

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2008-0514-WQ-E **TCEQ ID:** RN105470256 **CASE NO.:** 35599**RESPONDENT NAME:** CastleRock Communities, L.P.

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 checked="" 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 type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: CastleRock Communities Briar Tree, 23701 Briar Tree Drive, Porter, Montgomery County</p> <p>TYPE OF OPERATION: Construction</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received on February 6, 2008, alleging that the Respondent was allowing soil from a construction site to wash into streets and storm drains. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received but the complainant has 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 August 4, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Roshondra Lowe, Enforcement Division, Enforcement Team 5, R-12, (713) 767-3553; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Greg Yakim, President, CastleRock Communities, L.P., 7670 Woodway Drive, Houston, Texas 77063 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(s) of Complaints Relating to this Case: February 6, 2008</p> <p>Date of Investigation Relating to this Case: February 15, 2008</p> <p>Date of NOV/NOE Relating to this Case: March 14, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to obtain a Construction General Permit ("CGP") to authorize the discharge of storm water. Specifically, the Respondent was operating without a Storm Water CGP TXR150000 and is constructing five homes within the Briar Tree subdivision, which is considered a common place of development and requires a CGP to be obtained for a large construction site [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p>Total Assessed: \$1,800</p> <p>Total Deferred: \$360 <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: \$1,440</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has submitted an administratively complete Notice of Intent on March 20, 2008.</p>

Additional ID No(s): STW Non-permitted



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

DATES	Assigned	17-Mar-2008		
	PCW	10-Apr-2008	Screening	24-Mar-2008
		EPA Due		

RESPONDENT/FACILITY INFORMATION			
Respondent	CastleRock Communities, L.P.		
Reg. Ent. Ref. No.	RN105470256		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35599	No. of Violations	1
Docket No.	2008-0514-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Roshondra Lowe
Multi-Media		EC's Team	Enforcement Team 5
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **\$2,000**

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: No compliance history adjustment due to no prior compliance history.

Culpability No 0% Enhancement *Subtotal 4* **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction *Subtotal 5* **\$200**

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The Respondent returned to compliance on March 20, 2008 by submitting an administratively complete Notice of Intent.

Total EB Amounts **\$2** 0% Enhancement* *Subtotal 6* **\$0**
 Approx. Cost of Compliance **\$325** *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* **\$1,800**

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% *Adjustment* **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$1,800**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **\$1,800**

DEFERRAL 20% Reduction *Adjustment* **-\$360**

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 **\$1,440**

Screening Date 24-Mar-2008

Docket No. 2008-0514-WQ-E

PCW

Respondent CastleRock Communities, L.P.

Policy Revision 2 (September 2002)

Case ID No. 35599

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105470256

Media [Statute] Water Quality

Enf. Coordinator Roshondra Lowe

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	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No compliance history adjustment due to no prior compliance history.

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

Screening Date	24-Mar-2008	Docket No.	2008-0514-WQ-E	PCW
Respondent	CastleRock Communities, L.P.	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	35599	<i>PCW Revision February 29, 2008</i>		
Reg. Ent. Reference No.	RN105470256			
Media [Statute]	Water Quality			
Enf. Coordinator	Roshondra Lowe			

Violation Number	1
Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)
Violation Description	Failed to obtain a Construction General Permit ("CGP") to authorize the discharge of storm water. Specifically, the Respondent was operating without a Storm Water CGP TXR150000 and is constructing five homes within the Briar Tree subdivision, which is considered a common place of development and requires a CGP to be obtained for a large construction site.
Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	0%	
	Release	Major	Moderate			Minor
	Actual					
	Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent	10%	
		x					
Matrix Notes	100% of the rule requirement was not met					Adjustment	\$9,000

\$1,000

Violation Events

Number of Violation Events	2	Number of violation days	38	Violation Base Penalty	\$2,000												
<i>mark only one with an x</i>	<table border="1"> <tr><td>daily</td><td></td></tr> <tr><td>monthly</td><td>x</td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single event</td><td></td></tr> </table>	daily		monthly	x	quarterly		semiannual		annual		single event					
daily																	
monthly	x																
quarterly																	
semiannual																	
annual																	
single event																	
Two monthly events are recommended from date of investigation on February 15, 2008 to the screening date of March 24, 2008.																	

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount	\$2
Violation Final Penalty Total	\$1,800
This violation Final Assessed Penalty (adjusted for limits)	
\$1,800	

Economic Benefit Worksheet

Respondent: CastleRock Communities, L.P.
 Case ID No. 35599
 Reg. Ent. Reference No. RN105470256
 Media Water Quality
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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				0.0	\$0	n/a	\$0
Other (as needed)	\$325	15-Feb-2008	20-Mar-2008	0.1	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost of developing a Storm Water Pollution Prevention Plan (SWP3) and submitting an administratively complete Notice of Intent. Date required is the investigation date. 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

\$325

TOTAL

\$2

Compliance History

Customer/Respondent/Owner-Operator: CN602717951 CastleRock Communities, L.P. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN105470256 CASTLEROCK COMMUNITIES BRIAR TREE Classification: AVERAGE BY Site Rating: 3.01
ID Number(s): DEFAULT
Location: 23701 BRIAR TREE DRIVE IN PORTER, TEXAS, MONTGOMERY COUNTY Rating Date: September 01 07 Repeat Violator: NO
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: April 07, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 17, 2003 to March 17, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Roshondra Lowe Phone: (713) 767-3553

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
 - 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
CASTLEROCK COMMUNITIES, L.P.
RN105470256**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0514-WQ-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 CastleRock Communities, L.P. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a construction site at 23701 Briar Tree Drive in Porter, Montgomery County, Texas (the "Site").
2. The Respondent 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 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 March 19, 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 One Thousand Eighteen Hundred Dollars (\$1,800) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Four Hundred Forty Dollars (\$1,440) of the

administrative penalty and Three Hundred Sixty Dollars (\$360) is deferred contingent 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.

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 has submitted an administratively complete Notice of Intent on March 20, 2008 for the 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 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 failed to obtain a Construction General Permit ("CGP") to authorize the discharge of storm water, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on February 15, 2008. Specifically, the Respondent was operating without a Storm Water CGP TXR150000 and is constructing five homes within the Briar Tree subdivision, which is considered a common place of development and requires a CGP to be obtained for a large construction site.

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: CastleRock Communities, L.P., Docket No. 2008-0514-WQ-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 the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. 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.
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 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.

CastleRock Communities, L.P.
DOCKET NO. 2008-0514-WQ-E
Page 4

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Johi Indrias

For the Executive Director

8/29/2008

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

Date

Name (Printed or typed)

Title

Authorized Representative of
CastleRock Communities, L.P.

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

