

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-1758-EAQ-E **TCEQ ID:** RN104993456 **CASE NO.:** 31360
RESPONDENT NAME: Triad Hospitals, Inc.

ORDER TYPE:

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY	<input checked="" type="checkbox"/> EDWARDS AQUIFER	

SITE WHERE VIOLATION(S) OCCURRED: Cedar Park Regional Medical Center, northeast intersection of State Highway 183A Toll Road and Farm-to-Market Road 1431, Cedar Park, Williamson County

TYPE OF OPERATION: Medical center construction site

SMALL BUSINESS: Yes 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 February 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Ruben Soto, Enforcement Division, Enforcement Section I, MC 169, (512) 239-4571; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Mr. James Shelton, Chairman and CEO, Triad Hospitals, Inc., 5800 Tennyson Parkway, Plano, Texas 75024

Mr. Donnie W. Lindstrom, Director, Design and Construction, Triad Hospitals, Inc., 5800 Tennyson Parkway, Plano, Texas 75024

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 5, 2006</p> <p>Date of NOE Relating to this Case: September 19, 2006 (NOE)</p> <p>Background Facts: This was a routine investigation. One violation was documented.</p> <p>WATER</p> <p>Failed to obtain approval of an Edwards Aquifer Contributing Zone Plan prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the investigator observed evidence of trenching for utilities, road grading and construction activity on a combined area greater than five acres [30 TEX. ADMIN. CODE § 213.23(a)(1)(A) and (B)].</p>	<p>Total Assessed: \$54,000</p> <p>Total Deferred: \$10,800 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$43,200</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that Triad submitted an application for an Edwards Aquifer Contributing Zone Plan, which was approved by the Executive Director on September 15, 2006</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	25-Sep-2006			
	PCW	01-Oct-2006	Screening	01-Oct-2006	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Triad Hospitals, Inc.				
Reg. Ent. Ref. No.	RN104993456				
Facility/Site Region	11-Austin	Major/Minor Source	Major Source		

CASE INFORMATION					
Enf./Case ID No.	31360	No. of Violations	1		
Docket No.	2006-1758-EAQ-E	Order Type	1660		
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Ruben Soto		
Multi-Media		EC's Team	Enforcement Team 1		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No enhancement due to Average Performer classification.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	25% Reduction	Subtotal 5	-\$1,875
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with a small x)

Notes	The Respondent submitted an application for the Edwards Aquifer Contributing Zone Plan which was approved by the Executive Director on September 15, 2006.
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Economic Benefit	0% Enhancement	Subtotal 6	\$0
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Total EB Amounts	\$39	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	860% Enhancement	Adjustment	\$48,375
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes	Recommend an upward adjustment of penalty due to the egregious nature of the violation and as a necessary future deterrent to a violation of this type, over this aquifer.
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Final Penalty Amount	\$54,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$54,000
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DEFERRAL	20% Reduction	Adjustment	-\$10,800
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$43,200
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Screening Date	01-Oct-2006	Docket No.	2006-1758-EAQ-E	PCW
Respondent	Triad Hospitals, Inc.	Policy Revision 2 (September 2002)		
Case ID No.	31360	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN104993456			
Media [Statute]	Edwards Aquifer			
Ent. Coordinator	Ruben Soto			

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)	0	0%
	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%
<i>Please Enter Yes or No</i>			
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) 0%

>> 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: No enhancement due to Average Performer classification

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 01-Oct-2006 **Docket No.** 2006-1758-EAQ-E **PCW**
Respondent Triad Hospitals, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 31360 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN104993456
Media [Statute] Edwards Aquifer
Enf. Coordinator Ruben Soto
Violation Number 1
Primary Rule Cite(s) 30 Tex. Admin. Code § 213.23(a)(1)(A) and (B)
Secondary Rule Cite(s)
Violation Description Failure to obtain approval of an Edwards Aquifer Contributing Zone Plan prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone, as documented during an investigation conducted on July 5, 2006. Specifically, the investigator observed evidence of trenching for utilities, road grading and construction activity on a combined area greater than five acres.
Base Penalty \$10,000

>> **Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
	X			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 3

mark only one use a small x

daily	
monthly	X
quarterly	
semiannual	
annual	
slight over	

Violation Base Penalty \$7,500

Three monthly events are recommended from the date of the investigation (July 5, 2006) to the date the Edwards Aquifer Contributing Zone Plan was approved (September 15, 2006).

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$39

Violation Final Penalty Total \$54,000

This violation Final Assessed Penalty (adjusted for limits) \$54,000

Economic Benefit Worksheet

Respondent: Triad Hospitals, Inc.
 Case ID No: 31360
 Reg. Ent. Reference No: RN104993456
 Media [Statute]: Edwards Aquifer
 Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$4,000	05-Jul-2006	15-Sep-2006	0.2	\$39	n/a	\$39
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Cost reflects the amount to prepare and submit an Edwards Aquifer Contributing Zone Plan ("CZP"). The date required is the date of the investigation and the final date is the date the CZP was approved.

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 \$4,000

TOTAL \$39

Compliance History

Customer/Respondent/Owner-Operator: CN601265986 Triad Hospitals, Inc. Classification: AVERAGE BY DEFAULT Rating: 3.01

Regulated Entity: RN104993456 CEDAR PARK REGIONAL MEDICAL CENTER Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): EDWARDS AQUIFER REGISTRATION 11-06080703

Location: NORTHEAST INTERSECTION OF STATE HIGHWAY 183A TOLL ROAD AND FARM-TO-MARKET ROAD 1431, CEDAR PARK, WILLIAMSON COUNTY, TEXAS Rating Date: September 1 2006 Repeat Violator: NO

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: October 04, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 04, 2001 to October 04, 2006

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Ruben Soto Phone: 512 239-4571

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 09/20/2006 (513024)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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

CHAPTER 10

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TRIAD HOSPITALS, INC.
RN104993456**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2006-1758-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 Triad Hospitals, Inc. ("Triad") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Triad appear before the Commission and together stipulate that:

1. Triad owns and operates a medical center construction site located at the northeast intersection of State Highway 183A Toll Road and Farm-to-Market Road 1431 in Cedar Park, Williamson County, Texas (the "Site").
2. Triad 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 Triad agree that the Commission has jurisdiction to enter this Agreed Order, and that Triad is subject to the Commission's jurisdiction.
4. Triad received notice of the violations alleged in Section II ("Allegations") on or about September 24, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Triad of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Fifty-Four Thousand Dollars (\$54,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Triad has paid Forty-Three Thousand Two Hundred (\$43,200) of the administrative penalty and Ten Thousand Eight Hundred Dollars (\$10,800) is deferred contingent upon Triad'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 Triad fails to timely and satisfactorily comply

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- with all requirements of this Agreed Order, the Executive Director may require Triad 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 Triad have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 9. The Executive Director recognizes that Triad submitted an application for an Edwards Aquifer Contributing Zone Plan, which was approved by the Executive Director on September 15, 2006.
 10. 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 Triad has not complied with one or more of the terms or conditions in this Agreed Order.
 11. 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.
 12. 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, Triad is alleged to have failed to obtain approval of an Edwards Aquifer Contributing Zone Plan prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.23(a)(1)(A) and (B), as documented during an investigation conducted on July 5, 2006. Specifically, the investigator observed evidence of trenching for utilities, road grading and construction activity on a combined area greater than five acres.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Triad pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Triad'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

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"TCEQ" and shall be sent with the notation "Re: Triad Hospitals, Inc., Docket No. 2006-1758-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. The provisions of this Agreed Order shall apply to and be binding upon Triad. Triad 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against Triad 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.
4. 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Triad, or three days after the date on which the Commission mails notice of the Order to Triad, 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



For the Executive Director

3/7/07

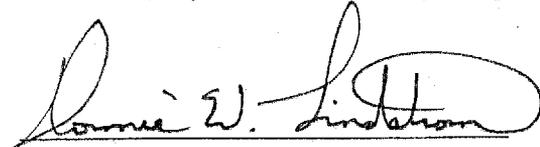
Date

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.



Signature

NOVEMBER 27, 2006

Date

DONNIE W. LINDSTROM

Name (Printed or typed)
Authorized Representative of
Triad Hospitals, Inc.

DIRECTOR, DESIGN AND

Title
CONSTRUCTION

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.

THE UNIVERSITY OF CHICAGO

PH.D. THESIS

Author: [Faint text]

Title: [Faint text]

Department: [Faint text]

Year: [Faint text]

[Faint text]