

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §213.4, Application Processing and Approval; and §213.23, Plan Processing and Approval.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 30 TAC 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 proposes to 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 proposes to provide for a 30-day comment period for contributing zone plans as required under HB 2912. The rulemaking also proposes to 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 proposed 30-day review process, this rulemaking proposes to eliminate the 16-day automatic approval of a contributing zone plan and move to a 90-day approval process. The statute does not require the commission to change the 16-day automatic approval. However, program staff experiences have shown that the 16-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 30-day comment period for applications submitted for the recharge and transition zones. This proposed 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 would change the language in §213.23(e)(2), relating to grounds for denying a contributing zone application, and add it to the proposed §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 16-day approval language, this language would no longer apply because the proposed changes would 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 proposes to amend §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, would be 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 proposes to amend the title of Subchapter B by correcting the misspelling of Hays County. The commission proposes to change 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 proposes to amend §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 proposes that the regional office distribute the copies within five days of the application being determined to be administratively complete. Further, the new language proposes to allow any person to file comments within 30 days of the date the application is mailed to local governmental entities. Finally, the rule proposes to require the executive director to review all comments that are timely filed. The commission proposes these changes to 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 will make the Subchapter B comment period requirements and review period consistent with Subchapter A.

The commission proposes to amend §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, the executive director will distribute them to the affected local governmental entities for review and comment. These changes are required under HB 2912, §10.04, which requires the regional offices to provide copies of the applications to parties listed in §213.4(a)(2).

The commission proposes to amend §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 proposed 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 proposed 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 proposed changes reflect the language in current §213.23(e)(2) which is proposed to be deleted and added to revised §213.23(e).

The commission proposes 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 rules propose to make the review time consistent between both Subchapters A and B.

Additionally, the current automatic approval for contributing zone plans causes 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 currently under review must be delayed. This change in prioritization may cause further delays and associated costs for the recharge and transition zone projects. If all the plans are reviewed under the same time frame, 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. Automatic approval on contributing zone plans removes this flexibility. Plans are currently turned away at time of submittal due to the lack of time to receive the additional information needed for the review.

In addition, without adequate time to respond to comments for both the executive director and the applicant, the executive director might be forced to deny 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.

It has become increasingly more difficult for the executive director to meet the 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.

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for units of state and local government due to administration and enforcement of the proposed rules.

These proposed rules are intended to implement certain provisions of HB 2912 (an act relating to the continuation and functions of the commission; providing penalties), 77th Legislature, 2001. The bill required the commission to implement a 30-day comment period in the review process for protection plans submitted for regulated activities in the contributing zone of the Edwards Aquifer. This comment period was implemented on September 1, 2001. These proposed rules would also change the number of

copies of protection plans required to be submitted to the commission's regional offices for activities within the recharge, transition, and contributing zones of the Edwards Aquifer and would delete the 16-day automatic approval of contributing zone protection plans, replacing it with a 90-day review time after the close of the 30-day comment period. No significant fiscal implications for the commission are anticipated due to the repeal of the 16-day automatic approval provision.

A protection plan consists of blueprints and various applications/plans including water pollution abatement plans, contributing zone plans, organized sewage collection system plans, aboveground/underground storage tank facility plans, modifications to existing plans, or exception requests. These plans have to be approved by the commission before any construction activity in the affected areas can start.

The Edwards Aquifer recharge, transition, and contributing zones are located in portions of Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties. All regulated activities within the recharge, transition, and contributing zones of the Edwards Aquifer would be affected by this rulemaking. Regulated activities, under Subchapter A, include any construction-related or post-construction activity that include, but are not limited to, the following: construction of buildings, utility stations, utility lines, roads, highways, or railroads; clearing, excavation, or any other activity that alters or disturbs the topographic, geologic, or existing recharge characteristics of a site; any installation of aboveground or underground storage tank facilities on the recharge or transition zone of the Edwards Aquifer; or any other activities that may pose a potential for contaminating the Edwards Aquifer and hydrologically-connected surface streams. Regulated activities under Subchapter B are

similar to those under Subchapter A, but apply only to activities disturbing at least five acres, or 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.

The proposed rules will change the requirement for copies of protection plans from requiring a specific number to requiring copies as needed. Currently, the commission requires an original and three copies of a recharge or transition zone protection plan and an original and one copy of a contributing zone protection plan. Upon receiving these copies from applicants for projects located over the recharge or transition zone, the commission's regional offices distribute the copies to affected incorporated cities, groundwater conservation districts, and counties in which the regulated activity will be located. The proposed rules would remove the specific copy criteria and instead require an original and one copy for the commission and one copy for each affected incorporated city, groundwater conservation district, and county in which the regulated activity will be located.

In order to provide the commission with sufficient time to review and analyze comments submitted during the new 30-day comment period, this rulemaking would delete the 16-day automatic approval of contributing zone protection plans. Currently, if the executive director does not issue a letter approving or denying a protection plan submitted for a regulated activity in the contributing zone of the Edwards Aquifer within 16 days, the plan is automatically approved. The proposed timing changes would make the review period for contributing zone protection plans the same as protection plans submitted for regulated activities in the recharge and transition zones of the Edwards Aquifer, which already require a 30-day comment period.

The commission annually processes approximately 70 contributing zone protection plans and approximately 570 recharge and transition zone protection plans. Out of this total, approximately ten contributing and 50 recharge and transition zone protection plans are submitted by units of state and local government.

The new 30-day comment period for contributing zone protection plans is not anticipated to result in significant fiscal implications for units of state and local government that are required to submit protection plans for construction activities in the contributing zone of the Edwards Aquifer. As mandated by HB 2912, the 30-day comment period was implemented on September 1, 2001. The majority of contributing zone plans affected by this provision are not submitted by units of state and local government. Out of the 18 contributing zone plans submitted for review so far in FY 2002, only three have been submitted by units of government. Two of these plans are still pending, awaiting the completion of the 30-day comment period. The commission has received no information that would indicate that this delay has resulted in significant fiscal impacts for any affected unit of government. Future applications for construction activity in the contributing zone of the Edwards Aquifer are anticipated to incorporate the 30-day comment period and the 90-day review time after the comment period into overall construction plans, which should not result in significant fiscal implications.

The requirement to provide additional copies of protection plans as needed is also not anticipated to result in significant fiscal implications for units of state and local government that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission anticipates that the highest number of copies that will need to be made in order to provide a copy of the protection

plan to the commission and all affected incorporated cities, groundwater conservation districts, and counties is approximately six copies with one original, which is four copies more than currently required for contributing zone plans and two copies more than for recharge and transition zone plans. The commission estimates the requirement to reproduce six copies will be rare, and that the average number of copies required to be reproduced will be closer to four. Given the size of the protection plans, which can be as many as 100 pages including blueprints, the commission anticipates affected units of state and local government will pay an additional \$60 per copy to comply with the proposed rules.

PUBLIC BENEFIT AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be increased time for the public and affected units of local government to comment on potential environmental impacts of construction activity over the Edwards Aquifer or in the contributing zone to the Edwards Aquifer, resulting in potentially increased water quality protection of the Edwards Aquifer.

This rulemaking is intended to implement certain provisions of HB 2912, 77th Legislature, 2001, which required the commission to implement a 30-day comment period in the review process for protection plans submitted for regulated activities in the contributing zone of the Edwards Aquifer. This rulemaking would also increase the number of copies of protection plans required to be submitted to the commission's regional offices for activities within the recharge, transition, and contributing zones of the Edwards Aquifer and would delete the 16-day automatic approval of contributing zone protection plans,

replacing it with a 90-day review time after the close of the 30-day comment period.

The commission annually processes approximately 70 contributing zone protection plans and approximately 570 recharge and transition zone protection plans. Out of this total, approximately 60 contributing and 520 recharge and transition zone protection plans are submitted by individuals and businesses.

As mandated by HB 2912, the 30-day comment period was implemented on September 1, 2001. The new 30-day comment period for contributing zone protection plans is not anticipated to result in significant fiscal implications for individuals and businesses that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission has received 18 contributing zone protection plans so far in FY 2002. All but three of these applications have already been approved and processed by the commission. None of the pending three applications were submitted by individuals or larger businesses. The commission has received no information that would indicate that the additional 30-day comment period has resulted in significant fiscal impacts for any affected individual or business since it was implemented on September 1, 2001. Future applications for construction activity in the contributing zone of the Edwards Aquifer are anticipated to incorporate the 30-day comment period and the 90-day review time after the 30-day comment period into overall construction plans, which should not result in significant fiscal implications.

The requirement to provide additional copies of protection plans as needed is also not anticipated to result in significant fiscal implications for individuals and businesses that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission anticipates that the highest number of copies that will need to be made in order to provide a copy of the protection plan to the commission and all affected incorporated cities, groundwater conservation districts, and counties is approximately six copies with one original. The commission estimates the requirement to reproduce six copies will be rare, and that the average number of copies required to be reproduced will be closer to four. Given the size of the protection plans, which can be as many as 100 pages including blueprints, the commission anticipates affected individuals and businesses will pay an additional \$60 per copy to comply with the proposed rules.

SMALL AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications, which are not anticipated to be significant, for small and micro-businesses due to implementation of the proposed rules, which are intended to implement provisions of HB 2912, 77th Legislature, 2001. This bill required the commission to implement a 30-day comment period in the review process for protection plans submitted for regulated activities in the contributing zone of the Edwards Aquifer.

Additionally, this rulemaking would increase the number of copies of protection plans required to be submitted to the commission's regional offices for activities within the recharge, transition, and contributing zones of the Edwards Aquifer and would delete the 16-day automatic approval of contributing zone protection plans, replacing it with a 90-day review time after the close of the 30-day

comment period.

The commission annually processes approximately 70 contributing zone protection plans and approximately 570 recharge and transition zone protection plans. Out of this total, approximately 60 contributing and 520 recharge and transition zone protection plans are submitted by industry, some of which may be small or micro-businesses.

As mandated by HB 2912, the 30-day comment period was implemented on September 1, 2001. The new 30-day comment period for contributing zone protection plans is not anticipated to result in significant fiscal implications for small or micro-businesses that are required to submit protection plans for construction activity over the Edwards Aquifer. The commission has received 18 contributing zone protection plans so far in FY 2002. Of the 18 plans submitted, at least one has been submitted by a small business. This plan is currently pending, awaiting the completion of the 30-day comment period. The commission has received no information that would indicate that the additional 30-day comment period has resulted in significant fiscal impacts for any small or micro-businesses since implemented on September 1, 2001. Future applications for construction activity in the contributing zone of the Edwards Aquifer are anticipated to incorporate the 30-day comment period and the 90-day review time after the 30-day comment period into overall construction plans, which should not result in significant fiscal implications.

The requirement to provide additional copies of protection plans as needed is also not anticipated to result in significant fiscal implications for small and micro-businesses that are required to submit

protection plans for construction activity over the Edwards Aquifer. The commission anticipates that the highest number of copies that will need to be made in order to provide a copy of the protection plan to the commission and all affected incorporated cities, groundwater conservation districts, and counties is approximately six copies with one original. The commission estimates the requirement to reproduce six copies will be rare, and that the average number of copies required to be reproduced will be closer to four. Given the size of the protection plans, which can be as many as 100 pages including blueprints, the commission anticipates affected small and micro-businesses will have to pay an additional \$60 per copy to comply with the proposed rules.

The following is an analysis of the potential cost per employee for small or micro-businesses affected by the proposed rules. Small and micro-business are defined as having fewer than 100 or 20 employees respectively. A small business that is required to provide four additional copies of a contributing zone protection plan would spend an additional \$3.00 per employee while a micro-business would spend an additional \$12 per employee to comply with the proposed rules.

LOCAL EMPLOYMENT IMPACT

The commission has reviewed this proposed rulemaking and 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 has reviewed the proposed 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 proposed 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 proposed rules did meet the definition of a “major environmental rule,” the proposed 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 proposed rules seek to carry out the commission’s statutory responsibility to protect the quality of the aquifer pursuant to TWC, §26.046 and §26.0461 and in accordance with §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 proposes 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 propose these rules solely under

the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. 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 proposed 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 16-day automatic approval. This proposed rulemaking will not create any additional burden on private real property and will not constitute a taking. House Bill 2912, §10.04 specifically requires a 30-day comment period for contributing zone plans. The commission decided to propose the 90-day approval process rather than a longer or shorter period because the 16-day automatic approval does not allow program staff adequate time for review 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 proposed 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 proposed rules are not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal 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., Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-086-213-WT. Comments must be received by 5:00 p.m., April 15, 2002. For further information, please contact Kathy Ramirez, Regulation Development Section, at (512) 239-6757.

STATUTORY AUTHORITY

The amendment is proposed 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 proposed 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. Texas Water Code, §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 gives the goal for groundwater protection in the state; and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater.

The proposed amendment implements TWC, §§5.103, 5.105, 26.011, 26.0461, 26.121, 26.137, 26.401, and 28.011.

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

§213.4

§213.4. Application Processing and Approval.

(a) - (b) (No change.)

(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. [An original and three copies of the application must be submitted to the appropriate regional office.]

(2) (No change.)

(d) - (k) (No change.)

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

§213.23

STATUTORY AUTHORITY

The amendment is proposed 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 proposed 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. Texas Water Code, §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 gives the goal for groundwater protection in the state; and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater.

The proposed amendment implements TWC, §§5.103, 5.105, 26.011, 26.0461, 26.121, 26.137, 26.401, and 28.011.

§213.23. Plan Processing and Approval.

(a) Approval by executive director.

(1) (No change.)

(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) [(2)] 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) (No change.)

(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. [An original and one copy of the application must be submitted to the appropriate regional office.]

(2) (No change.)

(d) (No change.)

(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.

[(1) 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.]

[(2) Grounds for denial of an application include, but are not limited to, failure to pay the application fee and failure to include all information listed in this section.]

[(3) If the executive director fails within 16 calendar days after receipt of the application to issue a letter approving or denying the application, the application shall be deemed to be granted.]

(f) - (k) (No change.)