

The Texas Commission on Environmental Quality (commission or TCEQ) proposes new §§339.1 - 339.3.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to implement House Bill 3442, 78th Legislature, 2003, by establishing, in rule, the amount, applicability, and collection of fees and procedures to process expedited requests for groundwater protection recommendation letters. Applicants for Railroad Commission of Texas (RRC) authorizations must submit these letters with their RRC applications.

SECTION BY SECTION DISCUSSION

Proposed new §339.1, Purpose, states that the purpose of the chapter is to authorize the processing of requests for groundwater protection recommendation letters required by the RRC for approval of an application. The letters recommend the depth, or depths, that usable-quality groundwater should be isolated or protected in oil and gas operations. At the present time, the executive director provides these letters to applicants for RRC authorizations, but no commission rules address the topic.

Proposed new §339.2, Applicability, states that this chapter applies to Texas Commission on Environmental Quality groundwater protection recommendation letters required by RRC rules (oil and gas production) or Texas Water Code (TWC), §27.033 (disposal wells). This section also states that the chapter applies to the expedited processing of requests for some of these letters and sets fees for expedited processing as authorized by TWC, §5.701. The commission does not provide expedited

processing of requests for groundwater protection letters for the drilling and use of disposal wells permitted by the RRC under TWC, §27.033.

Proposed new §339.3, Groundwater Protection Letter Requests, Expedited Processing, and Fee, describes how an applicant shall submit a request for a groundwater protection recommendation letter on a form approved by the executive director; establishes procedures for the processing of requests for groundwater protection recommendation letters; and sets the fee for expedited processing of groundwater protection recommendation letters at \$75. This section also states that the executive director shall establish procedures for the expedited processing of requests for groundwater protection recommendation letters. The executive director has set an internal goal of processing these letters within one working day and expects to be able to meet this goal in most cases.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Grants Management, determined that for the first five-year period the proposed new rules are in effect, there will be fiscal implications for state government but not for units of local government as a result of the administration or enforcement of the proposed rules.

The proposed rules implement sections of House Bill 3442, 78th Legislature, 2003. Certain provisions in the bill amended the TWC to allow the TCEQ to assess a \$75 fee for the expedited processing of a request for a groundwater protection recommendation letter for drilling, plugging, or cathodic protection of oil or gas wells. These letters, which are then provided to the RRC, and state the total

depth of surface casing needed during the drilling of oil and gas wells to protect usable groundwater in the state. The TCEQ recommendation letters are required by RRC regulations for the processing of RRC permit applications. The letters have been provided for about 50 years (since 1956).

Oil and gas operators would pay the fee only if they choose to request expedited processing of a groundwater protection recommendation letter from the TCEQ's Surface Casing Team. A fee for an expedited letter was not previously assessed to an applicant. A letter that is not expedited will not require a fee. The executive director has set an internal goal of processing these expedited letters to applicants within one working day.

House Bill 1, 78th Legislature, 2003 appropriated the TCEQ \$225,000 in Fiscal Year (FY) 2004 and the same amount in FY 2005 to cover the cost of processing expedited letters for well drilling. The agency estimates collecting approximately \$400,000 in fee revenue each FY and processing approximately 5,300 expedited letters each year. Fee revenue is deposited into the Water Resource Management Account.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be compliance with state law.

No individuals or businesses are required to comply with the proposed new rules. Individuals or businesses that choose to request expedited processing of a groundwater protection recommendation letter from the Surface Casing Team will be charged a \$75 fee.

Oil and gas operators seeking the expedited processing of a request for a groundwater protection recommendation letter for drilling, plugging, or cathodic protection of oil or gas wells will pay a fee of \$75 for each expedited letter. The total costs to a particular oil or gas operator would depend upon the number of expedited requests that were made.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed new rules for small or micro-businesses. Oil and gas operators that are small or micro-businesses would not be assessed a fee if they request a groundwater protection recommendation letter for drilling, plugging, or cathodic protection of oil or gas wells. However, those operators who choose to request expedited processing of a groundwater protection recommendation letter from the Surface Casing Team will be charged a \$75 fee.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed new rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. A “major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal does not meet the definition of a “major environmental rule” because the specific intent of the rules is to require an applicant to pay a fee of \$75 only if he or she chooses to obtain expedited processing of a groundwater protection recommendation letter. These rules substantially advance this purpose by providing for expedited processing of requests for these letters upon payment of such a fee. This proposal does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because no fee is required for a groundwater protection recommendation letter; these rules only set a fee for expedited processing of a request for these letters. This proposal is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because it sets a fee only for expedited processing.

In addition, this proposal does not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that this proposal does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) propose to adopt a rule solely under the general powers of the agency.

This proposal does not exceed a standard set by federal law because there are no such corresponding federal standards regarding fees for expedited processing of groundwater protection recommendation letters. Further, this proposal does not exceed an express requirement of state law because the fee for expedited processing of a groundwater protection recommendation letter does not exceed the limit of \$75 set by TWC, §5.701(r). This proposal does not exceed the requirements of the delegation agreement concerning injection wells because the commission does not regulate the wells that are the subject of the letters and because the delegation agreement does not establish express requirements for fees for processing of expedited groundwater protection recommendation letters. Finally, this proposal is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of TWC, §§5.701(r), 27.019, 27.021, 27.033.

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

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The commission's assessment indicates that Texas Government Code, Chapter 2007 applies to these proposed rules and that these rules do not constitute a statutory or constitutional taking.

The specific purpose of these proposed rules is to allow an applicant for an RRC authorization to pay a fee of \$75 to obtain expedited processing of a groundwater protection recommendation letter. House Bill 3442, 78th Legislature, 2003, amended TWC to set a maximum fee for expedited processing of a

request for a letter from the executive director stating the total depth of surface casing needed during the drilling of wells to protect usable-quality groundwater in the state and required for the processing of certain permits from the RRC to \$75.

This proposal substantially advances the purpose stated in the preceding paragraph by providing for the expedited processing of requests for these letters upon payment of a fee of \$75.

This proposal does not place any burden on real property and it does not obtain any benefit to society from the proposed use of private real property because it does not directly apply to the ownership or use of a particular parcel of private real property.

Promulgation of this proposal will not constitute a taking because there is no fee for a groundwater protection recommendation letter; the fee is only incurred if an applicant requests expedited processing of a groundwater protection recommendation letter. The fee does not directly apply to the ownership or use of a particular parcel of private real property.

There are alternative actions that the commission may take regarding this proposal, such as not charging a fee or charging a lower fee than \$75; however, it is reasonable to charge a fee of \$75 because that amount is estimated to be necessary to cover the costs of expedited processing of requests for these letters.

This proposal does not burden an owner of real property in a manner that would be a statutory or constitutional taking. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. This proposal simply sets a fee to be paid when an applicant opts to request expedited processing of a groundwater protection recommendation letter.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed these proposed rules for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that these proposed rules will not have direct or significant adverse effect on any coastal natural resources areas, nor will they have a substantive effect on commission actions subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 10, 2004, and should reference Rule Project Number 2004-001-339-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

CHAPTER 339: GROUNDWATER PROTECTION RECOMMENDATION

LETTERS AND FEES

§§339.1, 339.2, 339.3

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.701(r), relating to fees; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §27.032, regarding information required of applicants by the RRC; §27.033, regarding letters from the executive director; §27.051, regarding the issuance of permits; and §27.0511, regarding conditions of certain permits.

The proposed new sections implement TWC, §5.701(r).

§339.1. Purpose.

This chapter authorizes the executive director to provide groundwater protection recommendation letters to the Railroad Commission of Texas for use in processing applications. This chapter also establishes the fee for the expedited processing of requests for groundwater protection recommendation letters.

§339.2. Applicability.

This chapter applies to Texas Commission on Environmental Quality groundwater protection recommendation letters required by Railroad Commission of Texas (RRC) rules or Texas Water Code, §27.033 except that §339.3(b) and (c) of this title (relating to Groundwater Protection Letter Requests, Expedited Processing, and Fee) do not apply to letters related to drilling and use of disposal wells permitted by the RRC. The executive director provides these letters to applicants for authorizations from the RRC. The letters contain a recommendation to the RRC on the depth, or depths, that usable-quality groundwater should be isolated or protected in oil and gas operations. This chapter also applies to the expedited processing of requests for these letters and sets fees for expedited processing as authorized by Texas Water Code, §5.701.

§339.3. Groundwater Protection Letter Requests, Expedited Processing, and Fee.

(a) The applicant shall submit a request for a groundwater protection recommendation letter on a form approved by the executive director. The form must contain all information required by the executive director before a request will be processed.

(b) The executive director shall establish procedures for expedited processing of requests for groundwater protection recommendation letters.

(c) The fee for expedited processing of a request for a groundwater protection recommendation letter is \$75 and must be in the form of a check, money order, cashier's check, or electronic funds transfer made payable to the Texas Commission on Environmental Quality. The fee must be paid before the request will be processed.