

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§313.1-313.27, concerning the Edwards Aquifer. The repeals are adopted without changes as published in the May 16, 1996 issue of the *Texas Register*.

EXPLANATION OF ADOPTED RULE

Chapter 313 is repealed because the Edwards Aquifer rules are relocated in new Chapter 213 in concurrent rulemaking.

TAKINGS IMPACT ASSESSMENT

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 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 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 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.

STATUTORY AUTHORITY

The sections are repealed 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. Texas Water Code §26.046 which require the commission to hold public hearing to receive evidence from the public on actions the commission should take to protection the Edwards Aquifer from pollution and §26.0461 which allows the commission to impose fees for processing plans or amendments that are subject to review or approval under the commissions' Edwards Aquifer rules, §26.121 prohibiting unauthorized discharges, and §28.011 which provides for the commission to make and enforce rules and regulations for the protection and preservation of the quality of underground water.

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

§§313.1 - 313.6, 313.8 - 313.15

The repeals are adopted 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, §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 rule for the protection of the Edwards Aquifer.

§313.1. Purpose.

§313.2. Applicability.

§313.3. Definitions.

§313.4. Water Pollution Abatement Plan for Regulated Development.

§313.5. Organized Sewage Collection Systems.

§313.6. Wastewater Treatment and Disposal Systems.

§313.8. Plugging of Abandoned Wells.

§313.9. Prohibited Activities.

§313.10. Static Hydrocarbon and Hazardous Substance Storage in Underground Storage Tanks.

§313.11. Static Hydrocarbon Storage in Aboveground Storage Tanks.

§313.12. Exceptions.

§313.13. Review of Decisions of the Executive Director.

§313.14. Enforcement.

§313.15. Underground Water Conservation Districts.

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SUBCHAPTER B: APPLICATION REQUIREMENTS AND PROCESSING

FEES FOR APPROVAL OF PLANS AND AMENDMENTS

§§313.21 - 313.27

These repeals are adopted 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, §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 rule for the protection of the Edwards Aquifer.

§313.21. Required Submission.

§313.22. Person or Entity Required to Apply.

§313.23. Signatories to Applications.

§313.24. Contents of Application.

§313.25. Application Fees.

§313.26. Fees Related to Requests for Extensions.

§313.27. Fee Schedule.

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