The Texas Commission on Environmental Quality (commission) proposes amendments to §213.3 and §213.5.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

Texas Civil Statutes, Article 3271b, requires a geologist who provides information to the agency as part of either a geologic assessment or a hydrogeologic evaluation of a sensitive feature to be licensed by the Texas Board of Professional Geoscientists. The geologist must also have training and experience in groundwater hydrology and related fields that enable that individual to make sound professional judgments regarding the identification of sensitive features located in the recharge zone or transition zone.

SECTION BY SECTION DISCUSSION

Throughout the sections, administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

Proposed §213.3, Definitions, amends the introductory paragraph to eliminate possible conflict or ambiguity and amends paragraph (14) by revising the definition of geologist to be a Texas licensed professional geoscientist who has training and experience in groundwater hydrology and related fields that enable that individual to make sound professional judgments regarding the identification of sensitive features located in the recharge zone or transition zone. This amendment will supercede the current definition, which defines a geologist as a person who has received a baccalaureate or post-graduate degree in the natural science of geology from an accredited university and has training and experience in groundwater hydrology and related fields, or has demonstrated such qualifications by registration or licensing by a state, professional certification, or has completed accredited university programs that enable that individual to make sound professional judgments regarding the identification of sensitive features located in the recharge zone or transition zone. Proposed §213.3 also proposes a new paragraph (21) that defines licensed professional geoscientist as a geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice. Existing paragraphs (21) through (38) are proposed to be renumbered.

Proposed §213.5, Required Edwards Aquifer Protection Plans, Notification, and Exemptions, amends subsections (b)(3), (c)(3)(K) and (4)(C), (d)(2)(C), (e)(2)(C), and (f)(2)(B), (f)(2)(D), and (C)(i). Proposed subsection (b)(3) requires that the geologic assessment report be signed, sealed, and dated by

the geologist preparing the report. Proposed subsection (c)(3)(K) requires that the location and extent of geologic features encountered during construction of sewer lines be assessed by a geologist. Proposed subsection (c)(4)(C) adjusts the reference back to subsection (b)(3); makes a minor grammatical correction; requires that the geologic assessment for an organized sewage collection system plan be performed by a geologist; and requires that the geologic assessment report be signed, sealed, and dated by the geologist preparing the report. Proposed subsection (d)(2)(C) corrects a punctuation error; requires that the geologic assessment for an underground storage tank facility plan be prepared by a geologist; and requires that the geologic assessment report be signed, sealed, and dated by the geologist preparing the report. Proposed subsection (e)(2)(C) corrects a punctuation error; requires that the geologic assessment for an aboveground storage tank facility plan be prepared by a geologist; and requires that the geologic assessment report be signed, sealed, and dated by the geologist preparing the report.

Proposed subsection (f)(2)(B) amends the requirements regarding reports given to the executive director if a sensitive feature is discovered during construction, replacement, or rehabilitation. The geologic assessment report must be prepared by a geologist and must be signed, sealed, and dated by the geologist preparing the report. Proposed subsection (f)(2)(C)(i) requires the geologist who certifies that a lift station excavation has been inspected for the presence of sensitive features must sign, seal, and date the certification. Proposed subsection (f)(2)(D) requires the geologist who certifies that an underground storage tankhold excavation has been inspected for the presence of sensitive features must sign, seal, and date the certification.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated with obtaining the professional geoscientist license is $200 to cover the application and first-year license, and $150 per year after the first year.

Ms. Conrad also determined that, for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The public benefit anticipated from the employment of licensed professional geoscientists will be a potential increase in the quality of assessments and evaluations for the Edwards Aquifer. The practice of licensing professional geoscientists was established to set unified qualification standards for state agencies to regulate the public practice of geoscience, which ensures a certain level of ability to make sound, professional judgments. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact

statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of major environmental rule.

In addition, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed amendments to Chapter 213 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These proposed rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the CAMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 2, 2003, and should reference Rule Log Number 2001-051A-213-WT. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A: EDWARDS AQUIFER IN MEDINA, BEXAR, COMAL, KINNEY, UVALDE, HAYS, TRAVIS, AND WILLIAMSON COUNTIES

§213.3, §213.5

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

These proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§213.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings. [The definitions in Texas Water Code, §§26.001, 26.263, and 26.342 are applicable to this chapter. When used in this chapter, those definitions have the same meaning as the following definitions, unless the context in which they are used clearly indicates otherwise, or those definitions are inconsistent with the definitions listed in this section].

(1) - (4) (No change.)

(5) **Best management practices (BMPs)** - A schedule of activities, prohibitions, [of] practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state [State]. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are those measures that are reasonable and necessary to protect groundwater and surface water quality, as provided in technical guidance prepared by the executive director or other BMPs which are technically justified based upon studies and other information that are generally relied upon by professionals in the environmental protection field and are supported by existing or proposed performance monitoring studies, including, but not limited to, EPA [U.S. Environmental Protection Agency], American Society of Civil Engineers, and Water Environment Research Foundation guidance.

(6) - (13) (No change.)

(14) **Geologist** - A Texas licensed professional geoscientist who has training and experience in groundwater hydrology and related fields that enable that individual to make sound professional judgments regarding the identification of sensitive features located in the recharge zone or transition zone. [A person who has received a baccalaureate or post-graduate degree in the natural science of geology from an accredited university and has training and experience in groundwater hydrology and related fields, or has demonstrated such qualifications by registration or licensing by a state, professional certification, or has completed accredited university programs that enable that

individual to make sound professional judgements regarding the identification of sensitive features located in the recharge zone or transition zone.]

(15) (No change.)

(16) **Hazardous substance** - Any substance designated as such by the administrator of the EPA under [Environmental Protection Agency pursuant to] the Comprehensive Environmental Response, Compensation, and Liability Act; regulated in accordance with [pursuant to] the Federal Water Pollution Control Act, Chapter 311; or any solid waste, or other substance that is designated to be hazardous by the commission, in accordance with [pursuant to the] Texas Water Code, §26.263 or Texas Health and Safety Code, §361.003.

(17) - (20) (No change.)

(21) **Licensed professional geoscientist** - A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(22) [(21)] **Organized sewage collection system** - Any public or private sewerage system for the collection and conveyance of sewage to a treatment and disposal system that is regulated in accordance with rules of the commission and provisions of Texas Water Code, Chapter 26. A

system may include lift stations, force mains, gravity lines, and any other appurtenance necessary for conveying wastewater from a generating facility to a treatment plant.

(23) [(22)] **Permanent best management practices [BMPs]** - Best management practices used to prevent and control pollution from regulated activities after construction is complete.

(24) [(23)] **Pollution** - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

(25) [(24)] **Private sewage facilities** - On-site sewage facilities as defined under Chapter 285 of this title (relating to On-Site [On-site] Sewage Facilities).

(26) [(25)] **Private service lateral** - A wastewater line extending from the building drain to an existing private or public sewage collection system or other place of disposal that provides service to one single-family residence or building, with the [and whose] operation and maintenance as [are] the sole responsibility of the tenant or owner of the building. A wastewater line extending from the convergence of private service laterals from more than one single-family residence or building is considered a sewage collection system.

(27) [(26)] **Recharge zone** - Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the appropriate regional office and groundwater conservation districts.

(28) [(27)] **Regulated activity** -

(A) Any construction-related or post-construction activity on the recharge zone of the Edwards Aquifer having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams. These activities include, but are not limited to:

(i) construction of buildings, utility stations, utility lines, roads, highways, or railroads;

(ii) clearing, excavation, or any other activities that alter or disturb the topographic, geologic, or existing recharge characteristics of a site;

(iii) any installation of aboveground or underground storage tank facilities on the recharge or transition zone of the Edwards Aquifer; or

(iv) any other activities that may pose a potential for contaminating the Edwards Aquifer and hydrologically connected surface streams.

(B) Regulated activity ["Regulated activity"] does not include:

(i) clearing of vegetation without soil disturbance;

(ii) agricultural activities, except feedlots/concentrated animal feeding operations which are regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule);

(iii) activities associated with the exploration, development, and production of oil, gas, or geothermal resources under the jurisdiction of the Railroad Commission of Texas;

(iv) routine maintenance of existing structures that does not involve additional site disturbance, such as, but not limited to:

(I) the resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces; [,] and

(II) the building of fences, or other similar activities in which:

(-a-) there is little or no potential for contaminating groundwater; [,] or

(-b-) there is little or no change to the topographic, geologic, or existing sensitive features; or

(v) construction of single-family residences on lots that are larger than five acres, where no more than one single-family residence is located on each lot.

(29) [(28)] **Sensitive feature** - Permeable geologic or manmade feature located on the recharge zone or transition zone where:

(A) a potential for hydraulic interconnectedness between the surface and the Edwards Aquifer exists; [,] and

(B) rapid infiltration to the subsurface may occur.

(30) [(29)] **Sewage holding tank** - A tank or other containment structure used to receive and store sewage until its ultimate disposal in an approved treatment facility.

(31) [(30)] **Site** - The entire area included within the legal boundaries of the property described in the application. Regulated activities on a site that is located partially on the recharge zone

and transition zone, where the natural drainage in the transition zone flows back to the recharge zone, will be treated as if the entire site is located on the recharge zone.

(32) [(31)] **Static hydrocarbon** - A hydrocarbon which is liquid at atmospheric pressure and 20 degrees centigrade.

(33) [(32)] **Stub out** - A wye, tee, or other manufactured appurtenance placed in a sewage collection system providing a location for a future extension of the collection system.

(34) [(33)] **Temporary best management practices [BMPs] -** Best management practices used to prevent and control pollution from regulated activities during construction.

(35) [(34)] **Tertiary containment** - A containment method by which an additional wall or barrier is installed outside of the secondary storage vessel (e.g., tank or piping) or other secondary barrier in a manner designed to prevent a release from migrating beyond the tertiary wall or barrier before the release can be detected. Tertiary containment systems include, but are not limited to, impervious liners and vaults surrounding a secondary tank and/or piping system, or equivalent triple wall tank or piping system as approved by the executive director.

(36) [(35)] **Transition zone** - That area where geologic formations crop out in proximity to and south and southeast of the recharge zone and where faults, fractures, and other geologic features present a possible avenue for recharge of surface water to the Edwards Aquifer,

including portions of the Del Rio Clay, Buda Limestone, Eagle Ford Group, Austin Chalk, Pecan Gap Chalk, and Anacacho Limestone. The transition zone is identified as that area designated as such on official maps located in the appropriate regional office and groundwater conservation districts.

(37) [(36)] **Underground storage tank facility** - The site, tract, or other defined area where one or more underground storage tank systems are located, including all contiguous land and associated improvements.

(38) [(37)] **Underground storage tank system** - Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% [ten percent] or more beneath the surface of the ground.

(39) [(38)] **Well** - A bored, drilled, or driven shaft, or an artificial opening in the ground made by digging, jetting, or some other method, where the depth of the well is greater than its largest surface dimension. A well is not a surface pit, surface excavation, or natural depression.

§213.5. Required Edwards Aquifer Protection Plans, Notification, and Exemptions.

(a) (No change.)

(b) Water pollution abatement plan. A water pollution abatement plan must contain the following information.

(1) (No change.)

(2) Site location.

(A) - (B) (No change.)

(C) A site plan with a minimum scale of one [1] inch to 400 feet must show:

(i) (No change.)

(ii) the layout of the development showing existing and finished contours as [at] appropriate, but not greater than ten-foot contour intervals;

(iii) the location of all known wells (including, but not limited to, water wells, oil wells, and unplugged and abandoned wells);

(iv) - (x) (No change.)

(3) Geologic assessment. For all regulated activities, the applicant must submit a geologic assessment report prepared by a geologist describing the site-specific geology. The report must identify all potential pathways for contaminant movement to the Edwards Aquifer. Single-family residential subdivisions constructed on less than ten acres are exempt from this requirement. The geologic assessment report must be signed, sealed, and dated by the geologist preparing the report.

(A) - (B) (No change.)

(C) The geologic assessment must contain a description and evaluation of all geologic and manmade features, on forms provided by, or approved by, the executive director. The assessment must determine which of these features are sensitive features. The assessment must include:

(i) the identification of each geologic or manmade feature, with a cross-reference [cross reference] to the site-plan map coordinates; and

(ii) (No change.)

(D) - (E) (No change.)

(4) Technical report.

(A) The technical report must address the following issues.

(i) - (vi) (No change.)

(vii) The report must contain the [The] name of the receiving water(s) at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project.

(B) The technical report must describe the temporary best management practices (BMPs) and measures that will be used during and after construction. The technical report must clearly describe for each major activity identified in subparagraph (A)(v) of this paragraph appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented.

(i) BMPs and measures must prevent pollution of surface water, groundwater, or storm water [stormwater] that originates upgradient from the site and flows across the site as provided under this paragraph.

(ii) - (vi) (No change.)

(vii) Temporary sediment pond or basin construction plans and design calculations for a proposed temporary BMP or measure must be prepared by or under the direct supervision of a Texas licensed professional engineer [Licensed Professional Engineer]. All

construction plans and design information must be signed, sealed, and dated by the Texas licensed professional engineer [Licensed Professional Engineer].

(viii) Pilot-scale field testing (including water quality monitoring) may be required for BMPs that are not contained in technical guidance recognized by, or prepared by, the executive director.

(ix) - (x) (No change.)

(xi) If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site [offsite] impacts to water quality (e.g., fugitive sediment in street being washed into surface streams or sensitive features by the next rain).

(xii) Sediment must be removed from sediment traps or sedimentation ponds not later than when design capacity has been reduced by 50% [percent].

(xiii) Litter, construction debris, and construction chemicals exposed to storm water [stormwater] shall be prevented from becoming a pollutant source for storm water [stormwater] discharges (e.g., screening outfalls, picked up daily).

(C) The technical report must describe the permanent BMPs [best management practices (BMPs)] and measures that will be used during and after construction is completed.

(i) BMPs and measures must prevent pollution of surface water, groundwater, or storm water [stormwater] that originates upgradient from the site and flows across the site.

(ii) BMPs and measures must prevent pollution of surface water or groundwater that originates on-site or flows off the site, including pollution caused by contaminated storm water [stormwater] runoff from the site.

(iii) (No change.)

(iv) To the extent practicable, BMPs and measures must maintain flow to naturally occurring sensitive features identified in either the geologic assessment, executive director review, or during excavation, blasting, or construction.

(I) The permanent sealing of, or diversion of, flow from a naturally occurring [naturally-occurring] sensitive feature that accepts recharge to the Edwards Aquifer as a permanent pollution abatement measure should be avoided.

(II) A request to seal a naturally occurring [naturally-occurring] sensitive feature must include a justification as to why no reasonable and practicable alternative exists. The request will be evaluated by the executive director on a case-by-case basis.

(v) (No change.)

(vi) Construction plans and design calculations for the proposed permanent BMPs and measures must be prepared by, or under the direct supervision of, a Texas licensed professional engineer [Licensed Professional Engineer]. All construction plans and design information must be signed, sealed, and dated by the Texas licensed professional engineer [Licensed Professional Engineer].

(vii) (No change.)

(viii) Pilot-scale field testing (including water quality monitoring) may be required for BMPs that are not contained in technical guidance recognized by, or prepared by, the executive director.

(I) - (IV) (No change.)

(D) Requirements for BMPs and measures.

(i) Temporary BMPs.

(I) (No change.)

(II) The technical report must include a description of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Structural practices may include, but are not limited to: silt fences, earth dikes, drainage swales, sediment traps, checks dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and sediment basins. Placement of structural practices in floodplains should be avoided to the degree attainable.

(-a-) For common drainage locations that serve an area with ten or more acres disturbed at one time, a sediment basin that provides storage for a calculated volume of runoff from a two-year, 24-hour storm from each disturbed acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. Where no such calculation has been performed, a sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. When computing the number of acres draining into a common location it is not necessary to include flows from <u>off-site</u> [offsite] areas and flows from <u>on-site</u> [onsite] areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin.

(-b-) - (-c-) (No change.)

(ii) Permanent BMPs and measures.

(I) BMPs and measures must be implemented to control the discharge of pollution from regulated activities after the completion of construction. These practices and measures must be designed, constructed, operated, and maintained to insure that 80% [percent] of the incremental increase in the annual mass loading of total suspended solids [Total Suspended Solids] from the site caused by the regulated activity is removed. These quantities must be calculated in accordance with technical guidance prepared or accepted by the executive director.

(II) Owners of permanent BMPs and measures must insure that the BMPs and measures are constructed and function as designed. A Texas licensed professional engineer [Licensed Professional Engineer] must certify in writing that the permanent BMPs or measures were constructed as designed. The certification letter must be submitted to the appropriate regional office within 30 days of site completion.

(III) Where a site is used for low density single-family residential development and has 20% [percent] or less impervious cover, other permanent BMPs are not required. This exemption from permanent BMPs must be recorded in the county deed records, with a notice that if the percent impervious cover increases above 20% [percent] or land use changes, the exemption for the whole site as described in the property boundaries required by §213.4(g) of this title

[(relating to Application Processing and Approval)], may no longer apply and the property owner must notify the appropriate regional office of these changes.

(IV) The executive director may waive the requirement for other permanent BMPs for multi-family residential developments, schools, or small business sites where 20% [percent] or less impervious cover is used at the site. This exemption from permanent BMPs must be recorded in the county deed records, with a notice that if the percent impervious cover increases above 20% [percent] or land use changes, the exemption for the whole site as described in the property boundaries required by §213.4(g) of this title [(relating to Application Processing and Approval)], may no longer apply and the property owner must notify the appropriate regional office of these changes.

(E) The technical report must describe measures that will be used to avoid or minimize surface stream contamination and changes in the way in which water enters a stream as a result of the construction and development. The measures should address the following:

(i) increased stream flashing; [,]

(ii) the creation of stronger flows and in-stream velocities; [,] or

(iii) (No change.)

(F) The technical report must describe the method of wastewater disposal from the site.

(i) (No change.)

(ii) If wastewater is to be disposed of by an on-site sewage facility, the application must include a written statement from the appropriate authorized agent, stating that the site is suitable for the use of private sewage facilities and will meet the special requirements for on-site sewage facilities located on the Edwards Aquifer recharge zone as specified under Chapter 285 of this title (relating to On-Site [On-site] Sewage Facilities), or identifying those areas that are not suitable.

(G) (No change.)

(5) (No change.)

(c) Organized sewage collection systems.

(1) - (2) (No change.)

(3) Special requirements for sewage collection systems. In addition to the requirements in paragraph (2) of this subsection, sewage collection systems on the recharge zone must meet the following special requirements.

(A) - (B) (No change.)

(C) Lift station design. List stations must be designed and constructed to ensure that bypassing of any sewage does not occur. All lift stations must be designed to meet the requirements of §317.2(d) and §317.3 of this title. A lift station application must include final construction plans and a design report prepared by or under the direct supervision of a Texas licensed professional engineer [Licensed Professional Engineer]. All design information must be signed, sealed, and dated by a Texas licensed professional engineer [Licensed Professional Engineer].

(D) Certification of new sewage collection system lines by a Texas licensed professional engineer [Licensed Professional Engineer]. Owners of sewage collection systems must insure that all new gravity sewer system lines having a diameter greater than or equal to six inches and all new force mains are tested for leakage following construction. Such lines must be certified by a Texas licensed professional engineer [Licensed Professional Engineer] to meet the appropriate requirements of §317.2 of this title [(relating to Design Criteria for Sewerage Systems)]. The engineer must retain copies of all test results which must be made available to the executive director upon request. The engineer must certify in writing that all wastewater lines have passed all required testing to the appropriate regional office within 30 days of test completion and prior to use of the new collection system. Following the completion of the new sewer lines and manholes, they must be tested every five years thereafter in accordance with subparagraph (E) of this paragraph.

(E) Testing of existing sewer lines. Owners of sewage collection systems must insure that all existing sewer lines having a diameter greater than or equal to six inches, including private service laterals, manholes, and connections, are tested to determine types and locations of structural damage and defects such as offsets, open joints, or cracked or crushed lines that would allow exfiltration to occur. Existing manholes and lift station wet wells must be tested using methods for new structures which are approved by the executive director.

(i) Testing of all sewage collection systems must be conducted every five years after being put into use. Any sewage collection system in place as of March 21, 1990 must have commenced and completed the first round of five-year [five year] testing. Every five years, existing sewage collection systems must be tested to determine types and locations of structural damage and defects such as offsets, open joints, or cracked or crushed lines that would allow exfiltration to occur. These test results must be certified by a Texas licensed professional engineer [Licensed Professional Engineer]. The test results must be retained by the plan holder for five years and made available to the executive director upon request. The use of one of the following methods will satisfy the requirements for the five-year [five year] testing of existing sewer lines.

(I) In-place deflection testing must meet the requirements of §317.2(a)(4)(C) of this title. No pipe shall exceed a deflection rate of 5.0% [percent].

(II) - (IV) (No change.)

(ii) Except as otherwise provided in an enforcement order of the commission, as soon as possible, but at least within one year of detecting defects, repairs to the sewage collection system must be completed by the system's owner. However, all leakage must be immediately contained to prevent any discharge to water in the state or pollution of the Edwards Aquifer whether necessary repairs have been completed or not. Leakage is a violation of Texas Water Code, §26.121 [of the Texas Water Code] and these rules are not intended to excuse such unlawful discharge of waste into or adjacent to water in the state. All repairs must be certified by a Texas licensed professional engineer [Licensed Professional Engineer]. Repairs must be tested within 45 days of completion using the methods described in clause (i) of this subparagraph. Results must be submitted to the appropriate regional office within 30 days of testing.

(F) - (H) (No change.)

(I) Inspection of private service lateral connections. After installing and prior to covering and connecting a private service lateral to an organized sewage collection system, a Texas licensed professional engineer [Licensed Professional Engineer], Texas registered sanitarian [Registered Sanitarian], or appropriate city inspector must inspect the private service lateral and the connection to the collection system and certify that construction conforms with the applicable provisions of this subsection and local plumbing codes. Private service laterals may only be connected to approved sewage collection systems.

(J) (No change.)

(K) Sewer lines bridging caverns or other sensitive features. Sewer lines that bridge caverns or sensitive features must be constructed in a manner that will maintain the structural integrity of the line. When such geologic features are encountered during construction, the location and extent of those features must be assessed by a geologist and must be reported to the appropriate regional office in writing within two working days of discovery. Notification and inspection must comply with the requirements under subsection (f) of this section.

(L) (No change.)

(M) Alternative sewage collection systems. The executive director may approve an alternative procedure which is technically justified; signed, sealed, and dated by a Texas licensed professional engineer [Licensed Professional Engineer] indicating equivalent environmental protection; and which complies with the requirements of §317.2(d) of this title [(relating to Design Criteria for Sewerage Systems)].

(N) (No change.)

(4) Contents of organized sewage collection system plan.

(A) Application. For organized sewage collection systems, the information required under §213.4 of this title [(relating to Application Processing and Approval)] must be filed with the executive director at the appropriate regional office.

(B) (No change.)

(C) Geologic assessment. A geologic assessment, as described in subsection (b)(3) of this section, must be performed by a geologist along the path of the proposed sewer line(s), plus 50 feet on each side of the proposed sewer line(s) [line as described in subsection (b)(3) of this section]. The geologic assessment report must be signed, sealed, and dated by the geologist preparing the report.

(D) (No change.)

(E) Plans and specifications. Plans and specifications addressing all the requirements in paragraphs (2) and (3) of this subsection, must include at a minimum:

(i) a map showing the location of the organized sewage collection system layout [lay-out] in relation to recharge zone boundaries;

(ii) a map showing the location of the organized sewage collection system layout [lay-out] overlaid by topographic contour lines, using a contour interval of not greater than ten feet, and showing the area within both the five-year floodplain and the 100-year floodplain of any drainage way;

(iii) construction documents prepared by, or under the supervision of, a Texas licensed professional engineer [Licensed Professional Engineer], which have also been signed, sealed, and dated by that Texas licensed professional engineer [Licensed Professional Engineer], at a minimum, must include:

(I) - (IV) (No change.)

(d) Static hydrocarbon and hazardous substance storage in underground storage tanks system.

(1) Standards for underground storage tank systems. New or replacement systems for the underground storage of static hydrocarbons or hazardous substances must be of double-walled or an equivalent method approved by the executive director. Methods for detecting leaks in the inside wall of a double-walled system must be included in the facility's design and construction. The leak detection system must provide continuous monitoring of the system and must be capable of immediately alerting the system's owner of possible leakages.

(A) Installation. All underground hydrocarbon and hazardous substance storage tank systems must be installed by a person possessing a valid certificate of registration in accordance with the requirements [of Subchapter I] of Chapter 334, Subchapter I of this title (relating to Underground [and Aboveground] Storage Tank On-Site Supervisor Licensing and Contractor Registration [Tanks]).

(B) (No change.)

(2) Contents of an underground storage tank facility plan. An underground storage tank facility plan must, at a minimum, contain the following information.

(A) Application. The information required under §213.4 of this title [(relating to Application Processing and Approval)] must be filed with the executive director at the appropriate regional office.

(B) (No change.)

(C) Geologic assessment. For all facilities[,] located on either the recharge zone or transition zone, a geologic assessment prepared by a geologist, as described in subsection (b)(3) of this section, must be submitted for the site. The geologic assessment report must be signed, sealed, and dated by the geologist preparing the report.

(D) Technical report. For all facilities, located on either the recharge zone or transition zone, a technical report must be submitted on forms provided by, or approved by, the executive director. The technical report must contain the information requested in subsection (b)(4)(B) and (C) and (5) [subsections (b)(4)(B), (C), and (b)(5)] of this section. A technical report for a water pollution abatement plan submitted under subsection (b) of this section satisfies this requirement, provided it properly addresses the proposed underground storage tank facility.

(e) Static hydrocarbon and hazardous substance storage in an aboveground storage tank facility.

(1) (No change.)

(2) Contents of an aboveground storage tank facility plan. A permanent aboveground storage tank facility plan must contain, at a minimum, the following information.

(A) Application. For an aboveground storage tank facility, the information required under §213.4 of this title [(relating to Application Processing and Approval)] must be filed with the executive director at the appropriate regional office.

(B) (No change.)

(C) Geologic assessment. For all facilities[,] located on either the recharge zone or transition zone, a geologic assessment prepared by a geologist, as described in subsection (b)(3) of this section, must be submitted for the area containing the aboveground storage tank system. The geologic assessment report must be signed, sealed, and dated by the geologist preparing the report.

(D) Technical report. For all facilties[,] located on either the recharge zone or transition zone, a technical report must be submitted on forms provided by, or approved by, the executive director. The technical report must contain the information requested in subsection (b)(4)(B) and (C) and (5) [subsections (b)(4)(B), (b)(4)(C), and (b)(5)] of this section. A technical report for a

water pollution abatement plan submitted under subsection (b) of this section satifies this requirement, provided it properly addresses the proposed aboveground storage tank facility.

(3) - (4) (No change.)

(f) Notification and inspection.

(1) (No change.)

(2) If any sensitive feature is discovered during construction, replacement, or rehabilitation, all regulated activities near the sensitive feature must be suspended immediately.

(A) (No change.)

(B) Regulated activities near the sensitive feature may not proceed until the executive director has reviewed a geologic assessment report prepared by a geologist that consists of information required under subsection (b)(3)(C) and (D) of this section for the sensitive feature and has reviewed and approved the methods proposed to protect the sensitive feature and the Edwards Aquifer from potentially adverse impacts to water quality. The geologic assessment report must be signed, sealed, and dated by the geologist preparing the report.

(C) The holder of an approved sewage collection system plan, must meet the following.

(i) Upon completion of any lift station excavation, a geologist must certify that the excavation has been inspected for the presence of sensitive features. The certification must be signed, sealed, and dated by the geologist preparing the certification. Certification that the excavation has been inspected must be submitted to the appropriate regional office.

(I) - (II) (No change.)

(ii) The applicant must submit a plan for ensuring the structural integrity of the sewer line or for modifying the proposed collection system alignment around the feature. The plan must be certified by a Texas licensed professional engineer [Licensed Professional Engineer]. These plans must be submitted to the appropriate regional office for review and approval.

(D) For an approved underground storage tank facility plan, a geologist must certify that a completed tankhold excavation has been inspected for the presence of sensitive features. The certification must be signed, sealed, and dated by the geologist preparing the certification.

(i) - (iii) (No change.)

(3) (No change.)

(g) On-site sewerage systems. On-site sewerage systems located on the recharge zone are subject to §285.40 of this title (relating to OSSFs on the Recharge Zone of the Edwards Aquifer) and other applicable provisions contained in Chapter 285 of this title. Systems must be designed, installed, maintained, repaired, and replaced in accordance with Chapter 285 <u>of this title</u>.

(h) Exemption.

(1) Regulated activities exempt from the Edwards Aquifer protection plan application requirements under this section are:

(A) - (D) (No change.)

(E) the installation of other utility lines which are not designed to carry and will not carry the following:

(i) (No change.)

(ii) <u>storm water</u> [stormwater] runoff;

(iii) - (iv) (No change.)

(2) An individual land owner who seeks to construct his/her own single-family residence or associated residential structures on the site is exempt from the Edwards Aquifer protection plan application requirements under this section, provided that he/she does not exceed 20% [percent] impervious cover on the site.

(3) (No change.)

(4) All temporary erosion and sedimentation controls:

(A) must meet the requirements contained in subsection (b)(4)(D)(i) of this section; [,]

(B) must be installed prior to construction; [,]

(C) must be maintained during construction; [,] and

(D) (No change.)

(5) The executive director may monitor storm water [stormwater] discharges from these projects to evaluate the adequacy of the temporary erosion and sedimentation control measures. Additional protection will be required if the executive director determines that these controls are inadequate to protect water quality.