

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1720-EAQ-E **TCEQ ID:** RN105354765 **CASE NO.:** 34830

RESPONDENT NAME: Paintbrush 290 GP, 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: Scenic Greens Property, northwest of the intersection of U.S. Highway 290 and McGregor Lane, Hays County</p> <p>TYPE OF OPERATION: Property</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received September 11, 2007, alleging that the Scenic Greens Property is under construction and does not have an Edwards Aquifer Contributing Zone Plan ("CZP"), a Stormwater Pollution Plan, or erosion controls. 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 a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 7, 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. Ted L. Stewart, Partner/Registered Agent, Paintbrush 290 GP, LLC, 11612 Farm-to-Market Road 2244, Austin, Texas 78738 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: September 11, 2007</p> <p>Date of Investigation Relating to this Case: September 27, 2007</p> <p>Date of NOV/NOE Relating to this Case: October 9, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to obtain approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the Respondent dug a septic test hole without obtaining approval of an Edwards Aquifer CZP [30 TEX. ADMIN. CODE § 213.21(d)].</p>	<p>Total Assessed: \$2,500</p> <p>Total Deferred: \$500 <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: \$2,000</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent ceased unauthorized regulated activity on February 21, 2008.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

DATES	Assigned	15-Oct-2007	Screening	17-Oct-2007	EPA Due	
	PCW	17-Oct-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Paintbrush 290 GP, LLC
Reg. Ent. Ref. No.	RN105354765
Facility/Site Region	11-Austin
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	34830	No. of Violations	1
Docket No.	2007-1720-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Samuel Short
Multi-Media	Water Quality	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**

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"/> X	(mark with x)

Notes:

Total EB Amounts **0% Enhancement*** **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.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

PAYABLE PENALTY

Screening Date 17-Oct-2007

Docket No. 2007-1720-EAQ-E

PCW

Respondent Paintbrush 290 GP, LLC

Policy Revision 2 (September 2002)

Case ID No. 34830

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN105354765

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)**

N/A

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The Respondent has not had any other actions within the last five years.

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

Screening Date 17-Oct-2007	Docket No. 2007-1720-EAQ-E	PCW
Respondent Paintbrush 290 GP, LLC		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 34830		<i>PCW Revision September 19, 2007</i>
Reg. Ent. Reference No. RN105354765		
Media [Statute] Edwards Aquifer		
Enf. Coordinator Samuel Short		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 213.21(d)	
Violation Description	Failed to obtain approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone, as documented during an investigation conducted on September 27, 2007. Specifically, the Respondent dug a septic test hole without obtaining approval of an Edwards Aquifer CZP.	
	Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual				Percent <input type="text" value="0%"/>
Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent <input type="text" value="25%"/>

Matrix Notes 100% of the rule requirement was not met.

Adjustment

\$2,500

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty

One monthly event is recommended from the date of the investigation, September 27, 2007, to the screening date, October 17, 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 Paintbrush 290 GP, LLC
Case ID No. 34830
Reg. Ent. Reference No. RN105354765
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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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	27-Sep-2007	21-Feb-2008	0.4	\$81	n/a	\$81
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Cost reflects the amount to prepare and submit a CZP. The date required is the date of the investigation and the final date is the date that the Respondent ceased regulated activity.

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

\$81

Compliance History

Customer/Respondent/Owner-Operator: CN603251927 Paintbrush 290 GP, LLC Classification: Rating:
Regulated Entity: RN105354765 SCENIC GREENS PROPERTY Classification: Site Rating:
ID Number(s):
Location: NORTHWEST OF INTERSECTION OF US HWY 290 & MCGREGOR LN
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: October 17, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 17, 2002 to October 17, 2007
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Samuel Short Phone: (512) 239-5363

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
PAINTBRUSH 290 GP, LLC
RN105354765**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1720-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 Paintbrush 290 GP, LLC ("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 property located northwest of the intersection of U.S. Highway 290 and McGregor Lane in Hays County, Texas (the "Site").
2. This 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 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 October 14, 2007.
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 Two Thousand Five Hundred Dollars (\$2,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Dollars (\$2,000) of the administrative penalty and Five Hundred Dollars (\$500) is deferred contingent upon the Respondent's timely and satisfactory

compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

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 ceased unauthorized regulated activity on February 21, 2008.
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 approval of an Edwards Aquifer Contributing Zone Plan ("CZP") prior to beginning a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.21(d), as documented during an investigation conducted on September 27, 2007. Specifically, the Respondent dug a septic test hole without obtaining approval of an Edwards Aquifer CZP.

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: Paintbrush 290 GP, LLC, Docket No. 2007-1720-EAQ-E" to:

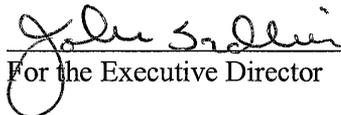
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

6/30/2008
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

4/09/08
Date

TED L. STEWART
Name (Printed or typed)
Authorized Representative of
Paintbrush 290 GP, LLC

PARTNER
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.



