

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2009-0056-WQ-E TCEQ ID: RN105519490 CASE NO.: 36998**  
**RESPONDENT NAME: KIMBALL HILL HOMES AUSTIN, L.P.**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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:** corner of United States Highway 290 and Ledgestone Drive, Hays County

**TYPE OF OPERATION:** multi-phased residential home construction site

**SMALL BUSINESS:**  Yes  No  N/A

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that the Respondent caused a fish kill by discharging sediment from the site into Long Branch Creek. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** The complainant has not expressed a desire to protest this action or speak at agenda. No one other than the ED and the Respondent expressed an interest in this matter.

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

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Jeremy Escobar, Air Enforcement Section, MC 149, (512) 239-1460

**TCEQ Regional Contact:** Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 239

**Respondent:** Mr. Derek Baker, President, Kimball Hill Homes, L.P., 7800 Shoal Creek Blvd., Ste. 230, Austin, Texas 78757

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      October 17, 2008</p> <p><b>Date of Investigation Relating to this Case:</b>                      October 17, 2008</p> <p><b>Date of NOE Relating to this Case:</b>                      December 19, 2008</p> <p><b>Background Facts:</b>                      The agreed order was signed on March 5, 2009.</p> <p><b>Current Compliance Status:</b>                      No outstanding Technical Requirements.</p> <p><b>WQ:</b>                      Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(2)].</p>	<p><b>Total Assessed:</b> \$30,000</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$30,000</p> <p>The Respondent paid the administrative penalty amount in full.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b>                      Human health or the environment have been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on October 22, 2008, the Respondent repaired the erosion and sediment controls, including reinstalling silt fences, stabilizing top soil at the site by covering it with grass sod, and removing the sediment runoff from the streets, culvert, and drains.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	22-Dec-2008		
	<b>PCW</b>	9-Jan-2009	<b>Screening</b>	9-Jan-2009
			<b>EPA Due</b>	

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Kimball Hill Homes Austin, L.P.		
<b>Reg. Ent. Ref. No.</b>	RN105519490		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	36998	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-0056-WQ-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jeremy Escobar
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$40,000
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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.

<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No change due to Average Performer classification.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$10,000
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$1	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$946	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$30,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$30,000
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$30,000
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$30,000
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Screening Date 9-Jan-2009

Docket No. 2009-0056-WQ-E

PCW

Respondent Kimball Hill Homes Austin, L.P.

Policy Revision 2 (September 2002)

Case ID No. 36998

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105519490

Media [Statute] Water Quality

Enf. Coordinator Jeremy Escobar

### 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%
<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 due to Average Performer classification.

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

**Screening Date** 9-Jan-2009 **Docket No.** 2009-0056-WQ-E **PCW**  
**Respondent** Kimball Hill Homes Austin, L.P. *Policy Revision 2 (September 2002)*  
**Case ID No.** 36998 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105519490  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jeremy Escobar

**Violation Number** 1  
**Rule Cite(s)** Texas Water Code § 26.121(a)  
**Violation Description** Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state. Specifically, during an investigation on October 17, 2008, TCEQ staff documented that a rain event occurring on the night of October 14, 2008 caused storm water runoff from the lot at 126 Terrace Court, to mix with reddish silty top soil used for landscaping. The sediment discharge left a silt trail as it flowed under and over several silt fences, a concrete lined culvert, rock berm, and down the side drainage along the Ledgestone Subdivision ("LS") property line, diverging into the main creek channel approximately 500 feet from the main outfall of the LS project. The sediment then washed approximately 1200 feet down the main creek, and into a small pond located behind 23 Laurel Hill Drive in the LS, resulting in a fish kill totaling approximately 110 fish.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	X			50%
	Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

**Matrix Notes** Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$5,000

\$5,000

**Violation Events**

Number of Violation Events 8 8 Number of violation days

*mark only one with an x*

daily	X
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$40,000

Eight daily events are recommended from October 14, 2008 when the discharge occurred, to the October 22, 2008 date of compliance.

**Good Faith Efforts to Comply** 25.0% Reduction Before NOV NOV to ED/PRP/Settlement Offer \$10,000

Extraordinary		
Ordinary	X	
N/A		(mark with x)

**Notes** The Respondent completed cleanup October 22, 2008 before NOE was sent.

**Violation Subtotal** \$30,000

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$1

**Violation Final Penalty Total** \$30,000

**This violation Final Assessed Penalty (adjusted for limits)** \$30,000

## Economic Benefit Worksheet

**Respondent** Kimball Hill Homes Austin, L.P.  
**Case ID No.** 36998  
**Reg. Ent. Reference No.** RN105519490  
**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)	\$946	14-Oct-2008	22-Oct-2008	0.02	\$0	\$1	\$1
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**  
 Cost of equipment and labor to repair/maintain the erosion and sediment controls, including reinstalling silt fences, stabilizing top soil at the site by covering it with grass sod, and removing the sediment from the streets and drain. The date required is the date of unauthorized discharge. The final date is the date that cleanup was completed.

### 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	\$946	<b>TOTAL</b>	\$1
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# Compliance History Report

Customer/Respondent/Owner-Operator: CN602647117 Kimball Hill Homes Austin, L.P. Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN105519490 LEDGESTONE PHASE 1 SECTION 1 AND 2 Classification: AVERAGE BY DEFAULT Site Rating: 3.01  
ID Number(s): STORMWATER PERMIT TXR15KP57  
Location: CORNER OF US 290 AND LEDGESTONE DRIVE, HAYS COUNTY

TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: January 23, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 23, 2004 to January 23, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jeremy Escobar Phone: 239 - 1460

## 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
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 12/22/2008 (709657)
  - 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  
ENFORCEMENT ACTION  
CONCERNING  
KIMBALL HILL HOMES AUSTIN, L.P.  
RN105519490**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-0056-WQ-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Kimball Hill Homes Austin, L.P. (“the Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Litigation Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. The Respondent owns and operates a multi-phased residential home construction site located at the corner of United States Highway 290 and LedgeStone Drive in Hays County, Texas (the “Site”).
2. The Respondent has discharged waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.

3. During an investigation on October 17, 2008, TCEQ staff documented that a rain event occurring on the night of October 14, 2008 caused storm water runoff from the Site at 126 Terrace Court, to mix with reddish silty top soil used for landscaping. The sediment discharge left a silt trail as it flowed under and over several silt fences, a concrete lined culvert, rock berm, and down the side drainage along the LedgeStone Subdivision ("LS") property line, diverging into the main creek channel approximately 500 feet from the main outfall of the LS project. The sediment then washed approximately 1,200 feet down the main creek, and into a small pond located behind 23 Laurel Hill Drive, resulting in a fish kill totaling approximately 110 fish.
4. The Respondent received notice of the violations on December 24, 2008.
5. The Executive Director recognizes that on October 22, 2008, the Respondent repaired the erosion and sediment controls, including reinstalling silt fences, stabilizing top soil at the site by covering it with grass sod, and removing the sediment runoff from the streets, culvert, and drains.

## **II. CONCLUSIONS OF LAW**

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of waste into or adjacent to water in the state, in violation of TEXAS WATER CODE § 26.121(a)(2).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Thirty Thousand Dollars (\$30,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Thirty Thousand Dollar (\$30,000) administrative penalty.

## **III. ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Thirty Thousand Dollars (\$30,000) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any

manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kimball Hill Homes Austin, L.P., Docket No. 2009-0056-WQ-E" to:

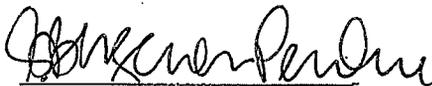
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon 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. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
5. 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.
6. 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.
7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director

1/7/2010

\_\_\_\_\_  
Date

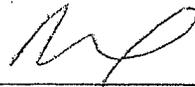
I, the undersigned, have read and understand the attached Agreed Order in the matter of Kimball Hill Homes Austin, L.P. I am authorized to agree to the attached Agreed Order on behalf of Kimball Hill Homes Austin, L.P., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Kimball Hill Homes Austin, L.P. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

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

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

  
\_\_\_\_\_  
Signature

3/5/09  
\_\_\_\_\_  
Date

Derek Baker  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Kimball Hill Homes Austin, L.P.

Division President  
\_\_\_\_\_  
Title

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.