

TCEQ Stakeholder Meeting on Changes to the Edwards Aquifer Protection Program  
Thursday, August 10, 2006  
Lower Colorado River Authority  
Dalchau Service Center  
3505 Montopolis Dr  
Austin, Texas  
Meeting Summary

**I. Welcome, Introductions, and Purpose of the Meeting**

Jody Henneke, Director, Office of Public Assistance, provided the ground rules for the meeting and introduced TCEQ staff in attendance. John Steib, Deputy Director, Office of Compliance and Enforcement provided some background information: Mr. Steib indicated that we need to balance environmental protection with economic growth. Two topics are being addressed tonight, one is the revised process for review of applications, the second is increased penalties for violations that are occurring over the Edwards Aquifer.

Mr. Steib explained that growth over the Edwards Aquifer during the last few years has skyrocketed and that TCEQ has made changes to turnaround Edwards' applications in an absolute minimum amount of time. In addition to streamlining the review process, additional staff have been assigned to the review process.

Mr. Steib went on to state that significant economic growth has resulted in a sharp increase in the number of significant Edwards Aquifer violations. That situation led the Executive Director to direct staff to increase penalties for certain violations.

Jennifer Sidnell, Director, Field Operations Support Division, described the goal of the new plan review process is to provide a decision on all Edwards Aquifer Protection Plans (EAPP) plans within 60 days of determination that the application is administratively complete. The process for determining whether plans are administratively complete will not change. A Notice of Deficiency (NOD) letter will be issued for any technical deficiencies regarding the initial review, a 14-day response will be requested. Additional time is allowed (up to 7 days) for a second NOD to resolve remaining technical deficiencies. If the deficiencies are not corrected within the timeframes allowed, the applicant will be contacted by phone and one of two options will occur: (1) The applicant may withdraw their application (via written request) and the fee can be applied to an additional submittal or (2) the agency will deny the application and the fee will not be refunded.

John Sadlier, Director, Enforcement Division, explained that late in 2004, the Executive Director noted a sharp increase in the documented occurrence of significant violations of the Edwards Aquifer regulations. In order to deter the most serious of those violations, the Executive Director instructed staff to increase penalties for those entities that began construction over the Edwards Aquifer Recharge or Contributing Zones prior to obtaining

authorization from the TCEQ. Penalties for activities that did not involve ground-breaking would be calculated in the customary manner.

Mr. Sadlier stated that the Texas Water Code grants the Commission authority to levy fines up to \$10,000 per day/per violation for violations of the Edwards Aquifer regulations. The Commission's current Penalty Policy allows the Executive Director to recommend penalties up to the statutory maximum but the final decision regarding penalties is up to the Commissioners. Mr. Sadlier explained that the stakeholder meeting was being held at the direction of the Commission. The purpose of the meeting was to notify the regulated community, and all other interested parties, that administrative penalties related to construction without authorization had increased and to take comments from interested parties regarding the increase. Historically these penalties were calculated by the month, now they are being calculated on a daily basis. The change has resulted in an approximate doubling of the average assessed penalty; however, penalties are still far below the statutory maximum. Additionally, the enhancement of penalties for significant violations is specifically contemplated and permitted under the Commission's current Penalty Policy.

## **II. Questions**

Is the enhanced penalty just for construction activities? Yes, violations that do not involve ground-breaking will continue to be calculated by the customary process.

If the penalty policy becomes a rule, will this process be defined in a policy or rule? That is yet to be determined by the Commissioners.

Further explain the phrase "multiplied by the number of days from the date the first documented construction activities began" – what does documented construction activities mean? The penalty date range date is determined by a review of construction records typically provided by the regulated entity. Construction activities are documented by the TCEQ investigator during a physical inspection of the site.

What are some examples of the specific activities that warrant these increased penalties? The building of water retention ponds, the building of structures, land leveling, and/or grading are some of the examples that will result in an increased penalty.

Since TCEQ has reduced the administrative time to review plans, has it also reduced the amount of time for staff to go onsite and look for sensitive features? By reducing these plan reviews this should increase the time that the agency has available to do onsite investigations.

What is a regulatory activity and what if it is a non-regulatory activity (maintenance)? Looking for a clear definition of what is not regulated. Maintenance of existing structures is not regulated (i.e., repaving of an existing road is not regulated). The distinction is generally a half a lane, so, if it is wider than that then an application should be submitted.

Is there a de-minimus amount of construction that would not require a plan to be submitted? What about placement of a utility pole or a very small concrete pad – 4 x 6 feet? These increased penalties are meant for the actual ground-breaking activities. Placement of a pole or installation of a pad are the types of activities that are included in the increased penalties, however, they are evaluated on a case-by-case basis.

Are impervious cover factors that go into the calculations for stormwater controls being evaluated for site specific issues, any anticipated rule changes? This type of comment should be taken at the annual Edwards meeting for review and potential rule development.

As part of the new Edwards enforcement policy, what is the Executive Director's definition of "egregious"? The Executive Director has not defined "egregious", he believes that violations of the regulations relevant to the sensitive features that would disturb them is considered egregious. For example, moving dirt over or covering sensitive features.

### **III. Comments**

Comment 1:

One commenter indicated that they did not have a problem with the penalty changes, however, there are issues that need to be addressed. Before changing policies, TCEQ needs to do 2 things. (1) The rules need to be clarified. An example was cited of a client that was cited for not maintaining some facilities but when they went to maintain another site they were cited again. (2) Timeframes for plan review are still entirely too long. Holding up construction can cost \$100,000 per month in interest. It takes less time for the people that are creating and designing these plans to create the whole thing than it takes the agency to review them. The reason that people are starting construction without a permit is because the plan review takes so long.

Comment 2:

Would like clarification of the rules regarding maintenance activities and whether or not they are regulated and how that affects cities, counties, local governments.

Comment 3:

- The plan review is too long. Need to have some type of walk in permit process for Edwards plans. It should only take about 30 minutes for TCEQ staff to review a plan, so, 90 days is too long.
- Commissioners at Agenda called the new Edwards policy arbitrary and subjective.
- Categorizing small and large sites based upon 5 acre increments is arbitrary and subjective.
- Programmatic or paperwork errors do not justify calculation of penalties on a per day basis.

- Calculating penalties on a per day basis is unprecedented by this agency and without prior public notice and comment it violates constitutional rights.
- The amount of penalties are not justified by the alleged activities.
- The ED process to receive and consider rebuttal evidence is deficient and unfair and is entirely arbitrary whether a respondent is allowed a facts meeting short of spending money in an evidentiary hearing.
- Notice of this meeting was not provided effectively to all.
- The new Edwards enforcement policy is a rule which has not undergone public comment process.
- The new Edwards enforcement policy should be considered with the overall penalty policy when it is promulgated in a rule.
- The Commissioners should provide a work session with opportunity for the public to comment regarding the new Edwards policy.
- The new Edwards policy is inconsistent with the overall penalty policy and enforcement process review in particular how it relates to small and micro businesses.
- The Regional staff often provide conflicting information from the enforcement staff.
- Enforcement often provides directions that conflict with permitting staff.
- Some local programs are authorized to review EAPP. There should be consistency between them.
- The enforcement staff has not coordinated with other political subdivision or state/federal agencies with over lapping jurisdiction leading to mixed signals which is a burden to the regulated community.
- Some businesses are treated differently than others regarding penalty calculations.

Jody Henneke then closed the meeting and stated that written comments will be accepted through close of business on August 24<sup>th</sup>.