

## **PETITION - Adoption of Rule**

August 15, 2018

TO: Stephanie Bergeron Perdue  
Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX. 78711-3087

### **Petitioner is an interested person**

As a resident of Texas, I qualify as an interested person according to 30 TAC §20.15 (a)(1).

### **Petitioner:**

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### **Reason of the proposed rule**

The Texas Commission on Environmental Quality (TCEQ) does not have a rule-based mechanism to officially notify the public when Contributing Zone Plans (CZPs) or Optional Enhanced Measures (OEMs) are open for the 30-day comment period. The current process for public notification is buried in the Distribution Notification Process of 30 TAC §213.23(a)(2).

This faulty process came to light when a group of concerned residents learned 21 days into the 30-day comment period that a Contributing Zone Plan - OEM of a development we are greatly concerned about, and had been following for months, was now before the TCEQ and only seven days remained to submit a Public Information Request, receive documents, review them, and submit comments.

A large portion of southwestern Travis County and northern Hays County are in the Barton Springs / Edwards Aquifer Contributing Zone. Our local water utility, the West Travis County Public Utility Agency (WTCPUA), is unique in that it requires that most developments comply with the TCEQs Optional Enhancements Measures (OEMs) as a condition for getting surface water.

Therefore, it is certain that there will be a continuing flow of Contributing Zone Plan (CZP) applications for projects in our community. For this reason, we in the vicinity feel we have the right to be informed of CZP applications. As a public agency, the TCEQ ought to make reasonable efforts to keep citizen stakeholders in the loop.

The current 30 TAC §213.23(a)(2) RULE reads as follows:

*(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.*

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This Distribution Notification Process is not sufficient nor transparent in alerting the public. In practice the Distribution Notification Process does not follow the Water Code statute.

For WATER CODE statute §26.137, COMMENT PERIOD FOR EDWARDS AQUIFER PROTECTION PLANS, to be meaningful and provide a true 30-day comment period, the process and rule needs to be moved into the TCEQs formal Public Notification system in the Commissioner's Integrated Database.

In the interest of sharing public information with concerned Texas residents, all CZP plans should be entered into the database. Their presence in the database would create an efficient, cost effective way to reach the public using the existing online database. The public comment period would then actually be open to the interested public.

### **Regional and State Considerations**

Our area is not incorporated and falls outside of any city's jurisdictional boundaries and does not, at this time, have an elected groundwater conservation district. We do not get notified and are not protected with communication and alerts about development that may effect the groundwater and environment.

Inclusion of CZP/OEMs in the database would improve efficiency of communication not only with the public but also between the various counties and the multiple agencies involved. A true picture of what's occurring with Contributing Zone Plans in the region would become transparent and to everyone's advantage. Comments could then be made with a truly open notification process.

There are a large number of CZPs flowing through the TCEQ system annually for Regions 11 and 13. Moving them into the light of the Commissioner's Integrated Database makes good sense.

Contributing Zone Plans may, at some point, be adopted in other portions of the state. The database could incorporate such notices wherever they originate and thereby serve notice to the public.

We depend on the TCEQ to do whatever is necessary to protect the environment and inform the public.

### **Public Notices**

I propose in addition to including Public Notice of Administratively Complete Contributing Zone Plans into the Commissioner's Integrated Database when they are open for the 30-day public comment period, that the rule also includes Public Notice of Technically Complete Contributing Zone Plans and Notice of Approval or Denial of plans. It's important the process also be folded into the chief clerks mailing list notice process.

### **Interim Alternative**

To immediately begin the process of giving the public notice of 30-day comment periods for Contributing Zone Plans, a system could be put in place with the Chief Clerk's office that utilizes TAC 30, §39.407, Mailing Lists. As part of the distribution notification process now in place, have the chief clerk maintain a mailing list of persons requesting notice of CZP Administratively Complete applications.

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**Proposed Rule and Process**  
**(30 TAC §213(a)(2) amended with integrated database process added)**

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. A Public Notice of Administratively Complete Contributing Zone Plans shall be posted in the TCEQs Commissioner's Integrated Database. Any person may file comments within 30 days of the date the application is mailed to local governmental entities and concurrently posted for Public Notice in the TCEQs Commissioner's Integrated Database. The executive director shall review all comments that are timely filed. A Public Notice of Technically Complete Contributing Zone Plans shall be posted to the Integrated Database within 90 days after determining that it is administratively complete. Upon Executive Director Approval, or Denial, of Contributing Zone Plans, a Public Notice shall be posted in the Commissioner's Integrated Database. The chief clerk shall maintain mailing lists of persons requesting notice of an application. Persons, including participants in past agency permit proceedings, may request in writing to be on a mailing list.

**Statutory Authority**

Texas Water Code, General Provisions, §5.103; and Water Quality Control, Administrative Provisions, Comment Period for Edwards Aquifer Protection Plans, TWC, §26.137.

Texas Administrative Code 30, RULE §39.407, Mailing Lists.

**Injury and Inequity from Failure to Adopt Proposed Rule**

The extreme growth and development of Central Texas and the Hill County makes this petition more vital than ever before; the environment is being radically impacted. An informed citizenry can help monitor development and work in tandem with governmental agencies to protect vital water and sensitive land resources and have smart growth as well.

**Conclusion**

I respectfully request the Texas Commission on Environmental Quality review this petition and act favorably in adopting rule changes necessary to notify the public of 30-day comment periods for CZPs and OEMs, and to bring the Barton Springs / Edwards Aquifer Contributing Zone Plans into the Public Notification system of the Commissioner's Integrated Database.

In the meantime, I request the TCEQ come up with some kind of interim alert process for Administratively Complete CZPs while you review this petition and how to implement a process and rule that can be adopted officially.

Thank you for your consideration,

Ms. Nancy Hernandez