

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-2065-EAQ-E **TCEQ ID:** RN105079842 **CASE NO.:** 31846

RESPONDENT NAME: Capital City-Bee Caves, Ltd.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Bee Cave West, at the southeast corner of Farm-to-Market Road 2244 and Knollwood Drive, Travis County</p> <p>TYPE OF OPERATION: Construction</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 14, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cari-Michel LaCaille, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-1387; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896 TCEQ Field Investigator: Ms. Lena Hoffman, Austin Regional Office, MC R-11, (512) 339-2929 Respondent: Mr. Christopher H. Whitworth, President, Capital City-Bee Caves, Ltd., 1717 West 6th Street, Suite 370, Austin, Texas 78703 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

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: November 6, 2006</p> <p>Date of NOE Relating to this Case: November 10, 2006 (NOB)</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 ("CZP") prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the investigator observed evidence of construction activity on a combined area greater than five acres [30 TEX. ADMIN. CODE § 213.23(a)(1)].</p>	<p>Total Assessed: \$31,500</p> <p>Total Deferred: \$6,300 <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: \$25,200</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <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 Capital City-Bee Caves has submitted an application for the Edwards Aquifer CZP which was approved by the Executive Director on November 10, 2006.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

DATES	Assigned	20-Nov-2006			
	PCW	5-Dec-2006	Screening	4-Dec-2006	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Capital City-Bee Caves, Ltd.
Reg. Ent. Ref. No.	RN105079842
Facility/Site Region	11-Austin
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	31846	No. of Violations	1
Docket No.	2006-2065-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Cari-Michel La Calle
Multi-Media		EC's Team	EnforcementTeam 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Reduction **Subtotal 5**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="text"/>	(mark with x)

Notes

Total EB Amounts **Subtotal 6**
Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 4-Dec-2006

Docket No. 2006-2065-EAQ-E

PCW

Respondent Capital City-Bee Caves, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 31846

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN105079842

Media [Statute] Edwards Aquifer

Enf. Coordinator Carl-Michel La Caille

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 judgments 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 submitted)	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 has not had any other enforcement actions within the last five years.

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

Screening Date 4-Dec-2006

Docket No. 2006-2065-EAQ-E

PCW

Respondent Capital City-Bee Caves, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 31846

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN105079842

Media [Statute] Edwards Aquifer

Enf. Coordinator Cari-Michel La Caille

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 213.23(a)(1)

Violation Description

Failed 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 November 6, 2006. Specifically, the investigator observed evidence of construction activity on a combined area greater than five acres.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 42

42 Number of violation days

mark only one with an x	daily	x
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

Forty-Two daily events are recommended from the earliest known date of construction activity, September 29, 2006, to the date the CZP was approved, November 10, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$31,500

This violation Final Assessed Penalty (adjusted for limits) \$31,500

Economic Benefit Worksheet

Respondent: Capital City-Bee Caves, Ltd.
Case ID No.: 31846
Reg. Ent. Reference No.: RN105079842
Media: 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
No commas or \$							

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	29-Sep-2006	10-Nov-2006	0.1	\$23	n/a	\$23
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Cost reflects the amount to prepare and submit a Edwards Aquifer Contributing Zone Plan ("CZP"). The date required is the earliest known date of construction activity 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

\$23

Compliance History

Customer/Respondent/Owner-Operator:	CN602970881	Capital City - Bee Caves, Ltd.	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN105079842	BEE CAVE WEST	Classification:	Site Rating:
ID Number(s):	EDWARDS AQUIFER	REGISTRATION	11-06092902	
Location:	SE CORNER OF FM 2244 & KNOLLWOOD DR			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	December 04, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 04, 2001 to December 04, 2006			

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

Name: Cari-Michel La Caille Phone: 512-239-1387

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 1 11/13/2006 (519061)
 - 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
ENFORCEMENT ACTION
CONCERNING
CAPITAL CITY-BEE CAVES, LTD.
RN105079842**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2006-2065-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 Capital City-Bee Caves, Ltd. ("Capital City-Bee Caves") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Capital City-Bee Caves appear before the Commission and together stipulate that:

1. Capital City-Bee Caves is conducting construction activities located at the southeast corner of Farm-to-Market Road 2244 and Knollwood Drive, Travis County, Texas (the "Site").
2. This Site is regulated under the Edwards Aquifer rules and is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Capital City-Bee Caves agree that the Commission has jurisdiction to enter this Agreed Order, and that Capital City-Bee Caves is subject to the Commission's jurisdiction.
4. Capital City-Bee Caves received notice of the violations alleged in Section II ("Allegations") on or about November 15, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Capital City-Bee Caves of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirty-One Thousand Five Hundred Dollars (\$31,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Capital City-Bee Caves has paid Twenty-Five Thousand Two Hundred Dollars

...the ... of ... and ... of ...

(\$25,200) of the administrative penalty and Six Thousand Three Hundred Dollars (\$6,300) is deferred contingent upon Capital City-Bee Caves' 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 Capital City-Bee Caves fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Capital City-Bee Caves 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 Capital City-Bee Caves 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 Capital City-Bee Caves has submitted an application for the Edwards Aquifer Contributing Zone Plan which was approved by the Executive Director on November 10, 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 Capital City-Bee Caves 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 operators of the Site, Capital City-Bee Caves 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). Specifically, the investigator observed evidence of construction activity on a combined area greater than five acres, as documented during an investigation conducted on November 6, 2006.

III. DENIALS

Capital City-Bee Caves generally denies each allegation in Section II ("Allegations").

The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

Next, the document outlines the various methods used to collect and analyze data. This includes both qualitative and quantitative approaches, as well as the use of advanced statistical techniques.

The following section details the results of the study, highlighting key findings and trends. It notes that there is a significant correlation between the variables being studied, which supports the initial hypothesis.

In conclusion, the study has provided valuable insights into the relationship between the variables. The findings suggest that further research is needed to explore the underlying mechanisms and to test the results in a broader context.

The document also includes a list of references and a bibliography, citing the works of other researchers in the field. This provides a foundation for the study and allows for further exploration of the topic.

Finally, the document provides a summary of the key points and a final conclusion. It reiterates the importance of the findings and the need for continued research in this area.

The author expresses their gratitude to the participants and the funding agency for their support. They also acknowledge the limitations of the study and the need for future research to address these issues.

The document is signed by the author, who is a member of the research team. The date of completion is also provided.

The document is intended for use as a reference and for the dissemination of research findings. It is available for public access and is subject to the terms of the Creative Commons Attribution-NonCommercial-ShareAlike license.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Capital City-Bee Caves pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Capital City-Bee Caves' 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: Capital City-Bee Caves, Ltd., Docket No. 2006-2065-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 Capital City-Bee Caves. Capital City-Bee Caves is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Capital City-Bee Caves 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 Capital City-Bee Caves, or three days after the date on which the Commission mails notice of the Order to Capital City-Bee Caves, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Handwritten title or section heading in the center of the page.

First paragraph of handwritten text, starting with a capital letter.

Second paragraph of handwritten text, possibly a continuation or a separate point.

Third paragraph of handwritten text, continuing the narrative or argument.

Fourth paragraph of handwritten text, showing further development of the content.

Fifth paragraph of handwritten text, providing more detail or examples.

Sixth paragraph of handwritten text, possibly concluding a section.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Zedler
For the Executive Director

7/11/07
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.

Christopher H. Whitworth
Signature

03/01/07
Date

By: Capital City GP Corp., its general partner

Christopher H. Whitworth
Name (Printed or typed)
Authorized Representative of
Capital City-Bee Caves, Ltd.

President
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.

MEMORANDUM

TO: [Name]

FROM: [Name]

SUBJECT: [Subject]

DATE: [Date]

1. [Text]

[Text]