

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2007-0509-EAQ-E **TCEQ ID:** RN105155808 **CASE NO.:** 33099  
**RESPONDENT NAME:** Fiorano Ventures, L.L.C.

<b>ORDER TYPE:</b>		
<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	
<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 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Ramble Ridge, approximately 8.2 miles northwest of IH 35 on Farm-to-Market Road 3009, Comal County</p> <p><b>TYPE OF OPERATION:</b> Construction site</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 30, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. J. Craig Fleming, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5806; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. J. W. Wood, Manager, Fiorano Ventures, L.L.C., 17460 IH 35 North, Suite 160-350, Schertz, Texas 78154  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> February 16, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> March 20, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>Failed to obtain approval of an Edwards Aquifer Protection Plan ("EAPP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p><b>Total Assessed:</b> \$24,000</p> <p><b>Total Deferred:</b> \$4,800  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$19,200</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on January 22, 2007, the Respondent submitted an application for the Edwards Aquifer Protection Plan ("EAPP") which was approved by the Executive Director on March 20, 2007.</p>

Additional ID No(s): Edwards Aquifer Registration No. 13-07012201



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

<b>DATES</b>	Assigned	26-Mar-2007	Screening	29-Mar-2007	EPA Due	
	PCW	30-Mar-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Fiorano Ventures, L.L.C.		
Reg. Ent. Ref. No.	RN105155808		
Facility/Site Region	13-San Antonio	Major/Minor Source	Major

<b>CASE INFORMATION</b>				
Enf./Case ID No.	33099	No. of Violations	1	
Docket No.	2007-0509-EAQ-E	Order Type	1660	
Media Program(s)	Edwards Aquifer	Enf. Coordinator	J. Craig Fleming	
Multi-Media		EC's Team	EnforcementTeam 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 checked="" type="checkbox"/>	<input type="checkbox"/>
N/A	<input type="text" value="(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 29-Mar-2007

Docket No. 2007-0609-EAQ-E

PCW

Respondent Fiorano Ventures, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 33099

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN105155808

Media [Statute] Edwards Aquifer

Enf. Coordinator J. Craig Fleming

### 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 judgments 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 due to Average Performer classification.

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

Screening Date 29-Mar-2007

Docket No. 2007-0509-EAQ-E

PCW

Respondent Fiorano Ventures, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 33099

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN105155808

Media [Statute] Edwards Aquifer

Enf. Coordinator J. Craig Fleming

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1)

Violation Description Failed to obtain approval of a Edwards Aquifer Protection Plan ("EAPP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on February 16, 2007. Specifically, the investigator observed evidence of the construction activity on a combined area more than five acres.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential			x	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the investigation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 32 Number of violation days 32

daily	
monthly	
quarterly	
semiannual	
annual	
single-event	x

Violation Base Penalty \$32,000

Thirty-two single events are recommended based on the investigation date of February 16, 2007 to the compliance date of March 20, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$24,000

This violation Final Assessed Penalty (adjusted for limits) \$24,000

## Economic Benefit Worksheet

**Respondent** Fiorano Ventures, L.L.C.  
**Case ID No.** 33099  
**Reg. Ent. Reference No.** RN105155808  
**Media** Edwards Aquifer  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	16-Feb-2007	20-Mar-2007	0.1	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost reflects the amount to prepare and submit an EAPP. The date required is the date of the investigation. The final date is the date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
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

NA

Approx. Cost of Compliance

\$1,000

TOTAL

\$4

# Compliance History

Customer/Respondent/Owner-Operator: CN603148149 Fiorano Ventures, L.L.C. Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN105155808 RAMBLE RIDGE Classification: AVERAGE BY DEFAULT Site Rating: 3.01  
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-07012201  
Location: 8.2 ML NW OF IH 35 ON FM 3009 in Comal County, Texas Rating Date: 9/1/2006 Repeat Violator: NO  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: March 30, 2007  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: March 29, 2002 to March 29, 2007

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

Name: J. Craig Fleming Phone: (512) 239-5806

## 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  
FIORANO VENTURES, L.L.C.  
RN105155808**

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

## **AGREED ORDER DOCKET NO. 2007-0509-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 Fiorano Ventures, L.L.C. ("Fiorano") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Fiorano, appear before the Commission and together stipulate that:

1. Fiorano owns and operates a construction site located approximately 8.2 miles northwest of IH 35 on Farm-to-Market Road 3009 in Comal 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 Fiorano agree that the Commission has jurisdiction to enter this Agreed Order, and that Fiorano is subject to the Commission's jurisdiction.
4. Fiorano received notice of the violations alleged in Section II ("Allegations") on or about March 25, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Fiorano of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Four Thousand Dollars (\$24,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Fiorano has paid Nineteen Thousand Two Hundred Dollars (\$19,200) of the administrative penalty and



Four Thousand Eight Hundred Dollars (\$4,800) is deferred contingent upon Fiorano'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 Fiorano fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Fiorano 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 Fiorano 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 on January 22, 2007, Fiorano submitted an application for the Edwards Aquifer Protection Plan ("EAPP") which was approved by the Executive Director on March 20, 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 Fiorano 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, Fiorano is alleged to have failed to obtain approval of an EAPP 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 February 16, 2007.

## **III. DENIALS**

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



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Fiorano pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Fiorano'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: Fiorano Ventures, L.L.C., Docket No. 2007-0509-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

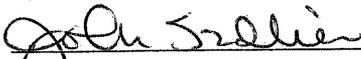
2. The provisions of this Agreed Order shall apply to and be binding upon Fiorano. Fiorano is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Fiorano 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 Fiorano, or three days after the date on which the Commission mails notice of the Order to Fiorano, 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

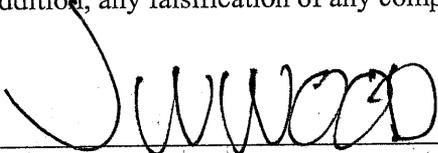
\_\_\_\_\_  
Date 6/13/08

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 6-16-07

J.W. WOOD MANAGER  
Name (Printed or typed)  
Authorized Representative of  
Fiorano Ventures, L.L.C.

\_\_\_\_\_  
Title MANAGER

**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.

10.10.10

10.10.10

10.10.10

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