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October 17, 2014

VIA HAND-DELIVERY

Mr. Richard A. Hyde, P.E.
Executive Director
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F, Suite 4214
Austin, Texas 78711-3087

RECEIVED
OCT 17 2014
EXECUTIVE DIRECTOR

Re: Petition for Rulemaking (3084-1)

Dear Mr. Hyde:

Enclosed please find one (1) original and seven (7) copies of a Petition for Rulemaking filed on behalf of the Lakeway Municipal Utility District ("Lakeway MUD") requesting administrative rules that would recognize the extended use of reclaimed water for beneficial use in lieu of requiring excess storage and irrigable acreage set-asides for effluent land disposal. Please date stamp one of the enclosed copies and return it to us via our courier. We respectfully request that this Petition be set for consideration and Commission action and look forward to working with all concerned on this matter.

If you have any questions regarding this petition, please feel free to call either Mr. Nathan Vassar (512-322-5867) or me at your convenience.

Sincerely,

Brad B. Castleberry

BBC/jdg
ENCLOSURE
cc: Ms. Anne Isdall, Office of General Counsel, TCEQ
Mr. Earl Foster
Mr. Nathan Vassar

PETITION FOR RULEMAKING	§	
	§	
BY LAKEWAY MUNICIPAL UTILITY DISTRICT	§	**BEFORE THE TEXAS COMMISSION**
	§	
	§	**ON ENVIRONMENTAL QUALITY**
AUTHORIZING THE CHANGE OF RECLAIMED WATER USE REGULATIONS	§	
	§	

ORIGINAL PETITION FOR RULEMAKING

TO THE HONORABLE COMMISSIONERS:

Now comes Lakeway Municipal Utility District ("Lakeway MUD") and pursuant to 30 Texas Administrative Code ("TAC") Chapter 20 hereby presents this Petition for Adoption of Rule (the "Petition") to the Texas Commission on Environmental Quality (the "Commission") seeking administrative rules that would recognize the extended use of reclaimed water for beneficial use in lieu of requiring excess storage and irrigable acreage set-asides for effluent land disposal, and respectfully requests that the Commission consider this Petition and the rule proposed as set out herein (the "Rule") and initiate proceedings necessary to adopt the Rule. Pursuant to the provisions of 30 TAC § 20.15, Lakeway MUD would respectfully show the following:

I. Public Policy Benefits

This Petition is submitted in the interest of furthering the statewide public policy of protecting our water resources and ensuring safe and effective reuse of treated wastewater effluent. *See Water for Texas 2012*, at 194. As detailed herein, the Petition seeks acknowledgement and credit for effective beneficial reuse strategies that will result in better management of water resources, particularly important during times of drought.

The Commission already acknowledges and promotes the efficient use of reclaimed water through its rules promulgated at 30 TAC Chapter 210 (related to the use of reclaimed water). Further, the Commission promotes the protection of water resources in Lakes Travis, Austin, Inks, and Buchanan (the "Highland Lakes") through its rules in 30 TAC Chapter 311 (related to watershed protection efforts). What the Commission does not currently do, that this Petition seeks to do, is to recognize the effectiveness of long-term direct beneficial reuse strategies, by limiting the need for excess storage and irrigable acreage set-aside requirements for disposal when a publicly owned treatment works ("POTW") has maintained contracts for the beneficial use of treated effluent. Thus, current regulations at 30 TAC § 309.20 regarding land disposal of sewage effluent, as applied to Producers and Providers (as those terms are defined at 30 TAC § 210.3) through 30 TAC § 311, subchapters A and B (applicable to the Highland Lakes), result in excess storage and designation of acreage for land disposal, regardless of an entity's long-term beneficial reuse contracts. Accordingly, Lakeway MUD seeks an authorization for extended use of reclaimed water, where such beneficial use can be recognized in lieu of land disposal.

By this Petition, Lakeway MUD requests that the Commission further its support for the use of reclaimed water as a public policy goal for the State of Texas and adopt rules recognizing the impact of successful long-term beneficial reuse strategies.

II. Petitioner's Name and Address

Lakeway MUD is a Texas municipal utility district that serves more than 4,000 water customers and 3,000 wastewater customers primarily within the boundaries of the City of Lakeway and a portion of the Village of the Hills. For purposes of the Petition, contact with Lakeway MUD can be made by directing all correspondence to the undersigned at the address provided herein.

III. Brief Explanation of Proposed Rule

Lakeway MUD proposes the Rule as an effort to promote the efficient use of existing water resources. The Rule would facilitate the Commission's current policies established in Chapter 210 (relating to the use of reclaimed water), and provide flexibility for Lakeway MUD and other similarly situated POTWs located in the watersheds of Lakes Travis, Austin, Inks, and Buchanan (collectively, the "Highland Lakes Watershed" or "Highland Lakes Watersheds") to avoid the expense and upkeep of maintaining excess storage and capacity for land disposal of treated effluent when alternative means are readily available that consistently promote the beneficial reuse of said effluent.

The Rule has been drafted to recognize the extended use of reclaimed water by contract in lieu of land disposal. As drafted, the Rule would require a POTW to meet several general requirements to promote long term beneficial reuse and provide assurances for the extended duration of use. The Rule is drafted to apply to POTWs that have been operating pursuant to a Texas Land Application permit ("TLAP") or Texas Pollutant Discharge Elimination System permit ("TPDES") for at least ten (10) years at the time of the application. Further, the Rule requires evidence of a long term contract with a Reclaimed Water User (defined as a contract in place for at least five years that is not set to expire during the term of the applicable TLAP or TPDES permit). A permitted POTW must continue to set aside at least an additional twenty-five percent (25%) of its revised irrigable acreage for land disposal pursuant to the authorization, such that the POTW shall always maintain at least one hundred and twenty-five percent (125%) of the revised acreage for land disposal. Further, the POTW must present evidence of a financial assurance mechanism/bond to cover any associated costs of trucking/hauling up to twenty-five percent (25%) of the POTW's effluent.

The Rule includes such requirements to ensure that the authorization is only available to established POTWs that have enacted effective reuse strategies, and have demonstrated a history of long term beneficial use. Further, the Rule's safeguards concerning the continued set-aside for land disposal, and a financial assurance mechanism, are intended to provide a safeguard in the event that some contract demands for treated effluent are curtailed in whole or in part.

The Rule would connect the life of the authorization to the term of the applicable TLAP or TPDES permit in order to allow a single coordinated review of renewal applications on a regular five-year schedule, instead of staggered terms.

IV. Text of the Proposed Rule

The text of the Rule is provided hereto as Exhibit A.

V. Statement of Legal Authority for Proposed Rule

The Rule is proposed to be adopted pursuant to the following authority:

a. Texas Water Code §§5.102 and 5.103, which authorize the Commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code.

b. Texas Water Code §5.013(a)(3), which grants the Commission jurisdiction over the state's water quality program, including the issuance of permits and other necessary authorizations.

c. Texas Water Code §26.121, which regulates the discharge of pollutants into or adjacent to waters in the State.

d. Texas Water Code §26.027, which authorizes the Commission to issue permits that regulate the discharge of pollutants into or adjacent to waters in the State.

e. Texas Water Code §11.046(c), which authorizes the use and beneficial reuse of reclaimed water before discharge or disposal.

f. Texas Water Code §11.002(8), which defines conservation as those practices, techniques and technologies that will improve the efficiency in the use of water.

g. Texas Water Code §11.1271(e), which requires the Commission to develop model water conservation programs that suggest best management practices for achieving the highest practicable levels of water conservation and efficiency.

h. The 2012 State Water Plan, *Water for Texas 2012*, which recognizes that reuse is an important water management strategy to meet the growing needs for water by the people of Texas.

VI. Injury or Inequity Resulting From Failure to Adopt Proposed Rule

The Rule is important to Lakeway MUD for the following reasons:

1. The Rule is needed to facilitate the efficient use of existing water resources; and

2. The Rule is needed to reduce the cost of maintaining excess irrigable acreage and effluent storage for land disposal under the current regulatory regime.

Lakeway MUD owns and operates two wastewater recycling plants, the Trophy Drive Water Recycling Treatment Facilities (Permit No. WQ00011495006) (the "Trophy Drive Plant"), located approximately two (2) miles northwest of the intersection of Ranch Road 620 and Lohmans Crossing Road in Travis County, Texas, and the Palos Verdes Water Recycling Plant (Permit No. WQ 0011495001) (the "Palos Verdes Plant"), located approximately two (2) miles north of the intersection of Ranch Road 620 and Lakeway Boulevard and two hundred (200) feet west of Yaupon Creek in Travis County, Texas. The Trophy Drive Plant is permitted to dispose of treated wastewater at a daily average flow not to exceed 0.40 million gallons per day ("MGD"), and the Palos Verdes Plant is permitted to dispose of treated wastewater at a daily average flow not to exceed 0.81 MGD. Pursuant to the Trophy Drive Plant and Palos Verdes Plant permits, and subject to 30 TAC § 311 (Subchapters A and B), neither plant discharges to waters in the state of Texas.

Lakeway MUD maintains a total of 107 acres, more or less, for the land application of treated effluent, including two separate tracts of pollen-laden cedar trees (approximately 45 acres and 51 acres, respectively), and 11 acres of medians along Lakeway Boulevard (using Bermuda

and Winter Rye Grass). Among Lakeway MUD's most resource-intensive maintenance costs includes attention to the significant fire risk at Lakeway MUD's cedar tracts (located near the geographic center of Lakeway), requiring frequent water application to the properties. Of course, such water resources could be applied to more beneficial purposes – particularly during periods of drought – consistent with the purpose of 30 TAC § 210.2 (regarding management of water resources to ensure adequate supplies for current and future needs, including beneficial reuse projects). Despite its ownership and maintenance of the 107 acres, Lakeway MUD rarely uses such irrigable lands for the disposal of treated effluent – even in wet years – due to the provision of reclaimed water to commercial entities (primarily golf courses) and homeowners associations that purchase Lakeway MUD's effluent. Indeed, Lakeway MUD has not used its cedar tracts (totaling nearly 100 acres) for land application since 2007. Despite this, current regulations require that Lakeway MUD continue to own and maintain such property for the unlikely scenario that it cannot beneficially reuse its treated effluent.

To alleviate POTWs' costs in maintaining irrigable acreage property for the prospect of land disposal (which impacts all POTWs within the Highland Lakes Watersheds), Lakeway MUD seeks an authorization for extended use of reclaimed water within the Highland Lakes Watersheds meeting certain requirements that may reduce their irrigable acreage set-aside requirements if such POTWs can satisfy certain criteria, as provided herein.

In sum, Lakeway MUD submits that the Rule will serve only to further an existing policy adopted by the Commission – that of most efficiently utilizing existing water resources by promoting the use of reclaimed water. If granted, the Rule proposes to eliminate the practice of designating land for potential reclaimed water application, when such land application is unlikely to become necessary due to successful implementation of reclaimed water reuse strategies.

Accordingly, the Rule will provide Lakeway MUD and other similarly situated POTWs with significant financial relief from having to set aside and maintain such acreage/storage. The Rule, or some version thereof, is a positive step towards further promoting the use of reclaimed water in an efficient manner, and Lakeway MUD respectfully requests the Commission adopt such a policy pursuant to this Petition.

VII. Prayer

WHEREFORE, premises considered, Lakeway MUD respectfully requests that the Commission consider this Petition and the Rule as proposed herein, and initiate proceedings necessary to adopt the Rule. Lakeway MUD further prays for any and all other relief to which it may be entitled.

Respectfully submitted,

LLOYD GOSSELINK
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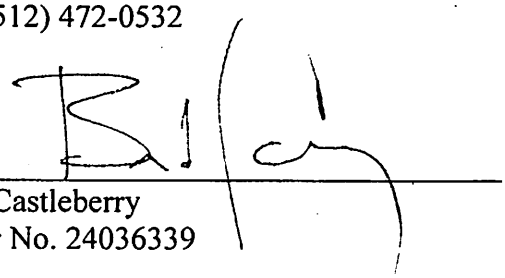
Austin, Texas 78701
Phone: (512) 322-5800
Fax: (512) 472-0532



Brad B. Castleberry
State Bar No. 24036339

Nathan E. Vassar
State Bar No. 24079508

ATTORNEYS FOR LAKEWAY MUD

EXHIBIT A

30 TEX. ADMIN. CODE
CHAPTER 321
SUBCHAPTER Q
AUTHORIZATION FOR EXTENDED USE OF RECLAIMED WATER

321.500 Purpose and Applicability

(a) The purpose of this subchapter is to authorize the extended use of Reclaimed Water for beneficial reuse for permitted treatment facilities subject to § 311, Subchapters A and B of this title (relating to Watershed Protection) with Long Term Contracts (as that term is defined herein) for direct reuse of Reclaimed Water in lieu of excess effluent storage and irrigable acreage set-aside requirements, as otherwise required pursuant to § 309.20 of this title.

(b) This subchapter shall only apply to permitted treatment facilities permitted and in operation for ten (10) years or longer.

(c) POTWs authorized under this subchapter shall be exempt from the provisions of § 309.20 of this title concerning set-aside storage and acreage requirements for land disposal of effluent.

321.505 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) *Long Term Contract* – a contract between a POTW and a Reclaimed Water User for Reclaimed Water that has been effective for at least five (5) years, and, at the time the POTW submits its application, is scheduled to continue for a term not expiring during the life of the Wastewater Permit.

(2) *POTW* – any publicly owned treatment works, as defined by 40 C.F.R. § 403.3(q) permitted to discharge wastes pursuant to Chapter 26 of the Texas Water Code, and, for purposes of this rule, subject to the requirements of §§ 311.3 and 311.13 of this title, that has been operating pursuant to a Wastewater Permit for at least ten (10) years at the time of its application.

(3) *Reclaimed Water* – domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use, pursuant to the provisions of Chapter 210 of this title (related to use of reclaimed water) and other applicable rules and permits.

(4) *Reclaimed Water User* – Person or entity utilizing reclaimed water for a beneficial use, in accordance with the requirements of Chapter 210 of this title. A Reclaimed Water User may also be a producer or provider of reclaimed water.

(5) *Wastewater Permit* – a Texas Land Application permit or Texas Pollutant Discharge Elimination System permit, as issued by the Texas Commission on Environmental Quality, or its successor agency.

321.510 General Requirements

(a) To qualify for an authorization, the following general requirements must be met.

(1) Written evidence of a Long Term Contract with a Reclaimed Water User for use of some or all of the POTW's Reclaimed Water.

(2) A valid Wastewater Permit, in the form of either a Texas Land Application permit or Texas Pollutant Discharge Elimination System permit, as applicable.

(3) Written evidence (*e.g.*, pump records or meter data) of historic use patterns of Reclaimed Water, in excess of five (5) years prior to the application.

(4) Written evidence demonstrating compliance with the following effluent parameters: 5 mg/L $CBOD_5$, 5 mg/L TSS, 2 mg/L NH3-N, for a period of at least one (1) year prior to the submittal of the application.

(5) Written evidence of an existing authorization for use of Reclaimed Water pursuant to the requirements of § 210.5 of this title.

(6) Written evidence demonstrating continued land disposal designation of an additional twenty-five percent (25%) of the revised irrigable acreage required for land disposal pursuant to the authorization under this subchapter, such that the POTW shall always maintain at least one hundred and twenty-five percent (125%) of the revised acreage required for land disposal. The revised acreage designation shall continue to meet the obligations of § 309.20 of this title (regarding land disposal of sewage effluent) that are unrelated to acreage/storage set-asides.

(7) Written evidence of a financial assurance mechanism to provide trucked or hauled transportation of effluent to approved disposal sites for at least twenty-five percent (25%) of the POTW's total permitted discharge or disposal volume, pursuant to its Wastewater Permit. The wording of the mechanisms must be in a form satisfactory to the executive director, and must conform to requirements in Chapter 37, Subchapter D of this title.

321.520 Application Requirements

(a) An applicant shall comply with the provisions of §§ 305.43, 305.44, and 305.47 of this title (relating to Who Applies; Signatories to Applications; and Retention of Application Data).

(b) An application for an authorization of extended use of Reclaimed Water under this subchapter must be made on forms prescribed by the executive director.

(c) An applicant shall submit one original application with attachments to the executive director and one additional copy of the application with attachments to the appropriate regional office. Additional copies may be required as noted in the application.

(d) The application must contain, at a minimum, the following information:

(1) the applicant's name, mailing address, and telephone number;

(2) the Wastewater Permit number of the associated domestic wastewater treatment facility;

(3) a brief description of the nature of the Reclaimed Water use;

(4) the signature of the applicant, in accordance with § 305.44 of this title;

(5) a copy of the recorded deed or tax records showing ownership, or a copy of a contract or lease agreement between the applicant and the owner of any lands evidencing current ownership of property used for storage and irrigable acreage;

(6) a copy of the applicant's reuse authorization issued under Chapter 210 of this title (relating to Use of Reclaimed Water), or a copy of a concurrent application;

(7) a county general highway map (with scale clearly shown) to identify the relative location of the domestic wastewater treatment facilities, the main lines of the collection system, and the property used for storage and irrigable acreage;

(8) a copy of all contracts with Reclaimed Water Users for use of some or all of the applicant's Reclaimed Water;

(9) written evidence (*e.g.*, pump records or meter data) of historic use patterns of Reclaimed Water, in excess of five (5) years of the application;

(10) written evidence demonstrating compliance with the following effluent parameters: 5 mg/L $CBOD_5$, 5 mg/L TSS, 2 mg/L NH3-N, for a period of at least one (1) year prior to the submittal of the application;

(11) written evidence demonstrating continued land disposal designation of at least twenty-five percent (25%) of the revised irrigable acreage required for land disposal of the permitted discharge or disposal volume, such that the POTW shall always maintain at least twenty-five percent (25%) of the revised acreage required for land disposal; and

(12) written evidence of a financial assurance mechanism to provide trucked or hauled transportation of effluent to approved disposal sites for at least twenty-five percent (25%) of the POTW's total permitted discharge or disposal volume, pursuant to its Wastewater Permit. The wording of the mechanisms must be in a form satisfactory to the executive director, and must conform to requirements in Chapter 37, Subchapter D of this title.

321.525 Application Review

(a) The executive director will review all applications for an authorization of extended use of Reclaimed Water for administrative and technical completeness.

(b) If an application has either an administrative or technical deficiency, the applicant will be asked to submit additional information no later than thirty (30) days following the date of the request.

(c) If additional information is not timely submitted or is insufficient to complete the application, the executive director may return the application without refunding the application fee.

(d) If the application is both administratively and technically complete, the executive director will:

(1) proceed with processing the application; and

(2) notify the applicant to fulfill notice obligations according to § 321.535 of this title (relating to Public Notice Requirements).

321.530 Authorization

(a) The executive director shall not provide an authorization of extended use of Reclaimed Water unless the following conditions are met:

(1) the applicant is a publicly owned treatment works, as defined by 40 C.F.R. § 403.3(q) permitted to discharge wastes pursuant to Chapter 26 of the Texas Water Code, and, for purposes of this rule, subject to the requirements of §§ 311.3 and 311.13 of this title, that has been operating pursuant to a Wastewater Permit for at least ten (10) years at the time of its application;

(2) the applicant has an authorization according to Chapter 210 of this title (relating to Use of Reclaimed Water); and

(3) the applicant has met all the general requirements according to § 321.510 of this subchapter.

(b) The authorization's term shall run concurrently with the term of the POTW's Wastewater Permit(s), such that the POTW shall seek renewal of its authorization pursuant to this subchapter concurrently with the renewal or amendment of its Wastewater Permit(s).

(c) The applicant, public interest counsel, or other persons may file with the Office of the Chief Clerk a motion to overturn the executive director's final action on an authorization of extended use of Reclaimed Water under § 50.139(a), (b), and (d)-(g) of this title (relating to Motion to Overturn Executive Director's Decision).

(d) This rule does not convey property rights or grant any exclusive privilege.

(e) Nothing in this rule shall be construed to authorize any injury to persons or property, or an invasion of other property rights, or any infringement of state or local law or regulation.

321.535 Notice Obligations

(a) An applicant shall place a sign at the proposed extended use of Reclaimed Water sites as of the executive director's notice to fulfill notice obligations, pursuant to § 321.525(d) of this subchapter.

(1) The sign must include no less than two-inch, black, block-lettering on a white background. The sign must include the following information:

(A) the legal name and address of the applicant;

(B) notice that the applicant has applied for authorization for extended reuse of Reclaimed Water;

(C) how the public may provide comments to the TCEQ; and

(D) where copies of the application, executive director's technical summary, and draft authorization may be reviewed.

(2) The sign shall be located at or near the site main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director must approve the variations before signs are posted.

321.540 Enforcement & Revocation

(a) If a POTW authorized for extended reuse of Reclaimed Water fails to comply with the terms of its authorization, this subchapter, or other regulations and statutes within the jurisdiction of the commission, the executive director may take enforcement action as provided by the Texas Water Code and in accordance with Chapter 70 of this title (relating to Enforcement).

(b) The executive director may revoke any authorization for extended use of Reclaimed Water due to noncompliance with the authorization, this subchapter, the requirements of Chapter 210 of this title (relating to Use of Reclaimed Water), or other regulations and statutes within the jurisdiction of the commission, but only after notice and the opportunity for hearing.

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References: 3084-1
JDG

Signature: Theresa S. Kilgore 10/17/14

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