

Texas Commission on Environmental Quality (commission) adopts amendments to §§213.9, 213.13, 213.14, and 213.26 - 213.28. These sections are adopted *without changes* to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8420) and, therefore, will not be republished.

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

The purpose of the adopted amendments is to implement legislative changes to Texas Water Code (TWC), §26.0461(b), (d), (e), and (h) and the addition of subsection (d-1) regarding Fees for Edwards Aquifer Plans, as enacted by House Bill 3098, 80th Legislature, 2007. Texas Water Code, §26.0461(b) and (e), as amended, authorizes the commission to assess fees for contributing zone plans. Texas Water Code, §26.0461(d), as amended, and new subsection (d-1), raises the cap on any fee imposed under §26.0461 from \$5,000 to \$6,500 for plans forty acres or less in size and sets a cap of \$13,000 for plans more than forty acres in size. In addition, Texas Water Code, §26.0461(e), as amended, authorizes the commission to base fees imposed under §26.0461 on the type of activity subject to regulation. Lastly, Texas Water Code, §26.0461(h), as amended, provides the commission with flexibility in spending fee revenue for support activities of the Edwards Aquifer Protection Program.

#### SECTION BY SECTION DISCUSSION

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

The adopted amendment to §213.9, Exceptions, increases the fee for submittal of an Edwards Aquifer protection plan exception from \$250 to \$500.

The adopted amendment to §213.13, Fees Related to Requests for Extensions, increases the fee for an Edwards Aquifer protection plan extension from \$100 to \$150.

The adopted amendment to §213.14, Fee Schedule, contains the criteria for calculating the application fee for the review of an Edwards Aquifer protection plan and modifications to a plan. The water pollution abatement plan fee schedule for single-family residential dwellings is revised to reflect seven categories based on size in acres with fees set at \$650 for one single-family dwelling on less than five acres, \$1,500 for multiple single-family dwellings and parks on less than five acres, \$3,000 for five to less than ten acres, \$4,000 for ten to less than forty acres, \$6,500 for forty to less than one hundred acres, \$8,000 for one hundred to less than five hundred acres, and \$10,000 for five hundred acres or greater. The fee schedule for commercial and other sites where regulated activities will occur is also revised to reflect six categories based on size in acres with fees set at \$3,000 for less than one acre, \$4,000 for one to less than five acres, \$5,000 for five to less than ten acres, \$6,500 for ten to less than forty acres, \$8,000 for forty to less than one hundred acres, and \$10,000 for one hundred acres and greater. The cap for fees for organized sewage collection systems and underground and aboveground storage tank facilities is raised to \$6,500.

*Subchapter B, Contributing Zone to the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties*

The adopted amendment to §213.26, Exceptions, increases the fee for submittal of an Edwards Aquifer contributing zone plan exception from \$250 to \$500.

The adopted amendment to §213.27, Contributing Zone Plan Application and Exception Fees, establishes the same criteria for calculating the application fee for the review of an Edwards Aquifer contributing zone plan and modifications to a plan as designated by the adopted amendment to §213.14. The contributing zone plan fee is revised from a flat fee of \$250 regardless of the size of development and the new fee schedule is reflective of the same specific fee categories based on size in acres as designated in amended §213.14 for water pollution abatement plans with the exception of plans for organized sewage collection systems and underground and aboveground storage tank facilities, as these activities are exempt from application requirements in the contributing zone under current rules.

The adopted amendment to §213.28, Fees Related to Requests for Contributing Zone Plan Approval Extensions, increases the fee for submittal of an Edwards Aquifer contributing zone plan extension from \$100 to \$150.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of “a major environmental rule” as defined in the statute. “A major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set

by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amendments to TWC, §26.0461 authorize the commission to base fees on the type of activity subject to regulation, assess fees for contributing zone plans, and raises the maximum fee from \$5,000 to \$6,500 for plans forty acres or less in size. The amendments also set a maximum fee of \$13,000 for plans more than forty acres in size and provide flexibility in the use of spending fee revenue to support the Edwards Aquifer Protection Program. Because the rules are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure, this rulemaking is not a major environmental rule. The amendments to TWC, §26.0461 are not anticipated 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. The amendments simply alter the fee structure by increasing the amounts based on the activities regulated. The commission solicited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact analysis for this rule pursuant to Texas Government Code, Chapter 2007 to determine whether the adopted rules constitute a taking. The following is a summary of that analysis. The specific purpose of the rulemaking is to amend the regulations set forth in Chapter 213

to adjust the amount of fees imposed for processing plans or amendments to plans subject to review and approval under the commission's Edwards Aquifer rules. The adopted rules substantially advance the stated purpose by increasing the fees as required by statutes. Promulgation and enforcement of these rules will not affect private real property.

Promulgation and enforcement of these rules will not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. Owners of property that is used for activities having the potential for polluting the Edwards Aquifer and owners of property that are hydrologically connected to surface water are presently required to submit to the Executive Director for approval an Edwards Aquifer Protection Plan application or an application to modify an approved plan. An owner must also submit an application fee at the time the original application or an application to modify an approved plan is filed. This rulemaking only affects the amount of the fees charged by the commission to review plans under the Edwards Aquifer Protection Program. The adopted rulemaking does not affect a landowner's right in private property because it does not burden nor restrict or limit the owner's right to property. Also, this adopted rulemaking should not reduce the market value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this action does not create a burden on any affected private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program. The commission solicited public

comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the Coastal Management Program.

#### PUBLIC COMMENT

The proposal was published in the November 23, 2007 issue of the *Texas Register* (32 TexReg 8420). The commission held a public hearing on December 10, 2007. The comment period closed on January 7, 2008. There were no attendees at the public hearing. The commission received written public comments from

Edwards Aquifer Authority (EAA), Save Our Springs Alliance (SOSA), and The Real Estate Council of San Antonio (RECSA).

#### RESPONSE TO COMMENTS

General comments in support of the rule package and amendments to 30 TAC Chapter 213 were received from EAA, SOSA, and RECSA.

**The commission appreciates all comments in support of the rule. The commission made no changes to the rule in response to these comments.**

SOSA specifically recommended increasing the maximum fee to \$13,000, as provided in HB 3098, rather than the \$10,000 proposed by the commission. In addition, SOSA requested an explanation as to why the commission proposed a fee cap of \$10,000.

**Although the commission received the authority to increase fees to a maximum of \$13,000, the commission did not receive a legislative increase in budget appropriation sufficient to justify fees**

**higher than \$10,000, at this time. Fees received in excess of the commission's budget appropriation level would not directly benefit the Edwards Aquifer Protection Program; therefore, no change was made to the rule in response to this comment.**

RECSA recommended that the commission: 1) prepare a request for supplemental appropriation; 2) add a licensed civil engineer in the regional offices; 3) provide training for employees involved in the Edwards Aquifer Program; and 4) make yearly accounting of funding and expenses in the Water Resources Account (Fund 154) and Edwards Aquifer Account (Fund 153) available to the public.

**In preparation for each legislative session, the TCEQ prepares a Legislative Appropriation Request (LAR) for consideration during the state's budget development process in which the TCEQ consistently requests funding for baseline program costs, in addition to supplemental, or exceptional item, requests. The EAPP currently has three Professional Engineers (PEs) dedicated to the review of Edwards Aquifer plans. Two of the engineers are located in the Austin Regional Office and one is in the San Antonio Regional Office. While the remaining EAPP staff are not PEs, they are knowledgeable of the Edwards Aquifer rule requirements. In addition, the EAPP Technical Guidance Manual (RG-349) is intended to provide assistance in preparation and review of Edwards Aquifer plans. The TCEQ recognizes a need for ongoing staff training and actively pursues additional training opportunities. Lastly, the TCEQ annually prepares an expense report that provides the EAPP expenses incurred by the North Central Texas Area, the Texas Border Area and the Field Operations Support Division. This report is located on the EAPP portion of the TCEQ website. The EAPP will request that additional agency program support funding information be provided by the TCEQ's Budget and Planning Division for inclusion on the website.**

**The commission made no changes to the rule language in response to these comments.**

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

**§§213.9, 213.13, and 213.14**

**STATUTORY AUTHORITY**

The amendments are adopted under Texas Water Code (TWC), §5.102, authorizing the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers; TWC, §5.103, authorizing the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §26.011, authorizing the commission to control the quality of water in the state; TWC, §26.0461, authorizing fees for the Edwards Aquifer program; TWC, §26.121, prohibiting the discharge of waste into water in the state except as authorized by the commission; and TWC, §26.341, regarding the state policy to protect the quality of groundwater and surface water from pollution by substances in underground and aboveground storage tanks and Texas Health and Safety Code, §366.012, authorizing the commission to “adopt rules governing the installation of on-site sewage disposal systems.”

The amendments implement TWC, §§5.102, 5.103, 26.011, 26.0461, 26.121, and 26.341 and Texas Health and Safety Code, §366.012.

**§213.9. Exceptions.**

(a) Granting of exceptions. Exceptions to any substantive provision of this chapter related to the protection of water quality may be granted by the executive director if the requestor can demonstrate equivalent water quality protection for the Edwards Aquifer. No exception will be granted for a prohibited activity. Prior approval under this section must be obtained from the executive director for the exception to be authorized.

(b) Procedure for requesting an exception. A person requesting an exception to the provisions of this chapter relating to the protection of water quality must file an original and three copies of a written request with the executive director at the appropriate regional office stating in detail:

(1) the name, address, and telephone numbers of the requestor;

(2) site and project name and location;

(3) the nature of the exception requested;

(4) the justification for granting the exception as described in subsection (a) of this section; and

(5) any other pertinent information that the executive director requests.

(c) Fees related to requests for exceptions. A person submitting an application for an exception, as described in this section, must pay \$500 for each exception request. The fee is due and payable at the time the exception request is filed, and should be submitted as described in §213.12 of this title (relating

to Application Fees). If the exception request fee is not submitted in the correct amount, the executive director is not required to consider the exception request until the correct fee is submitted.

**§213.13. Fees Related to Requests for Extensions.**

The person submitting an application for an extension of an approval of any plan under this chapter must pay \$150 for each extension request. The fee is due and payable at the time the extension request is filed, and should be submitted as described in §213.12 of this title (relating to Application Fees). If the extension fee is not submitted in the correct amount, the executive director is not required to consider the extension request until the correct fee is submitted. The extension request must be submitted to the appropriate regional office and must include a copy of the Edwards Aquifer protection plan and approval letter that is the subject of the extension request.

**§213.14. Fee Schedule.**

(a) Water Pollution Abatement Plans. For water pollution abatement plans and modifications to those plans, the application fee shall be based on the classification and total acreage of the site where regulated activities will occur as specified in Table 1 of this subsection.

Figure 30 TAC §213.14(a)

Table 1

CLASSIFICATION/NUMBER OF ACRES	FEE
One single-family residential dwelling on less than 5 acres	\$650
Multiple single-family residential dwellings and parks	
Less than 5 acres	\$1,500
5 acres to less than 10 acres	\$3,000
10 acres to less than 40 acres	\$4,000
40 acres to less than 100 acres	\$6,500
100 acres to less than 500 acres	\$8,000
500 acres or more	\$10,000
Non-residential (Commercial, industrial, institutional, multi-family residential, schools, and other sites where regulated activities will occur)	
Less than 1 acre	\$3,000
1 acre to less than 5 acres	\$4,000
5 acres to less than 10 acres	\$5,000
10 acres to less than 40 acres	\$6,500
40 acres to less than 100 acres	\$8,000
100 acres or more	\$10,000

(b) Organized sewage collection systems. For sewage collection system plans and modifications, the application fee shall be based on the total number of linear feet of all lines for which approval is sought. The fee shall be \$.50 per linear foot, with a minimum fee of \$650 and a maximum fee of \$6,500.

(c) Underground and aboveground storage tank facilities. For underground or permanent aboveground storage tank system facility plans and modifications, the application fee shall be based on

the number of tanks or piping systems for which approval is sought. The fee shall be \$650 per tank or piping system, with a minimum fee of \$650 and a maximum fee of \$6,500.

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

**§§213.26 - 213.28**

**STATUTORY AUTHORITY**

The amendments are adopted under Texas Water Code (TWC), §5.102, authorizing the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers; TWC, §5.103, authorizing the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §26.011, authorizing the commission to control the quality of water in the state; TWC, §26.0461, authorizing fees for the Edwards Aquifer program; TWC, §26.121, prohibiting the discharge of waste into water in the state except as authorized by the commission; and TWC, §26.341, regarding the state policy to protect the quality of groundwater and surface water from pollution by substances in underground and aboveground storage tanks and Texas Health and Safety Code, §366.012, authorizing the commission to “adopt rules governing the installation of on-site sewage disposal systems.”

The amendments implement TWC, §§5.102, 5.103, 26.011, 26.0461, 26.121, and 26.341 and Texas Health and Safety Code, §366.012.

**§213.26. Exceptions.**

(a) Granting of exceptions. Exceptions to any substantive provision of this subchapter related to the protection of water quality may be granted by the executive director if the requestor can demonstrate equivalent water quality protection for surface streams which enter the recharge zone of the Edwards Aquifer. Prior approval under this section must be obtained from the executive director for the exception to be authorized.

(b) Procedure for requesting an exception. A person requesting an exception to the provisions of this subchapter relating to the protection of water quality must file an original and one copy of a written request with the executive director at the appropriate regional office stating in detail:

(1) the name, address, and telephone numbers of the requestor;

(2) site and project name and location;

(3) the nature of the exception requested;

(4) the justification for granting the exception as described in subsection (a) of this section; and

(5) any other pertinent information that the executive director requests.

(c) Fees related to requests for exceptions. A person submitting an application for an exception, as described in this section, must pay \$500 for each exception request. The fee is due and payable at the time the exception request is filed, and should be submitted as described in §213.27 of this title (relating to Application Fees). If the exception request fee is not submitted in the correct amount, the executive director is not required to consider the exception request until the correct fee is submitted.

**§213.27. Application Fees.**

(a) The person submitting an application for approval or modification of any contributing zone plan under this subchapter must pay an application fee in the amount set forth in subsection (b) of this section. The fee is due and payable at the time the application is filed. The fee must be sent to either the appropriate regional office or the cashier in the agency headquarters located in Austin, accompanied by an Edwards Aquifer Contributing Zone Fee Application Form, provided by the executive director. Application fees must be paid by check or money order, payable to the "Texas Commission on Environmental Quality." If the application fee is not submitted in the correct amount, the executive director is not required to consider the application until the correct fee is submitted.

(b) For contributing zone plans and modifications to those plans, the application should be based on the classification and the total acreage of the site where regulated activities will occur as specified in Table 2 of this subsection.

Figure 30 TAC §213.27(b)

Table 2

CLASSIFICATION/NUMBER OF ACRES	FEE
One single-family residential dwelling on less than 5 acres	\$650
Multiple single-family residential dwellings and parks	
Less than 5 acres	\$1,500
5 acres to less than 10 acres	\$3,000
10 acres to less than 40 acres	\$4,000
40 acres to less than 100 acres	\$6,500
100 acres to less than 500 acres	\$8,000
500 acres or more	\$10,000
Non-residential (Commercial, industrial, institutional, multi-family residential, schools, and other sites where regulated activities will occur)	
Less than 1 acre	\$3,000
1 acre to less than 5 acres	\$4,000
5 acres to less than 10 acres	\$5,000
10 acres to less than 40 acres	\$6,500
40 acres to less than 100 acres	\$8,000
100 acres or more	\$10,000

**§213.28. Fees Related to Requests for Extensions.**

The person submitting an application for an extension of an approval of any contributing zone plan under this subchapter must pay \$150 for each extension request. The fee is due and payable at the time the extension request is filed, and should be submitted as described in §213.27 of this title (relating to Application Fees). If the extension fee is not submitted in the correct amount, the executive director is not required to consider the extension request until the correct fee is submitted. The extension request

must be submitted to the appropriate regional office and must include a copy of the contributing zone plan application and approval letter that is the subject of the extension request.