

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1700-WQ-E TCEQ ID RN105471619 CASE NO. 38521
RESPONDENT NAME: VINTAGE LIVING, LLC AND MICHAEL MCCORKLE

| | | |
|---|--|--|
| 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 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: 3340 Dacy Lane, Kyle, Hays County

TYPE OF OPERATION: residential housing development

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging construction of the subdivision without a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") permit and that trash from construction activities was blowing off-site on to adjacent properties. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired July 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Carlie Konkol, Air Enforcement Section, MC 149, (512) 239-0735

TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929

Respondent: Mr. Michael McCorkle, Manager, Vintage Living, LLC, 1761 Bebee Road, Kyle, Texas 78640

Respondent's Attorney: Mr. Cliff McCormack, 174 South Guadalupe, Suite 106, San Marcos, Texas 78666

| VIOLATION SUMMARY CHART: | | |
|--|---|---|
| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
| <p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: December 27, 2007</p> <p>Dates of Investigations Relating to this Case: January 22, 2008 (complaint) September 14, 2009 (records review)</p> <p>Date of NOE Relating to this Case: September 18, 2009</p> <p>Background Facts: The EDRP was filed on February 12, 2010. Respondents filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on June 4, 2010.</p> <p>Current Compliance Status: No outstanding technical requirements.</p> <p>WQ: Failed to obtain authorization to discharge storm water associated with construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c)].</p> | <p>Total Assessed: \$1,375</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$175/\$1,200</p> <p>Respondents paid \$175 of the administrative penalty. The remaining amount of \$1,200 shall be payable in 12 monthly installments of \$100 each.</p> <p>Both Respondents: Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Both Respondents: 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 final stabilization was achieved on or about May 6, 2010, on all portions of the Site that were the responsibility of the respondents.</p> |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|------------|----------------|--|
| DATES | Assigned | 28-Sep-2009 | Screening | 8-Oct-2009 | EPA Due | |
| | PCW | 26-Jan-2010 | | | | |

| | |
|--|--|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Vintage Living, LLC and Michael McCorkle |
| Reg. Ent. Ref. No. | RN105471619 |
| Facility/Site Region | 11-Austin |
| Major/Minor Source | Minor |

| | | | | |
|--------------------------------|----------------|------------------------------|--------------------|----------|
| CASE INFORMATION | | | | |
| Enf./Case ID No. | 38521 | No. of Violations | 1 | |
| Docket No. | 2009-1700-WQ-E | Order Type | 1660 | |
| Media Program(s) | Water Quality | Government/Non-Profit | No | |
| Multi-Media | | Enf. Coordinator | Carlie Konkol | |
| | | 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 | \$1,000 |
|---|-------------------|---------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|------------------|--------------------------------|------|
| Compliance History | 5.0% Enhancement | Subtotals 2, 3, & 7 | \$50 |
|---------------------------|------------------|--------------------------------|------|

| | |
|--------------|--|
| Notes | An enhancement is recommended for one Notice of Violation with same or similar violations. |
|--------------|--|

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| 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 | \$0 |
|--|-------------------|-----|

| | | | |
|-------------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|-----|

| | | |
|----------------------------|-------|-----------------------------------|
| Total EB Amounts | \$377 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$325 | |

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$1,050 |
|-----------------------------|-----------------------|---------|

| | | | |
|---|-------|-------------------|-------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 31.0% | Adjustment | \$325 |
|---|-------|-------------------|-------|

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$1,375 |
|-----------------------------|---------|

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$1,375 |
|-----------------------------------|-------------------------------|---------|

| | | | | |
|-----------------|------|-----------|-------------------|-----|
| DEFERRAL | 0.0% | Reduction | Adjustment | \$0 |
|-----------------|------|-----------|-------------------|-----|

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

| | |
|--------------|--|
| Notes | Deferral not offered for non-expedited settlement. |
|--------------|--|

| | |
|------------------------|---------|
| PAYABLE PENALTY | \$1,375 |
|------------------------|---------|

Screening Date 8-Oct-2009

Docket No. 2009-1700-WQ-E

PCW

Respondent Vintage Living, LLC and Michael McCorkle

Policy Revision 2 (September 2002)

Case ID No. 38521

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105471619

Media [Statute] Water Quality

Enf. Coordinator Carlie Konkol

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

An enhancement is recommended for one Notice of Violation with same or similar violations.

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

| | | | | |
|--------------------------------|---|-------------------|----------------|---|
| Screening Date | 8-Oct-2009 | Docket No. | 2009-1700-WQ-E | PCW |
| Respondent | Vintage Living, LLC and Michael McCorkle | | | <i>Policy Revision 2 (September 2002)</i> |
| Case ID No. | 38521 | | | <i>PCW Revision October 30, 2008</i> |
| Reg. Ent. Reference No. | RN105471619 | | | |
| Media [Statute] | Water Quality | | | |
| Enf. Coordinator | Carlie Konkol | | | |
| Violation Number | 1 | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c) | | | |
| Violation Description | Failed to obtain authorization to discharge storm water associated with construction activities. Specifically, the Respondent began construction on the Site prior to preparing and implementing a storm water pollution prevention plan ("SWP3") and obtaining authorization under a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit. | | | |
| Base Penalty | \$10,000 | | | |

>> Environmental, Property and Human Health Matrix

| | | | | | |
|-----------|----------------|-------|----------|-------|--|
| OR | Harm | | | | |
| | Release | Major | Moderate | Minor | |
| | Actual | | | | Percent <input type="text" value="0%"/> |
| Potential | | | | | |

>> Programmatic Matrix

| | | | | | |
|---------------------|---|-------|----------|-------|---|
| | Falsification | Major | Moderate | Minor | |
| | | x | | | Percent <input type="text" value="10%"/> |
| Matrix Notes | 100% of the rule requirement was not met. | | | | |
| Adjustment | \$9,000 | | | | |

Violation Events

| | | | |
|--|--------------------------------|---|--|
| Number of Violation Events | <input type="text" value="1"/> | <input type="text" value="24"/> | Number of violation days |
| <i>mark only one with an x</i> | daily | <input type="text"/> | Violation Base Penalty <input type="text" value="\$1,000"/> |
| | weekly | <input type="text"/> | |
| | monthly | <input checked="" type="text" value="x"/> | |
| | quarterly | <input type="text"/> | |
| | semiannual | <input type="text"/> | |
| | annual | <input type="text"/> | |
| | single event | <input type="text"/> | |
| One monthly event is recommended from the September 14, 2009 record review date to the October 8, 2009 screening date. | | | |

Good Faith Efforts to Comply Reduction

| | | |
|---------------------------|--|-------------------------|
| | Before NOV | NOV to EDPRP/Settlement |
| Extraordinary | <input type="text"/> | <input type="text"/> |
| Ordinary | <input type="text"/> | <input type="text"/> |
| N/A | <input checked="" type="text" value="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="\$377"/> | Violation Final Penalty Total | <input type="text" value="\$1,375"/> |
| This violation Final Assessed Penalty (adjusted for limits) | | <input type="text" value="\$1,375"/> | |

Economic Benefit Worksheet

Respondent Vintage Living, LLC and Michael McCorkle
Case ID No. 38521
Reg. Ent. Reference No. RN105471619
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 | | | | 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] | \$325 | 22-Jan-2008 | 6-May-2010 | 3.21 | \$52 | \$325 | \$377 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

The avoided cost to obtain a NOI. Date Required is the date the violation was first documented and the Final Date is the estimated date final stabilization was achieved.

Approx. Cost of Compliance

\$325

TOTAL

\$377

Compliance History Report

| | | | | |
|-------------------------------------|-------------|---------------------|-------------------------|-------------------|
| Customer/Respondent/Owner-Operator: | CN603628223 | Vintage Living, LLC | Classification: AVERAGE | Rating: 5.00 |
| Regulated Entity: | RN105471619 | 3340 DACY LANE | Classification: AVERAGE | Site Rating: 5.00 |

ID Number(s):

Location: 3340 DACY LN, KYLE, TX, 78640
 TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: February 11, 2010
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: September 29, 2004 to September 29, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Carlie Konkol Phone: (361) 825-3422

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: 9/1/2009 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 | 09/22/2009 | (775999) |
|---|------------|----------|
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

| | | |
|--------------|--|-----------------------|
| Date: | 03/20/2008 | (616760) |
| Self Report? | NO | Classification: Major |
| Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4) | |
| Description: | Failure to obtain coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP). | |
 - 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

Compliance History Report Pending

| | | | | |
|-------------------------------------|-------------|------------------------------------|-------------------------|-------------------|
| Customer/Respondent/Owner-Operator: | CN603329251 | MCCORKLE, MICHAEL | Classification: AVERAGE | Rating: 5.00 |
| Regulated Entity: | RN105471619 | MCCORKLE MICHAEL 3340 DACY LANE | Classification: AVERAGE | Site Rating: 5.00 |

ID Number(s):

Location: 3340 DACY LN, KYLE, TX, 78640
 TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: September 29, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: September 29, 2004 to September 29, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Carlie Konkol Phone: (512) 239-0735

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: 9/1/2009 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 | 09/22/2009 | (775999) |
|---|------------|----------|
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

| | | |
|--------------|--|-----------------------|
| Date: | 03/20/2008 | (616760) |
| Self Report? | NO | Classification: Major |
| Citation: | 30 TAC Chapter 281, SubChapter A 281.25(a)(4) | |
| Description: | Failure to obtain coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP). | |
 - 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
VINTAGE LIVING, LLC AND
MICHAEL MCCORKLE;
RN105471619**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1700-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 Vintage Living, LLC (“Vintage”) and Michael McCorkle (“Mr. McCorkle”) (collectively referred to as “Respondents”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Vintage and Mr. McCorkle, represented by Mr. Cliff McCormack of the Law Office of Cliff McCormack, appear before the Commission and together stipulate that:

1. Vintage owns and Mr. McCorkle operates a residential housing development located at 3340 Dacy Lane, Kyle, Hays County, Texas (the “Site”). Respondents have discharged waste from the Site into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. This Agreed Order is entered into pursuant to TEX. WATER CODE § 7.051 and HEALTH & SAFETY CODE § 341.049. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE chs. 7 and 26 and TCEQ rules.
3. The Commission and Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondents are subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondents of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

5. An administrative penalty in the amount of one thousand three hundred seventy-five dollars (\$1,375.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Respondents paid one hundred seventy-five dollars (\$175.00) of the administrative penalty. The remaining amount of one thousand two hundred dollars (\$1,200.00) of the administrative penalty shall be payable in twelve (12) monthly payments of one hundred dollars (\$100.00) each. 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 Respondents fail 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, Respondents’ failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondents to timely and satisfactorily comply with all of the terms of this Agreed Order.
6. 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.
7. The Executive Director of the TCEQ and Respondents agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that final stabilization was achieved on or about May 6, 2010, on all portions of the Site that were the responsibility of Respondents.
9. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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 January 22, 2008, and a follow up record review conducted on September 14, 2009, TCEQ Central Office investigators documented that Respondents violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization to discharge storm water associated with construction activities. Specifically, Respondents began construction on the Site prior to preparing and

implementing a storm water pollution prevention plan (“SWP3”) and obtaining authorization under a Texas Pollutant Discharge Elimination System (“TPDES”) Construction General Permit.

2. Respondents received notice of the violation on or about September 23, 2009.

III. DENIALS

Respondents generally deny each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondents pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Respondents’ 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: Vintage Living, LLC and Michael McCorkle, Docket No. 2009-1700-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. All relief not expressly granted in this Agreed Order are denied.
3. The provisions of the Agreed order shall apply to and be binding upon Respondents. If Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents’ failure to comply is not a violation of this Agreed Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents

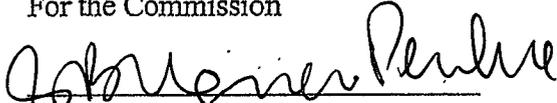
receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against Respondents 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.
7. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to Respondents, or three days after the date on which the Commission mails notice of this Agreed Order to Respondents, 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

7/21/2010
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 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 Vintage's and/or Mr. McCorkle's compliance history;
- Greater scrutiny of any permit applications submitted by Vintage and/or Mr. McCorkle;
- 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 Vintage and/or Mr. McCorkle;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Vintage and/or Mr. McCorkle; and
- TCEQ seeking other relief as authorized by law.

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

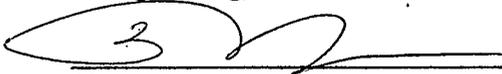


Signature

6/14/10
Date

Michael McCorkle
Name (Printed or typed)
Authorized representative of
Vintage Living, LLC

Mgr.
Title



Signature

6/14/10
Date

Michael McCorkle
Name (Printed or typed)
Authorized representative of
Michael McCorkle

Mgr.
Title