EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2005-1698-EAQ-E **TCEQ ID:** RN102791662 **CASE NO.:** 26964

RESPONDENT NAME: River Chase Subdivision II, Ltd.

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY	X EDWARDS AQUIFER	

SITE WHERE VIOLATION(S) OCCURRED: River Chase Subdivision II, located along the Middle Fork of the San Gabriel River, Georgetown, Williamson County

TYPE OF OPERATION: Residential subdivision

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 29, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Audra L. Ruble, Enforcement Division, Enforcement Section III, MC R-14, (361) 825-3126; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
TCEQ Field Investigator: Ms. Heather Beatty, Austin Regional Office, MC R-11, (512) 339-2929
Respondent: Mr. Robert Wunsch, President/Registered Agent, River Chase Subdivision II, Ltd., 4314 West Braker Lane, Suite 250, Austin, Texas 78759
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint ___ Routine __ Enforcement Follow-up _X_ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** July 20, 2005 **Date of NOE Relating to this Case:** August 5, 2005 (NOE) **Background Facts:** This was a routine record review. One violation was documented. **WATER** Failed to receive Commission approval of a Water Pollution Abatement Plan ("WPAP") prior to commencing construction. Specifically, a WPAP had been submitted but was found to be administratively incomplete. River Chase failed to resubmit the WPAP once the missing item had been addressed [30 TEX. ADMIN. CODE § 213.4(a)(1)].	**Total Assessed:** $5,250 **Total Deferred:** $1,050 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $4,200 **Site Compliance History Classification:** __High _X_ Avg. __Poor **Person Compliance History Classification:** __High _X_ Avg. __Poor **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete WPAP; b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the WPAP within 30 days after the date of such requests, or by any other deadline specified in writing; and c. Within 165 days after the effective date of this Agreed Order, submit written documentation demonstrating that approval of the WPAP has been obtained.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	12-Sep-2005				
PCW	14-Nov-2005	Screening	20-Sep-2005	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	River Chase Subdivision II, Ltd.		
Reg. Ent. Ref. No.	RN102791662		
Facility/Site Region	11-Austin	Major/Minor Source	Major Source

CASE INFORMATION

Enf./Case ID No.	26964	No. of Violations	1
Docket No.	2005-1698-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Audra L. Ruble
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $5,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement *Subtotals 2, 3, & 7* $250

Notes: The Respondent has received one previous NOV for the same violation.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* $0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	*(mark with a small x)*

Notes: The Respondent is not yet in compliance.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$19
Approx. Cost of Compliance	$100

SUM OF SUBTOTALS 1-7 Final Subtotal $5,250

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $5,250

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $5,250

DEFERRAL 20% Reduction Adjustment -$1,050

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $4,200

Screening Date 20-Sep-2005 **Docket No.** 2005-1698-EAQ-E **PCW**
Respondent River Chase Subdivision II, Ltd.
Case ID No. 26964
Reg. Ent. Reference No. RN102791662
Media [Statute] Edwards Aquifer
Enf. Coordinator Audra L. Ruble

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action *(number of NOVs meeting criteria)*	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government *(number of judgements or consent decrees meeting criteria)*	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government *(number of counts)*	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which violations were disclosed)*	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) **5%**

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) **0%**

>> Compliance History *Person* Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) **0%**

>> Compliance History Summary

Compliance History Notes The Respondent has received one previous NOV for the same violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **5%**

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	20-Sep-2005
Docket No.	2005-1698-EAQ-E
Respondent	River Chase Subdivision II, Ltd.
Case ID No.	26964
Reg. Ent. Reference No.	RN102791662
Media [Statute]	Edwards Aquifer
Enf. Coordinator	Audra L. Ruble
Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 213.4(a)(1)
Secondary Rule Cite(s)	
Violation Description	Failure to receive Commission approval of a Water Pollution Abatement Plan ("WPAP") prior to commencing construction. A WPAP had been submitted by the Respondent which was found to be administratively incomplete for one item. The Respondent failed to resubmit the WPAP once the missing item had been addressed.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 2

mark only one use a small x	
daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $5,000

Two monthly events are recommended from the date of record review (July 20, 2005) through screening (September 20, 2005).

Economic Benefit (EB) for this violation

Estimated EB Amount $19

Statutory Limit Test

Violation Final Penalty Total $5,250

This violation Final Assessed Penalty (adjusted for limits) $5,250

Economic Benefit Worksheet

Respondent: River Chase Subdivision II, Ltd.
Case ID No.: 26964
Reg. Ent. Reference No.: RN102791662
Media [Statute]: Edwards Aquifer
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System	$100	10-Jun-2002	01-May-2006	3.9	$19	n/a	$19
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to establish an organizational system for plan submittals, calculated from the date the initial WPAP was submitted through the expected approval date.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance: $100

TOTAL: $19

Compliance History

Customer/Respondent/Owner-Operator:	CN601477961	River Chase Subdivision II, Ltd.	Classification: AVERAGE	Rating: 0.50
Regulated Entity:	RN102791662	RIVER CHASE II SUBDIVISION	Classification: AVERAGE	Site Rating: 0.50
ID Number(s):	EDWARDS AQUIFER		REGISTRATION	11-02061001
Location:	EXTENSION OF RIVER CHASE BLVD ALONG THE MIDDLE FORK OF THE SAN GABRIEL RIVER IN GEORGETOWN		Rating Date: 9/1/2005 Repeat Violator: NO	
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	November 08, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 08, 2000 to November 08, 2005			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Audra Ruble Phone: 361-825-3126

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. if Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 09/08/2005 (401218)

2 08/30/2002 (8055)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/30/2002 (8055)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)

Description: Failure to obtain approval of a Water Pollution Abatement Plan prior to the start of construction on the Edwards Aquifer Recharge Zone.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
RIVER CHASE SUBDIVISION II,	§	
LTD.	§	**ENVIRONMENTAL QUALITY**
RN102791662		

AGREED ORDER
DOCKET NO. 2005-1698-EAQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding River Chase Subdivision II, Ltd. ("River Chase") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and River Chase appear before the Commission and together stipulate that:

1. River Chase owns a 57.1 acre tract of land located along the Middle Fork of the San Gabriel River, Georgetown, Williamson County, Texas (the "Site").

2. River Chase has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.

3. The Commission and River Chase agree that the Commission has jurisdiction to enter this Agreed Order, and that River Chase is subject to the Commission's jurisdiction.

4. River Chase received notice of the violations alleged in Section II ("Allegations") on or about August 10, 2005.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by River Chase of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand Two Hundred Fifty Dollars ($5,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). River Chase has paid Four Thousand Two Hundred Dollars ($4,200) of the administrative penalty and One Thousand Fifty Dollars ($1,050) is deferred contingent upon River Chase's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If River Chase fails to timely and

satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require River Chase to pay all or part of the deferred penalty.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and River Chase have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that River Chase has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, River Chase is alleged to have failed to receive Commission approval of a Water Pollution Abatement Plan ("WPAP") prior to commencing construction, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during a record review conducted on July 20, 2005. Specifically, a WPAP had been submitted but was found to be administratively incomplete. River Chase failed to resubmit the WPAP once the missing item had been addressed.

III. DENIALS

River Chase generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that River Chase pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and River Chase's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: River Chase Subdivision II, Ltd., Docket No. 2005-1698-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that River Chase shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, submit an administratively complete Water Pollution Abatement Plan ("WPAP") to:

      Ms. Heather L. Beatty, Investigator
      Austin Regional Office
      Texas Commission on Environmental Quality
      1921 Cedar Bend Dr., Suite 150
      Austin, Texas 78758-5336

   b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the WPAP within 30 days after the date of such requests, or by any other deadline specified in writing.

   c. Within 165 days after the effective date of this Agreed Order, submit written documentation demonstrating that approval of the WPAP has been obtained to:

      Order Compliance Team
      Enforcement Division, MC 149A
      Texas Commission on Environmental Quality
      P.O. Box 13087
      Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon River Chase. River Chase is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

4. If River Chase fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, River Chase's failure to comply is not a violation of this Agreed Order. River Chase shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. River Chase shall notify the Executive Director within seven days after River Chase becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by River Chase shall be made in writing to the Executive Director. Extensions are not effective until River Chase receives written approval from

the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against River Chase in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to River Chase, or three days after the date on which the Commission mails notice of the Order to River Chase, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 2/14/07
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ 11/10/06
Signature Date

Robert D. Wunsch President
Name (Printed or typed) Title
Authorized Representative of
River Chase Subdivision II, Ltd.

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.