

Penalties for Initiating Construction Activities over the Edwards Aquifer Recharge and/or Contributing Zones prior to Obtaining Authorization

During the latter part of calendar year 2004, the TCEQ's Executive Director implemented a change in the historic manner in which administrative penalties had been calculated relative to unauthorized construction over the Edwards Aquifer Recharge and/or Contributing Zones. The Executive Director felt that increased penalties were necessary to deter noncompliance after an analysis of compliance-related data revealed a sharp increase in the number of significant Edwards Aquifer violations. Agency data indicated that during calendar years 2001 through 2003, the TCEQ issued an average of **13 administrative penalty orders** per year for significant violations of the Edwards Aquifer regulations. During calendar years 2004 through 2005, the TCEQ issued an average of **21 administrative penalty orders** per year for significant violations of the Edwards Aquifer regulations. It is widely believed that the increase in the number of Edwards Aquifer enforcement actions is the direct result of the significant growth occurring in and around the Interstate Highway 35 Corridor.

Administrative penalties for violating regulations related to the Edward's Aquifer are authorized by Texas statute under Chapter 7, Texas Water Code. The Water Code allows for the imposition of penalties up to \$10,000 a day for each violation. The changes recommended by the Executive Director resulted in administrative penalties that are far less than the statutorily allowed maximum, however, these changes significantly increased penalties related specifically to the failure to obtain authorization prior to initiating construction activities.

Prior to December 31, 2004, administrative penalties related to the failure to obtain authorization prior to initiating construction activities were calculated as follows:

Small Sites (less than 5 acres) - \$1,000 multiplied by the **number of months** between the TCEQ investigation date to the date authorization was obtained or the date that the case was initially reviewed by the TCEQ Enforcement Division, whichever occurred first.

Large Sites (5 acres or greater) - \$2,500 multiplied by the **number of months** between the TCEQ investigation date to the date authorization was obtained or the date that the case was initially reviewed by the TCEQ Enforcement Division, whichever occurred first.

The average penalty assessed for Edwards Aquifer enforcement actions prior to the change described below was **\$3,191**.

After December 31, 2004, administrative penalties related to the failure to obtain authorization prior to initiating construction activities have been calculated as follows:

Small Sites (less than 5 acres) - \$500 multiplied by the **number of days** between the first date of documented construction activities to the date authorization was obtained or the date that the case was initially reviewed by the TCEQ Enforcement Division, whichever occurred first.

Large Sites (5 acres or greater) - \$1,000 multiplied by the **number of days** between the first date of documented construction activities to the date authorization was obtained or the date that the case was initially reviewed by the TCEQ Enforcement Division, whichever occurred first.

The average penalty assessed for Edwards Aquifer enforcement actions after the change described above is **\$6,446**.

The final administrative penalty may also be affected by several factors such as compliance history, culpability, early compliance, expedited settlement, and any other factors that justice may require.