

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1199-EAQ-E **TCEQ ID:** RN102759537 **CASE NO.:** 34351

RESPONDENT NAME: Forestar (USA) Real Estate Group Inc.

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"/> EDWARD AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Cibolo Canyon Resort Community, located approximately 3,000 feet east of Bulverde Road, on the south side of Cibolo Canyon Boulevard, Bexar County</p> <p>TYPE OF OPERATION: Mixed-use development construction site</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 December 27, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. John Pierret, Executive Vice President, Forestar (USA) Real Estate Group Inc., 14755 Preston Road, Suite 710, Dallas, Texas 75254 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(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 25, 2007</p> <p>Date of NOV/NOE Relating to this Case: July 9, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to submit and receive approval of modifications to an Edwards Aquifer Protection Plan ("EAPP") prior to performing a regulated activity. Specifically, an EAPP for the Site was approved on June 26, 2002 and a modification was approved on March 29, 2007, which specified that construction of a future 10.03 acre recreational center would require a separate modification to the plan. During the investigation, it was observed that the 10.03 acre site had been cleared and the club house, parking area, soccer field, and swimming pool were under construction, but approval for this regulated activity had not yet been obtained [30 TEX. ADMIN. CODE § 213.4(j)(2) and EAPP File No. 1788.05, Project Description].</p>	<p>Total Assessed: \$1,875</p> <p>Total Deferred: \$375 <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: \$1,500</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 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 on July 9, 2007, the Respondent obtained approval of a modification to the Edwards Aquifer Protection Plan ("EAPP") to develop the 10.03 acre recreational center site.</p>

Additional ID No(s): 13-07041602



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	16-Jul-2007	Screening	31-Jul-2007	EPA Due	
	PCW	31-Jul-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Forestar (USA) Real Estate Group Inc.
Reg. Ent. Ref. No.	RN102759537
Facility/Site Region	13-San Antonio
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	34351	No. of Violations	1	
Docket No.	2007-1199-EAQ-E	Order Type	1660	
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Lynley Doyen	
Multi-Media		EC's Team	EnforcementTeam 1	
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 **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply **Subtotal 5**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes

Total EB Amounts **Subtotal 6**
Approx. Cost of Compliance **0% Enhancement***
*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 **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 31-Jul-2007

Docket No. 2007-1199-EAQ-E

PCW

Respondent Forestar (USA) Real Estate Group Inc.

Policy Revision 2 (September 2002)

Case ID No. 34351

PCW Revision, June 26, 2007

Reg. Ent. Reference No. RN102759537

Media [Statute] Edwards Aquifer

Enf. Coordinator Lynley Doyen

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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Recommend no adjustment to penalty due to average performer classification.

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

Screening Date 31-Jul-2007	Docket No. 2007-1199-EAQ-E	PCW												
Respondent Forestar (USA) Real Estate Group Inc.		<small>Policy Revision 2 (September 2002)</small>												
Case ID No. 34351		<small>PCW Revision June 26, 2007</small>												
Reg. Ent. Reference No. RN102759537														
Media [Statute] Edwards Aquifer														
Enf. Coordinator Lynley Doyen														
Violation Number	1													
Rule Cite(s)	30 Tex. Admin. Code § 213.4(j)(2) and EAPP File No. 1788.05, Project Description													
Violation Description	Failed to submit and receive approval of modifications to an Edwards Aquifer Protection Plan ("EAPP") prior to performing a regulated activity. Specifically, an EAPP for the Site was approved on June 26, 2002 and a modification was approved on March 29, 2007, which specified that construction of a future 10.03 acre recreational center would require a separate modification to the plan. During the investigation, it was observed that the 10.03 acre site had been cleared and the club house, parking area, soccer field, and swimming pool were under construction, but approval for this regulated activity had not yet been obtained.													
	Base Penalty	\$10,000												
>> Environmental, Property and Human Health Matrix														
OR	Release	Harm												
		Major Moderate Minor												
	Actual	<input type="text"/> <input type="text"/> <input type="text"/>												
	Potential	<input type="text"/> <input type="text"/> <input type="text"/>												
		Percent <input type="text" value="0%"/>												
>> Programmatic Matrix														
	Falsification	Major Moderate Minor												
	<input type="text"/>	<input type="text" value="x"/> <input type="text"/> <input type="text"/>												
		Percent <input type="text" value="25%"/>												
Matrix Notes	100% of the rule requirement was not met.													
	Adjustment	\$7,500												
		\$2,500												
Violation Events														
	Number of Violation Events <input type="text" value="1"/>	<input type="text" value="14"/> Number of violation days												
<small>mark only one with an x</small>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text" value="x"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text" value="x"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,500"/>
daily	<input type="text"/>													
monthly	<input type="text" value="x"/>													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text"/>													
	One monthly event is recommended from the investigation date (June 25, 2007) to the date of compliance (July 9, 2007).													
Economic Benefit (EB) for this violation														
	Estimated EB Amount <input type="text" value="\$2"/>	Statutory Limit Test												
		Violation Final Penalty Total <input type="text" value="\$1,875"/>												
	This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,875"/>													

Economic Benefit Worksheet

Respondent Forestar (USA) Real Estate Group Inc.
Case ID No. 34351
Reg. Ent. Reference No. RN102759537
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	\$1,000	25-Jun-2007	9-Jul-2007	0.0	\$2	n/a	\$2
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimate cost associated with preparing, submitting, and obtaining approval to modify an Edwards Aquifer Protection Plan. Date required is the approximate date that construction began. 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

\$1,000

TOTAL

\$2

Compliance History

Customer/Respondent/Owner-Operator:	CN603055799	FORESTAR (USA) REAL ESTATE GROUP INC	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN102759537	CIBOLO CANYON RESORT COMMUNITY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):		EDWARDS AQUIFER EDWARDS AQUIFER EDWARDS AQUIFER	REGISTRATION REGISTRATION REGISTRATION	13-01120502 13-07041602 13-07041602
Location:		APPRX 3,000 FT E OF BULVERDE RD, ON THE S SIDE OF CIBOLO CANYON BLVD, BEXAR CO, TX		Rating Date: 9/1/2006 Repeat Violator: NO
TCEQ Region:		REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:		July 25, 2007		
Agency Decision Requiring Compliance History:		Enforcement		
Compliance Period:		July 25, 2002 to July 25, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name: Lynley Doyen		Phone: 512-239-1364		

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.)
1 07/26/2006 (454689)
2 03/30/2007 (554561)
3 07/11/2007 (557609)
- 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
FORESTAR (USA) REAL ESTATE
GROUP INC.
RN102759537**

§
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§
§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-1199-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 Forestar (USA) Real Estate Group Inc. ("Forestar USA") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Forestar USA appear before the Commission and together stipulate that:

1. Forestar USA owns and operates a mixed-use development construction site located approximately 3,000 feet east of Bulverde Road, on the south side of Cibolo Canyon Boulevard in Bexar County, Texas (the "Site").
2. Forestar USA 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 Forestar USA agree that the Commission has jurisdiction to enter this Agreed Order, and that Forestar USA is subject to the Commission's jurisdiction.
4. Forestar USA received notice of the violations alleged in Section II ("Allegations") on or about July 14, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Forestar USA of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Forestar USA has paid One Thousand Five Hundred Dollars (\$1,500) of the administrative penalty and Three Hundred Seventy-Five Dollars (\$375) is deferred contingent upon Forestar USA'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 Forestar USA fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Forestar USA 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 Forestar USA 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 July 9, 2007, Forestar USA obtained approval of a modification to the Edwards Aquifer Protection Plan ("EAPP") to develop the 10.03 acre recreational center site.
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 Forestar USA 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, Forestar USA is alleged to have failed to submit and receive approval of modifications to an EAPP prior to performing a regulated activity, in violation of 30 TEX. ADMIN. CODE § 213.4(j)(2) and EAPP File No. 1788.05, Project Description, as documented during an investigation conducted on June 25, 2007. Specifically, an EAPP for the Site was approved on June 26, 2002 and a modification was approved on March 29, 2007, which specified that construction of a future 10.03 acre recreational center would require a separate modification to the plan. During the investigation, it was observed that the 10.03 acre site had been cleared and the club house, parking area, soccer field, and swimming pool were under construction, but approval for this regulated activity had not yet been obtained.

III. DENIALS

Forestar USA generally denies each allegation in Section II ("Allegations"). Furthermore, Forestar USA does not acknowledge that it permitted discharge of any waste, nor did it engage in any other act or activity which in itself or in conjunction with any other discharge or activity cause, continue to cause or will cause pollution of any water in the State.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Forestar USA pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Forestar USA'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: Forestar (USA) Real Estate Group Inc., Docket No. 2007-1199-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 Forestar USA. Forestar USA 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 Forestar USA 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 Forestar USA, or three days after the date on which the Commission mails notice of the Order to Forestar USA, 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

12/7/07
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 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 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

10/19/7
Date

JOHN K. PIERRET
Name (Printed or typed)
Authorized Representative of
Forestar (USA) Real Estate Group Inc.

EVP
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.

