

Regulatory Briefing

Presented to the Stakeholder Committee

Development of a Regional Water Quality Protection Plan
for the Barton Springs Segment of the Edwards Aquifer
and its Contributing Zone

“Regional Water Quality Planning Project”

September 2, 2004

THE KEY TO UNDERSTANDING ENVIRONMENTAL REGULATIONS:



Making Sense of the Alphabet Soup!

- ▶ "Insiders" use acronyms for everything!
- ▶ These acronyms are confusing to even the average college graduate
- ▶ We're here to help make sense out of all this!
- ▶ If we forget to spell out an acronym, please ask!

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Regional Water Quality Planning Project

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RELATIONSHIP TO THE REGIONAL WATER QUALITY PLANNING PROCESS

- ▶ Some areas and activities impacting water quality are regulated under existing programs
- ▶ An understanding of current regulations will bring into focus activities to be addressed in the water quality protection plan
- ▶ Identification of areas where **implementation** can be shared, coordinated or augmented
- ▶ Identification of areas where **enforcement** can be shared, coordinated or augmented

DISCLAIMERS

- ▶ While certainly not brief, neither is this presentation exhaustive or unabridged. It is intended to provide general background information only.
- ▶ It is not intended to provide specific direction or advice to any person or entity, or to offer legal opinions or advice.
- ▶ The regulatory framework presented is focused on the project area. Other water quality regulations exist that apply to other geographic areas and those were omitted from this presentation.

OVERVIEW

- ▶ Applicable Federal Legislation
- ▶ Federal Water Quality Regulatory Programs
- ▶ Federal Endangered Species Programs
- ▶ Applicable State Legislation
- ▶ State Water Quality Regulatory Programs
- ▶ State Endangered Species Programs

APPLICABLE FEDERAL LEGISLATION

- ▶ Federal Clean Water Act (CWA)
- ▶ Federal Endangered Species Act (ESA)
- ▶ Additional Federal Legislation
 - Rivers and Harbors Act
 - Fish and Wildlife Coordination Act
 - National Environmental Policy Act (NEPA)
 - Resource Conservation and Recovery Act (RCRA)
 - Toxic Substances Control Act (TSCA)
 - Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

APPLICABLE FEDERAL LEGISLATION (Continued)

- ▶ Additional Federal Legislation (Continued)
 - Hazardous and Solid Waste Amendments (HSWA) to RCRA
 - Superfund Amendments and Reauthorization Act (SARA) / Emergency Planning and Community Right-to-Know Act (EPCRA)
 - Oil Pollution Act (OPA)
 - Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
 - Numerous provisions attached to other pieces of legislation (e.g. riders to appropriations bills, etc.)

Federal Clean Water Act

- ▶ Legislative History:
 - Congress in 1948 – “Water Pollution Control Act”
 - Major amendments 1961, 1966, 1970, and 1972
 - Amended/renamed 1977 - “Clean Water Act” (CWA)
 - Several subsequent amendments
- ▶ Governs discharges to water, activities that can impact water quality, and the disposal of sludge from water treatment processes

Federal Clean Water Act (Continued)

- ▶ Implemented by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (COE)
- ▶ Allows delegation of activities to approved states
- ▶ Provides civil and criminal penalties for violations and citizen suits for enforcement

Federal Endangered Species Act

▶ Legislative History:

- Congress in 1966 - "Endangered Species Protection Act"
- Amended/Renamed 1969 – "Endangered Species Conservation Act"
- Amended/Renamed 1973 – "Endangered Species Act" (ESA)

▶ Several subsequent amendments

▶ Identifies procedures for listing species as "threatened" and "endangered"

Federal Endangered Species Act (Continued)

- ▶ Governs activities that could impact listed species
- ▶ Implemented and enforced by the U.S. Fish and Wildlife Service (USFWS)
- ▶ Provides civil and criminal penalties for violations and citizen suits for enforcement

Additional Federal Legislation—Part 1

- ▶ Rivers and Harbors Act of 1899
 - Dredging/filling & ensuing ecological damage
- ▶ Fish and Wildlife Coordination Act of 1934
 - Consultation with USFWS for impounding, controlling or diverting water
- ▶ National Environmental Policy Act (NEPA) of 1969
 - Assessment/control of environmental impacts from federal actions
- ▶ Resource Conservation and Recovery Act (RCRA) of 1976
 - Identification/control of hazardous wastes and permitting of management facilities

Additional Federal Legislation–Part 2

- ▶ Toxic Substances Control Act (TSCA) of 1976
 - Identification/control of toxic substances and permitting of management facilities
- ▶ Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980
 - Defined/regulated hazardous substances, municipal and hazardous wastes, and petroleum storage tanks
- ▶ Hazardous and Solid Waste Amendments (HSWA) to RCRA of 1984
 - Restrictions and minimum technology requirements for disposal of hazardous and industrial wastes

Additional Federal Legislation–Part 3

- ▶ Superfund Amendments and Reauthorization (SARA) / Emergency Planning and Community Right-to-know Act (EPCRA) of 1986
 - Petroleum storage tanks design and operation
 - Local planning to prevent health/safety threat & environmental pollution from hazardous materials
- ▶ Oil Pollution Act (OPA) of 1990
 - Planning, response and clean-up for oil spills
- ▶ Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
 - Pesticide approval, use and management

FEDERAL WATER QUALITY REGULATORY PROGRAMS

- ▶ National Pollutant Discharge Elimination System (NPDES)
- ▶ Federal Spill Prevention, Control and Countermeasure (SPCC) Program
- ▶ Federal Municipal Solid Waste Management Program
- ▶ Federal Hazardous Waste Program
- ▶ Federal Sludge Management Program
- ▶ Federal Superfund Program
- ▶ Federal Toxic Substances Control Program

National Pollutant Discharge Elimination System (NPDES)

- ▶ Administered by the U.S. EPA [Title 40, Code of Federal Regulations (CFR), Chapter 122 or 40 CFR §122]
- ▶ Regulates:
 - Municipal Wastewater (Sewer) Discharges
 - Industrial Wastewater (Process) Discharges
 - Municipal Storm Water Discharges
 - Industrial Storm Water Discharges
 - Construction Site Storm Water Discharges

National Pollutant Discharge Elimination System (NPDES)– Continued

- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Administered through a permit system
- ▶ Includes requirements for public notice & public involvement
- ▶ Provides for delegation to approved states

Federal Spill Prevention, Control and Countermeasure (SPCC) Program

- ▶ Administered by the U.S. EPA [40 CFR §112]
- ▶ Regulates the storage and handling of petroleum products and hazardous materials
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ “Self Implementing” system – submittals only when requested

Federal Municipal Solid Waste Program

- ▶ Administered by the U.S. EPA [40 CFR §256-259]
- ▶ Regulates the transportation, storage, processing and disposal of municipal solid waste (garbage)
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through combination of permit program and “self implementation”
- ▶ Includes requirements for public notice & public involvement
- ▶ Provides for delegation to approved states

Federal Hazardous Waste Program

- ▶ Administered by the U.S. EPA [40 CFR §260-273]
- ▶ Regulates the generation, transportation, storage, processing and disposal of hazardous wastes
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through combination of permit program and “self implementation”
- ▶ Includes requirements for public notice & public involvement
- ▶ Provides for delegation to approved states

Federal Superfund Program

- ▶ Administered by the U.S. EPA [40 CFR §300-399]
- ▶ Requires the compilation and management of the National Priorities List (NPL) for contaminated sites, governs the clean-up of those sites, and outlines the Emergency Planning and Community Right-to-Know program
- ▶ Implementation through direct federal actions and required reporting
- ▶ Includes requirements for public notice & public involvement

Federal Sludge Management Program

- ▶ Administered by the U.S. EPA [40 CFR §500-503]
- ▶ Regulates the transportation, storage, processing and disposal of sludge from water and wastewater treatment
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through combination of permit program and “self implementation”
- ▶ Includes requirements for public notice & public involvement
- ▶ Provides for delegation to approved states

Federal Toxic Substance Control Program

- ▶ Administered by the U.S. EPA [40 CFR §700-766]
- ▶ Regulates the creation, use, transportation, storage, processing and disposal of toxic substances
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through combination of permit program and “self implementation”
- ▶ Includes requirements for public notice & public involvement

FEDERAL ENDANGERED SPECIES PROGRAMS – Part 1

- ▶ Administered by the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) [50 CFR §1-697]
- ▶ Listing Program (ESA §4)
 - Includes procedures to evaluate and list “threatened” and “endangered” species
 - Species Recovery Plans

FEDERAL ENDANGERED SPECIES PROGRAMS – Part 2

- ▶ “Federal Actions” (ESA §7)
 - §7(a)(1) requires all federal agencies to aid conservation efforts for endangered species
 - §7(a)(2) requires consultation with USFWS on direct federal actions, actions using federal funds, and the issuance of permits under federal programs, including delegated states

FEDERAL ENDANGERED SPECIES PROGRAMS – Part 3

- ▶ Prohibition of “Taking” endangered species (ESA §9 & §10)
 - Prohibits taking, possession, sale, or transfer of certain endangered species
 - Allows the issuance of incidental take permits
 - Habitat Conservation Plans

APPLICABLE STATE LEGISLATION

▶ Texas Water Code

- Governs the protection, procurement, use, storage, and return of water in the state

▶ Health and Safety Code

- Governs the treatment & disposal of municipal & industrial wastes, sewage sludge, & pollution clean-up

▶ Natural Resources Code

- Governs oil & gas exploration/production, mining, natural resource protection, & conservation easements

STATE WATER QUALITY REGULATORY PROGRAMS – Part 1

- ▶ Texas Oil and Gas Environmental Program
- ▶ Texas Edwards Aquifer Protection Program
- ▶ Texas On-Site Sanitary Facility (OSSF) Program
- ▶ Texas Pollutant Discharge Elimination System (TPDES)
- ▶ Texas Sludge Disposal Program
- ▶ Texas Municipal Solid Waste Program

STATE WATER QUALITY REGULATORY PROGRAMS – Part 2

- ▶ Texas Petroleum Storage Tank Program
- ▶ Texas Industrial and Hazardous Waste Program
- ▶ Texas Agricultural and Silvicultural Water Quality Management Program

Texas Oil and Gas Environmental Program

- ▶ Administered by the Railroad Commission of Texas (RRC) [Title 16, Texas Administrative (TAC), Chapters 1-7 or 16 TAC §1-§7]
- ▶ Regulates the exploration and production of oil, gas & geothermal resources and the disposal and clean-up of wastes
- ▶ Implementation through various regulatory approvals, including registrations and major and minor permits
- ▶ Enforcement by RRC Division offices

Texas Edwards Aquifer Protection Program – Part 1

- ▶ Administered by Texas Commission on Environmental Quality (TCEQ) [Title 30, Texas Administrative (TAC), Chapter 213 or 30 TAC §213]
- ▶ Regulates soil disturbance activities over the recharge zone, contributing zone and the transition zone of the Edwards Aquifer
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through the approval of Water Pollution Abatement Plans (WPAP)

Texas Edwards Aquifer Protection Program – Part 2

- ▶ Special Requirements for:
 - Organized Sewage Collection Systems
 - Underground Storage Tank (UST) facilities for hydrocarbons and hazardous substances
 - Aboveground Storage Tank (AST) facilities for hydrocarbons and hazardous substances
 - On-site Sanitary Sewage Facilities (OSSF)
- ▶ Enforcement by TCEQ central and region offices

Texas On-Site Sanitary Sewage Facility (OSSF) Program

- ▶ Administered by TCEQ and delegated local governments [30 TAC §285]
- ▶ Regulates the installation, operation and maintenance of OSSF's including septic tanks, irrigation systems, proprietary treatment systems and others
- ▶ Utilizes primarily "structural" controls
- ▶ Implementation through a permit program
- ▶ Enforcement by TCEQ region offices and delegated local governments

Texas Pollutant Discharge Elimination System (TPDES) – Part 1

- ▶ Administered by TCEQ [30 TAC §307-317]
- ▶ Regulates:
 - Municipal Wastewater (Sewer) Discharges
 - Industrial Wastewater (Process) Discharges
 - Municipal Storm Water Discharges
 - Industrial Storm Water Discharges
 - Construction Site Storm Water Discharges
 - Certain point and non-point source discharges
- ▶ Approved delegation under the U.S. EPA's NPDES program

Texas Pollutant Discharge Elimination System (TPDES) – Part 2

- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through various regulatory approvals, including permits by rule, general permits, and individual permits
- ▶ Includes requirements for public notice & public involvement
- ▶ Enforcement by TCEQ central and region offices
- ▶ Examples of regulated facilities/entities:
 - Municipal sewer plants of any size
 - Industrial process wastewater plants of any size

Texas Pollutant Discharge Elimination System (TPDES) – Part 3

- ▶ Examples of regulated facilities/entities:
(Continued)
 - Large and medium municipalities (Phase I) and small municipalities in urbanized areas (Phase II) that own/operate/manage municipal separate storm sewer systems (MS4s)
 - Construction sites larger than 1 acre
 - Certain industrial facilities with storm water discharges
 - Pollution clean-up sites with treated water discharges
 - Certain agricultural facilities (Concentrated Animal Feeding Operations – CAFOs) with point source and non-point source discharges

Texas Sludge Program

- ▶ Administered by TCEQ [30 TAC §312]
- ▶ Regulates the transportation, storage, processing and disposal of sludge from water and wastewater treatment plants
- ▶ Approved delegation under the U.S. EPA's NPDES program
- ▶ Utilizes "structural" and "non-structural" controls
- ▶ Implementation through various regulatory approvals, including notifications, registrations and permits
- ▶ Enforcement by TCEQ central and region offices

Texas Municipal Solid Waste Program

- ▶ Administered by TCEQ [30 TAC §330]
- ▶ Regulates the transportation, storage, processing and disposal of municipal solid waste (garbage)
- ▶ Approved delegation from U.S. EPA
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through various regulatory approvals, including notifications, registrations and permits
- ▶ Enforcement by TCEQ central and region offices

Texas Petroleum Storage Tank Program

- ▶ Administered by TCEQ [30 TAC §334]
- ▶ Regulates the installation, operation and pollution from underground and aboveground petroleum storage tanks (USTs and ASTs)
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through registrations
- ▶ Enforcement by TCEQ central and region offices

Texas Industrial and Hazardous Waste Program

- ▶ Administered by TCEQ [30 TAC §335]
- ▶ Regulates the transportation, storage, processing and disposal of hazardous and non-hazardous industrial solid waste
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through various regulatory approvals, including notifications, registrations and permits
- ▶ Enforcement by TCEQ central and region offices

Texas Agricultural and Silvicultural Water Quality Management Program

- ▶ Administered by Texas State Soil and Water Conservation Board (TSSWCB) [31 TAC §523]
- ▶ Voluntary program to control pollution from certain agricultural operations
- ▶ Utilizes “structural” and “non-structural” controls
- ▶ Implementation through water quality management plans
- ▶ Enforcement by TSSWCB and district offices

STATE ENDANGERED SPECIES PROGRAMS

- ▶ Administered by the Texas Parks and Wildlife Department (TPWD) [31 TAC §65-69]
- ▶ Listing Program similar to Federal ES programs
 - Includes procedures to evaluate and list “threatened” and “endangered” species
 - Natural Resource Protection/Restoration

Questions



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