



JOHNSON RADCLIFFE
PETROV & BOBBITT PLLC

PUBLIC LAW NEWS FLASH

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NEW WATER WELL REGULATIONS ADOPTED IN MONTGOMERY COUNTY

On August 26, 2002, the Lone Star Groundwater Conservation District (the "District") adopted rules regulating the drilling and operation of water wells in Montgomery County and set fees for the production of groundwater. The District was created by the Texas Legislature and was confirmed at an election held last November. The purpose of the District is to manage and conserve groundwater in Montgomery County. To this end, the District began drafting rules related to the drilling and operation of water wells last spring. This first draft of the District's rules immediately established a permitting scheme restricting both the development of new wells in Montgomery County, as well as production increases from existing wells. Moreover, this draft, which was not based on any scientific data concerning the groundwater aquifers in Montgomery County failed to take into account the lack of alternative water supplies.

Realizing the negative impact this could have on public water systems operating in Montgomery County, Johnson Radcliffe Petrov & Bobbitt PLLC ("JRPB") immediately began working to make changes to the proposed rules. With the cooperation of certain Board members of the District, JRPB was successful in having a provision inserted in the adopted rules assuring that water well permits will continue to be issued at least until alternate sources of supply become available. The adopted rules also exempted from regulation certain domestic wells producing less than 25,000 gallons per day. Non-exempt wells, however, must comply with a number of new requirements, including the following:

★ HISTORIC USE PERMIT REQUIREMENTS

All non-exempt wells in operation prior to August 26, 2002 must apply for a historic use permit no later than December 1, 2002. Under a historic use permit, well owners will be entitled to pump up to their maximum annual usage of groundwater during any full calendar year since January 1, 1992. Historic use permits are significant in that historic users will be given priority over other groundwater users in the event that groundwater pumpage must be reduced in the future. Failure to file an application by December 1st forfeits any claim for historic use.

★ OPERATING PERMIT REQUIREMENTS

For all wells drilled after August 26, 2002, an operating permit is required. The deadline for submitting an operating permit application for those wells currently under construction is December 1, 2002. After December 1, 2002, an operating permit must be obtained before drilling any new non-exempt well.

★ METER REQUIREMENTS

On or before January 1, 2003 all non-exempt wells must be equipped with flow meters. The District's rules specify certain minimum requirements for such meters and further require that records be maintained of all water produced.

★ ANNUAL REPORT REQUIREMENTS

Beginning February 15, 2003 and no later than February 15 of each year thereafter, all permittees are required to submit an annual report to the District detailing the monthly and annual amounts of groundwater produced for the preceding calendar year as well as the purpose for which the groundwater was used.

★ PUMPAGE FEE REQUIREMENTS

For the period September 1 through December 31, 2002, the District has adopted a pumpage fee of \$0.05 per 1,000 gallons of groundwater produced. The 2002 fee must be paid at the time that a historic use or operating permit application is filed, i.e. no later than December 1, 2002. A five percent discount is available to any permittee choosing to pay the fee before October 15, 2002. Beginning in 2003, the fee is due annually no later than January 1 of each year except that permittees paying an annual fee greater than \$500.00 may pay such fee in quarterly installments no later than the first day of January, April, July and October. JRPB is recommending that its clients amend their rate orders to include a pass-through clause in order to include this new fee as part of their customer billings.

The above are only highlights of the District's new rules. Additional regulations contained in the rules may apply to anyone who utilizes groundwater in Montgomery County.

For more information regarding the rules, contact Alan P. Petrov at apetrov@publiclaw.com.