

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 W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2012-2126-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 297, Water Rights, Substantive
Municipal Use Definition Change
Rule Project No. 2012-039-297-OW

Background and reason(s) for the rulemaking:

On June 21, 2012, Bickerstaff Heath Delgado Acosta LLP submitted a rulemaking petition on behalf of the City of Irving (Project No. 2012-034-PET-NR). In their petition, the City of Irving requested that the commission amend the definition of "Municipal Use" in 30 Texas Administrative Code §297.1(32) to allow indirect reuse of treated wastewater effluent, referred to hereinafter as use of return flows, for watering of parks, golf courses, and parkways as a municipal use, after that use of return flows has been authorized by the commission. At the TCEQ's agenda on August 8, 2012, the commission approved the initiation of a rulemaking based on this petition.

As requested in the petition, the commission amends the definition of municipal use to add reference to the use of return flows in addition to reclaimed water for the uses authorized by the existing rule. The commission also expands the authorized uses to include the watering of other public or recreational spaces and references Texas Water Code (TWC), §11.042, since authorizations for the use of return flows are issued by the commission under this statute.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rule amends §297.1(32) to change the definition of municipal use to add the watering of "other public or recreational spaces" to the list of authorized water uses and to allow use of return flows for all of those uses.

B.) Scope required by federal regulations or state statutes:

There are no changes required by federal rule. At the TCEQ's agenda on August 8, 2012, the commission approved the initiation of a rulemaking based on the City of Irving's petition. This rulemaking changes the definition of municipal use.

Re: Docket No. 2012-2126-RUL

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff also expands the authorized uses to include other public or recreational spaces and references TWC, §11.042, since authorizations for the use of return flows are issued by the commission under this statute.

Statutory authority:

TWC, §§5.102, 5.103, and 5.105

Effect on the:

A.) Regulated community:

Municipal water rights holders could gain the flexibility to use permitted return flows for public purposes without the expense of treating the water to make it potable or the expense of amending existing permits for the use of return flows to add irrigation use.

B.) Public:

The public will not be affected by this rulemaking.

C.) Agency programs:

For the Water Availability Division's Water Rights Permitting and Availability Section, the rulemaking would eliminate the need of an amendment for some municipal water right holders with permitted return flows. Changes to procedures, staff requirements, guidance documents and agency funding will not be necessary.

Stakeholder meetings:

No stakeholder meeting was held for this rulemaking.

The agency held a rule public hearing on March 12, 2013 and received a comment from the City of Irving, represented by Bickerstaff Heath Delgado Acosta LLP.

Public comment:

The City of Irving supported the rule as proposed.

The commission also received comments from the Lower Colorado River Authority (LCRA). The LCRA expressed concerns that the rule may impact water supply contracts for municipal use, potentially benefitting the buyer at the seller's expense and that it may not promote the most beneficial use of water during exceptional droughts.

Significant changes from proposal:

No changes were made to the rule language from proposal to adoption. The rule as adopted will not impact any entity other than those who already hold an authorization under TWC, §11.042, for the use of wastewater effluent return flows for municipal purposes. Further, the changes will have no impact on the management of water resources during times of shortage.

Commissioners

Page 3

May 30, 2013

Re: Docket No. 2012-2126-RUL

Potential controversial concerns and legislative interest:

Staff does not expect any controversial concerns or legislative interest.

Does this rulemaking affect any current policies or require development of new policies?

This rulemaking will not affect any current policies or require development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If this rulemaking does not go forward, staff would not be following the direction they were given by the commission at the August 8, 2012 agenda.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** February 15, 2013

Anticipated *Texas Register* publication date: July 5, 2013

Anticipated effective date: July 11, 2013

Six-month *Texas Register* filing deadline: August 15, 2013

Agency contacts:

Jennifer Allis, Rule Project Manager, 239-0027, Water Availability Division

James Aldredge, Staff Attorney, 239-2496

Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Jennifer Allis
Michael Parrish