

Response to Senator Wentworth's letter to the EAA (February 17, 2010). The Senator's statements are italicized. Our bulleted comments follow the Senator's statements.

Enrique Valdivia and George Rice

Dear Ms. Danielson:

It has come to my attention that the Edwards Aquifer Authority (Authority) is proposing to adopt a 20 percent impervious cover limit for the aquifer's recharge and contributing zone. If this is true, it appears that the new regulations would be duplicative of regulation efforts of the San Antonio Water System (SAWS), the Texas Commission on Environmental Quality (TCEQ), and the United States Environmental Protection Agency (EPA).

- The EAA is considering rules that would limit impervious cover to 20% - 30% on the recharge zone and the near-by contributing zone (within five miles of the recharge zone). The rules would apply throughout the EAA's jurisdiction (Uvalde, Medina, Bexar, Comal, and Hays counties).
- The EAA's rules would not apply to grandfathered properties.
- Regarding duplication of regulations:
 - Two cities within the EAA's jurisdiction have adopted impervious cover limits, San Antonio and San Marcos.
 - San Antonio's impervious cover limits range from 15% (in the ETJ) to 65% (commercial development within city limits). Under some circumstances, a commercial development may have up to 80% impervious cover. SAWS enforces San Antonio's impervious cover regulations.
 - San Marcos' impervious cover limits range from 20% to 50%, depending on the size of the lot and on implementation of optional water quality measures.
 - Much of the land within the San Antonio's and San Marcos' jurisdictions is grandfathered. The EAA's rules would not apply to this land.
 - TCEQ does not limit impervious cover. However, if impervious cover exceeds 20%, best management practices (BMPs) must be employed to protect water quality. Experience has shown that BMPs are often ineffective.
 - The EPA does not limit impervious cover. To say EPA duplicates state or local regulations mischaracterizes EPA's role. EPA has delegated primary authority for implementation and enforcement of the federal Clean Water Act to the state of Texas. Thus the TCEQ is the principal regulator in this area. Where the EPA has not delegated its' federal authority there is no state role. Where delegation has occurred EPA retains the right to supplement a state's

enforcement by bringing an enforcement action of its own. For example, EPA may act whenever a state fails to take timely and appropriate action in response to an environmental violation occurring under an environmental program delegated by EPA to the state. Also, EPA has oversight authority to see to it that TCEQ's programs remain consistent with federal mandates. This has recently occurred in the area of Texas's air quality program. Because TCEQ's flexible air permit system has been deemed inconsistent with federal rules EPA has reasserted its' authority over Texas's air program.

- It is important to recall that the EAA Act was enacted in no small part to avoid federal court ordered regulation of pumping from the Edwards Aquifer. Thus the EAA's mandate is to assure compliance with federal law. Attempts by the State Legislature to frustrate this mandate runs the risk of opening the door once again to federal intervention.

SAWS currently enforces regulations adopted by the City of San Antonio that impose an impervious cover limit over the aquifer area within the City of San Antonio and its five-mile extraterritorial jurisdiction. Their regulations provide flexibility to take into account management practices but remain protective of the aquifer.

- See comments above regarding San Antonio.

TCEQ regulations provide for a 20 percent impervious cover limit over the entire aquifer recharge zone and in the contributing zone, five miles up-gradient of the recharge zone. Although not identical, they provide protection for the resource through an agency statutorily authorized to administer such rules.

- See comment above regarding TCEQ.

In addition to regulation by SAWS and the TCEQ, development projects over the aquifer are subject to review and approval by the EPA. This represents a third layer of regulation.

- I am not aware of the EPA being involved in the approval of any project over the Aquifer.

Although I recognize the need to protect our water resources, the legislation that created the Edwards Aquifer Authority does not provide the Authority with the ability to regulate land use. In addition, new regulations are costly to develop and implement, and these costs are then passed on to the Authority's permittees.

While I appreciate your efforts to protect and manage the Edwards Aquifer, I believe the regulations you propose are an attempt to restrict land use for which the EAA has no authority and result in increased costs. I would appreciate an explanation and justification of this initiative so that I might understand it better.

- The legislation that created the EAA (S.B. 1477) states: *The authority has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer.* (§ 1.08 (a)). The Texas Supreme Court in *Bragg v. Edwards Aquifer Authority* commented that "the legislature created the [Authority] for the express purpose of ... managing the water in the aquifer... It provided the Authority with 'all of the powers, rights, and privileges, necessary to protect the aquifer and to ... prevent the ... pollution of water in, the aquifer.'" 71 SW 3rd 729, 736 (Tex. 2002). The Act defines "pollution" as "the alteration of the physical, thermal, chemical, or biological quality of any water in the state, or [its] contamination ... that renders the water harmful, detrimental, or injurious to humans ... or public health, safety or welfare, or that impairs the usefulness of the public enjoyment of the water for any ... purpose." Act section 103(17). The phrase "any water in the state" is broad enough to include aquifer water and surface water recharging the aquifer. Under its statutory power to prevent the pollution of the aquifer, the EAA may prohibit pollution by activities impacting the quality of surface water that recharges the aquifer, the quality of source water that artificially recharges the aquifer, and spills and releases into the aquifer. This statutory power includes the power to regulate land use activities that generate non-point source pollution of surface waters that recharge the aquifer. The types of measures taken to regulate non-point source pollution often include impervious cover limits.
- Approximately 12 full time employees would be required to administer the EAA's impervious cover rules. The EAA staff has estimated that this would cost approximately \$1,500,000 per year, including \$600,000 per year for legal expenses (see attached cost estimate).
- It should be noted that the EAA convened a Water Quality Advisory Task Force in 2004. This task force was chaired by former Texas State Senator John Sharp and was comprised of citizens and representatives from development, environmental, governmental, and municipal water purveyor organizations. This Water Quality Advisory Task Force recommended that the EAA develop impervious cover rules.

Cost Estimate for Administration of EAA Impervious Cover Rules

Estimated Cost of Implementation
(Impervious Cover Rules)

RECHARGE ZONE						
	POSITIONS	SALARY	BENEFITS	YEAR 1	YEAR 2	YEAR 3
Employees (salary & benefits)						
Environmental Supervisor	1	\$53,594	\$14,952	\$68,546	\$71,973	\$75,572
Environmental Coordinator *	2	\$37,000	\$12,521	\$99,041	\$103,993	\$109,193
Field Representative	3	\$28,991	\$11,347	\$121,013	\$127,064	\$133,417
Compliance Coordinator	1	\$47,223	\$14,018	\$61,241	\$64,303	\$67,518
Secretary	1	\$23,851	\$10,594	\$34,445	\$36,167	\$37,975
Records Clerk	1	\$20,603	\$10,118	\$30,721	\$32,257	\$33,870
Personnel Subtotal	9			\$415,007	\$435,757	\$457,545
Administrative Overhead						
Office space (rent + connectivity)				\$36,000	\$37,080	\$38,192
Vehicles	3			\$75,000		
Computers and equipment				\$18,000		
Legal				\$600,000	\$600,000	\$600,000
Research				\$250,000	\$250,000	\$250,000
Overhead Subtotal				\$979,000	\$887,080	\$888,192
Total Recharge Zone				\$1,394,007	\$1,322,837	\$1,345,737
CONTRIBUTING & TRANSITION ZONES						
	POSITIONS	SALARY	BENEFITS	YEAR 1	YEAR 2	YEAR 3
Employees (salary & benefits)						
Environmental Supervisor	1	\$53,594	\$14,952	\$68,546	\$71,973	\$75,572
Environmental Coordinator *	1	\$37,000	\$12,521	\$49,521	\$51,997	\$54,597
Field Representative	1	\$28,991	\$11,347	\$40,338	\$42,355	\$44,472
Personnel Subtotal	3			\$158,404	\$166,324	\$174,640
Administrative Overhead						
Office space (rent + connectivity)				\$12,000	\$12,360	\$12,731
Vehicles	1			\$25,000		
Computers and equipment				\$6,000		
Overhead Subtotal				\$43,000	\$12,360	\$12,731
Total Contributing & Transition Zones				\$201,404	\$178,684	\$187,371
TOTAL IMPERVIOUS COVER RULES	12			\$1,595,411	\$1,501,521	\$1,533,109

* Salary may not be consistent with market.