

CAPTION: Docket No. 2010-1278-EAQ-E. Consideration of an Agreed Order assessing administrative penalties against PLACE PROPERTIES DEVELOPMENT SERVICES, LLC in Bexar County; RN105724892; for Edwards Aquifer violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Evette Alvarado, Laurie Eaves)

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1278-EAQ-E **TCEQ ID:** RN105724892 **CASE NO.:** 40153
RESPONDENT NAME: PLACE PROPERTIES DEVELOPMENT SERVICES, LLC

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: Avalon Place Apartments, located on the south side of UTSA Boulevard, approximately 3,500 feet east of Babcock Road, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: Multi-family residential construction site</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 May 2, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2573; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Dan Fitzpatrick, Executive Vice President, PLACE PROPERTIES DEVELOPMENT SERVICES, LLC, 3445 Peachtree Road NE, Suite 1400, Atlanta, Georgia 30326 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: May 3, 2010</p> <p>Date of NOV/NOE Relating to this Case: July 19, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failed to obtain approval of a modification of an Edwards Aquifer water pollution abatement plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, construction of an additional parking area, not included in the WPAP approved on July 23, 2009, had been completed without first receiving approval for the modification [30 TEX. ADMIN. CODE § 213.4(a)(1) and (j) and WPAP No. 13-09043001 Standard Conditions No. 6].</p> <p>2) Failed to submit proof of deed recordation to the regional office within 60 days after receiving written approval of an Edwards Aquifer protection plan. Specifically, proof of deed recordation of the July 23, 2009, WPAP was not on file with the San Antonio Regional Office [30 TEX. ADMIN. CODE § 213.4(g)(3) and WPAP No. 13-09043001 Standard Conditions No. 4].</p> <p>3) Failed to submit written notification of intent to commence construction to the regional office no later than 48 hours prior to commencement of regulated activity. Specifically, a written notification of intent to commence construction of the project approved in the July 23, 2009, WPAP was not on file with the San Antonio</p>	<p>Total Assessed: \$2,500</p> <p>Total Deferred: \$500 <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: \$2,000</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - Average</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 the Respondent has implemented the following corrective measures at the Site:</p> <p>a. By May 6, 2010, obtained approval for a modification to an Edwards Aquifer WPAP;</p> <p>b. By May 10, 2010, submitted documentation of notification of intent to commence construction to the San Antonio Regional Office; and</p> <p>c. By July 2, 2010, submitted proof of deed recordation of the WPAP to the San Antonio Regional Office.</p>

Regional Office [30 TEX. ADMIN. CODE § 213.5(f)(1) and WPAP No. 13-09043001 Standard Conditions No. 7].		
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Additional ID No(s): WPAP 13-09043001 and 13-09043001A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	26-Jul-2010	Screening	2-Aug-2010	EPA Due	
	PCW	3-Aug-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	PLACE PROPERTIES DEVELOPMENT SERVICES, LLC
Reg. Ent. Ref. No.	RN105724892
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	3
Enf./Case ID No.	40153	Order Type	1660
Docket No.	2010-1278-EAQ-E	Government/Non-Profit	No
Media Program(s)	Edwards Aquifer	Enf. Coordinator	Evette Alvarado
Multi-Media		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 Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 2-Aug-2010

Docket No. 2010-1278-EAQ-E

PCW

Respondent PLACE PROPERTIES DEVELOPMENT SERVICES, LL

Policy Revision 2 (September 2002)

Case ID No. 40153

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105724892

Media [Statute] Edwards Aquifer

Enf. Coordinator Evette Alvarado

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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 adjustment for compliance history.

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

Screening Date 2-Aug-2010

Docket No. 2010-1278-EAQ-E

PCW

Respondent PLACE PROPERTIES DEVELOPMENT SERVICES, LLC

Policy Revision 2 (September 2002)

Case ID No. 40153

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105724892

Media [Statute] Edwards Aquifer

Enf. Coordinator Evette Alvarado

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1) and (j) and Water Pollution Abatement Plan No. 13-09043001 Standard Conditions No. 6

Violation Description Failed to obtain approval of a modification of an Edwards Aquifer water pollution abatement plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on May 3, 2010. Specifically, construction of an additional parking area, not included in the WPAP approved on July 23, 2009, had been completed without first receiving approval for the modification.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 3

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One monthly event is recommended from the investigation date (May 3, 2010) to the date the WPAP modification was approved (May 6, 2010).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent PLACE PROPERTIES DEVELOPMENT SERVICES, LLC
Case ID No. 40153
Reg. Ent. Reference No. RN105724892
Media Edwards Aquifer
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	\$6,000	3-May-2010	6-May-2010	0.01	\$2	n/a	\$2
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a modification to a WPAP. Date required is the investigation date. Final date is the date the WPAP modification was approved.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,000

TOTAL

\$2

Screening Date 2-Aug-2010

Docket No. 2010-1278-EAQ-E

PCW

Respondent PLACE PROPERTIES DEVELOPMENT SERVICES, LLC

Policy Revision 2 (September 2002)

Case ID No. 40153

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105724892

Media [Statute] Edwards Aquifer

Enf. Coordinator Evette Alvarado

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 213.4(g)(3) and WPAP No. 13-09043001 Standard Conditions No. 4

Violation Description

Failed to submit proof of deed recordation to the regional office within 60 days after receiving written approval of an Edwards Aquifer protection plan, as documented during an investigation conducted on May 3, 2010. Specifically, proof of deed recordation of the July 23, 2009, WPAP was not on file with the San Antonio Regional Office.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 284

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	x	

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes The Respondent returned to compliance by July 2, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$750

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

Economic Benefit Worksheet

Respondent PLACE PROPERTIES DEVELOPMENT SERVICES, LLC
Case ID No. 40153
Reg. Ent. Reference No. RN105724892
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
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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)	\$36	21-Sep-2009	2-Jul-2010	0.78	\$1	n/a	\$1

Notes for DELAYED costs

Actual cost as provided by Respondent to obtain and submit proof of deed recordation to the regional office. Date required is the date the deed recordation was due. 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 \$36

TOTAL \$1

Screening Date 2-Aug-2010

Docket No. 2010-1278-EAQ-E

PCW

Respondent PLACE PROPERTIES DEVELOPMENT SERVICES, LLC

Policy Revision 2 (September 2002)

Case ID No. 40153

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105724892

Media [Statute] Edwards Aquifer

Enf. Coordinator Evette Alvarado

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 213.5(f)(1) and WPAP No. 13-09043001 Standard Conditions No. 7

Violation Description

Failed to submit written notification of intent to commence construction to the regional office no later than 48 hours prior to commencement of regulated activity, as documented during an investigation conducted on May 3, 2010. Specifically, a written notification of intent to commence construction of the project approved in the July 23, 2009, WPAP was not on file with the San Antonio Regional Office.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		X			10%
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 7 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction \$250

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

Notes The Respondent returned to compliance by May 10, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$750

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

Economic Benefit Worksheet

Respondent PLACE PROPERTIES DEVELOPMENT SERVICES, LLC
Case ID No. 40153
Reg. Ent. Reference No. RN105724892
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	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)	\$20	3-May-2010	10-May-2010	0.02	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit documentation of notification of intent to commence construction to the regional office. Date required is the investigation date. 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 \$20

TOTAL \$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603227158 PLACE PROPERTIES DEVELOPMENT SERVICES LLC Classification: AVERAGE Rating: 3.01

Regulated Entity: RN105724892 AVALON PLACE APARTMENTS Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s): EDWARDS AQUIFER REGISTRATION 13-09043001
EDWARDS AQUIFER REGISTRATION 13-09043001A
STORMWATER PERMIT TXR15OK56

Location: on the south side of UTSA Blvd., approx. 3,500 feet east of Babcock Rd,
San Antonio, Bexar County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: August 05, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 05, 2005 to August 05, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Evette Alvarado Phone: (512) 239 - 2573

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? Yes
3. If Yes, who is the current owner/operator? Place Properties Development Services LLC
4. If Yes, who was/were the prior owner(s)/operator(s)? Episcopal Church Corporation in West Texas
5. When did the change(s) in owner or operator occur? 02/23/2010
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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 07/21/2010 (794572)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
PLACE PROPERTIES	§	
DEVELOPMENT SERVICES, LLC	§	
RN105724892	§	ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2010-1278-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 PLACE PROPERTIES DEVELOPMENT SERVICES, LLC ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a multi-family residential construction site on the south side of UTSA Boulevard, approximately 3,500 feet east of Babcock Road in San Antonio, Bexar County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 24, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Dollars (\$2,000) of the administrative penalty and Five Hundred Dollars (\$500) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
 - a. By May 6, 2010, obtained approval for a modification to an Edwards Aquifer water pollution abatement plan ("WPAP");
 - b. By May 10, 2010, submitted documentation of notification of intent to commence construction to the San Antonio Regional Office; and
 - c. By July 2, 2010, submitted proof of deed recordation of the WPAP to the San Antonio Regional Office.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to obtain approval of a modification of an Edwards Aquifer WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1) and (j) and WPAP No. 13-09043001 Standard Conditions No. 6, as documented during an investigation conducted on May 3, 2010.

Specifically, construction of an additional parking area, not included in the WPAP approved on July 23, 2009, had been completed without first receiving approval for the modification.

2. Failed to submit proof of deed recordation to the regional office within 60 days after receiving written approval of an Edwards Aquifer protection plan, in violation of 30 TEX. ADMIN. CODE § 213.4(g)(3) and WPAP No. 13-09043001 Standard Conditions No. 4, as documented during an investigation conducted on May 3, 2010. Specifically, proof of deed recordation of the July 23, 2009, WPAP was not on file with the San Antonio Regional Office.
3. Failed to submit written notification of intent to commence construction to the regional office no later than 48 hours prior to commencement of regulated activity, in violation of 30 TEX. ADMIN. CODE § 213.5(f)(1) and WPAP No. 13-09043001 Standard Conditions No. 7, as documented during an investigation conducted on May 3, 2010. Specifically, a written notification of intent to commence construction of the project approved in the July 23, 2009, WPAP was not on file with the San Antonio Regional Office.

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: PLACE PROPERTIES DEVELOPMENT SERVICES, LLC, Docket No. 2010-1278-EAQ-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

4-13-2011
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

3/1/11
Date

DAN FITZPATRICK
Name (Printed or typed)
Authorized Representative of
PLACE PROPERTIES DEVELOPMENT SERVICES, LLC

EVP - PDS
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.