

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) proposes amendments to §319.302 and §319.303.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Chapter 319, Subchapter C requires wastewater facilities owned by local governments to notify local governments and local media following certain wastewater 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 wastewater spill or discharge. These rules were originally created in response to a specific wastewater spill into Brushy Creek in the Austin Metropolitan area that resulted in bacterial infection for several residents residing in the impacted area of the spill. The recommended safety precautions currently contained in the spill notice form at §319.303 were specifically worded for this spill event. However, the recommended safety precautions are not applicable to all wastewater spill events and have resulted in confusion amongst the general public for spill events in other areas.

SECTION BY SECTION DISCUSSION

The commission proposes to amend §319.302, Notification Requirements, to provide clarification to the regulated community and general public on when and under what conditions notice must be provided.

The commission proposes to amend §319.303, Form of the Notice to Local Officials and Local Media, to provide clarification to the regulated community concerning what information must be included in a notice of a wastewater spill and to clarify precautionary language that may be contained in a wastewater spill

notice for the general public. Additionally, the proposed amendments will remove the form from the rule replacing it with minimum notification requirements.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

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

Current agency rules specify the notification requirements wastewater facilities owned by local governments are to take when certain spills and discharges affecting drinking and surface water occur. Current rules also specify a notification form, which provides recommended safety actions for the general public. Not all safety actions appearing on the form are applicable for every spill or discharge, and the language on the form has created confusion among the general public and wastewater facilities owned by local governments regarding which actions to take.

The proposed rules would no longer include the notification form but would specify where local governments can find a spill notice template on the agency Web site. The proposed rules specify the minimum notification elements and precautionary statements that wastewater or collection facilities owned by local governments must use when certain spills and discharges occur that may affect drinking water and surface water. The proposed rules do not eliminate or add any new notice requirements or precautionary actions to protect the general public, but clarify the appropriate precautionary actions that are to be taken. The proposed rules are expected to generate more efficiency for the agency and local governments when

responding to the public and reporting on such events. Local governments may see some cost savings because of more efficient use of staff time, but savings are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Nina 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 a greater understanding of what actions local governments should take in the event of a wastewater spill or discharge, which will contribute to a more efficient and prompt protection of public health and safety.

The proposed rules clarify the notice requirements and safety actions that a wastewater or collection facility owned by a local government should use in the event of a spill or discharge. Individuals and businesses should receive clearer information, but no significant fiscal implications are anticipated for individuals or businesses as a result of the proposed rules.

The proposed rules will not affect businesses that own wastewater treatment or collection facilities as they apply only to those facilities owned or operated by local governments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that own wastewater treatment or collection facilities since they pertain to those facilities owned or operated by local governments. Small or micro-businesses that are customers of wastewater treatment or collection facilities owned or operated by a local government should receive clearer information in the event of a discharge or spill.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

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 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 has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 the Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The proposed rules do not adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. The proposed rules are designed to protect human health by reducing potential exposure to accidental discharges or spills from wastewater treatment and collection facilities.

The economy, a sector of the economy, productivity, competition, or jobs will not be adversely affected in a material way because the additional costs caused by the rules are minimal. There are no costs to businesses or the private sector. The proposed rules will potentially add costs for notice to local governments and local media. The additional costs added by the rules are not substantial, however,

because the local governments are already required by Texas Water Code (TWC), §26.039(b) to notify the commission of all spills which cause, or may cause, pollution.

The proposed rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the proposed rules are designed to protect human health by reducing potential exposure to accidental discharges or spills from wastewater treatment and collection facilities owned or operated by a local government.

This proposal does not exceed a standard set by federal law and is specifically required by state law. There is no standard set by federal law for notification of local governments and local media of spills from wastewater treatment or collection facilities owned or operated by local governments. The proposed rules are specifically required by TWC, §26.039(f), to specify the conditions under which a spill must be reported to appropriate local government officials and local media. This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government. There is no agreement or contract between the commission and the federal government concerning notification of local governments and local media of spills from wastewater treatment or collection facilities owned or operated by local governments.

The proposed rules are not adopted solely under the general powers of the commission; instead, they are adopted under a specific state law. The specific state law is TWC, §26.039(f), which requires the commission by rule to specify the conditions under which a spill must be reported to appropriate local government officials and local media.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rules is to implement the requirements of House Bill 1074, 76th Legislature, 1999, which amends TWC, §26.039, to require notice to local governmental officials and local media of spills or accidental discharges from wastewater treatment or collection facilities owned or operated by local governments. The proposed rules substantially advance this specific purpose by identifying which entities must report and the conditions under which these reports must be made. This proposed rulemaking improves the usefulness of the form of the notice to local government officials and local media. Promulgation and enforcement of these proposed rules will not burden private real property. The proposed rules only affect wastewater treatment or collection facilities owned or operated by local governments.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 9, 2010, at 10:00 AM in Building B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Natalia Henricksen, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-024-319-OW. The comment period closes December 13, 2010.

Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Lynda Clayton, Water Quality Assessment Section, (512) 239-4591.

SUBCHAPTER C: PUBLIC NOTICE OF SPILLS OR ACCIDENTAL DISCHARGES
FROM WASTEWATER FACILITIES OWNED OR OPERATED BY
LOCAL GOVERNMENTS
§319.302 and §319.303

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §26.039(f), which requires the commission by rule to specify the conditions under which a spill from a wastewater treatment or collection facility owned or operated by a local government must be reported to appropriate local government officials and local media, including the content of the notice; and TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state.

The proposed amendments implement TWC, §§5.103, 5.105, and 26.039.

§319.302. Notification Requirements.

- (a) The owner of a facility must designate a responsible individual to comply with this subchapter.
- (b) In addition to the noncompliance notification to the commission required by §305.125(9) of this title (relating to Standard Permit Conditions) and any notification required under Chapter 327 of this title (relating to Spill Prevention and Control), the owner of a facility, through its responsible individual,

must notify appropriate local government officials and the local media (see §319.301 of this title (relating to Definitions)) whenever one of the following types of spills occurs from the facility:

(1) a spill, regardless of volume, that has the potential to contaminate [the facility owner knows or has reason to know, will adversely affect] a public or private source of drinking water or waters in the state commonly used for recreational purposes;

(2) a spill with a volume of 50,000 gallons or more where one or more of the following conditions also exists:

(A) the spill occurs [enters water in the state] within 1/2-mile of a public or private source of drinking water [that has been assessed by the commission as vulnerable to contamination];

(B) the spill occurs [enters water in the state] within 1/2-mile of a private drinking water well which is [source of drinking water] located within 1/2-mile of a public water supply well [source of drinking water that has been assessed by the commission as vulnerable to contamination];

(C) the spill occurs [enters water in the state] within 1/2-mile up-gradient of a surface water [public or private source of drinking water surface water] intake of a public or private source of drinking water;

(D) the spill occurs in an active groundwater recharge area;

(E) the spill occurs up-gradient and within 1/2-mile of a karst terrain or shallow alluvial well that is a source of drinking water;

(3) a spill of 100,000 gallons or more.

(c) The responsible individual must issue the notice [using the form in §319.303 of this title (relating to Form of the Notice to Local Officials and Local Media)] as quickly as possible, but not later than 24 hours after the facility becomes [becoming] aware of the spill. The notice [must be delivered in an expeditious manner. It] may be hand-delivered, sent by facsimile, e-mail, or by phone with follow-up written notice. The contents of the notice must comply with §319.303 of this title (relating to Form of the Notice to Local Officials and Local Media.)

(d) Within 48 hours of providing [Immediately after giving of] notice to appropriate local government officials and local media, the responsible individual must provide [report] to the commission regional office in whose region the spill occurred a copy of the notice, the date notice was provided to local officials and local media, and a list of notice recipients [that this notice was given].

§319.303. [Form of the] Notice to Local Officials and Local Media.

(a) Persons responsible for a wastewater spill must ensure notice complies with subsections (b) and (c) of this section. Responsible persons may contact the commission to obtain a template which may be used in the event of a wastewater spill. [The notice must be in the following form:]

[Figure: 30 TAC §319.303]

[NOTICE OF SPILL FROM A WASTEWATER FACILITY

A spill from a wastewater treatment or collection facility has occurred.

INFORMATION ABOUT THE SPILL

Facility Name: _____

Contact for further information: _____

Location of the spill: _____

Estimated time and date of spill: _____

Estimated volume of the spill (number of gallons): _____

Type of spill: (domestic) (industrial) (other) Explain other _____

Area potentially affected: _____

Suspected cause of spill: _____

THE FOLLOWING ACTIONS HAVE BEEN TAKEN:

___ Appropriate local governmental officials have been notified.

___ TNRCC regional office has been notified.

___ The spill has been contained.

___ Increased monitoring of water supply systems has been initiated.

___ The cause of the spill has been corrected.

___ Clean-up activities are underway/completed.

___ Other _____

PERSONS MAY WISH TO TAKE THE FOLLOWING PERSONAL PRECAUTIONS

- Use only water that has been distilled or boiled at a rolling boil for at least one minute for all personal uses including drinking, cooking, bathing and tooth brushing.
- Don't swim in affected area streams, ponds or lakes.
- Always wash hands thoroughly before preparing or eating food.

- Always wash hands thoroughly after any contact with animals, soil or diapers.
- Private well owners may wish to treat their well water, have their well water tested and inspect their wells for proper siting, construction and maintenance.]

(b) For all wastewater spills as referenced in §319.302(b) of this title (relating to Notification Requirements) the notice must contain the following:

(1) one of the following statements:

(A) a spill from a wastewater treatment facility has occurred; or

(B) a spill from a collection facility has occurred;

(2) the facility name;

(3) person to contact for further information;

(4) the location of the spill;

(5) the estimated date and time of the spill;

(6) the estimated volume of the spill (number of gallons);

(7) the type of the spill (domestic, industrial, etc.);

(8) a description of the area potentially affected, including a down-gradient and lateral distance from the spill site;

(9) the suspected cause of the spill; and

(10) a list of actions that have been taken including, but not limited to:

(A) notification of:

(i) appropriate local government officials; and

(ii) the TCEQ regional office;

(B) containment of the spill;

(C) increased monitoring of water supply systems; and

(D) initiation or completion of clean up activities.

(c) If the wastewater spill meets the conditions of §319.302(b)(2) and/or (b)(3) of this title then the notice must also contain the following precautionary statements:

(1) Persons using private drinking water supply wells located within 1/2-mile of the spill site or within the potentially affected area should use only water that has been distilled or boiled at a rolling boil for at least one minute for all personal uses including drinking, cooking, bathing, and tooth brushing. Individuals with private water wells should have their well water tested and disinfected, if necessary, prior to discontinuing distillation or boiling.

(2) Persons who purchase water from a public water supply may contact their water supply distributor to determine if the water is safe for personal use.

(3) The public should avoid contact with waste material, soil, or water in the area potentially affected by the spill.

(4) If the public comes into contact with waste material, soil, or water potentially affected by the spill, they should bathe and wash clothes thoroughly as soon as possible.