

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0446-WR-E **TCEQ ID:** RN104841085 **CASE NO.:** 33040

RESPONDENT NAME: LGI Land, Ltd.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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 checked="" type="checkbox"/> WATER RIGHTS	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: LGI Land Waterstone Estates, located on County Road 409, approximately one mile north of Farm-to-Market Road 1827, near Altoga, Collin County</p> <p>TYPE OF OPERATION: Land development business</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Three complaints were received on February 12, 2007, alleging that LGI Land was pumping water out of Stiff Creek and conducting land excavation activities. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Complaints were received but the complainants have not expressed the desire to protest this action or speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 16, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Thomas Lipar, Registered Agent, LGI Land, Ltd., 19221 Interstate 45 South, Suite 320, Conroe, Texas 77385 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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: February 12, 2007</p> <p>Date of Investigation Relating to this Case: February 21, 2007</p> <p>Date of NOE Relating to this Case: February 26, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation for compliance with the water rights program. One significant program violation was observed.</p> <p>WATER</p> <p>Failure to obtain a permit from the Commission authorizing the appropriation of state water prior to pumping water from a reservoir on Stiff Creek to use for commercial construction and land development purposes at the Site [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121].</p>	<p>Total Assessed: \$1,499</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,499</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: This is a Findings Order because it involves an unauthorized diversion of state water which deprived another property owner water for his cattle and resulted in economic loss.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent ceased all unauthorized appropriation of state water from Stiff Creek on February 22, 2007.</p>

Additional ID No(s): None



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

DATES	Assigned	5-Mar-2007	Screening	22-Mar-2007	EPA Due	
	PCW	23-Mar-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	LGI Land, Ltd.		
Reg. Ent. Ref. No.	RN104841085		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	33040	No. of Violations	1	
Docket No.	2007-0446-WR-E	Order Type	Findings	
Media Program(s)	Water Rights	Enf. Coordinator	Rebecca Clausewitz	
Multi-Media		EC's Team	EnforcementTeam 2	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,250
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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	5% Enhancement	Subtotals 2, 3, & 7	\$62
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Notes: The enhancement is due to one prior Notice of Violation ("NOV") containing a violation that is the same as the violation in the current enforcement action.

Culpability	Yes	25% Enhancement	Subtotal 4	\$312
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Notes: The Respondent was provided literature regarding water rights on August 9, 2006 stating that a water rights permit must be obtained prior to using or diverting state water.

Good Faith Effort to Comply	10% Reduction	Subtotal 5	\$125
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	Before NOV	NOV to EDP RP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The Respondent achieved compliance on February 22, 2007.

	Total EB Amounts	\$0	0% Enhancement*	Subtotal 6	\$0
	Approx. Cost of Compliance	\$2,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,499
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:		Final Penalty Amount	\$1,499
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STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$1,499
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended with a findings order.

PAYABLE PENALTY	\$1,499
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Screening Date 22-Mar-2007

Docket No. 2007-0446-WR-E

PCW

Respondent LGI Land, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33040

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN104841085

Media [Statute] Water Rights

Enf. Coordinator Rebecca Clausewitz

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were 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%
<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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The enhancement is due to one prior Notice of Violation ("NOV") containing a violation that is the same as the violation in the current enforcement action.

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

Screening Date 22-Mar-2007

Docket No. 2007-0446-WR-E

PCW

Respondent LGI Land, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 33040

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN104841085

Media [Statute] Water Rights

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.121

Violation Description Failed to obtain a permit from the Commission authorizing the appropriation of state water prior to pumping water from a reservoir on Stiff Creek to use for commercial construction and land development purposes at Water Stone Estates.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		x		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

The unauthorized diversion has caused significant impacts on neighbors and their livestock when the level of Stiff Creek dropped low enough to prevent the watering of livestock and when a neighbor's cattle became loose by passing under a fence that is suspended through Stiff Creek and leaving the neighbor's property.

Adjustment \$3,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 1

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,250

One single event is recommended based on the date of the investigation -- February 21, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,499

This violation Final Assessed Penalty (adjusted for limits) \$1,499

Economic Benefit Worksheet

Respondent: LGI Land, Ltd.
Case ID No.: 33040
Reg. Ent. Reference No.: RN104841085
Media: Water Rights
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	\$2,000	21-Feb-2007	22-Feb-2007	0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs includes the amount to obtain a water rights permit, calculated from the date of the investigation 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

There are no avoided costs associated with this violation.

Approx. Cost of Compliance	\$2,000	TOTAL	\$0
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LGI LAND, LTD.
RN104841085**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0446-WR-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding LGI Land, Ltd. ("LGI Land") under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, through the Enforcement Division, and LGI Land presented this agreement to the Commission.

LGI Land understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, LGI Land agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon LGI Land.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. LGI Land operates a land development business at Water Stone Estates, a residential real estate development site on County Road 409, approximately one mile north of Farm-to-Market Road 1827 near Altoga, Collin County, Texas (the "Site").
2. LGI Land's Site adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(46).
3. During an investigation conducted on February 21, 2007, TCEQ staff documented that LGI Land did not obtain a water rights permit from the Commission prior to pumping state water out of a reservoir on Stiff Creek for use in commercial construction and land development activities at the Site.

4. LGI Land received notice of the violations on or about March 3, 2007.
5. The Executive Director of the TCEQ recognizes that LGI Land ceased all unauthorized appropriation of state water from Stiff Creek on February 22, 2007.

II. CONCLUSIONS OF LAW

1. LGI Land is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 11 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, LGI Land failed to obtain a permit from the Commission authorizing the appropriation of state water prior to pumping state water from a reservoir on Stiff Creek to use for commercial construction and land development purposes at the Site, in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121.
3. Pursuant to TEX. WATER CODE § 11.0842, the Commission has the authority to assess an administrative penalty against LGI Land for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of One Thousand Four Hundred Ninety-Nine Dollars (\$1,499) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 11.0842(c). LGI Land has paid the One Thousand Four Hundred Ninety-Nine Dollar (\$1,499) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. LGI Land is assessed an administrative penalty in the amount of One Thousand Four Hundred Ninety-Nine Dollars (\$1,499) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and LGI Land's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: LGI Land, Ltd., Docket No. 2007-0446-WR-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

3. The provisions of this Agreed Order shall apply to and be binding upon LGI Land. LGI Land is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to LGI Land if the Executive Director determines that LGI Land has not complied with one or more of the terms or conditions in this Agreed Order.
5. 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.
6. This Agreed Order, issued by the Commission, shall not be admissible against LGI Land in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

11/13/2007
Date

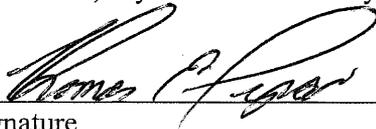
I, the undersigned, have read and understand the attached Agreed Order in the matter of LGI Land, Ltd. I am authorized to agree to the attached Agreed Order on behalf of LGI Land, Ltd., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, LGI Land, Ltd. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- 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;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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


Signature

8/16/07
Date

Thomas E. Lipar
Name (Printed or typed)
Authorized Representative of
LGI Land, Ltd.

Manager of LGI Holdings, LLC,
Title Sole Member of
LGI GP, LLC, General Partner
of LGI Land, Ltd.

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

