

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

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

Chairman Bryan W. Shaw, Ph.D.  
Commissioner Carlos Rubinstein  
Commissioner Toby Baker

## **OLD BUSINESS AGENDA**

October 31, 2012

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

Item continued from the October 17, 2012 agenda.

Item 1 **[Docket No. 2012-0501-RUL.](#)**

Consideration of the adoption of amended sections of 30 TAC Chapter 106, Permits by Rule and the non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Activities. The adopted amendments remove certain counties from the applicability of subsections (a) through (k) of Section 106.352, Oil and Gas Handling and Production Facilities and from the non-rule Air Quality Standard Permit which relate to the control of oil and gas facilities in the Barnett Shale region. The adopted amendments clarify the measurement of minimum separation between oil and gas facilities and receptors where a local ordinance exists requiring equal or greater distance, and extend the deadline in Section 106.352 to notify the Commission of an existing facility location and method of authorization. The proposed rules were published in the June 15, 2012 issue of the *Texas Register* (37 TexReg 4341). (Tasha Burns, Betsy Peticolas) (Rule Project No. 2012-020-106-AI)

Adopt the amendments to 30 TAC Section 106.352 and the non-rule Standard Permit for Oil and Gas Handling and Production Facilities, as presented by the Executive Director in his October 23, 2012 filing with the Office of the Chief Clerk with the following modifications: 1) Modify the response to the Texas Pipeline Association and the Texas Oil and Gas Association

comments set out on page 19 of the preamble to the proposed PBR to read as follows: “In order to avoid unintended interpretations, the commission is not adopting the proposed amendment to Section 106.352(e)(2). The subsection will read as it did before the proposed amendment.” And, modify the first paragraph on page 7 of the non-rule standard permit preamble documentation, consistent with the language cited above. BS/CR; all agree.

# AGENDA

October 31, 2012

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

### **PROPOSAL FOR DECISION**

Item 1 **Docket No. 2011-2253-PWS-E.**

Consideration of the Administrative Law Judge's Proposal for Decision and Order assessing administrative penalties and requiring certain actions of Old Tymer Enterprises, Inc. in Bexar County; RN1012404399; 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. The Commission will also consider the record, timely related filings, and exceptions and replies. (Jennifer Cook)

Adopt the ALJ's proposed Order as amended and provided by the ALJ in her letter dated September 24, 2012. CR/TB; all agree.

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

Item 2 **Docket No. 2012-1820-IHW.**

Consideration of an application by US Ecology Texas, Inc., for a ten-year renewal and major amendment of Permit No. 50052 that would authorize continued hazardous and industrial solid waste management activities, including operation of a landfill, continued implementation of the facility compliance plan for groundwater monitoring and corrective action, and changes to the existing permit and compliance plan. The facility is located on a 240-acre tract of land on Petronila Road and County Road 69, approximately 3.5 miles south of Robstown, Texas, in Nueces County, Texas. The Commission will also consider the draft permit, requests for hearing or reconsideration, related responses and replies, public comment, and the Executive Director's Response to Comments. (Diane Goss, Glenn Hall, Srinath Venkat, Brad Wilkinson)

Grant the hearing requests of Kenneth Ahlrich, Virginia Ahlrich, Danny Castro, Melissa Castro, Teodora Castro, Alex Gaza, William M. Gwynn, Charlie B. Jones, Jr., Russell Jungmann, Dewey Lawhorn, Elibardo Leal, Maria N. Leal, Danny Mallett, Jolynn Mallett, Grace Martinez, Joe Martinez, Morris Michalk, Melton Perez, Marie P. Sanders, Marolyn Schneider, William R. Schneider, Jr., Esther Svehla, Chrissy A. Tamez, Michael Winters and

The Clean Economy Coalition; Deny the remainder of the hearing requests and request for reconsideration; Refer the following issues to hearing: Issues No. 1 – 6 and 9, as worded by the Executive Director in the vote table and the following two issues: 1) Whether the Application and Draft Permit satisfy the applicable Texas Health & Safety Code Chapter 361 in 30 TAC Chapter 335 Air Emission Requirements for a Hazardous Waste Management Facility including whether dust suppression and prevention of wind dispersion of particulate matter are adequate to meet those standards and 2) Whether the Application and Draft Permit satisfy the regulatory requirements for operational plans including requirements for the Inspection Plan, the Contingency Plan, the Waste Analysis Plan, Recordkeeping and Reporting, and the provisions for Use and Management of Containers; and 3) Specify the maximum duration of the hearing is 9 months from the preliminary hearing to the issuance of the Proposal for Decision. CR/TB; all agree.

Item 3 **Docket No. 2011-1424-MSW.**

Consideration of an application by the City of Levelland for proposed Permit No. 2369 to authorize the construction and operation of a new Type I and Type IV Arid Exempt municipal solid waste landfill. The facility is proposed to be located on Bobwhite Road, 2.5 miles east of U.S. 385 and 0.5 miles south of FM 1585 in Hockley 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. (Daniel Ingersoll, Dwight Russell)

Grant the hearing requests of Eddie Blair, Kathy Blair, Emmitt Burelsmith and Shirley Burelsmith; Refer the matter for Alternative Dispute Resolution for a period of 4 weeks to take place prior to the SOAH's preliminary hearing; Refer the issues No. 1 – 11, as worded in the vote table and Issue No. 12, but reword it as follows: "Whether the Application and Draft permit include terms and conditions that are protective of wildlife pursuant to 30 TAC Section 330.61(n); and Find the maximum duration of the hearing should be 9 months from the date of the first preliminary hearing until the issuance of the ALJ's Proposal for Decision. TB/CR; all agree.

Item 4 **Docket No. 2012-0815-WR.**

Consideration of an application by Saddle Creek Development LTD for a Water Use Permit (Application No. 12202) for authorization to modify and maintain an existing dam and reservoir on Brown Branch, tributary of the Clear Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for in-place recreational use in Parker County, Texas. The reservoir has a capacity of 6.7 acre feet and a surface area of 1.32 acres. The Applicant proposes to maintain the reservoir at a constant level with groundwater from an existing well. The Commission will also consider requests for hearing or reconsideration, and related responses and replies. (Michael Gill, Ross Henderson)

Deny the timely hearing request by Dr. Denis R. Benjamin; Recognize that the conditions for the City of Dallas' withdrawing its hearing request has been satisfied; and Issue the Executive Director's revised draft permit. CR/TB; all agree.

## **MISCELLANEOUS MATTERS**

### **Item 5**     **[Docket No. 2012-1395-MIS.](#)**

Consideration of the Executive Director's findings and recommendations on whether a watermaster should be appointed for the Brazos River Basin, the Brazos-Colorado Coastal Basin, the Colorado River Basin, and the Colorado-Lavaca Coastal Basin. Texas Water Code, Section 11.326(g) requires that in river basins where no watermaster has been appointed, the Executive Director shall evaluate the river basin at least once every 5 years to determine whether a watermaster should be appointed, and report the findings and make recommendations to the Commission. The Commission shall include the findings and recommendations in the Commission's Biennial Report to the legislature. The Commission will also consider the Executive Director's Proposal to Address Water Use Reporting, procedures for responding to priority calls, and river basin monitoring activities. (L'Oreal Stepney, Ramiro Garcia, Kellye Rila, Robin Smith)

Acknowledge the receipt of the Executive Director's October 11, 2012 follow-up memorandum to the September 14, 2012 Work Session. CR/TB; all agree.

### **Item 6**     **[Docket No. 2012-0815-WR.](#)**

Consideration of the appeal filed by Salado at Walnut Creek Partners, LLC with regard to the Executive Director's negative use determination on Application No. 15502, dated July 13, 2012, for certain property at the Salado at Walnut Creek Apartments in Travis County, Texas. The Commission will also consider the application and all timely responses and reply briefs.

Deny Salado at Walnut Creek Partners, LLC's appeal and affirm the Executive Director's negative use determination dated July 13, 2012. TB/CR; all agree.

## **AIR QUALITY ENFORCEMENT AGREED ORDERS**

### **Item 7**     **[Docket No. 2012-0775-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Texas A&M University in Brazos County; RN100216274; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Rebecca Johnson, Debra Barber)

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

### **Item 8**     **[Docket No. 2012-0707-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Ascend Performance Materials LLC in Brazoria County; RN100238682; 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. (James Nolan, Debra Barber)

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

Item 9 [\*\*Docket No. 2012-0564-AIR-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties against WTG GAS PROCESSING, L.P. in Howard County; RN100211473; 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. CR/TB; all agree.

Item 10 [\*\*Docket No. 2012-0408-AIR-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties against Azteca Milling, L.P. in Hale County; RN100215086; 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. CR/TB; all agree.

Item 11 [\*\*Docket No. 2011-1036-AIR-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Baylor University in McLennan County; RN100215813; 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. CR/TB; all agree.

**INDUSTRIAL WASTE DISCHARGE ENFORCEMENT AGREED ORDER**

Item 12 [\*\*Docket No. 2012-0050-IWD-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of E.I. du Pont de Nemours and Company in Harris County; RN100225085; 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. CR/TB; all agree.

**MUNICIPAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS**

Item 13 [Docket No. 2012-0680-MWD-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of West Harris County Municipal Utility District No. 7 in Harris County; RN102915840; 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. (Jacquelyn Green, Debra Barber)

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

Item 14 [Docket No. 2012-0867-MWD-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Grand Saline in Van Zandt County; RN102330081; 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. (Jacquelyn Green, Debra Barber)

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

Item 15 [Docket No. 2011-1488-MWD-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Avalon Water Supply and Sewer Service Corporation in Ellis County; RN101511863; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jorge Ibarra, P.E., Debra Barber)

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

Item 16 [Docket No. 2012-0452-MWD-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Mertens in Hill County; RN101407815; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jacquelyn Green, Debra Barber)

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

**PETROLEUM STORAGE TANKS ENFORCEMENT AGREED ORDERS**

Item 17 [Docket No. 2012-0535-PST-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of MUREE VALLEY INTERNATIONAL INC dba Circle M Food Mart in Dallas County; RN101630267; 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. (Steven Van Landingham, Debra Barber)

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

Item 18 [\*\*Docket No. 2012-0789-PST-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties against CULLEN TEXACO, INC dba Cullen Shell in Harris County; RN100875145; 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. (Elvia Maske, Debra Barber)

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

Item 19 [\*\*Docket No. 2012-0888-PST-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Dallas County Hospital District in Dallas County; RN104781463; 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. (David Carney, Debra Barber)

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

Item 20 [\*\*Docket No. 2012-0221-PST-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of BOMBAY SEASONS INC dba Pete's Corner Store in Brazos County; RN102015807; 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. (Judy Kluge, Debra Barber)

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

**PUBLIC WATER SYSTEM ENFORCEMENT AGREED ORDERS**

Item 21 [\*\*Docket No. 2011-1263-PWS-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Silverlake Church in Brazoria County; RN101244986; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Katy Schumann, Debra Barber)

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

Item 22 [\*\*Docket No. 2012-0714-PWS-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Ghuman Enterprise Inc. dba Amatos Food Mart 3 in Montgomery County; RN104162300; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Abigail Lindsey, Debra Barber)

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

**STATE IMPLEMENTATION PLAN**

Item 23 [\*\*Docket No. 2012-1636-SIP.\*\*](#)

Consideration for publication of, and hearing on, a proposed revision to the Texas Air Quality State Implementation Plan (SIP): the Federal Clean Air Act (FCAA), Section 110(a)(1) and (2) Infrastructure and Transport SIP Revision for the 2010 Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The proposed SIP revision would outline the requirements of FCAA, Section 110(a)(2)(A) through (M), and the Texas provisions supporting the requirements for the 2010 SO<sub>2</sub> NAAQS. These requirements include basic program elements such as enforceable emission limitations and control measures, air quality monitoring and modeling, a permitting program, adequate funding and personnel, authority under state law to carry out the plan, emissions reporting, emergency powers, public participation, and fee collection. This SIP revision would also include a technical demonstration to support that Texas meets the interstate transport requirements of FCAA, Section 110(a)(2)(D)(i)(I). (Mary Ann Cook, Amy Browning) (Non-Rule Project No. 2012-022-SIP-NR)

Approve publication of, and hearing on, the proposed Infrastructure and Transport SIP for the 2010 Sulfur Dioxide NAAQS, as recommended by the Executive Director. CR/TB; all agree.

**RULE MATTER**

Item 24 [\*\*Docket No. 2012-1388-RUL.\*\*](#)

Consideration for publication of, and hearing on, proposed amendments to 30 Texas Administrative Code (TAC) Chapter 117, Control of Air Pollution from Nitrogen Compounds, Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas, Division 2, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources, Sections 117.2103, 117.2130, 117.2135, and 117.2145, and corresponding revisions to the state implementation plan. The proposed rulemaking would provide an exemption from the emission testing requirements in Chapter 117 for engines that are used exclusively for product testing and personnel training, operate in limited service, and meet the applicable federal emissions standards in 40 Code of Federal Regulations Part 89. Engines used in this type of service would be required to install and operate a non-resettable elapsed run time meter, maintain records of daily hours of operation, and maintain records demonstrating compliance with the applicable federal emissions standards. The proposed rulemaking is a follow-up to the

Commission's decision on May 30, 2012, to initiate rulemaking on the issues included in the petition for rulemaking filed by Halliburton Energy Services, Incorporated. (Javier Galván, Alexis Lorick) (Rule Project No. 2012-031-117-AI)

Approve publication of, and hearing on, the proposed amendments to 30 TAC Chapter 117 and the corresponding revisions to the state implementation plan, as recommended by the Executive Director. CR/TB; all agree.

### **PUBLIC COMMENT SESSION**

- Item 25 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.

There were no registrants for the Public Comment Session.

### **EXECUTIVE MEETING**

- Item 26 **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 27 **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 28 **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 SIX (6) WORK DAYS PRIOR TO THE AGENDA, SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. PERSONS WHO DESIRE THE ASSISTANCE OF AN INTERPRETER IN CONJUNCTION WITH THEIR ORAL PRESENTATION AT THIS TCEQ AGENDA ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.)**

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

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

\_\_\_\_\_/s/ Greg Merrell\_\_\_\_\_  
Assistant General Counsel  
Greg Merrell

\_\_\_\_11/8/2012\_\_\_\_\_  
Date