

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** October 31, 2008
Thru: LaDonna Castañuela
Chief Clerk
From: Dan Eden, Deputy Director
Office of Permitting, Remediation, and Registration
Subject: Consideration of a Petition for Proposed Rulemaking
Docket No.: 2008-1601-RUL
Rule Project No. 2009-002-PET-NR

Who Submitted the Petition:

The commission received a petition on October 1, 2008, from the Barton Springs/Edwards Aquifer Conservation District and the City of Austin.

What the Petitioner Requests:

The petitioners propose the adoption of a new subchapter in 30 Texas Administrative Code (TAC) Chapter 311 entitled "Water Quality Management of the Onion Creek and Barton Creek Watersheds." The petitioners' proposed rule defines water quality areas and watersheds of Onion and Barton Creeks and prohibits the discharge of pollutants into these water quality areas. The petitioners' proposed rule also allows any new or expanded wastewater treatment facilities in the water quality areas disposal without discharge so long as the facility satisfies specific requirements.

Recommended Action and Justification:

The executive director recommends initiating rulemaking as provided in the Administrative Procedures Act Section 2001.021. As part of this process, the ED recommends solicitation of stakeholder input; evaluation of potential options, including the most appropriate location for any necessary rule amendments (i.e. 30 TAC Chapters 213 or 311); and identification of recommended options for commission consideration.

The Watershed Rules (30 TAC Chapter 311) require additional treatment of wastewater discharges into or near specified water bodies. They typically require some or all of the following: (1) extra treatment of oxygen-demanding substances, (2) reduction of phosphorus, (3) irrigation disposal. The current watershed rules for Onion Creek require extra treatment of oxygen-demanding substances and reduction of phosphorus, but they do not prohibit the discharge of treated wastewater. There are no watershed rules that address the Barton Creek watershed. The Edwards Aquifer rules in 30 TAC §213.6 allow "irrigation only" over the recharge zone, and require advanced wastewater treatment for discharges within 5 stream miles of the recharge zone.

The petitioners' proposed rule would add additional requirements that prohibit any new or expanded discharges into Onion Creek and Barton Creek, which includes a portion of the contributing zone of the Edwards Aquifer, and would add requirements for the advanced wastewater treatment for all irrigation permits.

Re: Docket No. 2008-1601-RUL

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
- Texas Water Code, §§5.013(a)(3), 5.103, 5.105, 26.003, 26.011, and 26.027.

Affected Public:

Individuals owning property or recreating in the Onion Creek Water Quality Area or the Barton Creek Water Quality Area, land developers, existing wastewater treatment plant owners and operators, and local governments.

Affected Agency Programs:

The Water Quality Division, Field Operations Division, and Chief Engineer's Office will be affected by this rulemaking. Staff will need to conduct rulemaking that will include stakeholder meetings. If the rule is adopted, all programs will need to modify standard operating procedures to address any new requirements.

Agency Contacts:

Mark Fisher, Rule Project Manager, 239-4586, Water Quality Division
Kathy Humphreys, Staff Attorney, 239-3417
Kristin Smith, Texas Register Coordinator, 239-0177

Attachment: Petition

cc: 5 copies to the Chief Clerk for distribution
Executive Director's Office
David C. Schanbacher, P.E.
Daniel Womack
Kevin Patteson
Betsy Bird
Office of General Counsel
Mark Fisher
Kristin Smith