TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for a Petition for Rulemaking

AGENDA REQUESTED: June 18, 2013

DATE OF REQUEST: May 30, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141

CAPTION: Docket No. 2013-0939-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 May 13, 2013, by an individual on behalf of landowners and citizens of Ellis County (Petitioner). The petitioner requested that the commission amend 30 TAC Chapter 312, Sludge Use, Disposal and Transportation, to prohibit the application of sewage sludge in, or within three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000. (Laurie Fleet, Michael Parr) (Project No. 2013-033-PET-NR)

L'Oreal Stepney, P.E.
Deputy Director

David Galindo
Division Director

Bruce McAnally
Agenda Coordinator

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** May 30, 2013

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

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

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2013-0939-RUL

Project No.: 2013-033-PET-NR

Who Submitted the Petition:
On May 13, 2013, the Texas Commission on Environmental Quality received a petition from Mr. Cole Turner (petitioner), on behalf of the landowners and citizens of Ellis County.

What the Petitioner Requests:
The petitioner requested that TCEQ amend 30 Texas Administrative Code (TAC) Chapter 312, Sludge Use, Disposal, and Transportation, in order to prohibit the land application of sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

The petitioner states that the increased sludge application in the Midlothian area has resulted in adverse effects leading to a diminished quality of life and enjoyment of property, primarily due to objectionable odors.

Recommended Action and Justification:
The executive director recommends that the commission initiate a rulemaking proceeding. During the rulemaking process the executive director's staff will evaluate the issues raised in the petition as well as other documented nuisance odor issues at bulk sewage sludge land application sites. The rulemaking process will include stakeholder engagement and evaluate regulatory options to address nuisance odors – statewide, or by geographic area. The executive director's staff will then make recommendations on the most effective regulatory options to address nuisance odors, including rules.

As noted above, the petitioner requested that TCEQ amend Chapter 312, in order to prohibit the land application of sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000. Based on the 2010 United States Census Data, Dallas County is the only county that currently has a population between 2 million and 4 million people. Counties adjacent to Dallas County that exceed 140,000 people are: Tarrant, Collin, Denton, and Ellis Counties. In addition to the petition and associated complaints, the executive director is also investigating complaints about nuisance odors in other areas of the state, including Wise County.

Re: Docket No. 2013-0939-RUL

Texas Health and Safety Code (THSC), §361.022(c) provides the state's public policy regarding generating, treating, storing, and disposing of municipal sludge. It identifies the preferred methods to be used, to the extent economically and technologically feasible. For municipal sludge, the preferred methods are, in the order listed: source reduction, treatment to reduce pathogens and energy production, marketing and distribution of sludge, land applying sludge for beneficial re-use, land treatment, or landfilling. TCEQ promulgated statewide requirements for use, disposal, and transportation of municipal sludge in Chapter 312.

There are two types of municipal sludge: Class A and Class B.

Class A Sludge:

Class A sludge undergoes more treatment to reduce pathogens and metals prior to being utilized for beneficial land application. This increased level of treatment results in a product that allows it to be marketed and distributed to homeowners for use in gardens, flowerbeds, yards, etc. When the production volume exceeds the market for bagged material, bulk Class A sludge can be land applied to agricultural farms and fields, highway right-of-ways, parks, etc., without a permit authorization. TCEQ rules currently require the following for Class A sludge:

- Notification of land application site location, however no permit is required
- Vector attraction reduction
- Sludge testing to ensure it is non-hazardous

Class B Sludge:

Class B sludge is treated to a lower standard than Class A sludge for pathogens and metals. It cannot be marketed and distributed to the general public, but can be land applied to agricultural farms and fields. Due to the reduced treatment requirements, requirements for land applying Class B sludge are more stringent. TCEQ rules currently require the following for Class B sludge:

- Obtain a state permit only after providing proper prescribed public notice
- Metal limits and pathogen reduction requirements
- Vector attraction reduction
- Sludge testing to ensure it is non-hazardous
- Nutrient Management Plan to determine agronomic rates
- Maximum slope requirements
- Groundwater protection measures
- Land application prohibited in a designated floodway
- Transported in a covered container
- Sign posted at site stating that sewage sludge land application is located on premises

Re: Docket No. 2013-0939-RUL

- Reporting of volume land applied at a site
- Commercial Liability and Environmental Impairment insurance
- Buffer zones –

School, institution, business or residence	750 ft
Public water supply well, intake, spring or similar source, public water treatment plant, or public water supply storage tank	500 ft
Solution channels, sinkholes, or other conduits to groundwater	200 ft
Waters in the state of Texas - when sludge is not incorporated	200 ft
Waters in the state of Texas - when sludge is incorporated within 48 hours of application and a vegetated cover is established	33 ft
Private water supply well	150 ft
Public right of way	50 ft
Property boundary	50 ft
Irrigation conveyance canals	10 ft

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;
- THSC, §361.022, which establishes the State's Public Policy Concerning Municipal Solid Waste and Sludge.
- THSC, §361.121, which authorizes the commission to issue authorizations for the land application of sludge.
- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §5.120, which authorizes the commission to promote maximum conservation and protection of the quality of the environment and natural resources of the state;
- TWC, §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed and river basin in the state;
- TWC, §26.027, which authorizes the commission to issue permits; and
- TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges into or adjacent to water in the state.

Agency contacts:

Laurie Fleet, Rule Project Manager, 239-5445, Water Quality Division
Michael Parr, Staff Attorney, 239-0611
Bruce McAnally, Texas Register Coordinator, 239-2141

Re: Docket No. 2013-0939-RUL

Attachment
Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Laurie Fleet
Bruce McAnally

Texas Commission on Environmental Quality

DECISION OF THE COMMISSION
REGARDING THE PETITION FOR RULEMAKING
FILED BY AN INDIVIDUAL ON BEHALF OF THE LANDOWNERS AND CITIZENS OF ELLIS COUNTY

Docket No. 2013-0939-RUL

On June 18, 2013, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by an individual. The petition, filed on May 13, 2013, requests that the agency initiate rulemaking to amend 30 Texas Administrative Code Chapter 312, in order to prohibit the land application of sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

IT IS THE DECISION OF THE COMMISSION pursuant to the Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code, § 5.102 and § 5.103 to instruct the executive director to examine the issues in the petition and to initiate rulemaking to address nuisance odor issues at bulk sewage sludge land application sites.

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

DRAFT

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DLS

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

RECEIVED
MAY 13 2013
EXECUTIVE DIRECTOR

RE: Petition for Adoption of Rules (Title 30 TAC 20.15)

Dear Mr. Covar:

This Petition for Adoption of Rules is submitted by landowners and citizens subjected to the adverse effects of land application of sewage sludge in Ellis County, Texas. The changes affect the current Title 30 TAC 312 rules.

The purpose of the rule petition is to prohibit the application of sewage sludge in, or within, three miles of a city limit in Ellis County.

Background

Since February of 1998, land application of sludge has increased south of Midlothian. Specifically, the areas affected are in the vicinity of FM 875 and Singleton Road. The population since 1998 has increased dramatically to almost 1,200 families. The increased sludge application in the area has resulted in adverse effects leading to diminishing quality of life and enjoyment of property.

The primary adverse effect has been objectionable odors caused by the application of sewage sludge in the area, however, other physical effects include documented fish kills.

Currently, the land application of sludge is at its highest levels and public awareness of the problem is increasing with attention of news media outlets and local legislators.

Proposed Rule

The proposed changes are as follows:

Title 30 TAC 312.3 Exclusions

Add 312.3(n) – This chapter does not allow the application of bulk sewage sludge to land in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

Add 312.4(b)(5) – This subchapter does not authorize the application of bulk sewage sludge to land in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

Add 312.41(c)(3) – No person shall cause suffer or allow the land application of bulk material derived from sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

Add 312.42(j) – Land application of bulk sewage sludge is prohibited in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

Changes (*Italicized and underlined*) §312.41(b)(1) – Section 312.42 of this title (relating to General Requirements) and §312.44 of this title (relating to Management Practices), *with the exception of the requirements in §312.42(j),* do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge meets the metal concentration in §312.43(b)(3) of this title (relating to Metal Limits), the Class A Pathogen requirement in §312.82(a) of this title (relating to Pathogen Reduction), and one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title (relating to Vector Attraction Reduction).

Changes *(Italicized and underlined)* 312.41(d) – Special Requirements for Certain Bulk Derived Materials. The requirements in this subchapter when a bulk material derived from sewage sludge is applied to the land; if the sewage sludge from which the bulk material is derived *meets the distance requirement in §312.41(c)(3) and* meets the metal concentration in §312.43(b)(3) of this title the class A pathogen requirements in §312.82(a) of this title, and one of the vector attraction reduction requirements in §312.83(b)(1)-(8) of this title and the distance requirements in §312.32(j). The executive director may apply any or all of §312.42 and §312.44 of this title to the bulk derived material on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any metal in the sewage sludge.

Statement of Authority

Texas Health and Safety Code Chapter 361. Solid Waste Disposal Act and Title 30 Texas Administrative Code Chapter 312

Allegation of injury or inequity

It is my plea to help bring relief to over 1000 families who live in close proximity to an odor that is so offensive that it will run citizens back into their homes. For the past three years, since purchasing our home, we have been limited to the time we can spend outdoors due to the intense odor created by the sludge dumped on the acreage directly across the road from our home. Wind, humidity, rain and heat all cause the odor to intensify. We are confined to being indoors during the prettiest times of the year because the smell is unbearable and lingers well after it has been dumped. We are unable to open our windows in our house and the sludge odor prevents us from enjoying our property, our animals and outside activities. The smell also permeates our vehicles and the smell travels with us even when we are not at home.

Since 1998, housing and developing has increased the area population from hundreds to thousands as Midlothian, and the surrounding communities, continue to grow. New subdivisions are being created monthly and buyers are unaware of any odor, depending on the wind, until it is too late. A majority of citizens have no idea where the smell is coming from, nor do they know how to combat the intrusion when they do realize the origin. The average citizen is not prepared to spend hours and hours trying to fight for the rights they should already have.

My plea is for relief with a three mile no dump zone. Please help us get back the same clean air everyone else enjoys.

Sincerely,

Cole Turner

Cole Turner
1050 Marion Road
Venus, Texas 76084

171604 REV. 12/09 FD

[redacted]

12100 PARK THIRTY FIVE CIR
BLDG F
AUSTIN TX 78753

GREEN2 S:GREEN2 I:18
11A-FL1
1Y55Y02139823 4572
1500

COLE TURNER
817-714-0460
ELLIS COUNTY
1050 MARON RD
VENUS TX 76084

0.0 LBS LTR

1 OF 1

SHIP TO:
MR. ZAK COVAR
817-714-0460
TEXAS COMMISSION ON ENVIRONMENTAL Q
BUILDING F
12100 PARK 35 CIRCLE
AUSTIN TX 78753-1808

TX 787 9-04

UPS NEXT DAY AIR SAVER 1P
TRACKING #: 1Z Y55 Y02 13 9823 4572

BILLING: P/P

Reference#1: Turner
Reference#2: Covar

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