

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 8, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2013-0306-RUL

Project No.: 2013-020-PET-NR

Who Submitted the Petition:

On February 6, 2013, the Texas Commission on Environmental Quality received a petition from the Tarrant Regional Water District (petitioner).

What the Petitioner Requests:

The petitioner requested that TCEQ amend 30 TAC Chapter 311, Subchapter G, to revise the definitions of the Benbrook Lake Watershed and Water Quality Area and to impose a total phosphorus (TP) effluent limitation of one milligram per liter for new or amended permits authorizing discharges greater than, or equal to, 0.10 million gallons per day (MGD) to the Benbrook Lake Water Quality Area, and for new or amended permits authorizing discharges greater than or equal to 0.25 MGD to the Benbrook Lake Watershed.

Recommended Action and Justification:

According to studies and analyses provided by the petitioner, elevated concentrations of nutrients and their primary response variable, chlorophyll-*a*, are currently impacting water quality in Benbrook Lake (e.g., taste and odor issues due to blue-green algae proliferation), and levels of these parameters are likely to increase as development continues in the Watershed. Furthermore, the TCEQ Texas Water Quality Integrated Report has reported chlorophyll-*a*, or excessive algal growth, concerns in Benbrook Lake in consecutive report years dating back to 2002.

While the executive director recognizes the potential for increased nutrient levels as development continues in this watershed, it is unclear whether the proposed rulemaking is the appropriate mechanism for managing nutrients within Benbrook Lake. Therefore, the executive director recommends denial of the rule petition and the initiation of a stakeholder process. This will allow the TCEQ and stakeholders the opportunity to evaluate the supporting information, determine the level of water quality protection needed, and identify the appropriate implementation mechanism.

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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;
- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §5.120, which authorizes the commission to promote maximum conservation and protection of the quality of the environment and natural resources of the state;
- TWC, §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed and river basin in the state;
- TWC, §26.027, which authorizes the commission to issue permits; and
- TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges.

Agency contacts:

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Stefanie Skogen, Staff Attorney, 239-0575

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachment

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
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