

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 APR -8 PM 4: 39

TCEQ DOCKET NO. 2010-0317-EAQ CHIEF CLERKS OFFICE

IN THE MATTER OF THE	§	
APPLICATION OF H. L. ZUMWALT	§	
CONSTRUCTION, INC., FOR	§	BEFORE THE TEXAS COMMISSION
APPROVAL OF AN EDWARDS	§	ON
AQUIFER WATER POLLUTION	§	ENVIRONMENTAL QUALITY
ABATEMENT PLAN; ID NO. 2897.00.	§	

REPLY TO RESPONSES TO MOTION TO OVERTURN¹

Comes now Ranchland Oaks Home Owners' Association ("Ranchland Oaks") and files this reply to responses filed in this docket by H.L. Zumwalt Construction, Inc. ("Zumwalt"), the Executive Director (ED") of the Texas Commission on Environmental Quality ("TCEQ") and the Office of Public Interest Counsel ("OPIC"), and would respectfully show the following:

I. Introduction

On March 1, 2010, Ranchland Oaks filed its Motion for Reconsideration of the Executive Director's approval of Zumwalt's Edwards Aquifer Water Pollution Abatement Plan ("WPAP") for a proposed limestone quarry that would be constructed on 30 acres of a 113 acre ranch near Mico, Medina County, Texas, on the recharge zone of the Edwards Aquifer. The operation would include activities such as: rock mining, crushing and hauling, with continued ranching and agricultural use. Zumwalt March 12, 2010, submitted a Notice of Intent to Commence Construction. This allowed Zumwalt to begin construction two days later. Following the filing of Ranchland Oaks' Motion,

Zumwalt, the ED, and OPIC filed their responses with TCEQ on March 25, 2010. All, save Zumwalt, recommended the motion be granted and the approval, therefore, reversed.

II. Discussion

A. Timeliness of Motion

Zumwalt challenged Ranchland Oaks's filing as being untimely. As the ED response explains, the motion was timely filed, inasmuch as February 27th (the nominal 23rd day), fell on a Saturday, and, therefore, Monday, March 1, 2010 was the next day the Chief Clerk's office was open. 30 TAC§1.7:

Except as otherwise specifically provided by commission rules, in computing any period of time prescribed or allowed by commission regulation or orders or by any applicable statute, the period shall begin on the day after the act, event, or default in question and shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday on which the office of the chief clerk is closed, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal holiday on which the office of the chief clerk is closed.

B. Notice to Affected Incorporated Cities: City of San Antonio

Ranchland Oaks agrees with the ED's position that Zumwalt has not established compliance with the Application Processing and Approval rule for an Edwards Aquifer Protection Plan; 30 TAC§213.4(a)(2). Applicant's mischaracterization of its location, in relation to the San Antonio extra-territorial jurisdiction ("ETJ"), in its initial application led to the absence of notice of its proposed activity and water pollution abatement plan to any municipality. Subsequent to correcting its form and asserting that its site *is* within the

¹ Ranchland Oaks initial pleading was incorrectly entitled, "Motion for Reconsideration."

San Antonio ETJ, notice to the City of San Antonio was not submitted as it should have been. Had San Antonio been notified of the application, it would have had a meaningful opportunity to comment to TCEQ on the weaknesses of the application² Additional comments would then be available for review by the Executive Director. 30 TAC§ 213.4(a)(2). Ranchland Oaks agrees with counsel for the ED that this failure of notice dictates reversal of the ED's WPAP approval and a re-noticing of the application.

Ranchland Oaks recommends the Commission not address the merits of the WPAP approval, now. After the application has been re-noticed, the ED may determine, from comments received, that the application may not be approved, and the Commission will not have to devote its resources to this matter. Even if the ED decides otherwise, the Commission will in the future have a more complete record on which to base its decision.

C. Regarding the substance of the Water Pollution Abatement Plan

If the Commission, nonetheless, were inclined to consider, now, the substance of the Zumwalt response to critical comments regarding the WPAP, Ranchland Oaks points out the following.

Hydrological and Hydraulic Analysis of Berms: Zumwalt still presents no quantitative support for the adequacy of the berm designs. Typically, this agency would not accept as reasonable an applicant's conclusion (made by Zumwalt, here) that the upgradient drainage areas are, by some un-expressed measure, "small," so berm designs

² San Antonio, already, has suspended operations at the Zumwalt site once for Zumwalt's violation of the City's tree ordinance. So, it is reasonable to believe the Zumwalt operation is one being watched by the City and on which it would be likely to offer comments.

without data are OK. Also, Zumwalt did not respond to the Ranchland Oaks criticism that there is no berm vegetation plan.

On-Site Electrical Generation: Zumwalt did not respond to the Ranchland Oaks criticism that placing the diesel generator and its fuel in the pit was unnecessarily unprotective of water quality. Zumwalt provided no data on the costs of supplying 3-phase power to the site, which, after all, is bordered by FM 1283, along which runs both electric power transmission and distribution lines.

Stormwater Discharge Standards: In response to Ranchland Oaks's concern that the floor of quarry will allow infiltration of rainwater that accumulates in the quarry, Zumwalt contends that quarry floors, based in Westward's experience, are either bedrock or densely compacted limestone. Well, "bedrock" for limestone over the Edwards Aquifer is just more karst limestone, so long as one is above the aquifer, itself. That sort of bedrock offers no argument against infiltration; in fact, just the opposite can be argued. Whether or not the limestone dust and chip material on the floor of the quarry will be "densely compressed" is a function of location and the compressing traffic and the time over which the dust and material have been exposed to equipment traffic. Values for none of these variables is estimated by Zumwalt in its response. Furthermore, it is not annual evaporation rates that are the most relevant, here. What is relevant, here, are the short-term rates one would expect in the day or so following rainfall events, when, as Ranchland Oaks fears, contaminated rainfall is infiltrating the limestone and aquifer.

It is commendable that delayed release by Zumwalt of pit stormwater will lessen

erosion, in comparison to the situation had the stormwater been channeled and released immediately. However, this does not address the issue raised by Ranchland Oaks: the TSS concentrations will be drastically greater than background base flow concentrations in area's creeks.

Sensitive Features/Geological Assessment Standards: Ranchland Oaks commented that it is unexpected, given the quarry's location, that there would be no sensitive or significant recharge features at all on the quarry site and urged an independent assessment be made. Zumwalt, in its response, alleges that TCEQ came to the site and "verified ... the assessment of the site."

Ranchland Oaks has been unable to find in the agency's files the verification documentation, and Zumwalt did not provide it with its response. Before the Commissioners make decisions even in part in reliance on the "fact" of their staff's "verification" of the geologic assessment (as opposed to, say, the fact of a more routine staff site visit for other reasons), the Commissioners should carefully review the documentation of the alleged "verification."

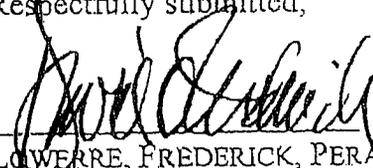
Spill Response Action: In response to Ranchland Oaks's concern that the spill response plan is too vague to provide instruction to those who would implement it or to allow enforcement of it, Zumwalt responds, basically, that parts of the plan are admittedly "general in nature," but there are other spill response plans (Zumwalt does not tell us whether these are general or detailed in nature) to which the site is subject. This does not fairly respond to the concern raised: the only plan in the record of this approval

sets forth directives such as, "be aware that different materials pollute in different amounts" and "designate responsible individuals to oversee and enforce control measures," and these are so vague as to allow neither the people who are supposed to implement them nor the agency enforcement staff to know who is to do what in the event of a spill.

III. Conclusion and Prayer

Ranchland Oaks is in support of the ED's and OPIC's recommendation that Ranchland Oaks's motion be granted. For the reasons discussed above, Protestant Ranchland Oaks HOA respectfully requests that the Commission grant its Motion to Overtum and reverse the Executive Director's decision to approve Applicant H.L. Zumwalt's Edwards Aquifer Water Pollution Abatement Plan.

Respectfully submitted,



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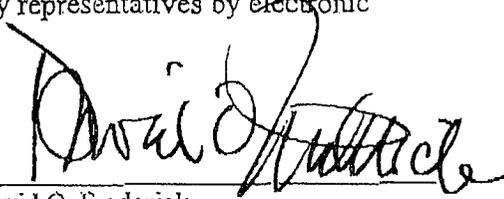
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CERTIFICATE OF SERVICE

By my signature below, I certify that on this 8th day of April, 2010, true and correct copies of the foregoing document were served on the following party representatives by electronic transmission, facsimile transmission and/or U.S. Mail.


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 CHIEF CLERKS OFFICE

From: David O. Frederick/Axum Teferra
Date: April 8, 2010

Re: TCEQ Docket No. 2010-0317-EAQ; In the Matter of the Application of H. L. Zumwalt Construction, inc., for Approval of a Water Pollution Abatement Plan, Edwards Aquifer Protection Program Identification No. 2897.00.

DOCUMENTS	NUMBER OF PAGES (not including cover pg)
Reply to Responses to Motion for Reconsideration	

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