

The Texas Natural Resource Conservation Commission (commission) proposes new §§213.1 - 213.15, concerning the Edwards Aquifer.

The purpose of the proposed new chapter is to streamline and consolidate the current Chapter 313, Edwards Aquifer rule, into new Chapter 213. The proposed numbering change implements a reorganization of commission rules by moving this chapter to the 200 series of Title 30 of the Texas Administrative Code that is being reserved for rules related to water programs. In addition, the proposed rule reorganizes the current rule to reflect the proper sequence of steps required to obtain approval from the executive director to commence construction of a regulated activity. Obsolete cross-references to other commission rules were corrected, poorly written or ambiguous language was revised, and processes and procedures were streamlined as part of the commissions regulatory reform process.

An additional purpose of the proposed new chapter is to respond to public comment received during hearings held pursuant to §26.046 of the Texas Water Code, which requires the agency to hold annual public comment hearings to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution. Initially, agency staff conducted three hearings in 1994 on March 30, April 5, and June 2, in San Antonio, Austin, and Hondo, respectively, to receive public comment on the protection of the Edwards Aquifer, related commission Chapter 313 rule, and its implementation by the agency. Staff then compiled a report which contained recommendations for changes to the rule based upon the comments received. Staff held three hearings on December 6 and

December 12, 1995 in San Antonio and Austin, respectively, and January 10, 1996 in Belton to receive comment on the report.

The proposed changes to the rules reflect comments requesting action that were reasonable, necessary, and the most cost-effective way to directly address specific, demonstrated water quality threats and to avoid duplication or unnecessary conflict with local regulations. These recommendations include: requiring 150 foot setback from a sensitive feature for new Underground Storage Tank (UST) without tertiary containment and temporary Above Ground Storage Tank (AST) facilities; the regulation of temporary ASTs on construction sites; the lowering of the exemption for the regulation of permanent AST facilities under this rule from 1,000 to 500 gallons of cumulative storage capacity; adding all new Municipal Solid Waste Type I facilities, including facilities required comply with Type I standards (i.e. Types I, II, and III facilities as defined in 30 TAC § 330.41 (b), (c), and (d)) to the list of prohibited activities in both the recharge and transition zones; clarifying the definition of Significant Recharge Features to aid in consistent program implementation and facilitate setbacks and recharge protection; clarifying that no discharge from sewage collection line leakage is allowed, enabling flexibility in repair schedules; removing requirements which are duplicative of Chapter 317 design criteria for sewage collection line standards; requiring Professional Engineer certification for plans which address caves encountered during construction of sewage collection lines; requiring a geologic assessment for new sewage lift station applications; requiring a geologic assessment for all new sewage collection systems; and modifying the exemption for geologic assessments to be based on acreage and amount of development.

The proposed changes also update the rule to reflect the current day-to-day operations of the agency relating to the protection of the water quality of the Edwards Aquifer and make the administration of the Edwards Aquifer Protection Program more efficient and effective. These changes include: reducing the requirement for conducting a geologic assessment for a distance of at least one mile downstream of all regulated developments to one-half mile, due to property access problems; clarifying the approved sewer line testing procedures; requiring a project that is partially located on the recharge and transition zone to meet standards as if the entire project is located within the recharge zone; placing a two-year expiration on Aboveground Storage Tank and Underground Storage Tank approvals to provide consistency with other expiration dates for approved regulated activities in Chapter 213; and eliminating the requirement for a Water Pollution Abatement Plan for electrical transformer stations containing mineral oil while clarifying that these facilities are not considered a hydrocarbon storage facility.

In addition, the commission has included a requirement for the inspection of best management practices and measures that are proposed as part of an Edwards Aquifer protection plan that are taken to prevent pollution of stormwater flowing onto and off a site. Maintenance and repair of these structures is required. The technical report will also include measures to avoid increased instream erosion from a site.

The purpose of this proposed rule is to establish regulations for activities having the potential for causing pollution of the Edwards Aquifer to protect existing and potential uses of groundwater and maintain the Texas Surface Water Quality Standards. However, these rules do not regulate in a totally

independent manner. They build upon and expand other existing rules under Title 30 of the Texas Administrative Code which govern various permitting, licensing, and spill response programs that address surface and groundwater pollution prevention from storage, transportation, and disposal of waste, hazardous substances, and wastewater. Some of these chapters are cross referenced within the proposed Chapter 213 and some of these chapter have special cross-references to the Edwards Aquifer or to a sole source aquifer as designated under the federal Safe Drinking Water Act.

Specific cross references in the proposed rule relate to on-site wastewater treatment which are contained in Chapter 285 of this title (relating to On-Site Wastewater Treatment). These rules contain specific provisions for on-site sewerage facilities (including septic tanks) in the recharge zone having the potential to cause pollution of the Edwards Aquifer. Cross references in the proposed rule also refer to Chapter 338 of this title relating to the Water Well Drillers Rules. This chapter specifically address the proper drilling and abandonment of wells to insure groundwater quality protection. While there are specific requirements for organized sewage collection systems contained in the proposed rule, the general design, design plans, and specifications must also comply with Chapter 317 of this title relating to Design Criteria for Sewerage Systems. To insure proper design and installation, underground storage tank systems designs are required to be prepared and signed by a registered contractor and installed by a person registered under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks). The design of wastewater treatment plants must be in accordance with Chapter 317 of this title and attain the effluent discharge standards contain in Chapter 309 of this title (relating to Effluent Limitations) and Chapter 311 of this title (relating to Watershed Protection) where applicable. The agency has proposed a rule under Chapter 216 of this title (relating to Water

Quality Performance Standards for Urban Development) that regulates non-point source pollution from certain developments in a limited part of the recharge and transition zones of the aquifer.

Prohibited activities are cross-referenced in the proposed rule to the chapters that contain the permitting provisions under this title. Waste disposal wells under Chapter 331, new feedlot/concentrations animal feeding operation under Chapter 321, land disposal of Class I wastes under Chapter 335, and new municipal solid waste landfill facilities required to meet and comply with Type I standards under Chapter 330 are all prohibited on the recharge zone. Waste disposal wells, land disposal of Class I waste, and new municipal solid waste facilities are all prohibited on the transition zone. Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste) has specific provisions in the section on location standards for hazardous waste storage, processing, or disposal that prohibit a land treatment facility, waste pile, storage surface impoundment, and landfill on the recharge zone of a sole source aquifer which cross references the Edwards Aquifer recharge zone maps that implement these proposed rules. Storage and processing facilities (excluding storage surface impoundments) under Chapter 335 may not be located on the recharge zone of a sole source aquifer unless secondary containment is provided.

Although not cited in the proposed rules, additional water quality protection from spills is provided by the commission staff in Regional Offices and through the Emergency Response Center. As specified under Chapter 343 of this title (relating to Oil and Hazardous Substances), the agency is the state's lead agency for response to all hazardous substance discharges or spills, and discharges or spills of other substances and certain inland oil discharges or spills which may cause pollution of the aquifer. This

authority is derived from §26.039 and §§26.261 through 26.268 of the Texas Water Code through the Texas Hazardous Substances Spill Prevention and Control Act. Pursuant to §26.039(b), whenever an accidental discharge or spill occurs, the individual operating or responsible for the activity or facility must notify the agency as soon as possible, but not later than 24 hours after the occurrence. In addition, the Railroad Commission of Texas has jurisdiction over discharges or spills from crude oil or natural gas pipelines under their jurisdiction. However, discharges or spills from pipelines transporting refined products such as gasoline, diesel, or other fuel oils fall under the jurisdiction of the agency. As specified under the “State of Texas Oil and Hazardous Substances Spill Contingency Plan,” the agency serves as the lead in directing and approving the response for the discharge or spill of a harmful quantity of crude oil (defined as five or more barrels discharged or spilled on the ground or any quantity discharged or spilled into water) during highway or rail transportation. In addition, the agency works with the Texas Department of Transportation to address both potential contamination issues surrounding the construction of highways and the placement of hazardous material traps to capture accidental spills resulting from accidents.

Proposed new §213.1, Purpose, discusses the intention of this chapter, delegates authority to the executive director to act on behalf of the commission and makes all actions taken by the executive director subject to 30 TAC Chapter 50, Subchapter C.

Proposed §213.2, Applicability and Person Required to Apply, specifies that these rules are applicable only to the Edwards Aquifer and identifies who must file applications with the executive director for approval.

Proposed §213.3, Definitions, provides definitions for terms used throughout the chapter. New or revised definitions relating to aboveground and underground storage tank facilities, best management practice, commencement of construction, geologic or manmade feature, regulated activity, sensitive feature, and site are included in this section.

Proposed §213.4, Application Processing and Approval, identifies who needs to file an Edwards Aquifer protection plan and how the plan will be processed. Section 213.4(a) prohibits the commencement of construction of a regulated activity until a plan has been approved by the executive director. Section 213.4(b) specifies the required contents of an application, including forms and the appropriate Edwards Aquifer protection plan. Section 213.4(c) requires that four copies of the application be submitted to the executive director for review and approval and specifies who has the authority to submit an application. Section 213.4(d) discusses the requirements for signatures on an application. Section 213.4(e) gives the time frame for executive director review and approval of an application and §213.4(f) authorizes the executive director to require additional provisions under a plan which are necessary to protect the Edwards Aquifer from pollution. Section 213.4(g) requires that within 30 days after plan approval, the applicant must record in the county deed records that the property is subject to an Edwards Aquifer protection plan and must provide proof of recordation to the executive director prior to commencing construction at the site. Section 213.4(h) relates to the term of approval of a plan, requiring that such approval expires two years after the initial issuance unless commencement of construction has occurred. This expiration is for all regulated activities that require an Edwards Aquifer protection plan under the proposed rules. Section 213.4(i) requires new owners of a site to comply with all terms of the approved Edwards Aquifer protection plan for that site.

Modifications to previously approved plans are discussed in §213.4(j) and compliance is discussed in §213.4(k).

Proposed §213.5, Required Edwards Aquifer Protection Plans, Notification, and Exemptions, lists activities that require an Edwards Aquifer protection plan, contents of a plan, notification and inspection requirements, and exemptions from submitting a plan. Section 213.5(a) lists regulated activities, by type of activity that requires an Edwards Aquifer protection plan. A water pollution abatement plan (WPAP) is required for all regulated activities on the recharge zone not specified in §213.5(c), (d), or (e). An organized sewage collection system plan (OSCSP) is required for repair, replacement, or construction of existing or new systems on the recharge zone. An underground storage tank facility plan (USTFP) is required for the construction, repair, or replacement of an underground storage tank system for the storage of static hydrocarbons and hazardous substances on the recharge or transition zone. An aboveground storage tank facility plan (ASTFP) is required for the construction, repair, or replacement of an aboveground storage tank system for the storage of static hydrocarbons and hazardous substances on the recharge or transition zone.

Proposed §213.5(b) specifies that contents of the WPAP are the application, site location information, assessment of area geology, and a technical report. The geologic assessment must be prepared by a geologist, must describe both area and site-specific geology, and identify potential pathways for contaminant movement to the Edwards Aquifer. Sensitive features within the 100-year floodplain that are located beyond the site boundary and the shorter distance of either one-half mile downgradient of the site or the distance to the downgradient boundary of the recharge zone shall be identified. The

proposed rule allows these features to be inventoried from literature searches, recognized from aerial photographs, or identified from other sources of information when access to downgradient property is denied.

The proposed rule also provides a standard method to identify sensitive features by requiring executive director approved forms. These forms allow the geologist to assess and determine if the geologic or manmade feature should be treated as a sensitive feature. This will allow for the identification of permeable geologic or manmade features located on the recharge zone or transition zone where a potential for hydraulic interconnectedness between the surface and the aquifer exists and where rapid infiltration to the subsurface may occur. The WPAP will have to specifically address these sensitive features to insure that contamination of the aquifer does not occur. The geological assessment will also detail the potential for fluid movement to the aquifer and contain a narrative description of soils on the site.

The WPAP also includes a technical report that details the nature of the regulated activity including size, projected population, amount and type of impervious cover, volume and character of wastewater to be produced, volume and character of stormwater runoff expected, and activities or processes which could be a potential source of aquifer contamination. The technical report will contain a description of the best management practices and measures that will be taken to prevent pollution of stormwater originating on-site or upgradient and the best management practices and measures that will prevent polluted stormwater runoff from leaving a site during and after construction. The report will also contain a description of measures that will be taken to prevent pollutants from entering the aquifer

while, to the extent practicable, maintaining flow to sensitive features. The sealing of sensitive features as a pollution control measure will be evaluated by the executive director on a case-by-case basis. The technical report will contain a description of measures to be taken to avoid or minimize instream erosion from water flowing off the site. The method of wastewater disposal from the site and measures that will be taken to contain any spill from the temporary storage of 250 or more gallons on site of static hydrocarbons or hazardous substance must be described. A plan for the inspection of best management practices and measures, and their maintenance and repair is required as part of the report.

Proposed §213.5(c) provides for the submittal of an OSCSP for repair, replacement, or construction related to existing or new organized sewage collection systems on the recharge zone. The general design of the system must comply with 30 TAC §317, Design Criteria for Sewerage Systems, and must be filed with and approved by the executive director or review authority before the OSCSP is submitted. Section 213.5(c)(3) contains special requirement for sewage collection systems on the recharge zone in the following areas: manhole construction repair or replacement, piping for gravity and pressurized collection systems, lift station design, certification of new sewage collection system lines, testing of existing sewer lines, blasting for sewer line excavation, sewer line stub outs, locating sewer lines within a five (5) year floodplain, inspection of private service lateral connections, embedment materials, sewer lines bridging caverns or other sensitive features, erosion and sedimentation control, alternative sewage collection systems, and required corrective action.

The OSCSP, under proposed §213.5(c)(4), must contain an application, narrative description, plans and specifications, and assessment of area geology. The assessment of area geology is required along

the path of the sewer line(s) plus 50 feet on either side of the line using the same technic described in proposed §213.5(b)(3). The OSCSP will contain pollution abatement measures for sensitive features identified along the path of the proposed sewer line as required by the assessment.

Proposed §213.5(d), Static Hydrocarbon and Hazardous Substance Storage in Underground Storage Tanks System, specifies the design standards for an underground storage tank systems and the required contents of the underground storage tank facility plan (USTFP) for facilities located on either the recharge or transition zone. New or replacement systems will be double-walled or an approved equivalent. The system design must be prepared and signed by a contractor registered under 30 TAC §334 (relating to Underground and Aboveground Storage Tanks) and installed by a person certified pursuant 30 TAC §334. Any new system that is within 150 feet of a domestic, industrial, irrigation, or public water supply well or other sensitive feature requires tertiary containment. Under proposed §213.5(d)(2), the required contents of an USTFP are the application, site location map as specified under §213.5(b)(2), assessment of area geology as described under §213.5(b)(3), and a technical report as described under §213.5(b)(4).

Proposed §213.5(e), Static Hydrocarbon and Hazardous Substance Storage in an Aboveground Storage Tank Facility, specifies the design standards for aboveground storage tank systems, the contents of the aboveground storage tank facility plan (ASTFP), and exemptions for facilities located on either the recharge or transition zone. Facilities used for the temporary and permanent aboveground storage of static hydrocarbon and hazardous substance must be constructed in a controlled drainage area that directs any spill to a collection point for recovery. The controlled drainage area is required to be sized

to capture one and one-half (1 ½) times the storage capacity of the facility and constructed of a material impervious to the substance(s) being stored. Any spill from a storage tank facility is required to be removed from the controlled drainage area for disposal within twenty-four (24) hours of the spill. Under proposed §213.5(e)(2), the contents of an ASTFP for permanent storage are the application, site location map as specified under §213.5(b)(2), assessment of area geology as described under §213.5(b)(3), and technical report as described under §213.5(b)(4).

A description of measures that will be taken to contain any spill of hydrocarbons or hazardous substances from temporary storage of 250 gallons or more shall be included in the plan. Any new temporary aboveground hydrocarbon and hazardous substance storage tank system is required to be located a minimum horizontal distance of 150 feet from any domestic, industrial, irrigation, public water supply well, or other sensitive feature.

Proposed §213.5(e)(4) exempts equipment used to transmit electricity that utilizes mineral oil for insulation or cooling purposes and permanent aboveground storage facilities with a cumulative storage capacity of less than 500 gallons from submitting an ASTFP.

Proposed §213.5(f), Notification and inspection, specifies that written notification is required no later than 48 hours prior to commencement of construction, repair, or replacement. Notice is required if any sensitive features are discovered during construction, repair or replacement. Upon completion of excavation for any lift station or tankhold, a qualified geologist is required to inspect the excavation for the presence of sensitive features. If sensitive features are discovered, methods to protect the aquifer

from potentially adverse impacts from the regulated activity must be approved by the executive director.

Proposed §213.6 (g) addresses on-site sewerage and proposed §213.5 (h). Section 213.5(h), Exemption, clarifies that the installation of natural gas, telephone or electric lines, water lines, or other such utility lines which are not designed to carry and will not carry pollutants, stormwater runoff, or sewage effluent are exempt from the Edwards Aquifer protection plan submittal requirements under this section. However, the construction of these facilities on the recharge zone is a regulated activity requiring the installation and maintenance of appropriate temporary erosion and sedimentation controls.

Proposed §213.6, Wastewater Treatment and Disposal Systems, contains a prohibition on new discharges or increases in discharges into or adjacent to water in the state, on the recharge zone that would create additional loading. Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in those permit. New land application wastewater treatment plants located on the recharge zone must be designed, constructed, and operated such that there are no bypasses of the treatment facilities or any discharges of untreated or partially treated wastewater from those facilities. Wastewater treatment plants must be designed in accordance with 30 TAC §317.

With the exception of licensed private sewage facilities, land application systems, under proposed §213.6(b), that rely on percolation for wastewater disposal are prohibited on the recharge zone.

Disposal of wastewater on the recharge zone utilizing land application methods, such as evaporation or

irrigation, will be considered on a case-by-case basis. Existing permits may be renewed for the same discharge volume and with the same conditions and authorizations specified in the permit.

Specific standards for wastewater discharge into or adjacent to water in the state, upstream from the recharge zone, are contained in §213.6(c). These standards apply to new or increased discharges of treated wastewater other than industrial wastewater discharges, within zero to five (0 to 5) miles upstream from the recharge zone, more than five (5) miles but within ten (10) miles upstream from the recharge zone and any other discharges that the agency determines may affect the Edwards Aquifer. Special provisions are also specified for all discharges, other than industrial wastewater discharges, more than five (5) miles upstream from the recharge zone which enter the main stem or a tributary of Segment 1428 of the Colorado River, or Segment 1427, main stem Onion Creek, or a tributary of Onion Creek. Any existing permitted industrial wastewater discharges within zero to ten (0 to 10) miles upstream of the recharge zone must, at all times, discharge effluent in accordance with permitted limits. Any application for new industrial wastewater discharge permits for facilities zero to ten (0 to 10) miles upstream of the recharge zone will be considered on a case-by-case basis.

Proposed §213.7, Plugging of Abandoned Wells, requires that all identified abandoned water well be plugged according to the requirements of 30 TAC Chapter 338 and any other locally applicable rules.

Proposed §213.8, Prohibited Activities, lists activities that are prohibited on either the recharge or transition zone due to their high potential to contaminate the aquifer. The following activities are prohibited on the recharge zone: waste disposal wells regulated under 30 TAC Chapter 331; new

feedlot/concentrated animal feeding operations regulated under 30 TAC Chapter 321; land disposal of Class I wastes, as defined in 30 TAC §335.1; sewage holding tanks used as part of an organized sewage collection systems; and new municipal solid waste landfill facilities (MSWLF) required to comply with Type I standards under 30 TAC §330.41 (b), (c), and (d). The following activities are prohibited on the transition zone: waste disposal wells regulated under 30 TAC Chapter 331; land disposal of Class I wastes, as defined in 30 TAC §335.1; and new MSWLF required to comply with Type I standards under 30 TAC §330.41 (b), (c), and (d).

Proposed §213.9, Exceptions, provides for exceptions to this chapter to be granted by the executive director and specifies the procedure for requesting an exemption.

Proposed §213.10, Enforcement, specifies that failure to comply with any provision of this chapter, any applicable statute or regulation, or order of the commission issued pursuant to this chapter may result in liability for penalties and may subject a noncompliant person to enforcement proceedings initiated by the executive director under Chapter 26 of the Texas Water Code.

Proposed §213.11, Groundwater Conservation Districts, recognizes the authorities, powers, and duties of groundwater conservation districts to conserve, prevent waste, and protect ground-water quality and encourages districts to assist the commission in its administration of this chapter by conducting specific functions within the areal extent of their geographic jurisdiction.

Proposed §213.12, Application Fees, requires applicants under this chapter to pay an application fee in the amount set forth in §213.14. The fee is due at the time the application is filed.

Proposed §213.13, Fees Related to Requests for Extensions, requires applicants under this chapter to pay \$100 for each extension request. The fee is due at the time the extension request is filed. The application must include a copy of the approved Edwards Aquifer protection plan.

Proposed §213.14, Fee Schedule, contains the criteria for calculating the application fee for the Edwards Aquifer protection plan.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these proposed sections are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. There are no significant fiscal implications anticipated for state government, although some changes in the costs of projects could be realized by state agencies operating in the geographical areas affected by these sections. These fiscal implications could be positive or negative depending on the type of project. These impacts are not anticipated to represent major changes in the costs to any state agency. Fiscal implications are also anticipated for units of local government. For example, local government will be impacted by the requirement to construct temporary erosion and sedimentation controls pursuant to proposed §213.5(h). Also, while the notification and inspection requirements for sewer line trenches are not new, this process has been expanded to include lift station excavations under §213.5 (f). However, some cost savings to local

governments may occur. These cost effects cannot be estimated at this time and are not anticipated to vary as a direct result of any provision of the proposed rule.

Mr. Minick has also determined that for the first five years these proposed sections are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be the prevention of further degradation of the quality of water resources in newly developed urban and suburban areas, reduction of the risk to human health and safety from degradation of water quality, the preservation of aquatic and related biological resources, and the maintenance of the quality of public and recreational resources.

Economic costs are anticipated for persons required to comply with the new requirements under this proposed chapter. Unless otherwise provided under this chapter, the owner of an existing or proposed site such as a residential or commercial development, sewage collection system, or aboveground or underground storage tank facility for static hydrocarbons or hazardous substance, who proposes new or additional regulated activities under this chapter, must file all appropriate applications and planning material with the executive director for approval. No changes to the application fees are proposed.

Costs implications of the rule may be associated with the following changes.

Under proposed §213.5(b)(3), a geologic assessment will not be required for single-family residential subdivisions on less than ten (10) acres. However, there will be a potential increase in cost because the current rule does not require a geologic assessment for a single-family residential subdivision with less

than 24 lots. The potential difference is that, under the current rules, 24 lots could be proposed on 100 acres and no geologic assessment would be required.

Under proposed §213.5(b)(3), the requirement for a downgradient assessment of area geology has been decreased from 1 mile to one-half mile. This will result in a cost savings.

Under proposed §213.5(c)(4)(D), a geologic assessment will have to be performed 50 feet on each side of the path of the proposed sewer line. While this new requirement will result in an initial cost, a cost savings should result ultimately during the construction phase since it allows for pre-planning to address sensitive features. Under the current rule, all construction must stop while plans are designed and approved.

Under proposed §213.5(d)(1)(B), new UST systems are required be located a minimum horizontal distance of 150 feet from any well or sensitive feature unless the system uses tertiary containment. This will result in an increased cost depending on the location of the UST.

Proposed §§213.5(b)(4) and 213.5(e)(3), require description of measures to contain spills for temporary ASTs storing greater than 250 gallons and require these facilities be located a minimum horizontal distance of 150 feet from any well or sensitive feature. Both temporary and permanent facilities that store greater than 500 gallons are required to be constructed within a controlled drainage area of impervious material that is sized to contain one and one-half times the storage capacity of the facility. This new requirement represents a cost increase because the current rules do not require

containment for temporary ASTs. However clean-up of spills of hazardous substances has always been required under the Texas Hazardous Substances Spill Prevention and Control Act. This section also requires permanent AST facilities of 500 gallon to 1,000 gallon to file and comply with an ASTFP.

Under §213.5(f)(2)(A)(i), a geologist must certify that a lift station excavation has been inspected for sensitive features. Section 213.5(f)(2)(B) also requires a geologist to certify that a UST excavation has been inspected for sensitive features. These new requirements could result in a cost, however, the current rule already requires that sensitive features be address if they are encountered during construction.

Under §213.5(h), temporary erosion and sedimentation controls will be required for the installation of utility lines that do not carry pollutants. This will result in an additional cost because these types of facilities are currently exempt from requirements under Chapter 313.

Under §§213.8(a)(5) and (b)(3), new Type I municipal solid waste landfills are prohibited on the recharge or transition zone. This should not result in either a cost increase or decrease because the topography, availability of soil liner materials, and geologic factors are unsuitable and uneconomical for locating these facilities in these areas.

The cost implications of these requirements for any project will vary on a case-by-case basis with the type of project, its size and location, the type of construction and other site-specific conditions. For large or particularly complex developments with significant potential for impact, the total monetary

implications could be significant. It is not anticipated that the total, incremental financial effects of the new requirements will increase total construction and development costs by a significant percentage. Many projects have no significant increases and could, in fact, realize some cost savings. There may also be indirect cost savings as a result of the reduction of contamination risks and the associated liability cost. Many of these fiscal implications will affect small businesses. However, the magnitude of costs or costs savings will vary with the size and individual characteristics of proposed developments, but not directly with the size of the affected firm.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Tex. Gov't Code Ann. §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to regulate activities having the potential for causing pollution of the Edwards Aquifer. The rule will substantially advance this specific purpose by clarifying the procedures and criteria to be used by the commission in the review and approval of Edwards Aquifer plans for regulated activities under this section. Promulgation and enforcement of this rule could affect private real property which is the subject of the rule.

However, there are exceptions to the application of Chapter 2007 of the Texas Government Code. One exception exists since the possibility of degradation to the quality of the water supply presents a real and substantial threat to public health and safety (see Texas Gov't Code Sec. 2007.003(b)(13)). The proposed rule will significantly contribute to the prevention of this threat. The Edwards Aquifer is the sole or primary source of water for over 1.5 million people. To the extent this rule regulates activities which have the potential for causing significant pollution of the Edwards Aquifer over the

recharge and transition zones, it significantly advances health and safety. This rule is necessary to carry out the stated authority of the commission to protect human health and the environment.

Additionally, regardless of the applicability of §2007.003(b)(13) of the Act, §2.007.003(c) also applies to this rule. Subsection (c) exempts the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995 and that prevents the pollution of a reservoir or an aquifer designated as a “sole source” aquifer. This exception applies to the enforcement or implementation of the entire rule even though only part of the Edwards has been designated as a sole source aquifer (See 40 Fed.Reg. 58344 (1975) and 53 Fed.Reg. 20897 (1988)). Current Chapter 313 rules regulating activities over the recharge or transition zones of the Edwards Aquifer have been in effect since March 1990.

The activities addressed by the rule are those that may pose a threat to water quality. This rule specifically applies to the Edwards Aquifer and is not intended to be applied to any other aquifers in the state of Texas. Unless otherwise provided under this chapter, the owner of an existing or proposed site such as a residential or commercial development, sewage collection system, or aboveground storage tank facility for static hydrocarbons or hazardous substance, who proposes new or additional regulated activities under this chapter, must file all appropriate applications with the executive director for approval.

Changes in the proposed rule would prohibit Type I, II or III municipal solid waste disposal facilities to be located over the recharge zone. However, there are no known permitted or proposed Type I, II or

III municipal solid waste facilities currently located within the recharge or transition zones of the aquifer. Generally, the topography, availability of soil liner materials, and geologic factors are unsuitable and uneconomical for locating municipal solid waste landfills on the recharge zone. Other activities with high potential for pollution, including new confined animal feeding operations and disposal of hazardous waste, are already prohibited under the existing Edwards Aquifer rule.

Public hearings on the proposal will be held in San Antonio on September 4th at 7:00 p.m. in the San Antonio City Council Chambers, Municipal Plaza Building at Main and Commerce Streets, 103 Main Plaza, San Antonio; and in Austin on September 10th at 2:00 p.m. at the Texas Natural Resource Conservation Commission Office Complex, Building E., Room 201S, 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion by the audience during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log No. 96114-213-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640; or faxed to (512) 239-5687. All comments sent by fax must be followed by an original, signed hard copy for the agency's records. Written comments must be received by 5:00 p.m., September 16, 1996. For further information concerning this proposal, please contact Mary Ambrose, Water Policy and Regulations Division at (512) 239-4813.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

These new sections are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 26.341 and Texas Health and Safety Code, §§361.024 and 366.012 which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Codes and other laws. Additionally, Texas Water Code §26.046 requires the commission to hold annual public hearing to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution, §26.0461 allows the commission to impose fees for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules, §26.121 prohibits unauthorized discharges, and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of ground-water quality.

There are no other codes or statutes that will be affected by this proposal.

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

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, 26.011, 26.046, and 28.011 which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties as provided by the Code and other state law and under the Texas Water Code, and §26.0461, which provides the commission with the authority to impose fees for the filing of certain plans subject to review by the agency under its rules for the protection of the Edwards Aquifer.

§213.1. Purpose.

The purpose of this chapter is to regulate activities having the potential for polluting the Edwards Aquifer in order to protect existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards. The activities addressed are those that pose a threat to water quality. Nothing in this chapter is intended to restrict the powers of the commission or any other governmental entity to prevent, correct, or curtail activities that result or might result in pollution of the Edwards Aquifer. The executive director shall review and act on an application subject to this chapter. Applications under this chapter are also subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director).

§213.2. Applicability and Person or Entity Required to Apply.

These rules specifically apply to the Edwards Aquifer and are not intended to be applied to any other aquifers in the state of Texas. Unless otherwise provided under this chapter, the owner of an existing or proposed site, such as a residential or commercial development, sewage collection system, or aboveground or underground storage tank facility for static hydrocarbons or hazardous substances, who proposes new or additional regulated activities under this chapter, must file all appropriate applications with the executive director for approval.

§213.3. Definitions.

The definitions in §26.001, §26.263, and §26.342 of the Texas Water Code are applicable to this chapter. When used in this chapter, those definitions shall have the same meaning as the following definitions unless the context in which they are used clearly indicates otherwise, or those definitions are inconsistent with the definitions listed below.

Abandoned well - A well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

(A) a non-deteriorated well which contains the casing, pump and pump column in good condition; or

(B) a non-deteriorated well which has been capped (as defined by Chapter 338 of this title relating to Water Well Drillers Rules).

Aboveground storage tank facility - The site, tract, or other area where one or more aboveground storage tank systems is located, including all adjoining contiguous land and associated improvements.

Aboveground storage tank system - A nonvehicular device (including any associated piping) that is made of nonearthen materials; located on or above the ground surface, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed to contain an accumulation of static hydrocarbons or hazardous substances.

Appropriate regional office - For regulated activities covered by this chapter and located in Hays, Travis and Williamson counties, the appropriate agency regional office is Region 11, located in Austin, Texas. For regulated activities covered by this chapter and located in Kinney, Uvalde, Medina, Bexar, and Comal counties, the appropriate agency regional office is Region 13, located in San Antonio, Texas.

Assessment of area geology - A report which is prepared by a geologist describing area and site-specific geology.

Best management practice (BMPs) - schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the State. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are those measures that are reasonable and necessary to achieve a performance standard that protects existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards, as determined by studies and other information that are generally relied upon by professionals in the environmental protection field and verified through performance monitoring.

Commencement of construction - The initiation of any regulated activity directly related and integral to the construction of the project proposed by the applicant in the approved water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, or aboveground storage tank facility plan. Activities will be considered on a case-by-case basis to have commenced if the owner has obtained all necessary federal, state, and local approvals or permits required to begin a regulated activity; and if either on-site construction directly related to the development has begun, or the owner has entered into contractual obligations, for physical construction to be completed within a reasonable time, which cannot be canceled or modified without substantial loss.

Edwards Aquifer - That portion of an arcuate belt of porous, waterbearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis,

and Williamson counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

Edwards Aquifer protection plan holder - Person who is responsible for compliance with an approved water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, aboveground storage tank facility plan, or an exception or variance granted by the executive director.

Feedlot/concentrated animal feeding operation - A concentrated, confined livestock or poultry facility operated for meat, milk or egg production, growing, stabling, or housing, in pens or houses wherein livestock or poultry are fed at the place of confinement and crop or forage growing or production of feed is not sustained in the area of confinement.

Geologic or manmade features - Features including but not limited to closed depressions, sinkholes, caves, faults, fractures, bedding plane surfaces, interconnected vugs, reef deposits, wells, borings, and excavations.

Groundwater conservation district - Any groundwater district created by the Texas Legislature or the commission under the Texas Water Code, Chapter 36, as a groundwater conservation district to conserve, preserve, and protect the waters of an underground water supply.

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

Industrial wastewater discharge - Any category of wastewater except:

- (A) those that are primarily domestic in composition; or
- (B) those emanating from feedlot/concentrated animal feeding operations.

Land application system - A wastewater disposal system designed not to discharge wastewater into a surface drainage way.

Organized sewage collection system - Any public or private sewerage system for the collection and conveyance of sewage to a treatment and disposal system that is regulated pursuant to rules of the commission and provisions of Chapter 26 of the Texas Water Code. A system includes lift

stations, force mains, gravity lines, and all appurtenances necessary for conveying wastewater from a generating facility to a treatment plant.

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

Private sewage facilities - On-site sewage facilities as defined under Chapter 285 of this title (relating to On-site Wastewater Treatment).

Private service lateral - Facilities extending from the building drain to an existing private or public sewage collection system or other place of disposal that provides service to one individual household or building whose operation and maintenance are the sole responsibility of the tenant or owner of the building. Facilities extending from the convergence of private service laterals from more than one building is considered a sewage collection system.

Recharge zone - Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as

that area designated as such on official maps located in the appropriate regional office and groundwater conservation districts.

Regulated activity - Any construction-related activity on the recharge zone of the Edwards Aquifer, such as, but not limited to: construction of buildings, utility stations, roads, highways, or railroads; clearing, excavation or any other activities which alter or disturb 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 which may pose a potential for contaminating the Edwards Aquifer. "Regulated activity" does not include:

(A) the clearing of vegetation in a 10-foot wide path, for the sole purpose of surveying;

(B) agricultural activities, except feedlots/concentrated animal feeding operations;

(C) activities associated with the exploration, development, and production of oil or gas or geothermal resources as defined in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste);

(D) routine maintenance of existing structures that does not involve additional site disturbance, such as; resurfacing of roads, parking lots, sidewalks, or other development-related impervious surfaces; fence building, or other similar activities in which there is little or no potential for contaminating groundwater, or there is little or no change to the topographic, geologic, or existing sensitive features; or

(E) construction of single-family residences on lots that are larger than five (5) acres, where no more than one single-family residence is located on each lot.

Sensitive feature - Permeable geologic or manmade feature located on the recharge zone or transition zone where:

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

(B) rapid infiltration to the subsurface may occur.

Sewage holding tank - A tank or other containment structure used to receive and store sewage until its ultimate disposal in an approved treatment facility.

Site - The entire area included within the legal boundaries of the property. Regulated activities on a site that is located partially on the recharge zone and transition zone shall be treated as if the entire site is located on the recharge zone.

Static hydrocarbon - A hydrocarbon which is liquid at atmospheric pressure and 20° centigrade.

Stub out - A wye, tee, or other manufactured appurtenance placed in a sewage collection system providing a location for a future extension of the collection system.

Transition zone - That area where geologic formations crop out in proximity to and south and southeast of the recharge zone and where faults, fractures, and other geologic features present a possible avenue for recharge of surface water to the Edwards Aquifer, including portions of the Del Rio Clay, Buda Limestone, Eagle Ford Group, Austin Chalk, Pecan Gap Chalk, and Anacacho Limestone. The transition zone is identified as that area designated as such on official maps located in the appropriate regional office and groundwater conservation districts.

Underground storage tank facility - The site, tract, or other defined area where one or more underground storage tank systems are located, including all adjoining contiguous land and associated improvements.

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

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

§213.4. Application Processing and Approval.

(a) Approval by the executive director. No person shall 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 chapter (relating to Required Edwards Aquifer Protection Plans, Notification, and Exemptions) has been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director. The appropriate regional office shall provide copies of submittals to affected incorporated cities and groundwater conservation districts having jurisdiction over the area potentially affected by a proposed regulated activity, for the purpose of considering timely input from local government entities. A complete application for approval, as described in this section, must be submitted with the appropriate fee as specified in §213.12 of this chapter (relating to Application Fees).

(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 persons signing the application; and

(D) information needed to determine the appropriate fee under §213.14 of this chapter (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 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 chapter;

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

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

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

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

(c) Application submittal. Four copies of the application must be submitted to the appropriate regional office. Only owners, their authorized agent(s), or those persons having an option to purchase, or 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 ninety (90) days after determining that it is administratively complete. The executive director must declare that the application is administratively complete or deficient within sixty (60) 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. Within 30 days of receiving written approval of an Edwards Aquifer protection plan for a proposed regulated activity, the applicant must record in the county deed records that the property is subject to an approved Edwards Aquifer protection plan. Prior to commencing construction, the applicant must submit, to the appropriate regional office, proof of application for recordation of notice in the county deed records.

(h) Term of approval. The executive director's approval of an Edwards Aquifer protection plan will expire two (2) years after the date of initial issuance, unless prior to the expiration date, construction related to the approved plan has commenced. If a written request for an extension is timely filed under the provisions of this subsection, the approved plan shall continue in effect until the executive director makes a determination on the request for the extension.

(1) A written request for an extension must be received not earlier than sixty (60) days and no later than thirty (30) 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 chapter (relating to Fees Related to Requests For Extensions).

(2) An executive director's approved extension will expire six (6) 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) 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 be considered a new application for the purposes of this chapter and will be subject to appropriate fees.

(4) An extension will not be granted if the proposed regulated activity or approved plan for the regulated activity(s) under this chapter has changed.

(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, he/she must file an Edwards Aquifer protection plan that specifically addresses the new 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 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 shall be responsible for compliance with this chapter and any special conditions of an 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.

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

(a) Required plans. A plan must be submitted for the following, as appropriate:

(1) a water pollution abatement plan under subsection (b) of this section to conduct regulated activities on the recharge zone not covered by subsections (c), (d), or (e) of this section;

(2) an organized sewage collection system plan under subsection (c) of this section for repair, replacement, or construction related to existing or new organized sewage collection systems on the recharge zone;

(3) an underground storage tank facility plan for static hydrocarbon and hazardous substance storage under subsection (d) of this section for the construction, repair, or replacement of an

underground storage tank system; including tanks, piping, and related systems located on the recharge zone or transition zone; and

(4) an aboveground storage tank facility plan for static hydrocarbon and hazardous substance storage under subsection (e) of this section for the construction, repair, or replacement of an aboveground storage tank system; including tanks, piping, and related systems, for the storage of hydrocarbon or hazardous substance located on the recharge zone or transition zone.

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

(1) Application. The information required under §213.4 of this chapter (relating to Application Processing and Approval) is part of the plan and shall be filed with the executive director at the appropriate regional office.

(2) Site location. The location data and maps shall include the following:

(A) a legible road map with directions, including mileage, which would enable the executive director to locate the site for inspection;

(B) a general location map showing:

(i) the site location on a copy (or spliced composite of copies, if necessary) of an official recharge zone map(s) with quadrangle name(s) and recharge and transition zone boundaries clearly labeled; and

(ii) a drainage plan, shown on the recharge zone map, indicating all paths of drainage from the site to the boundary of the recharge zone; and

(C) a site plan with a minimum scale of 1 inch to 400 feet, showing:

(i) the 100-year floodplain boundaries (if applicable);

(ii) the layout of the development, and existing and finished contours at appropriate, but not greater than five (5) foot contour intervals;

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

(iv) any sensitive feature located on the site of the proposed regulated activity or for areas beyond the site boundary that is within the 100-year floodplain and is a distance of one-half mile downgradient of the site as identified in paragraph (3) of this subsection.

(3) Assessment of area geology. For all regulated activities, the applicant must submit a report prepared by a geologist describing area and site-specific geology identifying all potential pathways for contaminant movement to the Edwards Aquifer. For areas beyond the site boundary that are within the 100-year floodplain and are the shorter distance of either one-half mile downgradient of the site or the downgradient boundary of the recharge zone, the geologic assessment must include an identification of sensitive features. If access to downgradient property is denied, these features may be inventoried from literature searches, recognized from aerial photographs, or identified from other sources of information. Where the 100-year floodplain has not been delineated, the applicant shall delineate the 100-year floodplain, showing all applicable data and calculations used to make such a delineation. Single-family residential subdivisions constructed on less than 10 acres are exempt from this requirement. The geologic assessment must include:

(A) a geologic map at site-plan scale showing the outcrop of surface geologic units and all geologic and manmade features, specifically identifying caves, sinkholes, faults, permeable fractures, solution zones, and other sensitive features;

(B) a stratigraphic column showing at a minimum, formations, members, and thicknesses;

(C) forms provided by or approved by the executive director, which describe and evaluate all geologic and manmade features to access and determine if they are sensitive features, and include:

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

(ii) the type of geologic or manmade feature, including but not limited to, sinkholes, caves, faults, wells or potentially permeable fractures and solution zones;

(D) a narrative assessment of site-specific geology, detailing the potential for fluid movement to the Edwards Aquifer, including discussion of the stratigraphy, structure, and karstic characteristics of the site; and

(E) a narrative description of soil units and soil profile, including thickness and hydrologic characteristics.

(4) Technical report. For regulated activities, a technical report shall address the following issues.

(A) An assessment of:

(i) the nature of the regulated activity (such as residential, commercial, industrial, or utility), including the size of the site in acres; the projected population for the site; the amount and type of impervious cover expected after construction is complete, such as paved surface or

roofing; the amount of surface expected to be occupied by parking lots; and other factors that could affect water quality;

(ii) the volume and character of wastewater expected to be produced (such as wastewater generated at a site should be characterized as either domestic or industrial, or if commingled, by approximate percentages of each type);

(iii) the volume and character of stormwater runoff expected to occur (estimates of stormwater runoff quality and quantity should be based on area and type of impermeable cover, as described in clause (i) of this subparagraph); and

(iv) any activities or processes which may be a potential source of contamination.

(B) A description of the best management practices and measures that will be taken to prevent pollution of stormwater originating on-site or upgradient from the site and potentially flowing across the site during construction and after completion of construction.

(C) A description of the best management practices and measures that will be taken to prevent pollution downgradient of the site by contaminated stormwater runoff from the site during construction and after completion of construction.

(D) A description of the best management practices and measures that will be taken to prevent pollutants from entering the aquifer while, to the extent practicable, maintaining flow to sensitive features identified in either the assessment of area geology or during excavation, blasting, or construction. The sealing of sensitive features as a pollution control measure will be evaluated by the executive director on a case-by-case basis.

(E) Measures to be taken to avoid or minimize changes in which water may enter a stream as a result of construction and development that would increase flashing, create stronger flow and stream velocity; or otherwise increase instream erosion and further water quality degradation;

(F) A description of the method of disposal of wastewater from the site:

(i) if wastewater is to be disposed of by conveyance to a sewage treatment plant for treatment and disposal, the existing or proposed treatment facility must be identified; or

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

(G) A description of measures that will be taken to contain any spill of hydrocarbons or hazardous substances from temporary aboveground storage of 250 gallons or more. Temporary storage facilities are those used on site for less than one year. Temporary aboveground storage tank systems of 250 gallons or more cumulative storage capacity shall be located a minimum horizontal distance of 150 feet from any domestic, industrial, irrigation, or public water supply well, or other sensitive feature.

(H) A plan for the inspection of best management practices and measures and for their maintenance and repair.

(c) Organized Sewage Collection Systems.

(1) No person shall commence repair, replacement, or construction related to an existing or new organized sewage collection system on the recharge zone, until design plans, specifications, and an engineering report, as specified in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems) and appropriate special requirements of this section, have been filed with and approved by the executive director or review authority.

(2) General design of sewage collection systems. Design of new sewage collection systems on the recharge zone must comply with Chapter 317 of this title.

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

(A) Manhole construction, repair, or replacement. All manholes constructed, repaired, or replaced after March 21, 1990, must be watertight, with watertight rings and covers and must be constructed and tested to meet the requirements of §317.2(c)(5)(H) of this title (relating to Sewage Collection System).

(B) Piping for gravity and pressurized collection systems. Compliance with the following is required, unless local regulations dictate more stringent standards:

(i) for gravity collection systems, all PVC pipe must have a Standard Dimension Ratio (SDR) of 35 or less and meet the requirements of §317.2(a) through §317.2(c)(4) of this title; and

(ii) for all pressurized sewer systems, all PVC pipe must have a minimum working pressure rating of 150 pounds per square inch and meet the requirements of §317.2(d)(2) - (d)(4) and §317.3(d)(5) - (d)(7) of this title (relating to Sewage Collection System and Lift Stations).

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

(D) Certification of new sewage collection system lines by a Texas Registered Professional Engineer. Owners of sewage collection systems must insure that all new gravity sewer system lines having a diameter greater than or equal to six (6) inches, all new force mains, and all new private service laterals, are tested for leakage following construction. Such lines must be certified by a Texas Registered Professional Engineer to meet the appropriate requirements of §317.2 of this title (relating to Design Criteria for Sewerage Systems). The engineer shall retain copies of all test results which shall be made available to the executive director upon request. The engineer shall submit a letter certifying that all wastewater lines have passed all required testing to the appropriate regional office within 30 days of test completion and prior to use of the new collection system. Following the completion of the new sewer lines and manholes, they must be tested every five years thereafter in accordance with subparagraph (E) of this paragraph.

(E) Testing of existing sewer lines. Owners of sewage collection systems must insure that all existing sewer lines having a diameter greater than or equal to six (6) inches, including private service laterals, manholes, and connections, are tested to determine types and

locations of structural damage and defects such as offsets, open joints, or cracked or crushed lines that would allow exfiltration to occur. Existing manholes and lift station wetwells shall be tested using methods for new structures which are approved by the executive director.

(i) Testing of all sewage collection systems shall be completed within five (5) years of commencement. Any sewage collection system in place as of March 21, 1990 shall have commenced and completed testing. Every five (5) years thereafter, existing sewer collection systems must be tested to determine types and locations of structural damage and defects such as offsets, open joints, or cracked or crushed lines that would allow exfiltration to occur. These test results shall be certified by a Texas Registered Professional Engineer. The following methods meet the requirements for the five year testing of existing sewer lines.

(I) In-place deflection testing shall meet the requirements of §317.2(a)(4)(C) of this title. No pipe shall exceed a deflection rate of five (5) percent.

(II) Internal line inspections, using a color television camera to verify that the lines are free of structural damage such as offsets, open joints, or cracked or crushed lines, that would allow exfiltration to occur, are acceptable. The use of black and white television equipment will not be accepted by the executive director.

(III) In-line smoke testing is acceptable only for the testing of private service laterals.

(IV) Testing methods other than those listed above must be approved by the executive director prior to initiating the sewer line testing.

(ii) As soon as possible, but at least within one (1) year of detecting defects, repairs to the sewage collection system must be initiated by the system's owner. However, all leakage must be immediately contained to prevent any discharge to water in the state or pollution of the Edwards Aquifer whether necessary repairs have been completed or not. Failure to comply with this section is a violation of §26.121 of the Texas Water Code. All repairs must be certified by a Texas Registered Professional Engineer. Repairs must be tested within 45 days of completion using the methods described in (i) of this subparagraph. Results must be submitted to the appropriate regional office within 30 days of testing.

(F) Blasting for sewer line excavation. Blasting for sewer line excavation must be done in accordance with appropriate criteria established by the National Fire Protection Association. Should such blasting result in damage to an existing or newly completed sewer line or any of its appurtenances, the owner of the sewer system and appurtenances must repair and retest the damaged sewer line and its appurtenances immediately. The use of sand for pipe embedment or backfill in blasted rock is prohibited.

(G) Sewer line stub outs. New collection system lines must be constructed with stub outs for the connection of anticipated extensions. The location of such stub outs must be marked on the ground such that their location can be easily determined at the time of connection of the

proposed extensions. All stub outs must be sealed with a manufactured cap to prevent leakage.

Extensions that were not anticipated at the time of original construction or that are to be connected to an existing sewer line not furnished with stub outs must be connected using a manufactured saddle in accordance with accepted plumbing techniques.

(i) Main line stub outs. Manholes shall be placed at the end of all sewer lines that will be extended at a future date, as specified in §317.2(c)(5) of this title. If the main line is to be extended within one (1) year, a variance to allow the use of stub out until the line is extended will be considered on a case-by-case basis. At the time of original construction, new stub outs must be constructed sufficiently to extend beyond the end of the street pavement. Stub outs that were not anticipated at the time of original construction must enter the manhole using a bored or drilled hole. Chiseling or hammering to enter a manhole is prohibited.

(ii) Private service lateral stub outs. Such stub outs must be manufactured using wyes or tees that are compatible in size and material with both the sewer line and the extension. Private service lateral stub outs that were not anticipated at the time of original construction must be connected using a manufactured saddle in accordance with accepted plumbing techniques.

(H) Locating sewer lines within a five (5) year floodplain. Sewer lines shall not be located within the five (5) year floodplain of a drainageway, unless an exemption is granted by the executive director. If the applicant demonstrates to the executive director that such location is

unavoidable, and the area is subject to inundation and stream velocities which could cause erosion and scouring of backfill, the trench must be capped with concrete to prevent scouring of backfill, or the sewer lines must be encased in concrete. All concrete shall have a minimum thickness of six (6) inches.

(I) Inspection of private service lateral connections. After installing and prior to covering and connecting a private service lateral to an organized sewage collection system, a Texas Registered Professional Engineer, Texas Registered Sanitarian, or appropriate city inspector shall inspect the private service lateral and the connection to the collection system and certify that construction conforms with the applicable provisions of this subsection. The owner of the collection system must maintain such certifications for three years and forward copies to the appropriate regional office upon request. No connections may be made to an approved sewage collection system until the executive director has received certification of new construction or repairs, and subsequent testing has been performed as required by paragraph (D) or (E) of this subsection. Private service laterals may only be connected to approved sewage collection systems.

(J) Embedment materials. Embedment materials must meet the specification for bedding contained in §317.2(a)(5) of this title.

(K) Sewer lines bridging caverns or other sensitive features. Sewer lines that bridge caverns or sensitive features must be constructed in a manner that will maintain the structural integrity of the line. When such geologic features are encountered during construction, the location

and extent of those features must be reported to the appropriate regional office in writing within two (2) working days of discovery and must comply with the requirements under subsection (f) of this section.

(L) Erosion and sedimentation control. A temporary erosion and sedimentation control plan must be included with all construction plans. All temporary erosion and sedimentation controls must be installed prior to construction, must be maintained during construction, and shall be removed when vegetation is established and the construction area is stabilized.

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

(N) Required corrective action. Notwithstanding compliance with the requirements of subparagraphs (A)-(M) of this paragraph, sewage collection systems must operate in a manner that will not cause pollution of the Edwards Aquifer. Any failure must be corrected in a manner satisfactory to the executive director.

(4) Contents of organized sewage collection system plan.

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

(B) Narrative description of proposed organized sewage collection system. A narrative report must include at a minimum a geographic description and anticipated type of development within the sewage collection system service area. A technical report that was submitted under subsection (b) of this section satisfies this requirement, provided it properly addresses the proposed sewage collection systems.

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

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

(ii) a map showing the location of the organized sewage collection system lay-out, overlaid by topographic contour lines, using a contour interval of not greater than five (5) feet, and showing the area within both the 5-year floodplain and the 100-year floodplain of any drainage way;

(iii) construction documents prepared by or under the supervision of a Texas Registered Professional Engineer, which have also been signed, sealed, and dated by that Texas Register Professional Engineer, at a minimum, shall include:

(I) plan and profile view of the collection system;

(II) construction details of collection system components;

(III) specifications for all collection system components; and

(IV) proposed pollution abatement measures for sensitive features identified along the path of the proposed sewer line.

(D) Assessment of area geology. An assessment of area geology shall be performed along the path of the proposed sewer line(s), plus 50 feet on each side of the proposed sewer line as described in subsection (b)(3) of this section.

(d) Static Hydrocarbon and Hazardous Substance Storage in Underground Storage Tanks System.

(1) Standards for Underground Storage Tank Systems. New or replacement systems for the underground storage of static hydrocarbons or hazardous substances shall be of double-walled

or an equivalent method approved by the executive director. Methods for detecting leaks in the inside wall of double-walled system shall be included in the facility's design and construction. The leak detection system shall provide continuous monitoring of the system and shall be capable of immediately alerting the system's owner of possible leakages. System design shall be prepared and signed by a contractor registered under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(A) Installation. All underground hydrocarbon and hazardous substance storage tank systems shall be installed by a person possessing a valid certificate of registration in accordance with the requirements of Subchapter I of Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(B) Siting. Any new underground hydrocarbon and hazardous substance storage tank system that does not incorporate a method for tertiary containment shall be located a minimum horizontal distance of 150 feet from any domestic, industrial, irrigation, or public water supply well, or other sensitive feature.

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

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

(B) A site location map as specified in subsection (b)(2) of this section including a legible road map, a general location map, and a site plan, shall be submitted as part of the plan.

(C) Assessment of area geology. For all facilities, located on either the recharge zone or transition zone, an assessment of area geology, as described in subsection (b)(3) of this section, shall be submitted for the site and for areas beyond the site boundary that is within the 100-year floodplain the shorter distance of either one-half mile downgradient of the site or the downgradient boundary of the recharge zone.

(D) Technical report. For all facilities, located on either the recharge zone or transition zone, a technical report as described in §213.5(b)(4) of this title (relating to Technical report), shall be submitted for the site.

(e) Static Hydrocarbon and Hazardous Substance Storage in an Aboveground Storage Tank Facility.

(1) Design standards. Facilities used for the temporary and permanent aboveground storage of static hydrocarbon and hazardous substance shall be constructed within controlled drainage areas that are sized to capture one and one-half (1½) times the storage capacity of the facility. The controlled drainage area shall be constructed of and in a material impervious to the substance(s) being stored, and shall direct spills to a convenient point for collections and recovery. Any spills from storage tank facilities shall be removed from the controlled drainage area for disposal within twenty-four (24) hours of the spill.

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

(A) Application. For an aboveground storage tank facility, the information required under §213.4 of this chapter shall be filed with the executive director at the appropriate regional office.

(B) A site location map as specified in subsection (b)(2) of this section, including a legible road map, a general location map, and a site plan, shall be submitted as part of the plan for a permanent facility.

(C) Assessment of area geology. For all facilities, located on either the recharge zone or transition zone, an assessment of area geology, as described in subsection (b)(3) of this section, shall be submitted for the site and for areas beyond the site boundary that is within the 100-year floodplain the shorter distance of either one-half mile downgradient of the site or the downgradient boundary of the recharge zone.

(D) Technical report. For all facilities, located on either the recharge zone or transition zone, a technical report as described in §213.5(b)(4) of this title (relating to Technical report), shall be submitted.

(3) A description of measures that will be taken to contain any spill of hydrocarbons or hazardous substances from temporary storage of 250 gallons or more shall be included with the plan unless described under subsection (b)(4)(G) of this section. Any new temporary aboveground hydrocarbon and hazardous substance storage tank system shall be located a minimum horizontal distance of 150 feet from any domestic, industrial, irrigation, or public water supply well, or other sensitive feature.

(4) Exemptions from this section.

(A) Equipment used to transmit electricity that utilizes mineral oil for insulation or cooling purposes, including transformers and oil circuit breakers, are exempt from this section.

(B) Permanent storage facilities with a cumulative storage capacity of less than 500 gallons are exempt from this section.

(f) Notification and inspection.

(1) The applicant must provide written notification of intent to commence construction, repair, or replacement to the appropriate regional office forty-eight (48) hours prior to commencing such regulated activity. Written notification shall include the date on which the regulated activity will commence and identify the approved plan under which the regulated activity will proceed.

(2) If any sensitive feature is discovered during construction, repair, or replacement, all regulated activities near the sensitive feature must be suspended immediately. The holder of an approved Edwards Aquifer protection plan must immediately notify the appropriate regional office of any sensitive features encountered during construction before continuing construction. Regulated activities near the sensitive feature may not proceed until the executive director has reviewed and approved the methods proposed to protect the sensitive feature and the Edwards Aquifer from potential adverse impacts to water quality.

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

(i) Upon completion of any lift station excavation, a geologist shall certify that the excavation has been inspected for the presence of sensitive features. Certification that the excavation has been inspected shall be submitted to the appropriate regional office. Further excavation and installation activities shall not proceed until the executive director has reviewed and approved the methods proposed to protect any sensitive feature discovered during this inspection and the Edwards Aquifer from potentially adverse impacts to water quality from the lift station.

(ii) A Texas Registered Professional Engineer shall submit proposed plans for insuring the structural integrity of the sewer line or modifying the proposed collection system alignment around the feature.

(B) Upon completion of tankhold excavation for an approved underground storage tank facility plan, a geologist shall certify that the excavation has been inspected for the presence of sensitive features. Certification that the excavation has been inspected shall be submitted to the appropriate regional office. Installation activities shall not proceed until the executive director has reviewed and approved the methods proposed to protect any sensitive feature found during this inspection and the Edwards Aquifer from potentially adverse impacts to water quality from the underground storage tank system. This protection method shall be consistent with subsection (d)(1)(B) of this section.

(3) The executive director must determine the acceptability of plans intended to demonstrate methods to mitigate potential contamination associated with the sensitive feature within one (1) week of receiving the plans.

(g) On-site sewerage systems. On-site sewerage systems located on the recharge zone of the Edwards Aquifer must be designed, installed, maintained, repaired, and replaced in accordance with §285.18 of this title (relating to On-Site Sewerage Facilities on Recharge Zones of the Edwards Aquifer) and other applicable provisions contained in Chapter 285.

(h) Exemption. The installation of natural gas, telephone or electric lines, water lines, or other such utility lines which are not designed to carry and will not carry pollutants, stormwater runoff, or sewage effluent is exempt from the Edwards Aquifer protection plan submittal requirements under this section. The construction of these facilities on the recharge zone is a regulated activity and the installation and maintenance of appropriate temporary erosion and sedimentation controls is required. All temporary erosion and sediment controls must be installed prior to construction, must be maintained during construction, and shall be removed when vegetation is established and the construction area is stabilized. The executive director may monitor stormwater discharges from these projects to evaluate the adequacy of the temporary erosion and sedimentation control measures. Additional protection will be required if the executive director determines that these controls are inadequate to protect water quality.

§213.6. Wastewater Treatment and Disposal Systems.

(a) General. New discharges or increases in discharges into or adjacent to water in the state that would create additional loading by treated wastewater are prohibited on the recharge zone. Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit unless the facility becomes non-compliant, as defined in Chapter 337 of this title (relating to Enforcement). New land application wastewater treatment plants located on the recharge zone must be designed, constructed, and operated such that there are no bypasses of the treatment facilities or any discharges of untreated or partially treated wastewater. Design of wastewater treatment plants must be in accordance with Chapter 317 of this title (relating to Design Criteria for Sewerage Systems).

(b) Land application systems. Except for licensed private sewage facilities, land application systems that rely on percolation for wastewater disposal are prohibited on the recharge zone. Wastewater disposal systems for disposal of wastewater on the recharge zone utilizing land application methods, such as evaporation or irrigation, will be considered on a case-by-case basis. At a minimum, those systems must attain secondary treatment as defined in Chapter 309 of this title (relating to Effluent Limitations). Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit unless the facility becomes non-compliant, as defined in Chapter 337 of this title (relating to Enforcement).

(c) Discharge upstream from the recharge zone.

(1) All new or increased discharges of treated wastewater into or adjacent to water in the state, other than industrial wastewater discharges, within zero to five (0 to 5) miles upstream from the recharge zone, at a minimum, shall achieve the following level of effluent treatment:

(A) five (5) milligrams per liter of carbonaceous biochemical oxygen demand, based on a 30-day average;

(B) five (5) milligrams per liter of total suspended solids, based on a 30-day average;

(C) two (2) milligrams per liter of ammonia nitrogen, based on a 30-day average; and

(D) one (1) milligram per liter of phosphorus, based on a 30-day average.

(2) All new or increased discharges into or adjacent to water in the state, other than industrial wastewater discharges, more than five (5) miles but within ten (10) miles upstream from the recharge zone and any other discharges that the agency determines may affect the Edwards Aquifer, at a minimum, must achieve the level of effluent treatment for 2N based on a 30-day average as set out in Table 1 of Chapter 309 of this title. More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

(3) All discharges, other than industrial wastewater discharges, more than five (5) miles upstream from the recharge zone which enter the main stem or a tributary of Segment 1428 of the Colorado River, or Segment 1427, main stem Onion Creek, or a tributary of Onion Creek must comply with §311.43 of this title (relating to Effluent Requirements for All Tributaries of Segment 1428 of the Colorado River and Segment 1427, Onion Creek, and Its Tributaries, of the Colorado River Basin), and to §311.44 of this title (relating to Disinfection). More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

(4) Any existing permitted industrial wastewater discharges within zero to ten (0 to 10) miles upstream of the recharge zone must, at all times, discharge effluent in accordance with permitted limits. Any application for new industrial wastewater discharge permits for facilities zero to ten (0 to 10) miles upstream of the recharge zone will be considered on a case-by-case basis, in accordance with appropriate discharge limits applicable to that industrial activity and with consideration of its proximity to the recharge zone.

§213.7. Plugging of Abandoned Wells.

All identified abandoned water wells, including injection, dewatering, and monitoring wells must be plugged pursuant to requirements under Chapter 338 of this title (relating to Water Well Drillers) and all other locally applicable rules, as appropriate.

§213.8. Prohibited Activities.

(a) Recharge zone. The following activities are prohibited on the recharge zone:

(1) waste disposal wells regulated under Chapter 331 of this title (relating to Underground Injection Control);

(2) new feedlot/concentrated animal feeding operations regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule).

(3) land disposal of Class I wastes, as defined in §335.1 of this title (relating to Definitions);

(4) the use of a sewage holding tank as part of an organized sewage collection systems; and

(5) new municipal solid waste landfill facilities required to meet and comply with Type I standards which are defined in §330.41 (b), (c), and (d) of this title (relating to Types of Municipal Solid Waste Facilities).

(b) Transition zone. The following activities are prohibited on the transition zone:

(1) waste disposal wells regulated under Chapter 331 of this title;

(2) land disposal of Class I wastes, as defined in §335.1 of this title; and

(3) new municipal solid waste landfill facilities required to meet and comply with Type I standards which are defined in §330.41 (b), (c), and (d) of this title.

§213.9. Exceptions.

(a) Granting of exceptions. Exceptions to any provisions of this chapter may be granted by the executive director if the requestor can demonstrate equivalent protection for the Edwards Aquifer. Requests for exceptions will be reviewed by the executive director on a case-by-case basis.

(b) Procedure for requesting an exception. A person requesting an exception to the provisions of this chapter must file four (4) 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 (a) of this section; and

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

§213.10. Enforcement.

Failure to comply with any provision of this chapter or of any applicable regulation or order of the commission issued pursuant to this chapter and in accordance with Chapter 26 and other relevant provisions of the Texas Water Code may result in liability for penalties and may subject a noncompliant person to enforcement proceedings initiated by the executive director under Texas Water Code, Chapter 26.

§213.11. Groundwater Conservation Districts.

The commission recognizes the authorities, powers, and duties of special-purpose districts, created by the Texas Legislature or by the commission under Chapter 36 of the Texas Water Code, as groundwater conservation districts to conserve, prevent waste, and protect the quality of ground water. In order to foster cooperation with local governments, the commission encourages districts to assist it in the administration of this chapter by carrying out the following functions within the areal extent of their geographic jurisdiction which includes the recharge zone or transition zone:

(1) cooperating with licensing authorities in carrying out the provisions of this chapter,

(2) conducting such geologic investigations as are necessary to provide updated information to the executive director regarding the official maps of the recharge zone and transition zone,

(3) monitoring the quality of water in the Edwards Aquifer, and

(4) maintaining maps of regulated activities on the recharge or transition zone.

§213.12. Application Fees.

The person submitting an application for approval or modification of any plan under this chapter must pay an application fee in the amount set forth in §213.14 of this Chapter (relating to Fee Schedule). The fee is due and payable at the time the application is filed. The fee must be sent to the appropriate regional office or the cashier in Austin Office of the agency, accompanied by an Edwards Aquifer Fee Application Form, provided by the executive director. Application fees must be paid by check or money order, payable to the "Texas Natural Resource Conservation Commission". 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.

§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 \$100 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 chapter (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.

Figure 1: 30 TAC §213.14(a)

(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 \$500 and a maximum fee of \$2,000.

(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 \$500 per tank or piping system, with a minimum fee of \$500 and a maximum fee of \$2,000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas on July 5, 1996.