

Water Quality Advisory Work Group Quarterly Meeting
316(b) Update
March 1, 2005

- I. Brief background of rule: cooling water intake impingement/entrainment rule

- II. Phase II
 - A. Litigation moved to 2nd Circuit Court
 - i. no date set
 - ii. stay?
 - iii. restoration concerns

 - B. PICs –in progress; continuing to meet w/ industries

 - C. Scheduling video conference call with EPA R6 to discuss implementation in TX

- III. Phase III
 - A. Compiling comments
 - B. L & NG facilities

WATER QUALITY PLANNING
 Policy Advisory Opinion Process
 of the
 Texas Board of Professional Engineers

Texas Commission on Environmental Quality
 March 2005

Texas Board of Professional Engineers

- By Legislative intent, in order to protect the public health, safety, and welfare, the practice of engineering is entrusted only to those persons duly licensed and practicing under the Act.
- The Board's role in the protection of the public is
 - to license qualified engineers
 - enforce the Texas Engineering Practice Act
 - regulate the practice of professional engineering in Texas.

Texas Engineering Practices Act

- Requires that any public work undertaken by the state or political subdivisions use a PE in the preparation of plans and estimates and during construction.
- Outlines that PEs have restrictions on competitive bidding (Professional Services Procurement Act).
- Defines the 'Practice of Engineering' and lists different activities that constitute the practice of engineering which require the services of a PE.

Policy Advisory Opinion

- The board will issue a written advisory opinion at the request of any interested person or at its own initiative regarding an interpretation or application of the Act that advises how the law applies to a specified existing or hypothetical factual situation.
- Advisory Opinion is a statement of policy issued by the board that provides guidance to the public and regulated community regarding the board's interpretation and application of the Act.

TBPE Advisory Opinion Process

- Policy advisory committee is formed to prepare advisory opinions for the board
- The board is to involve stakeholders to develop an opinion
- A draft opinion is to be posted in the *Texas Register* for comment
- The committee prepares a final opinion recommendation for the full board
- The full board may adopt the opinion or refer it back to the committee

**Water Quality Planning
 Advisory Opinion Request**

- Council of Engineering Companies, Oct 14, 2003.
- Requested board advisory opinion regarding water quality protection planning.
- Asked TBPE to determine what portion of water quality protection planning services constitutes the practice of engineering.
- Based on an RFP issued by various public entities in the Austin region for water quality protection planning in the Edwards Aquifer region.

Water Quality Protection Plan for the Edwards Aquifer

Scope of Work

- Define planning region
- Develop stakeholder process
- Develop communication strategy
- Assess existing water quality studies
- Summarize water quality issues
- Recommend additional studies
- Identify entities that implement protection measures
- Identify water quality protection strategies
- Develop water quality protection plan
- Develop process to disseminate plan

Stakeholder Process TCEQ Comments

- Water quality planning projects are largely scientific in nature
- Define the practice of engineering as activities which are directly related to design of an engineering work
- Physical, chemical, and biological monitoring...clearly not engineering tasks

Stakeholder Process Other Comments

- The services of a P.E. are required when the project involves the analysis and assessment of studies and models, recommendations regarding best management practices, and other performance-based evaluations
- The definition of engineering includes many of the following tasks: water quality assessment, monitoring, analysis, modeling, mapping, planning, and management
- Technical tasks associated with analyzing studies and models to determine effective strategies and ensuring that they work are clearly engineering

Draft Water Quality Planning Advisory Opinion October 8, 2004

- All water quality planning activities that lead to or support the analysis of works or systems or the alteration or use of water constitute the practice of engineering
- Some scientific activities in support of water quality planning, such as gathering and analyzing water quality samples, are not engineering but may require engineering supervision of the design and implementation of the sampling program, if that program is integral to a broader program of analysis of works or systems or the alteration or use of water.

Draft Advisory Opinion Who Commented?

- TSSWCB, TWDB, TPWD, TBPG, TCEQ
- Professionals - Geoscience, Ecology, Soil Science, Hydrology, Aquatic Science, Environmental Science
- NRCS
- SJRA, BRA, LCRA, GBRA, HGAC
- TML

Draft Advisory Opinion What Were the Comments?

- PAO is too broad and vague
- Significant departure from traditional practice
- May infringe upon the practice of geoscience
- Exclude/diminish role of qualified professionals
- Increase project costs, time and complexity without increased value
- Water quality studies are inherently interdisciplinary
- Could hamper ability to conduct legislatively mandated activities
- PAO is without justification

Draft Advisory Opinion
Stakeholder Meeting, Jan 11, 2005

- Further discussion
- TBPE will draft new advisory opinion and circulate it to the stakeholders for comment
- TBPE allowed additional written comments by January 31, 2005

Additional TCEQ Comments

- Not all activities which lead to an engineered work are part of the engineering process – e.g. permit effluent limits, TMDLs
- Water quality planning activities are part of the engineering process only when they address detailed and comprehensive site-specific factors for a particular engineered work
- Plans prepared by the TCEQ and others such as the Galveston Bay Plan, Texas Groundwater Protection Strategy, TMDL Implementation Plans, and Watershed Protection Plans are not engineering