

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 30, 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.: 2013-0939-RUL

Project No.: 2013-033-PET-NR

Who Submitted the Petition:

On May 13, 2013, the Texas Commission on Environmental Quality received a petition from Mr. Cole Turner (petitioner), on behalf of the landowners and citizens of Ellis County.

What the Petitioner Requests:

The petitioner requested that TCEQ amend 30 Texas Administrative Code (TAC) Chapter 312, Sludge Use, Disposal, and Transportation, in order to prohibit the land application of sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

The petitioner states that the increased sludge application in the Midlothian area has resulted in adverse effects leading to a diminished quality of life and enjoyment of property, primarily due to objectionable odors.

Recommended Action and Justification:

The executive director recommends that the commission initiate a rulemaking proceeding. During the rulemaking process the executive director's staff will evaluate the issues raised in the petition as well as other documented nuisance odor issues at bulk sewage sludge land application sites. The rulemaking process will include stakeholder engagement and evaluate regulatory options to address nuisance odors – statewide, or by geographic area. The executive director's staff will then make recommendations on the most effective regulatory options to address nuisance odors, including rules.

As noted above, the petitioner requested that TCEQ amend Chapter 312, in order to prohibit the land application of sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000. Based on the 2010 United States Census Data, Dallas County is the only county that currently has a population between 2 million and 4 million people. Counties adjacent to Dallas County that exceed 140,000 people are: Tarrant, Collin, Denton, and Ellis Counties. In addition to the petition and associated complaints, the executive director is also investigating complaints about nuisance odors in other areas of the state, including Wise County.

Re: Docket No. 2013-0939-RUL

Texas Health and Safety Code (THSC), §361.022(c) provides the state's public policy regarding generating, treating, storing, and disposing of municipal sludge. It identifies the preferred methods to be used, to the extent economically and technologically feasible. For municipal sludge, the preferred methods are, in the order listed: source reduction, treatment to reduce pathogens and energy production, marketing and distribution of sludge, land applying sludge for beneficial re-use, land treatment, or landfilling. TCEQ promulgated statewide requirements for use, disposal, and transportation of municipal sludge in Chapter 312.

There are two types of municipal sludge: Class A and Class B.

Class A Sludge:

Class A sludge undergoes more treatment to reduce pathogens and metals prior to being utilized for beneficial land application. This increased level of treatment results in a product that allows it to be marketed and distributed to homeowners for use in gardens, flowerbeds, yards, etc. When the production volume exceeds the market for bagged material, bulk Class A sludge can be land applied to agricultural farms and fields, highway right-of-ways, parks, etc., without a permit authorization. TCEQ rules currently require the following for Class A sludge:

- Notification of land application site location, however no permit is required
- Vector attraction reduction
- Sludge testing to ensure it is non-hazardous

Class B Sludge:

Class B sludge is treated to a lower standard than Class A sludge for pathogens and metals. It cannot be marketed and distributed to the general public, but can be land applied to agricultural farms and fields. Due to the reduced treatment requirements, requirements for land applying Class B sludge are more stringent. TCEQ rules currently require the following for Class B sludge:

- Obtain a state permit only after providing proper prescribed public notice
- Metal limits and pathogen reduction requirements
- Vector attraction reduction
- Sludge testing to ensure it is non-hazardous
- Nutrient Management Plan to determine agronomic rates
- Maximum slope requirements
- Groundwater protection measures
- Land application prohibited in a designated floodway
- Transported in a covered container
- Sign posted at site stating that sewage sludge land application is located on premises

Re: Docket No. 2013-0939-RUL

- Reporting of volume land applied at a site
- Commercial Liability and Environmental Impairment insurance
- Buffer zones –

School, institution, business or residence	750 ft
Public water supply well, intake, spring or similar source, public water treatment plant, or public water supply storage tank	500 ft
Solution channels, sinkholes, or other conduits to groundwater	200 ft
Waters in the state of Texas - when sludge is not incorporated	200 ft
Waters in the state of Texas - when sludge is incorporated within 48 hours of application and a vegetated cover is established	33 ft
Private water supply well	150 ft
Public right of way	50 ft
Property boundary	50 ft
Irrigation conveyance canals	10 ft

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;
- THSC, §361.022, which establishes the State's Public Policy Concerning Municipal Solid Waste and Sludge.
- THSC, §361.121, which authorizes the commission to issue authorizations for the land application of sludge.
- 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 authorize 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 into or adjacent to water in the state.

Agency contacts:

Laurie Fleet, Rule Project Manager, 239-5445, Water Quality Division

Michael Parr, Staff Attorney, 239-0611

Bruce McAnally, Texas Register Coordinator, 239-2141

Commissioners

Page 4

May 30, 2013

Re: Docket No. 2013-0939-RUL

Attachment

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Laurie Fleet
Bruce McAnally