

TCEQ DOCKET NO. 2010-0317-EAQ

**APPLICATION BY
H. L. ZUMWALT CONSTRUCTION,
INC., FOR APPROVAL OF AN
EDWARDS AQUIFER WATER
POLLUTION AND ABATEMENT
PLAN; ID No. 2897.00**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S RESPONSE TO
MOTION FOR RECONSIDERATION**

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) files this Response to the Motion for Reconsideration filed by Ranchland Oaks Home Owners' Association (Ranchland Oaks), on the Edwards Aquifer Protection Plan (EAPP) for the FM 1283 Ranch quarry proposed by H.L. Zumwalt Construction, Inc. (Zumwalt). The Executive Director respectfully recommends that the Commission grant this motion because San Antonio was not provided notice of the EAPP.

I. GENERAL BACKGROUND

Zumwalt intends to build a limestone quarry that will have a project area of approximately 30 acres within 113 acres located in Medina County, Texas. The site is located on the Edwards Aquifer Recharge Zone and is subject to the TCEQ's Edwards Aquifer rules.¹ According to the Edwards Aquifer rules, an Edwards Aquifer Protection Plan must be approved by the Executive Director before the applicant may begin construction of any regulated activity.² For industrial establishments that will not have an organized sewage collection system and will

¹30 Texas Administrative Code (TAC) Chapter 213, Subchapter A.

²30 TAC § 213.4(a)(1). "Regulated activity" is defined in 30 TAC 213.3(28) as "[A]ny construction-related or post-construction activity on the recharge zone of the Edwards Aquifer having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams." Quarrying is a regulated activity.

not have either an aboveground storage tank or underground storage tank, the Edwards Aquifer Protection Plan is comprised of a Water Pollution and Abatement Plan (WPAP).³

II. PROCEDURAL BACKGROUND

The Edwards Aquifer Rules provide:

"[T]he executive director shall review and act on an application subject to this chapter. The applicant or a person affected may file with the chief clerk a motion for reconsideration, under §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final action on an Edwards Aquifer protection plan, modification to a plan, or exception."⁴

Zumwalt submitted a WPAP for a limestone quarry to the TCEQ San Antonio Regional Office on November 6, 2009. TCEQ completed its review and approved the WPAP on February 4, 2010.⁵ TCEQ completed its review and approved the WPAP on February 4, 2010.⁶ Ranchland Oaks submitted its Motion for Reconsideration on March 1, 2010, which was within the 23 days required for filing a Motion for Reconsideration.

The Edwards Aquifer rules require that within five days of the application being determined administratively complete, the regional office will provide a copy of an EAPP to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located.⁷ Any person may file comments within 30 days of the date the application is mailed to local governmental entities.⁸

³ 30 TAC § 213.4(b).

⁴ 30 TAC § 213.1.

⁵ See, Attachment B

⁶ See, Attachment B

⁷ 30 TAC § 213.4(a)(2).

⁸ *Id.*

III. NOTICE TO AFFECTED INCORPORATED CITIES, GROUNDWATER CONSERVATION DISTRICTS, AND COUNTIES

According to the *General Information Form*, which Zumwalt provided as part of its WPAP, the project site is not located within any city's limits or extra-territorial jurisdiction (ETJ).⁹ Based on Zumwalt's representation, a copy of the WPAP was mailed to: the Medina County Judge, the Edwards Aquifer Authority, and the Medina County Underground Water District on November 9, 2009. The Executive Director did not receive any comments in response to the notice.

On January 20, 2010, Zumwalt submitted a revised *General Information Form* indicating that the project area is inside the City of San Antonio's ETJ. As discussed above, a copy of a WPAP must be sent to affected incorporated cities.¹⁰ The purpose of an ETJ is to allow a municipality to protect the general health, safety, and welfare of persons residing in and adjacent to a municipality.¹¹ Moreover, the Texas Water Code provides that a city may establish a water pollution control and abatement program, which may include areas within the city's ETJ in order for the city to achieve its objectives.¹² Because projects regulated under the Edwards Aquifer rules have the potential to affect the general health, safety and welfare of people within a city's ETJ, and also have the potential to impact a city's water pollution control and abatement plan in a city's ETJ, the Executive Director sends EAPPs and WPAPs to incorporated cities, if the regulated activity is in either the city or the city's ETJ. Because the Zumwalt WPAP was initially inaccurate, San Antonio was not notified and did not have an opportunity to comment on the WPAP.

⁹ Zumwalt WPAP, page 1.

¹⁰ 30 TAC § 213.4(a)(2).

¹¹ Local Gov't Code, § 42.001.

¹² Texas Water Code (TWC) § 26.177.

IV. CONCLUSION

San Antonio did not receive notice of the WPAP for the Zumwalt limestone quarry, therefore the Executive Director respectfully recommends that the Commission grant this motion.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

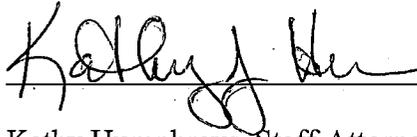


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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
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CERTIFICATE OF SERVICE

I certify that on March 25, 2010, the original and 7 copies of the **Executive Director's Response to the Motion for Reconsideration** of the H.L. Zumwalt Construction, Inc. Water Pollution and Abatement Plan" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and mailed and faxed to all persons on the attached mailing list.

A handwritten signature in cursive script, appearing to read "Kathy Humphreys", is written over a horizontal line.

Kathy Humphreys, Staff Attorney
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