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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1258-EAQ-E TCEQ ID: RN105225932 CASE NO.: 34364
RESPONDENT NAME: Gruene Rapids Condominiums, LLC

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"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: Gruene Rapids Condominiums, north side of Edwards Boulevard, 5,000 feet east of River Road, Comal County</p> <p>TYPE OF OPERATION: Construction for a proposed multi-family residential project</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input 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 January 21, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Troy D. Burch, Registered Agent/Member, Gruene Rapids Condominiums, LLC, 524 South Seguin Avenue, New Braunfels, Texas 78130 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: May 16, 2007</p> <p>Date of NOV/NOE Relating to this Case: July 23, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. One violation was documented.</p> <p>WATER</p> <p>Failure to obtain approval of an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$25,500</p> <p>Total Deferred: \$5,100 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$1,700 (remaining \$18,700 due in 11 monthly payments of \$1,700 each)</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 submitted an application for the Edwards Aquifer WPAP which was approved by the Executive Director on July 23, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	30-Jul-2007	Screening	2-Aug-2007	EPA Due	
	PCW	6-Aug-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Gruene Rapids Condominiums, LLC
Reg. Ent. Ref. No.	RN105225932
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34364	No. of Violations	1	
Docket No.	2007-1258-EAQ-E	Order Type	1660	
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Samuel Short	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$34,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes
No enhancement recommended because no NOVs or Agreed Orders were issued within the last five years.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes
The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	25% Reduction	Subtotal 5	\$8,500
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes
The Respondent submitted an application for the Edwards Aquifer Water Pollution Abatement Plan which was approved by the Executive Director on July 23, 2007.

	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$37	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$25,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$25,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$25,500
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DEFERRAL	20% Reduction	Adjustment	-\$5,100
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes
Deferral offered for expedited settlement.

PAYABLE PENALTY	\$20,400
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Screening Date 2-Aug-2007

Docket No. 2007-1258-EAQ-E

PCW

Respondent Gruene Rapids Condominiums, LLC

Policy Revision 2 (September 2002)

Case ID No. 34364

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN105225932

Media [Statute] Edwards Aquifer

Enf. Coordinator Samuel Short

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%
<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)**

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 recommended because no NOVs or Agreed Orders were issued within the last five years.

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

Screening Date 2-Aug-2007	Docket No. 2007-1258-EAQ-E	PCW
Respondent Gruene Rapids Condominiums, LLC	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 34364	<i>PCW Revision June 26, 2007</i>	
Reg. Ent. Reference No. RN105225932		
Media [Statute] Edwards Aquifer		
Enf. Coordinator Samuel Short		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 213.4(a)(1)	
Violation Description	Failed to obtain approval of an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on May 16, 2007. Specifically, the investigator observed evidence of the construction activity on a combined area of less than five acres.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	Percent <input type="text" value="5%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					Percent <input type="text" value="0%"/>
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.				

Adjustment

Violation Events

Number of Violation Events	<input type="text" value="68"/>	<input type="text" value="68"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$34,000"/>
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text" value="x"/>	

Sixty-eight single events are recommended from the date of the investigation on May 16, 2007, to the date the WPAP was approved on July 23, 2007.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$37"/>	Violation Final Penalty Total <input type="text" value="\$25,500"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$25,500"/>	

Economic Benefit Worksheet

Respondent: Gruene Rapids Condominiums, LLC
Case ID No.: 34364
Reg. Ent. Reference No.: RN105225932
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
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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	\$4,000	16-May-2007	23-Jul-2007	0.2	\$37	n/a	\$37
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a WPAP. The date required is the date of the investigation and the final date is the date the WPAP was approved.

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

\$4,000

TOTAL

\$37

**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
GRUENE RAPIDS CONDOMINIUMS,
LLC
RN105225932**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2007-1258-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 Gruene Rapids Condominiums, LLC ("Gruene Rapids") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Gruene Rapids appear before the Commission and together stipulate that:

1. Gruene Rapids is conducting construction activities for a proposed multi-family residential project on the north side of Edwards Boulevard, 5000 feet east of River Road in Comal County, Texas (the "Site").
2. The Site is regulated under the Edwards Aquifer rules and is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Gruene Rapids agree that the Commission has jurisdiction to enter this Agreed Order, and that Gruene Rapids is subject to the Commission's jurisdiction.
4. Gruene Rapids received notice of the violations alleged in Section II ("Allegations") on or about July 28, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Gruene Rapids of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Five Thousand Five Hundred Dollars (\$25,500) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Gruene Rapids has paid One Thousand Seven Hundred Dollars (\$1,700) of the administrative penalty and Five Thousand One Hundred Dollars (\$5,100) is deferred contingent upon Gruene Rapids' timely and satisfactory compliance with all the terms of this Agreed Order. If Gruene Rapids fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Gruene Rapids to pay all or part of the deferred penalty.

The remaining amount of Eighteen Thousand Seven Hundred Dollars (\$18,700) of the administrative penalty shall be payable in eleven monthly payments of One Thousand Seven Hundred Dollars (\$1,700) 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 Gruene Rapids 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 Gruene Rapids to meet the payment schedule of this Agreed Order constitutes the failure by Gruene Rapids 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 Gruene Rapids 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 Gruene Rapids submitted an application for the Edwards Aquifer Water Pollution Abatement Plan ("WPAP") which was approved by the Executive Director on July 23, 2007.
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 Gruene Rapids 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, Gruene Rapids is alleged to have failed to obtain approval of an Edwards Aquifer WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during an investigation conducted on May 16, 2007. Specifically, the investigator observed evidence of the construction activity on a combined area of less than five acres.

III. DENIALS

Gruene Rapids generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Gruene Rapids pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Gruene Rapids' 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: Gruene Rapids Condominiums, LLC, Docket No. 2007-1258-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 Gruene Rapids. Gruene Rapids 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. If Gruene Rapids 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, Gruene Rapids' failure to comply is not a violation of this Agreed Order. Gruene Rapids shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Gruene Rapids shall notify the Executive Director within seven days after Gruene Rapids becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. 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 Gruene Rapids shall be made in writing to the Executive Director. Extensions are not effective until Gruene Rapids receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against Gruene Rapids 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.
6. 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

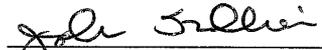
facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Gruene Rapids, or three days after the date on which the Commission mails notice of the Order to Gruene Rapids, 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

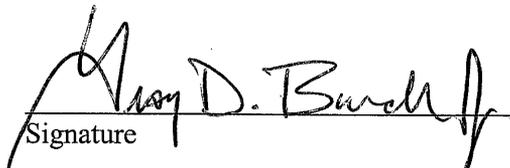
12/28/2007
Date

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

11-15-07
Date

Troy D. Burch Jr.

Name (Printed or typed)
Authorized Representative of
Gruene Rapids Condominiums, LLC

MEMBER

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.

