

**WHITE  
MARQUEZ  
SOWARD**

**MARKED AGENDA**

Friday, January 14, 2005

Texas Commission on Environmental Quality

9:30 a.m.

Room 201S, Building E  
12100 Park 35 Circle

1. **Discussion of the Monthly Enforcement Report.** This issue was not discussed.
2. **Discussion of the Environmental Monitoring and Response System (EMRS).** This issue was not discussed.
3. **Consideration of issues relating to agency compliance and enforcement policies and practices.** This issue was presented by Glenn Shankle, Executive Director and John Steib, Deputy Director Compliance and Enforcement. Additional staff participating in the discussions were Tom Weber, Chief Engineer's Office, Ann McGinley, Director Enforcement Division, Matt Baker, Office of Permitting, Remediation, and Registration, John Gillen, Office of Public Assistance, Lydia Gonzalez-Gromatsky, Deputy Director Office of Legal Services, and Linda Flores, Chief Financial Officer. Commission direction and agreement or disagreement on specific staff recommendations are reflected at the following link:  
[http://www.tceq.state.tx.us/assets/public/comm\\_exec/epreview/epr\\_recc.pdf](http://www.tceq.state.tx.us/assets/public/comm_exec/epreview/epr_recc.pdf).
4. **Consideration of issues related to the Chapter 291 rule petition submitted by Greater Houston Area Builders Association that requested amendments to eight existing sections and adoption of three new sections of Chapter 291 related to Certificates of Convenience and Necessity.** Mike Cowan, Director Water Supply Division, Robert Martinez, Environmental Law Division, and Doug Holcomb, Water Supply Division, presented this issue from the backup materials. No vote was taken by the Commission. Staff were directed to proceed with development of proposed changes to all affected sections of Chapter 291, including additional new sections based upon a robust stakeholder involvement. Particular points to consider with stakeholder and focus groups should include a more effective landowner notice provision, accurate service area description, notice to county and public records, decertification of CCNs and other related issues mentioned in the backup materials. Staff should be prepared for rule proposal in the June time frame. Additionally, staff will arrange to meet individually with the Commissioners to develop specific points for future discussions while working with interested legislators. The following individuals registered to speak on this issue:

State Representative Bill Callegari

David Dorman, Mayor of City of Melissa

Mary Sahs, representing the Forsythe Company and Dick Forsythe

Trey Lary, representing Allen, Boone, Humphries, Robinson LLP

Jim Holcomb, Petitioner, representing the Greater Houston Builders Association

Steve Kosub, representing the San Antonio Water System  
William Hudson, stakeholder and developer  
James Box, representing Texas Association of Builders  
Mark Zeppa, Executive Director, Independent Water and Sewer Companies of Texas

**Action: No action taken.**

5. **Discussion of activities associated with the State Implementation Plan and issues related to recommendations regarding PM 2.5, ozone, and carbon monoxide.** This issue was not discussed.
6. **Discussion of state and federal legislative issues potentially affecting the TCEQ. The commission may consider legislative proposals and federal rulemakings, as well as other state actions and state's participation in federal legislative and regulatory activities. The commission may also meet in closed meeting to receive legal advice regarding these matters, or any of the above matters, as authorized by Section 551.071 of the Open Meetings Act, Chapter 551 of the Government Code. Any commission action, decision, or vote on these matters will be made in open meeting in accordance with Section 551.102 of the Open Meetings Act, Chapter 551 of the Government Code.** This issue was not discussed.
7. **PUBLIC COMMENT SESSION: 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.** This issue was not discussed.
8. **Planning for the next Commissioners' Work Session.** This issue was not discussed.
9. **Closed Session:** The Commission met in closed session. No action was taken.

**Consideration of issues relating to agency compliance and enforcement policies and practices.**

Please note, at this time, there are no backup materials for this issue.

**Consideration of issues related to the Chapter 291 rule petition submitted by Greater Houston Area Builders Association that requested amendments to eight existing sections and adoption of three new sections of Chapter 291 related to Certificates of Convenience and Necessity.**

# Texas Commission on Environmental Quality

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INTEROFFICE MEMORANDUM

To: Commissioners' Work Session Date: January 14, 2005

Thru: Dan Eden, Deputy Director, Office of Permitting, Remediation and Registration

From: Mike Cowan, Water Supply Division, Office of Permitting, Remediation and Registration

Subject: Update on Stakeholders Meetings for Petition on Rule Making Related to Water and Sewer Certificates of Convenience and Necessity, 30 TAC, Chapter 291, Subchapter G

**Issue** Discussion of issues related to the Chapter 291 rule petition submitted by Greater Houston Builders Association (GHBA) which requested amendments to eight existing sections and adoption of three new sections of Chapter 291 related to Certificates of Convenience and Necessity.

**Background and Current Practice** A Certificate of Convenience and Necessity (CCN) is a franchise granted by the state and is the subject of the petition. A CCN delineates the utility's service area and protects the utility from encroachment by other similar utilities as long as the CCN holder is providing continuous and adequate service. Water supply and sewer service corporations and investor owned utilities must obtain a CCN; political subdivisions do not have to have a CCN unless they are proposing to serve in an area already being lawfully served.

Chapter 291, Subchapter G of the Commission's rules, which is promulgated from Texas Water Code Chapter 13, establishes the process for obtaining a water or sewer CCN. The application process includes the filing of an application, along with proposed notices, maps of the proposed service area and information that demonstrates that the applicant has financial, managerial and technical capability to operate a viable utility. The proposed amendments to eight existing sections and the three new sections of the proposed rule changes that the GHBA's requested cover the following issues:

1. Landowner issues, which include notice, consent and decertification;
2. Additional factors in granting a CCN which includes need for service, financial ability, regionalization feasibility and other factors
3. Federal funding issues, which include the federal agency providing federal funding, TCEQ pre-approval of federal loans and grants, and landowner and utility pay off of federal debt to release land from a CCN; and
4. CCN descriptions and county recording issues, which include metes and bounds descriptions for CCN boundaries, county recording requirements and disclosure to purchasers.

The TCEQ held two stakeholder meetings on November 12 and November 30, 2004, with attendees comprised of members of the Drinking Water Advisory Work Group, the petitioner and other interested parties. The meetings were facilitated by the Governor's Center for Management Development. Summaries of the stakeholder meetings are on the TCEQ's web page and have been provided to the Commissioners and their staff. Based on input from the stakeholder meetings and internal discussions on the proposed rule revisions by the petition, there are three distinct areas that can be addressed through: policy changes; rule changes; and statutory changes.

The policy changes could include changes in the some notice requirements, such as individual notice to landowners and elected officials; posting application information on the TCEQ web page; criteria for demonstrating the need for service such as letters of commitment, or economic or environmental information; and better service area descriptions such as electronic metes and bounds.

Rule changes could include: rule changes to specifically identify need for service criteria; rules requiring submission of additional specific financial, managerial and technical information with a CCN application; CCN transfer notice changes; boundary description requirement changes; and corrections to the agency, division and section names.

Finally, the TCEQ does not have statutory authority to proceed with rule making on some of the proposed rules in the petition which include: landowner consent on a CCN application; allowing landowners to petition for removal of their property from a CCN; some of the additional proposed factors to consider in granting a CCN; and all proposed rules concerning federal funding issues.

### **Question**

How should staff proceed on the proposed rule changes by the GHBA petition?

**Option 1**- Proceed with policy changes, continue to work with stakeholders and focus groups and wait until after the upcoming legislative session before proceeding with any rule changes that could be addressed in legislative rule implementation.

**Pros/Cons:** This would allow changes in some current policies but delay rule making until after the session. This would allow the Texas Legislature the opportunity to provide guidance and direction on CCN issues. This would also allow any additional changes based on staff, stakeholder and focus groups input.

This would delay rule changes that can be lawfully amended under current statutes.

**Option 2** Proceed with policy changes and rule revisions allowed by current statute.

**Pros/Cons:** This would allow changes in some current policies and allow the petitioner and stakeholders to begin working through the rule change process.

If statutory changes are made during the upcoming session it could result in delaying legislative rule implementation until any pending rules work through the process. This could also result in back to back rule changes on many similar issues.

**Closed Session:**

- a. Docket No. 1998-1154-EXE. The Commission will meet in closed session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director, as permitted by Section 551.074 of the Texas Open Meetings Act, Chapter 551 of the Government Code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.**
- b. Docket No. 1999-0024-EXE. The Commission will conduct a closed meeting to receive legal advice and will discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific commission employees, as permitted by Sections 551.071 and 551.074, the Open Meetings Act, codified as Chapter 551 of the Government Code. The Commission may also meet in open session to take action on a legal or personnel matter considered in the closed meeting as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.**
- c. Docket No. 1999-0025-EXE. The Commission will conduct a closed session to discuss their duties, roles, and responsibilities as commissioners of the TCEQ pursuant to section 551.074 of the open meetings act, codified as chapter 551 of the government code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.**