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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 29, 2008

The Honorable Danny Scheel
County Judge
County Courthouse
195 David Jones Dr.
New Braunfels, TX 78132-3760

Re: Edwards Aquifer, Comal County
NAME OF PROJECT: Dry Comal Creek Flood Retarding Structure; Located approximately 1.5 miles northwest of the intersection of Krueger Rd. and FM 482; New Braunfels ETJ, Texas
TYPE OF PLAN: Request for Approval of a Water Pollution Abatement Plan (WPAP); 30 Texas Administrative Code (TAC) Chapter 213 Edwards Aquifer
Edwards Aquifer Protection Program ID No. 2824.00; Investigation No. 689237; Regulated Entity No. RN105595078

Dear Judge Scheel:

The Texas Commission on Environmental Quality (TCEQ) has completed its review of the WPAP application for the above-referenced project submitted to the San Antonio Regional Office by CH2MHill on your behalf on August 1, 2008. Final review of the WPAP was completed after additional material was received on September 15, 2008. As presented to the TCEQ, the Temporary and Permanent Best Management Practices (BMPs) and construction plans were prepared by a Texas Licensed Professional Engineer to be in general compliance with the requirements of 30 TAC Chapter 213. These planning materials were sealed, signed and dated by a Texas Licensed Professional Engineer. Therefore, based on the engineer's concurrence of compliance, the planning materials for construction of the proposed project and pollution abatement measures are hereby approved subject to applicable state rules and the conditions in this letter. The applicant or a person affected may file with the chief clerk a motion for reconsideration of the executive director's final action on this Edwards Aquifer Protection Plan. A motion for reconsideration must be filed no later than 23 days after the date of this approval letter. *This approval expires two (2) years from the date of this letter unless, prior to the expiration date, more than 10 percent of the construction has commenced on the project or an extension of time has been requested.*

PROJECT DESCRIPTION

The proposed project will have an area of approximately 21.40 acres and will include a concrete flood retarding structure across Dry Comal Creek and construction related staging areas and access roads. The impervious cover will be 1.75 acres (8.18 percent) and will include the structure's footprint and stilling basin. The staging areas will have vegetation cleared and the material shredded and placed as ground cover. The haul roads will be widened to forty feet and improved with gravel. The gravel will be removed upon completion of construction. No wastewater will be generated by this project.

REPLY TO: REGION 13 • 14250 JUDSON RD. • SAN ANTONIO, TEXAS 78233-4480 • 210-490-3096 • FAX 210-545-4329

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: www.tceq.state.tx.us

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PERMANENT POLLUTION ABATEMENT MEASURES

An exception to the requirement for permanent BMPs was requested in the application due to the nature of the activity and minimal amount of total suspended solids (TSS) generated.

EXCEPTION JUSTIFICATION

The justification for the exception request stated equivalent water quality protection will be achieved because:

1. The project is not a typical commercial or industrial project. A minimal amount of TSS will be generated from the 1.75 acres of impervious cover related to the dam structure. Vehicular traffic will be limited to maintenance vehicles conducting inspections of the structure.
2. The structure itself will act as a settling pond for the first flush of contaminants upstream of the site.
3. The two hundred foot upstream natural buffer area for sensitive features will be preserved.
4. The impounded water upstream of the structure could provide recharge for the Edwards Aquifer through sensitive feature S-3
5. The conservation easement, which follows the creek downstream of the structure, requires all land in the easement to remain in natural conditions up to the transition zone boundary.

GEOLOGY

According to the geologic assessment included with the application, the site is located within the Lower Cretaceous and Quaternary alluvium formations. The project geologist evaluated eighteen geologic features and two manmade features (water wells). Five of the geologic features were scored as sensitive by the project geologist and are discussed in the paragraph below. The San Antonio Regional Office site assessment conducted on September 10, 2008 revealed the site as described by the geologic assessment.

SENSITIVE FEATURE

Natural buffers were proposed for five natural sensitive features (2 solution cavities, 1 sinkhole, and 2 zones of solution fractures). Construction related regulated activities will occur within the natural buffer areas, however, no permanent structures or impervious cover will impede on the natural buffer areas upon the completion of construction. Rock berms will be situated to act as sediment controls for protection of the features and as a physical barrier to signal the limits of construction.

Each feature will have regulated activities (widening of the access road and placement of gravel) occur in a portion of the natural buffer area during construction. The access roads generally follow existing ranch roads at the site. One feature, S-3, will be temporarily sealed due to its location in the inundation area upstream of the structure. A modified rock berm, consisting of rock fill and filter fabric will be placed in the feature to prevent sediment, and construction debris from entering the feature in times of high water.

SPECIAL CONDITIONS

- I. Due to the uniqueness of the project and the limited TSS generated, the exception to the requirement from permanent BMPs is approved.
- II. Removal of the gravel from the access roads is required upon the completion of construction. Final stabilization of the soil is required after the gravel is removed.

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- III. Sensitive feature S-3 shall be temporarily sealed with rock fill and filter fabric while construction activities are occurring. Upon the completion of construction, provide documentation (photographs) that the feature has been restored to its original condition.

STANDARD CONDITIONS

1. Pursuant to Chapter 7 Subchapter C of the Texas Water Code, any violations of the requirements in 30 TAC Chapter 213 may result in administrative penalties.
2. The holder of the approved Edwards Aquifer Protection Plan must comply with all provisions of 30 TAC Chapter 213 and all best management practices and measures contained in the approved plan. Additional and separate approvals, permits and/or authorizations from other TCEQ Programs (i.e., Stormwater, Water Rights, PST) can be required depending on the specifics of the plan.
3. In addition to the rules of the Commission, the applicant may also be required to comply with state and local ordinances and regulations providing for the protection of water quality.

Prior to Commencement of Construction:

4. Within 60 days of receiving written approval of an Edwards Aquifer Protection Plan, the applicant must submit to the San Antonio Regional Office, proof of recordation of notice in the county deed records, with the volume and page number(s) of the county deed records of the county in which the property is located. A description of the property boundaries shall be included in the deed recordation in the county deed records. A suggested form (Deed Recordation Affidavit, TCEQ-0625) that you may use to deed record the approved WPAP is enclosed.
5. All contractors conducting regulated activities at the referenced project location shall be provided a copy of this notice of approval. At least one complete copy of the approved WPAP and this notice of approval shall be maintained at the project location until all regulated activities are completed.
6. Modification to the activities described in the referenced WPAP application following the date of approval may require the submittal of a plan to modify this approval, including the payment of appropriate fees and all information necessary for its review and approval prior to initiating construction of the modifications.
7. The applicant must provide written notification of intent to commence construction, replacement, or rehabilitation of the referenced project. Notification must be submitted to the San Antonio Regional Office no later than 48 hours prior to commencement of the regulated activity. Written notification must include the date on which the regulated activity will commence, the name of the approved plan and program ID number for the regulated activity, and the name of the prime contractor with the name and telephone number of the contact person. The executive director will use the notification to determine if the approved plan is eligible for an extension.
8. Temporary erosion and sedimentation (E&S) controls, i.e., silt fences, rock berms, stabilized construction entrances, or other controls described in the approved WPAP, must be installed prior to construction and maintained during construction. Temporary E&S controls may be removed when vegetation is established and the construction area is stabilized. If a water quality pond is

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proposed, it shall be used as a sedimentation basin during construction. The TCEQ may monitor stormwater discharges from the site to evaluate the adequacy of temporary E&S control measures. Additional controls may be necessary if excessive solids are being discharged from the site.

9. All borings with depths greater than or equal to 20 feet must be plugged with non-shrink grout from the bottom of the hole to within three (3) feet of the surface. The remainder of the hole must be backfilled with cuttings from the boring. All borings less than 20 feet must be backfilled with cuttings from the boring. All borings must be backfilled or plugged within four (4) days of completion of the drilling operation. Voids may be filled with gravel.

During Construction:

10. During the course of regulated activities related to this project, the applicant or agent shall comply with all applicable provisions of 30 TAC Chapter 213, Edwards Aquifer. The applicant shall remain responsible for the provisions and conditions of this approval until such responsibility is legally transferred to another person or entity.
11. This approval does not authorize the installation of temporary aboveground storage tanks on this project. If the contractor desires to install a temporary aboveground storage tank for use during construction, an application to modify this approval must be submitted and approved prior to installation. The application must include information related to tank location and spill containment. Refer to Standard Condition No. 6, above.
12. If any sensitive feature (caves, solution cavities, sink holes, etc.) is discovered during construction, all regulated activities near the feature must be suspended immediately. The applicant or his agent must immediately notify the San Antonio Regional Office of the discovery of the feature. Regulated activities near the feature may not proceed until the executive director has reviewed and approved the methods proposed to protect the feature and the aquifer from potentially adverse impacts to water quality. The plan must be sealed, signed, and dated by a Texas Licensed Professional Engineer.
13. Two wells exist on site. All water wells, including injection, dewatering, and monitoring wells must be in compliance with the requirements of the Texas Department of Licensing and Regulation under Title 16 TAC Chapter 76 (relating to Water Well Drillers and Pump Installers) and all other locally applicable rules, as appropriate.
14. If sediment escapes the construction site, the sediment must be removed at a frequency sufficient to minimize offsite impacts to water quality (e.g., fugitive sediment in street being washed into surface streams or sensitive features by the next rain). Sediment must be removed from sediment traps or sedimentation ponds not later than when design capacity has been reduced by 50 percent. Litter, construction debris, and construction chemicals shall be prevented from becoming stormwater discharge pollutants.
15. Intentional discharges of sediment laden storm water are not allowed. If dewatering becomes necessary, the discharge will be filtered through appropriately selected best management practices. These may include vegetated filter strips, sediment traps, rock berms, silt fence rings, etc.

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- 16. The following records shall be maintained and made available to the executive director upon request: the dates when major grading activities occur, the dates when construction activities temporarily or permanently cease on a portion of the site, and the dates when stabilization measures are initiated.
- 17. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, and construction activities will not resume within 21 days. When the initiation of stabilization measures by the 14th day is precluded by weather conditions, stabilization measures shall be initiated as soon as practicable.

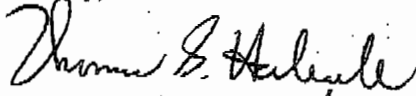
After Completion of Construction:

- 18. A Texas Licensed Professional Engineer must certify in writing that the permanent BMPs or measures were constructed as designed. The certification letter must be submitted to the San Antonio Regional Office within 30 days of site completion.
- 19. The applicant shall be responsible for maintaining the permanent BMPs after construction until such time as the maintenance obligation is either assumed in writing by another entity having ownership or control of the property (such as without limitation, an owner's association, a new property owner or lessee, a district, or municipality) or the ownership of the property is transferred to the entity. The regulated entity shall then be responsible for maintenance until another entity assumes such obligations in writing or ownership is transferred. A copy of the transfer of responsibility must be filed with the executive director through San Antonio Regional Office within 30 days of the transfer. A copy of the transfer form (TCEQ-10263) is enclosed.
- 20. Upon legal transfer of this property, the new owner(s) is required to comply with all terms of the approved Edwards Aquifer protection plan. If the new owner intends to commence any new regulated activity on the site, a new Edwards Aquifer protection plan that specifically addresses the new activity must be submitted to the executive director. Approval of the plan for the new regulated activity by the executive director is required prior to commencement of the new regulated activity.
- 21. An Edwards Aquifer protection plan approval or extension will expire and no extension will be granted if more than 50 percent of the total construction has not been completed within ten years from the initial approval of a plan. A new Edwards Aquifer protection plan must be submitted to the San Antonio Regional Office with the appropriate fees for review and approval by the executive director prior to commencing any additional regulated activities.
- 22. At project locations where construction is initiated and abandoned, or not completed, the site shall be returned to a condition such that the aquifer is protected from potential contamination.

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If you have any questions or require additional information, please contact Charly Fritz of the Edwards Aquifer Protection Program of the San Antonio Regional Office at (210) 403-4065.

Sincerely,



Mark R. Vickery, P.G.
Executive Director
Texas Commission on Environmental Quality

MRV/CEF/eg

Enclosure: Deed Recordation Affidavit, Form TCEQ-0625

cc: Ms. Judith Ibarra-Biancheta, P.E., C.F.M., CH2MHILL
Mr. Bruce Boyer, City of New Braunfels
Mr. Tom Hornseth, Comal County
Ms. Velma Danielson, Edwards Aquifer Authority
TCEQ Central Records, Building F, MC212