

From: mb

8302490221

04/16/2010 10:30

#585 P.002/006

H.L. Zumwalt Construction, Inc.  
12354 FM 1560 North  
Helotes, TX 78023  
(210) 695-3541, Fax (210) 695-5651

April 16, 2010

Texas Commission on Environmental Quality  
Chief Clerks Office, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

Attention: Tracy Gross

Subject: Motion For Reconsideration – Comments On New Issue  
Water Pollution Abatement Plan (WPAP) – RN 105835375 (EAPP No. 2897.00)  
H.L. Zumwalt Construction, Inc. – CN 602748824  
FM 1283 Ranch Quarry, Mico, Medina County, Texas

Ms. Gross,

In response to a TCEQ letter dated April 9, 2010, I am writing the TCEQ to give comments to the new issue raised by the Executive Director's response to the filed Motion to Overturn (titled Motion for Reconsideration). Attached are Westward Environmental, Inc.'s technical comments to the above mentioned Executive Director's response.

Respectfully submitted,

  
Henry L. Zumwalt  
President

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 APR 16 AM 11:07  
CHIEF CLERKS OFFICE



*Westward Environmental, Inc.*

*P.O. Box 2205  
BOERNE, TEXAS  
78006*

April 16, 2010

H.L. Zumwalt Construction, Inc.  
12354 FM 1560 North  
Helotes, Texas 78023

Attention: Henry L. Zumwalt

Subject: Motion For Reconsideration – (ETJ New Issue) Comments  
Water Pollution Abatement Plan (WPAP) – RN 105835375 (EAPP ID No. 2897.00)  
H.L. Zumwalt Construction, Inc. – CN 602748824  
FM 1283 Ranch Quarry, Mico, Medina County, Texas

Project No.: 0022-39  
CHIEF CLERKS OFFICE  
APR 16 AM 11:37  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Mr. Zumwalt,

At your request, Westward Environmental, Inc. (WEI) has reviewed the Motion For Reconsideration (MFR) filed by Lowerre, Frederick, Perales, Allmon, & Rockwell and the Executive Director's Response to Motion For Reconsideration. WEI has prepared this response to the TCEQ letter dated April 9, 2010.

On March 25, 2010, The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) filed a response to a Motion for Reconsideration (MFR) filed by Lowerre, Frederick, Perales, Allmon, & Rockwell on March 1, 2010 on behalf of Ranchland Oaks Home Owners' Association. In the ED's explanation a new issue was raised that was not in the filed MFR dated March 1, 2010 about the validity of the notice to the City of San Antonio due to an administrative error.

The TCEQ letter dated March 11, 2010 which was signed by Mr. Les Trobman of the General Counsel and distributed among all parties, states in the third paragraph:

"Title 30 of the Texas Administrative Code (TAC) Chapter 50 authorizes an extension of time for taking action on the Motion (*emphasis added*) up to 90 days after the date written notice of the Executive Director's action is mailed to an applicant. In this case, notice of the approval of the WPAP was mailed on February 4, 2010. Accordingly, this letter shall serve as the order extending the time for the Commission to act on the Motion until Wednesday, May 5, 2010."

The fourth paragraph states:

"The Executive Director, the Applicant, and the Office of Public Interest Counsel are hereby notified that they are encouraged to file briefs with regard to the issues raised in the Motion." (*emphasis added*)

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H.L. Zumwalt Construction, Inc.  
MFR Response

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4/16/2010

The above referenced paragraphs specifically show the TCEQ's directive in responding to the filed Motion. In the Executive Director's Response to Motion for Reconsideration dated March 25, 2010, the Executive Director presented a new and separate issue (ETJ issue) that was not part of the filed Motion dated March 1, 2010. The new "ETJ" issue should not be admissible since the original Motion filed by Lowerre, Frederick, Perales, Allmon, & Rockwell did not present the "ETJ" issue. Therefore, the Executive Director's response is not germane to the issues raised in the original Motion.

It is worth noting that in the Executive Director's Response to Motion for Reconsideration; only the new "ETJ" issue was raised. The Executive Director was silent to the movant's Motion which outlined seven issues. It could therefore be assumed that the ED did not find merit in any of the issues raised in the original Motion.

The original WPAP application submitted by WEI to the TCEQ on November 6, 2009 included one original and four copies. On November 9, 2009 the TCEQ sent a copy of the WPAP to: the Medina County Judge, the Edwards Aquifer Authority, and the Medina County Underground Water District. Subsequently, additional information regarding the WPAP application was submitted by WEI to the TCEQ on January 6, 2010 included one original and four copies. On January 20, 2010 a revised *General Information Form TCEQ-0587* was sent by WEI to the TCEQ indicating that the project area is inside the City of San Antonio's ETJ. The TCEQ had a fourth copy of the WPAP for San Antonio Waster Systems (SAWS) already in house. The ED approved the WPAP on February 4, 2010 which is sixteen days after the revised *General Information Form* was sent to the TCEQ. Even with the revised form, the TCEQ did not send a copy of the application to SAWS.

SAWS would be the governing agency since the 30 acre site resides in the ETJ of San Antonio. However, the site resides near the unnamed tributary of Deep Creek, which flows into Deep Creek and eventually flowing into the Medina River (Segment #1903); all of these are not part of the City of San Antonio's MS4 and intersect with the San Antonio River on the south side of Bexar County. Mr. Henry Zumwalt is neither subdividing nor platting his property and is therefore not subject to SAWS's limited authority within the ETJ of the City of San Antonio. Nevertheless, the H.L. Zumwalt Construction, Inc. WPAP already addresses concerns that SAWS has historically commented on in past WPAP quarry applications filed by Westward Environmental, Inc. Past issues of concern were: impervious cover, storage of hydrocarbons (TCEQ or EAA requirements), sewer mains and service laterals, building inside the 100-year floodplain, sensitive features, onsite vehicle maintenance, and change in land use. The following outline demonstrates how the current WPAP already addresses SAWS's historical concerns with similar applications.

- At the end of quarry operations no new impervious cover will remain onsite. (Note: The added impervious cover during the quarry process would be the scale house/scales and the compacted base fueling pad < 1%.) The scale house/scales and the compacted base fueling pad will be removed at the end of quarry operations.
- A 300 gallon mounted diesel tank on the generator will be used onsite. The 300 gallon tank is below the 499 gallon requirement in Chapter 213 and below the 600 gallon threshold through the Edwards Aquifer Authority (EAA). SAWS does not have a requirement for aboveground storage tanks; SAWS defaults to the TCEQ and EAA rules.
- No sewer mains or service laterals are proposed. (No subdividing or platting is required for the quarry.)

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MFR Response

Westward Environmental, Inc.  
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- No building will occur inside the 100-year floodplain. The 30 acre quarry boundary is 100+ feet outside of the 100-year floodplain.
- No sensitive features were discovered during the Geologic Assessment of the 30 acre project area.
- Vehicle and equipment maintenance will occur offsite at the construction company's shop.
- If a change in land use is proposed a WPAP Modification or a new WPAP will be submitted to the TCEQ.

It is our opinion that the Commission should elect to address the merits of the WPAP approval during the current procedural process. If the Commission should decide to rescind the WPAP approval and have the ED re-notice the application, the Commission, the Applicant and the public would best be served to have issues raised already resolved. It is also our understanding from comments made during three public meetings, that the movants wish to delay the environmental permitting process in order to discourage (on a monetary level) you the applicant from moving forward on the proposed project.

If you have any questions regarding this letter please contact our office at 830-249-8284.

Respectfully submitted,  
WESTWARD ENVIRONMENTAL, INC.



Matt Bellos  
Environmental Specialist

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Kathy Humphreys – Environmental Law Division MC-173 (fax)  
David Frederick – Lowerre, Frederick, Perales, Allmon & Rockwall (fax)  
Charly Fritz – TCEQ EAPP Region 13 (fax)  
Henry Zumwalt – H.L. Zumwalt Construction, Inc. (e-mail) + (mail)  
WEI 10022-39 File

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#585 P. 006/006

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TCEQ Docket No. 2010-0317-EAQ

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# WESTWARD ENVIRONMENTAL, INC.

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## FACSIMILE TRANSMITTAL SHEET

TO: DOCKET CLERK	FROM: MATT BELLOS
COMPANY: TCEQ - MC-105	DATE: April 16, 2010
FAX NUMBER: 512-239-3311	NO. OF PAGES INCLUDING COVER: 6
PHONE NUMBER:	PROJECT NUMBER: 10022-37
RE: ZUMWALT MFR	

URGENT     
  FOR REVIEW     
  PLEASE COMMENT     
  PLEASE REPLY

NOTES/COMMENTS:

Docket Clerk:

Attached are comments to the filed MFR for H.L. Zumwalt Construction, Inc.'s approved WPAP.

If you have any questions give me a call. Thanks.

Thank you,  
WESTWARD ENVIRONMENTAL, INC.

Matt Bellos  
Environmental Specialist  
mbellos@westwardenv.com

TEXAS  
 COMMISSION  
 ON ENVIRONMENTAL  
 QUALITY  
 2010 APR 16 AM 11:07  
 CHIEF CLERKS OFFICE

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