EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1837-WQ-E **TCEQ ID:** RN105025308 **CASE NO.:** 31340

RESPONDENT NAME: Imperial Homes Texas, 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	X WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Imperial Homes of Spring Creek Estates, south of Brown Road and west of Highway 249 on Orchard Grove Drive, Harris County

TYPE OF OPERATION: home construction

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: A complaint was received on August 2, 2006, concerning home construction activity which was allowing the discharge and accumulation of sediment into ditches, causing standing water in the ditches. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received but the complainant has not expressed a desire to protest this action or speak at Agenda.

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. Catherine Albrecht, Enforcement Division, Enforcement Section I, MC R-12, (713) 767-3672; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

TCEQ Field Investigator: Ms. Courtney Mize, Houston Regional Office, MC R-12, (713) 422-8921

Respondent: Mr. Terrence Hartzell, President, Imperial Homes, Inc., Imperial Homes Texas, Ltd., 10555 Richmond Avenue, Suite 400, Houston, Texas 77042
Mr. Fred Schweers, Vice President, Imperial Homes, Inc., Imperial Homes Texas, Ltd., 10555 Richmond Avenue, Suite 400, Houston, Texas 77042

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: _X_ Complaint ___ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint Relating to this Case:** August 2, 2006 **Date of Investigation Relating to this Case:** August 8, 2006 **Date of NOE Relating to this Case:** September 11, 2006 (NOE) **Background Facts:** This was a complaint investigation. One violation was documented. **WATER** Failed to obtain a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") TXR150000 for authorization to discharge storm water from home construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].	**Total Assessed:** $750 **Total Deferred:** $150 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $600 **Site Compliance History Classification:** __ High _X_ Avg. __ Poor **Person Compliance History Classification:** __ High _X_ Avg. __ Poor **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Imperial Homes submitted a Notice of Intent to the TCEQ on August 10, 2006 and obtained a TPDES CGP TXR150000 for storm water discharges associated with construction activities on August 11, 2006.

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	18-Sep-2006				
PCW	25-Oct-2006	Screening	28-Sep-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Imperial Homes Texas, Ltd.		
Reg. Ent. Ref. No.	RN105025308		
Facility/Site Region	12-Houston	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	31340	No. of Violations	1
Docket No.	2006-1837-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Catherine Albrecht
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* $1,000

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

Notes: The respondent is an average performer with no compliance history enhancement.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The respondent does not meet culpability criteria.

Good Faith Effort to Comply 25% Reduction *Subtotal 5* -$250

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

Notes: The respondent achieved compliance on August 11, 2006.

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

**Capped at the Total EB $ Amount*

Total EB Amounts	$319
Approx. Cost of Compliance	$2,000

SUM OF SUBTOTALS 1-7 Final Subtotal $750

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 $750

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $750

DEFERRAL 20% Reduction Adjustment -$150

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 $600

Screening Date 28-Sep-2006 **Docket No.** 2006-1837-WQ-E **PCW**

Respondent Imperial Homes Texas, Ltd. *Policy Revision 2 (September 2002)*

Case ID No. 31340 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN105025308

Media [Statute] Water Quality

Enf. Coordinator Catherine Albrecht

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%
		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) **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 The respondent is an average performer with no compliance history enhancement.

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

PCW

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

Screening Date	28-Sep-2006
Docket No.	2006-1837-WQ-E
Respondent	Imperial Homes Texas, Ltd.
Case ID No.	31340
Reg. Ent. Reference No.	RN105025308
Media [Statute]	Water Quality
Enf. Coordinator	Catherine Albrecht
Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)
Secondary Rule Cite(s)	
Violation Description	Failure to obtain a Texas Pollutant Discharge Elimination System Construction General Permit (CGP) TXR150000 for authorization to discharge storm water from home construction activities.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule was not met by not obtaining a general stormwater discharge permit.

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events: 1

mark only one use a small x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One monthly event is recommended from the investigation date of August 8, 2006 to the date of compliance on August 11, 2006.

Economic Benefit (EB) for this violation

Estimated EB Amount $319

Statutory Limit Test

Violation Final Penalty Total $750

This violation Final Assessed Penalty (adjusted for limits) $750

Economic Benefit Worksheet

Respondent: Imperial Homes Texas, Ltd.
Case ID No.: 31340
Reg. Ent. Reference No.: RN105025308
Media [Statute]: Water Quality
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				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs	$2,000	03-Jun-2003	11-Aug-2006	3.2	$319	n/a	$319
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated costs of preparing and submitting a Notice of Intent registration for a TPDES CGP TXR150000. Date required is the date the TPDES CGP was required. Final date is the date of compliance.

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: $2,000

TOTAL: $319

Compliance History

Customer/Respondent/Owner-Operator: CN602545659 Imperial Homes Texas, Ltd.

Classification: AVERAGE BY DEFAULT
Rating: 3.01

Regulated Entity: RN105025308 SPRING CREEK ESTATES

Classification: AVERAGE BY DEFAULT
Site Rating: 3.01

ID Number(s):

Location: South of Brown Road and west of Highway 249 on Orchard Grove Drive, Harris Co.

Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: September 27, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 27, 2001 to September 27, 2006

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Catherine Albrecht Phone: (713)767-3672

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
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.)
N/A

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
IMPERIAL HOMES TEXAS, LTD.	§	
RN105025308	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1837-WQ-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 Imperial Homes Texas, Ltd. ("Imperial Homes") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Imperial Homes appear before the Commission and together stipulate that:

1. Imperial Homes owns and operates a home construction site in Spring Creek Estates located south of Brown Road and west of Highway 249 on Orchard Grove Drive in Harris County, Texas (the "Site").

2. Imperial Homes has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.

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

4. Imperial Homes received notice of the violations alleged in Section II ("Allegations") on or about September 16, 2006.

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

6. An administrative penalty in the amount of Seven Hundred Fifty Dollars ($750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Imperial Homes has paid Six Hundred Dollars ($600) of the administrative penalty and One Hundred Fifty Dollars ($150) is deferred contingent upon Imperial Homes' 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 Imperial Homes fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Imperial Homes 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 Imperial Homes 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 Imperial Homes submitted a Notice of Intent to the TCEQ on August 10, 2006 and obtained a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") TXR150000 for storm water discharges associated with construction activities on August 11, 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 Imperial Homes 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, Imperial Homes is alleged to have failed to obtain a TPDES CGP TXR150000 for authorization to discharge storm water from home construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on August 8, 2006.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Imperial Homes pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Imperial Homes' 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: Imperial Homes Texas, Ltd., Docket No. 2006-1837-WQ-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 Imperial Homes. Imperial Homes 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 Imperial Homes 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 Imperial Homes, or three days after the date on which the Commission mails notice of the Order to Imperial Homes, 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

3/2/07

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 10, 2006

Date

Fred Schweers, Vice President
Imperial Homes, Inc., General Partner

Name (Printed or typed)
Authorized Representative of
Imperial Homes Texas, Ltd.

Fred Schweers, Vice President
Imperial Homes, Inc., General Partner

Title

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.