

DRAFT FOR DISCUSSION PURPOSES ONLY

**EDWARDS AQUIFER AUTHORITY
IMPERVIOUS COVER RULES
EXPANDED CONCEPT FRAMEWORK**

December 30, 2009

As described in the original concept memo adopted by the board in August of 2009, the Authority's impervious cover regulations would limit the amount of impervious that certain projects may contain to 20 percent. An increase to up to 30 percent impervious cover would be allowed if certain permanent stormwater best management practices (BMPs), the purchase of mitigation lands, the use of alternative development or land stewardship practices, or a combination of the above are implemented as part of a project. Specific, approvable BMPs would not be included in the rules, but examples of approvable BMPs would be included in a guidance document produced by the Authority. The regulations would apply to all development, within all zoning classes (commercial, industrial, and residential) that lie within the jurisdictional area defined by the rules.

Jurisdictionally, these impervious cover regulations would apply to the same geographical area as the Authority's Spill Reporting and Hazardous Substances Registration, Storage, and Planning Rules – Chapter 713, Subchapters E and F. Specifically, this includes the geographical area within the recharge zone of the aquifer and the contributing zone of the aquifer five miles up-gradient of the recharge zone, or to the limit of the five-mile water quality buffer zone, whichever is less, excluding the portion of Cibolo Creek up-gradient of the recharge zone as indicated on official Authority maps.

I. Requirements for projects that would be regulated under Authority rules:

If the regulations apply to a project, the project's owner, developer, or an agent of the owner or developer would be required to submit information to the Authority that sufficiently shows that the project in question will be limited to 20 percent impervious cover or that appropriate actions will be taken in order to increase the percentage of impervious cover up to a total of 30 percent.

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In order to avoid duplication of other regulatory requirements, the required information may be submitted to the Authority in several ways:

1. Those projects that are not regulated by TCEQ's 213 rules but are within the jurisdictional area of the Authority's regulation would be required to submit an "Edwards Aquifer Development Plan" to the Authority. The impervious cover rules would list specific pieces of information that must be included in such a plan in order for Authority staff to perform a proper review and verify that the percentage of impervious cover planned for the project complies with Authority regulations;
2. For those projects regulated by TCEQ's 213 (recharge zone) rules, the Authority would accept submittal of the "application" and "technical report" portions of the required TCEQ Edwards Aquifer Protection Plan as sufficient for review under the Authority's set of regulations (this submittal would be in lieu of an "Edwards Aquifer Development Plan"); or
3. For those projects regulated by TCEQ's 213 (contributing zone) rules, a combination of the information already required to be submitted to TCEQ and the information required for an "Edwards Aquifer Development Plan" could be submitted.

Once the Authority has determined that a project conforms to the Authority's impervious cover regulations, the general manager would issue a Letter of Approval that documents Authority approval of the project. In the event that the general manager determines that he or she cannot issue a Letter of Approval, the submittal would be brought before the board for consideration and final action.

An issued Letter of Approval would contain the approved percentage of impervious cover for the particular project and a description of any permanent stormwater BMPs, land preservation mitigation, watershed protection measures, or combination thereof that are

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planned for the project. If permanent stormwater BMPs are planned for the project, any maintenance requirements will also be outlined in the Letter of Approval.

Inspections to verify the amount of impervious cover, as well as BMP construction and maintenance activities, will be conducted during and after construction.

In addition, issued Letters of Approval would need to be deed recorded. This act could be accomplished by the Authority in the same manner that it records groundwater withdrawal permits.

As with TCEQ's 213 rules, some types of projects would not be regulated under the rules. For example, the construction of single-family residences on lots that are larger than five acres, where no more than one single-family residence is located on each lot would not be regulated under the Authority's impervious cover regulations and requirements. In addition, some projects would not realistically fit within the regulatory framework set out by the Authority. For example, roads designed to be constructed on narrow easements could not realistically meet the Authority's impervious cover limitations. Therefore, these types of projects would also not be covered under the Authority's impervious cover regulations and requirements.

II. Requirements for projects that would NOT be regulated under Authority rules:

The impervious cover regulations would not apply to a project, as defined by Chapter 245, Texas Local Government Code, which is determined to be in progress on the effective date of the rules. A project would be considered "in progress" if a permit or other form of authorization for the project was in effect in the defined jurisdictional area as of the effective date of the rules.

If it is believed that, due to its status as a "project in progress," a project is not regulated by the Authority's impervious cover regulations, the project's owner, developer, or an agent of the owner or developer would be required to submit a "Request for Recognition

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of a Project in Progress” to the Authority. This request would be required to contain sufficient information for Authority staff to make a proper determination of the applicability of its regulations. The impervious cover rules would list specific information that such a request must include in order for Authority staff to perform a proper determination. The types of information required would include:

- A description of the project;
- Copies of applications for the first permit or authorization for the project that establish a percentage or amount of impervious cover for the project; and
- Copies of the first issued permit or authorization for the project.

If the Authority determines that a project is a “project in progress,” and is therefore not regulated by the impervious cover regulations, the general manager will issue a Letter of Recognition to the requestor. This letter would describe the project that was the subject of the request and state that the Authority’s impervious cover regulations do not apply to the project. In the event that the general manager determines that he or she cannot issue a Letter of Recognition, the request would be brought before the board for consideration and final action.

In addition, issued Letters of Recognition would need to be deed recorded. This act could be accomplished by the Authority in the same manner that it records withdrawal permits.

III. Fee Requirements:

An administrative fee could be required for reviewing material submitted in order to obtain a Letter of Approval and reviewing a Request for Recognition of a Project in Progress. If so, the fee would not unreasonably exceed the cost to the Authority for performing the administrative functions that are necessary in performing a proper review of a submittal or request. However, the ability of the Authority to require such a fee is dependent on the specifics of the proposed rules and would have to be revisited as rule development continues. The special fee provision for this set of rules would be

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developed separately when a set of proposed rules covering general special fees that may be required by the Authority are brought before the board for consideration. Proposed rules for a special fee provision will be brought before the board soon after proposed rules for impervious cover are presented.

IV. Effect on Authority Operations:

If the board adopts rules for impervious cover regulation, approximately six new employees are expected to be required. Tasks for staff would include reviewing submittals and requests, issuing Letters of Approval and Letters of Recognition, performing compliance inspections, addressing compliance matters, and performing database and file maintenance. The additional staff members would consist of one Environmental Supervisor, four Environmental Coordinators, and one Secretary.

In addition, legal fees for this specific program would need to be included within the Authority's Legal Budget.