

The Texas Groundwater Protection Committee (committee) proposes new §601.10, Form and Content of Groundwater Contamination Notice.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill 3030, 78th Legislature, 2003, added §26.408 to the Texas Water Code (TWC), Chapter 26.

The new section contains the following provisions: 1.) a requirement that a state agency notify the Texas Commission on Environmental Quality (TCEQ) if a case of groundwater contamination under TWC, §26.406(a), is documented that may affect a drinking water well; 2.) a requirement that the TCEQ make every effort to provide notice to the owners of private drinking water wells that may be affected by the contamination and to applicable groundwater conservation districts by first-class mail within 30 days of receiving a notification or of obtaining independent knowledge of groundwater contamination; and 3.) a requirement that the committee prescribe by rule, the form and content of the groundwater contamination notice. This rulemaking implements the third requirement by establishing the form and content of the notices that are to be provided by TCEQ under TWC, §26.408.

SECTION DISCUSSION

The committee proposes new §601.10, Form and Content of Groundwater Contamination Notice, in new Subchapter B, Notice of Groundwater Contamination. When required by TWC, §26.408, the proposed rule prescribes the form and content of a written notice to be provided by TCEQ to the owner of a private drinking water well that may be affected by contamination and to each applicable groundwater conservation district.

The proposed rule uses the existing definition of contamination contained in §601.3(7) of this chapter (relating to Definitions). Under that definition, which was derived from TWC, Chapter 26, contamination is the detrimental alteration of the naturally occurring physical, thermal, chemical, or biological quality of groundwater. Furthermore, the definition of groundwater contamination is limited to: 1.) contamination reasonably suspected of having been caused by activities or by entities under the jurisdiction of the agencies on the committee having responsibilities related to the protection of groundwater; and 2.) is limited to groundwater that contains a concentration of less than, or equal to, 10,000 milligrams per liter (mg/L) of dissolved solids, or to groundwater with greater than 10,000 mg/L of dissolved solids that is currently extracted for beneficial use such as domestic, industrial, or agricultural purposes, or is hydrologically connected with, and has the potential for contaminant movement to, a surface water body or another zone of groundwater that has a concentration of less than, or equal to, 10,000 mg/L of dissolved solids. An exception to the definition is provided in the case of an underground source of drinking water granted an aquifer exemption by TCEQ with concurrence from the United States Environmental Protection Agency.

The proposed rule requires that the written notice contain the following information: 1.) the name of the contaminant or contaminants; 2.) the range of analytical results for the contaminant or contaminants measured in the area or well to date; 3.) possible health effects of the contaminant or contaminants; 4.) possible source or sources for this type of contamination; 5.) suggested actions and precautions potentially impacted well owners could take; and 6.) who to contact for more information.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Mary Ambrose, designated chairman of the committee, determined that, during the first five-year period the proposed new section is in effect, there will be no fiscal implications for state and local government as a result of the administration of the proposed section. The rule implements a requirement of TWC, §26.408, by prescribing by rule the form and content of certain notices to be provided by TCEQ under certain conditions. The provisions in the rule are not expected to add substantially more information to the notices nor to require substantially more staff time to prepare the notices than would be required under TWC, §26.408. Because the rule only applies to the notices provided by TCEQ, no impact is expected for other units of government.

PUBLIC BENEFITS AND COSTS

Ms. Ambrose also determined that, for the first five years the new section as proposed is in effect, the public benefit anticipated as a result of this proposed rule will be improved information for private well owners and applicable groundwater conservation districts regarding contamination that may affect drinking water wells. No costs to individuals from this proposed rule are anticipated because the new section only prescribes the form and content of certain notices to be provided by TCEQ.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small businesses or micro-businesses as a result of implementation of the proposed new section, which is intended to specify the form and content of certain notices provided by TCEQ, as required by TWC, §26.408(c).

LOCAL EMPLOYMENT IMPACT STATEMENT

The committee reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule, which prescribes the form and content of certain groundwater contamination notices provided by TCEQ, does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The committee reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in §2001.0225(g)(3). The proposed rulemaking implements legislative requirements in new TWC, §26.408(c), regarding the content of certain notices to be provided by TCEQ. Because the proposed new section only prescribes the form and content of the notice, it is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, even if the proposed rule did meet the definition of a “major environmental rule,” the proposed rule is not subject to §2001.0225 because it does not accomplish any of the four results specified in §2001.0225(a).

First, the proposal does not exceed a standard set by federal law because there is no equivalent federal statute that prescribes the form and content of a notice to a groundwater conservation district or to the owner of a private of drinking water well that may be affected by contamination. Second, this proposal

does not exceed an express requirement of state law. The committee is specifically authorized under new TWC, §26.408(c), as added by House Bill 3030, 78th Legislature, 2003, to adopt a rule defining the form and content of the notices to be provided by TCEQ to the owner of a private drinking water well that may be affected by contamination and to each applicable groundwater conservation district. Third, this proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because this notice is not part of a delegation agreement or contract between the state and a federal program. Finally, this proposal does not adopt a rule solely under the general powers of the committee instead of under a specific state law. The new section is specifically proposed under TWC, §26.408(c).

The committee invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The committee prepared a takings impact assessment for this rule in accordance with Texas Government Code, §2007.043. The purpose of this rulemaking is to define the form and content of the written notice to the owner of a private drinking water well that may be affected by contamination and each applicable groundwater conservation district to be provided by TCEQ. The rule provides the form and the minimum content of notices to be provided by TCEQ, as required by new TWC, §26.408(b), concerning Notices of Groundwater Contamination. Because the rule governs the actions of a member agency on the committee, it does not affect private real property and does not, in whole or in part, or

temporarily or permanently, restrict or limit a property owner's right to the property that would otherwise exist in the absence of the rule.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The committee reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Because TCEQ provides all administrative assistance to the committee, written comments may be submitted to Lola Brown, Texas Commission on Environmental Quality, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-044-601-WT. Comments must be received by 5:00 p.m., September 22, 2003. For further information or questions concerning this proposal, please contact Mary Ambrose, designated chairman of the committee, TCEQ, Office of Environmental Policy, Analysis, and Assessment, at (512) 239-4813 or Joseph Thomas, TCEQ, Office of Environmental Policy, Analysis, and Assessment, at (512) 239-4580.

SUBCHAPTER B: NOTICE OF GROUNDWATER CONTAMINATION

§601.10

STATUTORY AUTHORITY

The new section is proposed under House Bill 3030, 78th Legislature, 2003, and TWC, §26.408, which authorizes the committee to prescribe the form and content of the notices to be provided by TCEQ to the owner of a private drinking water well that may be affected by contamination and to each applicable groundwater conservation district. In addition, the new section is proposed under TWC, §26.405, which establishes the general powers and duties of the committee, as well as under TWC, §26.406, which establishes the committee's authority to adopt rules defining the conditions that constitute groundwater contamination for purposes of including such information in files available for public inspection as well as in the joint report required to be filed by the committee in conjunction with member agencies having responsibilities related to the protection of groundwater.

The proposed new section implements TWC, §26.408.

§601.10. Form and Content of Groundwater Contamination Notice.

When notice of groundwater contamination, as defined in §601.3(7) of this title (relating to Definitions), is provided under Texas Water Code, §26.408 to the owner of a private drinking water well that may be affected by the contamination and to each applicable groundwater conservation district, the notice shall:

(1) be in writing; and

(2) contain, at a minimum, the following information:

(A) the name of the contaminant or contaminants;

(B) the range of analytical results for the contaminant or contaminants
measured in the area or well to date;

(C) possible health effects of the contaminant or contaminants;

(D) possible source or sources for this type of contamination;

(E) suggested actions and precautions potentially impacted well owners could
take; and

(F) who to contact for more information.