

The Texas Commission on Environmental Quality (commission) proposes amendments to §§230.1 - 230.4 and 230.11.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed amendments is to implement Senate Bill (SB) 405, 77th Texas Legislature, 2001 by adding a geoscientist licensed to practice in this state to the list of professionals allowed to certify that adequate groundwater is available for a subdivision under Texas Local Government Code, §212.0101 and §232.0031. Under those sections, a municipal authority responsible for approving plats by ordinance or the commissioners court of a county by order (respectively) may require a person who submits a plat application for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, to have attached to it a statement that: 1) is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state; and 2) certifies that adequate groundwater is available for the subdivision. Sections 221.0101(b) and 232.0031(b) both require the commission, by rule, to establish the appropriate form and content of a certification to be attached to a plat application. SB 405 became effective on September 1, 2001.

SECTION BY SECTION DISCUSSION

For clarity, the references to Local Government Code are proposed to be changed to Texas Local Government Code in these amendments.

Proposed amendments to §230.1, Applicability, add “Texas licensed professional geoscientist” to the list of individuals that must use Chapter 230 and the attached form to certify that adequate groundwater

is available under the land of the subdivision subject to platting under Texas Local Government Code, §212.004 and §232.001.

Proposed amendments to §230.2, Definitions, add the definition “Licensed professional geoscientist” as new paragraph (8). A licensed professional geoscientist would be defined as a geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice. Existing paragraph (8) would be renumbered as paragraph (9).

Proposed amendments to §230.3, Certification of Groundwater Availability for Platting, add licensed professional geoscientist to subsection (a) and to subsection (c) in the Certification of Groundwater Availability for Platting Form.

Proposed amendments to §230.4, Administrative Information, add the name, address, phone number, facsimile number, and registration number of the licensed professional geoscientist preparing the certification to the list of general administrative information to be provided for a proposed subdivision under paragraph (5).

Proposed amendments to §230.11, Groundwater Availability and Usability Statements and Certification, add a licensed professional geoscientist to the list of who can certify by signature, seal, and date that adequate groundwater is available from the underlying aquifer(s) to supply the estimated demand of the proposed subdivision, based upon best professional judgement, current groundwater conditions, and the information developed and presented in the form specified by §230.3(c). In addition, formatting revisions are proposed to conform with *Texas Register* and agency current style practices.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist in the Strategic Planning and Appropriations Section, has determined that, for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed amendments.

The proposed amendments are intended to make changes to existing Chapter 230 regulations in order to implement certain provisions of SB 405, 77th Texas Legislature, 2001. The proposed amendments would incorporate a new definition for a licensed professional geoscientist. The proposed amendments would also add references to Chapter 230 regulations allowing a licensed professional geoscientist to prepare the certification that is attached to a plat application and used to demonstrate that adequate groundwater is available for a subdivision. Currently, only a Texas licensed professional engineer is allowed to do this. The proposed amendments are procedural in nature and are not anticipated to result in significant fiscal implications for any unit of state or local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be that platting applicants would be able to use either a Texas licensed professional engineer or geoscientist to certify that adequate groundwater is available as part of their plat applications.

The proposed rulemaking is intended to make changes to existing Chapter 230 regulations in order to implement certain provisions of SB 405. The proposed amendments would incorporate a new definition for a licensed professional geoscientist and add references to Chapter 230 regulations allowing a licensed professional geoscientist to prepare the certification that is attached to a plat application and used to demonstrate that adequate groundwater is available for a subdivision. Currently, only a Texas licensed professional engineer is allowed to do this. The proposed amendments are procedural in nature and are not anticipated to result in significant fiscal implications for any individual or business.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed amendments, which are intended to make changes to existing Chapter 230 regulations in order to implement certain provisions of SB 405. The proposed amendments would incorporate a new definition for a licensed professional geoscientist and add references to Chapter 230 regulations allowing a licensed professional geoscientist to prepare the certification that is attached to a plat application and used to demonstrate that adequate groundwater is available for a subdivision.

Currently, only a Texas licensed professional engineer is allowed to do this. The proposed amendments

are procedural in nature and are not anticipated to result in fiscal implications for any small or micro-business.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact 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 statutory requirements for a “major environmental rule.” 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, 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.

The principal intent of this proposal is to amend Chapter 230 to allow a geoscientist licensed to practice in this state to prepare, as part of the plat application for the subdivision of land, a certification that adequate groundwater is available for the subdivision for which the source of the water supply intended for the subdivision is groundwater under that land. This certification may be required by either a municipal authority responsible for approving plats that has adopted this requirement by ordinance or a county commissioners court that has adopted this requirement by order. The proposed amendments

implement SB 405, §2, passed during the 77th Texas Legislature, 2001. The proposed amendments do not impose any additional requirements on the preparation of these types of plats. Therefore, this proposal does not 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. The commission concludes that this proposal does not meet the definition of "major environmental rule."

Furthermore, even if the proposed amendments did meet the definition of a "major environmental rule," the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 230 do not meet any of these criteria. First, there are no applicable federal standards that are exceeded by the proposed amendments. Second, the proposed amendments carry out the requirements of state statutes relating to who can prepare a plat certification that adequate groundwater is available for a subdivision. Third, there are no applicable delegation agreements that apply to this situation. Therefore, no specific delegation agreement requirements would be exceeded by these proposed amendments. Fourth, the commission proposes these

amendments in accordance with its requirements under specific state law, Texas Local Government Code, §212.0101 and §232.0031. Therefore, the commission does not propose the rulemaking solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for these proposed amendments in accordance with Texas Government Code, Chapter 2007. The principal intent of this proposal is to amend Chapter 230 to allow a geoscientist licensed to practice in this state to prepare a certification that adequate groundwater is available for a subdivision as part of a plat application to either a municipal authority responsible for approving plats or the commissioners court of a county for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land. This platting requirement may be adopted by a municipal authority by ordinance or the commissioners court of a county by order. The proposed amendments implement SB 405, §2, passed during the 77th Texas Legislature, 2001. The commission's preliminary assessment indicates the proposed amendments do not constitute a takings under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed amendments would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed amendments do not add any additional requirements to the preparation of subdivision plats, and do not affect a landowner's rights in private real property by burdening private real property, restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed amendments. Therefore, the proposed amendments will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rulemaking is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendments are not subject to the Coastal Management Program.

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., December 9, 2002, and should reference Rule Log Number 2001-051-230-AD. For further information, please contact Michael Bame, Policy and Regulations Division at (512) 239-5658.

§§230.1 - 230.4, 230.11

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Local Government Code, §212.0101 and §232.0031, which provides that the commission, by rule, establish the appropriate form and content of a certification to be attached to a plat application when required by the municipal authority responsible for approving plats or the commissioners court of a county to require an engineer or geoscientist licensed to practice in Texas to certify that adequate groundwater is available as part of a plat application for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land.

The proposed amendments implement TWC, §5.103, and Texas Local Government Code, §212.0101 and §232.0031.

§230.1. Applicability.

(a) Subdivisions utilizing groundwater as the source of water supply. In the plat application and approval process, municipal and county authorities may require certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply. The municipal or county authority is not required to exercise their authority under Texas

Local Government Code, §212.0101 or §232.0031. However, if they do exercise their authority, the form and content of this chapter must be used.

(b) Use of this chapter. If required by the municipal or county authority, the plat applicant and the Texas licensed professional engineer or the Texas licensed professional geoscientist shall use this chapter and the attached form to certify that adequate groundwater is available under the land of a subdivision subject to platting under Texas [the] Local Government Code, §212.004 and §232.001. These rules do not replace other state and federal requirements applicable to public drinking water supply systems. These rules do not replace the authority of counties within designated priority groundwater management areas under Texas Water Code, §35.019, or the authority of groundwater conservation districts under Texas Water Code, Chapter 36.

§230.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in this section, it shall have the same definition and meaning as used in the practices applicable to hydrology and aquifer testing.

(1) - (7) (No change.)

(8) Licensed professional geoscientist - A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(9) [(8)] Requirements applicable to public drinking water supply systems - The requirements contained in commission rules covering public drinking water supply systems in Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems).

§230.3. Certification of Groundwater Availability for Platting.

(a) Certification. The certification required by this chapter must be prepared by a Texas licensed professional engineer or a Texas licensed professional geoscientist.

(b) Submission of information. The plat applicant shall provide to the municipal or county authority the certification of adequacy of groundwater under the subdivision required by this chapter.

(c) Form required. This chapter and the following form shall be used and completed if plat applicants are required by the municipal or county authority to certify that adequate groundwater is available under the land to be subdivided. The executive director may make minor changes to this form that do not conflict with the requirements of these rules.

FIGURE 30 TAC §230.3(c)

CERTIFICATION OF GROUNDWATER AVAILABILITY FOR PLATTING FORM

Use of this form: If required by a municipal authority pursuant to §212.0101, Texas Local Government Code or a county authority pursuant to §232.0031, Texas Local Government Code, the plat applicant and the Texas licensed professional engineer or Texas licensed professional geoscientist shall use this form based upon the requirements of Title 30, Texas Administrative Code, Chapter 230 to certify that adequate groundwater is available under the land to be subdivided (if the source of water for the subdivision is groundwater under the subdivision) for any subdivision subject to platting under §§212.004 and 232.001, Texas Local Government Code. The form and Chapter 230 do not replace state requirements applicable to public drinking water supply systems or the authority of counties or groundwater conservation districts under either §35.019 or Chapter 36 of the Texas Water Code.

Administrative Information (30 TAC, §230.4).

1. Name of Proposed Subdivision: _____
2. Any Previous Name Which Identifies the Tract of Land: _____

3. Property Owner's Name(s): _____
Address: _____
Phone: _____
Fax: _____
4. Plat Applicant's Name: _____
Address: _____
Phone: _____
Fax: _____
5. Licensed Professional Engineer or Geoscientist
Name: _____
Address: _____
Phone: _____
Fax: _____
Certificate Number: _____
6. Location and Property Description of Proposed Subdivision: _____

7. Tax Assessor Parcel Number(s).
Book: _____
Map: _____
Parcel: _____

Proposed Subdivision Information (30 TAC, §230.5).

8. Purpose of Proposed Subdivision (single family/multi-family residential, non-residential, commercial): _____

9. Size of Proposed Subdivision (acres): _____
10. Number of Proposed Lots: _____
11. Average Size of Proposed Lots (acres): _____
12. Anticipated Method of Water Distribution.

| | | |
|---|-------|----|
| Expansion of Existing Public Water Supply System: | Yes | No |
| New (Proposed) Public Water Supply System: | Yes | No |
| Individual Water Wells to Serve Individual Lots: | Yes | No |
| Combination of Methods: | Yes | No |
| Description (if needed): | _____ | |

13. Additional Information (if required by the municipal or county authority): _____

Note: If public water supply system is anticipated, written application for service to existing water providers within a 1/2-mile radius should be attached to this form (30 TAC §230.5(f)).

Figure 30 TAC §230.3(c) - Certification of Groundwater Availability for Platting

Projected Water Demand Estimate (30 TAC, §230.6).

- 14. Residential Water Demand Estimate at Full Build Out (includes both single family and multi-family residential).
 Number of Proposed Housing Units (single and multi-family):
 Average Number of Persons per Housing Unit:
 Gallons of Water Required per Person per Day:
 Water Demand per Housing Unit per year (acre feet/year):
 Total Expected Residential Water Demand per Year (acre feet/year):
- 15. Non-residential Water Demand Estimate at Full Build Out.
 Type(s) of Non-residential Water Uses:

Water Demand per Type per Year (acre feet/year):

- 16. Total Water Demand Estimate at Full Build Out (acre feet/year):
- 17. Sources of Information Used for Demand Estimates:

General Groundwater Resource Information (30 TAC, §230.7).

- 18. Identify and describe, using Texas Water Development Board names, the aquifer(s) which underlies the proposed subdivision:

Note: Users may refer to Aquifers of Texas (Texas Water Development Board Report 345, 1995) to obtain general information pertaining to the state's aquifers. This reference is available via the Internet (www.twdb.state.tx.us).

Obtaining Site-Specific Groundwater Data (30 TAC, §230.8).

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|-----|--|-----|----|
| 19. | Have all known existing, abandoned, and inoperative wells within the proposed subdivision been located, identified, and shown on the plat as required under §230.8(b)? | Yes | No |
| 20. | Were the geologic and groundwater resource factors identified under §230.7(b) considered in planning and designing the aquifer test required under §230.8(c)? | Yes | No |
| 21. | Have test and observation wells been located, drilled, logged, completed, developed, and shown on the plat as required by §230.8(c)(1 through 4)? | Yes | No |
| 22. | Have all reasonable precautions been taken to ensure that contaminants do not reach the subsurface environment and that undesirable groundwater has been confined to the zone(s) of origin (§230.8(c)(5))? | Yes | No |
| 23. | Has an aquifer test been conducted which meets the requirements of §§230.8(c)(1 and 6)? | Yes | No |
| 24. | Were existing wells or previous aquifer test data used? | Yes | No |
| 25. | If yes, did they meet the requirements of §230.8(c)(7)? | Yes | No |
| 26. | Were additional observation wells or aquifer testing utilized? | Yes | No |

Note: If expansion of an existing public water supply system or a new public water supply system is the anticipated method of water distribution for the proposed subdivision, site-specific groundwater data shall be developed under the requirements of 30 TAC, Chapter 290, Subchapter D (related to Rules and Regulations for Public Water Systems) and the applicable information and correspondence developed in meeting those requirements shall be attached to this form pursuant to §230.8(a).

Determination of Groundwater Quality (30 TAC, §230.9).

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|-----|--|-----|----|
| 27. | Have water quality samples been collected as required by §230.9? | Yes | No |
|-----|--|-----|----|

Figure 30 TAC §230.3(c) - Certification of Groundwater Availability for Platting

28. Has a water quality analysis been performed which meets the requirements of §230.9? Yes No

Determination of Groundwater Availability (30 TAC, §230.10).

29. Have the aquifer parameters required by §230.10(c) been determined? Yes No

30. If so, provide the aquifer parameters as determined.

Rate of yield and drawdown:

Specific capacity:

Efficiency of the pumped well:

Transmissivity:

Coefficient of storage:

Hydraulic conductivity:

Were any recharge or barrier boundaries detected? Yes No

If yes, please describe:

Thickness of aquifer(s):

31. Have time-drawdown determinations been calculated as required under §230.10(d)(1) Yes No

32. Have distance-drawdown determinations been calculated as required under §230.10(d)(2)? Yes No

33. Have well interference determinations been made as required under §230.10(d)(3)? Yes No

34. Has the anticipated method of water delivery, the annual groundwater demand estimates at full build out, and geologic and groundwater information been taken into account in making these determinations? Yes No

35. Has the water quality analysis required under §230.9 been compared to primary and secondary public drinking water standards as required under §230.10(e)? Yes No

Does the concentration of any analyzed constituent exceed the standards? Yes No

If yes, please list the constituent(s) and concentration measure(s) which exceed standards:

Groundwater Availability and Usability Statements (30 TAC, §230.11(a) and (b)).

36. Drawdown of the aquifer at the pumped well(s) is estimated to be _____ feet over a 10-year period and _____ feet over a 30-year period.

37. Drawdown of the aquifer at the property boundary is estimated to be _____ feet over a 10-year period and _____ feet over a 30-year period.

38. The distance from the pumped well(s) to the outer edges of the cone(s)-of-depression is estimated to be _____ feet over a 10-year period and _____ feet over a 30-year period.

39. The recommended minimum spacing limit between wells is _____ feet with a recommended well yield of _____ gallons per minute per well.

40. Available groundwater is / is not (circle one) of sufficient quality to meet the intended use of the platted subdivision.

41. The groundwater availability determination does not consider the following conditions (identify any assumptions or uncertainties that are inherent in the groundwater availability determination):

Certification of Groundwater Availability (30 TAC, §230.11(c)). Must be signed by a Texas Licensed Professional Engineer or a Texas Licensed Professional Geoscientist.

42. I, _____, Texas Licensed Professional Engineer or Texas Licensed Professional Geoscientist (circle which applies), certificate number _____, based on best professional judgement, current groundwater conditions, and the information developed and presented in this form, certify that adequate groundwater is available from the underlying aquifer(s) to supply the anticipated use of the proposed subdivision.

Date: _____

(affix seal)

§230.4. Administrative Information.

At a minimum, the following general administrative information as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting), shall be provided for a proposed subdivision for which groundwater under the land will be the source of water supply:

(1) - (4) (No change.)

(5) the name, address, phone number, facsimile number, and registration number of the licensed [licenced] professional engineer or the licensed professional geoscientist preparing the certification as required in this chapter;

(6) - (7) (No change.)

§230.11. Groundwater Availability and Usability Statements and Certification.

(a) (No change.)

(b) Groundwater availability determination conditions [Availability Determination Conditions].

The assumptions and uncertainties that are inherent in the determination of groundwater availability should be clearly identified as specified in §230.3(c) of this title. These conditions must be identified to adequately define the bases for the availability and usability statements. These bases may include, but are not limited to, uncontrollable and unknown factors such as:

(1) future pumpage from the aquifer or from interconnected aquifers from area wells outside of the subdivision or any other factor that cannot be predicted that would affect the storage of water in the aquifer; [,]

(2) long-term impacts to the aquifer based on climatic variations; and [,]

(3) future impacts to usable groundwater due to unforeseen or unpredictable contamination.

(c) Certification. Based on best professional judgement, current groundwater conditions, and the information developed and presented in the form specified by §230.3(c) of this title, the licensed professional engineer or licensed professional geoscientist certifies by signature, seal, and date that adequate groundwater is available from the underlying aquifer(s) to supply the estimated demand of the proposed subdivision.