

INSIGHTS

Wilkins Publishes Critique of Expansive TCEQ Water Code Jurisdiction

May 11, 2016

By: [Timothy A. Wilkins](#)

In a recent article for the Texas Environmental Law Journal, I explore TCEQ's view that the management of wastewaters or other industrial wastes "adjacent to water in the state" – construed expansively as (a) any location anywhere above groundwater or (b) anywhere waste may be "disposed of" via evaporation – requires a "Texas Land Application Permit" under the Water Code, above and beyond obtaining a Registration under TCEQ's waste program.

Under TCEQ's interpretation, surface impoundments, evaporation ponds, on-site waste storage and disposal units, enclosed cleaning operations, sumps, and the like are all likely subject to water permitting with full-blown public notice and participation. In my view, this broad view of Water Code jurisdiction and permitting obligations needs serious questioning: (i) its legal grounding is weak; (ii) the contours of the obligation – when a permit's required and when it's not – are fuzzy at best; and (iii) this program was developed without any formal rulemaking or opportunity for public comment.

This issue will particularly create problems for those who will need to obtain a full permit under the Water Code for activities and units that historically have been authorized without a permit after registering through TCEQ's waste program or who will face a risk of enforcement for failing to do so.

If you would like to discuss these issues or if you would like to receive a copy of the full article published in TELJ, please contact me at tim.wilkins@bracewelllaw.com or at 512.542.2134.