

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-1608-EAQ-E TCEQ ID: RN104509138 CASE NO.: 38471
RESPONDENT NAME: Independence Woods, L.L.C.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> EDWARDS AQUIFER
<p>SITE WHERE VIOLATION(S) OCCURRED: The Shops at Arbor Trails, southwest corner of MOPAC Expressway and Willian Cannon Drive, Austin, Travis County</p> <p>TYPE OF OPERATION: Commercial land development site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 22, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, P.G., Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Gregory Christopher, Manager, Independence Woods, L.L.C., 12918 Shops Parkway, Suite 600, Austin, Texas 78738 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 24, 2009</p> <p>Date of NOE Relating to this Case: September 15, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to obtain approval of a modification of a Organized Sewage Collection System Plan ("OSCSP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed that changes to the layout of Building E, sewer lines, and the addition of a lift station, were not included in the OSCSP approved on May 2, 2005 [30 TEX. ADMIN. CODE § 213.4(j)(4) and OSCSP No. 11-05011402A Standard Conditions ("SC") No. 3].</p> <p>2) Failure to comply with the terms of the approved Edwards Aquifer Protection Plan ("EAPP"). Specifically, a copy of the approved EAPP which includes the Water Pollution Abatement Plant ("WPAP") and OSCSP, was not available to contractors at the project location during construction [30 TEX. ADMIN. CODE § 213.4(k), WPAP No. 11-05011402 SC No. 3, and OSCSP No. 11-05011402A SC No. 2].</p> <p>3) Failure to submit certifications to the appropriate regional office within 30 days of testing or site completion. Specifically, certification by a Texas licensed professional engineer was not submitted timely for the sewer line testing and water quality pond construction [30 TEX. ADMIN. CODE § 213.5(c)(3)(D) and 213.5(b)(4)(D)(ii)(II) and WPAP No. 11-</p>	<p>Total Assessed: \$9,375</p> <p>Total Deferred: \$1,875 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$7,500</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input 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 measures at the Site:</p> <p>a) Received approval for a modified OSCSP on September 14, 2009;</p> <p>b) Began maintaining copies of the approved EAPP at the project location on August 12, 2009; and</p> <p>c) Submitted certifications to the Austin Regional Office signed by a Texas licensed professional engineer for sewer line testing and water quality pond construction on August 14, 2009.</p>

05011402 SC No. 14 and OSCSP No. 11-05011402A SC No. 12].		
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Additional ID No(s): EAQ No. 11-05011402



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	21-Sep-2009	Screening	1-Oct-2009	EPA Due	
	PCW	2-Oct-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Independence Woods, L.L.C.		
Reg. Ent. Ref. No.	RN104509138		
Facility/Site Region	11-Auslin	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	38471	No. of Violations	3
Docket No.	2009-1608-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Thomas Jecha, P.G.
		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 \$12,500

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 compliance history.

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 \$3,125

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$30	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,800	

SUM OF SUBTOTALS 1-7 Final Subtotal \$9,375

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$9,375

STATUTORY LIMIT ADJUSTMENT Final-Assessed Penalty \$9,375

DEFERRAL 20.0% Reduction Adjustment -\$1,875

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY \$7,500

Screening Date 1-Oct-2009

Docket No. 2009-1608-EAQ-E

PCW

Respondent Independence Woods, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 38471

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104509138

Media [Statute] Edwards Aquifer

Enf. Coordinator Thomas Jecha, P.G.

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 compliance history.

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

Screening Date 1-Oct-2009 **Docket No.** 2009-1608-EAQ-E **PCW**
Respondent Independence Woods, L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 38471 *PCW Revision October 30, 2009*
Reg. Ent. Reference No. RN104509138
Media [Statute] Edwards Aquifer
Inf. Coordinator Thomas Jecha, P.G.
Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 213.4(j)(4) and Organized Sewage Collection System Plan ("OSCSP") No. 11-05011402A Standard Conditions ("SC") No. 3
Violation Description Failed to obtain approval of a modification of a OSCSP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed that changes to the layout of Building E, sewer lines, and the addition of a lift station, were not included in the OSCSP approved on May 2, 2005.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
Potential					

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 52

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two monthly events are recommended from the July 24, 2009 investigation until the September 14, 2008 date of compliance.

Good Faith Efforts to Comply

25.0% Reduction \$1,250

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

Notes The modified plan was approved September 14, 2009.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$28

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent Independence Woods, L.L.C.
 Case ID No. 38471
 Reg. Ent. Reference No. RN104509138
 Media Edwards Aquifer
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
 Item Description: No commas or \$.

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$4,000	24-Jul-2009	14-Sep-2009	0.14	\$28	n/a	\$28
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to revise the OSCSP and obtain approval of the modifications. The date required is the investigation date and the final date is the compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,000

TOTAL

\$28

Screening Date 1-Oct-2009	Docket No. 2008-1608-EAQ-E	PCW														
Respondent Independence Woods, L.L.C.		<small>Policy Revision 2 (September 2002)</small>														
Case ID No. 38471		<small>PCW Revision October 30, 2008</small>														
Reg. Ent. Reference No. RN104509138																
Media [Statute] Edwards Aquifer																
Enf. Coordinator Thomas Jecha, P.G.																
Violation Number 2																
Rule Cite(s)	30 Tex. Admin. Code § 213.4(k), Water Pollution Abatement Plan ("WPAP") No. 11-05011402 SC No. 3, and OSCSP No. 11-05011402A SC No. 2															
Violation Description	Failed to comply with the terms of the approved Edwards Aquifer Protection Plan ("EAPP"). Specifically, a copy of the approved EAPP which includes the WPAP and OSCSP, was not available to contractors at the project location during construction.															
	Base Penalty	\$10,000														
>> Environmental, Property and Human Health Matrix																
OR	Release	Harm Major Moderate Minor														
	Actual	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr></table>				Percent <input type="text" value="0%"/>										
	Potential	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr></table>														
>> Programmatic Matrix																
	Falsification	Major Moderate Minor														
	<table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%; text-align: center;">x</td><td style="width:33%;"></td></tr></table>		x		Percent <input type="text" value="25%"/>											
	x															
Matrix Notes	100% of the rule requirement was not met.															
	Adjustment	\$7,500														
			\$2,500													
Violation Events																
	Number of Violation Events <input type="text" value="1"/>	Number of violation days <input type="text" value="19"/>														
<small>mark only one with an x</small>	<table border="1" style="width:100%;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></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 style="text-align: center;">x</td></tr> </table>	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	x	Violation Base Penalty <input type="text" value="\$2,500"/>
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	x															
	One single event is recommended.															
Good Faith Efforts to Comply																
	25.0% Reduction		\$625													
	Before NOV	NOV to EDPRP/Settlement Offer														
Extraordinary	<input type="text"/>	<input type="text"/>														
Ordinary	x	<input type="text"/>														
N/A	<input type="text"/>	(mark with x)														
Notes	The plan was on-site on August 12, 2009.															
	Violation Subtotal		\$1,875													
Economic Benefit (EB) for this violation																
	Estimated EB Amount <input type="text" value="\$1"/>	Violation Final Penalty Total	\$1,875													
		This violation Final Assessed Penalty (adjusted for limits)	\$1,875													

Economic Benefit Worksheet

Respondent Independence Woods, L.L.C.
Case ID No. 38471
Reg. Ent. Reference No. RN104509138
Media Edwards Aquifer
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
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)	\$200	24-Jul-2009	12-Aug-2009	0.05	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to maintain a copy of the EAPP at the project location for contractors working at the Site. The date required is the investigation date and the final date is the compliance date.

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 \$1

Screening Date 1-Oct-2009	Docket No. 2009-1608-EAQ-E	PCW	
Respondent Independence Woods, L.L.C.	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 38471	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN104509138			
Media [Statute] Edwards Aquifer			
Enf. Coordinator Thomas Jecha, P.G.			
Violation Number <input type="text" value="3"/>			
Rule Cite(s)	30 Tex. Admin. Code § 213.5(c)(3)(D) and 213.5(b)(4)(D)(ii)(II) and WPAP No. 11-05011402 SC No. 14 and OSCSP No. 11-05011402A SC No. 12		
Violation Description	Failed to submit certifications to the appropriate regional office within 30 days of testing or site completion. Specifically, certification by a Texas licensed professional engineer was not timely submitted for the sewer line testing and water quality pond construction.		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
OR	Release	Harm	
		Major Moderate Minor	
	Actual	<input type="text"/>	Percent <input type="text" value="0%"/>
	Potential	<input type="text"/>	
>> Programmatic Matrix			
	Falsification	Major Moderate Minor	
	<input type="text"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Percent <input type="text" value="25%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>		
Adjustment		<input type="text" value="\$7,500"/>	
		<input type="text" value="\$2,500"/>	
Violation Events			
	Number of Violation Events	<input type="text" value="2"/>	Number of violation days
		<input type="text" value="21"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$5,000"/>
	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"/>	
<input type="text" value="Two single events are recommended, a single event for each certification."/>			
Good Faith Efforts to Comply		<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$1,250"/>
	<small>Before NOV NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>		
Ordinary	<input checked="" type="checkbox"/>		
N/A	<input type="text"/>	<small>(mark with x)</small>	
Notes	<input type="text" value="The certifications were received on August 14, 2009."/>		
Violation Subtotal		<input type="text" value="\$3,750"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$1"/>	Violation Final Penalty Total	<input type="text" value="\$3,750"/>
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$3,750"/>	

Economic Benefit Worksheet

Respondent Independence Woods, L.L.C.
Case ID No. 38471
Reg. Ent. Reference No. RN104509138
Media Edwards Aquifer
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime 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				0.00	\$0	n/a	\$0
Other (as needed)	\$400	24-Jul-2009	14-Aug-2009	0.06	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to provide timely certifications. The date required is the investigation date and the final date is the compliance date.

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

\$400

TOTAL

\$1

Compliance History Report Pending

Customer/Respondent/Owner-Operator:	CN603526799 Independence Woods, LLC.	Classification:	Rating:
Regulated Entity:	RN104509138 THE SHOPS AT ARBOR TRAILS	Classification:	Site Rating:
ID Number(s):	EDWARDS AQUIFER	REGISTRATION	11-05011402
	EDWARDS AQUIFER	REGISTRATION	11-05011402A
	EDWARDS AQUIFER	REGISTRATION	11-05011402B
Location:	SW CORNER OF MOPAC EXPRESSWAY & WILLIAM CANNON DR		
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	September 28, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 28, 2004 to September 28, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Thomas Jecha, P.G.</u>	Phone:	<u>239 - 2576</u>

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. 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 09/15/2009 (764506)
- 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
INDEPENDENCE WOODS, L.L.C.
RN104509138**

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

AGREED ORDER DOCKET NO. 2009-1608-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 Independence Woods, L.L.C. ("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 commercial land development site at the southwest corner of Mopac Expressway and William Cannon Drive in Austin, Travis County, Texas (the "Site").
2. The Respondent allegedly has performed an activity in violation of TEX. WATER CODE ch. 26 or a rule 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 September 20, 2009.
5. The occurrence of any alleged 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 Nine Thousand Three Hundred Seventy-Five Dollars (\$9,375) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Thousand Five Hundred Dollars (\$7,500) of the

administrative penalty and One Thousand Eight Hundred Seventy-Five Dollars (\$1,875) is deferred.

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 has implemented the following corrective measures at the Site:
 - a. Received approval for a modified Organized Sewage Collection System Plan ("OSCSP") on September 14, 2009.
 - b. Began maintaining copies of the approved Edwards Aquifer Protection Plan ("EAPP") at the project location on August 12, 2009.
 - c. Submitted certifications to the Austin Regional Office signed by a Texas licensed professional engineer for sewer line testing and water quality pond construction on August 14, 2009.
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.
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:

1. Failed to obtain approval of a modification of a OSCSP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(j)(4) and OSCSP No. 11-05011402A Standard Conditions ("SC") No. 3, as documented during an investigation conducted on July 24, 2009. Specifically, the investigator observed that changes to the layout of Building E, sewer lines, and the addition of a lift station, were not included in the OSCSP approved on May 2, 2005.
2. Failed to comply with the terms of the approved EAPP, in violation of 30 TEX. ADMIN. CODE § 213.4(k), Water Pollution Abatement Plan ("WPAP") No. 11-05011402 SC No. 3, and OSCSP No. 11-05011402A SC No. 2, as documented during an investigation conducted on July 24, 2009.

Specifically, a copy of the approved EAPP which included the WPAP and OSCSP, was not available to contractors at the project location during construction.

3. Failed to submit certifications to the appropriate regional office within 30 days of testing or site completion, in violation of 30 TEX. ADMIN. CODE § 213.5(c)(3)(D) and 213.5(b)(4)(D)(ii)(II) and WPAP No. 11-05011402 SC No. 14 and OSCSP No. 11-05011402A SC No. 12, as documented during an investigation conducted on July 24, 2009. Specifically, certification by a Texas licensed professional engineer was not submitted timely for the sewer line testing and water quality pond construction.

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: Independence Woods, L.L.C., Docket No. 2009-1608-EAQ-E" to:

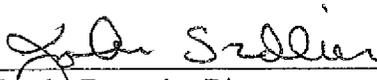
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

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 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.
4. 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



For the Executive Director

3/9/2010
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.



Signature

January 7, 2010
Date

Gregory Christopher
Name (Printed or typed)
Authorized Representative of
Independence Woods, L.L.C.

Manager
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.