

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

AGENDA REQUESTED: June 22, 2016

DATE OF REQUEST: June 3, 2016

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

CAPTION: Docket No. 2016-0597-PET. Consideration of a petition for rulemaking under Section 20.15 of 30 Texas Administrative Code (TAC) Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality (commission) on April 25, 2016, by Harris County, Texas (petitioner). The petitioner requested that the commission amend Section 321.212 of 30 TAC Chapter 321, Control of Certain Activities by Rule, Subchapter L, Discharges to Surface Waters from Motor Vehicles Cleaning Facilities, to remove minimum flow requirements for the motor vehicle cleaning facility permit. (Laurie Fleet, Hollis Henley) (Project No. 2016-036-PET-NR)

L'Oreal Stepney, P.E.
Deputy Director

Gregg Easley for David Galindo
Division Director

Sherry L. Davis
Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 3, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

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

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2016-0597-PET

Project No.: 2016-036-PET-NR

Who Submitted the Petition:

On April 25, 2016, the Texas Commission on Environmental Quality (TCEQ or commission) received a petition from Harris County (petitioner).

What the Petitioner Requests:

The petitioner requested that the commission initiate rulemaking to amend 30 Texas Administrative Code (TAC) Chapter 321, Subchapter L: Discharges to Surface Waters from Motor Vehicles Cleaning Facilities, to remove minimum flow requirements from the rule.

Recommended Action and Justification:

The executive director recommends denial of the petition.

The Memorandum of Agreement (MOA) between TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System (NPDES) prohibits TCEQ from issuing authorizations under Chapter 321, Subchapter L, relating to motor vehicle cleaning facilities. The MOA states:

"[TCEQ] has promulgated several rules which authorize discharges into and adjacent to waters in the state, in accordance with §26.040 of the Texas Water Code. [TCEQ] agrees it will not authorize [Texas Pollutant Discharge Elimination System (TPDES)] discharges into waters of the United States under these rules until they are amended to include all NPDES requirements, in accordance with 30 TAC §321.141 and subject to public notice, opportunity for comment, [TCEQ] response to comments, and EPA review (as described in Section IV.C. of this MOA). These rules include...30 TAC Chapter 321, Subchapter L, relating to Motor Vehicle Cleaning Facilities....

After program assumption each of these rules may be either repealed and replaced by a general permit issued by [TCEQ], or amended to authorize discharges to water of the United States only in accordance with NPDES requirements."

TCEQ has not repealed and replaced Chapter 321, Subchapter L, with a general permit or amended the rule to add the NPDES requirements. Instead, TCEQ authorizes these discharges under an individual permit which comply with all necessary NPDES requirements. Alternatively, as noted by the petitioner, regulated entities can obtain an

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authorization under 30 TAC Chapter 210, Subchapter E, to reuse the wastewater rather than discharge it to water in the state.

Chapter 321, Subchapter L was enacted before the MOA. If TCEQ amends Chapter 321, Subchapter L, it cannot solely remove the minimum flow requirements as Harris County requests. Rather, in order to comply with the MOA, any change to Chapter 321, Subchapter L must include all necessary NPDES requirements.

For this reason, TCEQ recommends denial of Harris County's request.

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;
- TWC, §26.040, which authorizes the commission to issue general permits; and
- 30 TAC §20.15, which provides such procedures specific to the commission.

Agency Contacts:

Laurie Fleet, Rule Project Manager, Water Quality Division, (512) 239-5445

Hollis Henley, Staff Attorney, (512) 239-0676

Sherry Davis, Texas Register Coordinator, (512) 239-2141

Attachment:

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Yvonna Miramontes
David Galindo
Laurie Fleet
Sherry Davis



43642
OLS (Gen Law)
P. Duron

Vince Ryan
Harris County Attorney

April 20, 2016



Certified Mail No. 7014 2870 0001 9571 6943

Return Receipt Requested

Richard A. Hyde
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

RE: Petition for Adoption of Rule; Amendment of 30 Texas Administrative Code (T.A.C.)
§ 321.212(a); Applicability of Motor Vehicle Cleaning Facilities for Authorization by Rule
under 30 T.A.C. Subchapter L

Dear Mr. Hyde:

Harris County submits the enclosed Petition for Adoption of Rule seeking a revision to 30 T.A.C. § 321.212(a), applicability of motor vehicle cleaning facilities for authorization by rule under 30 T.A.C. Chapter 321, Subchapter L.

If you have any questions or any further information is required, please contact me at (713) 274-5124 or at sarah.utley@cao.hctx.net.

Sincerely,

VINCE RYAN
Harris County Attorney

Sarah Jane Utley
Deputy Managing Attorney
Environment and Infrastructure Group

cc: Via email
John Blount, HCED
Alisa Max, HCED
Danielle Cioce, HCED
Bob Allen, HCPCSD

DOCKET NO. _____

**BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

Petition for Adoption of Rules

Pursuant to the Texas Government Code § 2001.021 and 30 Texas Administrative Code (T.A.C.) § 20.15, Harris County, Texas (Harris County) petitions the Texas Commission on Environmental Quality (TCEQ) to remove minimum flow requirements for the motor vehicle cleaning facility permit by rule provisions in 30 T.A.C. Chapter 321, Subchapter L. In support of its petition, Harris County would show the following:

1. Petitioner is an Interested Person

Harris County was created as a body corporate and politic under the laws of the State of Texas and is recognized as legal subdivision of the State of Texas. Vernon's Ann. Texas Const. Art. 9, § 1 and 11, § 1. Accordingly, as a legal subdivision of the State of Texas, Harris County is an interested person pursuant to 30 T.A.C. § 20.15(a)(3) and Tex. Gov't. Code § 2001.021(d)(3).

2. Name and Address of Petitioner

Harris County
1001 Preston
Houston, Texas 77002

3. Explanation of the Proposed Rule

Harris County serves over 4.4 million residents and has many operations, which often require motor vehicle maintenance and upkeep. As a component of motor vehicle upkeep, Harris County is often faced with the challenge of disposing the wastewater from our motor vehicle (MV) cleaning facilities, defined as wastewater generated at motor vehicle cleaning facilities as a result of washing the exterior of motor vehicles and specifically excluding domestic sewage. 30 T.A.C. § 321.211(3).

As one might imagine, Harris County operations can be located in remote areas of the County – examples include maintenance facilities. Sometimes, sanitary sewers are not available in these remote reaches of the County. Generally, when a sanitary sewer is not available, wastewater is treated by an onsite sewage facility (OSSF). However, MV Wastewater is prohibited from being discharged to an OSSF, even with pretreatment. *See* TCEQ Regulatory Guidance 434 (RG 434) and 30 T.A.C. Chapter 285. In many areas, this creates a problem because, as explained below, practical and cost-effective disposal solutions are elusive.

When discharge to a sanitary sewer is not an option, TCEQ RG 434, directs operators to evaluate obtaining a Level II authorization for the reuse of industrial reclaimed water in 30 T.A.C. 210, Subchapter E. This is an undesirable approach for Harris County operations because it is cumbersome and costly. However, even though it is not listed in RG 434, TCEQ staff directed Harris County to evaluate 30 T.A.C. Chapter 321, Subchapter L (Subchapter L) 'Discharges to Surface Waters from Motor Vehicles Cleanings Facilities' as an alternative option.¹

Subchapter L operates as a permit by rule, allowing MV facilities to discharge to water in the state if certain conditions are met. Harris County analyzed Subchapter L criteria with an eye toward typical county operations and determined that Harris County operations are generally eligible to operate under Subchapter L, but for one requirement – the requirement that MV Facilities discharge more than 5,000 gallons per day of operation. See 30 T.A.C. § 321.212(a). The 5,000 gallons per day of operation requirement appears to be subjective and Harris County does not believe it has any impact on the quality of wastewater discharge. In fact, Texas Pollutant Discharge Elimination System (TPDES) individual permits have maximum effluent flow limitations, not minimum. Accordingly, Harris County is seeking the removal of minimum flow requirement in 30 T.A.C. § 321.212(a).

4. Proposed Rule language

231.212 Purpose and Applicability

- (a) The purpose of this subchapter is to regulate by rule the surface discharge to water in the state of facility wastewater from motor vehicle cleaning facilities in accordance with effluent limitations, monitoring requirements, and other conditions set forth herein. Certificates of registration issued under this subchapter are subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director). Except as provided by § 321.219 of this title (relating to Enforcement and Revocation) and except as provided by subsection (e) of this section, this rule regulates the following type of facilities ~~which in a given month discharge, on average, more than 5,000 gallons per day of operation: . . .~~

- (1) Establishments primarily. . .

¹ In fact, TCEQ's application to use Industrial Reclaimed Water recognizes permits by rule authorized under 30 T.A.C Chapter 321. Extending the reach of Subchapter L would further simplify this regulatory process and decrease TCEQ's application processing work load.

5. Statement of Authority for the Proposed Rule

The TCEQ has the authority to adopt the proposed rule amendment based on the following statutory provisions:

- Texas Water Code § 5.103, which authorizes the Commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code.
- Texas Water Code § 5.105, which authorizes the Commission to set policy by rule.
- Texas Water Code § 5.501, which authorizes the Commission to adopt rules to implement the emergency and temporary order provisions of the Texas Water Code.
- Texas Water Code § 26.011, which establishes the Commission's authority over water quality in the state.

6. Injury or Inequity that could result from the Failure to adopt the Proposed Rule

Harris County's request to remove the minimum flow requirement is practical, protective of the environment, and cost-effective. As discussed above, MV Facilities are sometimes located in areas where sanitary sewers are not available, leaving Harris County with very few practical, cost effective disposal solutions.

Subchapter L was developed based on non-specific legislation that allows the TCEQ to create rules to protect the water in the state. Harris County asserts that elimination of the flow criterion would not create a negative impact to the environment. There is no known scientific basis to require MV cleaning facilities to have a minimum flow to be protective of the environment. In fact, TPDES individual permits have maximum flow limits, not minimum flow requirements. The only impact of the provision is to limit the applicability of the Subchapter L to larger operations, forcing smaller operations – businesses and local governmental alike – to endure more costly permitting schemes. Other options, such as Level II authorization for the reuse of industrial reclaimed water, require more man hours to obtain authorization, as well as much higher operational costs – more sampling and other regulatory compliance requirements.

Harris County has long been a steward of the environment and takes all matters of environmental compliance seriously. We strive to comply with all regulations, but assert that preventing Harris County – or other operators – from utilizing Subchapter L solely based on an arbitrary flow requirement is nonsensical and results in the unnecessary spending of tax dollars. Therefore, eliminating the criterion for average monthly discharge would allow for more efficient use of taxpayer funds, while being protective of the environment.

Texas Commission on Environmental Quality



DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED BY HARRIS COUNTY, TEXAS

Docket No. 2016-0597-PET
Rule Project No. 2016-036-PET-NR

On June 22, 2016, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the petition for rulemaking filed by Harris County, Texas (petitioner) on April 25, 2016. The petitioner requests that the Commission amend 30 Texas Administrative Code (TAC) Chapter 321, Control of Certain Activities by Rule, to remove minimum flow requirements for the motor vehicle cleaning facility permit by rule provisions.

IT IS THEREFORE ORDERED BY THE COMMISSION pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021, and Texas Water Code, § 5.102, that the petition be denied. The decision to deny the petition is based on a requirement in the Memorandum of Agreement between TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System (NPDES) which prohibits TCEQ from issuing authorizations under 30 TAC Chapter 321, Subchapter L, relating to motor vehicle cleaning facilities until the rule is amended to include all NPDES requirements.

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

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Date Signed