

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1146-WQ-E TCEQ ID: RN105171698 CASE NO.: 34336
RESPONDENT NAME: ICI CONSTRUCTION, INC.

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 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
<p>SITE WHERE VIOLATION(S) OCCURRED: 4250 Old Omen Road, Tyler, Smith County</p> <p>TYPE OF OPERATION: 14 acre construction site</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Three complaints were received, alleging that the Respondent's construction activities were causing siltation of a private lake downstream of the site, that excess sedimentation was accumulating in a nearby stream, and that excess sedimentation was being deposited on the road by the Respondent's construction vehicles. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: A downstream landowner, Dr. Bruce Carter, has expressed an interest in this matter. Specifically, Dr. Carter has requested a copy of the executed Commission Order.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 26, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Water Enforcement Section, MC 169, (512) 239-4493 TCEQ Regional Contact: Mr. Noel Luper, Tyler Regional Office, MC R-5, (903) 535-5174 Respondent: Mr. Chris Sidwa, Sr. Vice-President, ICI Construction, Inc., 24707 Hardy Road, Spring, Texas 77373-5794 Respondent's Attorney: Ms. Jean Flores, Guida, Slavich & Flores, 750 N. Paul Street, Ste. 200, Dallas, Texas 75201</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: March 1, 2007</p> <p>Dates of Investigation Relating to this Case: March 9, March 27, and May 4, 2007</p> <p>Date of NOE Relating to this Case: August 3, 2007</p> <p>Background Facts: The EDP RP was filed on February 21, 2008. The Respondent filed an Answer on March 13, 2008. Settlement was achieved and a signed agreed order was received on December 1, 2008.</p> <p>WQ:</p> <p>1. Failed to design and maintain in effective operating condition all sediment control measures, resulting in an unauthorized discharge [30 TEX. ADMIN. CODE § 305.125(1), TPDES Construction General Permit No. TXR15FB14, Part III, Section F.2(a)(i) and (ii), and TEX. WATER CODE § 26.121(a)].</p> <p>2. Failed to remove sediment from a sedimentation pond no later than the time that design capacity has been reduced by 50% [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Construction General Permit No. TXR15FB14, Part III, Section F.2(a)(iii)].</p>	<p>Total Assessed: \$17,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$17,000</p> <p>The Respondent has paid the penalty in full.</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective actions:</p> <ol style="list-style-type: none"> 1. Begun maintaining sediment control measures in effective operating condition; and 2. Removed excess sedimentation from the sedimentation basin.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

DATES	Assigned	13-Aug-2007	Screening	13-Aug-2007	EPA Due	
	PCW	27-May-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	ICI Construction, Inc. (Hamptons at Pine Forest)		
Reg. Ent. Ref. No.	RN105171698		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34336	No. of Violations	2	
Docket No.	2007-1146-WQ-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen	
Multi-Media		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)	Subtotal 1	\$17,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No change in penalty amount due to average performer classification.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

	0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$7,306	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$80,000		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$17,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: The penalty is enhanced based on the Texas Pollutant Discharge Elimination System General Permit's classification of the site as a "large construction site" (over 5 acres) under 40 Code of Federal Regulations § 122.26 and due to the egregious nature of the violations.

Final Penalty Amount	\$17,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$17,000
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$17,000
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Screening Date 13-Aug-2007 **Docket No.** 2007-1146-WQ-E
Respondent ICI Construction, Inc. (Hamptons at Pine Forest)
Case ID No. 34336
Reg. Ent. Reference No. RN105171698
Media [Statute] Water Quality
Enf. Coordinator Lynley Doyen

PCW

Policy Revision 2 (September 2002)
 PCW Revision November 6, 2007

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 change in penalty amount due to average performer classification.

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

Screening Date 13-Aug-2007	Docket No. 2007-1146-WQ-E	PCW												
Respondent ICI Construction, Inc. (Hamptons at Pine Forest)	<small>Policy Revision 2 (September 2002)</small>													
Case ID No. 34336	<small>PCW Revision November 6, 2007</small>													
Reg. Ent. Reference No. RN105171698														
Media [Statute] Water Quality														
Enf. Coordinator Lynley Doyen														
Violation Number <input type="text" value="1"/>														
Rule Cite(s)	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit No. TXR15FB14, Part III, Section F.2(a)(i) and 2(a)(ii)													
Violation Description	Failed to design and maintain in effective operating condition all sediment control measures, resulting in an unauthorized discharge. Specifically, during an investigation on March 9, 2007, the investigator observed that construction of a sedimentation basin had been initiated, but no sediment controls for construction were present. On March 27, 2007, the investigator observed that the completed basin was inadequately sized, the lower half of the basin spillway showed signs of erosion, and sediment had overwhelmed the silt fence at the bottom. On May 4, 2007, the investigator observed that the silt fence along the eastern boundary of the Site was deteriorated, variously buried or had erosion gullies several feet deep below it. A significant amount of sediment had migrated offsite and was deposited through a wooded area and into a tributary of Gilley Creek.													
Base Penalty		<input type="text" value="\$10,000"/>												
>> Environmental, Property and Human Health Matrix														
OR	Release	Harm												
		Major Moderate Minor												
	Actual	<input type="text" value="x"/>												
	Potential	<input type="text"/>												
	Percent	<input type="text" value="25%"/>												
>> Programmatic Matrix														
	Falsification	Major Moderate Minor												
	<input type="text"/>	<input type="text"/>												
	Percent	<input type="text" value="0%"/>												
Matrix Notes	Human health or the environment has been exposed to significant amounts of pollutants which do not exceed protective levels as a result of this violation.													
Adjustment		<input type="text" value="\$7,500"/>												
		<input type="text" value="\$2,500"/>												
Violation Events														
	Number of Violation Events	<input type="text" value="6"/>												
		<input type="text" value="157"/> Number of violation days												
<small>mark only one with an x</small>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td style="text-align: center;">x</td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	x	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty
daily	<input type="text"/>													
monthly	x													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text"/>													
		<input type="text" value="\$15,000"/>												
Six monthly events are recommended from the initial investigation date (March 9, 2007) to the screening date (August 13, 2007).														
Economic Benefit (EB) for this violation		Statutory Limit Test												
Estimated EB Amount	<input type="text" value="\$5,330"/>	Violation Final Penalty Total												
		<input type="text" value="\$15,000"/>												
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$15,000"/>												

Economic Benefit Worksheet

Respondent ICI Construction, Inc. (Hamptons at Pine Forest)

Case ID No. 34336

Reg. Ent. Reference No. RN105171698

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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Delayed Costs

Equipment	\$10,000	31-Jan-2007	30-Sep-2008	1.7	\$56	\$1,111	\$1,166
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	\$50,000	31-Jan-2007	30-Sep-2008	1.7	\$4,164	n/a	\$4,164
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remediate the receiving waters and to properly design and install adequate sediment control measures. Date required is the approximate date construction began. Final date is the expected 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

\$60,000

TOTAL

\$5,330

Screening Date 13-Aug-2007	Docket No. 2007-1146-WQ-E	PCW			
Respondent ICI Construction, Inc. (Hamptons at Pine Forest)	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 34336	<small>PCW Revision November 6, 2007</small>				
Reg. Ent. Reference No. RN105171698					
Media [Statute] Water Quality					
Enf. Coordinator Lynley Doyen					
Violation Number <input type="text" value="2"/>					
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and TPDES Construction General Permit No. TXR15FB14, Part III, Section F.2(a)(iii)				
Violation Description	Failed to remove sediment from a sedimentation pond no later than the time that design capacity has been reduced by 50%. Specifically, during an investigation on May 4, 2007, the investigator documented that the sedimentation basin was filled with sediment to the level of the spillway and sediment had been deposited down the length of the spillway. On June 20, 2007, the investigator observed that no maintenance had been conducted at the Site and that the sedimentation basin was still full to capacity with compacted sediment.				
Base Penalty		<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			
		Major Moderate Minor			
	Actual	<input type="text"/>	<input type="text"/>		
	Potential	<input type="text"/>	<input type="text" value="x"/>		
		Percent	<input type="text" value="10%"/>		
>> 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 could be exposed to significant pollutants which would not exceed protective levels.				
Adjustment		<input type="text" value="\$9,000"/>			
		<input type="text" value="\$1,000"/>			
Violation Events					
Number of Violation Events		<input type="text" value="2"/>	Number of violation days		
		<input type="text" value="101"/>			
<small>mark only one with an x</small>	daily	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text" value="x"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
		Violation Base Penalty	<input type="text" value="\$2,000"/>		
Two quarterly events are recommended from the investigation date (May 4, 2007) to the screening date (August 13, 2007).					
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$1,975"/>	Violation Final Penalty Total	<input type="text" value="\$2,000"/>	
			This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$2,000"/>	

Economic Benefit Worksheet

Respondent: ICI Construction, Inc. (Hamptons at Pine Forest)
Case ID No.: 34336
Reg. Ent. Reference No.: RN105171698
Media: Water Quality
Violation No.: 2

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)	\$20,000	4-May-2007	30-Sep-2008	1.4	\$94	\$1,881	\$1,975
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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to remove and properly dispose of the sediment to restore capacity to the sedimentation basin.
 Date required is the investigation date when the violation was first documented. Final date is the expected 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 \$20,000

TOTAL \$1,975

Compliance History

Customer/Respondent/Owner-Operator: CN601703937 ICI Construction, Inc. Classification: AVERAGE Rating: 2.75
Regulated Entity: RN105171698 ICI CONSTRUCTION HAMPTONS AT PINE FOREST Classification: HIGH Site Rating: 0.00
ID Number(s): STORMWATER PERMIT TXR15FB14
Location: 4250 OLD OMEN RD, SMITH CO, TX Rating Date: September 01 07
Repeat Violator: NO
TCEQ Region: REGION 05 - TYLER
Date Compliance History Prepared: January 08, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 08, 2003 to January 08, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lynley Doyen Phone: 512-239-1364

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 02/28/2007 (542541)
2 08/02/2007 (543965)
- 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
ICI CONSTRUCTION, INC.;
RN105171698

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1146-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding ICI Construction, Inc. ("ICI") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and ICI, represented by Jean Flores of the law firm of Guida, Slavich & Flores, appear before the Commission and together stipulate that:

1. ICI is a commercial general contractor which constructed a Planned Multi-Family Residence ("PMF"), the Hamptons at Pine Forest, located at 4250 Old Omen Road, Tyler, Smith County, Texas (the "Site"). The Site is a large construction site which encompasses approximately fourteen (14) acres. TPDES storm water construction general permit no. TXR15FB14 (the "TPDES permit") was issued by TCEQ for the Site and became effective November 3, 2006.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of the Texas Water Code and TCEQ rules.
3. The Commission and ICI agree that the Commission has jurisdiction to enter this Agreed Order, and that ICI is subject to the Commission's jurisdiction.
4. ICI received notice of the violations alleged in Section II ("Allegations") on or about August 8, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by ICI of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of seventeen thousand dollars (\$17,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). ICI has paid seventeen thousand dollars (\$17,000.00) of the administrative 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 ICI 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 forty-eight rainfall events between March 9, 2007, and June 20, 2007, were ten inches above normal rainfall averages, which caused a delay in ICI's ability to implement corrective measures at the Site. The Executive Director recognizes that ICI has implemented the following corrective measures at the Site:
 - a. Begun maintaining sediment control measures in effective operating condition; and
 - b. Removed excess sedimentation from the sedimentation basin.
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 ICI 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

1. ICI is alleged to have violated:
 - a. TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and the TPDES permit, Part III, Section F.2(a)(i) and (ii), by failing to design and maintain in effective operating condition all sediment control measures, resulting in an unauthorized discharge. Specifically, on March 9, 2007, the investigator observed that construction of a sedimentation basin had been initiated, but no sediment controls for construction were present. On March 27, 2007, the investigator observed

that the completed basin was inadequately sized, the lower half of the basin spillway showed signs of erosion, and sediment had overwhelmed the silt fence at the bottom. On May 4, 2007, the investigator observed that the silt fence along the eastern boundary was deteriorated, variously buried or had erosion gullies several feet deep below it. A significant amount of sediment had migrated offsite and was deposited through a wooded area and into a tributary of Gilley Creek; and

- b. 30 TEX. ADMIN. CODE § 305.125(1), and the TPDES permit, Part III, Section. F.2(a)(iii), by failing to remove sediment from a sedimentation pond no later than the time that design capacity has been reduced by 50%. Specifically, during an investigation on May 4, 2007, the investigator documented that the sedimentation basin was filled with sediment to the level of the spillway and sediment had been deposited down the length of the spillway. On June 20, 2007, the investigator observed that no maintenance had been conducted at the Site and that the sedimentation basin was still full to capacity with compacted sediment.

III. DENIALS

1. ICI generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that ICI pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and ICI’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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: ICI Construction, Inc., Docket No. 2007-1146-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. The provisions of this Agreed Order shall apply to and be binding upon ICI. ICI is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

3. If ICI fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, ICI's failure to comply is not a violation of this Agreed Order. ICI shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. ICI shall notify the Executive Director within seven days after ICI becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by ICI shall be made in writing to the Executive Director. Extensions are not effective until ICI receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against ICI in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to ICI, or three days after the date on which the Commission mails notice of the Order to ICI, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

12/10/08

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that 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 my failure to comply with the Ordering Provisions, if any, in this order and/or ICI's failure to timely pay the penalty amount, may result in:

- A negative impact on ICI's compliance history;
- Greater scrutiny of any permit applications submitted by ICI;
- 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 against ICI;
- Automatic referral to the Attorney General's Office of any future enforcement actions against ICI; and
- TCEQ seeking other relief as authorized by law.

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

Signature

CHRIS SIDWA

Name (Printed or typed)

Authorized representative of
ICI Construction, Inc.

12-1-08
Date

SR. V.P.
Title