

## TCEQ kicks permit dispute to administrative judge, arbitration possible

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By Greg Bowen The Herald-Zeitung | 1 comment

### AUSTIN

The question of whether a state permit should be issued to allow the discharge of treated effluent into Comal County's Dry Comal Creek has been punted by TCEQ to a state administrative law judge for additional scrutiny.

But Friends of Dry Comal Creek, a grassroots group fighting the permit, and the developer, the Randolph Todd Co. of Austin, may try to work out their differences in arbitration before the case goes to a judge with the State Office of Administrative Hearings (SOAH) for a trial-like hearing.

The developer is seeking the permit to build a sewer plant that would discharge as much as 390,000 gallons of treated effluent per day into the often-dry creek about five miles upstream of New Braunfels. The plant would serve a planned 1,500-home, \$53 million housing development on 735 acres of rolling Hill Country ranchland along South Cranes Mill Road off Highway 46.

Ed Harris, a founder of Friends of Dry Comal Creek and a neighbor of the proposed subdivision, said he was pleased with Wednesday's decision by the three-member governing board of the Texas Commission on Environmental Quality to send the case to SOAH.

"I'm happy that we have that," Harris said. "They could have approved the permit — but they didn't. They put it in front of a judge."

### Costly

Harris said a SOAH hearing is an expensive process and that Friends would join with the well-established, San Antonio-based Greater Edwards Aquifer Alliance to collect donations to help fund the effort's legal bills. The GEAA has expressed concern about the cumulative impact that the planned Randolph Todd subdivision, along with other high-density developments over the Edwards, would have on the quality of water recharging the aquifer, which supplies drinking water to over 2 million area residents.

### Number of issues

In the contested-case hearing process, a SOAH judge hears arguments from all sides and then writes a "proposal for decision" containing a recommendation to either issue the permit or deny it. The recommendation goes to TCEQ's commission, which, in public session, makes the final call on the permit.

On Wednesday, TCEQ Chairman Bryan Shaw, said in public hearing that the case presents "a sizable number of issues - about a dozen."

Commissioner Toby Baker made the motion to send the case to SOAH, with instructions that the SOAH process would look into a laundry list of issues, including the impact of the effluent on domestic water wells that serve area residents; whether the effluent would result in odors or increase pollution in Dry Comal Creek; whether the health of nearby residents, their livestock or the creek's aquatic life would be harmed; and whether the permit complies with special rules to protect the Edwards Aquifer.

Baker's motion included a provision that the SOAH process take no more than nine months from the first preliminary hearing, which will be scheduled later.

No public comment was allowed Wednesday on the permit application, although several members of Friends were prepared to speak and Randolph Todd had representatives in the room.

Negotiations?

Immediately following the Wednesday decision, Harris said Friends would be willing to negotiate with Randolph Todd if the developer offered to begin an arbitration process.

Harris said the group isn't anti-development - but it suspects the sewer plant now proposed would release effluent that, even though treated, would contain enough fecal matter to contaminate domestic drinking water wells and to do other environmental damage.

"With 390,000 gallons of treated sewage, I could have 6 or 7 pounds of human waste in my well every day," Harris said.

Harris said he'd like to see the developer upgrade the proposed plant to a Texas Land Application plant or TLAP, which is built to higher construction standards in order to protect the aquifer and uses land-application techniques to prevent the effluent from being pumped directly into what is typically a dry creek.

"We'd support a TLAP plant. Why not use the latest state-of-the art technology?" he asked. "Why use old, cheap technology? That's the problem with development - they put the least expensive technology in."

Harris said an upgraded plant would likely cost \$15 to \$20 million more than the currently-proposed plant.

While being interviewed by a media representative, Harris was approached by a TCEQ mediator who had been asked by Randolph Todd to find out whether Friends would be interested in arbitration.

Harris said the mediator told him the developer wanted to begin arbitration pretty quickly. Harris told him Friends want a TLAP plant. The mediator asked if the grassroots group would meet the developer half way on the technology, said Harris, who added that he told the mediator only a TLAP plant would be acceptable.

Harris said he told the mediator he would poll the group to see whether its members wanted to go the arbitration route.