

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** June 20, 2008

**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** Dan Eden, Deputy Director  
Office of Permitting, Remediation and Registration

**Docket No.:** 2007-0995-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 230, Groundwater Availability Certification for Platting  
SB 662: Groundwater Availability Certification for Platting  
Rule Project No. 2007-045-230-PR

**Scope of the rulemaking:**

This rulemaking implements Senate Bill (SB) 662 from the 80th Legislative Session, 2007. Local Government Code, §212.0101(c) and §232.0032(c), require the commission in consultation with the Texas Water Development Board (TWDB), by rule to require a person who submits a plat under Local Government Code, §212.0101 or §232.0032, to transmit to the TWDB and any applicable groundwater conservation district (GCD), information that would be useful in performing GCD activities, conducting regional water planning, maintaining the TWDB's groundwater database, or conducting state studies on groundwater.

**Reasons for the rule package:**

In 2007, the 80th Legislature passed SB 662 which amended Local Government Code, §212.0101 and §232.0032. This adoption rulemaking will implement these changes by amending Chapter 230, Groundwater Availability Certification for Platting.

**Statutory Authority:**

These amendments are adopted under Local Government Code, §212.0101(c) and §232.0032(c), as added by SB 662. Under Local Government Code, §212.0101 and §232.0032, a municipal authority responsible for approving plats by ordinance or the commissioners court of a county by order (respectively) may require a person who submits a plat application for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, to have attached to it a statement that: (1) is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state; and (2) certifies that adequate groundwater is available for the subdivision. Local Government Code, §212.0101(b) and §232.0032(b), both require the commission, by rule, to establish the appropriate form and content of a certification to be attached to a plat application. The commission adopted Chapter 230 in June 2000 to implement Local Government Code, §212.0101(b) and §232.0032(b). SB 662 requires the commission, in consultation with the TWDB, adopt by rule no later than January 1, 2009, to require certain plat applicants to transmit to the TWDB and any applicable GCD information that would be useful in performing GCD activities, conducting regional water planning, maintaining the TWDB's groundwater database, or conducting state studies on groundwater.

**Potentially controversial matters:**

None.

**Public comment:**

The commission held a public hearing for this rule on March 27, 2008 in Austin, Texas and no comments were received at that hearing. The public comment period for this rulemaking closed on March 31, 2008. The commission received comments from Naismith Engineering, Inc. (NEI).

NEI generally supported the proposed rules and suggested several modifications. NEI suggested broadening rule language to clarify rule applicability if groundwater supply is supplemented by other sources. NEI commented that additional reference to Local Government Code, §242.001(d)(4)(A), relating to plat approval by one office in a municipality's extra-territorial jurisdiction, and broadening and adding a definition for 'platting authority' would clarify rule implementation. NEI suggested geographic coordinate information be required by the rules and that the submission of electronic data to the TWDB be clarified in the rules. NEI recommended the rules be restructured to mandate data submission to the municipal and county authorities.

**Significant changes from proposal:**

No rule changes were made in response to the NEI comments. The suggested changes would: (1) make the rules inconsistent throughout Chapter 230 and inconsistent with the statutory language that requires the rules, (2) cause the commission to adopt rules governing data submission to other agencies, and (3) mandate that permissive municipal and county authorities be required.

**Key points in adoption rulemaking schedule:**

<b><i>Texas Register</i> proposal publication date:</b>	February 29, 2008
<b>Six-month <i>Texas Register</i> filing deadline:</b>	August 29, 2008
<b>Anticipated <i>Texas Register</i> publication date:</b>	July 25, 2008
<b>Anticipated effective date:</b>	July 31, 2008

**Agency contacts:**

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**Attachments**

cc: Chief Clerk, 5 copies  
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