EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0926-WQ-E **TCEQ ID:** RN105229744 **CASE NO.:** 33789

RESPONDENT NAME: King-Isles, Inc. dba King Isles Vista Hermosa

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

SITE WHERE VIOLATION(S) OCCURRED: King Isles Vista Hermosa, 3054 Holly Road, Corpus Christi, Nueces County

TYPE OF OPERATION: Residential subdivision constuction

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on October 29, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-0321; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Ben Gonzales, Project Manager, King-Isles, Inc., 1641 Goldston Road, Corpus Christi, Texas 78409
Mr. Francis L. Youngblood, President, King-Isles, Inc., 1641 Goldston Road, Corpus Christi, Texas 78409

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** May 30, 2007 **Date of NOV/NOE Relating to this Case:** May 31, 2007 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **WATER** Failed to obtain authorization under the Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit to discharge storm water associated with construction activities to waters of the state [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(1)].	**Total Assessed:** $1,000 **Total Deferred:** $200 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $800 **Site Compliance History Classification** __ **High** ___ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order: i. Develop and implement a storm water pollution prevention plan in accordance with the requirements of Texas Pollutant Discharge Elimination System general permit TXR050000; and ii. Submit an administratively complete Notice of Intent for authorization to discharge under TPDES GP TXR050000. b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision May 25, 2007*

TCEQ

DATES						
Assigned	4-Jun-2007					
PCW	13-Jun-2007	Screening	12-Jun-2007	EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	King-Isles, Inc. dba King Isles Vista Hermosa		
Reg. Ent. Ref. No.	RN105229744		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33789	No. of Violations	1
Docket No.	2007-0926-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Harvey Wilson
Multi-Media		EC's Team	EnforcementTeam 3
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

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

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 enhancement is recommended.

Culpability — No — 0% Enhancement — *Subtotal 4*: $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5*: $0

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

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts	$29
Approx. Cost of Compliance	$1,000

0% Enhancement* — **Capped at the Total EB $ Amount* — *Subtotal 6*: $0

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $1,000

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment*: $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount: $1,000

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $1,000

DEFERRAL — 20% Reduction — *Adjustment*: -$200

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: $800

Screening Date 12-Jun-2007 **Docket No.** 2007-0926-WQ-E **PCW**

Respondent King-Isles, Inc. dba King Isles Vista Hermosa *Policy Revision 2 (September 2002)*

Case ID No. 33789 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN105229744

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

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 enhancement is recommended.

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

Screening Date 12-Jun-2007 **Docket No.** 2007-0926-WQ-E **PCW**

Respondent King-Isles, Inc. dba King Isles Vista Hermosa *Policy Revision 2 (September 2002)*

Case ID No. 33789 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN105229744

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(a)(1)

Violation Description Failed to obtain authorization under the Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit to discharge storm water associated with construction activities to waters of the state. Specifically, the Respondent was operating without a permit at the time of the May 30, 2007 investigation.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirements were not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 — 13 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One monthly event is recommended from the investigation date of May 30, 2007, until the screening date of June 12, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $29

Statutory Limit Test

Violation Final Penalty Total $1,000

This violation Final Assessed Penalty (adjusted for limits) $1,000

Economic Benefit Worksheet

Respondent King-Isles, Inc. dba King Isles Vista Hermosa
Case ID No. 33789
Reg. Ent. Reference No. RN105229744
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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)	$1,000	30-May-2007	31-Dec-2007	0.6	$29	n/a	$29
Notes for DELAYED costs	The estimated cost of preparing a Storm Water Pollution Prevention Plan and preparing and submitting the Notice of Intent. Date Required is the date the violation was first documented. Final Date is the estimated 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** $29

Compliance History

Customer/Respondent/Owner-Operator:	CN602917254	King-Isles, Inc.	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105229744	KING ISLES VISTA HERMOSA	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01

ID Number(s):

Location: 3054 HOLLY RD, CORPUS CHRISTI, TX, 78415 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: October 30, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 12, 2002 to June 12, 2007

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

Name: Harvey Wilson Phone: 512/239-0321

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 05/31/2007 (562519)

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	
KING-ISLES, INC. DBA KING ISLES	§	**TEXAS COMMISSION ON**
VISTA HERMOSA	§	
RN105229744	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0926-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 King-Isles, Inc. dba King Isles Vista Hermosa ("King Isles") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and King Isles appear before the Commission and together stipulate that:

1. King Isles owns and operates a residential subdivision constuction business located at 3054 Holly Road in Corpus Christi, Nueces County, Texas (the "Site").

2. King Isles has discharged construction waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. The Commission and King Isles agree that the Commission has jurisdiction to enter this Agreed Order, and that King Isles is subject to the Commission's jurisdiction.

4. King Isles received notice of the violations alleged in Section II ("Allegations") on or about June 5, 2007.

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

6. An administrative penalty in the amount of One Thousand Dollars ($1,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). King Isles has

paid Eight Hundred Dollars ($800) of the administrative penalty and Two Hundred Dollars ($200) is deferred contingent upon King Isles' 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 King Isles fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require King Isles 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 King Isles have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. 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 King Isles has not complied with one or more of the terms or conditions in this Agreed Order.

10. 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.

11. 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 of the Site, King Isles is alleged to have failed to obtain authorization under the Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit to discharge storm water associated with construction activities to waters of the state, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(1), as documented during an investigation conducted on May 30, 2007.

III. DENIALS

King Isles generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that King Isles pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and King Isles' 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: King-Isles, Inc. dba King Isles Vista Hermosa, Docket No. 2007-0926-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. It is further ordered that King Isles shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order:

      i. Develop and implement a storm water pollution prevention plan, in accordance with the requirements of TPDES general permit TXR050000; and

      ii. Submit an administratively complete Notice of Intent for authorization to discharge under TPDES general permit TXR050000 to:

         Texas Commission on Environmental Quality
         Storm Water & General Permits Team; MC - 228
         P. O. Box 13087
         Austin, TX 78711-3087

   b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2. a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

      "I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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 169A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon King Isles. King Isles 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 King Isles 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, King Isles' failure to comply is not a violation of this Agreed Order. King Isles shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. King Isles shall notify the Executive Director within seven days after King Isles 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 King Isles shall be made in writing to the Executive Director. Extensions are not effective until King Isles 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 King Isles 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 King Isles, or three days after the date on which the Commission mails notice of the Order to King Isles, 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

12/14/07
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

December 4, 2007
Date

Francis L. Youngblood
Name (Printed or typed)
Authorized Representative of
King-Isles, Inc. dba King Isles Vista Hermosa

President
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.