inflows to East Matagorda Bay. The stakeholders adopted the following statement: 'Strategies to maintain and increase freshwater inflows should be pursued to support a sound ecological environment within East Matagorda Bay.' The stakeholders intent was to avoid a further reduction of the freshwater inflows, to the extent those reductions can be avoided, and that strategies should be pursued to provide additional freshwater inflows to East Matagorda Bay."; 3) Insert the following sentence on page 22 of the preamble at the end of the last sentence of the first paragraph: "The final environmental flow standards may either be higher or lower than the environmental flow standards in this proposed rule and may include additional components such as additional levels of base flows at locations on the Guadalupe River and its tributaries, and additional levels of pulse flows consistent with the recommendation of the Stakeholder Committee. The Commission invites comments on all aspects of the full Stakeholder Committee recommendations."; and 4) Replace the word "and" at the end of 30 TAC Section 298.330(a) (1) with the word "or". CR/BG; all agree.

PUBLIC COMMENT SESSION

Item 44 The Commission will receive comments from the public on any matters within the jurisdiction of the TCEQ, with the exception of pending permitting matters or other contested cases which are subject to the ex parte prohibition found in

Texas Government Code §2001.061. In the interest of time, speakers will be limited to three minutes each, with the total time for public comment limited to one hour.

No Action Taken.

EXECUTIVE MEETING

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

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

The Commission did not meet in an Executive Meeting.

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

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

The Commission did not meet in an Executive Meeting.

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

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

The Commission did not meet in an Executive Meeting.

(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/tceqa.shtml](http://www.texasadmin.com/tceqa.shtml)

Assistant General Counsel
Tracy Gross

Date