

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §213.4, Application Processing and Approval; and §213.23, Plan Processing and Approval. Sections 213.4 and 213.23 are adopted *without changes* to the proposed text as published in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1449) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The 77th Legislature, 2001, passed House Bill (HB) 2912, §10.04, which amended Texas Water Code (TWC), §26.137 to provide for a 30-day comment period in the review process for protection plans in the contributing zone of the Edwards Aquifer as provided in Subchapter A, §213.4(a)(2).

Rules under Chapter 213 Subchapter A, concerning the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties apply to all regulated developments within the recharge zone and to certain activities within the transition zone and to point source wastewater discharges in the recharge zone and up to ten miles upstream of the recharge zone within the aquifer's contributory watersheds. Regulated development includes any construction-related or post-construction activity on the recharge or transition zones 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, the construction of residential or commercial sites, utility lines, roads and highways, sewage collection systems, or aboveground or underground storage tank facilities for static hydrocarbons or hazardous substances. Clearing, excavation, or any other activity which alters or disturbs the topographic, geologic, or existing recharge characteristics of a site is also considered regulated activity.

Currently in §213.4(a)(1), no person may commence the construction of any regulated activity until an Edwards Aquifer protection plan or modifications to the plan have been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director. Section 213.4(c)(1) requires that an original and three copies of the application must be submitted to the appropriate regional office. Under §213.4(a)(2), the regional office then provides copies of the application to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. These copies are required to be distributed within five days of the application being determined to be administratively complete. The executive director must declare that the application is administratively complete or deficient within 30 days of receipt by the appropriate regional office. Any person may file comments within 30 days of the date the application is mailed to the local governmental entities. The executive director reviews all comments that are timely filed. The executive director must complete the review of an application within 90 days after determining that it is administratively complete.

Effective June 1, 1999, the commission implemented new Chapter 213, Subchapter B to regulate activities in the contributing zone to the Edwards Aquifer having the potential for polluting surface streams which recharge the Edwards Aquifer. United States Geological Survey hydrogeologic studies show that, on average, 80 to 85% of the recharge to the Edwards Aquifer takes place in the stream beds that cross the recharge zone. The regulation of activities that can affect the quality of water flowing into the recharge zone protects the quality of the groundwater in the Edwards Aquifer, thus protecting the existing and potential uses of these water resources.

Regulated activities under Subchapter B include any construction-related or post-construction activity occurring in the contributing zone of the Edwards Aquifer that has the potential for contributing pollution to surface streams that enter the Edwards Aquifer recharge zone. These activities include, but are not limited to, the construction of residential or commercial sites, utility lines, roads and highways, or aboveground or underground storage tank facilities for static hydrocarbons or hazardous substances. Clearing, excavation, or any other activity which alters or disturbs the topographic, geologic, or existing stormwater runoff characteristics of a site is also considered regulated activity. Subchapter B rules apply only to regulated activities disturbing at least five acres, or regulated activities disturbing less than five acres which are part of a larger common plan of development or sale with the potential to disturb cumulatively five or more acres.

Currently under Subchapter B, no person may commence the construction of any regulated activity until a contributing zone plan or modifications to the plan have been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director.

An original and one copy of the application must be submitted to the appropriate regional office. The executive director must complete the review of an application for contributing zone plan approval within 15 calendar days of receipt by the appropriate regional office. If the executive director fails to issue a letter approving or denying the application within 16 calendar days after receipt of the application, the application shall be deemed to be granted.

This rulemaking will change the number of copies required to be submitted for Edwards Aquifer protection plans submitted under Subchapter A to allow the executive director to comply with the requirement to provide copies of the application to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. The current requirement of submitting an original and three copies does not allow for a copy to be kept by the appropriate regional office after the other copies have been distributed.

For Subchapter B, this rulemaking will provide for a 30-day comment period for contributing zone plans as required under HB 2912. The rulemaking also will change the number of copies of an application which an applicant must submit to ensure the executive director can comply with the new requirement.

Further, to accommodate the adopted 30-day review process, this rulemaking adopts the elimination of the 16-day automatic approval of a contributing zone plan and moves to a 90-day review process. The statute does not require the commission to change the 16th-day automatic approval. However, program staff experiences have shown that the 16th-day automatic approval following the 30-day comment period does not allow adequate time for further review by program staff or additional work that may be required by the applicant's consultants to address comments received. Subchapter A rules currently provide for a 90-day review time after the application is determined to be administratively complete for applications submitted for the recharge and transition zones. This adopted change will make the review time for the contributing zone plans consistent with the review time for the recharge and transition zone plans.

Finally, this rulemaking will change the language in §213.23(e)(2), relating to grounds for denying a contributing zone application, and add it to the adopted §213.23(e). The denial language currently provides the executive director a mechanism to deny, within 15 days, an application submitted for the contributing zone. However, with deletion of the 16th-day approval language, this language would no longer apply because the adopted changes will allow construction in the contributing zone to begin only after the agency issues an approval letter.

#### SECTION BY SECTION DISCUSSION

*Subchapter A: Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties*

The commission amends §213.4, Application Processing and Approval, by changing the submission requirement in §213.4(c)(1) from an original and three copies of the application to an original and one copy for the executive director to review. Additionally, one copy for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located, is required. The rule further clarifies that all the copies must be sent to the appropriate regional office. This allows the executive director to comply with §213.4(a)(2), which requires the regional office to provide copies of the applications to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. Past practice has shown that three copies may not be adequate to distribute to all of these entities and to retain a copy at the region office.

In addition, with the creation of new groundwater conservation districts during the 77th Legislative Session, 2001, the executive director cannot specify the exact number of copies needed. Thus, the rule has been changed from requiring a specific number to requiring, “additional copies as needed.” The number of copies needed is dependent upon the location of the project, because the project could potentially fall under the jurisdiction of more than one groundwater district, in addition to a county and municipality. To assist applicants in determining the number of copies they need to submit, the agency has developed guidance that is available on the agency’s web page at <http://www.tnrcc.state.tx.us/EAPP/review.html>. Additionally, applicants that have a project in Hays, Travis, or Williamson Counties can call the Austin Regional Office at (512) 339-2929 for assistance in determining the number of copies they need to submit. Applicants that have projects in Kinney, Uvalde, Medina, Bexar, or Comal Counties can call the San Antonio Regional Office at (210) 409-3096 for assistance.

*Subchapter B: Contributing Zone to The Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hayes, Travis and Williamson*

The commission amends the title of Subchapter B by correcting the misspelling of Hays County. The commission changes the title from “Contributing Zone to The Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hayes, Travis and Williamson” to “Contributing Zone to The Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson.”

The commission amends §213.23(a) by adding language which will create a new paragraph (2) and renumbering the existing paragraph (2) to paragraph (3). The new language in paragraph (2) requires the appropriate regional office to provide copies of applications to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. Additionally, the rule requires the regional office to distribute the copies within five days of the application being determined to be administratively complete. Further, the new language allows any person to file comments within 30 days of the date the application is mailed to local governmental entities. Finally, the rule requires the executive director to review all comments that are timely filed. These changes incorporate the requirements of HB 2912, §10.04, which as codified in TWC, §26.137, requires the commission to provide a 30-day comment period in the review process for the protection plans in the contributing zone of the Edwards Aquifer as provided in §213.4(a)(2). Additionally, these changes make the Subchapter B comment period requirements and review period consistent with Subchapter A.

The commission amends §213.23(c)(1) by changing the submission requirement in subsection (c)(1) from an original and one copy of the application to an original and one copy of the application for the executive director to review and one copy for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located. Once the copies are received and determined to be administratively complete, the executive director will distribute them to the affected local governmental entities for review and comment. As required under HB 2912, §10.04, the regional offices will provide copies of the applications to parties listed in §213.4(a)(2).

The commission amends §213.23(e) by deleting paragraphs (1) - (3) and adding language to require that the executive director must complete the review of an application within 90 days after determining that it is administratively complete. Further, the adopted rule requires the executive director to declare that the application is administratively complete or deficient within 30 days of receipt by the appropriate regional office. Finally, the adopted rule provides that grounds for a deficient application include, but are not limited to, failure to include all information listed in this section and failure to pay all applicable application fees. These adopted changes reflect the language in current §213.23(e)(2) which will be deleted and added to revised §213.23(e).

The commission has made these changes to allow adequate time for both the agency to review and respond to comments and for the applicant to respond to questions or requests for information that the agency may have based on comments received during the 30-day comment period. The executive director believes that 90 days will be adequate time for any needed investigation by the executive director's staff or any additional work that may need to be performed by the applicant's consultants. Subchapter A rules currently provide for a 90-day review time for applications submitted for the recharge and transition zones, which the executive director has found to be adequate.

Since the Subchapter B rules became effective June 1, 1999, review of these plans has proven to be similar to that of plans submitted under Subchapter A. It was originally thought that the plans submitted for the contributing zone would allow for an abbreviated review process, since the plans were certified by a licensed professional engineer and no geologic assessment was required. Even though the plans are certified, additional information is frequently needed by the executive director to evaluate the

adequacy of the plan. Thus, these adopted rules make the review time consistent between both Subchapters A and B.

Additionally, the current automatic approval for contributing zone plans has caused a delay in review and approval for plans submitted for the recharge and transition zones under Subchapter A. Plans are reviewed in the order received to ensure fairness to all applicants. However, when contributing zone plans are submitted, due to the automatic approval after 15 days, staff must re-prioritize and focus on the review of the contributing zone plan first, and the recharge and transition zone plans that are under review must be delayed. This may cause further delays and associated costs for the recharge and transition zone projects. By requiring all the plans to be reviewed under the same time frame, all plans will be reviewed fairly in the order received.

Currently, the agency is able to exercise more flexibility in accepting recharge and transition zone plans at the time of plan submittal. If a plan is accepted as administratively complete but additional technical information is needed, there is flexibility in the review schedule to obtain the additional technical information needed. The automatic approval of contributing zone plans removed this flexibility and plans were turned away at time of submittal due to the lack of time to receive the additional information needed for the review.

In addition, without the newly adopted 90-day review period to respond to comments for both the executive director and the applicant, the executive director might be forced to deny contributing zone plans that would otherwise be approved with additional investigation time. If the executive director

denies a plan, the applicant will need to not only resubmit the plan, which will start the review process over, but also pay an additional application fee for that plan.

The newly adopted 90-day review period is necessary because it has become increasingly more difficult for the executive director to meet the existing 15-day review time for submitted contributing zone plans, because of the increase in the total number of contributing zone plans being received. For example, in the Austin Regional Office the number of contributing zone plans received increased from 24 in Fiscal Year (FY) 2000 to 51 in FY 2001. In addition, the Edwards Aquifer Protection Program has seen an increase in plans submitted for the recharge and transition zones as well as the contributing zone. The number of plans submitted for the recharge and transition zones in the Austin Regional Office increased from 305 in FY 2000 to 327 in FY 2001 and in the San Antonio Regional Office, the number increased from 198 to 244.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in §2001.0225(g)(3). The rulemaking only makes the following procedural changes: 1) increases the number of copies of an application which an applicant must submit; 2) corrects the misspelling of Hays County; 3) provides for a 30-day comment period in the review process for protection plans in the contributing zone; and 4) substitutes a 90-day approval process for contributing zone plans instead of the 16-day automatic approval. None of these adopted rules are expected to 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. Furthermore, even if the adopted rules did meet the definition of a “major environmental rule,” the adopted rules are not subject to §2001.0225 because they do not accomplish any of the four results specified in §2001.0225(a). First, there are no federal law standards relating to or applicable to the protection of groundwater quality in the Edwards Aquifer. Therefore, there are no applicable standards set by federal law that could be exceeded by these rules. Second, the requirements of these adopted rules seek to carry out the commission’s statutory responsibility to protect the quality of the aquifer in accordance with TWC, §§26.046, and 26.0461, 26.137, and 26.011. Therefore, the rulemaking does not exceed an express requirement of state law. Third, the commission is not a party to a delegation agreement with the federal government concerning a state and federal program that would be applicable to requirements set forth in these rules. Therefore, there are no delegation agreement requirements that could be exceeded by these rules. Fourth, the commission adopts these rules to protect the Edwards Aquifer pursuant to and in furtherance of its requirements under the specific state law of TWC, §§26.137, 26.046, and 26.0461. Therefore, the commission does not adopt these rules solely under the commission’s general powers.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The specific purposes of this rulemaking are to implement HB 2912, §10.04 and to make the procedural requirements of the contributing zone plan approvals consistent with the recharge and transition zone plan approvals. The adopted rulemaking advances these purposes by changing the

number of copies of an application which an applicant must submit, correcting the misspelling of Hays County, providing for a 30-day comment period in the review process for protection plans in the contributing zone, and substituting a 90-day approval process for contributing zone plans instead of the 16th-day automatic approval. This adopted rulemaking will not create any additional burden on private real property and will not constitute a taking. HB 2912, §10.04 specifically requires a 30-day comment period for contributing zone plans. The commission decided to adopt the 90-day approval process rather than a longer or shorter period because the 16th-day automatic approval does not allow for further review by the program staff or additional work that may be required by the applicant's consultants to address comments received and the 90-day approval process will make the rules consistent with the rules of the recharge and transition zone plans.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

#### HEARINGS AND COMMENTERS

Public hearings were held in San Antonio on March 20, 2002 at 7:00 p.m., in the City Council Chambers located in the Municipal Plaza Building, 103 Main Plaza as well as in Austin on April 3, 2002 at 10:00 a.m. at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210. The commission received no comments during either public hearing. The

City of Austin (COA) provided a comment in support of the rule amendments.

#### RESPONSE TO COMMENTS

The COA commented that it supports the proposed changes to Chapter 213, Subchapters A and B, in particular the provision for a 30-day review period of contributing zone plans by local governments that was enacted by HB 2912.

**The commission appreciates the comment in support of the rule.**

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

**§213.4**

**STATUTORY AUTHORITY**

The amendment is adopted under HB 2912, §10.04, which amended TWC, §26.137 to provide for a 30-day comment period in the review process for protection plans in the contributing zone of the Edwards Aquifer. Additionally, the amendment is adopted under TWC, §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; §26.046, which requires the commission to receive public comment on actions the commission should take to protect the Edwards Aquifer from pollution; and §26.0461, which allows the commission to impose fees for inspecting the construction and maintenance of projects covered by plans and for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules. TWC, §26.011 provides that the commission will administer the provisions of TWC, Chapter 26 and establishes the level of quality to be maintained and controls the quality of the water in the state. Additionally, §26.121 prohibits unauthorized discharges; §26.401 establishes the goal of groundwater policy in the state; and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater.

**§213.4. Application Processing and Approval.**

(a) Approval by the executive director.

(1) No person may commence the construction of any regulated activity until an Edwards Aquifer protection plan or modifications to the plan as required by §213.5 of this title (relating to Required Edwards Aquifer Protection Plans, Notification, and Exemptions) or exception under §213.9 of this title (relating to Exceptions) has been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director.

(2) The appropriate regional office shall provide copies of applications to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. These copies will be distributed within five days of the application being determined to be administratively complete. Any person may file comments within 30 days of the date the application is mailed to local governmental entities. The executive director shall review all comments that are timely filed.

(3) A complete application for approval, as described in this section, must be submitted with the appropriate fee as specified in §213.12 of this title (relating to Application Fees).

(4) Projects in progress and the effective date of this rule.

(A) For areas designated as recharge zone or transition zone on official maps prior to the effective date of this rule, and for which this designation did not change on the effective date of this rule, all Edwards Aquifer protection plans submitted to the executive director, on or after the effective date of the rule, will be reviewed under all the provisions of the subchapter in effect on the date the plan is submitted.

(B) For areas not designated as recharge zone on official maps prior to the effective date of this rule, regulated activities will be considered to have commenced construction and will not be subject to this subchapter if, on the effective date of the rule, all federal, state, and local approvals or permits required to begin physical construction have been obtained, and if either on-site construction directly related to the development has begun or construction commences within six months of the effective date of the rule.

(C) Regulated activities in areas designated as transition zone on official maps prior to the effective date of this rule and designated as recharge zone on the effective date of this rule will be regulated as transition zone activities if, on the effective date of the rule, all federal, state, and local approvals or permits required to begin physical construction have been obtained, and if either on-site construction directly related to the development has begun or construction commences within six months of the effective date of the rule.

(D) The effective date of the amendments to §§213.3 - 213.10 is June 1, 1999.

(5) Assumption of program by local government.

(A) A local governmental entity may assume the rights, duties, and responsibilities to review and either approve or deny Edwards Aquifer protection plan applications within its boundaries and monitor and enforce compliance with plans if the local government obtains certification from the executive director.

(B) In order to obtain certification, the local government must demonstrate:

(i) it has a water quality protection program equal to or more stringent than the rules contained in this chapter, including but not limited to a program that:

(I) regulates activities covered under this chapter, and

(II) has performance standards equal to or more protective of water quality;

(ii) it has adopted ordinances or has other enforceable means sufficient to enforce the program throughout the local governmental entities jurisdiction; and

(iii) it has adequate resources to implement and enforce the program.

(C) Upon approval of a request for certification under this section, the executive director shall enter into an agreement with the local governmental entity to provide for the terms and conditions of program assumption, including executive director oversight. Nothing in a certification or agreement shall affect the commission's ability to enforce its water quality protection rules or applicable state law.

(D) An agreement under subparagraph (C) of this paragraph shall not provide for the payment of fees required by this chapter to the local entity; rather, fees shall be paid to the commission for continued proper oversight and enforcement. Nor shall such agreement provide for partial assumption of the program unless expressly authorized by the commission.

(E) Certification shall be for a term not to exceed five years, subject to renewal.

(F) Upon written notice, certification may be revoked or suspended by the executive director if the local entity does not meet the terms and conditions of the agreement provided under subparagraph (D) of this paragraph or fails to meet the criteria for certification provided under subparagraph (B) of this paragraph.

(G) A decision by the executive director under this section is not subject to appeal to the commission.

(b) Contents of Application.

(1) Forms provided by the executive director. Applications for approval filed under this chapter must be made on forms provided by or approved by the executive director. Each application for approval must, at a minimum, include the following:

(A) name of the development, subdivision, or facility for which the application is submitted;

(B) a narrative description of the location of the project or facility for which the application is submitted, presenting sufficient detail and clarity so that the project site and its boundaries can be located during a field inspection;

(C) name, address, and telephone number of the owner or any other person signing the application; and

(D) information needed to determine the appropriate fee under §213.14 of this title (relating to Fee Schedule) for the following plan types:

(i) for water pollution abatement plans and modifications to plans, the total acreage of the site where regulated activities will occur;

(ii) for organized sewage collection system plans and modifications to plans, the total linear footage of all collection system lines; or

(iii) for static hydrocarbon and hazardous substance storage in underground or permanent aboveground storage tank facility plans, the total number of tanks or piping systems.

(2) Additional information. Each application must also include the following information, as applicable:

(A) for water pollution abatement plans, the information required under §213.5(b) of this title;

(B) for organized sewage collection system plans, the information required under §213.5(c) of this title;

(C) for static hydrocarbon and hazardous substance storage in underground storage tank systems, the information required under §213.5(d) of this title;

(D) for static hydrocarbon and hazardous substance storage in aboveground storage tank systems, the information required under §213.5(e) of this title; and

(E) any other pertinent information related to the application which the executive director may require.

(c) Application submittal.

(1) Submit one original and one copy for the executive director's review and additional copies as needed for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located. The copies must be submitted to the appropriate regional office.

(2) Only owners, their authorized agent(s), or those persons having the right to possess and control the property which is the subject of the Edwards Aquifer protection plan may submit the plan for review and approval by the executive director.

(d) Signatories to Applications.

(1) Required Signature. All applications must be signed as follows.

(A) For a corporation, a principal executive officer (president, vice-president, or a duly authorized representative) must sign the application. A representative must submit written proof of the authorization.

(B) For a partnership, a general partner must sign the application.

(C) For a political entity such as a municipality, state, federal or other public agency, either a principal executive officer or a duly authorized representative must sign the application. A representative must submit written proof of the authorization.

(D) For an individual or sole proprietorship, the individual or sole proprietor must sign the application.

(2) Proof of Authorization to Sign. The executive director requires written proof of authorization for any person signing an application.

(e) Executive director review. The executive director must complete the review of an application within 90 days after determining that it is administratively complete. The executive director must declare that the application is administratively complete or deficient within 30 days of receipt by the appropriate regional office. Grounds for a deficient application include, but are not limited to, failure to pay all applicable application fees.

(f) Additional provisions. As a condition of approval, the executive director may impose additional provisions deemed necessary to protect the Edwards Aquifer from pollution. The executive director may conditionally approve an Edwards Aquifer protection plan or impose special conditions on the approval of a plan.

(g) Deed recordation.

(1) The applicant must record in the deed records of the county in which the property is located that the property is subject to an approved Edwards Aquifer protection plan within 30 days of receiving written approval of:

(A) a water pollution abatement plan;

(B) an aboveground storage tank plan;

(C) an underground storage tank plan;

(D) modifications to any of these plans for a proposed regulated activity; or

(E) an exception.

(2) A description of the property boundaries which is covered by the Edwards Aquifer protection plan shall be recorded in the county deed records.

(3) Within 60 days of receiving written approval of an Edwards Aquifer protection plan, the applicant must submit, to the appropriate regional office, proof of recordation of notice in the county deed records, with the volume and page number(s) of the county record.

(4) The construction of a public street or highway is exempt from all deed recordation requirements.

(h) Term of approval. The executive director's approval of an Edwards Aquifer protection plan will expire two years after the date of initial issuance, unless prior to the expiration date, substantial construction related to the approved plan has commenced. For purposes of this subsection, substantial construction means more than ten percent of total construction has commenced. If a written request for an extension is filed under the provisions of this subsection, the approved plan will continue in effect until the executive director makes a determination on the request for an extension.

(1) A written request for an extension must be received not earlier than 60 days prior to the expiration date of an approved Edwards Aquifer protection plan or a previously approved extension. Requests for extensions are subject to fees outlined in §213.13 of this title (relating to Fees Related to Requests For Extensions).

(2) An executive director's approved extension will expire six months after the original expiration date of the approved Edwards Aquifer protection plan or a previously approved extension unless prior to the expiration date, commencement of construction, repair, or replacement related to the approved plan has occurred.

(3) An Edwards Aquifer protection plan approval or extension will expire and no extension will be granted if more than 50 percent of the total construction has not been completed

within ten years from the initial approval of a plan. A new Edwards Aquifer protection plan must be submitted to the appropriate regional office with the appropriate fees for review and approval by the executive director prior to commencing any additional regulated activities.

(4) Any requests for extensions received by the executive director after the expiration date of an approved Edwards Aquifer protection plan or a previously approved extension will not be accepted. A new application for the purposes of this chapter must be submitted to the appropriate regional office with the appropriate fees for the review and approval by the executive director.

(5) An extension will not be granted if the proposed regulated activity or approved plan for the regulated activity(ies) under this chapter has changed from the regulated activity(ies) approved by the executive director.

(i) Legal transfer of property. Upon legal transfer of property, sewage collection systems, force mains, lift stations, underground storage tank system, or aboveground storage tank system, the new owner(s) is required to comply with all terms of the approved Edwards Aquifer protection plan. If the new owner intends to commence any new regulated activity on the site, a new Edwards Aquifer protection plan that specifically addresses the new activity must be submitted to the executive director. Approval of the plan for the new regulated activity by the executive director is required prior to commencement of the new regulated activity.

(j) Modification of previously approved plans. The holder of any approved Edwards Aquifer protection plan must notify the appropriate regional office in writing and obtain approval from the executive director prior to initiating any of the following:

(1) any physical or operational modification of any water pollution abatement structure(s), including but not limited to ponds, dams, berms, sewage treatment plants, and diversionary structures;

(2) any change in the nature or character of the regulated activity from that which was originally approved or a change which would significantly impact the ability of the plan to prevent pollution of the Edwards Aquifer;

(3) any development of land previously identified as undeveloped in the original water pollution abatement plan;

(4) any physical modification of the approved organized sewage collection system;

(5) any physical modification of the approved underground storage tank system; or

(6) any physical modification of the approved aboveground storage tank system.

(k) Compliance. The holder of the approved or conditionally approved Edwards Aquifer protection plan is responsible for compliance with this chapter and any special conditions of the approved plan through all phases of plan implementation. Failure to comply with any condition of the executive director's approval is a violation of this rule and is subject to administrative rule or orders and penalties as provided under §213.10 of this title (relating to Enforcement). Such violations may also be subject to civil penalties and injunction.

**SUBCHAPTER B: CONTRIBUTING ZONE TO THE EDWARDS AQUIFER IN MEDINA,  
BEXAR, COMAL, KINNEY, UVALDE, HAYS, TRAVIS, AND WILLIAMSON COUNTIES**

**§213.23**

**STATUTORY AUTHORITY**

The amendment is adopted under HB 2912, §10.04, which amended TWC, §26.137 to provide for a 30-day comment period in the review process for protection plans in the contributing zone of the Edwards Aquifer. Additionally, the amendment is adopted under TWC, §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by TWC and other laws of Texas; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; §26.046, which requires the commission to receive public comment on actions the commission should take to protect the Edwards Aquifer from pollution; and §26.0461, which allows the commission to impose fees for inspecting the construction and maintenance of projects covered by plans and for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules. TWC, §26.011 provides that the commission will administer the provisions of TWC, Chapter 26 and establishes the level of quality to be maintained and controls the quality of the water in the state. Additionally, §26.121 prohibits unauthorized discharges; §26.401 establishes the goal of the groundwater policy in the state; and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater.

**§213.23. Plan Processing and Approval.**

(a) Approval by executive director.

(1) No person may begin the construction of any regulated activity until a contributing zone plan or modification to a plan as required by §213.21 of this title (relating to Applicability and Persons or Entity Required to Apply) has been:

(A) filed with the appropriate regional office, and

(B) the application has been reviewed and approval letter issued by the executive director.

(2) The appropriate regional office shall provide copies of applications to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. These copies will be distributed within five days of the application being determined to be administratively complete. Any person may file comments within 30 days of the date the application is mailed to local governmental entities. The executive director shall review all comments that are timely filed.

(3) A complete application for approval of a contributing zone plan, as described in this section, must be submitted with a copy of the notice of intent and the appropriate fee as specified in

§213.27 of this title (relating to Contributing Zone Plan Application and Exception Fees). The application may be submitted to the executive director for approval prior to the submittal of the notice of intent to the EPA.

(b) Contents of application. Applications for contributing zone plan approval filed under this subchapter must be made on forms provided by or approved by the executive director. Each application must, at a minimum, include the following:

(1) the name of the development, subdivision, or facility for which the application is submitted and the name, address, and telephone number of the owner or any other persons signing the application;

(2) a narrative description of the location of the project or facility for which the application is submitted, presenting sufficient detail and clarity so that the project site and its boundaries can be located during a field inspection;

(3) a technical report as described under §213.24 of this title must accompany the application for plan approval; and

(4) any additional information needed by the executive director for plan approval.

(c) Submission of application.

(1) Submit one original and one copy for the executive director's review and additional copies as needed for each affected incorporated city, groundwater conservation district, and county in which the proposed regulated activities will be located. The copies must be submitted to the appropriate regional office.

(2) Only the following may submit an application for review and approval by the executive director:

(A) owner(s);

(B) the owner(s)' authorized agent(s); or

(C) those persons having the right to possess and control the property which is the subject of the contributing zone plan.

(d) Signatories to applications. All applications must be signed as specified under §213.4(d)(1) of this title (relating to Required Signature). The executive director requires written proof of authorization for any person signing an application.

(e) Executive director review. The executive director must complete the review of an application within 90 days after determining that it is administratively complete. The executive director must declare that the application is administratively complete or deficient within 30 days of receipt by the appropriate regional office. Grounds for a deficient application include, but are not limited to, failure to include all information listed in this section and failure to pay all applicable application fees.

(f) Additional provisions. As a condition of contributing zone plan approval, the executive director may impose additional provisions necessary to protect the Edwards Aquifer from pollution. The executive director may conditionally approve a contributing zone plan or impose special conditions on the approval of a contributing zone plan. Upon inspection, the executive director may require the applicant to take additional measures if the activities do not conform to an approved plan or the plan did not address all potential sources of pollution as required by these rules.

(g) Term of approval. The executive director's approval of a contributing zone plan will expire two years after the date of initial issuance, unless prior to the expiration date, substantial construction related to the approved plan has commenced. For purposes of this subsection, substantial construction is where more than ten percent of total construction has commenced. If a written request for an extension is filed under the provisions of this subsection, the approved plan continues in effect until the executive director acts on the request for an extension.

(1) A written request for an extension must be received not earlier than 60 days prior to the expiration date of an approved contributing zone plan or a previously approved extension.

Requests for extensions are subject to fees outlined in §213.28 of this title (relating to Fees Related to Requests For Contributing Zone Plan Approval Extension).

(2) An executive director's approved extension will expire six months after the original expiration date of the approved contributing zone plan or a previously approved extension unless prior to the expiration date, commencement of construction, repair, or replacement related to the approved plan has occurred.

(3) A plan approval will expire and no extension will be granted if less than 50 percent of the total construction has been completed within ten years from the initial approval of a plan. A new plan must be submitted to the appropriate regional office with the appropriate fees for review and approval by the executive director prior to commencing any additional regulated activities.

(4) Any requests for extensions received by the executive director after the expiration date of an approved contributing zone plan or a previously approved extension will not be accepted. A new application for the purposes of this subchapter must be submitted to the appropriate regional office with the appropriate fees for the review and approval by the executive director.

(5) An extension will not be granted if the proposed regulated activity under an approved plan has changed.

(h) Legal transfer of property. Upon legal transfer of property, the new owner(s) is required to comply with all terms of the approved contributing zone plan. If the new owner intends to commence any new regulated activity on the site, a new application for plan approval for the new activity must be filed with and approved by the executive director beforehand.

(i) Modification of a previously approved plan. The holder of any approved contributing zone plan letter must notify the appropriate regional office in writing and obtain approval from the executive director prior to initiating any of the following:

(1) any physical or operational modification of any best management practices or structure(s), including but not limited to temporary or permanent ponds, dams, berms, silt fences, and diversionary structures;

(2) any change in the nature or character of the regulated activity from that which was originally approved;

(3) a change that would significantly impact the ability to prevent pollution of the Edwards Aquifer and hydrologically connected surface water; or

(4) any development of land previously identified in a contributing zone plan as undeveloped.

(j) Compliance. The holder of the approved or conditionally approved contributing zone plan letter is responsible for compliance with this subchapter and the approved plan. The holder is also responsible for any special conditions of an approved plan through all phases of plan implementation. Failure to comply with any rule or condition of the executive director's approval is a violation of this rule and is subject to administrative orders and penalties as provided under §213.25 of this title (relating to Enforcement). Such violations may also be subject to civil penalties and injunction.

(k) Responsibility for maintenance of permanent best management practices (BMPs) and measures after construction is complete.

(1) The applicant shall be responsible for maintaining the permanent BMPs after construction until such time as the maintenance obligation is either assumed in writing by another entity having ownership or control of the property (such as without limitation, an owner's association, a new property owner or lessee, a district, or municipality) or the ownership of the property is transferred to the entity. Such entity shall then be responsible for maintenance until another entity assumes such obligations in writing or ownership is transferred.

(2) A copy of the transfer of responsibility must be filed with the executive director at the appropriate regional office within 30 days of the assumption of the obligation or the transfer of ownership.

(3) This section applies to:

(A) multiple single-family residential developments, multi-family residential,  
and

(B) non-residential developments such as commercial, industrial, institutional,  
schools, and other sites where regulated activities occur.