

The Texas Commission on Environmental Quality (commission) proposes amendments to §§331.2, 331.7, 331.9, and 331.132.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems. Subsurface area drip dispersal systems apply fluid into the soil below the surface of the soil, and therefore, are classified as Class V injection wells in accordance with §331.11(a)(4), Classification of Injection Wells. The commission proposes to amend Chapter 331 to address the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32.

The commission also proposes additional rulemaking to 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 222, Subsurface Area Dispersal System; Chapter 281, Applications Processing; Chapter 305, Consolidated Permits; and Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting, in this issue of the *Texas Register* to implement HB 2651.

#### SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

*Section 331.2, Definitions*

Proposed §331.2(90) is amended by adding a statement that includes subsurface area drip dispersal systems to the definition of subsurface fluid distribution systems. This proposed amendment explains that the definition of subsurface fluid distribution systems, a type of injection well, includes subsurface area drip dispersal systems.

*Section 331.7, Permit Required*

Proposed §331.7(c) is amended to provide that the owner or operator of subsurface area drip dispersal systems must obtain a permit under TWC, Chapters 26 and 32 and submit information to the Underground Injection Control program staff for inclusion in the Class V injection well inventory list.

*Section 331.9, Injection Authorized by Rule*

Proposed §331.9(b) is amended to clarify which injection wells require a permit and which injection wells are authorized by rule. The reference in this section to §331.7 reinforces the requirement for subsurface area drip dispersal systems to obtain a wastewater discharge permit under TWC, Chapter 26 or Chapters 26 and 32 prior to discharging effluent into a subsurface fluid distribution system, which is a type of Class V injection well.

*Section 331.132, Construction Standards*

Proposed §331.132(a) is amended to correct an out-of-date statute citation. Previously, TWC, Chapter 32 was repealed and the water well driller provisions recodified into Texas Occupations Code, Chapter

1901, as amended by HB 2813, 77th Legislature, 2001. The proposed amendment to §331.132(a) reflects the recodification of the water well driller provisions in the Texas Occupations Code.

Proposed §331.132(b) is amended to identify the information that is required to be submitted with the applicable permit application for injection wells that are both authorized by rule under this chapter and regulated by permit under other commission permitting programs.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules.

HB 2651 amended the TWC by adding Chapter 32. The commission proposes to amend Chapter 331 to clarify that rules for underground injection control systems apply to subsurface area drip dispersal systems, as defined by TWC, Chapter 32. Subsurface area drip dispersal systems are subsurface fluid distribution systems, a type of injection well, and are therefore subject to the requirements of Chapter 331. No substantive changes regarding the requirements for injection wells are part of the proposed rulemaking. Owners or operators of subsurface area drip dispersal systems will not experience any fiscal implications as a result of the proposed rulemaking.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater clarity in the requirements for subsurface area drip dispersal systems, and thus, more efficient administration of commission rules regulating the permitting and operation of subsurface area drip dispersal systems.

Subsurface area drip dispersal systems are subject to the requirements of Chapter 331, and no substantive changes regarding those requirements are part of the proposed rulemaking. The proposed rulemaking explicitly states that the requirements of Chapter 331 will apply to subsurface area drip dispersal systems. Owners or operators of subsurface area drip dispersal systems will not experience any fiscal implications as a result of the proposed rulemaking.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that own or operate subsurface area drip dispersal systems. Subsurface area drip dispersal systems are subject to the requirements of Chapter 331, and no substantive changes regarding those requirements are part of the proposed rulemaking. The proposed rulemaking explicitly states that the requirements of Chapter 331 will apply to subsurface area drip dispersal systems.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed 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 the rules do not meet the definition of a “major environmental rule.” Under Texas Government Code, §2001.0225, “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 proposed rules are intended to implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The proposed rules clarify that a subsurface area drip dispersal system regulated under Chapter 222 is also considered as an injection well under the definition of subsurface fluid distribution system. The proposed rules do not alter the underlying technical requirements for injection wells. Therefore, because this rulemaking will 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 rulemaking does not fit the Texas Government Code, §2001.0225, definition of “major environmental rule.”

Furthermore, the proposed rulemaking action does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental 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 rules do not meet any of these applicability requirements. First, the proposed rules are specifically required to implement state law in HB 2651. Second, the proposed rules do not exceed an express requirement of state law, instead these rules implement HB 2651 and the Injection Well Act in TWC, Chapter 27. Third, the proposed rules do not exceed an express 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. Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32 and under TWC, §27.019, which authorizes the commission to adopt rules reasonably required for the performance of its duties under TWC, Chapter 27.

The commission invites public comment regarding this draft regulatory impact analysis determination.

#### TAKING IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed a preliminary assessment of whether this action would constitute a takings under Texas Government Code, Chapter 2007. The proposed rules are intended to establish requirements for subsurface area drip dispersal systems and clarify that subsurface area drip dispersal systems are a type of injection well. The promulgation and enforcement of the proposed rules will not affect private real property in a manner that would require

compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. The area affected by the prohibition is not proximate to the coastal areas of the state and Chapter 331 is not a chapter that is listed in Chapter 281, Subchapter B, as being subject to the CMP. Therefore, this proposed rulemaking is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 14, 2006, 2:00 p.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, located at 12100 Park 35 Circle.

The hearing will be structured for the receipt of oral or written comments by interested persons.

Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-050-222-PR. Comments must be received no later than 5:00 p.m., March 20, 2006. For further information, please contact Sherry Smith, Water Quality Division at (512) 239-0571 or Louis C. Herrin, III, P.E., Water Quality Division at (512) 239-4552.



**SUBCHAPTER A: GENERAL PROVISIONS**

**§§331.2, 331.7, 331.9**

**STATUTORY AUTHORITY**

The amendments are proposed under TWC, §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers 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 §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. The amendments are also proposed under HB 2651, which requires the commission to adopt rules relating to subsurface drip dispersal systems.

The proposed amendments implement HB 2651 and TWC, Chapter 27, which requires the commission to regulate injection wells.

**§331.2. Definitions.**

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, have the following meanings.

(1) - (35) (No change.)

(36) **Existing injection well**--A Class I well which was authorized by an approved state or United States Environmental Protection Agency [EPA]-administered program before August 25, 1988, or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under §335.1 of this title (relating to Definitions).

(37) - (41) (No change.)

(42) **Groundwater protection area**--A geographic area (delineated by the state under [the] Safe Drinking Water Act, 42 United States Code, §300j-13) near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water.

(43) - (59) (No change.)

(60) **Motor vehicle waste disposal well**--A well used for the disposal of fluids from vehicular repair or maintenance activities[,] including, but not limited to, repair and maintenance facilities for cars, trucks, motorcycles, boats, railroad locomotives, and airplanes.

(61) - (89) (No change.)

(90) **Subsurface fluid distribution system**--An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. This

definition includes subsurface area drip dispersal systems as defined in §222.5 of this title (relating to Definitions).

(91) - (92) (No change.)

(93) **Total dissolved solids [(TDS)]**--The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(94) - (95) (No change.)

(96) **Underground injection control [(UIC)]**--The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state program.

(97) **Underground source of drinking water [(USDW)]**--An "aquifer" or its portions:

(A) - (C) (No change.)

(98) - (102) (No change.)

(103) **Well stimulation**--Several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater

to move more readily into the formation[,] including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(104) (No change.)

**§331.7. Permit Required.**

(a) - (b) (No change.)

(c) The owner or operator of a large capacity septic system, [or] a septic system which accepts industrial waste, or a subsurface area drip dispersal system, as defined in §222.3 of this title (relating to Definitions) must obtain a wastewater discharge permit in accordance with Texas Water Code, Chapter 26 or Chapters 26 and 32, and Chapter 305 of this title (relating to Consolidated Permits), and must submit the inventory information required under §331.10 of this title (relating to Inventory of Wells Authorized by Rule).

(d) (No change.)

**§331.9. Injection Authorized by Rule.**

(a) (No change.)

(b) Injection into Class V wells, unless otherwise provided in subsection (c) of this section, §331.7 of this title (relating to Permit Required), or §331.137 of this title (relating to Permit for Motor Vehicle Waste Disposal Wells, is authorized under [by virtue of] this rule. [Injection into Class V wells used for the disposal of greater than 5,000 gallons per day of sewage or sewage effluent must be authorized by a wastewater discharge permit from the commission under Chapter 305 of this title (relating to Consolidated Permits) before operations begin.]

(1) Well authorization under this section expires upon the effective date of a permit issued under §331.7 of this title [(relating to Permit Required)].

(2) An owner or operator of a Class V well is prohibited from injecting into the well:

(A) - (B) (No change.)

(C) upon failure to submit inventory information in a timely manner under §331.10 of this title (relating to Inventory of Wells Authorized by Rule);

(D) - (E) (No change.)

(c) (No change.)

(d) Class IV wells injecting hazardous waste-contaminated groundwater [ground water] that is of acceptable quality to aid remediation and that is being reinjected into the same formation from which it was drawn, as authorized by §331.6 of this title (relating to Prohibition of Class IV Well Injection), shall be authorized by rule.

## **SUBCHAPTER H: STANDARDS FOR CLASS V WELLS**

### **§331.132**

#### **STATUTORY AUTHORITY**

The amendment is proposed under TWC, §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers 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 §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. The amendment is also proposed under HB 2651, which requires the commission to adopt rules relating to subsurface drip dispersal systems.

The proposed amendment implements HB 2651 and TWC, Chapter 27, which requires the commission to regulate injection wells.

#### **§331.132. Construction Standards.**

(a) Applicability. All Class V wells shall be completed in accordance with the specifications contained in this section, unless otherwise authorized by the executive director. Injection wells listed in Texas Occupations Code, §1901.001(8) [Texas Water Code, §32.001(8)] shall be installed by a water well driller licensed by the Texas Department of Licensing and Regulation.

(b) Reporting.

(1) Prior to construction. Except for closed loop injection and air conditioning return flow wells, information required under §331.10(a) of this title (relating to Inventory or Wells Authorized by Rule) shall be submitted to the executive director for review and approval prior to construction. For large capacity septic systems, septic systems that accept industrial waste, and subsurface fluid distribution systems including subsurface area drip dispersal systems as defined in §222.5 of this title (relating to Definitions), the information required under §331.10(a) of this title shall be submitted as part of the wastewater discharge permit application filed under Chapter 305 of this title (relating to Consolidated Permits).

(2) - (3) (No change.)

(4) Temporary injection points. Temporary injection points shall be completed in such a manner as to prevent movement of surface water or undesirable groundwater into underground sources of drinking water [(USDW)].

\_\_\_\_\_ (5) (No change.)

(c) (No change.)

(d) Surface completion.

(1) - (3) (No change.)



(4) Temporary injection points shall be completed in such a manner as to prevent the movement of surface water or undesirable groundwater into underground sources of drinking water [a USDW].

(e) Optional use of a steel or polyvinyl chloride (PVC) [PVC] sleeve. If the use of a steel or PVC sleeve is necessary to prevent possible damage to the casing, the steel sleeve shall be a minimum of 3/16 inches in thickness or the PVC sleeve shall be a minimum of Schedule 80 sun-resistant and 24 inches in length, and shall extend 12 inches into the cement slurry.

(f) - (h) (No change.)