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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 Carlos Rubinstein  
Commissioner Toby Baker

## **AGENDA**

November 14, 2012

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

#### **PROPOSALS FOR DECISION**

Item 1 **[TCEQ Docket No. 2011-1566-UCR, SOAH Docket No. 582-12-0707.](#)**

Consideration of the Administrative Law Judge's Proposal for Decision and Order regarding the application from Aqua Utilities, Inc. dba Aqua Texas, Inc., CCN Nos. 11157 and 20453, to purchase water and sewer system facilities, to transfer CCN service areas, and cancel CCN Nos. 13114 and 21005 from Texas-American Water Company in Brazoria, Harris, Liberty, Matagorda, and Montgomery Counties, Texas; pursuant to rules of the Texas Commission on Environmental Quality in 30 TAC Chapter 291 and Texas Water Code Chapter 13. The Commission will also consider the application, record, timely related filings, exceptions and replies. (Ron Olson)

Adopt the ALJ's proposed Order; Do Not Adopt the amendments proposed by the ALJ in her reply to exceptions; and instead Include the following amendments: (i) Add the following new conclusions of law between the ALJ's proposed Conclusion of Law Nos. 2 and 3: New Conclusion of Law No. 3: The Commission's rules implementing TWC § 13.301 that cover the STM for facilities/transaction are under 30 TAC § 291.109; New Conclusion of Law No. 4: The statute and rule for STMs for facilities/transactions allow the Commission to determine whether the transaction will serve the public interest without a hearing. *Cite TWC § 13.301(d); 30 TAC § 291.109(d)*; (ii) Replace the ALJ's proposed Conclusion of Law No. 9

with the following: Amended Conclusion of Law No. 11: Once the ED notified Aqua Texas that he would not request a hearing, the applications were approved concerning the sale and transfer of the facilities, the transaction could be completed, and the Commission no longer had authority to refer the applications concerning the STM for facilities/transaction for a contested case hearing at SOAH; (iii) Add the following new conclusions of law after the ALJ's proposed conclusions: New Conclusion of Law No. 12: The statutory provisions dealing with the portion of the STM for CCN/service area provide that a utility may not sell, assign, or lease a CCN unless the Commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area." *Cite TWC § 13.251*; New Conclusion of Law No. 13: The Commission's rules implementing TWC § 13.251 that cover the STM transfer of any CCN rights are under 30 TAC § 291.112; New Conclusion of Law No. 14: The rule for STMs for CCN/service area provides that a STM applicant for CCN/service rights "shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are located within two miles of the requested service area boundaries, and any city with an ETJ which overlaps the proposed service area boundaries." *Cite 30 TAC § 291.112(c)(3)*; New Conclusion of Law No. 15: If the ED does not request a hearing on the CCN transfer, the Commission may approve the transfer by order at a regular meeting of the Commission. *Cite 30 TAC § 291.112(c)(4)*; New Conclusion of Law No. 16: The Commission's corresponding rules provide that the Commission may approve a sale, acquisition, lease or rental, or merger or consolidation and/or transfer of a CCN if it determines that the transaction is in the public interest, including the new or amended CCN application criteria. *Cite 30 TAC § 291.112(c)(5)*; (iv) Replace proposed ordering provision no. 1 with the following: Amended Ordering Provision No. 1: The applications concerning the STM for facilities/transaction are dismissed for lack of jurisdiction from SOAH's docket. The matter concerning the CCN transfer is remanded to the Executive Director for further processing to allow Aqua Texas to provide additional notice to the Cities of Hillcrest Village, Woodbranch Village, and Stagecoach and to allow the Executive Director to recommend to the Commission whether the CCN transfer would be in the public interest after considering the factors in 30 TAC § 291.112(c)(5)(A) – (E); and (v) Instruct Aqua Texas to send additional notice of its applications to the Cities of Hillcrest Village, Woodbranch Village, and Stagecoach and allow a 30 day comment period. Following the supplemental comment period, the ED shall evaluate whether the CCN transfer would be in the public interest after considering the factors in 30 TAC § 291.112(c)(5)(A) – (E). The ED shall submit written recommendations concerning whether to approve the transfer of the CCNs and, if so, proposed CCN maps to the Commission for consideration at a future Agenda if the ED does not request a hearing. CR/TB; all agree.

Item 2 [\*\*TCEQ Docket No. 2012-1070-UCR; SOAH Docket No. 582-12-6877.\*\*](#)

Consideration of the Administrative Law Judge's Proposal for Decision and Order regarding the petition appealing the retail water rates of Riverside Water Supply Corporation in Walker County, Texas; pursuant to rules of the Texas Commission on Environmental Quality in 30 TAC Chapter 291 and Tex. Water Code ch. 13. The Commission will also consider the record, timely related filings, exceptions and replies. (Dinniah Tadema)

Adopt the ALJ's Proposed Order dismissing the ratepayers' appeal for lack of jurisdiction. TB/CR; all agree

**HEARING REQUEST/REQUEST FOR RECONSIDERATION**

Item 3 **Docket No. 2012-0482-AIR.**

Consideration of an application by INVISTA S.a.r.l. for the renewal of Air Quality Permit No. 809, which authorizes the Nitric Acid Plant at the Invista Victoria Plant located at 2695 Old Bloomington Road North, Victoria, Victoria 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. (Ramiro Cruz, John Minter)

Deny all hearing requests pursuant to Texas Health & Safety Code Section 382.056; Issue the Executive Director's draft permit for renewal to INVISTA S.a.r.l; and adopt the Executive Director's Response to Comments. CR/TB; all agree.

**MISCELLANEOUS MATTERS**

Item 4 **TCEQ Docket No. 2010-0508-AGR-E; SOAH Docket No. 582-11-0784.**

Consideration of an Order issued by the State Office of Administrative Hearings July 31, 2012, Granting Amended Motion to Remand and Forwarding Agreed Order and Comments to the Texas Commission on Environmental Quality, regarding George DeVries dba DeVries Dairy, RN100802917, in Erath County, pursuant to Tex. Water Code chs. 7 and 26 and 30 Tex. Admin. Code § 80.254. The Commission will also consider public comments and related responses and replies. (Tammy Mitchell)

Adopt the Proposed Agreed Order as recommended by the Executive Director. TB/CR; all agree.

Item 5 **Docket No. 2012-0640-UIC.**

Consideration of the amendment and reissuance of General Permit Number WDWG010000 which authorizes the disposal of nonhazardous brine from a desalination operation or nonhazardous drinking water treatment residuals into a Class I well. The amendment incorporates standards for disposal of nonhazardous drinking water treatment residuals (DWTR) that contain naturally occurring radioactive material (NORM) into a salt cavern in horizontally bedded or non-domal salt. A Radioactive Materials License is required for disposal of DWTR containing NORM that does not meet an exempted level for its radiological content. This permit is a single statewide general permit covering all qualifying Class I injection wells that meet the permit's performance standards. This permit specifies which Class I injection wells may be authorized under the general permit and establishes requirements in order to obtain and maintain such authorization. Notice of the draft amended general permit was published in the July 13, 2012 issue of the *Texas Register* (37 TexReg 5368). (Kathryn Hoffman; Don Redmond, Diane Goss)

Adopt General Permit WDWG010000 as recommended by the Executive Director. CR/TB; all agree.

Item 6 **[Docket No. 2012-1903-MWD-E.](#)**

Consideration of an Order to Terminate Agreed Order for the City of Lubbock in Lubbock County; RN101609949; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Kari Gilbreth)

Adopt the Order to Terminate Agreed Order entered by the Texas Water Commission and the City of Lubbock in 1989 as recommended by the Executive Director. TB/CR; all agree.

**AIR QUALITY ENFORCEMENT AGREED ORDERS**

Item 7 **[Docket No. 2012-0692-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of United Structures of America, Inc. in Harris County; RN100219708; 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. (Trina Grieco, Debra Barber)

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

Item 8 **[Docket No. 2011-1561-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties against Lindberg Collision Incorporated in Dallas County; RN105927156; 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. (Anna Treadwell, Lena Roberts)

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

Item 9 **[Docket No. 2012-0736-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Flint Hills Resources Corpus Christi, LLC in Nueces County; RN100235266; 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 10 **[Docket No. 2012-0734-AIR-E.](#)**

Consideration of an Agreed Order assessing administrative penalties against Trend Gathering & Treating, LLC in Freestone County; RN103043840; 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 11 [\*\*Docket No. 2012-0665-AIR-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Equistar Chemicals, LP in Harris County; RN100542281; 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.

**AIR QUALITY ENFORCEMENT DEFAULT ORDERS**

Item 12 [\*\*Docket No. 2011-2252-AIR-E.\*\*](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Bob King's Truck Beds, LLC d/b/a Kings Truck Beds in Wise County; RN104311055; 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. (Anna Treadwell, Lena Roberts)

Remanded to the Executive Director. CR/TB; all agree

Item 13 [\*\*Docket No. 2011-0380-AIR-E.\*\*](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Jason Castoria d/b/a American Auto Care in Brazos County; RN105967806; 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. (Anna Treadwell, Lena Roberts)

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

**INDUSTRIAL WASTE DISCHARGE ENFORCEMENT AGREED ORDER**

Item 14 [\*\*Docket No. 2012-0330-IWD-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Magnolia Shell Truck Stop, Inc. in Harris County; RN101520344; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Peipey Tang, Lena Roberts)

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

**IRRIGATION LICENSING ENFORCEMENT DEFAULT ORDER**

Item 15 [Docket No. 2011-1630-LII-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Terry Lee Middleton d/b/a Five Star Lawn & Landscape in Tarrant County; RN105704118; for landscape irrigation occupational license 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. (Kari L. Gilbreth, Lena Roberts)

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

**MULTI-MEDIA MATTER ENFORCEMENT DEFAULT ORDERS**

Item 16 [Docket No. 2011-0490-MLM-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Jason Castoria d/b/a American Auto Care in Brazos County; RN105967806; for industrial solid and/or hazardous waste and used oil violations pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code chs. 361 and 371, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Anna M. Treadwell, Lena Roberts)

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

Item 17 [Docket No. 2012-0494-MLM-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Rene Navarette d/b/a Tire Enterprise Towing & Recovery in Hudspeth County; RN106256845; for municipal solid waste and used oil violations pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code chs. 361 and 371, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Peipey Tang, Lena Roberts)

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

**MUNICIPAL SOLID WASTE ENFORCEMENT AGREED ORDER**

Item 18 [Docket No. 2011-1549-MSW-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Bulldog Tire Recycling, Inc. in Harris County; RN103042495; for municipal solid waste 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 Tex. Admin. Code ch. 60. (Peipey Tang, Lena Roberts)

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



**MUNICIPAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS**

Item 19 **[Docket No. 2011-1599-MWD-E.](#)**

Consideration of an Agreed Order assessing administrative penalties against U.S. Army Corps of Engineers in Williamson County; RN101715522, RN101701688, RN102185097, RN101715456; 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, Debra Barber)

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

Item 20 **[Docket No. 2011-2117-MWD-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Fruitvale Independent School District in Van Zandt County; RN101527919; 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.

Item 21 **[Docket No. 2012-0480-MWD-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Aqua Utilities, Inc. in Harris County; RN101519668; 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 22 **[Docket No. 2010-1581-MWD-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of J&S Water Company, L.L.C. in Chambers County; RN101613479; 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 23 **[Docket No. 2012-0026-MWD-E.](#)**

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Kennard in Houston County; RN102078169; 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 24 [\*\*Docket No. 2012-0679-MWD-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Lefors in Gray County; RN102184546; 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. (Stephen Thompson, Debra Barber)

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

Item 25 [\*\*Docket No. 2012-0152-MWD-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Coolidge in Limestone County; RN101919025; 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, Debra Barber)

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

**MUNICIPAL WASTE DISCHARGE ENFORCEMENT DEFAULT ORDER**

Item 26 [\*\*Docket No. 2011-1344-MWD-E.\*\*](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Indian Petro Corp. in San Jacinto County; RN102080744; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Peipey Tang, Lena Roberts)

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

**ON SITE SEWAGE FACILITY AUTHORIZATION ENFORCEMENT DEFAULT ORDER**

Item 27 [\*\*Docket No. 2012-0450-OSS-E.\*\*](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Erasmo Garcia in McCulloch County; RN105691786; for on-site sewage disposal system violations pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 366, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Joel Cordero, Lena Roberts)

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

**PETROLEUM STORAGE TANKS ENFORCEMENT AGREED ORDERS**

Item 28 [\*\*Docket No. 2010-1897-PST-E.\*\*](#)



Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Fred Jackson in Dallas County; RN101537017; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Elizabeth Lieberknecht, Lena Roberts)

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

Item 29 [\*\*Docket No. 2012-0531-PST-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of ADICO ENTERPRISES INC. dba Anas Shell in Harris County; RN100870831; 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. (Maggie Dennis, Debra Barber)

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

Item 30 [\*\*Docket No. 2012-0864-PST-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Monroe Center, Inc. dba First Stop Food Store 16 in Harris County; RN101434603; 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, Debra Barber)

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

Item 31 [\*\*Docket No. 2012-0116-PST-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Jesus Acuna d/b/a Country Boy Store 1 in El Paso County; RN100810555; 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. (Peipey Tang, Lena Roberts)

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

Item 32 [\*\*Docket No. 2012-0365-PST-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Mohammad Y. Hossaen dba West Davis Food Mart in Dallas County; RN102154267; 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. (Thomas Greimel, Debra Barber)

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

**PETROLEUM STORAGE TANKS ENFORCEMENT DEFAULT ORDERS**

Item 33 [Docket No. 2012-0484-PST-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Billy Don Hughes in Shelby County; RN101910115; 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. (Ryan Rutledge, Lena Roberts)

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

Item 34 [Docket No. 2012-0710-PST-E.](#)

Consideration of a Default Order assessing administrative penalties against BKK Holdings inc. dba Four Foxes 1 in Hood County; RN102245339; 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. (Mike Fishburn, Lena Roberts)

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

**PETROLEUM STORAGE TANKS ENFORCEMENT DEFAULT AND SHUTDOWN ORDERS**

Item 35 [Docket No. 2012-0062-PST-E.](#)

Consideration of a Default and Shutdown Order assessing administrative penalties and requiring certain actions of BENTON RAINEY, INC. in Lamar County; RN102832433; 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. (Jim Sallans, Lena Roberts)

Approve the Default and Shutdown Order. CR/TB; all agree.

Item 36 [Docket No. 2012-0419-PST-E.](#)

Consideration of a Default and Shutdown Order assessing administrative penalties and requiring certain actions of SUPER VILLAGE ENTERPRISE INC d/b/a Super Food Mart in Harris County; RN101884799; 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. (Rebecca M. Combs, Lena Roberts)

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

Item 37 [Docket No. 2012-0042-PST-E.](#)

Consideration of a Default and Shutdown Order assessing administrative

penalties and requiring certain actions of Ayman International, Inc. d/b/a Eagle Mart 2 in Harris County; RN102480134; 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. (Becky Combs, Lena Roberts)

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

Item 38 [\*\*Docket No. 2011-1555-PST-E.\*\*](#)

Consideration of a Default and Shutdown Order assessing administrative penalties and requiring certain actions of Ghanshayam Enterprise LLC d/b/a Sunmart 140 in Harris County; RN102024387; 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 Default and Shutdown Order. CR/TB; all agree.

Item 39 [\*\*Docket No. 2012-0389-PST-E.\*\*](#)

Consideration of a Default and Shutdown Order assessing administrative penalties and requiring certain actions of HSBM Retail Management, LLC d/b/a I-45 Quick Stop in Freestone County; RN102018652; 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. (Rebecca M. Combs, Lena Roberts)

Approve the Default and Shutdown Order. CR/TB; all agree.

Item 40 [\*\*Docket No. 2012-0333-PST-E.\*\*](#)

Consideration of a Default and Shutdown Order assessing administrative penalties and requiring certain actions of Cindy Mettlen d/b/a Midway in Leon County; RN102254190; 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. (Joel Cordero, Lena Roberts)

Approve the Default and Shutdown Order. CR/TB; all agree.

**PUBLIC WATER SYSTEM ENFORCEMENT AGREED ORDERS**

Item 41 [\*\*Docket No. 2011-1163-PWS-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Richard Allen Keenan dba K & B Waterworks in Galveston County; RN102690187; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Jennifer Cook, Lena Roberts)

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

Item 42 [\*\*Docket No. 2012-0818-PWS-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Carolyn Crawford dba Little Texans Public Water System in Burnet County; RN102903911; 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.

Item 43 [\*\*Docket No. 2012-0720-PWS-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of The Angler's Lodge, LLC in Val Verde County; RN101243277; 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. (Tammy L. Mitchell, Lena Roberts)

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

Item 44 [\*\*Docket No. 2012-0571-PWS-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of SWEA GARDENS ESTATES UTILITY, INC. in Harris County; RN101456457; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Michaelle Sherlock, Debra Barber)

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

Item 45 [\*\*Docket No. 2012-0149-PWS-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Leona Bullock dba Blue Ridge Mobile Home Park in Kerr County; RN101226538; 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, Debra Barber)

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

Item 46 [\*\*Docket No. 2012-0517-PWS-E.\*\*](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Lake Hills DTP II, LLC in Bandera County; RN106081326; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rule of the Texas Commission on Environmental Quality. (Mike Fishburn, Lena Roberts)

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

**PUBLIC WATER SYSTEM ENFORCEMENT DEFAULT ORDER**

Item 47 [Docket No. 2012-0424-PWS-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Wendell Reese d/b/a Pecan Shadows Water Supply Company in Matagorda County; RN102691052; 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. (Ryan Rutledge, Lena Roberts)

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

**SLUDGE ENFORCEMENT AGREED ORDER**

Item 48 [Docket No. 2012-0270-SLG-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Marlin in Falls County; RN104915079; for water quality violations pursuant to Tex. Health & Safety Code ch. 361, Tex. Water Code chs. 7 and 26, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Lanae Foard, Debra Barber)

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

**WASTEWATER OPERATOR CERTIFICATION ENFORCEMENT DEFAULT ORDER**

Item 49 [Docket No. 2012-0243-WOC-E.](#)

Consideration of a Default Order assessing administrative penalties and requiring certain actions of Whit R. Ogilvie in Limestone County; RN103830741; for occupational licensing violations pursuant to Tex. Water Code chs. 7, 26 and 37, Tex. Health & Safety Code ch. 341, and the rules of the Texas Commission on Environmental Quality. (Ryan Rutledge, Lena Roberts)

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

**WATER QUALITY ENFORCEMENT AGREED ORDERS**

Item 50 [Docket No. 2012-0457-WQ-E.](#)

Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of Andy Ngo in Nacogdoches County; RN106108350; 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, Debra Barber)

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

Item 51 [Docket No. 2011-1002-WQ-E.](#)

Consideration of an Agreed Order assessing administrative penalties against City of Burleson in Johnson County; RN101387264; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Jeff Huhn, Lena Roberts)

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

### **STATE IMPLEMENTATION PLANS**

Item 52 **Docket No. 2012-0862-SIP.**

Consideration of the adoption of Federal Clean Air Act (FCAA), Section 110(a)(1) and (2) Infrastructure and Transport State Implementation Plan (SIP) Revision for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard. The adopted SIP revision will meet the infrastructure requirements of the FCAA, Section 110(a)(1) and (2) under the 2010 NO<sub>2</sub> NAAQS. The adoption will outline the requirements of FCAA, Section 110(a)(2)(A) through (M) and the Texas provisions supporting the requirements. 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 will also include a technical demonstration to support that Texas meets the interstate transport requirements of FCAA, Section 110(a)(2)(D)(i)(I). (Margaret Earnest, Amy Browning) (Non-rule Project No. 2012-016-SIP-NR)

Adopt the Infrastructure and Transport State Implementation Plan Revision for the 2010 Nitrogen Dioxide NAAQS as recommended by the Executive Director. TB/CR; all agree.

Item 53 **Docket No. 2012-0805-SIP.**

Consideration of the adoption of the Beaumont-Port Arthur (BPA) Attainment Area On-Road Mobile Source Emissions Inventory and Motor Vehicle Emissions Budget (MVEB) Update State Implementation Plan (SIP) Revision. The adopted SIP revision will replace the 2008 BPA maintenance plan on-road mobile source emissions inventories for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) based on the United States Environmental Protection Agency's MOBILE model with those based on the EPA's Motor Vehicle Emission Simulator (MOVES) model. On-road mobile source emissions inventory updates include those for 2005, 2011, 2014, 2017, and 2021. The 2021 NO<sub>x</sub> and VOC MVEBs are also updated based on the MOVES-based emissions inventories. The updated MVEBs may help the BPA area meet transportation conformity requirements of the Federal Clean Air Act. (Jamie Zech, John Minter) (SIP Project No. 2012-005-SIP-NR)

Adopt the Beaumont-Port Arthur Attainment Area Motor Vehicle Emissions Budget Update SIP Revision as recommended by the Executive Director. CR/TB; all agree.



## **RULE MATTERS**

### **Item 54**    **[Docket No. 2009-1400-RUL.](#)**

Consideration for publication of, and hearing on, proposed new Sections 101.100 - 101.102, 101.104, 101.106 - 101.110, 101.113, and 101.116 - 101.122 of 30 Texas Administrative Code (TAC) Chapter 101, General Air Quality Rules, Subchapter B, Failure to Attain Fee, and corresponding revisions to the state implementation plan (SIP). The proposed rulemaking would implement the provisions of the Federal Clean Air Act (FCAA), Section 182(d)(3) and (e) and Section 185 for the Houston-Galveston-Brazoria one-hour ozone nonattainment area to include a requirement for the imposition of a penalty fee for major stationary sources of volatile organic compounds (VOC) located in an area classified as severe or extreme if the area fails to attain the ozone National Ambient Air Quality Standard by the applicable attainment date. The rulemaking will also implement FCAA, Section 182(f), which requires all SIP requirements that apply for VOC to also apply for emissions of nitrogen oxides (NOX). The rulemaking will also provide for equivalent alternative options to meet the fee obligation. Major stationary sources are subject to paying a fee of \$5,000, as adjusted by the consumer price index, per ton in excess of 80% of a baseline amount of VOC, NOX, or both. The fee is proposed to be due annually until the area is redesignated attainment or has a design value of attainment. (Kathy Pendleton, Terry Salem) (Rule Project No. 2009-009-101-AI)

Approve publication of, and hearing on, the proposed Amendments to 30 TAC Chapter 101 and corresponding revisions to the State Implementation Plan as recommended by the Executive Director. TB/CR; all agree.

### **Item 55**    **[Docket No. 2012-1663-RUL.](#)**

Consideration for publication of the proposed amendment to Section 11.1, Historically Underutilized Business Program, of 30 TAC Chapter 11, Contracts. The proposed rulemaking would update the Historically Underutilized Business (HUB) Rule. The Texas Comptroller of Public Accounts conducted a disparity study in 2009, which resulted in revisions to Title 34, Part 1, TAC Chapter 20, Subchapter B (HUB rules). These revisions became effective on September 14, 2011. A state agency is required by Texas Government Code, Section 2161.003 to adopt the HUB rules. TCEQ's current rule adopting the HUB rules by reference refers to a previous version of the rule and does not reflect the current numbering of the rule. (Laura Cagle, Amy Mendez) (Rule Project No. 2012-036-011-AS)

Approve publication of the proposed amendment to 30 TAC Section 11.1 as recommended by the Executive Director. CR/TB; all agree.

### **Item 56**    **[Docket No. 2011-1228-RUL.](#)**

Consideration of the adoption of amendments to Sections 288.1 - 288.5 of 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines

and Requirements. The adoption would implement Senate Bill (SB) 181 and SB 660, 82nd Legislature, 2011, Regular Session, to require entities that submit water conservation plans to the TCEQ and the Texas Water Development Board (TWDB) to implement sector-based reporting measures for water use. The adopted rulemaking would also require the TCEQ and the TWDB, in consultation with the Water Conservation Advisory Council, to develop a uniform methodology and guidance for calculating water use and conservation. The proposed rules were published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5216). (Scott Swanson, Ron Olson) (Rule Project No. 2011-058-288-OW)

Adopt the amendments to 30 TAC Chapter 288 as recommended by the Executive Director. TB/CR; all agree.

### **PUBLIC COMMENT SESSION**

- Item 57 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 58 **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 59 **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 60 **Docket No. 2012-0003-EXE.**

