

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** January 11, 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 Proposed Rulemaking  
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. In their petition, the City of Irving requested 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, 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 proposes to amend 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 proposes to expand the authorized uses to include the watering of other public or recreational spaces and proposes to reference 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 proposes to amend §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 proposes to change the definition of municipal use.

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

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Staff also proposes to expand the authorized uses to include other public or recreational spaces and proposes to reference 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 will be held for this rulemaking; however, the agency will hold a rule public hearing on February 21, 2013.

**Potential controversial concerns and legislative interest:**

Staff does not expect any controversial concerns or legislative interest.

**Will 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 proposal rulemaking schedule:**

**Anticipated proposal date:** January 30, 2012

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

**Public hearing date (if any):** March, 2013

**Public comment period:** February 15, 2013 - March 18, 2013

**Anticipated adoption date:** June 26, 2013

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**Attachments**

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