

WATER CODE

TITLE 2. WATER ADMINISTRATION

SUBTITLE D. WATER QUALITY CONTROL

CHAPTER 28. WATER WELLS AND DRILLED OR MINED SHAFTS

SUBCHAPTER A. GENERAL PROVISIONS

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. [766](#), 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 28.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Executive Director" means the executive director of the Texas Natural Resource Conservation Commission.

(3) "Shaft" means any vertically oriented excavation, whether constructed by drilling or mining techniques, where the depth of the excavation is greater than its diameter, the excavation penetrates into or through the base of the uppermost water-bearing strata, and the primary purpose of the excavation is the transport of workers and materials to and from a destination, at depth, for purposes of geological studies, access to existing and planned subsurface mine workings, or for ventilation of those workings.

(4) "Water" or "water in the state" means 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 natural and artificial surface water that is inland or coastal, fresh or salt, and navigable or nonnavigable, and includes 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.

(5) "Surface facilities" means the on-site above-ground appurtenances, structures, equipment, and other fixtures that are or will be used for storage or processing or in

conjunction with the shaft operation.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983; Acts 1985, 69th Leg., ch. 795, Sec. 1.122, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.301, eff. Sept. 1, 1995.

#### SUBCHAPTER B. WATER WELLS

Sec. 28.011. UNDERGROUND WATER: REGULATIONS. Except as otherwise provided by this code, the commission may make and enforce rules and regulations for protecting and preserving the quality of underground water.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 28.002 by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 914, Sec. 1, eff. Aug. 30, 1993.

Sec. 28.012. CERTAIN WELLS TO BE PLUGGED OR CASED. The owner of a water well which encounters salt water or water containing mineral or other substances injurious to vegetation or agriculture shall securely plug or case the well in a manner that will effectively prevent the water from escaping from the stratum in which it is found into another water-bearing stratum or onto the surface of the ground.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 28.003 by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

#### SUBCHAPTER C. DRILLED OR MINED SHAFTS

Sec. 28.021. PERMIT FROM COMMISSION. No person desiring to drill, excavate, or otherwise construct a shaft as defined in this chapter may commence construction without first obtaining a permit for such work from the commission.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18,

1983.

Sec. 28.022. APPLICATION FOR PERMIT. The commission shall prescribe forms for application for a permit and shall make the forms available on request without charge.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.023. INFORMATION REQUIRED OF APPLICANT. An applicant shall furnish any information the commission considers necessary to discharge its duties under this chapter and the rules of the commission.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.024. APPLICATION FEE. With each application for a shaft permit, the commission shall collect a fee as set by the executive director to reasonably offset the costs to the commission for processing the application. The fee may not be less than \$10,000.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.025. LETTER FROM RAILROAD COMMISSION. A person making application to the commission for a shaft permit shall submit with the application a letter from the railroad commission stating that such shaft construction will not endanger or injure any oil or gas formation or significantly limit the potential for future recovery of or exploration for oil or gas.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.026. INSPECTION OF SHAFT LOCATION. On receiving an

application for a permit, the executive director shall have an inspection made of the location of the proposed shaft to determine the local conditions and probable effect of the shaft on water in the state and shall determine the requirements for setting of casing, liners, and seals as provided in Sections 28.030, 28.036, and 28.037 of this chapter.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.027. RECOMMENDATIONS FROM OTHER AGENCIES. The executive director shall submit to such state agencies and other persons that the commission may designate copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the commission may prescribe.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.123, eff. Sept. 1, 1985.

Sec. 28.028. HEARING ON PERMIT APPLICATION. (a) The commission shall hold an adjudicatory hearing on the application.

(b) The commission by rule shall provide for giving notice of a public hearing on a permit application. The rules for notice shall include provisions for giving notice to local governments and interested persons.

(c) The hearing required in Subsection (a) of this section shall be conducted in accordance with rules for contested cases under Chapter 2001, Government Code. Any person, corporation, partnership, association, local government, government agency, or other entity shall be allowed to participate in a hearing as a party under this section upon a showing of sufficient interest or of an ability to contribute to the resolution of relevant issues.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.124, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(63), eff. Sept. 1, 1995.

Sec. 28.029. DELEGATION OF HEARING POWERS. (a) The commission may authorize the chief administrative law judge of the State Office of Administrative Hearings to call and hold hearings on any subject on which the commission may hold a hearing.

(b) The commission may also authorize the chief administrative law judge to delegate to one or more administrative law judges the authority to hold any hearing the chief administrative law judge calls.

(c) At any hearing called under this section, the chief administrative law judge or the administrative law judge to whom a hearing is delegated may administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1995, 74th Leg., ch. 106, Sec. 4, eff. Sept. 1, 1995.

Sec. 28.030. RULES, ETC. (a) The commission shall adopt rules reasonably required for the performance of the powers, duties, and functions of the commission under this chapter.

(b) Such rules shall be published as proposed rules, as prescribed by Chapter 2001, Government Code, no later than 120 days after the enactment of this section and shall provide reasonable time for the commission to receive comments and recommendations from interested agencies and the public before adoption by the commission.

(c) No shaft permit shall be issued by the commission pursuant to this chapter nor shall a permit hearing be held on a shaft application until the commission has adopted rules for the issuance of such shaft permit.

(d) The commission may refuse to accept a shaft permit application or hold a shaft permit application hearing if the planned siting of the shaft is the subject of litigation.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.125, eff.

Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(63), eff. Sept. 1, 1995.

Sec. 28.031. ISSUANCE OF PERMIT. (a) The commission may grant an application in whole or part and may issue the shaft permit if it finds:

(1) that the use or installation of the shaft is in the public interest and that after consideration of all siting alternatives there is a public need for construction of the shaft at the location for which the application is made;

(2) that no existing rights, including but not limited to mineral rights and water rights, will be impaired;

(3) that, with proper safeguards, both ground and surface water can be adequately protected from pollution; and

(4) that the applicant has made a satisfactory showing of financial responsibility if required by Subsection (b) of Section 28.053 of this chapter.

(b) In the permit the commission shall impose terms and conditions reasonably necessary to protect all water from pollution, including the necessary casing, liners, seals and surface facilities.

(c) In the permit the commission shall impose terms and conditions for final closure of surface facilities and plugging and sealing of the shaft reasonably necessary to protect all water penetrated from pollution.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.032. COPIES OF PERMIT; FILING REQUIREMENTS. (a) The commission shall furnish the railroad commission with a copy of each shaft permit the commission issues.

(b) Before beginning shaft construction, a person receiving a shaft permit shall file a copy of the permit with the commissioners court of the county in which the shaft is to be located.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.126, eff.

Sept. 1, 1985.

Sec. 28.033. RECORD OF STRATA. (a) The commission shall require a person applying for a shaft permit to drill or have drilled a test hole on center or offset to the shaft and provide the following to the commission and the railroad commission in the application:

- (1) a description of the lithology into or through the lower confining strata;
- (2) results of rock testing;
- (3) geophysical logs; and
- (4) other information that may be required by the commission.

(b) The commission shall require a person receiving a shaft permit to keep and furnish to the commission and the railroad commission a complete and accurate record of the depth, thickness, and character of the different strata or rock units penetrated in constructing the shaft.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.034. GEOPHYSICAL AND DRILLING LOG. If the shaft is to be constructed over, around, or within 2,000 feet of an existing drilled borehole or boreholes, the commission shall require the applicant for a shaft permit to furnish such geophysical logs as may be required by the commission, including electric logs, and the drilling log and well completion record of all existing boreholes to the commission, along with a complete and accurate core data record of the depth, thickness, and character of the different strata or rock units penetrated as a part of the shaft application.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.035. SEISMIC REFLECTION SURVEY. The commission shall require as a part of any shaft application a seismic

reflection survey and velocity control data conforming, at minimum, to specifications established by the commission in the rules provided for in Subsection (a) of Section 28.030 of this chapter. Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.036. CASING, LINER, AND SEAL REQUIREMENTS. (a) The casing, liners, and seal(s) shall be set at the depth, with the materials, and in the manner required by the commission.

(b) The permittee shall provide records as required by the executive director to indicate compliance with Subsection (a) of this section.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.037. FACTORS IN SETTING CASING, LINER, AND SEAL REQUIREMENTS. Before setting the casing, liner, and seal requirements, the commission shall consider:

(1) known geological and hydrological conditions and relationships;

(2) foreseeable future economic development in the area; and

(3) foreseeable future demand for the use of fresh water in the locality.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983.

Sec. 28.038. ENVIRONMENTAL REPORT. If an environmental report, environmental assessment, or environmental impact statement of any kind that includes an analysis of the environmental impacts of the shaft construction or operation is required by any federal or state agency before approval to construct the shaft, the environmental document, along with evidence of the needed approvals that have been granted, must be submitted to the commission as part of the shaft permit application, and the commission shall make the environmental



document available for public review and comment for a period of not less than 30 days before the application for the shaft permit is considered.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

#### SUBCHAPTER D. COMMISSION AUTHORITY

Sec. 28.051. POWER TO ENTER PROPERTY. Members of the commission, employees and agents of the commission, and authorized agents or employees of local governments may enter public or private property at any time to inspect and investigate conditions relating to shaft activities or to monitor compliance with a rule, permit, or other order of the commission. Members, employees, or agents acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.052. POWER TO EXAMINE RECORDS. Members of the commission, employees and agents of the commission, and authorized agents or employees of local governments may examine and copy those records or memoranda of a shaft permittee or his contractors they are investigating or monitoring as provided by Section [28.051](#) of this chapter that relate to the construction and operation of a shaft or any other records required to be maintained by law.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.127, eff. Sept. 1, 1985.

Sec. 28.053. FINANCIAL RESPONSIBILITY. (a) The commission may require in a shaft permit that the permittee reimburse the commission for reasonable costs of monitoring and on-site,

full-time surveillance to determine compliance with a rule, permit, or other order of the commission.

(b) A person to whom a shaft permit is issued may be required by the commission to maintain a performance bond or other form of financial security to ensure payment of costs that may become due in accord with Subsection (a) of this section or to ensure that an abandoned shaft is safely and properly sealed and plugged.

Added by Acts 1983, 68th Leg., p. 651, ch. 148, Sec. 1, eff. May 18, 1983. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.128, eff. Sept. 1, 1985.

#### SUBCHAPTER E. LEAKING WATER WELLS GRANT PROGRAM

Sec. 28.101. DEFINITIONS. In this subchapter:

(1) "District" means a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production of water wells, or both.

(2) "Fund" means the leaking water wells fund created under Section 28.103.

(3) "Program" means the leaking water wells program established under Section 28.104.

Added by Acts 2023, 88th Leg., R.S., Ch. 876 (H.B. 4256), Sec. 1, eff. June 13, 2023.

Sec. 28.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a district in a county that:

(1) has a population of 16,000 or less; and

(2) is adjacent to at least seven counties with populations of less than 15,000.

Added by Acts 2023, 88th Leg., R.S., Ch. 876 (H.B. 4256), Sec. 1, eff. June 13, 2023.

Sec. 28.103. LEAKING WATER WELLS FUND. (a) The leaking water wells fund is created as a fund in the state treasury outside the general revenue fund.

(b) The fund consists of:

(1) money appropriated, credited, or transferred to the fund by the legislature;

(2) gifts or grants contributed to the fund; and

(3) interest earned on deposits and investments of the fund.

(c) Interest earned on money deposited to the credit of the fund is exempt from Section 404.071, Government Code. Interest earned on money in the fund shall be retained in the fund.

(d) The fund may be used only to implement the program established under Section 28.104, including the costs of program administration and operation.

Added by Acts 2023, 88th Leg., R.S., Ch. 876 (H.B. 4256), Sec. 1, eff. June 13, 2023.

Sec. 28.104. LEAKING WATER WELLS PROGRAM. The commission shall establish and administer the leaking water wells program to plug leaking water wells. Under the program, the commission shall provide grants to districts for eligible projects to offset the cost of plugging leaking water wells.

Added by Acts 2023, 88th Leg., R.S., Ch. 876 (H.B. 4256), Sec. 1, eff. June 13, 2023.

Sec. 28.105. APPLICATION FOR GRANT. (a) A district may apply for and receive a grant for an eligible project under the program.

(b) An application for a grant under this subchapter must be made on a form provided by the commission and must contain the information required by the commission.

Added by Acts 2023, 88th Leg., R.S., Ch. 876 (H.B. 4256), Sec. 1, eff. June 13, 2023.

Sec. 28.106. ELIGIBILITY OF PROJECTS FOR GRANTS; PRIORITIZATION. (a) To be eligible for a grant for a project, a district must:

(1) demonstrate that the project includes a leaking water well:

(A) that:

(i) is located within 2,000 feet of a drinking water well, a water well for livestock or irrigation, or a sensitive wildlife area; or

(ii) has seasonal or annual flow to the surface, or a hydrological connection to surface water, including a waterway, intermittent stream, or springs system; and

(B) of which:

(i) the plug, casing, completion interval, or general integrity is known by the district to be deficient; or

(ii) the completion interval is sufficiently proximate to other known intervals or pressurized zones with high concentrations of salinity, chlorides, sulfides, or other hazardous or toxic components;

(2) obtain any necessary approval from a surface owner for access to the property where the leaking water well is located; and

(3) as necessary and subject to Subsection (b), engage in a bid process to select and hire a contractor or subcontractor to perform the work.

(b) Notwithstanding any other law, a contract for work on a project for which a grant is provided under the program:

(1) must be awarded to a contractor or subcontractor selected from a list of approved well pluggers maintained by the Railroad Commission of Texas; and

(2) may be awarded to the contractor or subcontractor whose bid or proposal the recipient of the grant determines provides the best value for the recipient based on the selection criteria published by the recipient.

(c) The commission by rule shall establish criteria for prioritizing projects eligible to receive a grant under the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 876 (H.B. [4256](#)), Sec. 1, eff. June 13, 2023.

Sec. 28.107. RESTRICTION ON USE OF GRANT. (a) A recipient of a grant provided under the program may use the grant only to pay the cost of the project for which the grant is provided. A recipient

may not use the grant to pay administrative costs associated with the project.

(b) A leaking water well plugged under the program must be permanently plugged. The commission, in consultation with the Railroad Commission of Texas, shall establish criteria for ensuring that a well is permanently plugged.

(c) The amount of a grant provided under the program that is not spent for the completion of a project must be returned to the commission for deposit to the credit of the fund.

Added by Acts 2023, 88th Leg., R.S., Ch. 876 (H.B. [4256](#)), Sec. 1, eff. June 13, 2023.