

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2007-0600-WQ-E TCEQ ID NO.: RN105008510 CASE NO.: 33261**

**RESPONDENT NAME: CANYON VISTA CUSTOM HOMES, LLC**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 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

**SITE WHERE VIOLATION(S) OCCURRED:** approximately 0.75 miles east of the intersection of Highway 71 and Farm-to-Market Road 2244, off of Farm-to-Market Road 2244, Travis County

**TYPE OF OPERATION:** Construction business

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There are no other pending enforcement actions regarding this facility.

**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 February 25, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

- TCEQ Attorney:** Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
- TCEQ Enforcement Coordinator:** Mr. Harvey Wilson, Air Enforcement Section, MC 219, (512) 239-0321
- TCEQ Regional Contact:** Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 239-7050
- Respondent:** Mr. Ryan Rucker, President, Canyon Vista Custom Homes, LLC, 4500 Steiner Ranch Boulevard, Suite 3509, Austin, Texas 78732
- Respondent's Attorney:** Not represented by counsel.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Dates of Complaints Relating to this Case:</b>                      None</p> <p><b>Dates of Investigations Relating to this Case:</b>                      July 10, 2006 and March 22, 2007</p> <p><b>Dates of NOV/NOEs Relating to this Case:</b>                      August 17, 2006 (NOV)                      March 26, 2007 (NOE)</p> <p><b>Background Facts:</b>                      On September 28, 2007, the Executive Director filed the EDPRP against the Respondent. By letter dated September 28, 2007, sent via certified mail, return receipt requested, and via first class mail, the Executive Director served the Respondent with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP.</p> <p>More than 20 days have elapsed since the Respondent received notice of the EDPRP. The Respondent failed to file an Answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>WQ</b></p> <p>Failed to obtain authorization under the Texas Pollutant Discharge Elimination System 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)].</p>	<p><b>Total Assessed:</b> \$1,050</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$1,050</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" 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>Ordering Provisions</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days:</p> <p>a. Develop and implement a storm water pollution prevention plan, in accordance with the requirements of Texas Pollutant Discharge Elimination System general permit TXR050000; and</p> <p>b. Submit an administratively complete Notice of Intent for authorization to discharge under Texas Pollutant Discharge Elimination System general permit TXR050000 to the TCEQ.</p> <p>2. Within 45 days, submit written, notarized certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the above Ordering Provisions.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

DATES	Assigned	2-Apr-2007	Screening	19-Apr-2007	EPA Due	
	PCW	2-Aug-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Canyon Vista Custom Homes, LLC		
Reg. Ent. Ref. No.	RN105008510		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	33261	No. of Violations	1	
Docket No.	2007-0600-WQ-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Harvey Wilson	
Multi-Media		EC's Team	Enforcement Team 4	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement Subtotals 2, 3, & 7

Notes

**Culpability**   Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply**  Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

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

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

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

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  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 19-Apr-2007

Docket No. 2007-0600-WQ-E

PCW

Respondent Canyon Vista Custom Homes, LLC

Policy Revision 2 (September 2002)

Case ID No. 33261

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN105008510

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)	1	5%
	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) 5%

>> 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

A 5% enhancement is recommended because the respondent has previously received a NOV for the same violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 19-Apr-2007

Docket No. 2007-0600-WQ-E

PCW

Respondent Canyon Vista Custom Homes, LLC

Policy Revision 2 (September 2002)

Case ID No. 33261

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN105008510

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

Violation Number

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 ("CGP") 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 March 22, 2007 record review.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

One monthly event is recommended from the investigation date of March 22, 2007, until the screening date of April 19, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

## Economic Benefit Worksheet

**Respondent** Canyon Vista Custom Homes, LLC  
**Case ID No.** 33261  
**Reg. Ent. Reference No.** RN105008510  
**Media Water Quality**  
**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	\$2,000	17-Aug-2006	15-Dec-2007	1.3	\$133	n/a	\$133
Other (as needed)				0.0	\$0	n/a	\$0

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

\$2,000

TOTAL

\$133

# Compliance History

Customer/Respondent/Owner-Operator:	CN603071358 CANYON VISTA CUSTOM HOMES LLC	Classification: AVERAGE	Rating: 2.1
Regulated Entity:	RN105008510 CANYON VISTA CUSTOM HOMES LAKEPOINTE	Classification: AVERAGE	Site Rating:
ID Number(s):			
Location:	APPROXIMATELY 0.75 MILES EAST OF HWY 71 & FM 2244 INTERSECTION OFF OF FM 2244	Rating Date: September 01 06	Repeat Violations: NO
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	April 16, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 16, 2002 to April 16, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Harvey Wilson</u>	Phone:	<u>239-0321</u>

## 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	08/18/2006	(508876)	
	N/A		
2	09/26/2006	(513822)	
3	11/13/2006	(519041)	
4	03/27/2007	(554716)	
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	08/17/2006	(508876)	
Self Report?	NO		Classification: Major
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)		
Description:	Failure to obtain coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP).		
- 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  
CANYON VISTA CUSTOM  
HOMES, LLC, RN105008510

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2007-0600-WQ-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, 40 CODE OF FEDERAL REGULATIONS ch. 122, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Canyon Vista Custom Homes, LLC (“Custom Homes”).

The Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Custom Homes owns and/or operates a construction business located approximately 0.75 mile east of the intersection of Highway 71 and Farm-to-Market Road 2244, off of Farm-to-Market Road 2244 in Travis County, Texas (the “Site”).
2. The Site has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During an inspection conducted on March 22, 2007, a TCEQ Austin Office investigator documented that Custom Homes failed to obtain authorization under the Texas Pollutant Discharge Elimination System (“TPDES”) Construction General Permit (“CGP”) to discharge storm water associated with construction activities to waters of the State. Specifically, Custom Homes was operating at the Site without the specified TPDES permit at the time of the record review.
4. Custom Homes received notice of the violation on or about September 28, 2007.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Canyon Vista Custom Homes, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on September 28, 2007.
6. By letter dated September 28, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Canyon Vista Custom Homes, LLC with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Custom Homes received notice of the EDPRP.
7. More than 20 days have elapsed since Custom Homes received notice of the EDPRP, provided by the Executive Director. Custom Homes failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact Nos. 1 and 2, Custom Homes is subject to the jurisdiction of the TCEQ pursuant to the TEX. WATER CODE and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3., Custom Homes failed to obtain authorization under the ("TPDES") ("CGP") 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).
3. As evidenced by Finding of Fact No 5., the Executive Director has timely served Custom Homes with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 6, Custom Homes has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Custom Homes and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Custom Homes for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of One Thousand Fifty dollars (\$1,050.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Custom Homes is assessed an administrative penalty in the amount of One Thousand Fifty dollars (\$1,050.00) for violations of TEX. WATER CODE chs 7 and 26, 40 CODE OF FEDERAL REGULATIONS ch. 122, and rules of the TCEQ. The payment of this administrative penalty and Custom Homes' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Canyon Vista Custom Homes, LLC; Docket No. 2007-0600-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. Custom Homes shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of the Commission 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 Texas Pollutant Discharge Elimination System 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 149A  
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

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Custom Homes. Custom Homes is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Custom Homes fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Custom Home's failure to comply is not a violation of this Order. Custom Homes shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Custom Homes shall notify the Executive Director within seven days after Custom Homes becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Custom Homes shall be made in writing to the Executive Director. Extensions are not effective until Custom Homes receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Custom Homes if the Executive Director determines that Custom Homes has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF GARY K. SHIU**

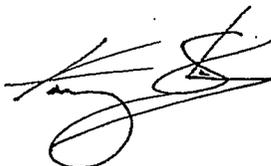
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Gary K. Shiu. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Canyon Vista Custom Homes, LLC” (the “EDPRP”) with the Office of the Chief Clerk on September 28, 2007.

I sent the EDPRP to Mr. Ryan Rucker, President, Canyon Vista Custom Homes, LLC at the last known address on September 28, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

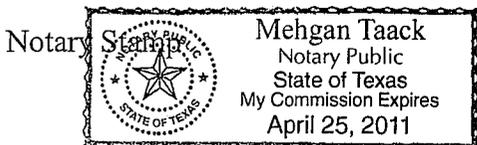
More than 20 days have elapsed since Custom Homes received notice of the EDPRP. Custom Homes failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.



\_\_\_\_\_  
Gary K. Shiu  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 10<sup>th</sup> day of April, A.D., 2008.



Meghan Taack  
Notary Signature