

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** August 7, 2009  
**Thru:** LaDonna Castañuela  
Chief Clerk  
**From:** Richard A. Hyde, P.E., Deputy Director  
Office of Permitting and Registration  
**Subject:** Consideration of a Petition for Proposed Rulemaking  
**Docket No.:** 2009-1142-RUL  
**Rule Project No.** 2009-046-PET-NR

## Who Submitted the Petition:

On July 6, 2009, TCEQ received a petition for rulemaking from Betty Brown, State Representative, District 4 on behalf of her constituent, Ms. Gloria Hunter.

## What the Petitioner Requests:

The petitioner requested that the commission amend rules at 30 TAC §312.13 to require adjacent landowner notification where the commission issues a registration for the land application of water treatment plant sludge.

## Recommended Action and Justification:

The executive director recommends denial of the petition.

The petition seeks to require adjacent landowner notification so that adjacent property owners are notified of a commission issued registration that would devalue their property. Section 26.027 of the Texas Water Code authorizes TCEQ to issue permits and other authorizations to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes and coastal waters. The permitting process is limited to controlling the discharge of pollutants into the air or into state waters. The TCEQ does not have jurisdiction under the Texas Water Code to consider property values, the marketability of adjacent property, or economic development in its determination of whether to issue a permit or other authorization.

Water Treatment Plant sludge, is an inert silt material that is collected from the treatment of raw water from a public water supply facility. Land application of water treatment plant sludge is performed for a beneficial purpose, replacing the need to purchase commercial fertilizer and/or top soil. Prior to issuing a registration for the beneficial land application of water treatment plant sludge, the TCEQ performs a review of the application and develops conditions to restrict the amount of and areas where land application can occur.

TCEQ's review of the application includes a review of administrative information, sludge and soils analysis, and maps (highway, topographic, soils and flood zone). Analytical results are reviewed to ensure that sludge complies with commission rules at 30 TAC Chapter 312. Annual reporting on the amount of water treatment plant sludge land applied is required along with annual testing of the water treatment plant sludge and soils where sludge is land applied. With these protections in place on this inert material, environmental impacts and nuisance conditions are not anticipated.

Re: Docket No. 2009-1142-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
- The regulatory definition for Water Treatment Plant Sludge is stated in 30 TAC §312.8(93)

**Affected Public:**

Landowners adjacent to water treatment facilities would be notified of a facility where the commission issues a registration for the land application of water treatment plant sludge.

**Affected Agency Programs:**

Proposed rules would require mailed public notice to adjacent landowners on new and amended registrations, with an opportunity for a public meeting.

**Agency Contacts:**

Sherry Smith, Rule Project Manager, Water Quality Division, 239-0571  
Anthony Tatu, Staff Attorney, 239-5778  
Devon Ryan, Texas Register Coordinator, 239-6090

Attachment: Petition

cc: 5 copies to the Chief Clerk for distribution  
Executive Director's Office  
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