

# Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** October 29, 1999

**Thru:** LaDonna Castañuela  
Chief Clerk

**From:** Randy Wood, Deputy Director  
Office of Environmental Policy, Analysis, and Assessment

**Subject:** **Docket No. 1999-1322-RUL.** Consideration of a petition for rulemaking for amendments to 30 TAC Chapter 39, relating to Public Notice, Subchapter E, §39.251, concerning Application for Injection Well Permit, and consideration for conforming amendments to 30 TAC Chapter 39, Subchapter L, §39.651. The petition requests that the commission propose and adopt rules that would change the public notice requirement for mineral rights owners within the cone of influence of an underground injection well. (Devane Clarke/Lara Nehman) (Rule Log No. 99071-039-WS)

## What the Proposed Rule Would Do:

On September 29, 1999, the executive director received a petition for rulemaking from the Texas Chemical Council (TCC) requesting changes to 30 TAC Chapter 39, Subchapter E, §39.251 that proposed an amendment to the mailed notice requirements to owners of mineral rights. The requested amendments would change the requirement for notice to mineral rights owners from those within the cone of influence to those underlying the proposed or existing injection well facility and underlying the tracts of land adjacent to the well facility. For consistency, the Executive Director would propose to make the same amendments to 30 TAC §39.651.

## Applicable Law:

30 TAC §20.15(c) states: "Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the APA [Texas Administrative Procedure Act, Texas Government Code, Chapter 2001]." The 60-day deadline for commission action on the petition is November 29, 1999.

The amended sections would be proposed under Texas Water Code, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §27.015, which requires permit applicants to submit a letter from the Railroad Commission that no oil or gas mineral rights have been impaired; §27.018, which

requires notice of the opportunity to request a public hearing on permit applications to affected persons; and §27.051, which requires the commission to assure that no existing rights are impaired.

**Background:**

During 1996, the commission undertook a major rewrite and consolidation of its procedural rules from the multiple chapters covering multiple technical programs into a consistent set of procedural rules. This was done as part of the commissioners' regulatory reform initiative and was led by the Office of General Counsel. A new Chapter 39 was created to contain all of the public notice requirements of the commission. The underground injection well notice requirements were moved from Chapter 305 and consolidated with notice requirements from other chapters to the extent possible. Staff evaluated rule sections that had created problems for applicants and attempted to clarify the requirements where possible, while assuring that the statutory requirements for notice were met.

One area addressed by staff was the determination of "affected persons" because it had created confusion in the past. Underground injection well operations have the potential to impair mineral rights. While mineral rights owners whose mineral rights might be affected by underground injection wells were clearly potentially "affected persons," they might or might not have received mailed notice under the rules existing at that time.

The commission adopted the current rule that requires mineral rights owners that are "within the cone of influence" to receive mailed notice because mineral rights owners within the cone of influence were determined to be potentially affected persons. This was the first time that the "cone of influence" definition was used in the context of determining what mineral interests might be affected by an underground injection well. The term "cone of influence" is an expression of the distance from an injection well within which drinking water resources may be contaminated by the increased injection zone pressures caused by the injection of wastes.

The regulated public did not provide comment regarding the mailed notice requirement to mineral interests within the cone of influence; and it was not evident at the time of enactment that the rule could potentially require that thousands of individuals receive mailed notice. For injection well applicants with a large cone of influence associated with the injection well, an applicant may be required to research and identify thousands of mineral rights owners to comply with the mailed notice requirement. In turn, the commission could potentially have to verify and send notices to thousands of mineral rights owners. There is no federal or state statutory requirement to mail notice to mineral rights owners.

**Reason Rules Are Needed:**

- a. Description of the Petition for Rulemaking: The TCC filed a petition to amend Chapter 39, Subchapter E, §39.251 to change the mailed notice requirement for draft injection well

permits to owners of mineral rights from those within the cone of influence to those underlying the proposed or existing injection well facility and underlying the tracts of land adjacent to the well facility. For consistency, the Executive Director also proposes to make the same amendment to the new 30 TAC §39.651 recently adopted pursuant to HB 801, that pertains to notice of application and preliminary decision on injection well permits.

- b. Petitioner's Rationale for the Requested Rule Change: Injection well owners with a large cone of influence associated with the injection well report a significant cost (\$20,000 to \$110,000 per facility) to research and identify mineral rights owners within their cone of influence to comply with this notice requirement.
- c. Results of Petitioner's Request and Resulting Rule Change: The proposed rule amendments would significantly decrease the financial burden to the agency and the regulatory burden for underground injection well permit applicants who have a large cone of influence associated with their injection well. For applications in which an injection well has a small cone of influence, the proposed amendments may increase the number of mineral rights owners who must receive mailed notice.

**Staff Recommendation and Rationale:**

The Executive Director supports the rule change because it is a good compromise between the injection well applications involving large and small cones of influence. The proposed rule requiring mailed notice to mineral rights owners whose interests underlie adjacent properties would likely reduce the number of mineral rights owners who receive mailed notice for wells with a large cone of influence, but would likely increase the number of mailed notices required for wells with a small cone of influence. Mailing notice to mineral interests underlying adjacent properties is consistent with the current mailed notice requirement to adjacent landowners.

The rule petition proposes to fix a potentially costly and burdensome situation that may require applicants and the commission to identify and verify thousands of addresses and mail thousands of notices to mineral rights owners. This requirement far exceeds any federal or state statutory requirement and is not covered by the application fees.

Notice by publication is a more prudent method of notifying thousands of people of a permit application and is the current method used by the United States Environmental Protection Agency. With the new Texas Administrative Code Chapter 39 amendments, applicants are required to publish an additional notice earlier in the application process which was not previously required. For wells in which hazardous waste will be injected, there is an additional radio broadcast notice requirement. Additionally, any person at any time may ask to be added to the mailing list for a permit application. A person may also request to be placed on a county-wide mailing list which causes that person to be on the mailing list for any permit application in a particular county.

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There is additional protection for owners of mineral interests. Although mineral interests are potentially affected by an underground injection well permit, the TNRCC does not approve any well unless the Texas Railroad Commission (RRC) has determined that the well will not impair oil and gas interests. Texas Water Code, §27.015, requires an applicant to obtain a letter from the RRC stating that “drilling or using the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any oil or gas formation.” The TNRCC does not declare an application to be technically complete until the RRC letter has been filed.

**Affected Public:**

Owners and operators of injection wells, the commission, and mineral rights owners will be affected by this rulemaking. Injection well applicants with a large cone of influence associated with an injection well may likely experience a reduction in the cost of application and injection well applicants with a small cone of influence associated with the injection well may likely experience an increase in the cost of application. The commission will likely experience a reduction in the time and cost to verify addresses and mail notices to mineral rights owners. Some mineral rights owners who would previously have received mailed notice will no longer receive mailed notice, whereas some who did not previously receive mailed notice will now receive mailed notice. Notice by publication and notice to landowners will not change. Furthermore, as mentioned above, the new procedural rules require that applicants publish an additional notice earlier in the application process. Finally, any person can request to be placed on the mailing list; and the commission will be publicizing the opportunity for members of the public to get their names on county-wide mailing lists.

**Affected Agency Programs:**

There is no anticipated impact to other agency programs as a result of the recommended rulemaking.

**Agency Contacts:**

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