EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0174-EAQ-E **TCEQ ID:** RN105618391 **CASE NO.:** 37126

RESPONDENT NAME: Rockfield Investments, LLC

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	X EDWARDS AQUIFER

SITE WHERE VIOLATION(S) OCCURRED: Rockfield RV Park, located on the east side of Farm-to-Market Road 2722 about 2.4 miles north of the intersection of Highway 46, New Braunfels, Comal County

TYPE OF OPERATION: Recreational vehicle park construction site

SMALL BUSINESS: X **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on June 15, 2009. No comments were received.

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; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387

Respondent: Mr. Edward A. Niland, Vice President, Rockfield Investments, LLC, 2386 Farm-to-Market Road 2722, New Braunfels, Texas 78132

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** October 23, 2008 **Date of NOV/NOE Relating to this Case:** January 23, 2009 (NOE) **Background Facts:** This was a routine investigation. **WATER** Failure to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed evidence of ongoing construction on approximately 1.93 acres, which included roads, recreational vehicle pads, a sewer system, and other improvements on the Site [30 TEX. ADMIN. CODE § 213.4(a)].	**Total Assessed:** $5,625 **Total Deferred:** $1,125 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $4,500 **Site Compliance History Classification** **___ High _X_ Average ___ Poor** **Person Compliance History Classification** **___ High _X_ Average ___ Poor** **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent submitted the WPAP on September 4, 2008 and the WPAP was approved on November 14, 2008.

Additional ID No(s).: 13-08090401

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES						
Assigned	26-Jan-2009					
PCW	5-Feb-2009	Screening	4-Feb-2009	EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	Rockfield Investments, LLC		
Reg. Ent. Ref. No.	RN105618391		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	37126	No. of Violations	1
Docket No.	2009-0174-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Samuel Short
		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* $15,000

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 — *Subtotals 2, 3, & 7* $0

Notes: No change due to Average Performer classification.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $3,750

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $91
Approx. Cost of Compliance $6,500
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $11,250

OTHER FACTORS AS JUSTICE MAY REQUIRE -50.0% — *Adjustment* -$5,625

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: A reduction is recommended due to the fact that the violation was self-reported in a letter received on August 4, 2008.

Final Penalty Amount $5,625

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $5,625

DEFERRAL 20.0% Reduction — *Adjustment* -$1,125

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 $4,500

Screening Date 4-Feb-2009 **Docket No.** 2009-0174-EAQ-E **PCW**

Respondent Rockfield Investments, LLC *Policy Revision 2 (September 2002)*

Case ID No. 37126 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105618391

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%
		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)**

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 due to Average Performer classification.

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

Screening Date 4-Feb-2009 **Docket No.** 2009-0174-EAQ-E **PCW**

Respondent Rockfield Investments, LLC *Policy Revision 2 (September 2002)*

Case ID No. 37126 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105618391

Media [Statute] Edwards Aquifer

Enf. Coordinator Samuel Short

Violation Number 1

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

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. Specifically, the investigator observed evidence of ongoing construction on approximately 1.93 acres, which included roads, recreational vehicle pads, a sewer system, and other improvements on the Site.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 15 — 103 Number of violation days

mark only one with an x

daily	
weekly	x
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $15,000

Fifteen weekly events are recommended from August 4, 2008, the date the violation was self-reported to the date the WPAP was approved, November 14, 2008.

Good Faith Efforts to Comply

25.0% Reduction — $3,750

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes: The Respondent achieved compliance on November 14, 2008.

Violation Subtotal $11,250

Economic Benefit (EB) for this violation

Estimated EB Amount $91

Statutory Limit Test

Violation Final Penalty Total $5,625

This violation Final Assessed Penalty (adjusted for limits) $5,625

Economic Benefit Worksheet

Respondent Rockfield Investments, LLC
Case ID No. 37126
Reg. Ent. Reference No. RN105618391
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$6,500	4-Aug-2008	14-Nov-2008	0.28	$91	n/a	$91
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to prepare, submit the application, and obtain approval of an Edwards Aquifer WPAP. Date required is the date the violation was self-reported. Final date is the date the WPAP was approved.

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: $6,500

TOTAL: $91

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603404872	ROCKFIELD INVESTMENTS, LLC	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105618391	ROCKFIELD RV PARK	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01

ID Number(s):	EDWARDS AQUIFER	REGISTRATION	13-08090401
Location:	LOCATED ON THE EAST SIDE OF FARM-TO-MARKET ROAD 2722 ABOUT 2.4 MILES NORTH OF THE INTERSECTION OF HIGHWAY 46 IN NEW BRAUNFELS, COMAL COUNTY, TEXAS		
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	February 04, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 04, 2004 to February 04, 2009		

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

6. Rating Date: 9/1/2008 Repeat Violator: NO

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 01/23/2009 (702727)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
ROCKFIELD INVESTMENTS, LLC	§	
RN105618391	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2009-0174-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 Rockfield Investments, 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 and operates a recreational vehicle park construction site located on the east side of Farm-to-Market Road 2722 about 2.4 miles north of the intersection of Highway 46 in New Braunfels, Comal 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 January 28, 2009.

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 Five Thousand Six Hundred Twenty-Five Dollars ($5,625) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Four Thousand Five Hundred Dollars ($4,500) of the administrative penalty and One Thousand One Hundred Twenty-Five Dollars ($1,125) 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 submitted the Water Pollution Abatement Plan ("WPAP") on September 4, 2008 and the WPAP was approved on November 14, 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 a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a), as documented during an investigation conducted on October 23, 2008. Specifically, the investigator observed evidence of ongoing construction on approximately 1.93 acres, which included roads, recreational vehicle pads, a sewer system, and other improvements on the Site.

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: Rockfield Investments, LLC, Docket No. 2009-0174-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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

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

_____ 5/6/2009
For the Executive Director 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.

_____ 4-14-09
Signature Date

Edward A. Nilsen Vice President Rockfield Investments, LLC
Name (Printed or typed) Title
Authorized Representative of
Rockfield Investments, LLC

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.