

# Texas Commission on Environmental Quality

## Interoffice Memorandum

To: Commissioners Date: February 18, 2011

Thru: LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G. Executive Director

From: L'Oreal W. Stepney, Deputy Director  
Office of Water

Docket No.: 2010-0815-RUL

Subject: Commission Approval for Rulemaking Adoption  
Chapter 319, General Regulations Incorporated into Permits  
Revisions to Clarify Safety Recommendations to the Public in the Event of a  
Wastewater Spill  
Rule Project No. 2010-024-319-OW

### **Background and reason(s) for the rulemaking:**

30 TAC Chapter 319, Subchapter C requires wastewater facilities owned by local governments to notify local governments and local media following certain spills and discharges. The rule establishes when notification is required and includes the form used to provide such notifications. The notification form provides recommended safety actions for the general public to take in the event of a spill or discharge.

Recently, through the Office of Compliance and Enforcement, Field Operations Support Division (FOSD), it was brought to the attention of the Office of Water, Water Quality Division (WQD), that the language located on the wastewater spill reporting form, found at §319.303, was creating confusion amongst members of the general public during notification of a wastewater spill. Specifically, the confusion centered on recommended safety actions for the general public to take in the event of a spill.

During the discussion it was also recommended that the actual notification form should be removed from the rule and replaced with the minimum required elements of the form. The form would be made available on the TCEQ Web site with other forms for ease of access by the regulated community and to allow efficient updates to the form should that become necessary.

### **Scope of the rulemaking:**

The WQD is recommending revisions to §319.302 and §319.303 to replace the notification form with minimum required spill notice elements and clarify recommended safety actions for the general public. The FOSD and WQD have coordinated together on revisions to the sections under consideration.

A.) Summary of what the rulemaking will do: The proposed amendments will clarify instructions to the general public concerning initiation of safety precautions in the event of a wastewater spill; additionally, the proposed amendments will remove the existing spill

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notification form from the rule to be replaced by minimum reporting requirements for the regulated entity in the event of a wastewater spill.

B.) Scope required by federal regulations or state statutes: The proposed amendments are not required by any federal regulations or state statutes.

C.) Additional staff recommendations that are not required by federal rule or state statute: The proposed amendments are recommended by staff.

**Statutory authority:**

- Texas Government Code, Chapter 2001, Subchapter B, which relates to general administrative rulemaking authority;
- 30 TAC §20.15, which provides procedures for initiating rulemaking actions;
- Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment;
- TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules;
- TWC, §26.003, which establishes this state's public policy of maintaining the quality of water in the state consistent with public health and enjoyment;
- TWC, §26.011, which provides the commission's authority to establish, maintain and control the quality of water in this state, and to adopt reasonable rules related thereto;
- TWC, §26.039(e), which requires an individual operating, in charge of, or responsible for a wastewater treatment or collection facility owned or operated by a local government to notify appropriate government officials and local media in the event of an accidental discharge that may adversely affect a public or private source of drinking water; and
- TWC, §26.039(f), which requires the commission to specify by rule the conditions under which an individual must comply with §26.039(e) and prescribe procedures for giving notice, including the content and manner of giving notice.

**Effect on the:**

A.) Regulated community: Recommended revisions to the above referenced sections would allow for more readily available access via internet to the required reporting form in the event of a wastewater spill. The recommended revisions do not create a new affected group nor is there expected to be a fiscal impact.

B.) Public: Recommended revisions to the above referenced sections would impact the general public by clarifying safety recommendations in the event of a wastewater spill. The recommended revisions do not create a new affected group nor is there expected to be a fiscal impact.

C.) Agency programs: Recommended revisions to the above referenced sections are only expected to impact the Office of Compliance and Enforcement, FOSD. Currently, FOSD has fielded calls

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from the general public concerning clarification on the current recommendations/safety precautions to undertake during a wastewater spill. Responding to these inquiries requires staff time. With the recommended revisions, general public calls should be limited. Additionally, the recommended revisions will require outreach to the regulated communities notifying them that the reporting form is now available via internet access. The impact would be minimal and only upon initial approval of the rule revisions.

**Stakeholder meetings:**

No stakeholder meetings were held.

**Public comment:**

No oral comments were received during the public hearing. Two written comments were received during the comment period.

Both comments expressed concern over the phrase in the proposed amendments at §319.302(b)(1) "...commonly used for recreational purposes..." stating that this phrase actually caused increased confusion and contradicted the statute at TWC, §26.039(e), which specifically refers to drinking water sources only.

Additionally, one commenter indicated that additional clarification should be provided at §319.302(b)(3) expressly stating that notice should only be provided when "...the facility owner knows, or has reason to know, may adversely affect a public or private source of drinking water."

**Significant changes from proposal:**

The Executive Director agrees with the comment received from both commenters concerning the phrase "...commonly used for recreational purposes..." at §319.302(b)(1). This phrase has subsequently been removed.

**Potential controversial concerns and legislative interest remaining after proposal and public comment:**

There are no potential controversial concerns or legislative interest.

**Does this rulemaking affect any current policies or require development of new policies?**

This rulemaking project will not affect current policies nor will it require development of new policies.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

The consequences of not proceeding with this rulemaking are continued possible confusion amongst the general public over the precautionary statements in the required notice of a wastewater spill.

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**Key points in adoption rulemaking schedule:**

Texas Register proposal publication date: November 5, 2010  
Anticipated Texas Register publication date: March 25, 2011  
Anticipated effective date: March 31, 2011  
Six-month Texas Register filing deadline: May 5, 2011

**Agency contacts:**

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