

1           The Railroad Commission of Texas (Commission) adopts amendments to §3.78, relating to Fees  
2 and Financial Security Requirements, without changes to the proposed text as published in the October 2,  
3 2015, issue of the *Texas Register* (40 TexReg 6815). The Commission adopts the amendments to  
4 implement a fee for groundwater protection determination letters as provided in Texas Natural Resources  
5 Code, §91.0115(b), and to correct a form reference.

6           House Bill 2694 (HB 2694), enacted by the 82nd Texas Legislature (Regular Session, 2011)  
7 amended Texas Natural Resources Code, Chapter 91, and Texas Water Code, Chapter 27, to transfer the  
8 Surface Casing Unit from the Texas Commission on Environmental Quality to the Railroad Commission  
9 of Texas. HB 2694 added §91.0115, Texas Natural Resources Code, relating to Casing; Letter of  
10 Determination, which transferred to the Railroad Commission the responsibility for issuing a letter of  
11 determination stating the total depth of surface casing required for an oil or gas well by §91.011. Section  
12 91.0115(b) authorized the Railroad Commission to charge a fee in an amount to be determined by the  
13 Railroad Commission for a letter of determination and to charge an additional fee not to exceed \$75 for  
14 processing a request to expedite a letter of determination. These adopted amendments to §3.78 implement  
15 the Commission's authority to charge a fee for each request for a determination letter. The Commission  
16 will continue to charge an additional fee for a request to expedite a determination letter.

17           The Commission received three comments on the proposal, one from a state representative and  
18 two from individuals. The Commission appreciates these comments.

19           The Honorable Abel Herrero, State Representative for District 34, commented that oil and gas  
20 operators in his area have expressed concern that the fee will exacerbate an already difficult economic  
21 situation, where recent falling oil prices have threatened jobs in the Coastal Bend as producers rethink  
22 the viability of drilling new wells. Representative Herrero asked the Commission to reconsider or  
23 indefinitely suspend the proposed fee. Additionally, one individual stated that small operators are being  
24 "taxed" unfairly when oil prices have fallen below \$50 a barrel, and asked the Commission not to

1 incorporate these additional fees and to continue to provide free "water board" letters.

2           The Commission disagrees with these comments and will implement the fee as proposed. The fee  
3 will ensure that the Commission recovers funds necessary for Commission staff to prepare groundwater  
4 protection determination letters, including the study and evaluation of electronic access to geologic data  
5 and surface casing depths necessary to protect usable groundwater in this state. As noted in the proposal  
6 preamble, the Commission receives at least 18,000 requests for groundwater protection determination  
7 letters each year. The proposal preamble also noted that the new fee will impose a small cost compared to  
8 the overall cost of drilling a well. For example, the average cost to drill a 400-foot wildcat well (one of  
9 the shallowest wells permitted by the Commission) is estimated to be approximately \$229,600 (using an  
10 average cost of \$574 per foot). The groundwater determination letter fee plus the 150% surcharge, at a  
11 total of \$250, is only 0.109% of \$229,600. For deeper wells, the fee will be an even smaller percentage of  
12 the overall cost. Finally, the Commission anticipates the amendments will have a lower cost impact on  
13 small or micro businesses than on large businesses. This is because the number of wells an entity drills or  
14 plugs, and the corresponding number of requests for groundwater determination letters, should be  
15 proportionate to the size of the entity.

16           Another individual commented that a surcharge should not be applied to a nonrefundable fee or  
17 added to the expedite fee, given the price of oil and company cut-backs, and stated that it is not a good  
18 time for the Commission to impose even more fees and surcharges. The Commission disagrees with this  
19 comment. Texas Natural Resources Code §81.070 requires the Commission to impose surcharges on fees  
20 required to be deposited into the Oil and Gas Regulation and Cleanup Fund (the Fund), and groundwater  
21 determination letter fees are required to be deposited in the Fund pursuant to Texas Natural Resources  
22 Code §81.067. For these reasons, the Commission makes no change to the rule as proposed.

23           The Commission adopts new subsection (a)(14) to add a definition for "Groundwater protection  
24 determination letter" to mean "a letter of determination stating the total depth of surface casing required

1 for a well in accordance with Texas Natural Resources Code, §91.011."

2           The Commission adopts §3.78(b)(14)(A) to require a nonrefundable fee of \$100 with each  
3 individual request for a groundwater protection determination letter. The Commission redesignates the  
4 existing language of §3.78(b)(14) concerning the fee for each individual application for an expedited  
5 letter of determination as §3.78(b)(14)(B). Pursuant to §3.78(n), for which no amendments were  
6 proposed, a 150% surcharge would apply to the \$100 fee, for a total cost of \$250 for each request for a  
7 groundwater protection determination letter. If an expedited letter is requested, the expedite fee and its  
8 surcharge will be charged in addition to the regular fee.

9           The Commission also amends §3.78(b)(13)(A) to correct a reference to Form W-3X.

10           The Commission adopts the amendments to §3.78 pursuant to Texas Natural Resources Code,  
11 §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or  
12 engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for  
13 governing and regulating persons and their operations under Commission jurisdiction; Texas Natural  
14 Resources Code, §81.067 and §81.068, relating to the Oil and Gas Regulation and Cleanup Fund; Texas  
15 Natural Resource Code, §81.070, which authorizes the Commission to impose surcharges on fees; Texas  
16 Natural Resources Code, §91.101, which authorizes the Commission to prevent pollution of surface  
17 water or subsurface water from oil and gas operations; Texas Natural Resources Code, §91.011, which  
18 authorizes the Commission to adopt rules concerning the depth of well casing; Texas Natural Resources  
19 Code, §91.0115, which requires the Commission to issue groundwater protection determination letters  
20 and authorizes the Commission to charge an application fee and an expedite application fee; and Texas  
21 Water Code, §27.033, which requires a person applying for a permit under Chapter 27 to submit with the  
22 application a letter of determination from the Commission stating that drilling and using the disposal well  
23 and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that  
24 area and that the formation or stratum to be used for the disposal is not freshwater sand.

1 Texas Natural Resources Code, §§81.051, 81.052, 81.067,81.068, 81.070, 91.101, 91.011, and  
2 91.0115, and Texas Water Code, §27.033 are affected by the adopted amendments.

3 Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 81.067,81.068, 81.070,  
4 91.101, 91.011, and 91.0115, and Texas Water Code, §27.033.

5 Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 91, and Texas Water  
6 Code, Chapter 27.

7  
8 §3.78. Fees and Financial Security Requirements.

9 (a) Definitions. The following words and terms, when used in this section, shall have the  
10 following meanings, unless the context clearly indicates otherwise:

11 (1) - (13) (No change.)

12 (14) Groundwater protection determination letter--A letter of determination stating the  
13 total depth of surface casing required for a well in accordance with Texas Natural Resources Code,  
14 §91.011.

15 (b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

16 (1) - (12) (No change.)

17 (13) Inactive well extension fee.

18 (A) For each well identified by an operator in an application for a plugging  
19 extension based on the filing of an abeyance of plugging report on Commission Form W-3X [~~W3-X~~], the  
20 operator must pay to the Commission a non-refundable fee of \$100.

21 (B) (No change.)

22 (14) Groundwater protection determination letters.

23 (A) With each individual request for a groundwater protection determination  
24 letter, the applicant shall submit to the Commission a nonrefundable fee of \$100.

1                    (B) With each individual application for an expedited letter of determination  
2 stating the total depth of surface casing required for a well in accordance with Texas Natural Resources  
3 Code, §91.0115(b), the applicant shall submit to the Commission a nonrefundable fee of \$75, in addition  
4 to the fee required by subparagraph (A) of this paragraph.

5                    (15) - (16) (No change.)

6                    (c) - (n) (No change.)

7                    This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and  
8 found to be a valid exercise of the agency's legal authority.

9                    Issued in Austin, Texas, on January 12, 2016.

10                    Filed with the Office of the Secretary of State on January 12, 2016.

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