

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-0290-WR-E **TCEQ ID:** RN104337746 **CASE NO.:** 35391

**RESPONDENT NAME:** The Golf Club at Circle C, LP

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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"/> WATER RIGHTS
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 7401 State Highway 45, Austin, Travis County</p> <p><b>TYPE OF OPERATION:</b> Golf club</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 1, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Pamela Campbell, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4493; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Chip Gist, General Manager, The Golf Club at Circle C, LP, 7401 State Highway 45, Austin, Texas 78739  <b>Respondent's Attorney:</b> Ms. Robin A. Melvin, Graves Dougherty Hearon &amp; Moody, 401 Congress Avenue, Suite 2200, Austin, Texas 78701</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 8, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> January 4, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failure to obtain a permit to appropriate state water. Specifically, during the November 8, 2007 investigation, the Regional investigator documented that two existing on-channel reservoirs (Reservoir Nos. 4 and 5) at the Site were impounding state water without authorization. These reservoirs are on an unnamed tributary of Danz Creek [TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11].</p> <p>2) Failure to obtain a permit to appropriate state water from an exempt dam or reservoir for nonexempt purposes. Specifically, during the November 8, 2007 investigation, the Regional investigator documented that three exempt impoundments (Reservoir Nos. 1, 2, and 3) at the Site were impounding state water for nonexempt purposes [TEX. WATER CODE § 11.143].</p>	<p><b>Total Assessed:</b> \$10,000</p> <p><b>Total Deferred:</b> \$2,000  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$2,000 (remaining \$6,000 due in 3 monthly payments of \$2,000 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent submitted a permit application to appropriate state water on July 1, 2004.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and</p> <p>b. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to appropriate state water has been obtained or that appropriation of state water has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

<b>DATES</b>	Assigned	7-Jan-2008	Screening	12-Feb-2008	EPA Due	
	PCW	4-Apr-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	The Golf Club at Circle C, LP
Reg. Ent. Ref. No.	RN104337746
Facility/Site Region	11-Austin
Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	35391	No. of Violations	2	
Docket No.	2008-0290-WR-E	Order Type	1660	
Media Program(s)	Water Rights	Enf. Coordinator	Pamela Campbell	
Multi-Media		EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$5,000

## 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 type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/> X	(mark with x)

Notes

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

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

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** 12-Feb-2008

**Docket No.** 2008-0290-WR-E

**PCW**

**Respondent** The Golf Club at Circle C, LP

Policy Revision 2 (September 2002)

**Case ID No.** 35391

PCW Revision January 29, 2008

**Reg. Ent. Reference No.** RN104337746

**Media [Statute]** Water Rights

**Enf. Coordinator** Pamela Campbell

**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 ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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)** 0%

>> **Repeat Violator (Subtotal 3)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

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

>> **Compliance History Summary**

**Compliance History Notes**

No change due to no previous compliance history.

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

<b>Screening Date</b> 12-Feb-2008	<b>Docket No.</b> 2008-0290-WR-E	<b>PCW</b>			
<b>Respondent</b> The Golf Club at Circle C, LP	<small>Policy Revision 2 (September 2002)</small>				
<b>Case ID No.</b> 35391	<small>PCW Revision January 29, 2008</small>				
<b>Reg. Ent. Reference No.</b> RN104337746					
<b>Media [Statute]</b> Water Rights					
<b>Enf. Coordinator</b> Pamela Campbell					
<b>Violation Number</b> <input type="text" value="1"/>					
<b>Rule Cite(s)</b>	Tex. Water Code § 11.121 and 30 Tex. Admin. Code § 297.11				
<b>Violation Description</b>	Failed to obtain a permit to appropriate state water. Specifically, during the November 8, 2007 investigation, the Regional investigator documented that two existing on-channel reservoirs (Reservoir Nos. 4 and 5) at the Site were impounding state water without authorization. These reservoirs are on an unnamed tributary of Danz Creek.				
<b>Base Penalty</b>		<input type="text" value="\$5,000"/>			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
		<b>Percent</b>	<input type="text" value="0%"/>		
<b>&gt;&gt;Programmatic Matrix</b>					
		<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>			<input type="text" value="10%"/>
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>				
		<b>Adjustment</b>		<input type="text" value="\$4,500"/>	
		<input type="text" value="\$500"/>			
<b>Violation Events</b>					
Number of Violation Events		<input type="text" value="8"/>	Number of violation days		
		<input type="text" value="96"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>			
	monthly	<input checked="" type="text" value="x"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
single event	<input type="text"/>				
		<b>Violation Base Penalty</b>			<input type="text" value="\$4,000"/>
<input type="text" value="Eight monthly events (four for each reservoir) are recommended from the investigation date (November 8, 2007) through the screening date (February 12, 2008)."/>					
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
Estimated EB Amount		<input type="text" value="\$6,766"/>	Violation Final Penalty Total		<input type="text" value="\$4,000"/>
			<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$4,000"/>

## Economic Benefit Worksheet

**Respondent** The Golf Club at Circle C, LP  
**Case ID No.** 35391  
**Reg. Ent. Reference No.** RN104337746  
**Media** Water Rights  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$15,332	27-Jun-2003	1-Jun-2009	5.9	\$303	\$6,066	\$6,369
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	\$1,337	27-Jun-2003	1-Jun-2009	5.9	\$397	n/a	\$397
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

These are the permit application fees and engineering fees the Respondent incurred for preparation and submittal of the water rights permit application. The date required is the date the Respondent purchased the Site and the final date is the anticipated 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

\$16,669

TOTAL

\$6,766

<b>Screening Date</b> 12-Feb-2008	<b>Docket No.</b> 2008-0290-WR-E	<b>PCW</b>			
<b>Respondent</b> The Golf Club at Circle C, LP	<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 35391	<i>PCW Revision January 29, 2008</i>				
<b>Reg. Ent. Reference No.</b> RN104337746					
<b>Media [Statute]</b> Water Rights					
<b>Enf. Coordinator</b> Pamela Campbell					
<b>Violation Number</b> <input type="text" value="2"/>					
<b>Rule Cite(s)</b>	Tex. Water Code § 11.143				
<b>Violation Description</b>	Failed to obtain a permit to appropriate state water from an exempt dam or reservoir for nonexempt purposes. Specifically, during the November 8, 2007 investigation, the Regional investigator documented that three exempt impoundments (Reservoir Nos. 1, 2, and 3) at the Site were impounding state water for nonexempt purposes.				
<b>Base Penalty</b>		<input type="text" value="\$5,000"/>			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	<b>Harm</b>			<b>Percent</b>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	<b>Percent</b>
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of the rule requirement was not met.				
<b>Adjustment</b>		<input type="text" value="\$4,500"/>			
<input type="text" value="\$500"/>					
<b>Violation Events</b>					
Number of Violation Events <input type="text" value="12"/>		Number of violation days <input type="text" value="96"/>			
<i>mark only one with an x</i>	daily	<input type="text"/>			
	monthly	x			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
<b>Violation Base Penalty</b> <input type="text" value="\$6,000"/>					
Twelve monthly events (four for each reservoir) are recommended from the investigation date (November 8, 2007) through the screening date (February 12, 2008).					
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b> <input type="text" value="\$0"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$6,000"/>			
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$6,000"/>	

## Economic Benefit Worksheet

**Respondent** The Golf Club at Circle C, LP  
**Case ID No.** 35391  
**Reg. Ent. Reference No.** RN104337746  
**Media** Water Rights  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation no. 1.

**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

12

Approx. Cost of Compliance \$0

TOTAL \$0

## Compliance History

Customer/Respondent/Owner-Operator: CN602665374 The Golf Club at Circle C, LP  
Regulated Entity: RN104337746 11405852301 DR1 WRPERM 5852  
ID Number(s): WATER RIGHTS PERMIT  
Location: 7401 STATE HIGHWAY 45  
AUSTIN, TRAVIS COUNTY  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: March 24, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: March 24, 2003 to March 24, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Pamela Campbell Phone: 512 239-4493

Classification:  
Classification:

Rating:  
Site Rating:  
WRPERM 5852

### 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 01/04/2008 (611208)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - 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  
THE GOLF CLUB AT CIRCLE C, LP  
RN104337746**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-0290-WR-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 The Golf Club at Circle C, LP ("the Respondent") under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Ms. Robin A. Melvin of the law firm of Graves Dougherty Hearon & Moody, appear before the Commission and together stipulate that:

1. The Respondent owns and operates a golf club located at 7401 State Highway 45 in Austin, Travis County, Texas (the "Site").
2. The Respondent'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. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 9, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Ten Thousand Dollars (\$10,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent



has paid Two Thousand Dollars (\$2,000) of the administrative penalty and Two Thousand Dollars (\$2,000) is deferred contingent upon the Respondent'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 the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Dollars (\$6,000) of the administrative penalty shall be payable in three monthly payments of Two Thousand Dollars (\$2,000) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 the Respondent 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 the Respondent submitted a permit application to appropriate state water on July 1, 2004.
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 the Respondent 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, the Respondent is alleged to have:

1. Failed to obtain a permit to appropriate state water, in violation of TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11, as documented during the November 8, 2007 investigation. Specifically, during the November 8, 2007 investigation, the Regional investigator documented that two existing on-channel reservoirs (Reservoir Nos. 4 and 5) at the Site were



impounding state water without authorization. These reservoirs are on an unnamed tributary of Danz Creek.

2. Failed to obtain a permit to appropriate state water from an exempt dam or reservoir for nonexempt purposes, in violation of TEX. WATER CODE § 11.143, as documented during the November 8, 2007 investigation. Specifically, during the November 8, 2007 investigation, the Regional investigator documented that three exempt impoundments (Reservoir Nos. 1, 2, and 3) at the Site were impounding state water for nonexempt purposes.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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: The Golf Club at Circle C, LP, Docket No. 2008-0290-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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and
  - b. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to appropriate state water has been obtained or that appropriation of state water has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for



gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 South IH 35, Suite 100  
Austin, Texas 78704-5700

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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.



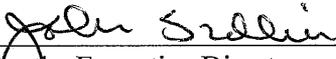
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

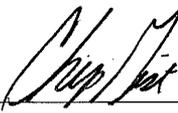
9/4/2008  
\_\_\_\_\_  
Date

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

June 20, 2008  
\_\_\_\_\_  
Date

CHIP GIST  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
The Golf Club at Circle C, LP

GENERAL MANAGER  
\_\_\_\_\_  
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.

