

TRANSPORTATION AND NATURAL RESOURCES

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October 14, 2009

Ms. April Hoh (MC-150)
Water Quality Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Draft Rule to Address Waste Discharges in the Barton Creek and Onion Creek
Watersheds

Dear Ms. Hoh:

Travis County Transportation and Natural Resources Department (TNR) reviewed the draft document that the TCEQ presented to area stakeholders on September 30, 2009. The draft, if it became a rule, would allow for the continuous discharge of municipal waste into the Barton Creek and Onion Creek Watersheds throughout the Edwards Aquifer Contributing Zone. Travis County TNR and County citizens are very interested and affected by this issue. Travis County TNR manages parkland and promotes open space and recreational opportunities in the Onion Creek watershed. We maintain strong partnerships with private and governmental bodies in this area for the purpose of endangered species protection.

On its face, the effluent limitations in the draft rule appear more stringent than the limitations currently applicable in the contributing zone. But, this is really an abstraction considering there are currently no continuous municipal waste discharges to surface waters in these areas. The draft rule also contains exceptions to these effluent limitations for industrial waste discharges and an allowance for less stringency based upon a permit applicant's proposal to implement certain alternative measures. This section of the draft rule is vague on how or when these alternatives would be implemented.

Travis County TNR objects to the draft rule because it conflicts with the anti-degradation policy of the TCEQ. Under the policy, a new discharge should use no more than ten percent of the assimilative capacity of the water body or less for an unusually sensitive aquatic ecosystem. The draft rule would establish a framework for discharge of various pollutants without limitations on load. As one example, Onion Creek data analysis by the City of Austin shows that ambient total

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phosphorus concentrations average 0.046 mg/l. TCEQ analysis similarly describes the median concentration as 0.05 mg/l. These values are significantly below the technology-based limitation suggested in the draft rule of 0.1 mg/l. This concentration and corresponding load will exceed total phosphorus assimilative capacity. The TCEQ anti-degradation policy also specifies that a demonstration can be made in support of an increased loading of total phosphorus. Through three TCEQ-hosted meetings, a clear majority of stakeholders requested a supporting demonstration, data, or justification, to no avail. Conversely, watershed-specific modeling and research studies have described the predicted degradation that would occur if continuous discharges of phosphorus and other pollutants were to occur.

A small minority of stakeholders have raised cost concerns that a discharge prohibition will require storage and land application infrastructure for municipal waste. The overwhelming majority of stakeholders support a prohibition. As a resolution, TCEQ is urged to use the watershed and regionally specific scientific studies that show a greater than *de minimus* degradation of water quality is likely if this draft rule were adopted and implemented. Travis County is unaware of an important economic or social justification in support of an exception to the TCEQ anti-degradation policy.

Travis County TNR objects to the draft rule because it appears to provide an effluent set that has a technology basis. The draft effluent set does not consider the impact of continuous discharges on the applicable water quality uses of Barton Creek and Onion Creek (high aquatic life uses, aquifer protection) and the necessity of protection of the endangered Barton Springs Salamander. The TCEQ has not provided stakeholders with a full rationale for how the effluent set was selected and what alternative effluent sets were considered.

Travis County realizes that a stakeholder-based effort is only advisory in nature. However, the assessment of these issues could benefit from a reliance on the scientific judgment of the area experts who have analyzed the aquatic ecosystems and hydrology of these watersheds and underlying aquifers. Fortunately, there is available and applicable science (much of it funded by the TCEQ and other state and federal agencies) to utilize as a basis for decision making now that it is needed.

For all these reasons, it is the conclusion of Travis County TNR that the draft rule should not be proposed. It is strongly recommended that TCEQ promulgate a rule that establishes a stringent floor by presumptively prohibiting municipal waste discharges into surface water throughout the watersheds of Onion Creek and Barton Creek upstream from the Edwards Aquifer Recharge Zone. TCEQ could additionally establish an exception to this prohibition, based upon a prescribed demonstration of non-degradation by an applicant.

Sincerely,



Jon A. White, Director
Natural Resources and Environmental Quality Division
Transportation and Natural Resources Department