

EXECUTIVE SUMMARY - ENFORCEMENT MATTER**DOCKET NO.:** 2008-1241-EAQ-E **TCEQ ID:** RN105504161 **CASE NO.:** 36294**RESPONDENT NAME:** IH-10/Loop 1604 Partners, Ltd.

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: The Landmark, located at the southeast corner of the intersection of Loop 1604 and Interstate Highway 10, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Mixed use development site</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 December 22, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Ms. Sunshine Knolle, Project Manager, IH-10/Loop 1604 Partners, Ltd., 18618 Tuscany Stone, Suite 100, San Antonio, Texas 78528 Mr. Walter G. Busby, Vice President, IH-10/Loop 1604 Partners, Ltd., 18618 Tuscany Stone, Suite 100, San Antonio, Texas 78528 Respondent's Attorney: Mr. Ali Abazari, Attorney, Jackson Walker L.L.P., 112 East Pecan Street, Suite 2400, San Antonio, Texas 78205</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: June 18, 2008</p> <p>Date of NOV/NOE Relating to this Case: July 17, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone and/or Contributing Zone. Specifically, the investigator observed clearing of vegetation, disturbance of soil, and improved upon and constructed roads on a combined area of approximately 2.6 acres [30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.23(a)(1)].</p>	<p>Total Assessed: \$10,500</p> <p>Total Deferred: \$2,100 <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: \$8,400</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 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 on July 16, 2008, the Respondent received approval of an Edwards Aquifer WPAP for the Site.</p>

Additional ID No(s): 13-08042502



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	21-Jul-2008			
	PCW	8-Aug-2008	Screening	31-Jul-2008	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	IH-10/Loop 1604 Partners, Ltd.		
Reg. Ent. Ref. No.	RN105504161		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36294	No. of Violations	1
Docket No.	2008-1241-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$14,000
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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	0.0% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$0
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Notes: No adjustment due to compliance history.

Culpability	No	0.0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	<i>Subtotal 5</i>	\$3,500
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Economic Benefit	0.0% Enhancement*	<i>Subtotal 6</i>	\$0
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Total EB Amounts: \$15
 Approx. Cost of Compliance: \$4,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$10,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$10,500

STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$10,500
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DEFERRAL	20.0% Reduction	<i>Adjustment</i>	-\$2,100
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$8,400
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Screening Date 31-Jul-2008

Docket No. 2008-1241-EAQ-E

PCW

Respondent IH-10/Loop 1604 Partners, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 36294

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105504161

Media [Statute] Edwards Aquifer

Enf. Coordinator Lanae Foard

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

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

No adjustment due to compliance history.

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

Screening Date 31-Jul-2008	Docket No. 2008-1241-EAQ-E	PCW		
Respondent IH-10/Loop 1604 Partners, Ltd.	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36294	<i>PCW Revision June 12, 2008</i>			
Reg. Ent. Reference No. RN105504161				
Media [Statute] Edwards Aquifer				
Enf. Coordinator Lanae Foard				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	30 Tex. Admin. Code §§ 213.4(a)(1) and 213.23(a)(1)			
Violation Description	Failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone and/or Contributing Zone, as documented during an investigation conducted on June 18, 2008. Specifically, the investigator observed clearing of vegetation, disturbance of soil, and improved upon and constructed roads on a combined area of approximately 2.6 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"/>	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 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 violation.			
Adjustment		<input type="text" value="\$9,500"/>		
		<input type="text" value="\$500"/>		
Violation Events				
Number of Violation Events		<input type="text" value="28"/>	Number of violation days	
		<input type="text" value="28"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	x		
Twenty-eight single events are recommended from the investigation date (June 18, 2008) to the date of compliance (July 16, 2008).			<input type="text" value="\$14,000"/>	
Good Faith Efforts to Comply		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$3,500"/>	
		Before NOV NOV to EDRP/Settlement		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	x	<input type="text"/>		
N/A	<input type="text"/>	(mark with x)		
Notes	The Respondent came into compliance on July 16, 2008.			
Violation Subtotal		<input type="text" value="\$10,500"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$15"/>	Violation Final Penalty Total	<input type="text" value="\$10,500"/>	
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$10,500"/>		

Economic Benefit Worksheet

Respondent IH-10/Loop 1604 Partners, Ltd.

Case ID No. 36294

Reg. Ent. Reference No. RN105504161

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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$4,000	18-Jun-2008	16-Jul-2008	0.08	\$15	n/a	\$15
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,000

TOTAL

\$15

Compliance History

Customer/Respondent/Owner-Operator: CN603349507 IH 10 LOOP 1604 PARTNERS LTD Classification: Rating:
Regulated Entity: RN105504161 THE LANDMARK Classification: Site Rating:
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-08042502
Location: SE CORNER OF IH 10 AND LOOP 1604, SAN ANTONIO,
BEXAR CO, TEXAS
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: July 30, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 30, 2003 to July 30, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lanae Foard Phone: 512-239-2554

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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 07/18/2008 (654654)
 - 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
IH-10/LOOP 1604 PARTNERS, LTD.
RN105504161

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

AGREED ORDER DOCKET NO. 2008-1241-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 IH-10/Loop 1604 Partners, Ltd. ("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, represented by Mr. Ali Abazari of the law firm of Jackson Walker L.L.P., appear before the Commission and together stipulate that:

1. The Respondent owns a mixed use development site located at the southeast corner of the intersection of Loop 1604 and Interstate Highway 10 in San Antonio, Bexar County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order 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 July 22, 2008.
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 Ten Thousand Five Hundred Dollars (\$10,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Thousand Four Hundred Dollars (\$8,400) of the administrative penalty and Two Thousand One Hundred Dollars (\$2,100) 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 on July 16, 2008, the Respondent received approval of an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") for the Site.
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 of the Site, the Respondent is alleged to have failed to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone and/or Contributing Zone, in violation of 30 TEX. ADMIN. CODE §§ 213.4(a)(1) and 213.23(a)(1), as documented during an investigation conducted on June 18, 2008. Specifically, the investigator observed clearing of vegetation, disturbance of soil, and improved upon and constructed roads on a combined area of approximately 2.6 acres.

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: IH-10/Loop 1604 Partners, Ltd., Docket No. 2008-1241-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

John S. Miller

For the Executive Director

12/8/08

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.

Walter G. Busby

Signature

9/30/08

Date

Walter G. Busby

Name (Printed or typed)

Vice President

Title

Authorized Representative of
IH-10/Loop 1604 Partners, Ltd.

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.

