

Draft Regulatory Guidance Developer Interest

1. Applicable statutes or rules

30 TAC §293.50 Developer Interest Reimbursement

30 TAC §293.46 Construction Prior to Commission Approval

2. Background

30 TAC §293.50 provides that developers can receive interest when reimbursed for certain construction and non-construction costs. 30 TAC §293.46 provides guidelines for a developer proceeding with construction prior to a district having funds available. 30 TAC §293.46(3) requires that construction plans and specifications have all required approvals prior to construction contract award, and the penalty for not receiving prior approvals. 30 TAC §293.46(5) requires contract advertising, award, construction, and installation of facilities to be in substantial compliance with statutory requirements and the limitation of reimbursement to a developer if these requirements are not met.

3. Draft Regulatory Guidance

The goal of this regulatory guidance document is to give TCEQ staff, the regulated community, and public guidance on events to occur prior to projects being constructed, encourage compliance and to have high quality water, wastewater, and drainage systems.

If plan approvals are not obtained prior to initiation of construction, the following apply:

1. If a design engineer can provide documentation (written correspondence, emails) to support their understanding that review was not necessary, then there would be no reduction in developer reimbursement for lack of plan approval prior to construction.
2. A developer cannot be reimbursed for additional costs resulting from changes required by a city or other agency when the developer failed to get all necessary approvals for plans and specifications before awarding the contract.
3. At the time of submission of a bond application to the TCEQ for review, if construction plans and specifications have not been approved by all cities and agencies having jurisdictional responsibilities over the district, bond proceeds for that project will be escrowed until such time as all approvals have been granted and the district submits a request for release of escrowed funds, or the district board of directors will be directed not to expend these funds until they receive all required approvals.

Developer interest may be denied when contract advertising, award, construction and installation of facilities are not achieved in substantial compliance with statutory requirements.