

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 7, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

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

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2014-0021-RUL

Project No.: 2014-013-PET-NR

Who Submitted the Petition:

On January 7, 2014, the Texas Commission on Environmental Quality received a petition for rulemaking from Lloyd Gosselink Rochelle & Townsend, P.C. on behalf of the Upper Neches River Municipal Water Authority (petitioner).

What the Petitioner Requests:

The petitioner requests that 30 Texas Administrative Code (TAC) Chapter 311 be amended to establish the Lake Palestine Water Quality Area and impose a specified effluent set for future permits authorizing discharges to the Lake Palestine Water Quality Area and Lake Palestine Watershed.

Recommended Action and Justification:

The petitioner identifies Lake Palestine water quality concerns for depressed dissolved oxygen and elevated chlorophyll *a* and impairments for elevated pH as listed in the 2012 Texas Integrated Report of Surface Water Quality. However, not all available water quality data from Lake Palestine indicate corresponding water quality concerns due to factors such as nutrient enrichment. For example, the petitioner points to an increasing trend in chlorophyll *a* concentrations in Lake Palestine, but other water quality parameters that are directly (nitrogen and phosphorus) and indirectly (Secchi depth) related to nutrient enrichment have remained relatively unchanged over that same period of time.

The Executive Director has processes in place for evaluating wastewater discharges and their potential effects on receiving water quality. During the Executive Director's review of a wastewater discharge permit application, discharge impacts to dissolved oxygen are modeled on a site-specific basis, and this evaluation results in the establishment of effluent limits for biochemical oxygen demand (five-day), total suspended solids, ammonia nitrogen, and dissolved oxygen that are protective of water quality. In addition, the Executive Director employs procedures to determine whether discharge limits for nutrient parameters, such as total phosphorus, are needed to further safeguard receiving water quality. Using these evaluation processes, the Executive Director would establish discharge permit requirements that protect water quality in Lake Palestine and that could meet, exceed, or be less stringent than the levels of wastewater treatment requested in the petition.

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In outlining the need for the requested rulemaking, the petitioner has not provided demonstrations of increased threats to water quality due to expected future wastewater discharges to the Lake Palestine watershed. Furthermore, the petitioner has not provided technical analyses of how future discharges to the lake would affect water quality, why the permitting procedures that are currently in place would not adequately protect water quality, and why the minimum levels of each effluent parameter requested in the petition are justified. To address these information needs, the Executive Director recommends denial of the petition. The Executive Director can partner with stakeholders to continue to gather additional technical information regarding Lake Palestine and its surrounding watershed.

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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Attachment

Petition

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cc: Chief Clerk, 2 copies
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