

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§213.3-213.10, and new §§213.20-213.28, concerning the Edwards Aquifer Rules.

REVIEW OF AGENCY RULES

This action also constitutes the commission's review of the rules contained in 30 TAC Chapter 213, Subchapter A, concerning the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis and Williamson Counties, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. This provides for an assessment as to whether the reason for adopting or readopting the rule continues to exist. Rules not specifically proposed for amendment are being proposed for re-adoption as they currently exist and will not be published in this proposal.

EXPLANATION OF PROPOSED RULE

This chapter regulates certain activities having the potential for polluting the Edwards Aquifer and hydrologically-connected surface water to protect existing and potential beneficial uses of groundwater and maintain Texas Surface Water Quality Standards. The activities addressed are those that pose a threat to water quality in the recharge, transition and contributing zones to the Edwards Aquifer.

Subchapter A concerning the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis and Williamson Counties applies to all regulated developments within the recharge zone and to certain activities within the transition zone and to wastewater discharges in the recharge zone and up to ten miles upstream of the recharge zone within the aquifer's contributory watersheds. Regulated development includes all publicly and privately owned sites where new construction is to commence or

where a change in land use from current conditions is intended. Major changes to Subchapter A include water quality performance standards for stormwater leaving a regulated activity, specific design requirements for temporary and permanent best management practices (BMPs) and measures, and assigned responsibility for the maintenance of permanent BMPs.

Proposed new Subchapter B concerning the Contributing Zone to the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis and Williamson Counties regulates activities in the contributing zone to the Edwards Aquifer having the potential for polluting surface streams which provide a significant volume of water to the Edwards Aquifer where the streams enter the recharge zone. Hydrogeologic studies show that, on average, 80 to 85 percent of the recharge to the aquifer takes place in the stream beds that cross the recharge zone. The regulation of activities that can affect the quality of water flowing into the recharge zone will protect the quality of the groundwater in the Edwards Aquifer, thus protecting the existing and potential uses of these water resources. The proposed new subchapter focuses on the regulation of nonpoint source pollution activities such as stormwater runoff from construction sites and post-construction industrial and residential sites. A regulated activity includes, but is not limited to, the construction or installation of buildings, utility stations, utility lines, underground and aboveground storage tank systems, roads, highways, or railroads. Clearing, excavation or any other activities that alter or disturb the topographic or existing stormwater runoff characteristics of a site and any other activities that may pose a potential for contaminating stormwater runoff are also regulated.

The primary purpose of the proposed amendments to Subchapter A and new Subchapter B is to respond to public comment received during hearings held pursuant to Texas Water Code, §26.046. Section 26.046 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. Public hearings on the Edwards Aquifer Program and on new Subchapter A were held in San Antonio on September 4, 1996 and in Austin on September 10, 1996, with oral testimony provided at both hearings. The comment period closed September 16, 1996. The agency has responded to these public comments through both programmatic and rule changes. Response to comments received during the last public hearing were addressed in the adoption preamble for the first phase of rule revisions as published in the December 17, 1996, issue of the *Texas Register* (21 TexReg 12125). This second phase of rulemaking addresses topics identified in that adoption preamble as needing additional study, such as contributing zone regulation, performance standards for BMPs, and responsibility for maintenance of permanent BMPs. Many of the proposed changes to Subchapter A and new Subchapter B reflect comments received at these hearings requesting an action that was 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.

In addition, commenters suggested delegation of approval and enforcement authority under the Edwards Aquifer Protection Program to certain local agencies that have sufficient jurisdiction and resources to implement the review, approval, inspection, and enforcement process. Such agreements would be entered into pursuant to §§26.175, 5.229, and 7.351 of the Texas Water Code. While not part of this proposed rule package, the commission has drafted a model cooperative agreement under which the

executive director may delegate the review, approval, and enforcement of Edwards Aquifer Protection Plans to local governments. The notice of the availability of the model cooperative agreement is published in the Miscellaneous Documents section of the *Texas Register*.

Additionally, throughout Subchapter A, ambiguous language was clarified as part of the commission's regulatory reform initiative. Processes and procedures contained within the rules were streamlined to facilitate a new expedited plan review process to allow available resources to be directed to monitoring and inspection of regulated activities covered by this chapter.

Finally, the rules were reviewed as mandated by the General Appropriations Act, Article IX, Section 167. This review included an assessment that the reason for the rules continues to exist. Subchapter A is being readopted as required by this Act.

Subchapters A and B rules do not regulate activities in a totally independent manner from other commission rules. They build upon and expand the protection measures found in other existing commission 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 Chapter 213 and some of these chapters have special cross-references to the Edwards Aquifer or are otherwise made applicable to the Edwards by referencing their applicability to a sole source aquifer as designated under the federal Safe Drinking Water Act.

Specific cross-references in the rule relate to on-site wastewater treatment which are contained in Chapter 285 of this title (relating to On-Site Sewage Facilities). These rules contain specific and more stringent provisions for on-site sewerage facilities (including septic tanks) in the recharge zone having the potential to cause pollution of the Edwards Aquifer. While there are specific requirements for organized sewage collection systems contained in the 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 (USTs) are required to be installed by a person registered under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks). More stringent requirements for the design, installation, monitoring, and containment of USTs are provided in Chapter 213. The design of wastewater treatment plants must be in accordance with Chapter 317 of this title and attain the effluent discharge standards contained in Chapter 309 of this title (relating to Effluent Limitations) and Chapter 311 of this title (relating to Watershed Protection) where applicable. Such effluent criteria are the most stringent in the state and require a 97.5% pollutant removal. The agency also regulates nonpoint source pollution from certain developments in certain parts of the contributing, recharge and transition zones of the aquifer under Chapter 216 of this title (relating to Water Quality Performance Standards for Urban Development).

Although not specifically referenced in Chapter 213, additional water quality protection from oil and hazardous substances spills is provided by staff in the Regional Offices and through the Emergency Response Center. As specified under Chapter 327 of this title (relating to Spill Prevention and Control), the commission 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 - 26.268 of the Texas Water Code and through the Texas Hazardous Substances Spill Prevention and Control Act. Pursuant to Texas Water Code, §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 authority 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 transportation. Rail transportation spills are reported to the National Spill Response Center under the U.S. Department of 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.

SUBCHAPTER A

§213.3. DEFINITIONS.

As required by recent rules passed by the Secretary of State, all of the definitions have been numbered. The proposed amendments to §213.3 contain a revised definition of “Abandoned well” to reflect recent legislation which transferred the licensing of Water Well Drillers and Pump Installers from the agency to the Texas Department of Licensing and Regulation. This transfer of licensing is also reflected in

changes made to §213.7. A new definition for “Capped well” is being proposed to support the definition of abandoned well. The definition of “Assessment of area geology” was deleted and replaced with a new proposed definition for “Geologic assessment.” A revised definition for “Best Management Practice (BMPs)” is being proposed to reflect the technology based protection standards being proposed in §213.5(b)(4)(D). A revised definition for “Edwards Aquifer” is being proposed to reflect recent work by the Texas Water Development Board in 1995 and the U.S. Geological Survey in 1984 which no longer recognize the terms “Edwards and Associated Limestones” and “Edwards Formation.”

A new definition for “Geologist” is included to ensure the technical expertise of individuals performing geologic assessments under Subchapter A. This change will aid in streamlining the executive director review of applications by requiring qualified individuals to perform the geologic assessments required under §213.5. The definition for “Organized sewage collection system” has been reworded for clarity. A new definition for “Permanent BMPs” is being proposed to clarify that this term refers to BMPs used to control pollution from regulated activities after construction is complete.

Although the definition for “Recharge zone” has not changed, the commission proposes changes to the official maps referenced in the definition in three areas: 1) in the Helotes and Castle Hills seven and one-half minute topographic quadrangles in Bexar County, 2) in central Uvalde County, and 3) in western Uvalde and Kinney Counties. The scale of the maps precludes their publication in the Texas Register; however, illustrative maps showing the proposed changes to official maps are shown on Appendix A (**Figures 1-6: Preamble**). Appendices A1 and A2 illustrate proposed changes for the Bexar County area, Appendices A3 and A4 illustrate proposed changes for central Uvalde County, and

Appendices A5 and A6 illustrate proposed changes for western Uvalde and Kinney Counties.

Appendices A1, A3, and A5 show the proposed amendments to the recharge zone and Appendices A2, A4, and A6 show the proposed recharge zone incorporating proposed amendments in each area.

Detailed maps are available for public inspection at the agency's Austin and San Antonio Regional Offices and at the Central Office respectively located at 1921 Cedar Bend, Suite 150, Austin, Texas; 140 Heimer Road, Suite 360, San Antonio, Texas; and 12110 Park 35 Circle, Room 4101, Bldg. F, Austin, Texas. **(Figures 1-6: 30 TAC Chapter 213 -- preamble)**

Appendix A1 illustrates the proposed amendments to the recharge zone in the Helotes and Castle Hills quadrangles in Bexar County. This amended area of regulation is a result of the executive director's review of recent mapping of the hydrogeologic subdivisions of the Edwards Group conducted by the U.S. Geological Survey in Bexar County published in 1995. New territory (Appendix A1) was added to the recharge zone in several areas where investigation indicated either the Edwards Group or Georgetown Formation stratigraphic units were present and not previously included in the recharge zone or where areas contained in watersheds directly upstream of faults which cut across creeks in the recharge zone were identified. Territory was removed from the recharge zone (Appendix A1) in certain areas to the north and northwest of the recharge zone within the two quadrangles where investigation indicated that island outcrops of the Edwards Group were not in significant hydrologic communication with the main body of the recharge zone. The recharge zone incorporating proposed amendments in Bexar County is shown in Appendix A2.

The commission proposes changes to the mapped portion of the recharge zone in central Uvalde County. Appendix A3 illustrates the proposed recharge zone in Uvalde County for the Lake Creek, Sycamore Mountain, Regan Wells, Deep Creek, Magers Crossing and Concan seven and one-half minute topographic quadrangles. This proposed area of regulation reflects the executive director's review of the mapped outcrop of the Edwards Group equivalents (Devils River Limestone) and previous interpretations of aquifer boundaries in Uvalde County in relation to surface water drainage patterns of the contributing zone. The recharge zone is presently defined by the complete areal extent of the Edwards Group equivalents outcrop in Uvalde County including portions of formations more properly grouped with the Edwards-Trinity Plateau Aquifer than the Edwards Balcones Fault Zone Aquifer. These areas of the Edwards-Trinity Plateau Aquifer, where the underlying Trinity Group formations are exposed in streams and tributaries, are characterized by groundwater flow toward the streams rather than percolation through the Edwards Group equivalent formations to the deep artesian portion of the aquifer. These areas are also characterized by less intensive faulting.

The proposed boundary in central Uvalde County is based on groundwater flow direction inferred from surface water divides and the occurrence of Trinity Group Aquifer units in stream courses. Territory was removed from the mapped recharge zone (Appendix A3) in certain areas to the north and northwest of the recharge zone within the quadrangles where investigation indicated that groundwater flow discharged in stream courses. New territory (Appendix A3) was added to the recharge zone in one area in the northern portion of the Concan quadrangle where new information indicated areas where Edwards Group equivalents are present and were not previously included. The recharge zone incorporating proposed amendments in central Uvalde County is shown in Appendix A4.

The commission proposes amendments to the recharge zone in Kinney and western Uvalde Counties. Appendix A5 illustrates the proposed changes in the recharge zone for the Kickapoo Caverns, Pinto Mountain, Bracketville Northeast, Silver Lake, Bull Waterhole, Salmon Peak, Montell and Laguna seven and one-half minute topographic quadrangles. This proposed area of regulation reflects the executive director's review of geologic mapping of the outcrop of the Edwards Group equivalents (Divils River Limestone, Salmon Peak Limestone, McKnight Formation, and the West Nueces Formation) and previous interpretations of aquifer boundaries in Uvalde and Kinney Counties in relation to surface water and groundwater drainage patterns. The recharge zone is presently defined by the complete areal extent of the Edwards Group equivalents outcrop in northern Uvalde and northeastern Kinney Counties. Existing recharge zone mapping in Kinney and Uvalde Counties does not distinguish between outcrops of the Edwards Balcones Fault Zone Aquifer (the subject of these rules) and the Edwards-Trinity Plateau Aquifer. The existing recharge zone includes portions of formations more properly grouped with the Edwards-Trinity Plateau Aquifer than the Edwards Balcones Fault Zone Aquifer. These areas of the Edwards-Trinity Plateau Aquifer, where the underlying Trinity Group formations are exposed in streams and tributaries, are characterized by groundwater flow toward the streams rather than percolation through the Edwards Group formations to the deep artesian portion of the aquifer. These areas are also characterized by less intensive faulting.

Changes proposed in western Uvalde County and northeastern Kinney County are based on interpretation of the boundary between the Edwards-Trinity Plateau Aquifer to the north and west and the Edwards (Balcones Fault Zone) Aquifer to the south and east. The proposed boundary is based on topography, surface drainage patterns, and mapped occurrence of the Glen Rose Formation outcrops

exposed in stream channels. Territory was removed from the mapped recharge zone (Appendix A5) in certain areas to the north of the recharge zone within the quadrangles where investigation indicated that groundwater flow discharged in stream courses. In Kinney County, the proposed western boundary depicts a groundwater divide separating groundwater flow to the south and southeast in the Edwards Balcones Fault Zone Aquifer towards Uvalde County from the groundwater flow to the west and south in the Edwards-Trinity Plateau Aquifer generally towards San Felipe Springs in Del Rio. The groundwater divide is interpreted from topography and water level data and water level contour mapping of the U. S. Geological Survey. Territory was removed from the mapped recharge zone (Appendix A5) in the area west of the inferred groundwater divide expressed as the recharge zone boundary in the Brackettville Northeast and Silver Lake quadrangles. New territory was added to the recharge zone in one area in the southeastern portion of the Brackettville Northeast quadrangle where runoff in the watershed of Grass Valley Hollow would flow or drain northeastward onto the recharge zone. The recharge zone incorporating proposed amendments in Kinney and western Uvalde County is shown in Appendix A6.

The proposed definition of "Regulated activity" has been amended to clarify the type of activity being regulated. Specifically, the definition has been revised to indicate that clearing vegetation without soil disturbance, rather than the clearing for the sole purpose of surveying, is not a regulated activity. This is intended to clarify that the clearing of the site utilizing methods that disturb the soil without an Edwards Aquifer Protection Plan and associated temporary erosion control structures is not permitted. The intent of this exemption is to allow clearing that does not pose a potential for polluting the Edwards

Aquifer and not clearing the site utilizing earth-moving equipment with the stated purpose of surveying different lines.

The definition for “Site” has been revised for clarity. A new definition for “Temporary BMPs” is being proposed to clarify that this term refers to BMPs used to control pollution from regulated activities before and during construction and removed after the site is stabilized.

§213.4. APPLICATION PROCESSING AND APPROVAL.

Proposed amendments to §213.4(a), §§213.4(b)(1)(C) and (b)(1)(D)(ii), §213.4(c) and §213.4(h), were made for clarity with several subsections broken down into paragraphs for ease of reading. Proposed amendments to §213.4(a)(1) add exceptions to the list of items to be filed with and approved by the executive director prior to commencement of construction. Proposed amendments to §213.4(a)(2) clarify that any person may file comments within 30 days of the date an application is mailed to an affected incorporated city, groundwater conservation district, and county for comment. Copies will be distributed within 5 days of being determined to be administratively complete. The executive director will review all comments that are timely filed. Proposed amendments to §213.4(c) delete from the list of who can submit an application a person having an option to purchase the property to eliminate the use of staff to process speculative plans.

Proposed amendments to §213.4(g), were made for clarity and ease of reading. Additional changes specify that deed recordation of a water pollution abatement plan for the construction of a public street or highway and proof of application of recordation is not required. Proposed revisions to §213.4(h)(1)

delete the requirement to submit, no later than 30 days prior to expiration, a written request for an extension of a plan. Amendments split §213.4(h)(2) into (h)(2) and new (h)(3), with new (h)(3) reworded to clarify that an approved plan or extension will expire and no extension will be granted if less than 50 percent of the total construction has been completed within ten years from the initial approval of a plan. Upon expiration, a new plan must be submitted with the appropriate fee for review and approval by the executive director prior to commencing any additional regulated activities. The rest of the paragraphs in §213.4(h) have been renumbered to accommodate this separation.

Proposed amendments to §213.4(i) clarify that, if a new owner intends to commence any new regulated activity, a new plan must be submitted to the executive director and approved prior to the commencement of the new activity. Proposed amendments to §213.4(k) clarify that failure to comply with any rule or condition of the executive director's approval is a violation of Chapter 213 and is subject to administrative orders and penalties as provided under §213.10, relating to Enforcement. Such violations may also be subject to civil penalties and injunction.

§213.5. REQUIRED EDWARDS AQUIFER PROTECTION PLANS, NOTIFICATION, AND EXEMPTIONS.

Proposed amendments to §213.5(b)(1), (2), and (3), respectively, were made to clarify the wording and requirements for an application under the rule. Proposed changes to §213.5(b)(2)(B)(ii) delete the requirement to extend the drainage plan beyond the boundary of the site to the boundary of the recharge zone. Changes to §213.5(b)(2)(C)(ii) increase the contour interval for layout of the development on the

site plan from five to ten foot contour intervals. This change was made because the level of detail provided by the five-foot contour interval was unnecessary for plan evaluation.

Proposed amendments to §213.5(b)(2)(C)(iv), (b)(3), (d)(2)(C) and (e)(2)(C) delete the requirement for off-site geologic assessment for all plans, with the exception of 50 feet on either side of a sewage line. This requirement has been eliminated because the quality of water leaving the site should meet the standards established in §213.5(b)(4)(D) and should not pose a water quality problem downgradient of the site, thus rendering the identification of sensitive features beyond the site boundary unnecessary.

Throughout §213.5, the phrase “Texas Registered Professional Engineer” is proposed to be amended to “Texas Licensed Professional Engineer”. This change from “Registered” to “Licensed” implements new terminology contained in Senate Bill 623, 75th Legislature (1997), which amended the Texas Engineering Practice Act.

Proposed amendments to §213.5(b)(4) subdivide subparagraphs to clarify the wording, organization, and requirements of the paragraph as to the contents of the technical report.

Proposed amendments to §213.5(b)(4)(B) require a description of temporary BMPs that will be used during and after construction. These BMPs must prevent pollution of surface water, groundwater or stormwater that originates on-site or upgradient from the site and flows across the site; prevent pollution of surface water or groundwater that originates on-site or flows off site, including pollution caused by contaminated stormwater runoff from the site; and prevent pollutants from entering surface

streams or the Edwards Aquifer. As proposed, §213.5(b)(4)(B) requires that, to the maximum extent practicable, BMPs and measures must maintain flow to naturally-occurring sensitive features which accept recharge to the Edwards Aquifer. The temporary sealing of such a feature as a temporary pollution abatement measure during active construction should be avoided where reasonable and practicable alternatives exist. A request to temporarily seal must include a justification as to why no reasonable and practicable alternative exist and will be evaluated by the executive director on a case-by-case basis.

Also under proposed §213.5(b)(4)(B), all temporary BMPs and measures must meet the performance standards contained in §213.5(b)(4)(D)(i). The technical report must include a plan for the inspection of temporary BMPs and measures and for their timely maintenance, repair, and if necessary retrofit. Construction plans and design calculations for a temporary sediment pond or basin and for a proposed temporary BMP or measure must be prepared by or under the direct supervision of a Texas Licensed Professional Engineer and signed, sealed, and dated by the Texas Licensed Professional Engineer. Pilot-scale field testing (including water quality performance monitoring) may be required for BMPs and measures that are not contained in technical guidance recognized by or prepared by the executive director.

Proposed amendments to §213.5(b)(4)(C) require the technical report to describe the permanent BMPs that will be used during and after construction to prevent: pollution of surface water, groundwater or stormwater that originates on-site or upgradient from the site and flows across the site; pollution of surface water or groundwater that originates on-site or flows off the site, including pollution caused by

contaminated stormwater runoff from the site; and pollutants from entering surface streams or the Edwards Aquifer. To the maximum extent practicable, BMPs and measures must maintain flow to naturally-occurring sensitive features which accept recharge to the Edwards Aquifer. The permanent sealing of or diversion of flow from such a feature as a permanent pollution abatement measure should be avoided where reasonable and practicable alternatives exist. A request to seal must include a justification as to why no reasonable and practicable alternative exist and will be evaluated by the executive director on a case-by-case basis.

Also proposed under §213.5(b)(4)(C), all permanent BMPs and measures must meet the performance standards contained in §213.5(b)(4)(D)(ii). The technical report must include construction plans and design calculations for the proposed permanent BMPs and measures be prepared by or under the direct supervision of a Texas Licensed Professional Engineer and all construction plans and design information be signed, sealed, and dated by the Texas Licensed Professional Engineer. The technical report must include a plan for the inspection of the permanent BMPs and measures and for their timely maintenance, repair, and, if necessary, retrofit. This plan must be prepared and certified by the engineer designing the permanent BMPs and measures and signed by the owner or responsible party.

Under proposed amendments to §213.5(b)(4)(C)(vii), the executive director may require pilot-scale field testing (including water quality performance monitoring) for BMPs and measures that are not contained in technical guidance recognized by or prepared by the executive director. No additional approvals will be granted until the pilot study is completed and adequate protection of the aquifer is

demonstrated. If the innovative technology demonstrates adequate protection, additional units may be approved for use on a case-by-case basis.

Proposed amendments to §213.5(b)(4)(D) provide standards for both temporary and permanent BMPs and measures under clause (i) and (ii), respectively.

For temporary BMPs and measures, §213.5(b)(4)(D)(i) proposes to require that a sediment basin be used, where space and other factors allow, when activities, which disturb ten acres or more of land, drain to a single outlet. The sediment basin must be designed and constructed to accommodate the anticipated sediment loading from the regulated activities and must receive drainage from the disturbed areas and all other areas served by the basin. The sediment basin must be designed, constructed, operated, and maintained to meet a removal efficiency of 80 percent for suspended solids and 0.5 milliliter per liter (ML/L) peak settleable solids concentration as calculated for disturbed conditions and the ten-year 24-hour design event. For activities disturbing between five and ten acres draining to a single outlet, the plan may incorporate practices other than a sediment basin to achieve the equivalent removal efficiency as specified above. The removal efficiency of the selected practices must be supported by design calculations, unless these calculations are waived by the executive director. Activities disturbing less than five acres which drain to a single outlet do not require sediment calculations but must include erosion and sedimentation controls in accordance with technical guidance prepared or accepted by the executive director. The commission has chosen these standards for temporary BMPs based upon the standards currently being utilized by the state of South Carolina for the control of stormwater pollution. By establishing these standards, the commission proposed to provide

for a specific and quantified performance objective which will simplify both site planning and the executive director's review process.

Proposed amendments to §213.5(b)(4)(D)(ii) specify performance standards for permanent BMPs and measures. BMPs and measures must be implemented to control the discharge of pollution from regulated activities after the completion of construction. It is the goal of this chapter that groundwater quality be protected. However, the precise effect of specific water quality management practices upon groundwater quality has not been determined. Information being gathered under the United States Environmental Protection Agency (EPA) stormwater permits for the cities of San Antonio and Austin may provide information that will facilitate the quantification of these goals.

The commission is considering several alternative approaches to water quality management in the absence of specific water quality information. The commission is requesting comments on: 1) the approach that should be used in setting performance standards for regulated activities, 2) the level of performance that should be achieved, and 3) the appropriateness of using the same approach and performance levels in both the recharge zone and the contributing zone of the Edwards Aquifer. It is suggested that comments address the environmental need for a proposed performance standard, the reasonableness of a proposed performance standards, and the practicability, feasibility and estimated costs of complying with a proposed performance standard. Comments should include or reference water quality information, case histories, cost data, comparable programs, or other relevant information which may be useful to the commission in making a determination as to the most appropriate performance standards to adopt for regulated activities in both the recharge and contributing zones.

The commission is considering using total suspended solids (TSS) as the indicator parameter for measuring performance of BMPs and measures because there is more data and more reliable information on this constituent in the scientific literature than other constituents. The control of TSS may also provide some level of control of other constituents commonly found in stormwater runoff associated with suspended sediments. The use of background water quality levels as the standard on which to base the design of BMPs and measures establishes a consistent basis for planning purposes. The use of a specific performance objective coupled with proper maintenance should attain a high level of water quality protection that is achievable using current technology.

One approach, which is presented in the proposed rule under §213.5(b)(4)(D)(ii), is to limit increases in constituent (TSS) loadings from regulated activities as a percent increase above background levels. As proposed, these practices and measures must be designed, constructed, operated, and maintained to insure that the annual loading of TSS from the site is not greater than 20 percent above the background levels for the site. The same performance standard is proposed under §213.24(a)(4) for permanent BMPs and measures on the contributing zone. These quantities can be calculated in accordance with technical guidance prepared or accepted by the executive director and no background sampling will be required. Owners of permanent BMPs and measures must insure that these BMPs and measures are constructed and function as designed. A Texas Licensed Professional Engineer would be required to certify in writing that the BMPs or measures were constructed as designed and a certification letter must be submitted to the appropriate regional office within 30 days of site completion.

Another approach the agency is considering is to achieve constituent (TSS) removal efficiency, defined as a percent of the constituent discharged from a control facility as compared to the amount of the constituent entering the control facility. This standard is related to the efficiency of the BMP design and operation. The commission is considering technology-based requirements similar to those included in the Lower Colorado River Authority Technical Guidance. A 70 to 90 percent removal of average annual load of TSS would be required, depending on the proximity of the regulated activity to the recharge zone, with a higher percent removal (80 to 90 percent) being required on the recharge zone. Lower percentage removals (70 to 80 percent) would be proposed for the contributing zone where removal mechanisms in the stream bed would be effective prior to the flow entering the recharge zone.

Proposed amendments to §§213.5(b)(4)(E), (F), and (G) were made to improve readability and to clarify that the subparagraphs contained requirements for the content of the technical report.

Section 213.5(b)(4)(H) is proposed to be deleted and replaced with new §213.5(b)(5). This change reflects the ongoing responsibility for the maintenance of permanent BMPs and measures in the recharge and transition zones. This paragraph applies to both multiple single-family residential development and non-residential development (commercial, industrial, institutional, multi-family residential, schools, and other sites where regulated activities will occur). Following construction of permanent BMPs and measures, the applicant shall remain solely responsible for their maintenance and retrofit until such time as responsibility is accepted in writing by a duly constituted governmental authority, property owners association, a new property owner or lessee, or other entity. A copy of the transfer of responsibility must be filed with the executive director at the appropriate regional office.

Section 213.5(c) regulates organized sewage collection systems. Proposed amendments to §213.5(c)(3)(E)(i) clarifies that the testing of all sewage collection systems must be conducted every five years after being put into use. The proposed amendments also require that the results from every five-year collection system testing be retained for five years by the plan holder and made available to the executive director upon request. By retaining the test results, the plan holder will be able to demonstrate that the proper testing of lines was conducted. To reduce the regulatory burden on plan holders, proposed amendments to §213.5(c)(3)(I), relating to inspection of private service lateral connections after installation but prior to covering and connection to an organized sewage collection system, deletes the requirement for owners of systems to maintain certifications for three years and forward copies to the regional office upon request. The requirement that no connections to an approved sewage collection system may be made until the executive director has received certification of new construction or repairs and testing was also deleted to reduce the amount of paper work submitted to the agency. However, certification that the construction conforms with applicable provisions of §213.5(c) and local plumbing codes is required.

Proposed amendments to §213.5(c)(4) reorganize subparagraphs for the contents of a sewage collection system plan to match the organization for Edwards Aquifer protection plans in other subsections of §213.5 and renumbering for subparagraph (C), new (D), and renumbering for (E) are proposed. Proposed §213.5(c)(4)-(d) limits the contents of the technical report for organized sewage collection system plan to information needed for staff review. Proposed amendments §213.5(c)(4)(E)(ii) increases

the contour interval for the map showing the location of the organized sewage collection system lay-out from five to ten foot contour intervals.

Proposed amendments to §213.5(d)(2)(D) and (e)(2)(D) limit the information required as part of the technical report for an underground storage tank facility plan and above ground storage tank facility plan to information needed for staff review to ensure that the quality of water in the Edwards Aquifer is being protected.

Proposed amendments to §213.5(f) were made to clarify the applicant's responsibilities for notification to the executive director and applicant responsibilities for inspection and proposing methods or plans to protect sensitive features discovered during inspections. New §213.5(f)(1)(A)(iii) requires the applicant provide the name of the prime contractor and the name and telephone number of the contact person when providing written notification of commencement of a regulated activity. The notification of commencement of a regulated activity will be used by the executive director to determine if an applicant is eligible for an extension of an approved plan. Changes are also proposed to clarify the executive director's responsibility to review and approve the proposed methods or plans.

Proposed amendments to §213.5(h) organize the subsection into paragraphs, subparagraphs, and clauses to improve the readability of the subsection. Temporary erosion and sedimentation controls are required to be installed and maintained for exempted activities on the recharge zone. All temporary erosion and sedimentation controls are required to meet the performance standards for temporary and permanent BMPs and measures contained in §213.5(b)(4)(D)(i).

§213.6. WASTEWATER TREATMENT AND DISPOSAL SYSTEMS.

Proposed amendments to §213.6, relating to Wastewater Treatment and Disposal Systems, clarify that the intent of this section is to prohibit new industrial and municipal wastewater discharges into or adjacent to water in the state that would create additional pollutant loading on the recharge zone. Increases in existing discharges that would increase pollutant loading are also prohibited on the recharge zone. This prohibition is needed to protect the high water quality of a sole or primary source of drinking water for over 1.5 million people. This clarification of intent is consistent with the original adoption preamble which appeared in the March 3, 1990 issue of the *Texas Register* (15 TexReg 1301) which stated that additional capacity must be in the form of land application and not direct discharge to waters in the state. Further, that preamble indicated that an increase in existing flow would be approval so long as the effluent limits were reduced such that the net increase in pollutant loading to the stream was zero. This prohibition was also added to the list of prohibited activities on the recharge zone contained in §213.8, relating to Prohibited Activities.

§213.7. PLUGGING OF ABANDONED WELLS AND BORINGS.

Proposed amendments to §213.7 adds borings to the title of the section to read, "Plugging of Abandoned Wells and Borings." Proposed new subsection (b) clarifies that abandoned injection wells must be closed pursuant to requirements under Chapter 331 of this title (relating to Underground Injection Control). Proposed new subsection (c) contains standards for the plugging of borings to prevent the movement of pollution from the surface to the Edwards Aquifer through open borings. Within four days of completion of a drilling operation, borings with depths equal to or greater than 20 feet must be plugged with a non-shrink grout from the bottom of the hole to within three feet of the

surface with the remainder being backfilled with cuttings or gravel. If the boring encounters voids, the voids may be filled with gravel.

§213.8. PROHIBITED ACTIVITIES.

A proposed amendment to §213.8(a) adds new municipal and industrial wastewater discharges into or adjacent to water in the state that would create additional pollutant loading to the list of prohibited activities on the recharge zone.

§213.9. EXCEPTIONS.

Proposed amendments to §213.9, relating to Exceptions, clarify that no exception from the Chapter 213 rules will be granted for a prohibited activity. Prior approval under this section must be obtained from the executive director for the exception to be authorized. A new fee of \$500 must be submitted with the exception application prior to executive director review of the exception to determine that equivalent water quality protection to that provided by the Chapter 213 rules will be achieved.

§213.10. ENFORCEMENT.

Amendments to proposed §213.10, relating to Enforcement, add that liability for penalties may result and may subject a noncompliant person to enforcement proceedings initiated by the executive director if there is failure to comply an approved or conditionally approved Edwards Aquifer protection plan. This provision was added in response to legislative changes to Texas Water Code, §26.121 contained in Senate Bill 1, 75th Legislature. Failure to comply with any provision of Chapter 213, or with any

applicable regulation or order of the commission issued pursuant to this chapter can also result in the same liability and enforcement proceedings.

SUBCHAPTER B

§213.20. PURPOSE.

The purpose of proposed new Subchapter B, relating to Contributing Zone to the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis and Williamson Counties, is stated in §213.20. This new subchapter regulates activities in the contributing zone to the Edwards Aquifer having the potential for polluting surface streams which flow into the recharge zone of the Edwards Aquifer in order to protect existing and potential beneficial uses of groundwater in the Edwards Aquifer and surface water. The activities addressed are those that pose a threat to water quality. New §213.20(1) provides that this purpose is consistent with Texas Water Code, §26.401. The goal of Subchapter B is that existing quality of groundwater in the Edwards Aquifer not be degraded, consistent with the protection of public health and welfare, the propagation and protection of terrestrial and aquatic life, the protection of the environment, the operation of existing industries, and the maintenance and enhancement of the long-term economic health of the state.

Proposed new §213.20(2) provides that nothing in this subchapter is intended to restrict the powers of the commission or any other governmental entity to prevent, correct, or curtail activities in the contributing zone that result or may result in pollution of the Edwards Aquifer or hydrologically connected surface waters. Subchapter B rules are not exclusive and other rules of the commission also apply. In addition to the rules of the commission, a contributing zone plan applicant may also be

required to comply with local ordinances and regulations providing for the protection of water quality.

New §213.20(3) provides that the executive director must review and act on contributing zone plans subject to this subchapter. The applicant or a person affected may file with the chief clerk a motion for reconsideration, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final action on a contributing zone plan or modification to a plan.

§213.21. APPLICABILITY AND PERSON OR ENTITY REQUIRED TO APPLY.

Proposed new §213.21 discusses the applicability of the rules and specifies the person or entity required to apply to the agency for an approval of a contributing zone plan. Proposed §213.21(a) provides that this subchapter specifically applies to the contributing zone of the Edwards Aquifer and is not intended to be applied to any other contributing zones for any other aquifers in the state of Texas. Section 213.21(b) states that unless otherwise provided under Subchapter B, the owner of an existing or proposed regulated activity who proposes new or additional regulated activities under this subchapter, must file for and receive executive director approval of a contributing zone plan prior to commencement of construction of the new or additional regulated activity. Proposed §213.21(c) states that regulated activities are allowable under Subchapter B only by applicants who have a letter of contributing zone plan approval issued by the executive director under §213.23.

§213.22. DEFINITIONS.

Proposed new §213.22 contains definitions for Subchapter B. The definitions in the Texas Water Code, §§26.001, 26.263, and 26.342 and in §213.3 (relating to Definitions for Subchapter A) are applicable to

Subchapter B and have the same meaning unless the context in which they are used clearly indicates otherwise, or those definitions are inconsistent with the definitions listed in this section.

Proposed new definition for “Contributing zone” specifies that the zone contains the area or watershed where runoff from precipitation flows downstream to the recharge zone of the Edwards Aquifer in the counties or parts of counties subject to this subchapter. The contributing zone is illustrated on Figures 1a: §213.22 (Southern Part) and 1b: §213.22 (Northern Part). The contributing zone is located upstream (upgradient topographically) and generally north and northwest of the recharge zone within Kinney County, except the area within the watersheds draining to Segment 2304 of the Rio Grande Basin; Uvalde, Medina, Bexar, and Comal Counties; within Hays and Travis Counties, except the area within the watersheds draining to the Colorado River above a point 1.3 miles upstream from Tom Miller Dam, Lake Austin at the confluence of Barrow Brook Cove, Segment 1403 of the Colorado River Basin; and within Williamson County, except the area within the watersheds draining to the Lampasas River above the dam at Stillhouse Hollow reservoir, Segment 1216 of the Brazos River Basin.

Comments received during the annual public hearings on the Edwards Aquifer Protection Program, as well as executive director scientific and technical analysis, indicate that water quality in the Edwards Aquifer is vulnerable to potential sources of pollution located in areas upstream of the recharge zone. Activities in the contributing zone may discharge pollutants to surface streams which traverse the recharge zone. These streams provide recharge to the Edwards Aquifer through sensitive features in the stream bed. Research by the U.S. Geological Survey and others indicates approximately 80 to 85

percent of the recharge to the Edwards Aquifer occurs through sensitive features located in the stream channels traversing the recharge zone. It is therefore appropriate to consider water pollution control requirements for activities occurring in the contributing zone.

The proposed definition for contributing zone provides for regulation in the area directly upstream of the recharge zone where stream drainage conveys runoff onto the recharge zone. The area identified for regulation provides protection to both surface water flowing to the recharge zone and groundwater in the Edwards Aquifer while minimizing the regulatory burden of these rules to those areas having the greatest potential for impacting the Edwards Aquifer. The definition limits the scope of regulation to the area geographically proximate to the recharge zone within the counties currently regulated under the existing rules and limits the zone to those watersheds which cross the recharge zone of the Edwards Aquifer (as defined under Subchapter A of this Chapter).

In determining the areal extent of the contributing zone to be regulated under new Subchapter B, the commission considered several alternatives and weighed the relative reasonableness, necessity, and cost required to directly address potential water quality threats. Four different options to protect water quality were evaluated based on relative effectiveness, regulatory burden, administrative feasibility, and available agency resources. In decreasing geographic size, the options considered were: 1) total area within all contributory watersheds that provide flow to the recharge zone; 2) all area within a ten mile zone upstream from the recharge zone boundary; 3) all area upstream of the recharge zone within counties currently affected by the Edwards Rules under Subchapter A; and 4) all area within a 0.5 mile

riparian buffer zone on either side of a stream for a distance of ten stream miles upstream from the recharge zone.

The commission considered the first option listed above, the inclusion of all areas that are contained within the contributory watersheds that cross the Edwards Aquifer recharge zone, and acknowledges that the size of the geographic area of regulation would represent a totally inclusive approach to water quality protection. All areas that potentially contribute stream flow to the recharge zone would be regulated. However, this option would more than triple the geographic area currently regulated by the rules and double the number of counties affected by the regulations. This large an area would spread the available staff and resources too thinly to adequately implement a regulatory program. This option can not be supported by existing water quality data, which is insufficient to indicate that a real or potential threat to the aquifer exists from activities in the upper reaches of these basins. Data is also insufficient to model or predict the potential impact of regulated activities on water quality. In addition, a large number of local governments and landowners that are unfamiliar with the program and not dependent upon the aquifer would be regulated (all or parts of Edwards, Real, Kerr, Bandera, Kendall, Gillespie, Blanco, and Burnet Counties).

The commission considered a second option of a contributing zone area that would encompass regulated activities within a ten mile zone upstream from the recharge zone boundary which would include portions of two new counties within the program (Bandera and Kendall Counties). This option would include all geographical areas immediately upstream of the recharge zone. While this zone option can be portrayed on maps, the on-the-ground determination at the upstream boundary of the zone would be

more difficult than the first option because there would be no clear topographic features to use for reference to precisely indicate watershed boundaries. In addition, the on-the-ground projection of the ten mile zone from the recharge zone would be more difficult than the on-the-ground determination of the presence of the Edwards Aquifer recharge zone, because no distinct geologic boundary would exist at the upstream boundary of the contributing zone.

The commission considered and included within the proposed rules a third option to regulate all the area upstream of the recharge zone within counties currently affected by the Edwards Aquifer rules under Subchapter A. This option provides regulation in the area immediately upstream of the recharge zone with the greatest potential to impact water quality. Regulation in this area would address cumulative effects from the upper reaches and impacts to the aquifer by minimizing nonpoint source pollution loadings within the regulated contributing zone, thus allowing for natural stream processes to reduce or mitigate contaminants. Boundaries established at county lines are easily mapped and understood by affected landowners. The regulated community will be able to easily determine if they are within a regulated county and detailed mapping and site position determination will not be necessary.

Landowners that are unfamiliar with the Edwards Aquifer protection program and not dependent upon the aquifer will be regulated; however, these individuals should benefit from water quality protection of surface streams in the contributing zone.

The commission also considered a fourth option, a contributing zone to encompass regulated activities within a 0.5 mile riparian buffer zone on either side of tributary streams for a distance of ten stream miles upstream from the recharge zone. The boundaries of this option would be the most difficult to

convey to the general public and the regulated community. The on-the-ground determination of this boundary would be difficult because, in most instances, the buffer zone would overlap into an adjacent buffer zones for another stream, resulting in only small outliers of area not being included within the contributing zone. While the ten mile upstream boundary is used in the wastewater discharge permitting program as contained in §213.6, this relatively small regulated community is knowledgeable as to methods to determine actual stream miles and this determination is confirmed by agency staff as part of the agency wastewater permitting process. Staff and resources would not be available to confirm the location of every regulated activity under Subchapter B for this option.

The proposed definition for “Regulated activity” is similar to the definition provided in Subchapter A and contains a list of activities subject to regulation under Subchapter B. A regulated activity is any construction-related or post-construction activity on the contributing zone of the Edwards Aquifer that has the potential for contributing pollution to surface streams that enter the Edwards Aquifer recharge zone. A regulated activity includes, but is not limited to: construction or installation of buildings, utility stations, utility lines, underground and aboveground storage tank systems, roads, highways, or railroads. Clearing, excavation or any other activities which alter or disturb the topographic or existing stormwater runoff characteristics of a site and any other activities which may pose a potential for contaminating stormwater runoff are also regulated.

The term “regulated activity” does not include: the clearing of vegetation without soil disturbance; agricultural activities, except feedlots/concentrated animal feeding operations which are regulated under Chapter 321 of this title (relating to Control of Certain Activities By Rule); and activities associated

with the exploration, development, and production of oil or gas or geothermal resources under the jurisdiction of the Railroad Commission of Texas. Other activities that are not included under the term “regulated activity” include the routine maintenance of existing structures that does not involve additional site disturbance, such as the resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces and the building of fences, or other similar activities in which there is little or no potential for contaminating hydrologically connected surface water, or there is little or no change to the topographic or geologic features or construction of single-family residences on lots that are larger than five acres, where no more than one single-family residence is located on each lot.

The proposed definition for “Site” provides that the entire area included within the legal platted boundaries of the property described in the application is the site. Regulated activities on a site that is located partially on the recharge zone and the contributing zone is required to be treated as if the entire site is located on the recharge zone and is subject to requirements specified under Subchapter A of this Chapter (relating to Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis and Williamson Counties).

§213.23. PLAN PROCESSING AND APPROVAL.

Proposed new §213.23 provides for plan approval by the executive director, contents of application, submission of application, who may sign an application, executive director review of the application, additional provisions the executive director may apply to the approval, term of approval, legal transfer

of property, modification of previously approved plans, and compliance with the subchapter and the approved plan.

Proposed new §213.23(a) contains the specifications for approval of a contributing zone plan by the executive director. No person may commence the construction of any regulated activity under Subchapter B until a contributing zone plan or modification to a plan has been filed with the appropriate regional office, and the application has been reviewed and approval letter issued by the executive director. Proposed new §213.23(b) specifies that the application must include the name of the development, subdivision, or facility for which the application is submitted and the name, address, and telephone number of the owner or any other persons signing the application. The application must include a narrative description of the location of the project or facility for which the application is submitted, with sufficient detail and clarity so that the project site and its boundaries can be located during a field inspection. The application must include a technical report (as described under §213.24, relating to Technical Report) and any other pertinent information related to the application which the executive director may require.

Proposed new §213.23(c) requires an original and one copy of the application 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 contributing zone plan may submit an application. Proposed new §213.23(d) requires all applications to be signed as specified under §213.4(d)(1), relating to Required Signature.

Proposed new §213.23(e) requires the executive director to complete the review of an application for contributing zone plan approval within 30 days after determining that it is administratively complete.

The executive director is required to determine that the application is administratively complete or deficient within 15 days of receipt by the appropriate regional office. Proposed new §213.23(f) allows the executive director to impose additional provisions deemed necessary to protect the Edwards Aquifer from pollution. The executive director may conditionally approve a contributing zone plan or impose special conditions on the approval of a contributing zone plan.

Proposed new §213.23(g) provides that the executive director's letter of approval of a contributing zone plan will expire two years after the date of initial issuance unless, prior to the expiration date, substantial construction related to the approved plan has commenced. For purposes of this subsection, substantial construction is defined as more than ten percent of total construction has commenced. If a written request for an extension is filed under the provisions of this subsection, the approved plan must continue in effect until the executive director makes a determination on the request for the extension. A written request for an extension must be received not earlier than sixty (60) days prior to the expiration date of an approved contributing zone plan or a previously approved extension. Requests for extensions are subject to fees outlined in §213.28, relating to Fees Related to Requests For Plan Approval Extension. An executive director's approved extension expires six months after the original expiration date of the approved contributing zone 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. A plan approval will expire and no extension will be granted if less than 50 percent of the total construction has been completed within ten years from the initial approval of a plan. Any requests

for extensions received by the executive director after the expiration date of an approved contributing zone plan or a previously approved extension will not be accepted and a new application for the purposes of this subchapter must be submitted with the appropriate fees for the review and approval by the executive director. An extension will not be granted if the proposed regulated activity under an approved plan has changed.

Proposed new §213.23(h) specifies that upon legal transfer of property, the new owner(s) is required to comply with all terms of the approved contributing zone plan. If the new owner intends to commence any new regulated activity on the site, a new application for plan approval that specifically addresses the new activity must be filed with and approved by the executive director.

Proposed new §213.23(i) requires the holder of any approved contributing zone plan letter to notify the appropriate regional office in writing and obtain approval from the executive director prior to initiating: any physical or operational modification of any BMPs or structure, 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 to prevent pollution of the Edwards Aquifer and hydrologically connected surface water, or any development of land previously identified in a contributing zone plan as undeveloped.

Proposed new §213.23(j) requires the holder of the approved or conditionally approved contributing zone plan letter to be responsible for compliance through all phases of plan implementation with this subchapter, the approved plan, and any special conditions imposed by the executive director on an

approved plan. Failure to comply with any rule or condition of the executive director's approval is a violation of this Chapter and is subject to administrative orders and penalties.

§213.24. TECHNICAL REPORT.

Proposed new §213.24, contains the specifications for the technical report that must accompany the application for contributing zone plan approval. Under §213.24(a) the report must contain a location map and site plan which includes a legible road map with directions, including mileage, which would enable the executive director to locate the site for inspection. The report includes a site plan showing the 100-year floodplain boundaries (if applicable); the layout of the development, with existing and finished contours at appropriate, but not greater than ten foot contour intervals; and a drainage plan indicating all paths of drainage from the site to surface streams.

Under proposed new §213.24(b), the technical report must describe 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 area expected to be occupied by parking lots; and other factors that could affect the surface water quality. Under proposed new §213.24(c), the volume and character of stormwater runoff expected to occur must be described and estimates of stormwater runoff quality and quantity should be given. Under proposed new §213.24(d), any activities or processes which may be a potential source of contamination are required to be specified.

Under proposed new §213.24(e), the technical report must describe the temporary BMPs and measures that will be taken during construction. These BMPs and measures must prevent pollution of surface water or stormwater that originates on-site or upgradient from the site and flows across the site and they must prevent pollution of surface water that originates on-site or flows off the site, including pollution caused by contaminated stormwater runoff from the site. A plan for the inspection of the temporary BMPs and measures and for their timely maintenance, repair, and, if necessary, retrofit must be included in the report. Temporary BMPs and measures must meet the performance standards contained in Subchapter A, §213.5(b)(4)(D)(i).

Under proposed new §213.24(f), the technical report must describe the permanent BMPs and measures that will be taken during construction and after construction is completed. These BMPs and measures must prevent pollution of surface water or stormwater the originates on-site or upgradient from the site and flows across the site and they must prevent pollution of surface water downgradient of the site, including pollution caused by contaminated stormwater runoff from the site. Under §213.24(f)(3), BMPs and measures must meet the performance standards contained in Subchapter A, §213.5(b)(4)(D)(ii).

As stated earlier under the discussion for §213.5(b)(4)(D)(ii), the commission is requesting comments on: 1) the approach that should be used in setting performance standards for regulated activities, 2) the level of performance that should be achieved, and 3) the appropriateness of using the same approach and performance levels in both the recharge zone and the contributing zone of the Edwards Aquifer. Comments should address the environmental need for a proposed performance standard, the

reasonableness of a proposed performance standards, and the practicability, feasibility and estimated costs of complying with a proposed performance standard. Comments should include or reference water quality information, case histories, cost data, comparable programs, or other relevant information which may be useful to the commission in making a determination as to the most appropriate performance standards to adopt for regulated activities in both the recharge and contributing zones.

Under §213.24(f)(3), construction plans and design calculations for the proposed permanent BMPs and measures must be prepared by or under the direct supervision of a Texas Licensed Professional Engineer and must be signed, sealed, and dated by the Texas Licensed Professional Engineer. The technical report must contain a plan for the inspection of the permanent BMPs and measures and for their timely maintenance, repair, and, if necessary, retrofit, if performance standards contained in Subchapter A, §213.5(b)(4)(D), are not being met. The plan for inspection and timely maintenance, repair, and if necessary retrofit must be prepared by the engineer designing the permanent BMPs and measures and signed by the owner or responsible party.

Under proposed new §213.24(f)(3)(C), the executive director may require pilot-scale field testing (including water quality performance monitoring) for BMPs and measures that are not contained in technical guidance recognized by or prepared by the executive director. Only one pilot-scale field testing site will be approved and no additional approvals will be granted until the pilot study is complete and the applicant demonstrates adequate protection of surface water. If the innovative technology demonstrates adequate protection, additional units may be approved for use as permanent BMPs and measures on the contributing zone on a case-by-case basis.

Proposed new §213.24(g) requires the inclusion in the technical report of a description of measures to be taken to avoid or minimize surface stream contamination or changes in the way in which water enters a stream as a result of construction and development. The measures should address increase stream flashing, the creation of stronger flows and in-stream velocities, and other in-stream effects caused by the regulated activity that increase erosion that results in water quality degradation.

Proposed new §213.24(h) requires the technical report to describe the method of disposal of wastewater from the site. If wastewater is to be disposed in a conveyance to a sewage treatment plant for treatment and disposal, the existing or proposed treatment facility must be identified. If wastewater is to be disposed in 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 or exceed the requirements for on-site sewage facilities as specified under Chapter 285 of this title (relating to On-site Sewage Facilities), or the report must identify those areas that are not suitable for the use of private sewage facilities. If wastewater is to be discharged in the contributing zone, requirements under Subchapter A, §213.6(c), upstream from the recharge zone, must be satisfied.

Proposed new §213.24(i) requires the technical report to describe the measures that will be taken to contain any spill of static hydrocarbons or hazardous substances, such as on a roadway, from a pipeline, or from the 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 must be located a minimum horizontal distance of 150 feet from the five year floodplain of any stream drainage.

Proposed new §213.24(j), requires the report to indicate the placement of permanent aboveground storage tank facilities with cumulative storage capacity of 500 gallons or greater. These facilities must be constructed and spills removed using the standards contained in Subchapter A, §213.5(e)(1), relating to Design Standards.

§213.25. ENFORCEMENT.

Proposed new §213.25 states that liability for penalties may result and may subject a noncompliant person to enforcement proceedings initiated by the executive director if there is failure to comply with any provision of this subchapter, approved or conditionally approved contributing zone plan or letter, or of any applicable regulation or order of the commission issued pursuant to this chapter and in accordance with Texas Water Code, Chapter 26, Texas Health and Safety Code.

§213.26. EXCEPTIONS.

Proposed new §213.26 provides for the granting of an exception and procedures for requesting an exception. Under §213.26(a), exceptions to any substantive provision of Subchapter B related to the protection of water quality may be granted by the executive director if the requestor can demonstrate equivalent water quality protection for surface streams that enter the recharge zone of the Edwards Aquifer. Prior approval under this section from the executive director must be obtained for the exception to be authorized. Under §213.26(b), a complete application for an exception must be submitted with the appropriate fee. A person requesting an exception to the provisions of Subchapter B relating to the protection of water quality must file an original and one copy of a written request with the executive director at the appropriate regional office stating in detail: the name, address, and

telephone numbers of the requestor; site and project name and location; the nature of the exception requested; the justification for granting the exception as described in subsection (a) of this section; and any other pertinent information that the executive director requests. Under §213.26(c), the executive director is not required to consider the exception request until correct fee as specified in §213.27 is submitted with the request for exception.

§213.27. CONTRIBUTING ZONE PLAN APPLICATION AND EXCEPTION FEES.

Proposed new §213.27 specifies that fees for contributing zone plan application for approval or modification and application for an exception are \$500 each. The fee is due and payable at the time the application is filed. 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.

§213.28. FEES RELATED TO REQUESTS FOR CONTRIBUTING ZONE PLAN APPROVAL EXTENSION.

Proposed new §213.28 requires a person submitting an application for an extension of an approval of any contributing zone plan under this subchapter to pay \$500 for each extension request. The fee is due and payable at the time the extension request is filed. 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.

REVIEW OF AGENCY RULES

The commission also proposes the review of the rules contained in 30 TAC Chapter 213, Subchapter A, concerning the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis and Williamson Counties, as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for re adoption rules adopted under the Administrative Procedures Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 213, Subchapter A, and determined that the rules contained in Chapter 213, Subchapter A, are still necessary for the protection of the Edwards Aquifer. They apply to the regulation of activities having the potential for polluting the Edwards Aquifer and hydrologically-connected surface streams in order to protect existing and potential beneficial uses of groundwater and maintain Texas Surface Water Quality Standards. The activities addressed are those that pose a threat to water quality in the Edwards Aquifer, the sole or primary source of drinking water for between 1.5 to two million people. Because of its unique hydrogeologic character, this aquifer is extremely vulnerable to contamination, and specific rules regulating activities are necessary. In addition, recent legislative changes during the 75th legislature (1997) to “Fees for Edwards Aquifer Plans,” Texas Water Code, §26.0461 indicate that the agency program for protecting the Edwards Aquifer contained under the existing Chapter 213 has been recognized by the legislature as necessary and in need of additional funding.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be fiscal implications as a result of administration or enforcement of the sections. The effect on state government will be an increase in

costs associated with the review of applications and plans for regulated activities in the contributing zone to the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis and Williamson Counties. These costs will depend on the number and type of applications that will be received and processed. Actual costs cannot be determined in advance, but, it is anticipated that processing and review costs will be substantially offset by the application fees proposed to be assessed. These anticipated revenues to the state will be derived from a fee of \$500 to be levied for each application, amendment, exception, or time extension requested. There are no direct fiscal implications anticipated for local governments except those units of local government that are responsible for projects involving regulated activities subject to the provisions of these rules. The costs or cost savings for these local governments will be similar to the costs for other, non-governmental sponsors.

The fiscal implications for those persons affected by or subject to these rules are related to proposed changes in requirements for and review and approval of proposed regulated activities in the Edwards Aquifer regions covered by this chapter. Some cost savings to applicants are anticipated as a result of amended requirements for applications and site plans, including the deletion of requirements for identification of drainage paths from a proposed site to the recharge zone, deletion of the requirement for a geologic assessment beyond the site boundary, the increase in the contour interval for plans from five feet to ten feet, and the deletion of the requirements for certification and notification of inspection of private service laterals. Any cost savings resulting from these amendments will vary on a case-by-case basis with the size and location of project, the site description and nature of the intended development.

Additional costs to applicants who are currently subject to this chapter are anticipated to result from the proposed requirements related to temporary and permanent BMPs, including requirements for certification by a licensed professional engineer, performance standards for BMPs, plugging requirements for abandoned borings in addition to wells, and additional fee assessments for applications for amendments and extensions of time. In many instances, these additional costs will be offset by the reductions in cost anticipated as a result of changes to application and plan requirements. In addition, many of the proposed requirements, such as certification by a licensed professional engineer, are almost uniformly consistent with current practice and will not significantly increase the actual costs of development activities under this chapter. The inclusion of specific uniform performance standards for BMPs may result in cost increases for some projects and cost savings for others, depending on which standards have been applied in the past to the project under current practice and policy.

No significant costs are anticipated as a result of the clarification of the provisions related to assignment of responsibility for maintenance of BMPs. Generally, the costs of additional requirements for management practices and performance standards are anticipated to offset potential cost savings for most applicants and projects subject to these rules. The net effect, however, is not anticipated to represent a significant increase in the overall costs of development in the area of the Edwards Aquifer and its associated features.

The most significant fiscal implications of these rules are for those projects and applicants in the contributing zone which were not previously subject to regulations, requirements, and costs provided in the proposed Subchapter B. Although these costs are highly variable and dependent on site-specific

conditions, it is estimated that the costs to prepare a contributory zone plans required under these proposed rules will range between \$1,000 and \$2,000 for projects of typical size and description. For certain larger or otherwise atypical projects, these costs could be greater. In addition, the operating and maintenance costs for permanent control structures, primarily sedimentation and filtration control features, will vary in a case-by-case basis. For a representative structure, however, these costs are anticipated to vary from less than \$1,000 to approximately \$2,000 annually. These costs may also be greater for larger than average or atypical control structures. The fiscal implications of these sections as proposed may effect small businesses. The fiscal effects on small businesses are anticipated to be similar to those fiscal effects that may be realized by all classes of business. These effects will not vary with the size of the business, but will vary with the size, location, and nature of development activities that may be proposed and undertaken on the Edwards Aquifer or those associated areas subject to these rules.

PUBLIC BENEFIT

Mr. Minick has also determined that, for the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be the reduction or prevention of the threat of degradation of the quality of the water resources of the Edwards Aquifer and the associated recharge, transition, and contributing zones from the effects of developments in urban, suburban, and rural areas; reduction of the risk to human health and safety from degradation of the quality of public water supplies; the preservation of aquatic and related biological resources; and the maintenance of the quality of public recreational resources.

REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis (RIA) requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225, which applies only to certain major environmental rules that have at least one of four results. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rule does meet the definition of a "major environmental rule" but does not meet any of the four results that would trigger applicability of §2001.0225.

First, the proposal does not exceed a standard set by federal law. The only related federal law establishes the Sole Source Aquifer Program implemented by the EPA for portions of the Edwards Aquifer, which applies only to federally-funded projects conducted on the aquifer. Under that program, no federal financial assistance may be made to projects that the EPA determines may contaminate the Edwards Aquifer so as to create a significant hazard to public health. To date, no federal regulations setting technical standards exist. There is no federal law that specifically addresses construction activities that may impact the Edwards Aquifer. Therefore, the proposal does not exceed a standard set by federal law. Moreover, even if the rule did exceed a standard set by federal law, this proposal is specifically required by state law which requires the commission to protect the quality of water in the Edwards Aquifer from pollution (See Texas Water Code §§26.011, 26.046, and 26.0461) and is exempt from §2001.0025's applicability.

Second, this proposal does not exceed an express requirement of state law. The proposal is designed to carry out the commission's statutory responsibility to control the quality of water in the state, including groundwater, pursuant to §§26.011, and 26.046, and 28.011 of the Texas Water Code. The proposal is intended to comply with the stated requirements of state law and not exceed them in any way.

Third, this proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This proposal is not covered by any delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program.

Finally, this proposal does not adopt a rule solely under the general powers of the agency instead of under a specific state law. While this proposal adopts a rule under general powers of the agency, it is also adopted under specific state laws regarding the Edwards Aquifer, pursuant to §26.046 and §26.0461, which provide for the protection of the aquifer from pollution.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to regulate activities having the potential for polluting the Edwards Aquifer and hydrologically connected surface water to protect existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards. The amendments to Subchapter A are intended to strengthen the current rule, including the addition of water quality performance standards for

stormwater leaving a regulated activity, specific requirements for temporary and permanent BMPs and measures, and assigned responsibility for the maintenance of permanent BMPs.

The specific purpose of new Subchapter B is to regulate construction-related and post-construction activities having the potential for contributing pollution to surface streams that enter the Edwards Aquifer recharge zone. To achieve that goal, the rule establishes a contributory zone which is located upstream (upgradient topographically and generally north and northwest of the recharge zone where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer in the counties or parts of counties subject to Chapter 213). Temporary and permanent BMPs and measures must be implemented to control the discharge of pollution from regulated activities during and after the completion of construction and water quality performance standards for stormwater leaving a regulated activity must be met. Further, the rule requires the submission of a contributing zone plan prior to commencement of new or additional regulated activities. The plan must be approved by the executive director before such activities may commence. By regulating activities in the contributory zone, the rule will protect existing and potential uses of groundwater in the Edwards Aquifer and maintain Texas Surface Water Quality Standards consistent with Texas Water Code, §§26.011, 26.046, 26.0461, and 26.121. This Chapter specifically apply to the Edwards Aquifer and is not intended to be applied to any other aquifers in the state of Texas.

Promulgation and enforcement of these amendments to the rules could burden private real property which is the subject of the rules. However, the following exception to the application listed in Texas Government Code, §2007.003(b) applies to these rules. The action is taken in response to a real and

substantial threat to public health and safety (see Texas Government Code §2007.003(b)(13)). The Edwards Aquifer is the sole or primary source of drinking water for over 1.5 million people. Degradation to the quality of the water supply in the Edwards Aquifer caused by activities conducted in the contributory zone and on the recharge and transition zones presents a real and substantial threat to public health and safety. The proposed rules will significantly advance the health and safety purpose by regulating activities in the contributory zone and setting performance standards to achieve water quality protection. These regulations are necessary to carry out the stated authority of the commission to protect human health and the environment and otherwise control water quality. The rules impose no greater burden than is necessary to achieve the health and safety purpose by providing flexibility to the applicant to choose the methods to be used to meet specific water quality performance standards.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and determined that it is not an action that may adversely affect a coastal natural resource area that is subject to the Coastal Management Program (CMP). The proposed rule does not govern any of the actions that must be subject to the goals and policies of the CMP, pursuant to 31 TAC §505.11.

PUBLIC HEARINGS

Public hearings on this proposal and rules review will be held in Wimberley on Monday, May 4, 1998, at 7:00 p.m., in Bowen Intermediate School, located at 14501 Ranch Road 12, Wimberley; in Austin on Tuesday, May 5, 1998, at 10:00 a.m., in the Texas Natural Resource Conservation Commission Office Complex, Building E., Room 201 S located at 12100 Park 35 Circle, Austin; and in San Antonio on

Wednesday, May 6, 1998, at 7:00 p.m., in the City Council Chambers, located at 103 Main Plaza, San Antonio. 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. Open discussion will not occur during the hearings; however, a staff member will be available to discuss the proposal one half hour (30 minutes) prior to each hearing and will answer questions before and after the hearings. In conjunction with these hearings, the commission will hold its annual public hearing (under §26.046 of the Texas Water Code) to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution. The commission requests that the comments regarding the proposed rule and comments regarding evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution be identified separately, if at all possible.

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

SUBMITTAL OF COMMENTS

Written comments on the proposal or on the actions the commission should take to protect the Edwards Aquifer from pollution should reference Rule Log No. 97105-213-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., May 11, 1998.

The commission requests that the comments regarding the proposed rule and comments on the results of the review of its rules be clearly distinguished from comments regarding evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution in order to facilitate their rapid assessment. For further information concerning this proposal, the rule review, or the annual public hearing, please contact Mary Ambrose, Water Policy and Regulations Division at (512) 239-4813.

STATUTORY AUTHORITY

These amended sections are proposed under Texas Water Code (TWC), §5.103 which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas, and §5.105 which provides the commission to establish and approve all general policy of the commission by rule. Section 26.011 of the TWC provides that the commission will administer the provisions of Chapter 26 of the TWC and establish the level of quality to be maintained in and control the quality of the water in the state. Waste discharges or impending discharges are subject to rules adopted by the commission in the public interest. This section also grants the commission with the powers necessary or convenient to carry out its responsibilities. Section 26.341 of the TWC recognizes that it is the policy of the state to maintain and protect the quality of groundwater and surface water resource from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resource, and §26.345

allows the commission to develop a regulatory program regarding underground and aboveground storage tanks. 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 inspecting the construction and maintenance of projects covered by plans and for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules, §26.121 prohibits unauthorized discharges, §26.401 give the goal for groundwater protection in the state, and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater quality. Texas Health and Safety Code, §361.024 provides the commission with the authority to promulgate rules consistent with the Solid Waste Disposal Act and standards of operation for the management and control of solid waste. Texas Health and Safety Code, §366.012 provides the commission with the authority to adopt rules governing the installation of on-site sewage disposal systems. The review of the commission's rules is proposed under Article IX, §167, General Appropriations Act, 75th Legislature.

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**

§213.3 - §213.10

§213.3. Definitions.

The definitions in [§26.001, §26.263, and §26.342 of the] Texas Water Code, §§26.001, 26.263, and 26.342 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 in this section.

(1) 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 properly capped [(as defined by Chapter 238 of this title relating to Water Well Drillers Rules)].

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

(3) Aboveground storage tank system - A non-vehicular 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.

(4) 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.]

(5) Best management practices (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 protect [achieve a performance standard that protects existing and potential uses of] groundwater and [maintains] surface water quality [in compliance with Texas Surface Water Quality Standards], as provided [contained] in technical guidance prepared by the executive director or other BMPs which are technically justified based upon studies and other information that are generally relied upon by professionals in the environmental protection field and are supported by existing or proposed performance monitoring studies, including, but not limited to, U.S. Environmental Protection Agency, American Society of Civil Engineers, and Water Environment Research Foundation guidance.

(6) Capped well - A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well. The cap must be able to sustain a weight of at least 400 pounds. The cap must not be easily removed by hand.

(7) Commencement of construction - Construction of physical facilities including but not limited to buildings, roads, and utility infrastructure.

(8) 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) Aquifer 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 Group [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.

(9) Edwards Aquifer protection plan - A general term which includes water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, aboveground storage tank facility plan, or a modification or exception granted by the executive director.

(10) 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 a modification or exception granted by the executive director.

(11) 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.

(12) 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.

(13) Geologic assessment - A report which is prepared by a geologist describing site-specific geology.

(14) Geologist - A person who has received a baccalaureate or post-graduate degree in the natural science of geology or has training and experience in groundwater hydrology and related fields, or has such qualifications as may be demonstrated by registration or licensing in a state, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding the identification of sensitive features located in the recharge zone or transition zone.

(15) 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 reservoir.

(16) 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 the Federal Water Pollution Control Act, Chapter 311 [§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.

(17) 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.

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

(19) 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 the Texas Water Code, Chapter 26 [Chapter 26 of the Texas Water Code]. A system may include [includes] lift stations, force mains, gravity lines, and any other appurtenance [all appurtenances] necessary for conveying wastewater from a generating facility to a treatment plant.

(20) Permanent BMPs - Best management practices used to control pollution from regulated activities after construction is complete.

(21) 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.

(22) Private sewage facilities - On-site sewage facilities as defined under Chapter 285 of this title (relating to On-site Sewage Facilities).

(23) Private service lateral - A wastewater line [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 and whose operation and maintenance are the sole responsibility of the tenant or owner of the building. A wastewater line [Facilities] extending from the convergence of private service laterals from more than one building is considered a sewage collection system.

(24) 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.

(25) 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 and hydrologically connected surface streams. "Regulated activity" does not include:]

(A) Any construction-related or post-construction activity on the recharge zone of the Edwards Aquifer having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams. These activities include, but are not limited to: [the clearing of vegetation in a ten-foot wide path, for the sole purpose of surveying;]

(i) construction of buildings, utility stations, utility lines, roads, highways, or railroads;

(ii) clearing, excavation or any other activities that alter or disturb the topographic, geologic, or existing recharge characteristics of a site;

(iii) any installation of aboveground or underground storage tank facilities on the recharge or transition zone of the Edwards Aquifer; or

(iv) any other activities that may pose a potential for contaminating the Edwards Aquifer and hydrologically connected surface streams.

(B) "Regulated activity" does not include: [agricultural activities, except feedlots/concentrated animal feeding operations;]

(i) clearing of vegetation without soil disturbance;

(ii) agricultural activities, except feedlots/concentrated animal feeding operations which are regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule);

(iii) activities associated with the exploration, development, and production of oil or gas or geothermal resources under the jurisdiction of the Railroad Commission of Texas;

(iv) routine maintenance of existing structures that does not involve additional site disturbance, such as but not limited to:

(I) the resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces, and

(II) the building of fences, or other similar activities in which:

(-a-) there is little or no potential for contaminating groundwater, or

(-b-) there is little or no change to the topographic, geologic, or existing sensitive features; or

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

[(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) the routine maintenance of existing structures that does not involve additional site disturbance, such as but not limited to, the resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces and the building of fences, 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 acres, where no more than one single-family residence is located on each lot.]

(26) 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.

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

(28) Site - The entire area included within the legal boundaries of the property described in the application. Regulated activities on a site that is located partially on the recharge zone and transition zone, where the natural drainage in the transition zone flows back to the recharge zone, will [shall] be treated as if the entire site is located on the recharge zone.

(29) Static hydrocarbon - A hydrocarbon which is liquid at atmospheric pressure and 20 degrees centigrade.

(30) 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.

(31) Temporary BMPs - Best management practices used to control pollution from regulated activities and are installed prior to construction, maintained during construction, or removed after the construction site is stabilized.

(32) Tertiary containment - A containment method by which an additional wall or barrier is installed outside of the secondary storage vessel (e.g., tank or piping) or other secondary barrier in a manner designed to prevent a release from migrating beyond the tertiary wall or barrier before the release can be detected. Tertiary containment systems include, but are not limited to, impervious liners and vaults surrounding a secondary tank and/or piping system, or equivalent triple wall tank or piping system as approved by the executive director.

(33) 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.

(34) 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.

(35) 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 ten percent [%] or more beneath the surface of the ground.

(36) 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 title (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, groundwater conservation districts, and counties having jurisdiction over the area potentially affected by a proposed regulated activity, for the purpose of considering timely comment from local government entities. Such comments must be received within 30 days from the date the submittal is distributed to affected incorporated cities, groundwater conservation districts, and counties to be considered by the executive director. A complete application for approval, as described in this section, must be submitted with the appropriate fee as specified in §213.12 of this title (relating to Application Fees).]

(1) No person may 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 title (relating to Required Edwards Aquifer Protection Plans, Notification, and Exemptions) or exception under

§213.9 of this title (relating to Exceptions) has been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director.

(2) The appropriate regional office shall provide copies of applications to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. These copies will be distributed within five days of the application being determined to be administratively complete. Any person may file comments within 30 days of the date the application is mailed to local governmental entities. The executive director shall review all comments that are timely filed.

(3) A complete application for approval, as described in this section, must be submitted with the appropriate fee as specified in §213.12 of this title (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 person [persons] signing the application; and

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

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

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

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

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

(c) Application submittal. [An original and three 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.]

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

(2) Only owners, their authorized agent(s), or those persons 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) - (f) (No change.)

(g) Deed recordation. [Within 30 days of receiving written approval of a water pollution abatement plan, an aboveground storage tank plan, an underground storage tank plan, or modifications/exceptions to any of these plans 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.]

(1) The applicant must record in the deed records of the county in which the property is located that the property is subject to an approved Edwards Aquifer protection plan within 30 days of receiving written approval of:

(A) a water pollution abatement plan,

(B) an aboveground storage tank plan,

(C) an underground storage tank plan,

(D) modifications to any of these plans for a proposed regulated activity, or

(E) an exception.

(2) 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.

(3) The construction of a public street or highway is exempt from all deed recordation requirements.

(h) Term of approval. The executive director's approval of an Edwards Aquifer protection plan will expire two years after the date of initial issuance, unless prior to the expiration date, substantial construction related to the approved plan has commenced. For purposes of this subsection, substantial construction means [is where] more than ten percent of total construction has commenced. If a written request for an extension is filed under the provisions of this subsection, the approved plan will [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 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 title (relating to Fees Related to Requests For Extensions).

(2) An executive director's approved extension will expire six 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. [An extension will not be granted if not more than 50% of the total construction has not been completed within ten years from the initial approval of a plan.]

(3) An Edwards Aquifer protection plan approval or extension will expire and no extension will be granted if more than 50 percent of the total construction has not been completed within ten years from the initial approval of a plan. A new Edwards Aquifer protection plan must be submitted to the appropriate regional office with the appropriate fees for review and approval by the executive director prior to commencing any additional regulated activities.

(4) [(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 not be accepted. A [and a] new application for the purposes of this chapter must be submitted with the appropriate fees for the review and approval by the executive director.

(5) [(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 from the regulated activity(s) approved by the executive director.

(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, a new [he/she must file an] Edwards Aquifer protection plan that specifically addresses the new activity must be submitted to the executive director. Approval of the plan for the new regulated activity by the executive director is required prior to commencement of the new regulated activity.

(j) (No change.)

(k) Compliance. The holder of the approved or conditionally approved Edwards Aquifer protection plan is [shall be] responsible for compliance with this chapter and any special conditions of the [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 and id subject to administrative rule or orders and penalties as provided under §213.10 of this title (relating to Enforcement). Such violations may also be subject to civil penalties and injunction.

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

(a) (No change.)

(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 title (relating to Application Processing and Approval) is part of the plan and must [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) Location data and maps must include 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 must include: [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 [a] site plan with a minimum scale of 1 inch to 400 feet must show [,showing]:

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

(ii) the layout of the development showing [, and] existing and finished contours at appropriate, but not greater than ten- [five] 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) the location of any sensitive feature on the site of the proposed regulated activity as identified [or in areas beyond the site boundary] in the geologic assessment [of geology] under paragraph (3) of this subsection.

(3) Geologic assessment [of area geology]. For all regulated activities, the applicant must submit a geologic assessment report prepared by a geologist describing the site-specific geology_ The report must identify [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 ten acres are exempt from this requirement. [The geologic assessment must include:]

(A) The geologic assessment must include a geologic map, at site-plan scale, illustrating: [showing the outcrop of surface geologic units and all geologic and manmade features, specifically identifying caves, sinkholes, faults, permeable fractures, solution zones, surface streams, and other sensitive features;]

(i) the outcrop of surface geologic units, and

(ii) all geologic and manmade features, specifically identifying,

(I) caves,

(II) sinkholes,

(III) faults,

(IV) permeable fractures,

(V) solution zones,

(VI) surface streams, and

(VII) other sensitive features.

(B) The geologic assessment must contain a stratigraphic column showing, at a minimum, formations, members, and thicknesses.[:]

(C) The geologic assessment must contain a description and evaluation of all geologic and manmade features, on forms provided by or approved by the executive director. The assessment must determine of these features are sensitive features. The assessment must include:
[forms provided by or approved by the executive director, which describe and evaluate all geologic and manmade features to assess and determine if they are sensitive features, and include:]

(i) the 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, surface streams, or potentially permeable fractures and solution zones;]

(I) sinkholes,

(II) caves,

(III) faults,

(IV) wells,

(V) surface streams, or

(VI) potentially permeable fractures and solution zones.[;]

(D) The geologic assessment must contain a narrative assessment of site-specific geology[, detailing] The assessment must detail the potential for fluid movement to the Edwards Aquifer and include a [including]discussion of the stratigraphy, structure, and karstic characteristics of the site_ [; and]

(E) The geologic assessment must contain a narrative description of soil units and a soil profile, including thickness and hydrologic characteristics.

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

(A) The technical report must address the following issues. [An assessment of:]

(i) The report must describe the nature of the regulated activity (such as residential, commercial, industrial, or utility), including: [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 surface and groundwater quality;]

(I) the size of the site in acres;

(II) the projected population for the site;

(III) the amount and type of impervious cover expected after construction is complete, such as paved surface or roofing;

(IV) the amount of surface expected to be occupied by parking lots; and

(V) other factors that could affect surface water and groundwater quality.

(ii) The report must describe the volume and character of wastewater expected to be produced. [(such as] Wastewater [wastewater] generated at a site should be characterized as either domestic or industrial, or if commingled, by approximate percentages of each type. D;]

(iii) The report must describe the volume and character of stormwater runoff expected to occur. Estimates [(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. D; and]

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

(B) The technical report must describe the temporary best management practices (BMPs) and measures that will be used during and after construction. [A description of the best management practices and measures that will be taken during and after construction to prevent

pollution of surface or groundwater or of stormwater originating on-site or upgradient from the site and potentially flowing across the site. Pilot-scale field testing (including water quality performance monitoring) may be required for BMPs that are not contained in technical guidance recognized by or prepared by the executive director.]

(i) BMPs and measures must prevent pollution of surface water, groundwater or stormwater that originates on-site or upgradient from the site and flows across the site.

(ii) BMPs and measures must prevent pollution of surface water or groundwater that originates on-site or flows off site, including pollution caused by contaminated stormwater runoff from the site.

(iii) BMPs and measures must prevent pollutants from entering surface streams or the aquifer.

(iv) To the maximum extent practicable, BMPs and measures must maintain flow to naturally-occurring sensitive features identified in either the geologic assessment, executive director review, or during excavation, blasting, or construction.

(I) The temporary sealing of a naturally-occurring sensitive feature which accepts recharge to the Edwards Aquifer as a temporary pollution abatement measure during active construction should be avoided if reasonable and practicable alternatives exist.

(II) A request to temporarily seal must include a justification as to why no reasonable and practicable alternative exists. The request will be evaluated by the executive director on a case-by-case basis.

(v) Temporary BMPs and measures must meet the performance standards contained in subparagraph (D)(i) of this paragraph.

(vi) The report must include a plan for the inspection of temporary BMPs and measures and for their timely maintenance, repair, and, if necessary, retrofit.

(vii) Temporary sediment pond or basin construction plans and design calculation for a proposed temporary BMP or measure must be prepared by or under the direct supervision of a Texas Licensed Professional Engineer. All construction plans and design information must be signed, sealed, and dated by the Texas Licensed Professional Engineer.

(viii) Pilot-scale field testing (including water quality performance monitoring) may be required for BMPs that are not contained in technical guidance recognized by or prepared by the executive director

(C) The technical report must describe the permanent best management practices (BMPs) and measures that will be used during and after construction. [A description of the best management practices and measures that will be taken during and after construction to prevent

pollution of surface or groundwater downgradient of the site, including pollution caused by contaminated stormwater runoff from the site. Pilot-scale field testing (including water quality performance monitoring) may be required for BMPs that are not contained in technical guidance recognized by or prepared by the executive director.]

(i) BMPs and measures must prevent pollution of surface water, groundwater, or stormwater that originates on-site or upgradient from the site and flows across the site.

(ii) BMPs and measures must prevent pollution of surface water or groundwater that originates on-site or flows off the site, including pollution caused by contaminated stormwater runoff from the site.

(iii) BMPs and measures must prevent pollutants from entering surface streams or the aquifer.

(iv) To the extent practicable, BMPs and measures must maintain flow to naturally occurring sensitive features identified in either the geologic assessment, executive director review, or during excavation, blasting, or construction.

(I) The permanent sealing of or diversion of flow from a naturally-occurring sensitive feature that accepts recharge to the Edwards Aquifer as a permanent pollution abatement measure should be avoided if reasonable and practicable alternatives exist.

(II) A request to seal a naturally-occurring sensitive feature must include a justification as to why no reasonable and practicable alternative exists. The request will be evaluated by the executive director on a case-by-case basis.

(v) Permanent BMPs and measures must meet the performance standards contained in subparagraph (D)(ii) of this paragraph.

(vi) Construction plans and design calculations for the proposed permanent BMPs and measures must be prepared by or under the direct supervision of a Texas Licensed Professional Engineer. All construction plans and design information must be signed, sealed, and dated by the Texas Licensed Professional Engineer.

(vii) The technical report must include a plan for the inspection of the permanent BMPs and measures and for their timely maintenance, repair, and, if necessary, retrofit. The plan must be prepared and certified by the engineer designing the permanent BMPs and measures. The plan must be signed by the owner or responsible party.

(viii) Pilot-scale field testing (including water quality performance monitoring) may be required for BMPs that are not contained in technical guidance recognized by or prepared by the executive director.

(I) When pilot-scale field testing of an innovative technology (including water quality performance monitoring) is required, only one pilot site will be approved.

(II) No additional approvals will be granted until the pilot study is complete and the applicant demonstrates adequate protection of the Edwards Aquifer.

(III) If the innovative technology demonstrates adequate protection of the Edwards Aquifer, additional units may be approved for use as permanent pollution abatement measures on the Edwards Aquifer recharge zone on a case-by-case basis.

(D) Performance standards for BMPs and measures. [A description of the best management practices and measures that will be taken during and after construction to prevent pollutants from entering surface streams or the aquifer while, to the extent practicable, maintaining flow to naturally occurring sensitive features identified in either the assessment of area geology or during excavation, blasting, or construction. Pilot-scale field testing (including water quality performance monitoring) may be required for BMPs that are not contained in technical guidance recognized by or prepared by the executive director. The sealing of naturally occurring sensitive features as a pollution control measure will be avoided where reasonable and practicable alternatives exist and will be evaluated by the executive director on a case-by-case basis.]

(i) Temporary BMPs.

(I) For regulated activities which disturb ten or more acres that drain to a single outlet, a sediment basin must be used where space and other factors allow. The sediment basin must be designed and constructed to hold the anticipated sediment loading from the land disturbing activities. The sediment basin size must account for drainage from the disturbed areas and all other areas served by the basin. The sediment basin must be designed, constructed, operated, and maintained to meet a removal efficiency of 80 percent for suspended solids and 0.5 ML/L peak settleable solids concentration as calculated for disturbed conditions and the ten-year 24-hour design event.

(II) For regulated activities disturbing between 5 and ten acres that drain to a single outlet, practices other than a sediment basin may be used. These practices must achieve the equivalent removal efficiency specified in subparagraph (D)(i)(I) of this paragraph. The removal efficiency of the selected practices must be supported by design calculations unless these calculations are waived by the executive director.

(III) For regulated activities disturbing less than 5 acres that drain to a single outlet, sediment calculations are not required. These projects must provide for erosion and sedimentation controls in accordance with technical guidance prepared or accepted by the executive director.

(ii) Permanent BMPs and measures.

(I) BMPs and measures must be implement to control the discharge of pollution from regulated activities after the completion of construction. These practices and measures must be designed, constructed, operated, and maintained to insure that the annual loading of TSS from the site is not greater than 20% above the background levels for the site. These quantities must be calculated in accordance with technical guidance prepared or accepted by the executive director.

(II) Owners of permanent BMPs and measures must insure that the BMPs and measures are constructed and function as designed. A Texas Licensed Professional Engineer must certify in writing that the permanent BMPs or measures were constructed as designed. The certification letter must be submitted to the appropriate regional office within 30 days of site completion.

(E) The technical report must describe measures that will be used to avoid or minimize surface stream contamination and changes in the way in which water enters a stream as a result of the construction and development. The measures should address the following: [Measures to be taken to avoid or minimize surface stream contamination or 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.]

(i) increased stream flashing.

(ii) the creation of stronger flows and in-stream velocities, or

(iii) other in-stream effects caused by the regulated activity which increase erosion that results in water quality degradation.

(F) The technical report must describe [A description of] the method of [disposal of] wastewater disposal from the site.

(i) If [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 [if] wastewater is to be disposed of by an on-site sewage facility, the application must include [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 Sewage Facilities), or identifying those areas that are not suitable.

(G) The technical report must describe the [A description of] measures that will be used [taken] to contain any spill of hydrocarbons or hazardous substances such as on a roadway or from a pipeline or 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.]

(i) Temporary storage facilities are those used on site for less than one year.

(ii) Temporary aboveground storage tank systems of 250 gallons or more cumulative storage capacity must 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 timely maintenance and repair and, if necessary, retrofit.]

(5) Responsibility for maintenance of permanent BMPs and measures after construction is complete.

(A) The applicant shall remain solely responsible for the maintenance and retrofit of permanent BMPs and measures until the responsibility is accepted in writing by:

(i) a duly constituted governmental authority,

(ii) a property owners association,

(iii) a new property owner or lessee, or

(iv) other entity.

(B) A copy of the transfer of responsibility must be filed with the executive director at the appropriate regional office.

(C) This paragraph applies to:

(i) multiple single-family residential developments and

(ii) non-residential developments such as commercial, industrial, institutional, multi-family residential, schools, and other sites where regulated activities occur.

(c) Organized sewage collection systems.

(1) No person may [shall] commence rehabilitation 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.

(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 rehabilitation or construction. All manholes rehabilitated or constructed 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)-(4) and §§317.3(d)(5)-(7) of this title (relating to Sewage Collection System and Lift Stations).

(C) Lift station design. Lift stations must be designed and constructed to ensure [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 application [submittal] must include final construction plans and a design report prepared by or under the direct supervision of a Texas Licensed [Registered] Professional Engineer. All design information must be signed, sealed, and dated by a Texas Licensed [Registered] Professional Engineer.

(D) Certification of new sewage collection system lines by a Texas Licensed [Register] 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 inches and all new force mains are tested for leakage following construction. Such lines must be certified by a Texas Licensed [Registered] Professional Engineer to meet the appropriate requirements of §317.2 of this title (relating to Design Criteria for Sewerage Systems). The engineer must [shall] retain copies of all test results which must [shall] be made available to the executive director upon request. The engineer must certify in writing [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 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 wet wells must [wetwells shall] be tested using methods for new structures which are approved by the executive director.

(i) Testing of all sewage collection systems must [shall] be conducted every five years after being put into use [completed within five years of commencement]. Any sewage collection system in place as of March 21, 1990 must [shall] have commenced and completed the first round of five year testing. Every five years [thereafter], existing sewage [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 must [shall] be certified by a Texas Licensed [Registered] Professional Engineer. The test results must be retained by the plan holder for five years and made available to the executive director upon request. The use of one of the following methods will satisfy the requirements for the five year testing of existing sewer lines.

(I) In-place deflection testing must [shall] meet the requirements of §317.2(a)(4)(C) of this title. No pipe shall exceed a deflection rate of 5.0%.

(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 older black and white television equipment will not be accepted by the executive director. Newer black and white television equipment may be used following demonstration to the executive director that an acceptable inspection can be performed as provided in subclause (IV) of this clause.

(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) Except as otherwise provided in an enforcement order of the commission, as soon as possible, but at least within one (1) year of detecting defects, repairs to the sewage collection system must be completed 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. Leakage is a violation of §26.121 of the Texas Water Code and these rules are not intended to excuse such unlawful discharge of waste into

or adjacent to water in the state. All repairs must be certified by a Texas Licensed [Registered] Professional Engineer. Repairs must be tested within 45 days of completion using the methods described in clause (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 must [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 a 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-year floodplain. Sewer lines may [shall] not be located within the five-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 must [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

Licensed [Registered] Professional Engineer, Texas Registered Sanitarian, or appropriate city inspector must [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 and local plumbing codes. [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 working days of discovery [and]. Notification and inspection 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 must [shall] be removed when sufficient vegetation is established to control the erosion and sedimentation and the construction area is stabilized.

(M) Alternative sewage collection systems. The executive director may approve an alternative procedure which is technically [technical] justified; signed, sealed and dated by a Texas Licensed [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 title (relating to Application Processing and Approval) must [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) Geologic assessment. A geologic assessment must 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) Technical report. For an organized sewage collection system, a technical report must be submitted on forms provided by or approved by the executive director. The technical report must contain the information requested in the following subsections of this section: (b)(4)(A)(ii) and (iv), (b)(4)(B), (b)(4)(D)(i), (b)(4)(F)(i), and (b)(4)(G). A technical report for a water pollution abatement plan submitted under subsection (b) of this section satisfies this requirement, provided it properly addresses the proposed sewage collection system. [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.]

(E) [(C)] Plans and specifications. Plans and specifications addressing all the requirements in paragraphs (2) and (3) of this subsection, 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 ten (10) [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 Licensed [Registered] Professional Engineer, which have also been signed, sealed, and dated by that Texas Licensed [Register] Professional Engineer, at a minimum, must [shall] include:

(I) plan and profile views 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) 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 must [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 must [shall] be included in the facility's design and construction. The leak detection system must [shall] provide continuous monitoring of the system and must [shall] be capable of immediately alerting the system's owner of possible leakages.

(A) Installation. All underground hydrocarbon and hazardous substance storage tank systems must [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 must [shall] be located a minimum horizontal distance of 150 feet from any domestic, industrial, or irrigation well, or other sensitive feature as determined under the geologic assessment [of area geology] at the time of construction or replacement under paragraph (2) [subparagraph] (C) of this subsection or the tankhold inspection under subsection (f)(2)(B) of this section. This method of tertiary containment [shall] also applies [apply] to the placement of a tank system within 150 feet of a public water supply well without a sanitary control easement of 150 feet as defined in §290.41(c)(1)(F) of this title (relating to Water Sources).

(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 title (relating to Application Processing and Approval) must [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, must [shall] be submitted as part of the plan.

(C) Geologic assessment [of area geology]. For all facilities, located on either the recharge zone or transition zone, a [an] geologic assessment [of area geology], as described in subsection (b)(3) of this section, must [shall] be submitted for the site [and for areas beyond the site boundary that are 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. For regulated activities located on the transition zone, the assessment of area geology shall be submitted for the site and 200 feet downgradient].

(D) Technical report. For all facilities, located on either the recharge zone or transition zone, a technical report must [as described in §213.5(b)(4) of this title (relating to Technical Report),shall] be submitted on forms provided by or approved by the executive director. The technical

report must contain the information requested in subsections (b)(4)(B), (C), and (b)(5) of this section.

A technical report for a water pollution abatement plan submitted under subsection (b) of this section satisfies this requirement, provided it properly addresses the proposed underground storage tank facility.

(e) Static hydrocarbon and hazardous substance storage in an aboveground storage tank facility.

(1) Design standards. Systems used for the temporary and permanent aboveground storage of static hydrocarbon and hazardous substance must [shall] be constructed within controlled drainage areas that are sized to capture one and one-half (1½) times the storage capacity of the system. The controlled drainage area must [shall] be constructed of and in a material impervious to the substance(s) being stored, and must [shall] direct spills to a convenient point for collections and recovery. Any spills from storage tank facilities must [shall] be removed from the controlled drainage area for disposal within 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 title must [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, must [shall] be submitted as part of the plan for a permanent facility.

(C) Geologic assessment [of area geology]. For all facilities, located on either the recharge zone or transition zone, a [an] geologic assessment [of area geology], as described in subsection (b)(3) of this section, must [shall] be submitted for the area containing the aboveground storage tank system [and for areas beyond the site boundary that are 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. For regulated activities located on the transition zone, the assessment of area geology shall be submitted for the site and 200 feet downgradient.]

(D) Technical report. For all facilities, located on either the recharge zone or transition zone, a technical report [as described in subsection (b)(4) of this section, shall] must be submitted on forms provided by or approved by the executive director. The technical report must contain the information requested in subsections (b)(4)(B), (b)(4)(C), and (b)(5) of this section. A technical report for a water pollution abatement plan submitted under subsection (b) of this section satisfies this requirement, provided it properly addresses the proposed aboveground storage tank facility.

(3) A description of measures that will be used [taken] to contain any spill of hydrocarbons or hazardous substances from temporary storage of 250 gallons or more must [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 must [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 insulating oil for insulation or cooling purposes, including transformers and oil circuit breakers, are exempt from this subsection. Construction of supporting structures is a regulated activity for which a water pollution abatement plan under subsection (a)(1) of this section is required.

(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, replacement, or rehabilitation. Notification must be given to the appropriate regional office no later than 48 hours prior to commencement of the [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. For purposes of determining whether the applicant is

eligible to an extension of the approval of a plan, construction will not be deemed to have commenced until receipt by the appropriate regional office of a subsequent notice verifying that construction was commenced on a specific date.]

(A) Written notification must include:

(i) the date on which the regulated activity will commence,

(ii) the name of the approved plan for the regulated activity, and

(iii) the name of the prime contractor and the name and telephone number of the contact person.

(B) The executive director will use the notification to determine if the applicant is eligible for an extension of an approved plan. Construction will not be considered to have commenced until receipt by the appropriate regional office of a subsequent notice. This notice must verify that construction was commenced on a specific date.

(2) If any sensitive feature is discovered during construction, replacement, or rehabilitation, 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 potentially adverse impacts to water quality.]

(A) The holder of an approved Edwards Aquifer protection plan must immediately notify the appropriate regional office of any sensitive features encountered during construction. This notice must be given before continuing construction.

(B) 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 potentially adverse impacts to water quality.

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

(i) Upon completion of any lift station excavation, a geologist must [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.

Construction may continue if the geologist certifies that, in their assessment of the excavation, no sensitive feature or features were present.]

(I) Certification that the excavation has been inspected must be submitted to the appropriate regional office.

(II) Further activities may not proceed until the executive director has reviewed and approved the methods proposed to protect any sensitive feature and the Edwards Aquifer from potentially adverse impacts to water quality from the lift station.

(III) Construction may continue if the geologist certifies that no sensitive feature or features were present.

(ii) The applicant must submit a plan for ensuring the structural integrity of the sewer line or for modifying the proposed collection system alignment around the feature. The plan must be certified by a Texas Licensed Professional Engineer. These plans must be submitted to the appropriate regional office for review and approval. [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.]

(D) [(B)] For [Upon completion of tankhold excavation under] an approved underground storage tank facility plan, a geologist must [shall] certify that a completed tankhold [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. Construction may continue if the geologist certifies that, in their assessment of the excavation, no sensitive feature or features were present.]

(i) Certification that the tankhold excavation has been inspected must be submitted to the appropriate regional office.

(ii) If a sensitive feature is discovered, the applicant must propose methods to protect the feature and the Edwards Aquifer from potentially adverse impacts to water quality from the underground storage tank system. Installation activities may not proceed until the executive director has reviewed and approved the proposed methods. The protection methods must be consistent with subsection (d)(1)(B) of this section.

(iii) Construction may continue if the geologist certifies that no sensitive feature or features were present.

(3) The executive director must review methods or plans proposed to protect sensitive features and the Edwards Aquifer from potentially adverse impacts to water quality. This review will

be completed [determine the acceptability of plans intended to demonstrate methods to mitigate potential contamination associated with the sensitive feature] within one week of receiving a method or plan [the plans] Regulated activities near the sensitive feature may not continue until the executive director has approved he proposed methods or plans.

(g) On-site sewerage systems. On-site sewerage systems located on the recharge zone are subject to §285.40 of this title (relating to OSSFs on the Recharge Zone of the Edwards Aquifer) and other applicable provisions contained in Chapter 285 of this title. Systems must be designed, installed, maintained, repaired, and replaced in accordance with Chapter 285. [of the Edwards Aquifer must be designed, installed, maintained, repaired, and replaced in accordance with §285.40 of this title (relating to OSSFs on the Recharge Zone 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, sewage effluent, or treated effluent from a wastewater treatment facility 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 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. 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.]

(1) Regulated activities exempt from the Edwards Aquifer protection plan application requirements under this section are:

(A) the installation of natural gas lines,

(B) the installation of telephone lines,

(C) the installation of electric lines,

(D) the installation of water lines, and

(E) the installation of other utility lines which are not designed to carry and will not carry the following:

(i) pollutants,

(ii) stormwater runoff,

(iii) sewage effluent, or

(iv) treated effluent from a wastewater treatment facility.

(2) Temporary erosion and sedimentation controls are required to be installed and maintained for exempted activities on the recharge zone.

(3) All temporary erosion and sedimentation controls

(A) must meet the performance standards contained in subsection (b)(4)(D)(i) of this section.

(B) must be installed prior to construction.

(C) must be maintained during construction, and

(D) may be removed only when vegetation is established and the construction area is stabilized.

(4) 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 70 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).]

(1) New industrial and municipal wastewater discharges into or adjacent to water in the state that would create additional pollutant loading are prohibited on the recharge zone.

(2) Increases in existing discharges into or adjacent to water in the state that would increase or add new pollutant loading are prohibited on the recharge zone.

(3) Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit. Permits will not be renewed if the facility becomes non-compliant, as defined in Chapter 70 of this title (relating to Enforcement).

(4) 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.

(5) 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 70 of this title (relating to Enforcement).]

(1) Except for licensed private sewage facilities, land application systems that rely on percolation for wastewater disposal are prohibited on the recharge zone.

(2) 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).

(3) 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 70 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 miles upstream from the recharge zone, at a minimum, must achieve the following level of effluent treatment:

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

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

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

and

(D) one 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 miles but within ten 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 and Borings.

(a) All identified abandoned water wells, including injection, dewatering, and monitoring wells must be plugged pursuant to requirements under Chapter 238 of this title [(relating to Water Well Drillers)], the Texas Department of Licensing and Regulation rules on plugging abandoned wells, and all other locally applicable rules, as appropriate.

(b) Abandoned injection wells must be closed under the requirements of Chapter 331 of this title (relating to Underground Injection Control).

(c) All borings with depths greater than or equal to 20 feet must be plugged with a non-shrink grout from the bottom of the hole to within three (3) feet of the surface. The remainder of the hole must be backfilled with cuttings from the boring or gravel. All borings less than 20 feet must be backfilled with cuttings from the boring or gravel. All borings must be backfilled or plugged within four (4) days of completion of the drilling operation. Voids may be filled with gravel.

§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;

(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); and

(6) new municipal and industrial wastewater discharges into or adjacent to water in the state that would create additional pollutant loading.

(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 substantive provision of this chapter related to the protection of water quality may be granted by the executive director if the requestor can demonstrate equivalent water quality protection for the Edwards Aquifer. No exception will be granted for a prohibited activity. [Requests for exceptions will be reviewed by the executive director on a case-by-case basis.] Prior approval under this section must be obtained from the executive director for the exception to be authorized.

(b) - (c) (No change.)

§213.10. Enforcement.

Liability for penalties may result and may subject a noncompliant person to enforcement proceedings initiated by the executive director if there is failure to comply with: [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.]

(1) any provision of this chapter,

(2) an approved or conditionally approved Edwards Aquifer protection plan, or

(3) 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 or Texas Health and Safety Code.

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

STATUTORY AUTHORITY

These amended sections are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 26.046, 26.0461, 26.121, 26.341, and 28.011 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.

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

§213.20. Purpose.

The purpose of this subchapter is to regulate activities in the contributing zone to the Edwards Aquifer having the potential for polluting surface streams which enter the recharge zone of the Edwards Aquifer. These regulations are intended to protect existing and potential beneficial uses of groundwater in the Edwards Aquifer and maintain Texas Surface Water Quality Standards. These regulations address activities that pose a threat to water quality.

(1) The goal of this subchapter is that the existing quality of groundwater in the Edwards Aquifer not be degraded. This goal is consistent Texas Water Code, §26.401 and includes:

(A) the protection of public health and welfare,

(B) the propagation and protection of terrestrial and aquatic life,

(C) the protection of the environment,

(D) the operation of existing industries, and

(E) the maintenance and enhancement of the long-term economic health of the state.

(2) Nothing in this subchapter is intended to restrict the powers of the commission or any other governmental entity to prevent, correct, or curtail activities in the contributing zone that result or may result in pollution of the Edwards Aquifer or hydrologically connected surface waters. These rules are not exclusive and other rules also apply. In addition to the rules of the commission, local ordinances and regulations providing for the protection of water quality may also apply to activities in the contributing zone.

(3) The executive director must review and act on contributing zone plans subject to this subchapter. The applicant or a person affected may file with the chief clerk a motion for reconsideration, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final action on a contributing zone plan or modification to a plan.

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

(a) These rules apply only to the contributing zone of the Edwards Aquifer. These rules are not intended to be applied to any other contributing zones for any other aquifers in the state of Texas.

(b) Unless otherwise provided under this subchapter, executive director approval of a contributing zone plan must be obtained prior to beginning construction of a new or additional regulated activity.

(c) Regulated activities are allowed to be conducted under this subchapter only by applicants who have a letter of contributing zone plan approval issued by the executive director. This letter is issued under §213.23 of this title (relating to Plan Processing and Approval).

§213.22. Definitions.

The definitions in Texas Water Code, §§26.001, 26.263, and 26.342 and in §213.3 of this chapter (relating to Definitions) apply to this subchapter. Those definitions have the same meaning unless the context in which they are used clearly indicates otherwise, or those definitions are inconsistent with the definitions listed in this section.

(1) **Contributing zone** - The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer. The contributing zone is illustrated on

Figures 1: §213.22 (Southern Part) and Figure 2: §213.22 (Northern Part). The contributing zone is located upstream (upgradient) and generally north and northwest of the recharge zone for the following counties: **Figures 1: §213.22(1) and Figure 2: §213.22(1)**

(A) all areas within Kinney County, except the area within the watershed draining to Segment 2304 of the Rio Grande Basin;

(B) all areas within Uvalde, Medina, Bexar, and Comal Counties;

(C) all areas within Hays and Travis Counties, except the area within the watersheds draining to the Colorado River above a point 1.3 miles upstream from Tom Miller Dam, Lake Austin at the confluence of Barrow Brook Cove, Segment 1403 of the Colorado River Basin; and

(D) all areas within Williamson County, except the area within the watersheds draining to the Lampasas River above the dam at Stillhouse Hollow reservoir, Segment 1216 of the Brazos River Basin.

(2) Regulated activity -

(A) Any construction or post-construction activity occurring on the contributing zone of the Edwards Aquifer that has the potential for contributing pollution to surface streams that enter the Edwards Aquifer recharge zone.

(i) These activities include construction or installation of:

(I) buildings,

(II) utility stations,

(III) utility lines,

(IV) underground and aboveground storage tank systems,

(V) roads,

(VI) highways, or

(VII) railroads.

(ii) Clearing, excavation or other activities which alter or disturb the topographic or existing stormwater runoff characteristics of a site are regulated activities.

(iii) Any other activities that pose a potential for contaminating stormwater runoff are regulated activities.

(B) "Regulated activity" does not include:

(i) the clearing of vegetation without soil disturbance;

(ii) agricultural activities, except feedlots/concentrated animal feeding operations which are regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule);

(iii) activities associated with the exploration, development, and production of oil or gas or geothermal resources under the jurisdiction of the Railroad Commission of Texas;

(iv) routine maintenance of existing structures that does not involve site disturbance such as but not limited to:

(I) the resurfacing of existing paved roads, parking lots, sidewalks, or other development-related impervious surfaces, and

(II) the building of fences, or other similar activities which present little or no potential for contaminating hydrologically-connected surface water;

(v) routine maintenance that involves little or no change to the topographic or geologic features; or

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

(3) Site - The entire area within the legal boundaries of the property described in the application. Regulated activities on a site located partially on the recharge zone and the contributing zone must be treated as if the entire site is located on the recharge zone, subject to requirements under Subchapter A of this chapter.

§213.23. Plan Processing and Approval.

(a) Approval by the executive director.

(1) No person may begin the construction of any regulated activity until a contributing zone plan or modification to a plan as required by §213.21 of this title (relating to Applicability and Persons or Entity Required to Apply) has been:

(A) filed with the appropriate regional office, and

(B) the application has been reviewed and approval letter issued by the executive director.

(2) A complete application for approval of a contributing zone plan, as described in this section, must be submitted with the appropriate fee as specified in §213.27 of this title (relating to Contributing Zone Plan and Exception Fees).

(b) Contents of application. Applications for contributing zone plan approval filed under this subchapter must be made on forms provided by or approved by the executive director. Each application must, at a minimum, include the following:

(1) the name of the development, subdivision, or facility for which the application is submitted and the name, address, and telephone number of the owner or any other persons signing the application;

(2) 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;

(3) a technical report as described under §213.24 of this title must accompany the application for plan approval; and

(4) any additional information needed by the executive director for plan approval.

(c) Submission of application.

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

(2) Only the following may submit an application for review and approval by the executive director:

(A) owner(s),

(B) the owner(s)' authorized agent(s), or

(C) those persons having the right to possess and control the property which is the subject of the contributing zone plan.

(d) Signatories to applications. All applications must be signed as specified under §213.4(d)(1) of this title (relating to Required Signature). The executive director requires written proof of authorization for any person signing an application.

(e) Executive director review.

(1) The executive director must complete the review of an application for contributing zone plan approval within 30 days after determining that it is administratively complete.

(2) The executive director must declare that the application is administratively complete or deficient within 15 days of receipt by the appropriate regional office.

(3) Grounds for a deficient application include, but are not limited to, failure to pay the application fee and failure to include all information listed in this section.

(f) Additional provisions. As a condition of contributing zone plan approval, the executive director may impose additional provisions necessary to protect the Edwards Aquifer from pollution. The executive director may conditionally approve a contributing zone plan or impose special conditions on the approval of a contributing zone plan.

(g) Term of approval. The executive director's approval of a contributing zone plan will expire two years after the date of initial issuance, unless prior to the expiration date, substantial construction related to the approved plan has commenced. For purposes of this subsection, substantial construction is where more than ten percent of total construction has commenced. If a written request for an extension is filed under the provisions of this subsection, the approved plan continues in effect until the executive director acts on the request for an extension.

(1) A written request for an extension must be received not earlier than sixty (60) days prior to the expiration date of an approved contributing zone plan or a previously approved extension. Requests for extensions are subject to fees outlined in §213.28 of this title (relating to Fees Related to Requests For Plan Approval Extension).

(2) An executive director's approved extension will expire six months after the original expiration date of the approved contributing zone 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) A plan approval will expire and no extension will be granted if less than 50 percent of the total construction has been completed within ten years from the initial approval of a plan. A new plan must be submitted to the appropriate regional office with the appropriate fees for review and approval by the executive director prior to commencing any additional regulated activities.

(4) Any requests for extensions received by the executive director after the expiration date of an approved contributing zone plan or a previously approved extension will not be accepted. A new application for the purposes of this subchapter must be submitted with the appropriate fees for the review and approval by the executive director.

(5) An extension will not be granted if the proposed regulated activity under an approved plan has changed.

(h) Legal transfer of property. Upon legal transfer of property, the new owner(s) is required to comply with all terms of the approved contributing zone plan. If the new owner intends to commence any new regulated activity on the site, a new application for plan approval for the new activity must be filed with and approved by the executive director beforehand.

(i) Modification of a previously approved plan. The holder of any approved contributing zone plan letter must notify the appropriate regional office in writing and obtain approval from the executive director prior to initiating any of the following:

(1) any physical or operational modification of any best management practices or structure(s), including but not limited to temporary or permanent ponds, dams, berms, silt fences, and diversionary structures;

(2) any change in the nature or character of the regulated activity from that which was originally approved;

(3) a change that would significantly impact the ability to prevent pollution of the Edwards Aquifer and hydrologically connected surface water; or

(4) any development of land previously identified in a contributing zone plan as undeveloped.

(j) Compliance. The holder of the approved or conditionally approved contributing zone plan letter is responsible for compliance with this subchapter and the approved plan. The holder is also responsible for any special conditions of an approved plan through all phases of plan implementation. Failure to comply with any rule or condition of the executive director's approval is a violation of this rule and is subject to administrative orders and penalties as provided under §213.25 of this title (relating to Enforcement). Such violations may also be subject to civil penalties and injunction.

§213.24. Technical Report.

For all regulated activities, a technical report must accompany the application for contributing zone plan approval. The report must address the following issues.

(1) The report must contain a location map and the site plan.

(A) The location map must be a legible road map with directions, including mileage, which would enable the executive director to locate the site for inspection.

(B) The site plan must be drawn at a minimum scale of 1 inch to 400 feet. The site plan must show:

(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 ten foot contour intervals; and

(iii) a drainage plan showing all paths of drainage from the site to surface streams.

(2) The report must describe the nature of the regulated activity (such as residential, commercial, industrial, or utility), including:

(A) the size of the site in acres;

(B) the projected population for the site;

(C) the amount and type of impervious cover expected after construction is complete, such as paved surface or roofing;

(D) the amount of surface area expected to be occupied by parking lots; and

(E) other factors that could affect the surface water quality;

(3) The report must describe 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 paragraph (1)(A) of this section.

(4) The report must describe any activities or processes which may be a potential source of contamination.

(5) The report must describe the temporary best management practices (BMPs) and measures that will be used during construction.

(A) BMPs and measures must prevent pollution of surface water or stormwater that originates on-site or upgradient from the site and flows across the site.

(B) BMPs and measures must prevent pollution of surface water that originates on-site or flows off the site, including pollution caused by contaminated stormwater runoff from the site.

(C) A plan for the inspection of the temporary best management practices and measures and for their timely maintenance, repair, and, if necessary, retrofit must be included in the report.

(D) BMPs and measures must meet the performance standards contained in §213.5(b)(4)(D)(i) of this title (relating to Required Edwards Aquifer Protection Plans, Notifications and Exemptions).

(6) The report must describe the permanent best management practices (BMPs) and measures that will be used during construction and after construction.

(A) BMPs and measures must prevent pollution of surface water or stormwater originating on-site or upgradient from the site and flows across the site.

(B) BMPs and measures must prevent pollution of surface water downgradient of the site, including pollution caused by contaminated stormwater runoff from the site.

(C) BMPs and measures must meet the performance standards contained in §213.5(b)(4)(D)(ii) of this title.

(i) Construction plans and design calculations for the proposed permanent BMPs and measures must be prepared by or under the direct supervision of a Texas Licensed Professional Engineer. All construction plans and design information must be signed, sealed, and dated by the Texas Licensed Professional Engineer.

(ii) The technical report must contain a plan for the inspection of the permanent BMPs and measures and for their timely maintenance, repair, and, if necessary, retrofit, if performance standards contained in §213.5(b)(4)(D) of this title are not being met. This plan must be prepared by the engineer designing the permanent BMPs and measures and signed by the owner or responsible party.

(iii) Pilot-scale field testing (including water quality performance monitoring) may be required for BMPs and measures that are not contained in technical guidance recognized by or prepared by the executive director.

(I) When pilot-scale field testing of an innovative technology (including water quality performance monitoring) is required, only one pilot site will be approved.

(II) No additional approvals will be granted until the pilot study is complete and the applicant demonstrates adequate protection of surface water that enters the recharges zone of the Edwards Aquifer.

(III) If the innovative technology demonstrates adequate protection, additional units may be approved for use as permanent BMPs and measures on the contributing zone on a case-by-case basis.

(7) The technical report must describe the measures that will to be taken to avoid or minimize surface stream contamination or changes in the way in which water enters a stream as a result of construction and development. The measures should address the following:

(A) increased stream flashing.

(B) the creation of stronger flows and in-stream velocities, and

(C) other in-stream effects caused by the regulated activity which increase erosion that results in water quality degradation.

(8) The technical report must describe the method of disposal of wastewater from the site.

(A) 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.

(B) 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 or exceed the requirements for on-site sewage facilities as specified under Chapter 285 of this title (relating to On-site Sewage Facilities), or identifying those areas that are not suitable.

(C) If wastewater is to be discharged in the contributing zone, requirements under §213.6(c) of this title (relating to Wastewater Treatment and Disposal Systems) must be satisfied.

(9) The technical report must describe the measures that will be used to contain any spill of static hydrocarbons or hazardous substances such as on a roadway or from a pipeline or temporary aboveground storage of 250 gallons or more.

(A) Temporary storage facilities are those used on site for less than one year.

(B) Temporary aboveground storage tank systems of 250 gallons or more cumulative storage capacity must be located a minimum horizontal distance of 150 feet from the five year floodplain of any stream drainage.

(10) The technical report must indicate the placement of permanent aboveground storage tank facilities. Permanent aboveground storage tank facilities for static hydrocarbon and hazardous substances with cumulative storage capacity of 500 gallons or greater must be constructed and spills removed using the standards contained in §213.5(e)(1) of this title.

§213.25. Enforcement.

Liability for penalties may result and may subject a noncompliant person to enforcement proceedings initiated by the executive director if there is failure to comply with:

(1) any provision of this subchapter,

(2) an approved or conditionally approved contributing zone plan or letter, or

(3) 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 or Texas Health and Safety Code.

§213.26. Exceptions.

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

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

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

(2) site and project name and location;

(3) the nature of the exception requested;

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

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

(c) Fees related to requests for exceptions. A complete application for an exception, as described in this section, must be submitted with the appropriate fee as specified in §213.27 of this title (relating to Contributing Zone Plan Approval and Exception Fees). If the exception request fee is not submitted in the correct amount, the executive director is not required to consider the exception request until the correct fee is submitted.

§213.27. Contributing Zone Plan Application and Exception Fees.

The person submitting an application for approval or modification of any contributing zone plan or exception under this subchapter must pay an application fee of \$500. The fee is due and payable at the time the application is filed. The fee must be sent to either the appropriate regional office or the cashier in the agency headquarters located in Austin, accompanied by an Edwards Aquifer Contributing Zone Fee Application Form, provided by the executive director. Application fees must be paid by

check or money order, payable to the "Texas 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.

§213.28. Fees Related to Requests for Contributing Zone Plan Approval Extension.

The person submitting an application for an extension of an approval of any contributing zone plan under this subchapter must pay \$500 for each extension request. The fee is due and payable at the time the extension request is filed, and should be submitted as described in §213.27 of this title (relating to Contributing Zone Plan Approval and Exception Fees). If the extension fee is not submitted in the correct amount, the executive director is not required to consider the extension request until the correct fee is submitted. The extension request must be submitted to the appropriate regional office and must include a copy of the contributing zone plan application and approval letter that is the subject of the extension request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to propose.

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