

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for a Petition for Rulemaking

AGENDA REQUESTED: August 8, 2012

DATE OF REQUEST: July 20, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Michael Parrish, (512) 239-2548

CAPTION: Docket No. 2012-1262-RUL. Consideration of a petition for rulemaking under Section 20.15 of 30 TAC Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality on June 21, 2012 by the City of Irving. The petitioner requested that the commission amend the definition of "Municipal Use" in Section 297.1(32) to allow indirect reuse of treated wastewater effluent for watering of parks, golf courses, and parkways as a municipal use, after that indirect reuse had been authorized by the commission. (Ron Ellis, James Aldredge) (Project No. 2012-034-PET-NR)

L'Oreal Stepney, P.E.

Deputy Director

Kellye Rila

Division Director

Michael Parrish

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 20, 2012

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2012-1262-RUL

Project No.: 2012-034-PET-NR

Who Submitted the Petition:

Bickerstaff Heath Delgado Acosta LLP submitted the Petition on behalf of the City of Irving on June 21, 2012.

What the Petitioner Requests:

The City of Irving requests that the commission amend the definition of "Municipal Use" in 30 Texas Administrative Code (TAC) §297.1(32) to allow indirect reuse of treated wastewater effluent for watering of parks, golf courses, and parkways as a municipal use, after that indirect reuse had been authorized by the commission (in accordance with the Texas Water Code (TWC), §11.042 and 30 TAC §297.16).

The Petitioner's proposed changes to the definition of "Municipal Use" are as follows:

(32) **Municipal use** - The use of

(A) potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or

(B) ~~or~~ the use of reclaimed water or reuse authorized pursuant to §297.16 of this title in lieu of potable water for the preceding purposes, or

(C) ~~or~~ the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:

(i) ~~(A)~~ the application site is land owned or leased by the Chapter 26 permit holder; or

(ii) ~~(B)~~ the application site is within an area for which the commission has adopted a no-discharge rule.

Recommended Action and Justification:

The executive director recommends the initiation of a rulemaking as provided for in the Texas Government Code, §2001.021. Under a revised definition of municipal use, certain water needs could be satisfied by non-potable water supplies, preserving potable supplies for human consumption. Additionally, municipal water right holders could gain the flexibility to use permitted return flows for public purposes without the expense of treating

Re: Docket No. 2012-1262-RUL

the water to make it potable or the expense of amending existing permits for indirect reuse to add irrigation use. Indirect reuse is a water planning strategy being explored by many municipal water right holders to stretch existing supplies. The change requested by the petition could help enable municipal water right holders to implement that strategy.

If the initiation of rulemaking is approved, the executive director would recommend two changes to the petitioner's proposed language. The list of potable water uses in the existing rule should be expanded to include the concept of other public or recreational spaces. Also, the reference in the petition to 30 TAC §297.16 should be replaced by a reference to TWC, §11.042 because authorizations for indirect reuse issued by the commission are issued under TWC, §11.042.

The petitioner's proposed language with the executive director's suggested revisions added appears below. The executive director's suggested additions are shaded and suggested deletions are in brackets.

(32) **Municipal use** - The use of

(A) potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, **other public or recreational spaces, or**

(B) ~~or~~ the use of reclaimed water **or reuse authorized pursuant to Texas Water Code, §11.042 [§297.16 of this title]** in lieu of potable water for the preceding purposes, **or**

(C) ~~or~~ the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:

(i) ~~(A)~~ the application site is land owned or leased by the Chapter 26 permit holder; or

(ii) ~~(B)~~ the application site is within an area for which the commission has adopted a no-discharge rule.

Applicable Law:

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule
- 30 TAC §20.15, which provides such procedures specific to the commission

Agency contacts:

Ron Ellis, Rule Project Manager, 239-1282, Water Availability Division

James Aldredge, Staff Attorney, 239-2496

Michael Parrish, Texas Register Coordinator, 239-2548

Attachment

Petition

Commissioners

Page 3

July 20, 2012

Re: Docket No. 2012-1262-RUL

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Ron Ellis
Michael Parrish

Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

June 21, 2012

Via Courier

Bridget C. Bohac
Office of the Chief Clerk
MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

RE: Petition for Rulemaking

Dear Ms. Bohac:

Enclosed please find for filing the original Petition for Rulemaking submitted on behalf of the City of Irving, Texas. Please file-stamp the extra copy of the Petition and return it to our courier.

Thank you for your assistance in this matter. Please contact us, at (512) 472-8021 or at dearoom@bickerstaff.com and smaxwell@bickerstaff.com, if any additional information or documentation is required or if we can be of assistance in any way.

Sincerely,



Susan M. Maxwell

SM/cg

Enclosure

cc: Todd Reck, City of Irving
David Cardenas, City of Irving
Charles Anderson, City of Irving
Kuruvilla Oommen, City of Irving

CHIEF CLERK'S OFFICE
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bickerstaff Heath Delgado Acosta LLP

3711 S. MoPac Expressway Building One, Suite 300 Austin, Texas 78746 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

June 21, 2012

Via Courier

Mr. Zak Covar
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Petition for Rulemaking

Dear Mr. Covar:

Enclosed please find a Petition for Rulemaking submitted on behalf of the City of Irving, Texas, pursuant to Texas Government Code § 2001.021 and 30 TAC § 20.15. As set forth in the Petition, the City petitions the Commission to amend its current definition of "Municipal Use," 30 TAC § 297.1 (32).

Thank you for your assistance in this matter. Please contact us, at (512) 472-8021 or at dcaroom@bickerstaff.com and smaxwell@bickerstaff.com, if any additional information or documentation is required or if we can be of assistance in any way.

Sincerely,



Susan M. Maxwell

SM/cg
Enclosure

cc: Todd Reck, City of Irving
David Cardenas, City of Irving
Charles Anderson, City of Irving
Kuruvilla Oommen, City of Irving

DOCKET NO. _____

BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PETITION FOR RULEMAKING

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Pursuant to Texas Government Code § 2001.021 and 30 TAC §20.15, the City of Irving (“Petitioner”) petitions the Texas Commission on Environmental Quality (the “Commission”) to adopt an amendment to its current definition of “Municipal Use.” In support of its petition, Irving would show the following:

1. **Petitioner:**

The City of Irving is the Petitioner. Its address is City of Irving, 825 West Irving Boulevard, Irving, Texas 75060. Petitioner may be contacted regarding this petition through counsel, undersigned below.

2. **Proposed Rule:**

Petitioner requests that the definition of “Municipal Use,” 30 TAC 297.1(32), be modified as reflected below:

(32) Municipal use--The use of

(A) potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or

(B) ~~or~~ the use of reclaimed water or reuse authorized pursuant to § 297.16 of this title in lieu of potable water for the preceding purposes, or

(C) ~~or~~ the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:

(i) (A) the application site is land owned or leased by the Chapter 26 permit holder; or

(ii) (B) the application site is within an area for which the commission has adopted a no-discharge rule.

3. **Explanation of Proposed Rule:**

As the rule is currently drafted direct reuse of treated wastewater effluent for watering municipal parks, golf courses, parkways and other purposes is considered a municipal use. This promotes conservation by allowing the substitution of treated wastewater for potable

water from the municipal supply. However, indirect reuse of treated wastewater for many of these same purposes is not considered a “municipal use” under the current definition because the definition of “reclaimed water,” 30 TAC § 297.1(39), requires that the treated wastewater be “under the direct control of the treatment plant operator.”

The proposed amendment of the “Municipal Use” definition would allow indirect reuse of treated wastewater effluent for watering of parks, golf courses, and parkways as a municipal use, after that indirect reuse had been authorized by the Commission pursuant to Texas Water Code § 11.042 and 30 TAC § 297.16. All appropriate environmental and water availability reviews would have already occurred as part of obtaining the “bed and banks” authorization. Like the existing authorization for direct reuse of treated effluent for these purposes, the proposed amendment would promote conservation by allowing indirect reuse of treated effluent, thus relieving demands that otherwise might have to be supplied from potable municipal water.

4. Statutory Authority:

The Commission has authority to adopt the proposed rule amendment under Texas Water Code § 5.103.

5. Injury or Inequity Resulting from Failure to Adopt the Proposed Rule:

Without the proposed amendment, municipalities desiring to indirectly utilize treated wastewater effluent for watering golf courses, parks and parkways are required to amend their underlying water right authorization to include “agricultural use.” Not only is obtaining such an amendment potentially time consuming and expensive for the municipality, and burdensome on the TCEQ staff, it is not logical – watering such municipal facilities with reuse water in order to relieve the potable water demand on the municipal supply system *is* a municipal use, not an agricultural use.

6. Alternative Language:

The purpose of the proposed amendment is to modify the “Municipal Use” definition to allow indirect reuse of treated wastewater effluent to meet a demand that otherwise might have had to be satisfied from the municipal potable water supply, much as direct reuse of treated effluent is already authorized for this purpose. The language proposed by this Petition, above, is not the only way to accomplish this goal. Petitioner would not object to alternative language or modification of the proposed language, if such is determined to be preferable by TCEQ staff, so long as it accomplishes the intended purpose.

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays that the Commission adopt the proposed revision of the "Municipal Use" definition to allow indirect reuse of treated effluent to qualify as a municipal use.

Respectfully submitted,

BICKERSTAFF HEATH
DELGADO ACOSTA LLP
Douglas G. Caroom
Texas Bar No. 03832700
Susan M. Maxwell
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Austin, Texas 78746
Telephone: (512) 472-8021
Facsimile: (512) 320-5638

By: Susan Maxwell
Douglas G. Caroom *For*

Attorneys for City of Irving, Texas

**DECISION OF THE COMMISSION
REGARDING THE PETITION FOR RULEMAKING
FILED BY THE CITY OF IRVING**

Docket No. 2012-1262-RUL

On August 8, 2012, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by the City of Irving. The petition, filed on July 21, 2012, requests that the agency initiate rulemaking to amend the definition of "Municipal Use" in §297.1(32) to allow indirect reuse of treated wastewater effluent for watering of parks, golf courses, and parkways as a municipal use, after that indirect reuse had been authorized by the commission.

IT IS THE DECISION OF THE COMMISSION pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code, § 5.102 to instruct the Executive Director to examine the issues in the petition and to initiate rulemaking.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman