

The Texas Groundwater Protection Committee (committee) adopts new §601.10 *without change* to the proposed text as published in the August 22, 2003 issue of the *Texas Register* (28 TexReg 6765) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED 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 adopts 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 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 rule uses the existing definition of contamination contained in §601.3(7), 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.) 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 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.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The committee reviewed the 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 rulemaking implements legislative requirements in new TWC, §26.408(c), regarding the content of certain notices to be provided by TCEQ. Because the 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 rule did meet the definition of a “major environmental rule,” the adopted rule is not subject to §2001.0225 because it does not accomplish any of the four results specified in §2001.0225(a).

First, the rule 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 drinking water well that may be affected by contamination. Second, the rule 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, the rule 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, the rule is not adopted solely under the general powers of the committee instead of under a specific state law. The new section is specifically adopted under TWC, §26.408(c).

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 be provided by TCEQ to the owner of a private drinking water well that may be affected by contamination and each applicable groundwater conservation district. 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 property that would otherwise exist in the absence of the rule.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The committee reviewed the 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 rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

The public comment period ended at 5:00 p.m. on September 22, 2003. No comments were received.

SUBCHAPTER B: NOTICE OF GROUNDWATER CONTAMINATION

§601.10

STATUTORY AUTHORITY

The new section is adopted 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 adopted 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.

§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.