

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new §§319.301-319.303, concerning Public Notice of Spills or Accidental Discharges from Wastewater Facilities Owned or Operated by Local Governments. The new sections are adopted with changes to the proposed text as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6243).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE RULES

The purpose of these rules is to implement House Bill (HB) 1074, 76th Legislature (1999), which amended Texas Water Code (TWC), §26.039. Section 26.039(b) requires the individual operating or in charge of a facility to notify the commission as soon as possible, but within 24 hours of the occurrence of a spill which causes or may cause pollution and to include the location, volume, and content of the discharge or spill in the notice. HB 1074 added §26.039(e) to provide that appropriate local government officials and local media must be notified if the spill comes from a wastewater treatment or collection facility owned or operated by a local government and the spill might adversely affect a source of drinking water.

The legislation requires the commission to adopt rules by December 1, 1999, specifying the conditions under which notification of a spill must be given to appropriate local government officials and local media, the procedures for giving the required notice, the content of the notice, and the manner of giving notice. In developing the rules, the commission must consider the nature and extent of the discharge or spill, the potential effect of a discharge or spill, and regional information about the susceptibility of a particular drinking water source to a specific type of pollution.

The legislation was enacted in response to a water pollution episode in Texas in which a wastewater lift station was struck by lightning and rendered inoperable, causing sewage to back up along a collection line. Approximately 170,000 gallons of wastewater discharged from a manhole in that collection line, spilling into a creek, which in turn is believed to have contaminated public and private wells with the waterborne pathogen *Cryptosporidium*. More than 1,000 people in the area are reported to have become ill. Some people were hospitalized.

The legislature concluded that fewer people would have become ill during the incident if the general public had quickly become aware of the potential risks to them, and taken actions to minimize their risk, such as using disinfected water for personal use. The legislature concluded that notice to the local media was the quickest way to convey this information to the general public.

The following information was used in part as a basis for the development of the criteria to define spills which must be reported. Wastewater collection and treatment facilities often have spills, usually in small amounts. Causes of these events include vandalism, tree root invasions, power failures, breaks in the system, and inadequate volume capacity. Usually, spills do not contaminate drinking water supplies. Less than ten well-documented cases of outbreaks of disease caused by *Cryptosporidium* have been reported in the entire United States from 1975-1997.

The Center for Disease Control (CDC) reports that untreated surface water is more likely than ground water to contain pathogenic microorganisms because of the possibility of direct contamination with animal feces, treated and untreated human sewage, or fecal run-off from adjacent land after heavy rain

or snow melt. Groundwater is less likely to be contaminated because the soil acts as a filter.

Cryptosporidium and *Giardia*, another water borne pathogen, do not reproduce outside of humans and animals, so the number of organisms decreases with distance from the point of contamination. Most outbreaks of disease caused by *Cryptosporidium* and *Giardia* are associated with rainfall events that follow drought. According to the CDC, the few ground water-associated outbreaks of water borne diseases have been attributed to wells that were either poorly located (near sewage facilities), poorly constructed, or damaged (ruptured casings).

Individuals can protect themselves in a contamination situation by using only water that has been distilled or boiled at a rolling boil for at least one minute for all personal uses including drinking, cooking, and bathing. Private well owners can protect themselves by treating their well water, having their well water tested, and inspecting their wells for proper siting, construction, and maintenance.

These rules will increase public awareness of the potential for contamination of drinking water.

Wastewater treatment and collection facilities owned or operated by local governments will be required to give notice to local governments and local media of spills or accidental discharges under conditions that may adversely affect a public or private source of drinking water.

SECTION BY SECTION DESCRIPTION

Section 319.301 defines important terms specifically for Chapter 319, Subchapter C, using language from HB 1074 and existing rules of the commission.

Section 319.301(2) defines “appropriate local government officials” as the county judge, mayor, city manager and director of a water district or authority. These officials were chosen because they are likely to be available and in the best position to determine who needs to be notified.

The definition of “local government” in §319.301(7) is the same as the definition of local government in TWC, §26.001(17).

The definition of “local media” in §319.301(8) was chosen in order to make certain that appropriate media would be notified and to cover all areas, including small ones.

The definition of “spill” in §319.301(12) was taken from the definitions of “spill” and “accidental discharge” in TWC, §26.039.

Section 319.302(a) requires the owner of a facility to appoint a responsible individual to comply with the notice requirements of these rules. This subsection implements HB 1074, which requires an individual to give the notices of spills.

Section 319.302(b) requires the owner of a facility, through its responsible individual, to give notice to appropriate local officials and local media when one of the following types of spills occur: (1) a spill, regardless of volume, that the facility owner knows or has reason to know, will adversely affect a public or private source of drinking water. This is intended to address small volume discharges in situations which will obviously affect drinking water supplies, such as low volume discharges in the

immediate vicinity of a well; (2) a spill of 50,000 gallons or more that meets the following additional criteria based on proximity to drinking water supplies: (a) the spill enters water in the state within 1/2-mile of a public source of drinking water which has been assessed by the commission as vulnerable to contamination; (b) the spill enters water in the state within 1/2-mile of a private source of drinking water located within 1/2-mile of a public source of drinking water which has been assessed by the commission as vulnerable to contamination; (c) the spill enters water in the state within 1/2-mile up-gradient of a public or private source of drinking water surface water intake; (d) the spill occurs in an active groundwater recharge area; or (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.

The original, proposed criteria had no minimum volume threshold levels. The reporting criteria applied the same, regardless of how small or large the spill was. Data obtained by the commission from commenters after the proposal was published indicated that the proposal criteria would create an excessively large number of reportable spills.

The 50,000-gallon threshold is a change from the proposal. Information provided to the commission by members of the affected regulated community and commenters indicates that about 10% of wastewater spills are in excess of 50,000 gallons. The spill in the Texas incident was approximately 170,000 gallons. It is the only well-documented outbreak of disease caused by *Cryptosporidium* in Texas that is alleged to have been caused by wastewater contamination. The commission presumes that a

relationship exists between the volume of a discharge and the discharge's potential to impact sources of drinking water.

The 100,000-gallon spill reporting requirement is a change from the proposal. A very large spill can travel a long distance and can impact a drinking water supply source at distances greater than 1/2-mile. Information provided to the commission by members of the affected regulated community and commenters indicates that approximately 2.0% of wastewater spills are in excess of 100,000 gallons. Therefore, reporting of all such spills is a conservative requirement and should not result in a large number of reports.

These conditions limit the required notice to the types of spills significant enough to threaten public health. If notice was required in all cases of spills, the media and the public might not be able to differentiate between significant and insignificant spills, would not know when to take drinking water precautions, and might disregard notices of significant spills.

Section 319.303 sets out the form of the notice to be given to local officials and local media. The form requires that the location, volume, and content of the spill be disclosed, as required by HB 1074.

The proposal has been modified to include a checklist of actions that have been taken in response to the spill. This will help citizens to know what has already been done about the spill by the time they find out about the spill.

The proposal has also been modified to include a list of suggested precautions that people may wish to take when a spill occurs in their area. These precautions are recommended by the CDC. Several commenters requested that such precautions be put on the form that goes to the media.

FINAL REGULATORY IMPACT ANALYSIS

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 Act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The 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 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 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 TWC, §26.039(b) to notify the commission of all spills which cause, or may cause, pollution.

The 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 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 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 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.

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 rules is to implement the requirements of HB 1074, 76th Legislature, 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 rules will substantially advance this specific purpose by identifying which entities must report, the conditions under which these reports must be made, and the contents of the notice to local governments and local media. Promulgation and enforcement of these rules will not burden private real property. The rules only affect wastewater treatment or collection facilities owned or operated by local governments.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning consistency with the CMP. As required by 31 TAC §505.11(b)(4) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, agency rules regarding operation of wastewater collection and treatment facilities must be consistent with the goals and policies of the CMP to protect the coastal area.

The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal

natural resource areas. CMP policies applicable to the rules include the administrative policies and the policies for activities related to the operation of wastewater collection and treatment facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the rules will encourage prompt notification of local governments and local media of spills, from wastewater treatment and collection facilities owned or operated by local governments, that could adversely affect drinking water sources. This will result in an overall environmental benefit across the state, including coastal areas. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies.

Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that the rules are consistent with CMP goals and policies, and the rules will have a negligible impact upon the coastal area.

HEARING AND COMMENTERS

A public hearing on this proposal was held on September 2, 1999 in Austin, Texas. One person testified at the hearing, representing the City of Wichita Falls. Written comments were received from four individuals and the following organizations: American Water Works Association, Brazos River Authority, Brushy Creek Municipal Utility District, City of Austin, City of College Station, City of Fort Worth, City of Grapevine, City of McAllen, City of Wichita Falls, Eco Resources, Texas Municipal League, Texas Public Works Association, Texas Rural Water Association, and the Texas Water Utilities Association.

ANALYSIS OF TESTIMONY

The American Water Works Association, Brazos River Authority, City of Austin, and the City of College Station stated that these rules should apply to private wastewater utility system facilities as well as publicly owned ones.

The commission disagrees with this comment. The legislation being implemented is specifically limited to public wastewater utility system facilities.

The American Water Works Association, the City of College Station, and the City of Wichita Falls commented that the rules will be difficult to implement and enforce, questioned the degree of protection of public health that will result, and questioned how the TNRCC will know that a system has not reported a spill.

When it adopted HB 1074, the Legislature determined that public notice requirements would protect public health by allowing the public to take precautions themselves. The purpose of these rules is to implement that legislation. The three-tiered approach to reporting focuses on those spills that have the most potential to affect human health. The vulnerability assessments focus on those water supplies that are the most vulnerable to contamination, with the most potential to affect human health. The commission expects all regulated entities to comply with its rules. Failure to comply with rules is discovered through inspections of records, citizen complaints, emergency response, and random inspections. The commission will monitor enforcement of the rules to the same extent as other commission rules.

The City of Austin and ECO Resources commented that the proposed rules appear to be “one size fits all” and do not consider: (1) the nature and extent of the discharge or spill; (2) the potential effect of the discharge or spill; and (3) regional information about the susceptibility of a particular drinking water source to a specific type of pollution, as required by HB 1074.

The commission disagrees with this comment. The adopted rules consider all of the elements required by HB 1074. The adopted rules have a three-tiered approach in §319.302(b), based on volume, which considers the nature and extent of the discharge and the effect of the discharge. The criteria and the vulnerability assessments consider regional information as required.

The American Water Works Association, ECO Resources, and one individual stated that the definition of appropriate local government official should include local health departments.

The commission disagrees. The adopted rules require notice to be given to the heads of both city and county government. Because of overlapping jurisdictions, variations in the structures of local health departments, and other response agencies within city and county governments, the mayor and the county judge are in the best position to determine which departments within their jurisdiction should be notified of a spill.

An individual commented that the Texas Department of Health should be included in the required notification.

The commission disagrees with this comment. HB 1074 requires notification of local government officials. This is a notice of a spill before any health impacts have been determined, to allow the public to take precautions. If health impacts occur, various other state agencies will be notified.

The Texas Rural Water Association and the City of Fort Worth commented that the definition of local media should be limited to those media adequate to notify the public potentially affected by a given spill.

The commission disagrees. The intent of the legislation is to provide notice to the public as quickly as possible. The best way to accomplish this is to require that all local media be contacted.

The Brazos River Authority, Texas Rural Water Association, Texas Water Utilities Association, and an individual commented that the definition of municipal utility district should be revised to include all water districts.

The commission agrees that the proposed definition excluded other water districts, and has modified the definition of local government to include a water district or authority acting under Article III, §52 or Article XVI, §59 of the Texas Constitution.

The Texas Rural Water Association commented that the definition of municipal utility district should be deleted because it is included in the definition of local government.

The commission agrees, and has made the change accordingly.

The American Water Works Association, Brushy Creek MUD, City of College Station, ECO Resources, Texas Rural Water Association, the Texas Municipal League, and three individuals stated that the definition of facility operator should apply only to the owner of the facility, not the individual running the facility.

The commission agrees, and has replaced the term “facility operator” with the term “responsible individual,” which is defined to mean the individual designated by the owner of a facility to give the notices required by these rules. The adopted rules require the owner of a facility to designate a “responsible individual” and report spills through its “responsible individual.” The owner of a facility has the ultimate responsibility for reporting a spill.

The American Water Works Association and Texas Water Utilities Association commented that clarification was needed as to whether a contract operator or the owner of the system has the responsibility for public notification.

The commission agrees with this comment. The owner of the system is responsible for public notification. Adopted §319.302 states that the owner of a facility, through its responsible individual, must notify appropriate local government officials and the local media when a reportable spill occurs. The owner may appoint a contract operator to be the responsible person, but the owner of a facility has the ultimate responsibility for reporting a spill.

The City of Wichita Falls, Texas Public Water Association, Texas Rural Water Association, Texas Water Utilities Association, and the Texas Municipal League commented that the definition of spill in the rules should be more specific.

The commission agrees, and has modified the definition of spill to conform to the statutory definitions in TWC, §26.039(a)(1) and (2).

The City of McAllen, the City of Grapevine, the City of Austin, and Brushy Creek MUD stated that the criteria for reporting are too general, and leave too much to the interpretation of the utility, and that studies should be done to make the criteria specific to local conditions.

The commission disagrees with this comment. The rules must be general enough to apply to all regions of the state. The adopted rules have been revised, however, to be more specific than the proposed rules were, and to provide more guidance to the facility on when to report a spill. HB 1074 imposes time constraints that do not allow for the suggested studies. It requires the commission to adopt rules implementing the legislation by December 1, 1999. The commission will continue to refine the rules as additional information becomes available.

The City of Fort Worth commented that under certain criteria local media will need to be notified, but not local governmental officials.

The commission disagrees with this comment. The county judge must always be notified and must decide who else should be notified. Notice to other local officials will depend on the location of the spill.

An individual recommended clarifying that a spill is also reportable if more than one of the listed criteria exists.

The commission agrees with the commenter. A spill is reportable if at least one of the listed criteria exists. If a spill meets two or more of the criteria, it is still reportable. The rules have been changed to make this clarification.

The City of College Station and ECO Resources commented that the term “pathway” in the proposal should be redefined to make the term less broad.

The commission agrees with this comment. The term “pathway” does not have a well-defined statutory meaning. The commission has replaced the term “pathway” with “water in the state,” as is defined in TWC, §26.001(5).

The American Water Works Association, Brazos River Authority, Brushy Creek MUD, City of Austin, City of College Station, ECO Resources, Texas Rural Water Association, and the Texas Water Utilities Association commented that a spill under a certain volume should be completely exempt from reporting requirements under these rules, unless it will threaten public health or cause an adverse

environmental effect. They commented that the criteria as proposed will result in more reportable spills than the commission originally estimated, with a correspondingly higher cost impact.

The commission agrees, and has revised the criteria in adopted §319.302(b) for the reasons discussed in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE RULES section of this preamble. Spills under 50,000 gallons do not have to be reported to local officials and the media unless the owner knows or has reason to know that the spill will adversely affect a drinking water supply. Spills of 50,000 gallons or greater will have to be reported if they meet certain other criteria. Spills of 100,000 gallons or greater must always be reported. The revisions should significantly reduce the number of reportable spills and focus on those that have the most potential to adversely affect human health or the environment.

The Texas Rural Water Association and Texas Water Utility Association recommended that the commission determine that a spill has the potential to adversely affect a water supply before a facility should be required to notify local officials and the media of a spill.

The commission disagrees. These rules constitute the determination of the commission that a spill which meets the criteria in §319.302 has the potential to adversely affect a water supply.

An individual commented that a large spill should require notification without additional criteria.

The commission agrees, and the adopted rule has been changed to require that spills of 100,000 gallons or more be reported without any other criteria applied. These spills have the potential to adversely affect sources of drinking water at distances greater than 1/2-mile.

The American Water Works Association and the City of College Station questioned how the commission can require other public entities to be responsible for protecting drinking water quality in private wells.

The Texas Water Code does not allow pollution of water in the state. HB 1074 requires public entities to notify the media and local government officials of their applicable sewage spills. These rules implement that legislation. Public entities are responsible for spills that can affect the quality of water in the state, including groundwater.

The City of Fort Worth commented that §319.302(a)(2) of the proposed rules incorrectly references both private and public sources of drinking water.

The commission disagrees. The private drinking water sources of concern are being identified by their proximity to a public drinking water source that has been assessed as vulnerable. The criteria which identified the public drinking water source as vulnerable are assumed to apply to the private source of drinking water also.

The City of Fort Worth, Texas Municipal League, Texas Water Utilities Association, the City of Wichita Falls, and an individual commented that utility systems do not have all of the information needed to assess a spill according to the criteria of these rules. The Brazos River Authority, Texas Rural Water Association, Texas Water Utilities Association, the City of Wichita Falls, and the City of Austin had questions about the commission's vulnerability assessments, when they will be completed, and how the information will be given to the utility systems. The American Water Works Association and the City of College Station suggested that the rules be revised to provide that the criteria for reportable spills be used only in conjunction with TNRCC-issued maps of vulnerable wells and surface water sources.

In 1990, the Texas Public Drinking Water Program began developing criteria to assess the vulnerability of public water supply (PWS) wells, springs, reservoirs, canals, and rivers to contamination. The vulnerability assessments include evaluations of the risk for both microbiological and chemical contamination. Vulnerability assessments are now used to reduce the risk of waterborne disease from drinking water obtained from rivers and lakes, and to help determine if water from PWS wells and springs requires additional treatment.

Vulnerability assessments for microbiological contamination are ongoing, and are prioritized based on the potential risk to public health. Priority is currently given to identifying surface water treatment plants that are at greatest risk to contamination from the protozoan *Cryptosporidium*. Priority is also given to identifying shallow or poorly constructed wells that need improved water treatment.

The vulnerability determinations are scheduled to be completed by December 1999. The data will be available to the public in various formats. Local governments responsible for complying with these rules will be notified if they have vulnerable wells in their counties. Phone numbers to call, Internet addresses, and other specific information will be provided at that time.

The commission disagrees with the comment that the reporting criteria should be used only with TNRCC-provided maps and information. A facility should obtain all available information from all available sources relating to the reporting criteria in the effects of a facility's spills on drinking water.

Three individuals stated that the 1/2-mile distance limitation in the criteria should be increased to a mile.

The commission disagrees. The commission believes that the 1/2-mile distance limitation in certain criteria should be protective of sources of drinking water since the number of disease-causing organisms decreases with distance from the point of contamination. The adopted rules also contain other criteria for reportable spills regardless of distance from a drinking water source.

The City of Fort Worth, Texas Rural Water Association, Texas Municipal League, and one individual commented that the 24-hour period to provide notice should begin when a spill is known to occur rather

than when the spill occurs, since a utility may not know about a spill for some period of time after it occurs.

The commission agrees that it is more reasonable to require notice after a facility becomes aware that a spill occurs. The adopted rules require notice within 24 hours after becoming aware of the spill.

The Texas Rural Water Association commented that the 24-hour reporting requirement in TWC, §26.039 only applies to reporting spills to the commission, not to reporting spills to local governmental officials and local media.

The commission agrees that the 24-hour notice requirement in the statute applies specifically to notice to the commission. However, the intent of HB 1074 was to give notice to potentially affected citizens as quickly as possible, so that they could take precautions themselves. HB 1074 requires the commission to prescribe the procedures for giving notice to appropriate local governments and local media. The commission believes that the 24-hour standard should apply to these notices as well as notice to the commission.

Two individuals suggested additional items to include in the notice (precautions that should be observed and type of spill). ECO Resources commented that the wastewater facility should not make any assessment of danger to drinking water in the notice of spill form. That should be left up to the water system operator.

The commission agrees that listing precautions for the public to observe in the notice will protect the public health by telling the public how to protect themselves. The commission agrees that the forms should disclose the type of spill because HB 1074 requires that the nature and content of the spill be disclosed. The assessment of danger to drinking water in the proposed form has been removed because the wastewater facility is not in the best position to make drinking water quality determinations. The notice of spill form has been modified accordingly. The new form addresses the commenters' concerns.

An individual made a number of suggestions for implementation of these rules, including educational support, training, and other activities.

The commission appreciates the suggestions and will consider these implementation suggestions after these rules requiring notification are adopted.

STATUTORY AUTHORITY

The new sections are adopted under 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; 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.

**SUBCHAPTER C : PUBLIC NOTICE OF SPILLS OR ACCIDENTAL
DISCHARGES FROM WASTEWATER FACILITIES OWNED OR
OPERATED BY LOCAL GOVERNMENTS**

§§319.301 - 319.303

§319.301. Definitions.

The following definitions apply to this subchapter.

(1) **Alluvial well** - A well completed in sedimentary deposits resulting from modern rivers.

(2) **Appropriate local government officials** -

(A) The county judge of a county in which a spill occurs requiring notification under §319.302 of this title (relating to Notification Requirements).

(B) The county judge of a county within 1/2-mile of a spill requiring notification under §319.302 of this title.

(C) The mayor and city manager of a city whose drinking water supply intake is within 1/2-mile of a spill requiring notification under §319.302 of this title.

(D) The director of a water district or authority, acting under the Texas Constitution, Article III, §52, or Article XVI, §59, whose drinking water supply intake is within 1/2-mile of a spill requiring notification under §319.302 of this title.

(3) **Drinking water** - All water:

(A) distributed by any agency or individual, public or private, for the purpose of human consumption;

(B) which may be used in the preparation of foods or beverages;

(C) which may be used for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings;

(D) supplied for human consumption; or

(E) used by any institution catering to the public.

(4) **Facility** - A wastewater treatment plant, collection facility, pumping station, or sewer pipeline owned or operated by a local government.

(5) **Groundwater recharge area** - An area where there is direct and rapid communication of flow from the surface downward to the drinking-water aquifer.

(6) **Karst** - A type of topography that is formed over limestone, dolomite, or gypsum by dissolving or solution, and that is characterized by closed depressions or sinkholes, caves, and underground drainage.

(7) **Local government** - An incorporated city, a county, a river authority, or a water district or authority acting under the Texas Constitution, Article III, §52 or Article XVI, §59.

(8) **Local media** - The daily newspapers and the radio and television media serving the counties and cities served by a facility or the aquifer area in which a spill or accidental discharge occurs, as well as these news organizations in the nearest metropolitan area.

(9) **Private source of drinking water** - A drinking water supply that is not a public source of drinking water.

(10) **Public source of drinking water** - A public water system which provides the public piped water for human consumption, which includes all uses described under the definition of drinking water in paragraph (3) of this section. Such a system must have a potential for at least 15 service connections or serve at least 25 individuals at least 60 days out of the year.

(11) **Responsible individual** - The individual designated by the owner of a facility to give the notices required by §319.302 of this title.

(12) **Spill** - An act or omission through which waste or other substances:

(A) are inadvertently discharged into water in the state; or

(B) will enter water in the state, unless controlled or removed.

(13) **Water in the state** - Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

§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 whenever one of the following types of spills occurs from the facility:

(1) a spill, regardless of volume, that the facility owner knows or has reason to know, will adversely affect a public or private source of drinking water;

(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 enters water in the state within 1/2-mile of a public source of drinking water that has been assessed by the commission as vulnerable to contamination;

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

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

(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 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.

(d) Immediately after giving of notice to appropriate local government officials and local media, the responsible individual must report to the commission regional office in whose region the spill occurred that this notice was given.

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

The notice must be in the following form: Figure: 30 TAC §319.303

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.