



Westward Environmental, Inc.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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P.O. Box 2205
BOERNE, TEXAS
78006

CHIEF CLERKS OFFICE

March 9, 2010

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

Project No.: 10022-39

Attention: Melissa Chao

Subject: Motion For Reconsideration letter – Lowerre, Frederick, Perales, Allmon, & Rockwell
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

Ms. Chao,

Westward Environmental, Inc. prepared the above referenced Water Pollution Abatement Plan (WPAP) in accordance with 30 TAC Chapter 213 for H.L. Zumwalt Construction, Inc. which was approved by the TCEQ on February 4, 2010. A Motion For Reconsideration (MFR) was filed by Lowerre, Frederick, Perales, Allmon, & Rockwell by fax on March 1, 2010 at 4:45pm (*See Appendix – A*). The MFR letter was filed on the 25th day after the executive director's approval of the WPAP which is two days past the allotted 23 day time period. The submitted MFR has a date of March 1, 2010 on the fax cover page and a date of March 1, 2010 on the attached report from Ms. Ross. The submitted MFR was not only submitted after the required 23 days but the MFR was prepared on the 25th day. Because the MFR letter was not filed within the specified time frame in the WPAP approval letter and 30 TAC Chapter 50.139, it is our opinion that the MFR letter was not timely filed and therefore should not be given consideration in this matter.

As stated in the February 4, 2010 TCEQ WPAP approval letter (*See Appendix – B*) and 30 TAC Chapter 50.139, "The applicant or a person affected may file with the chief clerk a motion for reconsideration of the executive director's final action on this Edwards Aquifer Protection Plan. A motion for reconsideration must be filed no later than 23 days after the date of this approval". The above language does not specify business days nor does it exclude weekends or holidays. The language is specific, "no later than 23 days after the date of this approval" and no interpretation is required. The submitted MFR was not filed within the 23 day period.

During the adoption of amendments to 30 TAC Chapter 50 in 2000 (30 TAC Chapter 213.1(3) which references Chapter 50.139(a),(b),(d)–(g)), the TCEQ determined that the 23 day time period is sufficient for opposing comments and takes into account the time for the mailing system in Texas. As stated in the 30 TAC Chapter 50 – Action on Applications and Other Authorizations background document page 2 (*See Appendix – C*), "Persons opposing the issuance of permits or approvals will benefit because the deadline for filing a motion for reconsideration or motion to overturn will allow a full 20 days for filing these motions, taking into account three days from mailing to receipt of notification." The background document clearly shows the intent of the 23 days and already allows for "extra" time for mailing.

Due to the reasons cited in this letter, Westward Environmental, Inc. requests that the TCEQ not give consideration to the MFR filed by Lowerre, Frederick, Perales, Allmon, & Rockwell dated March 1, 2010. Based on our knowledge that the commission or general counsel did not extend the period of time for filing a MFR, the required 23 day timeframe had expired.

If you have any questions regarding this letter please contact our office.

Respectfully submitted,
WESTWARD ENVIRONMENTAL, INC.



Matt Bellos
Environmental Specialist

Distribution: Addressee (1 original + 7 copies)
TCEQ Region 13 – Ms. Charly Fritz
Mr. Henry Zumwalt – H.L. Zumwalt Construction, Inc.
WEI 10022-39 File

Attachments

(MFR) filed by Lowerre, Frederick, Perales, Allmon, & Rockwell – *Appendix A*
WPAP approval letter dated February 4, 2010 – *Appendix B*
Action on Applications and Other Authorizations background document – *Appendix C*

APPENDIX - A

**LOWERRE, FREDERICK, PERALES,
ALLMON, & ROCKWELL**

707 Rio Grand, Suite 200
Austin, TX 78701
(512) 469-6000 Phone
(512) 482-9346 FAX

OPA
MAR 02 2010
BY

FAX COVER SHEET

To:

Ladonna Castañuela

(512) 239-3311

TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 MAR - 1 PM 4: 51
CHIEF CLERKS OFFICE

From:

David Frederick

(512) 482-9346

Ref:

IN THE MATTER OF THE APPLICATION OF H. L. ZUMWALT CONSTRUCTION,
INC. FOR APPROVAL OF AN EDWARDS AQUIFER WATER POLLUTION
ABATEMENT PLAN

Date: 3/1/2010

DOCUMENTS	NUMBER OF PAGES (not including cover pg.)
Motion to Reconsider	9

CONFIDENTIALITY NOTICE: This message is intended for the use of the individual or entity to which it is addressed. This message consists of information from LOWERRE, FREDERICK, PERALES, ALLMON & ROCKWELL and may be privileged, confidential and exempt from disclosure by law. Unauthorized distribution or copying of this information is prohibited. If you have received this communication in error, please notify us immediately at our telephone number listed above. We will promptly arrange for the return of the message to us.

History of this Application: On November 2, 2009, H.L. Zumwalt submitted a Water Pollution Abatement Plan ("WPAP") for a proposed limestone quarry operation of approximately 30 acres on a site located on the north side of FM 1283 located near Mico in Medina County, Texas. A fax transmittal from the Texas Commission on Environmental Quality ("TCEQ"), dated December 16, 2009, pointed out 11 matters in Applicant's WPAP that needed to be addressed or further examined. Following this notice from TCEQ, on January 5, 2010, Applicant filed its WPAP Modification with the Agency. Soon after, the Executive Director approved the Plan in a letter dated February 4, 2010.

Reasons for Reconsideration: In support of this Motion, Ranchland Oaks attaches the letter from Dr. Lauren Ross, Ph.D., P.E., who has reviewed the Water Pollution Abatement Plan of H.L. Zumwalt and its related documents.

Prayer: For the reasons discussed in the enclosed letter, Protestant Ranchland Oaks HOA respectfully requests that the Commission grant this Motion and reverse the Executive Director's decision to approve Applicant H.L. Zumwalt's Edwards Aquifer Protection Plan.

Respectfully submitted,

David O. Frederick
LOWERRE, FREDERICK, PERALES, *w/permission by MP*
ALLMON & ROCKWELL by:

David O. Frederick, SBT # 07412300

Received:

Mar 1 2010 04:45pm

MAR-01-2010 MON 04:45 PM LOWERRE FREDERICK PERALE

FAX NO. 5124829346

P. 04/10

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COUNSEL FOR RANGLAND OAKS
HOME OWNERS' ASSOCIATION

P. O. Box 1948
Austin, Texas 78767-1948
Phone: 512-326-8880
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writer's e-mail: lauren@glenrose.com

**GLENROSE
ENGINEERING INC.**

March 1, 2010

Mr. David Frederick, Attorney
707 Rio Grande Street; Suite 200
Austin, Texas 78701

Subject: Zumwalt Quarry Water Pollution Abatement Plan

Dear Mr. Frederick:

At your request I have reviewed the following documents relating to the Water Pollution Abatement Plan submitted to the Texas Commission on Environmental Quality by Zumwalt Construction, Inc. for the FM 1283 Ranch Quarry in Medina County:

- Water Pollution Abatement Plan; H. L. Zumwalt Construction, Inc., FM 1283 submitted to Texas Commission on Environmental Quality, Region 13 by Westward Environmental, Inc., November 2009;
- Central Records MC213 EDAQ; Medina FM 1283 Ranch Quarry dated November 6, 2009;
- Fax Transmittal from Charly Fritz, TCEQ to Gary Nicholls, P. E. on December 16, 2009;
- Letter from Gary Nicholls, P. E., Westward Environmental, Inc. to Ms. Charly Fritz, Texas Commission on Environmental Quality, Region 13, dated January 5, 2010;
- Letter to Henry Zumwalt from Mark Vickery, Executive Director, Texas Commission on Environmental Quality to Mr. Henry Zumwalt, H. I. Zumwalt Construction, Inc., dated February 4, 2010.

The proposed quarry would be constructed on 30 acres of the recharge zone of the Edwards Aquifer. The site is part of a 113-acre ranch. Rock mining, crushing, and hauling would

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March 1, 2010
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occur simultaneously with ranching and agricultural activities. Rock crushing will be dry, requiring no wash ponds. The quarry is proposed to operate within earthen berms constructed from overburden top soil.

I have identified the following issues associated with possible water quality degradation from the proposed rock mining and processing operations.

Hydrologic and Hydraulic Analysis of Berms

The applicant proposes to divert storm runoff around the rock mining operation by constructing berms upgradient and downgradient from the mining pit using on-site top soil and overburden (Westward Environmental, Inc., January 4, 2010). These storm runoff diversion berms are proposed without calculations of the contributing area size, or of the expected storm runoff flow rates.

Without information regarding the contributing area size and expected flow rates, it isn't possible to determine whether the flow concentration that occurs from berm placement can be accommodated without a designed runoff channel. Furthermore, the applicant has not addressed erosion and water quality degradation that would result from overland flow diversion by the proposed berms.

A revegetation plan should be included in the permit to assure rapid stabilization of properly-sized berms.

On-Site Electrical Generation

The applicant proposes to operate the rock crusher, conveyors, and screens with electricity from a diesel-powered mobile generator. The diesel tank would hold 300 gallons of fuel. The tank and mobile generator trailer would eventually be located inside the quarry pit.

On-site fuel storage and electrical generation represent a potential for water quality degradation that off-site electrical generation would not pose. The proposed location of these operations inside the quarry pit presents a further danger of water contamination, either

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directly into the underlying karst Edwards Limestone, or as part of any mining pit dewatering activities. More protective options include use of off-site electricity, or placing the mobile generator and fuel storage outside the mining pit area.

Stormwater Discharge Standards

The applicant assumes (page 7) that stormwater in the quarry pit will largely evaporate. There is, however, no analysis to demonstrate that evaporation is more likely than subsurface infiltration.

The applicant proposes to dewater the pit, if necessary, under the provisions of TPDES General Permit No. TXR050000 under Sector J for Mineral Mining and Dressing Facilities. Under the provisions of this general permit, stormwater effluent could be discharged provided suspended solids concentrations are not higher than 45 mg/l for a daily maximum and 25 mg/l for a daily average and pH is between 6 and 9 standard units. The required monitoring frequency is once per year.

These TXR050000 standards are not adequate to protect the water quality of Edwards Aquifer recharge. Although the applicant correctly quotes the Edwards Aquifer Technical Guidance Manual (RG-348) background suspended sediment concentration of 80 mg/l for undeveloped areas, that value applies to storm runoff conditions.¹ During baseflow conditions suspended sediment concentrations in streams recharging the Edwards Aquifer are lower. Since base flow conditions are likely to be present during the dewatering process, a more restrictive suspended sediment limit would be appropriate. Baseflow total suspended solids concentrations for Texas Hill Country streams across the Edwards limestone outcrop are typically less than 5 mg/l.²

¹ Barrett, Michael, Ann Quenzer, and David Maidment, *Water Quality and Quantity Inputs for the Urban Creeks Future Needs Assessment*, Center for Research in Water Resources, University of Texas at Austin, January 15, 1998, page 10.

² City of Austin, *The Barton Creek Report*, April 1997, pages 164, 213, 214.

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March 1, 2010
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The permit approval from the TCEQ fails to require even the inadequate stormwater discharge standards proposed by the applicant. Special Conditions V only states: "*Intentional discharges of sediment laden water from regulated activities are not allowed. If dewatering becomes necessary, appropriate measures must be taken.*"³

Sensitive Features/Geological Assessment Standards

The geologic assessment for this site identified no sensitive or significant features. In my experience of geologic assessments, however, significant or sensitive Edwards karst features are often not identified even when present. I recommend that an independent geologic assessment be performed to confirm the absence of significant or sensitive features.

The applicant has committed that there will be no temporary seal for naturally-occurring sensitive features (page 23, item 8). With respect to features discovered during mining, however, page 35 of the application states: "*If the feature is determined to be sensitive in accordance with TAC 213 rules, the TCEQ will be notified and an appropriate method for addressing the feature will be formulated and submitted for TCEQ approval.*" Whether or not an "*appropriate method for addressing the feature*" could include sealing should be clarified.

Potential for Subsurface Contamination

The applicant proposes to excavate a rock mine pit 135 feet below grade to a final floor elevation of 995 feet mean sea level. The application and the proposed approval fail to address potential water quality degradation associated with stormwater migrating through the bottom of the pit and into underlying karst formations. The applicant's proposal to address identified sensitive or significant features does not encompass protection for smaller or unidentified features providing connectivity to subsurface flow.

³ Letter from Mark Vickery to Henry Zumwalt, February 4, 2010, page 2.

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The absence of an identified Edwards Aquifer water table in the subsurface flow regime does not eliminate the potential for subsurface migration and contamination.

Spill Response Action

The Spill Response Action section is very general and does not provide clear and specific guidance. Examples of the lack of specificity include:

- *"Be aware that different materials pollute in different amounts."* A useful guide would review the materials to be used and define amounts that constitute a significant spill.
- *"Hold regular meetings. . ."* does not identify how frequently meetings should be held.
- *"Place a stockpile of spill clean-up materials where it will be readily accessible."* This statement fails to identify what types of clean-up materials will be stockpiled, fails to identify the quantity of materials to be stockpiled, and fails to identify locations that would be readily accessible.
- *"Designate responsible individuals to oversee and enforce control measures."* This statement fails to identify the job title or the authority of those with cleanup and control oversight.
- *"Store and dispose of used clean up materials, contaminated materials, and recovered spill material that is no longer suitable for the intended purpose in conformance with the provisions in applicable BMPs."* This statement is ambiguous in that it does not identify the provisions in applicable BMPs.

Without clear guidance on spill response there is no assurance of an adequate program to protect water quality in the event of a spill.

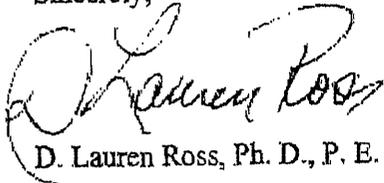
Mr. David Frederick
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Post-Mining Plans for Stormwater

Once the rock mining operation has ceased, there is no proposed plan for site restoration or to address any long-term water quality impacts from the presence of the open rock pit penetrating the Edwards formation.

Please let me know if I can provide further review or additional information.

Sincerely,



D. Lauren Ross, Ph. D., P. E.

Registered Texas Engineer Number 56647

Glenrose Engineering, Inc.

Texas Board of Professional Engineers Number F4092



1 March 2010

CHIEF CLERKS OFFICE

2010 MAR - 1 PM 4: 52

TEXAS
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APPENDIX - B

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 4, 2010

Mr. Henry Zumwalt
H.L. Zumwalt Construction, Inc.
12354 FM 1560 N
Helotes, TX 78023

Re: Edwards Aquifer, Medina County
NAME OF PROJECT: FM 1283 Ranch Quarry; Located on the north side of FM 1283 approximately 5 miles west of the FM 471 and SH 211 intersection; San Antonio ETJ, Texas
TYPE OF PLAN: Request for Approval of a Water Pollution Abatement Plan (WPAP); 30 Texas Administrative Code (TAC) Chapter 213 Edwards Aquifer
Edwards Aquifer Protection Program ID No. 2897.00; Investigation No. 782871; Regulated Entity No. RN105835375

Dear Mr. Zumwalt:

The Texas Commission on Environmental Quality (TCEQ) has completed its review of the WPAP application for the above-referenced project submitted to the San Antonio Regional Office by Westward Environmental, Inc. on behalf of H.L. Zumwalt Construction, Inc. on November 6, 2009. Final review of the WPAP was completed after additional material was received on January 6, 2010 and January 20, 2010. As presented to the TCEQ, the Temporary and Permanent Best Management Practices (BMPs) and construction plans were prepared by a Texas Licensed Professional Engineer to be in general compliance with the requirements of 30 TAC Chapter 213. These planning materials were sealed, signed and dated by a Texas Licensed Professional Engineer. Therefore, based on the engineer's concurrence of compliance, the planning materials for construction of the proposed project and pollution abatement measures are hereby approved subject to applicable state rules and the conditions in this letter. The applicant or a person affected may file with the chief clerk a motion for reconsideration of the executive director's final action on this Edwards Aquifer Protection Plan. A motion for reconsideration must be filed no later than 23 days after the date of this approval letter. *This approval expires two (2) years from the date of this letter unless, prior to the expiration date, more than 10 percent of the construction has commenced on the project or an extension of time has been requested.*

PROJECT DESCRIPTION

The proposed commercial project is a limestone quarry that will have a project area of approximately 30 acres within a 113 acre property. No permanent impervious cover is proposed for the quarry area, however, temporary impervious cover (scales and scale house) is proposed. Quarrying activities will occur to an elevation no deeper than 1115 feet above mean sea level (a.m.s.l.). Other activities proposed at the site include a rock crusher, stockpile areas, screens and conveyors, a scale house and scales. Project wastewater will be collected in portable toilets and disposed of by a TCEQ registered waste disposal service.

PERMANENT POLLUTION ABATEMENT MEASURES

A request was made for an exception to the requirement of implementing permanent BMPs designed in accordance with the Edwards technical guidance manual for the site upon the completion of construction. To prevent the pollution of storm water runoff originating on-site or upgradient of the site and potentially flowing across and off the site, the various controls described below will be utilized.

- An earthen berm composed of compacted soil and/or overburden will surround the initial plant area and expand as the quarry pit expands. The berm will be constructed to a height of four to six feet and retain storm water onsite and direct upgradient flows around the quarry pit and plant area.
- Rock berms will be installed on the downgradient side during the initial stages of construction and clearing to control sediment runoff.
- A mobile fueling truck, which will be stored offsite, will be used for refueling equipment. A flex base pad, approximately 100 by 100 feet with a one foot berm, will act as secondary containment for fueling activities. Maintenance activities will occur offsite.

GEOLOGY

According to the geologic assessment included with the application, the Kainer member of the Edwards Group and the Upper Glen Rose Limestone formations were observed at the site. According to the project geologist, seven geologic and one manmade feature were observed at the site. No feature was scored as sensitive. The San Antonio Regional Office site assessment conducted on January 13, 2010 revealed the site as described by the geologic assessment.

SPECIAL CONDITIONS

- I. This approval does not authorize the construction or installation of aboveground storage tanks at this site.
- II. The BMPs proposed in the application and/or described in this approval letter must be operational prior to any soil disturbing activities within the BMP's drainage area.
- III. The exception request from permanent BMPs described by the Edwards technical guidance manual is approved based upon the discussion in the Permanent Pollution Abatement Measures section of this letter. Any additional activities not discussed in this letter or the application, any changes to the BMPs and measures described above and in the application or expansion of the quarry pit beyond the description in the application may require a modification to this approved protection plan.
- IV. Notify the TCEQ San Antonio Regional Office, in writing, of any changes proposed to the depth of the quarry pit. A modification to this approved WPAP may be required.
- V. Intentional discharges of sediment laden water from regulated activities are not allowed. If dewatering becomes necessary, appropriate measures must be taken.
- VI. Pursuant to 30 TAC §213.4(h)(3) and as stated in the Edwards Aquifer protection plan, this protection plan approval or extension will expire and no extension will be granted if more than

50% of the total construction has not been completed within 10 years from the initial approval of the plan. A new Edwards Aquifer protection plan must be submitted to the TCEQ with the appropriate fees for review and approval by the executive director prior to commencing or continuing any construction or regulated activities beyond 10 years. The Applicant must submit a status report for the project containing information regarding the percentage of the total project construction completed within 180 days prior to the expiration date of this plan approval. If at that time, the total project construction cannot be demonstrated to be at least 50% complete, the Applicant must submit a new Edwards Aquifer protection plan to the TCEQ for review and approval before continuing any construction or regulated activities beyond 10 years from the date of initial approval of the plan.

If a new Edwards Aquifer protection plan is submitted to the TCEQ under 30 TAC § 213.4(h)(3), the approved plan will continue in effect until the executive director makes a determination on the new plan.

- VII. This approval letter is being issued for regulated activities (as defined in Chapter 213) and for best management practices presented in the application. This approval does not constitute a water right permit or authorization from the TCEQ Dam Safety Program. Failure to obtain all necessary authorizations could result in enforcement actions. For more information on Water Rights Permits, please refer to:

http://www.tceq.state.tx.us/permitting/water_supply/water_rights/wr_amiregulated.html

For more information on the Dam Safety program, please refer to:

http://www.tceq.state.tx.us/compliance/field_ops/dam_safety/damsafetyprog.html

STANDARD CONDITIONS

1. Pursuant to Chapter 7 Subchapter C of the Texas Water Code, any violations of the requirements in 30 TAC Chapter 213 may result in administrative penalties.
2. The holder of the approved Edwards Aquifer Protection Plan must comply with all provisions of 30 TAC Chapter 213 and all best management practices and measures contained in the approved plan. Additional and separate approvals, permits and/or authorizations from other TCEQ Programs (i.e., Storm Water, Water Rights, UIC) can be required depending on the specifics of the plan.
3. In addition to the rules of the Commission, the applicant may also be required to comply with state and local ordinances and regulations providing for the protection of water quality.

Prior to Commencement of Construction:

4. Within 60 days of receiving written approval of an Edwards Aquifer Protection Plan, the applicant must submit to the San Antonio Regional Office, proof of recordation of notice in the county deed records, with the volume and page number(s) of the county deed records of the county in which the property is located. A description of the property boundaries shall be included in the deed recordation in the county deed records. A suggested form (Deed Recordation Affidavit, TCEQ-0625) that you may use to deed record the approved WPAP is enclosed.
5. All contractors conducting regulated activities at the referenced project location shall be provided a copy of this notice of approval. At least one complete copy of the approved WPAP and this

notice of approval shall be maintained at the project location until all regulated activities are completed.

6. Modification to the activities described in the referenced WPAP application following the date of approval may require the submittal of a plan to modify this approval, including the payment of appropriate fees and all information necessary for its review and approval prior to initiating construction of the modifications.
7. The applicant must provide written notification of intent to commence construction, replacement, or rehabilitation of the referenced project. Notification must be submitted to the San Antonio Regional Office no later than 48 hours prior to commencement of the regulated activity. Written notification must include the date on which the regulated activity will commence, the name of the approved plan and program ID number for the regulated activity, and the name of the prime contractor with the name and telephone number of the contact person. The executive director will use the notification to determine if the approved plan is eligible for an extension.
8. Temporary erosion and sedimentation (E&S) controls, i.e., silt fences, rock berms, stabilized construction entrances, or other controls described in the approved WPAP, must be installed prior to construction and maintained during construction. Temporary E&S controls may be removed when vegetation is established and the construction area is stabilized. If a water quality pond is proposed, it shall be used as a sedimentation basin during construction. The TCEQ may monitor storm water discharges from the site to evaluate the adequacy of temporary E&S control measures. Additional controls may be necessary if excessive solids are being discharged from the site.
9. All borings with depths greater than or equal to 20 feet must be plugged with 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. All borings less than 20 feet must be backfilled with cuttings from the boring. All borings must be backfilled or plugged within four (4) days of completion of the drilling operation. Voids may be filled with gravel.

During Construction:

10. During the course of regulated activities related to this project, the applicant or agent shall comply with all applicable provisions of 30 TAC Chapter 213, Edwards Aquifer. The applicant shall remain responsible for the provisions and conditions of this approval until such responsibility is legally transferred to another person or entity.
11. This approval does not authorize the installation of temporary aboveground storage tanks on this project. If the contractor desires to install a temporary aboveground storage tank for use during construction, an application to modify this approval must be submitted and approved prior to installation. The application must include information related to tank location and spill containment. Refer to Standard Condition No. 6, above.
12. If any sensitive feature (caves, solution cavities, sink holes, etc.) is discovered during construction, all regulated activities near the feature must be suspended immediately. The applicant or his agent must immediately notify the San Antonio Regional Office of the discovery of the feature. Regulated activities near the feature may not proceed until the executive director has reviewed and approved the methods proposed to protect the feature and the aquifer from

potentially adverse impacts to water quality. The plan must be sealed, signed, and dated by a Texas Licensed Professional Engineer.

13. No wells exist on the site. All water wells, including injection, dewatering, and monitoring wells must be in compliance with the requirements of the Texas Department of Licensing and Regulation under Title 16 TAC Chapter 76 (relating to Water Well Drillers and Pump Installers) and all other locally applicable rules, as appropriate.
14. If sediment escapes the construction site, the sediment must be removed at a frequency sufficient to minimize offsite impacts to water quality (e.g., fugitive sediment in street being washed into surface streams or sensitive features by the next rain). Sediment must be removed from sediment traps or sedimentation ponds not later than when design capacity has been reduced by 50 percent. Litter, construction debris, and construction chemicals shall be prevented from becoming storm water discharge pollutants.
15. Intentional discharges of sediment laden water are not allowed. If dewatering becomes necessary, the discharge will be filtered through appropriately selected best management practices. These may include vegetated filter strips, sediment traps, rock berms, silt fence rings, etc.
16. The following records shall be maintained and made available to the executive director upon request: the dates when major grading activities occur, the dates when construction activities temporarily or permanently cease on a portion of the site, and the dates when stabilization measures are initiated.
17. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, and construction activities will not resume within 21 days. When the initiation of stabilization measures by the 14th day is precluded by weather conditions, stabilization measures shall be initiated as soon as practicable.

After Completion of Construction:

18. 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 San Antonio Regional Office within 30 days of site completion.
19. The applicant shall be responsible for maintaining the permanent BMPs after construction until such time as the maintenance obligation is either assumed in writing by another entity having ownership or control of the property (such as without limitation, an owner's association, a new property owner or lessee, a district, or municipality) or the ownership of the property is transferred to the entity. The regulated entity shall then be responsible for maintenance until another entity assumes such obligations in writing or ownership is transferred. A copy of the transfer of responsibility must be filed with the executive director through San Antonio Regional Office within 30 days of the transfer. A copy of the transfer form (TCEQ-10263) is enclosed.
20. Upon legal transfer of this property, 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 Edwards Aquifer protection plan that specifically addresses the new activity must be submitted to the executive director. Approval of the plan for the new

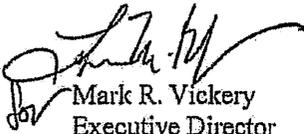
Mr. Henry Zumwalt
February 4, 2010
Page 6

regulated activity by the executive director is required prior to commencement of the new regulated activity.

21. 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 San Antonio Regional Office with the appropriate fees for review and approval by the executive director prior to commencing any additional regulated activities.
22. At project locations where construction is initiated and abandoned, or not completed, the site shall be returned to a condition such that the aquifer is protected from potential contamination.

If you have any questions or require additional information, please contact Charly Fritz of the Edwards Aquifer Protection Program of the San Antonio Regional Office at (210) 403-4065.

Sincerely,



Mark R. Vickery
Executive Director
Texas Commission on Environmental Quality

MRV/CEF/eg

Enclosures: Deed Recordation Affidavit, Form TCEQ-0625
Change in Responsibility for Maintenance of Permanent BMPs, Form TCEQ-10263

cc: Mr. Gary Nicholls, P.E., Westward Environmental, Inc.
Ms. Luanna Buckner, Medina County UWD
The Honorable James Barden, Medina County Judge
Ms. Velma Danielson, Edwards Aquifer Authority
TCEQ Central Records, Building F, MC212

APPENDIX - C

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to §50.39, Motion for Reconsideration, and §50.139, Motion to Overturn Executive Director's Decision, *with changes* to the proposed text as published in the September 22, 2000 issue of the *Texas Register* (25 TexReg 9414).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On January 12, 2000, the commission adopted amendments to its procedural rules to implement Senate Bill (SB) 211, including amendments (see the January 28, 2000 issue of the *Texas Register* (25 TexReg 593)) to §50.39, Motion for Reconsideration and §50.139, Motion to Overturn Executive Director's Decision. These amendments were intended to mirror the provisions of SB 211, which amended Texas Government Code, §2001.142, to provide that a party is presumed to have been notified of a decision or order in a contested case on the third day after notice is mailed by first class mail. Prior to SB 211, the Texas Government Code provided that the date of notification was presumed to be the date on which the notice of the decision was mailed. Likewise, prior to the amendments to §50.39 and §50.139, the time for filing a motion for reconsideration or motion to overturn of an uncontested permit ran from the time of mailing to the applicant. Since adoption of these amendments to §50.39 and §50.139, the time for filing a motion for reconsideration or motion to overturn runs from the time of written notification to the applicant, with a presumption that a person is notified on the third day after the date of mailing of the executive director's decision. Thus, while SB 211 did not specifically require changes in procedures for uncontested matters, in the interest of consistency, the commission changed its procedures to give movants additional time to file motions for reconsideration and motions to overturn.

Since adoption, however, staff have recognized that the rules as written may on occasion result in

uncertainty concerning when the time period for filing begins to run. For the convenience of the applicant, staff in some cases hand-delivered or faxed early notice of the executive director's decision. The intent of the rule is for the time for filing a motion for reconsideration or motion to overturn to begin from the date notice of the executive director's action is mailed. Since an early copy furnished to the applicant might be construed to constitute "notice in writing," thereby resulting in confusion regarding a movant's time for filing, the commission adopts certain changes to make the beginning date more certain in all cases.

The adopted rules as proposed provided that motions for reconsideration and motions to overturn must be filed no later than 23 days after the agency mails notice of the signed permit, approval, or other action of the executive director and set forth the circumstances under which the public interest counsel and timely commenters would receive notice of the action. For purposes of simplicity and clarity, the rules as adopted now provide that notice of the action is to be mailed to the applicant and persons on any required mailing list for the action. Related rules on extension of time limits and disposition of motions would also be changed with this adoption. Additionally, a change is adopted to clarify that in some situations, agency staff, rather than the chief clerk, mail notice of a signed permit or other executive director action. These changes should benefit both applicants and potential protestants. Applicants should benefit because, where time is of the essence, the practice of faxing and hand-delivering copies of signed permits and other approvals can resume. Persons opposing the issuance of permits or approvals will benefit because the deadline for filing a motion for reconsideration or motion to overturn will allow a full 20 days for filing these motions, taking into account three days from mailing to receipt of notification.

SECTION BY SECTION DISCUSSION

Section 50.39, relating to Motion for Reconsideration, which applies to certain applications declared administratively complete before September 1, 1999, is adopted to be amended to specify that the deadline for filing a motion for reconsideration runs from the date the agency mails notice of a signed permit, approval, or other executive director's action. In addition, to cover the time from mailing to the time of notification, it is adopted that the deadline for filing be changed so that it is 23 days after notice of the signed permit or other action of the executive director is mailed to the applicant and persons on any required mailing list. This change is reflected in adopted amendments to §50.39(b). Two other changes are adopted for §50.39(b). A change is adopted to reflect that in some situations agency staff, rather than chief clerk, may mail notice of a signed permit or other executive director action. Another change is adopted to mirror a revised provision in §50.139(b) that provides that, if timely comments are received in response to any required prior notice of an application, notice of an executive director action will be mailed to public interest counsel and timely commenters, as well as the applicant. Corresponding changes are adopted to §50.39(d) and §50.39(e) to reflect the adopted changes to the deadline for filing of motions for reconsideration.

Section 50.139, relating to Motion to Overturn Executive Director's Decision, which applies to certain applications declared administratively complete on or after September 1, 1999, is adopted to be amended to mirror the adopted changes to §50.39. That is, changes are adopted to specify that the deadline for filing a motion to overturn runs from the date the agency mails notice of a signed permit, approval, or other executive director's action to the applicant and persons on any required mailing list. The adopted rule will also allow for 23 days from the date of mailing of notice of the signed permit or other executive director

action. This change is reflected in §50.139(b). Two other changes are adopted for §50.139(b). A change is adopted to reflect that in some situations, agency staff, rather than the chief clerk, may mail notice of a signed permit or other executive director action. Another change is adopted to reflect that the obligation to mail notice of the executive director's action to the public interest counsel and commenters is triggered by the receipt of timely comments, in response to any required prior notice of an application. Corresponding changes are adopted to §50.139(e) and §50.139(f) to reflect the adopted changes to the deadline for filing motions to overturn.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "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 rulemaking does not meet the definition of "major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Instead, this rulemaking is procedural in nature and sets time frames for the filing of a motion for reconsideration or motion to overturn of a signed permit, approval or other action of the executive director.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The specific purpose of the rulemaking is to provide that motions for reconsideration and motions to overturn must be filed no later than 23 days after the date the agency mails notice of a signed permit, approval, or other action of the executive director to the applicant and persons on any required mailing list. They are procedural rule changes only and do not affect private real property. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the amendments are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor do they affect any action or authorization identified in the Coastal Coordination Act Implementation Rules, §505.11. This rulemaking concerns only the procedural rules of the commission and is therefore not subject to the CMP.

HEARING AND COMMENTERS

A public hearing was held on October 17, 2000. No one attended the hearing. The comment period closed on October 23, 2000. No comments were received.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code,

§2001.004, which requires state agencies to adopt rules of practice.

SUBCHAPTER C: ACTION BY EXECUTIVE DIRECTOR

§50.39

§50.39. Motion for Reconsideration.

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion for reconsideration of the executive director's action on an application.

(b) A motion for reconsideration must be filed no later than 23 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director to the applicant and persons on any required mailing list for the action.

(c) An action by the executive director under this subchapter is not affected by a motion for reconsideration filed under this section unless expressly ordered by the commission.

(d) With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for reconsideration and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the agency mails notice of the signed permit, approval, or other written notice of the executive director's action.

(e) Disposition of motion.

(1) Unless an extension of time is granted, if a motion for reconsideration is not acted on by the commission within 45 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director, the motion is denied.

(2) In the event of an extension, the motion for reconsideration is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director.

(f) Section 80.271 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion for reconsideration is denied by commission action or under subsection (e) of this section and no motions for rehearing shall be filed. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

SUBCHAPTER G: ACTION BY THE EXECUTIVE DIRECTOR

§50.139

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

§50.139. Motion to Overturn Executive Director's Decision.

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion to overturn of the executive director's action on an application or water quality management plan (WQMP) update certification. Wherever other commission rules refer to a "motion for reconsideration", that term should be considered interchangeable with the term "motion to overturn executive director's decision."

(b) A motion to overturn must be filed no later than 23 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director to the applicant and persons on any required mailing list for the action.

(c) A motion to overturn must be filed no later than 20 days after the date persons who timely commented on the WQMP update are notified of the response to comments and the certified WQMP

update. A person is presumed to have been notified on the third day after the date the notice of the executive director's action is mailed by first class mail.

(d) An action by the executive director under this subchapter is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

(e) With the agreement of the parties or on their own motion, the commission of the general counsel may, by written order, extend the period of time for filing motions to overturn and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director.

(f) Disposition of motion.

(1) Unless an extension of time is granted, if a motion to overturn is not acted on by the commission within 45 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director, the motion is denied.

(2) In the event of an extension, the motion to overturn is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the agency mails notice of the signed permit, approval, or other action of the executive director.

(g) When a motion to overturn is denied under subsection (f) of this section, a motion for rehearing does not need to be filed as a prerequisite for appeal. Section 80.272 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion to overturn is denied. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.