

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

April 16, 2010

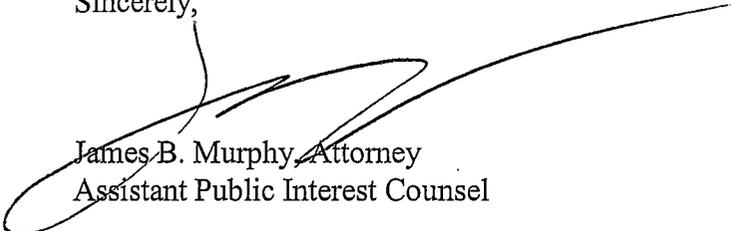
LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: H. L. ZUMWALT CONSTRUCTION, INC.
TCEQ DOCKET NO. 2010-0317-EAQ

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Reply to the Executive Director's Response to Motion to Overturn in the above-entitled matter.

Sincerely,



James B. Murphy, Attorney
Assistant Public Interest Counsel

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. Box 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

P.O. Box 13087

Austin, Texas 78711-3087

512-239-1000

Internet address: www.tceq.state.tx.us

TCEQ DOCKET NO. 2010-0317-EAQ

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

THE OFFICE OF PUBLIC INTEREST COUNSEL'S REPLY TO EXECUTIVE DIRECTOR'S RESPONSE TO MOTION TO OVERTURN

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Reply to Executive Director's Response to Motion to Overturn concerning the Executive Director's (ED) approval of a Water Pollution Abatement Plan (WPAP) concerning H.L. Zumwalt Construction, Inc. (Applicant) in the above-referenced matter and respectfully shows the following.

I. INTRODUCTION

On March 25, 2010, the ED, OPIC, and Westward Environmental, Inc. (Westward) on behalf of Applicant submitted responses to a motion to overturn filed by David Frederick with the law firm of Lowerre, Frederick, Perales, Allmon & Rockwell on behalf of the Ranchland Oaks Home Owners' Association (Ranchland). The ED's response included a new procedural issue, which the General Counsel of TCEQ solicited comments on by letter dated April 9, 2010. The procedural issue relates to a failure to provide notice to the City of San Antonio as required by 30 TAC § 213.04(a)(2).

II. APPLICABLE LAW

30 TAC § 213.4(a)(2) provides:

The appropriate regional office shall provide copies of applications [for WPAPs] to affected incorporated cities, groundwater conservation districts, and counties in which the proposed regulated activity will be located. These copies will be distributed within five days of the application being determined to be administratively complete. Any person may file comments within 30 days of the date the application is mailed to local government entities. The executive director shall review all comments that are timely filed.

III. DISCUSSION

In the application submitted to the San Antonio Regional Office on November 6, 2009, Westward stated that the project site is not located within any city's limits or extraterritorial jurisdiction (ETJ). *See* General Information Form dated November 6, 2009, at 1 ¶ 2 (attached as Exhibit A). Based on Westward's representation, the San Antonio Regional Office mailed a copy of the WPAP to the Medina County Judge, the Edwards Aquifer Authority, and the Medina County Underground Water District on November 9, 2009 in accordance with 30 TAC § 213.4(a)(2).

On January 20, 2010, Westward sent an email with a revised General Information Form to the Regional Office stating that the project site is located within the ETJ of the City of San Antonio. *See* Email from Matt Bellos, Westward Environmental, Inc., to Charly Fritz, TCEQ, on January 20, 2010 (attached as Exhibit B). The Regional Office did not send a copy of the WPAP to the City at that time.

As discussed in the ED's response, affected incorporated cities receive notice of the WPAP 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 impact a city's water

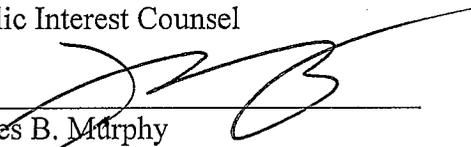
pollution control and abatement plan. Westward failed to provide accurate information in its original application on the location of the project site. As a result, there is no unfair burden on Applicant despite the delay in processing caused by providing the City an opportunity to comment. Accordingly, it is necessary to provide the City with an opportunity to comment on the WPAP as required by 30 TAC § 213.4(a)(2).

IV. CONCLUSION

For these reasons, OPIC recommends that the Commission overturn the ED's action on Applicant's WPAP so that the required notice and opportunity for comment may be given. The City's comments, if any are filed, may inform the ED's decision on the WPAP and address some or all of Ranchland's concerns expressed in its motion.

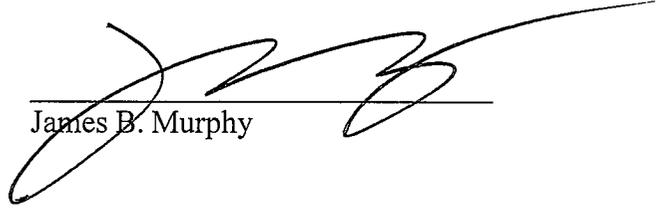
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: 
James B. Murphy
Assistant Public Interest Counsel
State Bar No. 24067785
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-4014 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2010 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Motion to Overturn were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


James B. Murphy

TCEQ-R13
NOV 06 2009
SAN ANTONIO

General Information Form
For Regulated Activities on the
Edwards Aquifer Recharge and Transition Zones
and Relating to 30 TAC §213.4(b) & §213.5(b)(2)(A), (B)
Effective June 1, 1999

REGULATED ENTITY NAME: FM 1283 Ranch
COUNTY: Medina STREAM BASIN: Deep Creek

EDWARDS AQUIFER: RECHARGE ZONE
 TRANSITION ZONE

PLAN TYPE: WPAP AST EXCEPTION
 SCS UST MODIFICATION

CUSTOMER INFORMATION

1. Customer (Applicant):

Contact Person: Henry L. Zumwalt
Entity: H.L. Zumwalt Construction, Inc.
Mailing Address: 12354 FM 1560 North
City, State: Helotes, Texas Zip: 78023
Telephone: 210-695-3541 FAX: 210-695-5651

Agent/Representative (If any):

Contact Person: Gary Nicholls, P.E. Vice President
Entity: Westward Environmental, Inc
Mailing Address: 102 South Main St. 2nd Floor
City, State: Boerne, Texas Zip: 78006
Telephone: (830) 249-8284 FAX: (830) 249-0221

2. This project is inside the city limits of _____
 This project is outside the city limits but inside the ETJ (extra-territorial jurisdiction) of _____
 This project is not located within any city's limits or ETJ:

3. The location of the project site is described below. The description provides sufficient detail and clarity so that the TCEQ's Regional staff can easily locate the project and site boundaries for a field investigation.

The site is located on the north side of FM 1283 approximately 5 miles west of the intersection of FM 471 and SH 211 near Mico, Medina County, Texas.

4. **ATTACHMENT A - ROAD MAP.** A road map showing directions to and the location of the project site is attached at the end of this form.
5. **ATTACHMENT B - USGS / EDWARDS RECHARGE ZONE MAP.** A copy of the official 7 ½ minute USGS Quadrangle Map (Scale: 1" = 2000') of the Edwards Recharge Zone is attached behind this sheet. The map(s) should clearly show:

- Project site.
- USGS Quadrangle Name(s).
- Boundaries of the Recharge Zone (and Transition Zone, if applicable).
- Drainage path from the project to the boundary of the Recharge Zone.

6. Sufficient survey staking is provided on the project to allow TCEQ regional staff to locate the boundaries and alignment of the regulated activities and the geologic or manmade features noted in the Geologic Assessment. **The TCEQ must be able to inspect the project site or the application will be returned.**
7. **ATTACHMENT C - PROJECT DESCRIPTION.** Attached at the end of this form is a detailed narrative description of the proposed project.
8. Existing project site conditions are noted below:
- Existing commercial site
 - Existing industrial site
 - Existing residential site
 - Existing paved and/or unpaved roads
 - Undeveloped (Cleared)
 - Undeveloped (Undisturbed/Uncleared)
 - Other: Ranching/Agriculture

PROHIBITED ACTIVITIES

9. I am aware that the following activities are prohibited on the **Recharge Zone** and are not proposed for this project:
- (1) waste disposal wells regulated under 30 TAC Chapter 331 of this title (relating to Underground Injection Control);
 - (2) new feedlot/concentrated animal feeding operations, as defined in 30 TAC §213.3;
 - (3) land disposal of Class I wastes, as defined in 30 TAC §335.1;
 - (4) the use of sewage holding tanks as parts of organized collection systems; and
 - (5) new municipal solid waste landfill facilities required to meet and comply with Type I standards which are defined in §330.41(b), (c), and (d) of this title (relating to Types of Municipal Solid Waste Facilities).
10. I am aware that the following activities are prohibited on the **Transition Zone** and are not proposed for this project:
- (1) waste disposal wells regulated under 30 TAC Chapter 331 (relating to Underground Injection Control);
 - (2) land disposal of Class I wastes, as defined in 30 TAC §335.1; and
 - (3) new municipal solid waste landfill facilities required to meet and comply with Type I standards which are defined in §330.41 (b), (c), and (d) of this title.

ADMINISTRATIVE INFORMATION

11. The fee for the plan(s) is based on:
- For a Water Pollution Abatement Plan and Modifications, the total acreage of the site where regulated activities will occur.

- For an Organized Sewage Collection System Plans and Modifications, the total linear footage of all collection system lines.
- For a UST Facility Plan or an AST Facility Plan, the total number of tanks or piping systems.
- A Contributing Zone Plan.
- A request for an exception to any substantive portion of the regulations related to the protection of water quality.
- A request for an extension to a previously approved plan.

12. Application fees are due and payable at the time the application is filed. If the correct fee is not submitted, the TCEQ is not required to consider the application until the correct fee is submitted. Both the fee and the Edwards Aquifer Fee Form have been sent to the Commission's:

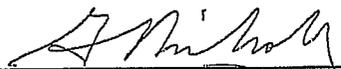
- TCEQ cashier
- Austin Regional Office (for projects in Hays, Travis, and Williamson Counties)
- San Antonio Regional Office (for projects in Bexar, Comal, Kinney, Medina, and Uvalde Counties)

13. Submit one (1) original and three (3) copies of the completed application to the appropriate regional office for distribution by the TCEQ to the local municipality or county, groundwater conservation districts, and the TCEQ's Central Office.

14. No person shall commence any regulated activity until the Edwards Aquifer Protection Plan(s) for the activity has been filed with and approved by the executive director.
 No person shall commence any regulated activity until the Contributing Zone Plan for the activity has been filed with the executive director.

To the best of my knowledge, the responses to this form accurately reflect all information requested concerning the proposed regulated activities and methods to protect the Edwards Aquifer. This **GENERAL INFORMATION FORM** is hereby submitted for TCEQ review. The application was prepared by:

Gary Nicholls, P.E.
 Print Name of Customer/Engineer


 Signature of Customer/Engineer

11-02-09
 Date

If you have questions on how to fill out this form or about the Edwards Aquifer protection program, please contact us at 210/490-3096 for projects located in the San Antonio Region or 512/339-2929 for projects located in the Austin Region.

Individuals are entitled to request and review their personal information that the agency gathers on its forms. They may also have any errors in their information corrected. To review such information, contact us at 512/239-3282.

Charlyne Fritz - Zumwalt ETJ

From: "Matt Bellos" <mbellos@westwardenv.com>
To: "Charlyne Fritz" <CFritz@tceq.state.tx.us>
Date: 1/20/2010 2:01 PM
Subject: Zumwalt ETJ
Attachments: Zumwalt.pdf

Charly,

On the General Information Form for the Zumwalt WPAP the "X" was in the wrong place. The Zumwalt site is inside the ETJ of San Antonio but not in the city limits. The form has been corrected and is attached. Let me know if you need anything else.

Matt Bellos
Environmental Specialist
Westward Environmental, Inc.
102 South Main Street, 2nd Floor
P.O. Box 2205
Boerne, TX 78006
Office(830)249-8284
Fax(830)249-0221

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Exhibit B

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 Edwards Aquifer Recharge and Transition Zones
 and Relating to 30 TAC §213.4(b) & §213.5(b)(2)(A), (B)
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MAILING LIST
H. L. ZUMWALT CONSTRUCTION, INC.
TCEQ DOCKET NO. 2010-0317-EAQ

Henry Zumwalt
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San Antonio Regional Office MC R-13
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