

TCEQ Stakeholder Meeting on Changes to the Edwards Aquifer Protection Program
Thursday, August 17, 2006
City of San Antonio
DBSC Training Rooms A&B
1901 S. Alamo
San Antonio, 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 there are two topics being addressed tonight, one is the revised process for review of applications, the second is a relatively new penalty policy for violations that are occurring over the Edwards Aquifer.

Mr. Steib explained that there has been significant growth over the Edwards Aquifer during the last few years and that TCEQ is making changes to turnaround Edwards' applications in a reasonable 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 meeting with the applicant will occur when the application is submitted to the Regional Office, and hopefully that will result in a quick determination of the administrative completeness of the application. Once the plan is declared administratively complete it is date stamped and the 60-day time clock starts. A Notice of Deficiency (NOD) letter will be issued for any technical deficiencies regarding the plan, 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 refunded, or, (2) the agency will deny the application and the fee will not be refunded.

Mr. Steib explained that, the Executive Director noted a significant increase in the number of administrative orders with violations of the Edwards Aquifer regulations. There seemed to be a pattern that it was cheaper to pay the fine than comply with the regulations. In order to deter the most serious of those violations, the Executive Director

instructed staff to increase penalties for those entities that actually cover up sensitive features of the aquifer.

John Sadlier, Director, Enforcement Division, explained that the enhanced penalty calculation applies to those entities that began construction over the Edwards Aquifer Recharge or Contributing Zones prior to obtaining authorization from the TCEQ. This involves violations where ground breaking has taken place. Enhanced penalties would not be calculated for violations such as tree clearing, however, tree clearing is a regulated activity and could result in the initiation of an enforcement action.

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. 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

What is the TCEQ's goal for setting up the administrative completeness review? Hopefully when someone walks in the door with a plan, staff will be able to meet at that point.

After responding to the first NOD, what is the TCEQ's turnaround for response to the NOD response? There is no date certain, but, the staff will get back to the applicant as quickly as possible.

Does the total timeframe include the time for the NODs and responses? Yes.

If there are extensive comments in the NOD, is there a possibility for an extension to the 14 day response time? If an applicant requests an additional amount of time, that will be part of the 2nd NOD letter process. If there is a legitimate need, on a case-by-case basis, the Regional Director may be able to allow an extension to the 60 day overall timeframe.

What happens if the NOD letter is not received timely? In most cases the Regional staff are in constant contact with the applicant by phone. The letters are both mailed and faxed to both the applicant and their consultants. It is doubtful that this would happen frequently.

Does your time start when you receive your letter? It starts with the date of the letter, however, if someone did not receive the letter, the staff will work with them to resolve the deficiencies.

The Edwards penalty policy is being described as a new policy, however, it has been in place since 2004 – is it new? The penalty process is about 6 months long. We are also in the process of revising our overall penalty policy and the Commissioners have asked us to take comments specifically on these construction activities and determine if there is support for these higher penalties or not.

When you say “without authorization” for this increased penalty you are referring to an approved EAPP? Yes.

If a company is placing a piece of equipment on top of mine spoils, does that mean that they need an EAPP? Recommend that they contact the Regional Office prior to placing the equipment. Richard Garcia offered to meet after the meeting.

How many new staff members are you adding to the San Antonio area to handle these plans? Four additional staff have been added.

III. Comments

No comments were received.

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