EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-0074-EAQ-E **TCEQ ID:** RN104792163 **CASE NO.:** 29032

RESPONDENT NAME: Christopher Milam and Keith John Schoenfelt dba The Preserve at Lost Gold Cave

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	X EDWARDS AQUIFER

SITE WHERE VIOLATION(S) OCCURRED: The Preserve at Lost Gold Cave, 4000 Stoneridge Road, Austin, Travis County

TYPE OF OPERATION: Residential homebuilder

SMALL BUSINESS: X **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 Respondents have expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on July 1, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Colin Barth, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0086; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468

Respondent: Mr. Keith Schoenfelt and Mr. Christopher Milam, Partners of Stoneridge Joint Venture, 1500 Village West, Austin, Texas 78733

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 _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** December 15, 2005 **Date of NOE Relating to this Case:** March 22, 2006 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **WATER** Failed to obtain approval of an Edwards Aquifer Protection Plan prior to the commencement of construction on the Site located on the Edwards Aquifer Recharge Zone. Specifically, Mr. Milam and Mr. Schoenfelt began construction on approximately 3.5 acres prior to receiving Commission approval [30 TEX. ADMIN. CODE § 213.4(a)(1)].	**Total Assessed:** $9,750 **Total Deferred:** $1,950 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $7,800 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** __ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that on October 7, 2005, Mr. Milam and Mr. Schoenfelt submitted an Edwards Aquifer Protection Plan that was approved by the commission on January 10, 2006.

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	27-Mar-2006				
PCW	08-Jun-2006	Screening	05-Apr-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Christopher Milam and Keith John Schoenfelt dba The Preserve at Lost Gold Cave		
Reg. Ent. Ref. No.	RN104792163		
Facility/Site Region	11-Austin	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	29032	No. of Violations	1
Docket No.	2006-0074-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Colin Barth
Multi-Media		EC's Team	Enforcement Team 8
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $13,000

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 respondents have no record of any previous NOVs or Orders at this site in the past five years.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The respondents did not meet the culpability criteria.

Good Faith Effort to Comply 25% Reduction *Subtotal 5* -$3,250

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

Notes: The Edwards Aquifer Protection Plan was approved January 10, 2006.

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

**Capped at the Total EB $ Amount*

Total EB Amounts	$36
Approx. Cost of Compliance	$10,000

SUM OF SUBTOTALS 1-7 Final Subtotal $9,750

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 $9,750

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $9,750

DEFERRAL 20% Reduction Adjustment -$1,950

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 $7,800

Screening Date 05-Apr-2006 **Docket No.** 2006-0074-EAQ-E **PCW**

Respondent Christopher Milam and Keith John Schoenfelt dba The Preserve at Lost Gold Cave *ember 2002)*

Case ID No. 29032 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN104792163

Media [Statute] Edwards Aquifer

Enf. Coordinator Colin Barth

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%
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)

N/A

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

>> Compliance History Summary

Compliance History Notes The respondents have no record of any previous NOVs or Orders at this site in the past five years.

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

PCW

Screening Date 05-Apr-2006 **Docket No.** 2006-0074-EAQ-E

Respondent Christopher Milam and Keith John Schoenfelt dba The Preserve at Lost Gold Cave

ember 2002)

Case ID No. 29032

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104792163

Media [Statute] Edwards Aquifer

Enf. Coordinator Colin Barth

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1)

Secondary Rule Cite(s)

Violation Description Failure to obtain approval of an Edwards Aquifer Protection Plan prior to the commencement of construction on approximately 3.5 acres located on the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on December 15, 2005.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

OR

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment -$9,500

Base Penalty Subtotal $500

Violation Events

Number of Violation Events 26

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $13,000

Twenty-six single events are recommended from the December 15, 2005 investigation date to the January 10, 2006 date of compliance.

Economic Benefit (EB) for this violation

Estimated EB Amount $36

Statutory Limit Test

Violation Final Penalty Total $9,750

This violation Final Assessed Penalty (adjusted for limits) $9,750

Economic Benefit Worksheet

Respondent Christopher Milam and Keith John Schoenfelt dba The Preserve at Lost Gold Cave
Case ID No. 29032
Reg. Ent. Reference No. RN104792163
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				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs	$10,000	15-Dec-2005	10-Jan-2006	0.1	$36	n/a	$36
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs The delayed costs include the amount to prepare, submit, and receive approval of an Edwards Aquifer Protection Plan, including all associated fees, calculated from the date the violation was discovered to 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 $10,000

TOTAL $36

Compliance History

Customer/Respondent/Owner-Operator:	CN601960347	SCHOENFELT, KEITH JOHN	Classification:	Rating:
Regulated Entity:	RN104792163	THE PRESERVE AT LOST GOLD CAVE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	EDWARDS AQUIFER	REGISTRATION		11-05100701
Location:	4000 STONERIDGE RD		Rating Date: September 01 05	Repeat Violator: NO
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	April 05, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 04, 2001 to April 05, 2006			

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

Name: Colin Barth Phone: 512 239 0086

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 01/13/2006 (450353)

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

Compliance History

Customer/Respondent/Owner-Operator:	CN602992026	MILAM, CHRISTOPHER	Classification:	Rating:
Regulated Entity:	RN104792163	THE PRESERVE AT LOST GOLD CAVE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	EDWARDS AQUIFER		REGISTRATION	11-05100701
Location:	4000 STONERIDGE RD		Rating Date: 9/1/2005 Repeat Violator: NO	
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 29, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 29, 2001 to March 29, 2006			

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

Name: Colin Barth Phone: 512-239-0086

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 01/13/2006 (450353)

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	§	
CHRISTOPHER MILAM AND KEITH	§	**TEXAS COMMISSION ON**
JOHN SCHOENFELT DBA THE	§	
PRESERVE AT LOST GOLD CAVE	§	**ENVIRONMENTAL QUALITY**
RN104792163		

AGREED ORDER
DOCKET NO. 2006-0074-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 Christopher Milam and Keith John Schoenfelt dba The Preserve at Lost Gold Cave ("Mr. Milam and Mr. Schoenfelt") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Milam and Mr. Schoenfelt appear before the Commission and together stipulate that:

1. Mr. Milam and Mr. Schoenfelt began construction activities for single family residential developments located at 4000 Stoneridge Road in Austin, Travis County, Texas (the "Site").

2. Mr. Milam and Mr. Schoenfelt have 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 Mr. Milam and Mr. Schoenfelt agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Milam and Mr. Schoenfelt are subject to the Commission's jurisdiction.

4. Mr. Milam and Mr. Schoenfelt received notice of the violations alleged in Section II ("Allegations") on or about March 27, 2006.

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

6. An administrative penalty in the amount of Nine Thousand Seven Hundred Fifty Dollars ($9,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

Mr. Milam and Mr. Schoenfelt have paid Seven Thousand Eight Hundred Dollars ($7,800) of the administrative penalty and One Thousand Nine Hundred Fifty Dollars ($1,950) is deferred contingent upon Mr. Milam and Mr. Schoenfelt'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 Mr. Milam and Mr. Schoenfelt fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Milam and Mr. Schoenfelt 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 Mr. Milam and Mr. Schoenfelt 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 on October 7, 2005, Mr. Milam and Mr. Schoenfelt submitted an Edwards Aquifer Protection Plan that was approved by the commission on January 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 Mr. Milam and Mr. Schoenfelt have 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 owners of the Site, Mr. Milam and Mr. Schoenfelt are alleged to have failed to obtain approval of an Edwards Aquifer Protection Plan prior to the commencement of construction on the Site located on the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on December 15, 2005. Specifically, Mr. Milam and Mr. Schoenfelt began construction on approximately 3.5 acres prior to receiving Commission approval.

III. DENIALS

Mr. Milam and Mr. Schoenfelt generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Milam and Mr. Schoenfelt pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Milam and Mr. Schoenfelt'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: Christopher Milam and Keith John Schoenfelt dba The Preserve at Lost Gold Cave, Docket No. 2006-0074-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. Mr. Milam and Mr. Schoenfelt are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Milam and Mr. Schoenfelt. Mr. Milam and Mr. Schoenfelt are 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. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Milam and Mr. Schoenfelt 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.

5. 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.

6. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Milam and Mr. Schoenfelt, or three days after the date on which the Commission mails notice of the Order to Mr. Milam and Mr. Schoenfelt, 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

Date 8/20/2007

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

Date 5-09-07

Name (Printed or typed)
Authorized Representative of
Christopher Milam dba The Preserve at Lost Gold Cave

Title PARTNER
AGENT for Betty R Bro

Signature

Date 4-26-2007

KEITH SCHOENFELT
Name (Printed or typed)
Authorized Representative of
Keith John Schoenfelt dba The Preserve at Lost Gold Cave

Title PARTNER
STONERIDGE JOINT VENTURE

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.