

Texas Natural Resource Conservation Commission (commission) proposes amendments to §213.14, concerning Fees for Edwards Aquifer Plans.

EXPLANATION OF PROPOSED RULE

The purpose of the proposed amendments is to implement legislative changes to Texas Water Code, §26.0461(a) and (d) regarding Fees for Edwards Aquifer Plans, as enacted by House Bill 1016, 75th Legislature (1997). Section 26.0461 (a), as amended, authorizes the commission to assess fees for processing Edwards Aquifer protection plans or amendment to plans and for inspecting the construction and maintenance of water quality protection measures. Section 26.0461 (d), as amended, raises the cap on any fee imposed under §26.0461 from \$2000 to \$5000. Based on a five-year average, the estimated annual fee revenue shortfall for the program under the current regulations is \$352,200. The proposed fees will generate sufficient revenue to cover this shortfall in periods of strong economic growth.

The proposed amendment to §213.14, Fee Schedule, contains the criteria for calculating the application fee for the review of an Edwards Aquifer protection plan and modifications to a plan. The water pollution abatement plan fee schedule for single-family residential dwellings, parks, and public schools has been revised to reflect four categories based on size in acres with fees set at \$1000 for less than five acres, \$2000 for five to less than 10 acres, \$3000 for 10 to less than 50 acres, and \$5000 for sites 50 acres and greater. The fee schedule for commercial and other sites where regulated activities will occur has been revised to reflect three categories based on size in acres with fees set at \$1000 for less than 1 acre, \$3000 for 1 to less than 10 acres, and \$5000 for 10 acres and greater. The cap for fees for

organized sewage collection systems and underground and aboveground storage tank facilities has been raised to \$5000.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that during the first five-year period the section as proposed is in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in revenue of approximately \$268,810 per year, based on a five year average of revenues received from 1993 to 1997. In periods of strong construction and development growth, a small amount of excess funds will be generated by these fees that will be used to supplement fees collected during years of slow growth. The proposed fee is not expected to generate revenue to recover the total costs of the Edwards Aquifer protection program in slow-growth years.

Other state agencies conducting activities in the geographical areas subject to these rules will be subject to the effects of changes to fee schedules similar to any other party conducting regulated activities. The effects of this proposed rule are not anticipated to be significant for any individual agency or impose substantial costs. Similar fiscal implications are also anticipated for units of local government that are conducting regulated development activities.

Economic costs are anticipated for persons required to comply with these sections as proposed. An owner or developer of property who proposes new or additional activity subject to approval under 30

TAC Chapter 213 will be subject to changes in the fees assessed for review and approval of plans. The cost implications of the revised application review fee requirements for any project will vary on a case-by-case basis with the type of project and its size. The fee for plan review for residential development of between two and five acres is reduced from \$2,000 to \$1,000. For residential developments of less than two acres and from five to 10 acres, no changes to existing fees are proposed. For residential developments of between 10 and 50 acres, the fee will increase from \$2,000 to \$3,000 and for tracts of greater than 50 acres the fee is increased from \$2,000 to \$5,000. For commercial developments of less than one acre, no changes in plan review fees are proposed. For commercial developments between one and 10 acres the fee will increase from \$2,000 to \$3,000. The fee that will be assessed for larger commercial developments (greater than 10 acres) is increased from \$2000 to \$5,000. The fee rate for organized sewage collection systems or for underground or aboveground storage tank facilities (based on linear footage of sewage collection line or total number of tanks or piping systems, respectively) has not changed; however, the cap on these fees will increase from \$2000 to \$5000.

It is not anticipated that the total incremental cost of the revised fees will increase total construction and development costs in the affected region by a significant amount. Many smaller projects will realize a cost savings or no significant increases. The actual effect of the changes to any one business will vary with the size and individual characteristics of proposed developments, but not directly with the size of the affected firm. There are no additional direct economic costs to persons required to comply with these sections except as identified above for affected property owners or developers.

PUBLIC BENEFIT

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

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Ann. §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to amend the regulations set forth in Chapter 213 to adjust the amounts of fees assessed on persons whose activities have the potential for polluting the Edwards Aquifer and hydrologically connected surface water. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rule.

Promulgation and enforcement of these rules will not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. Owners of property that is used for activities having the potential for polluting the Edwards Aquifer and hydrologically connected surface water are presently required to submit an application for approval or modification of a plan as well as an application fee at the time the application is filed. This rulemaking, which to a large extent increases

the amount of fees such owners will be responsible for paying, does not further restrict the right to the property. Also, this rulemaking is not the producing cause of a reduction in the market value of the affected private real property. Therefore, this action does not create a burden on the affected private real property.

In addition, §2007.003(b)(13) of the Texas Government Code exempts from its coverage those governmental actions that are taken in response to a real and substantial threat to public health and safety, that are designed to significantly advance the health and safety purpose, and that do not impose a greater burden than is necessary to achieve the health and safety purpose. The proposed rulemaking will significantly contribute to prevention of the threat of pollution of the Edwards Aquifer, the sole or primary source of water for over 1.5 million people, by providing adequate resources to the agency to enable it to enforce the rules contained in Chapter 213, which in its entirety addresses a real and substantial threat to public health and safety, significantly advances the health and safety purpose, and does not impose a greater burden than is necessary to achieve that purpose.

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. The proposed rule does not govern any of the actions that must be subject to the goals and policies of the Program, pursuant to 31 TAC §505.11.

PUBLIC HEARINGS

Public hearings on the proposal will be held in San Antonio on August 4th at 7:00 p.m. in the Training Room of the San Antonio Water System Building (SAWS), at 1001 East Market Street, San Antonio; and in Austin on August 7th at 10:00 a.m at TNRCC Building F., Room 2210, 12100 Park 35 Circle, Austin. The hearings are structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion among members of the audience during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

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 should reference Rule Log No. 97134-213-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., August 8, 1997. Comments should be limited to the amendments contained in this proposal. Later this year, 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. For further information concerning this proposal, please contact Mary Ambrose, Water Policy and Regulations Division at (512) 239-4813.

LEGAL AUTHORITY

These amended sections are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 26.341 and Texas Health and Safety Code, §§361.024 and 366.012 which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Codes and other laws. Additionally, Texas Water Code §26.046 requires the commission to hold annual public hearing to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution, §26.0461 allows the commission to impose fees for 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, and §28.011 authorizes the commission to make and enforce rules for the protection and preservation of groundwater quality.

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

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

§213.14. Fee Schedule.

(a) Water Pollution Abatement Plans. For water pollution abatement plans and modifications to those plans, the application fee shall be based on the classification and total acreage of the site where regulated activities will occur as specified in Table 1. **(Figure 1: §213.14(a))**

Table 1

<u>Classification/Number of Acres</u>	<u>Fee</u>
<u>Single-family residential dwellings, parks, public schools</u>	
<u>Less than 5 acres</u>	<u>\$1,000</u>
<u>5 to less than 10 acres</u>	<u>\$2,000</u>
<u>10 to less than 50 acres</u>	<u>\$3,000</u>
<u>50 acres or more</u>	<u>\$5,000</u>
<u>Commercial and other sites where regulated activities will occur</u>	
<u>Less than 1 acre</u>	<u>\$1,000</u>

<u>Classification/Number of Acres</u>	<u>Fee</u>
<u>1 to less than 10 acres</u>	<u>\$3,000</u>
<u>10 acres or more</u>	<u>\$5,000</u>

Table 1

Classification/Number of Acres	Fee
Single-family residential, parks, public schools	
Less than 2 acres	\$1,000
2 acres or more	\$2,000
Commercial and other sites where regulated activities will occur	
Less than 1 acre	\$1,000
1 acre or more	\$2,000

(b) Organized sewage collection systems. For sewage collection system plans and modifications, the application fee shall be based on the total number of linear feet of all lines for which approval is sought. The fee shall be \$.50 per linear foot, with a minimum fee of \$500 and a maximum fee of \$5,000 [~~\$2,000~~].

(c) Underground and aboveground storage tank facilities. For underground or permanent aboveground storage tank system facility plans and modifications, the application fee shall be based on the number of tanks or piping systems for which approval is sought. The fee shall be \$500 per tank or piping system, with a minimum fee of \$500 and a maximum fee of <etb>\$5,000<et> [\$2,000].

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

Issued in Austin, Texas on June 30, 1997.