

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1209-WQ-E TCEQ ID: RN105060834 CASE NO.: 36208
RESPONDENT NAME: KOBO, INC. DBA KOBO HOMES, INC.

ORDER TYPE:		
<input checked="" type="checkbox"/> X1660 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 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

SITE WHERE VIOLATION(S) OCCURRED: Lampasas County Road 4026, ¼ of a mile south of the intersection of U.S. Highway 183 and Lampasas County Road 4026, Lampasas, Lampasas County

TYPE OF OPERATION: subdivision construction site

SMALL BUSINESS: Yes No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired September 7, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Heather Brister, Water Enforcement Section, MC R-9, (254) 761-3034

TCEQ Regional Contact: Mr. Frank Burlison, Waco Regional Office, MC R-9, (254)761-3001

Respondent: Mr. Karl Oestreich, President and Ms. Brenda Oestreich, Vice-President, Kobo, Inc., 808 S. Western Avenue, Lampasas, Texas 76550

Respondent's Attorney: Mr. David J. Tuckfield, The Law Office of David J. Tuckfield, P.C., 12400 Highway 71 West, Suite 350-150, Austin, TX 78738

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint</p> <p><input checked="" type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 6, 2008</p> <p>Date of NOE Relating to this Case: June 10, 2008</p> <p>Background Facts: The EDRP was filed November 10, 2008. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on July 13, 2009.</p> <p>Current Compliance Status: Respondent submitted a Notice of Termination for Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15DM40 on May 26, 2009. TPDES CGP No. TXR15DM40 expired on June 3, 2008.</p> <p>WQ:</p> <p>1. Failed to make readily available a storm water pollution prevention plan ("SWP3") at the time of the on-site inspection [30 TEX. ADMIN. CODE § 305.125(1) and TPDES CGP No. TXR15DM40, Part III, Section D(1)].</p> <p>2. Failed to conduct inspections of controls in accordance to the provisions of the CGP for storm water [30 TEX. ADMIN. CODE § 305.125(1) and TPDES CGP No. TXR15DM40, Part III, Section F(7)(a)].</p>	<p>Total Assessed: \$2,372</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$167/\$2,205</p> <p>The Respondent paid \$167 of the administrative penalty. The remaining amount of \$2,205 shall be payable in 21 monthly payments of \$105 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" 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 Respondent submitted a Notice of Termination for Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15DM40 on May 26, 2009, and that the TPDES CGP No. TXR15DM40 expired on June 3, 2008.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-Jun-2008			
	PCW	21-May-2009	Screening	11-Jul-2009	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Kobo, Inc. dba Kobo Homes, Inc.				
Reg. Ent. Ref. No.	RN105060834				
Facility/Site Region	9-Waco	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	36208	No. of Violations	2
Docket No.	2008-1209-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Brister
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **Subtotals 2, 3, & 7**

Notes

Culpability **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit **Subtotal 6**

Total EB Amounts
Approx. Cost of Compliance **Capped at the Total EB \$ Amount*

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 11-Jul-2009

Docket No. 2008-1209-WQ-E

PCW

Respondent Kobo, Inc. dba Kobo Homes, Inc.

Policy Revision 2 (September 2002)

Case ID No. 36208

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105060834

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

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)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> 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

The Respondent was issued one notice of violation for violations that are same or similar to those cited in this case.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 11-Jul-2009	Docket No. 2008-1209-WQ-E	PCW		
Respondent Kobo, Inc. dba Kobo Homes, Inc.	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36208	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN105060834				
Media [Statute] Water Quality				
Enf. Coordinator Heather Brister				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15DM40, Part III, Section D(1)			
Violation Description	Failed to make readily available a storm water pollution prevention plan ("SWP3") at the time of an on-site inspection, as documented during the investigation conducted on May 6, 2008.			
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"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.			
		Adjustment	<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>		
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="64"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
		Violation Base Penalty	<input type="text" value="\$1,000"/>	
		One single event is recommended.		
Good Faith Efforts to Comply		0.0% Reduction		<input type="text" value="\$0"/>
	Before NOV	NOV to EDRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	x	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
		Violation Subtotal	<input type="text" value="\$1,000"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$27"/>	Violation Final Penalty Total	<input type="text" value="\$1,186"/>	
		This violation Final Assessed Penalty (adjusted for limits)		
		<input type="text" value="\$1,186"/>		

Economic Benefit Worksheet

Respondent: Kobo, Inc. dba Kobo Homes, Inc.

Case ID No.: 36208

Reg. Ent. Reference No.: RN105060834

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
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	\$200	4-Apr-2007	30-Nov-2009	2.66	\$27	n/a	\$27
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain a SWP3 on site. Date Required is the date the violation was initially documented.
Final Date is the estimated 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 \$200

TOTAL \$27

Screening Date 11-Jul-2009	Docket No. 2008-1209-WQ-E	PCW		
Respondent Kobo, Inc. dba Kobo Homes, Inc.	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 36208	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN105060834				
Media [Statute] Water Quality				
Enf. Coordinator Heather Brister				
Violation Number <input type="text" value="2"/>				
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and TPDES CGP No. TXR15DM40, Part III, Section F(7)(a)			
Violation Description	Failed to conduct inspections of controls, in accordance with the provisions of the CGP for storm water, as documented during the investigation conducted on May 6, 2008.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			Percent <input type="text" value="10%"/>
	Release	Major	Moderate	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	x	<input type="text"/>
>> 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 significant amounts of pollutants which would not exceed levels that are protective of human health and environmental receptors as a result of the violation.			
Adjustment		<input type="text" value="\$9,000"/>		
		<input type="text" value="\$1,000"/>		
Violation Events				
	Number of Violation Events	<input type="text" value="1"/>	Number of violation days	<input type="text" value="66"/>
<i>mark only one with an x</i>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	x		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
Violation Base Penalty		<input type="text" value="\$1,000"/>		
One quarterly event is recommended from the investigation date (May 6, 2008) to the screening date (July 11, 2008).				
Good Faith Efforts to Comply		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>	
		Before NOV	NOV to EDPRP/Settlement Offer	
	Extraordinary	<input type="text"/>	<input type="text"/>	
	Ordinary	<input type="text"/>	<input type="text"/>	
	N/A	x	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal		<input type="text" value="\$1,000"/>		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$272"/>	Violation Final Penalty Total	<input type="text" value="\$1,186"/>	
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,186"/>		

Economic Benefit Worksheet

Respondent: Kobo, Inc. dba Kobo Homes, Inc.

Case ID No.: 36208

Reg. Ent. Reference No.: RN105060834

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
<small>No commas or \$</small>							

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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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)	\$250	6-May-2008	9-Mar-2009	1.76	\$22	\$250	\$272

Notes for AVOIDED costs

Estimated cost that was avoided by failing to perform inspections on controls. Date Required is the date of the investigation. Final Date is the date of screening date.

Approx. Cost of Compliance

\$250

TOTAL

\$272

Compliance History

Customer/Respondent/Owner-Operator: CN603094848 KOBO INC Classification: AVERAGE Rating: 9.00
 Regulated Entity: RN105060834 KOBO CIRCLE O SUBDIVISION Classification: AVERAGE Site Rating: 9.00

ID Number(s): STORMWATER PERMIT TXR15DM40

Location: Located on County Road 4026, 1/4 of a mile south of the intersection of U.S. Highway 183 and Lampasas County Road 4026, Lampasas County, Texas. Rating Date: September 01 07
 Repeat Violator: NO

TCEQ Region: REGION 09 - WACO
 Date Compliance History Prepared: June 25, 2008
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 25, 2003 to June 25, 2008
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Heather Brister Phone: 254/761-3034

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 03/27/2008 (618255)
- 2 06/10/2008 (657312)

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

Date: 06/01/2007 (556179)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Rqmt Prov: PERMIT CGP Part II; Section D(3)(d)
 Description: Failure to post a copy of the notice of intent (NOI) at the construction site in a location where it is readily available for viewing.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Rqmt Prov: PERMIT CGP Part II; Section D(2)(a)
 Description: Failure to develop and implement a storm water pollution prevention plan (SWP3) according to the provisions of the Construction General Permit (CGP) for Storm Water.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Rqmt Prov: PERMIT CGP Part III; Section F(8)(a)
 Description: Failure to conduct inspections of controls in accordance to the provisions of the Construction General Permit (CGP) for Storm Water.

- | | |
|--|-----|
| 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
AGAINST KOBO, INC. DBA KOBO
HOMES, INC.;
RN105060834

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1209-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 Kobo, Inc. dba Kobo Homes, Inc. ("Kobo") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Kobo, represented by David J. Tuckfield of the law firm of David J. Tuckfield, P.C., appear before the Commission and together stipulate that:

1. Kobo owns and operates a subdivision site called Kobo Circle O Subdivision located on Lampasas County Road 4026, ¼ of a mile south of the intersection of U.S. Highway 183 and Lampasas County Road 4026, Lampasas, Lampasas County, Texas (the "Site").
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 TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Kobo agree that the Commission has jurisdiction to enter this Agreed Order, and that Kobo is subject to the Commission's jurisdiction.
4. Kobo received notice of the violations alleged in Section II ("Allegations") on or about June 15, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Kobo of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of two thousand three hundred seventy-two dollars (\$2,372.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Kobo paid one hundred sixty-seven dollars (\$167.00) of the administrative penalty. The remaining amount of two thousand two hundred five dollars (\$2,205.00) of the administrative penalty shall be payable in 21 monthly payments of one hundred five dollars (\$105.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Kobo fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Kobo's failure to meet the payment schedule of this Agreed Order constitutes the failure by Kobo to timely and satisfactorily comply with all of the terms of this Agreed Order
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 Kobo 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 Kobo submitted a Notice of Termination for Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15DM40 on May 26, 2009 and that the TPDES CGP No. TXR15DM40 expired on June 3, 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 Kobo 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. During an investigation conducted on May 6, 2008, a TCEQ Waco Regional Office investigator documented that Kobo violated:
 - a. 30 TEX. ADMIN. CODE § 305.125(1) and TPDES CGP No. TXR15DM40, Part III, Section D(1) by failing to make readily available a storm water pollution prevention plan ("SWP3") at the time of the on-site inspection.
 - b. 30 TEX. ADMIN. CODE § 305.125(1) and TPDES CGP No. TXR15DM40, Part III, Section F(7)(a) by failing to conduct inspections of controls in accordance to the provisions of the CGP for storm water.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Kobo pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Kobo'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: Kobo, Inc. dba Kobo Homes, Inc., Docket No. 2008-1209-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 Kobo. Kobo 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 Kobo 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.
5. 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 Kobo, or three days after the date on which the Commission mails notice of the Order to Kobo, 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

Burgess Perdue 8/20/2009

For the Executive Director 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, if any, 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 my failure to timely pay the penalty amount, may result in:

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

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

[Signature]
Signature

July 13, 2009
Date

Brenda Oestreich
Name (Printed or typed)
Authorized representative of
Kobo, Inc. dba Kobo Homes, Inc.

VP-
Title

2072