

**Chairman Kathleen White**  
**Commissioner Ralph Marquez**  
**Commissioner Larry Soward**

**MARKED AGENDA**

Friday, May 13, 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.**

The Monthly Enforcement Report was presented by Anne Dobbs of the Enforcement Division from the backup materials.

No action taken.

**2. Consideration of the Submission to the U.S. Environmental Protection Agency of the 2004 Texas Water Quality Assessment and List of Impaired Waters as Required by the Federal Clean Water Act, Sections 305(b) and 303(d).**

Patrick Roques of the Office of Compliance & Enforcement and Matthew Beeter of the Office of Legal Services presented the Draft 2004 Texas Water Quality Inventory and 303(d) List to the Commissioners from the backup materials.

Public testimony was taken from Gwen Webb representing the City of Mt. Belvieu.

The Commissioners moved to approve submittal of the report to the U.S. Environmental Protection Agency with direction to the staff to make non-substantive changes to the submission as necessary. KW/LS; all agree.

**3. Consideration of the use of Delivery Certificate revocation and Shut Down authority of Petroleum Storage Tank facilities.**

After reviewing options for use of revocation and shutdown actions in PST default situations, the Commission decided to revoke the Respondent's delivery certificate if the Respondent: 1) must take corrective action, including obtaining financial assurance, to address a violation; and 2) fails to file an answer, or fails to participate in either the preliminary or evidentiary hearing once a matter is referred to SOAH.

To implement this direction, the agency's enforcement petitions will conspicuously inform the Respondent that if he fails to answer or participate in any hearing held, the Executive Director will ask the Commission to revoke the Respondent's delivery certificate. In pending cases, amended petitions will be filed which include the remedy of revocation upon default. Staff will additionally notify the Respondent through a cover letter and will make telephone calls to further inform the Respondent that revocation will be pursued if the Respondent fails to answer or participate in any

hearing held. Where a delivery certificate is held by a party that is not otherwise a part of an enforcement case, petitions will be served to both the owner and the operator of the station, since both are affected by the revocation. Staff will give notice to industry of this policy change by posting the change on the website and notifying industry organizations. Finally, revocations will be listed on the website in a user-friendly and noticeable way to provide notice to carriers. No action taken.

- 4. 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.**

Leonard Olson, Director of the Intergovernmental Relations Division, updated the Commissioners on state and federal issues potentially affecting the agency from the backup materials.

No action taken.

- 5. 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.**

There were no registrants for this item.

No action taken.

- 6. Planning for the next Commissioners' Work Session.**

Brian Christian announced that the June 3, 2005 work session has been cancelled, and the next scheduled work session would be August 12, 2005. The Commissioners discussed the need for a work session in June and agreed to schedule a work session for Friday, June 24, 2005 after the legislative session adjourns. In addition to the standing issues regarding the enforcement report, issues regarding state and federal legislation, the public comment session, and planning for subsequent work sessions, the June 24 work session will also include discussions about the TERP process and the preliminary 2006 budget.

Planning for the August 12, 2005 work session was also discussed. In addition to the standing issues regarding the enforcement report, issues regarding state and federal legislation, the public comment session, and planning for subsequent work sessions, the August 12 work session will also include discussion of the water re-use issue.

- 7. 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.**

The Commissioners did not meet in executive session.

- 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.**

The Commissioners did not meet in executive session.

- 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.**

The Commissioners did not meet in executive session.

**(PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE TCEQ COMMISSIONERS' WORK SESSION 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 PAUL MUNGIA IN THE OFFICE OF THE CHIEF CLERK AT (512) 239-1455 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 PAUL MUNGIA IN THE OFFICE OF THE CHIEF CLERK AT (512) 239-1455 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.) REGISTRATION FOR AGENDA STARTS AT 9:00 A.M. UNTIL 9:30 A.M. PLEASE REGISTER BETWEEN THESE TIMES. LATE REGISTRATION COULD RESULT IN YOUR MISSING THE OPPORTUNITY TO COMMENT ON YOUR ITEM.)**