

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2006-0427-WQ-E TCEQ ID: RN104014964 CASE NO.: 29197
RESPONDENT NAME: BENAVIDES CUSTOM HOMES, LLC

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 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
<p>SITE WHERE VIOLATION(S) OCCURRED: near Del Rio Highway 277 and Veterans Boulevard, Eagle Pass, Maverick County</p> <p>TYPE OF OPERATION: construction site for custom homes</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 August 13, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Kathleen C. Decker, Litigation Division, MC 175, (512) 239-6500 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Laurie Eaves, Water Enforcement Section, MC 169, (512) 239-4495 TCEQ Regional Contact: Ms. Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052 Respondent: Mr. Mark Benavides, President and Registered Agent, Benavides Custom Homes, LLC, 1069 Vista Hermosa, Eagle Pass, Texas 78852 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:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: February 7, 2006 and April 19, 2006.</p> <p>Date of NOE Relating to this Case: March 31, 2006.</p> <p>Background Facts: An EDRP was filed on September 12, 2006. The Respondent received the EDRP on September 26, 2006. An EDFARP was filed on March 14, 2007. The Respondent received the EDFARP on March 20, 2007. No Answer has been filed to the EDRP or the EDFARP.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>WQ:</p> <p>1. Failed to post a copy of the Notice of Intent at the Site in a location where it is readily available for viewing [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 CODE OF FEDERAL REGULATIONS § 122.26(a); and TPDES General Permit No. TXR150000 Part II, Section D3(d)].</p> <p>2. Failed to post a signed copy of the construction site notice at the Site in a location where it is readily available for viewing [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 CODE OF FEDERAL REGULATIONS § 122.26(a); and TPDES General Permit No. TXR150000 Part II, Section D2(c)].</p>	<p>Total Assessed: \$3,150</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$3,150</p> <p>This is a Default Order.</p> <p>The Respondent has not actually paid any of the assessed penalty, but will be required to do so under the terms of the Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirement(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Within 15 days:</p> <p>a. Post a copy of the Notice of Intent at the site in a location where it is readily available for viewing;</p> <p>b. Post a signed copy of the construction site notice at the Site in a location where it is readily available for viewing; and</p> <p>c. Ensure the SWP3 is readily available at the time of an on-site inspection and/or post a notice describing the location of the SWP3.</p> <p>2. Within 30 days, pay all outstanding General Permits Storm Water fees, including any associated penalties and interest, for fiscal years 2005 and 2006.</p> <p>3. Within 45 days, submit written certification notarized by a State of Texas Notary Public and include detailed supporting documentation including photographs, receipts and or other records to demonstrate compliance with Ordering Provisions 1 and 2.</p>

3. Failed to have the Storm Water Pollution Prevention Plan ("SWP3") readily available at the time of an on-site inspection [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 CODE OF FEDERAL REGULATIONS § 122.26(a); and TPDES General Permit No. TXR150000 Part III, Section D1].

4. Failed to pay General Permit Storm Water fees for fiscal years 2005 and 2006, for TCEQ Financial Administration Account No. 20006737 [30 TEX. ADMIN. CODE § 205.6 and TEX. WATER Code § 5.702].



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	03-Apr-2006			
	PCW	28-Apr-2006	Screening	10-Apr-2006	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Benavides Custom Homes, LLC
Reg. Ent. Ref. No.	RN104014964
Facility/Site Region	16-Laredo
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	29197	No. of Violations	4
Docket No.	2006-0427-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Ruben Soto
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	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$150
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Notes: The Respondent received one Commissioned issued NOV with same or similar violations as those cited in this action.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes: The Respondent is not yet in compliance.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$24	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$300	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,150
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$3,150
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,150
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered because this is not an expedited case.

PAYABLE PENALTY	\$3,150
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Screening Date	10-Apr-2006	Docket No.	2006-0427-WQ-E	PCW
Respondent	Benavides Custom Homes, LLC	Policy Revision 2 (September 2002)		
Case ID No.	29197	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN104014964			
Media [Statute]	Water Quality			
Enf. Coordinator	Ruben Soto			

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 <i>(number of NOVs meeting criteria)</i>	1	5%
	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 (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 <i>(number of audits for which notices were)</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)

>> Repeat Violator (Subtotal 3)

<input type="text" value="No"/>	Adjustment Percentage (Subtotal 3) <input type="text" value="0%"/>
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>> Compliance History Person Classification (Subtotal 7)

<input type="text" value="Average Performer"/>	Adjustment Percentage (Subtotal 7) <input type="text" value="0%"/>
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>> Compliance History Summary

Compliance History Notes	The Respondent received one Commissioned issued NOV with same or similar violations as those cited in this action.
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Total Adjustment Percentage (Subtotals 2, 3, & 7)

Screening Date	10-Apr-2006	Docket No.	2006-0427-WQ-E	PCW
Respondent	Benavides Custom Homes, LLC		Policy Revision 2 (September 2002)	
Case ID No.	29197		PCW Revision May 19, 2005	
Reg. Ent. Reference No.	RN104014964			
Media [Statute]	Water Quality			
Enf. Coordinator	Ruben Soto			
Violation Number	<input type="text" value="1"/>			
Primary Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(a) and TPDES General Permit No. TXR150000 Part II Section D3(d).			
Secondary Rule Cite(s)				
Violation Description	Failure to post a copy of the NOI at the construction site in a location where it is readily available for viewing, as documented during an investigation conducted on February 7, 2006.			
Base Penalty	<input type="text" value="\$10,000"/>			

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

		Harm			Percent <input type="text"/>
OR	Release	Major	Moderate	Minor	
		Actual	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
Matrix Notes	<input type="text" value="100% of the rule was not met."/>				

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$8"/>	Violation Final Penalty Total <input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent Benavides Custom Homes, LLC
Case ID No. 29197
Reg. Ent. Reference No. RN104014964
Media [Statute] 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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	03-May-2005	30-Nov-2006	1.6	\$8	n/a	\$8

Notes for DELAYED costs
 Estimated cost for posting the NOI at the construction site preventing the noncompliance. Date required is the first documented date of noncompliance. Final date is the anticipated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$8

Screening Date	10-Apr-2006	Docket No.	2006-0427-WQ-E	PCW
Respondent	Benavides Custom Homes, LLC		Policy Revision 2 (September 2002)	
Case ID No.	29197		PCW Revision May 19, 2005	
Reg. Ent. Reference No.	RN104014964			
Media [Statute]	Water Quality			
Enf. Coordinator	Ruben Soto			
Violation Number	2			
Primary Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(a) and TPDES General Permit No. TXR150000 Part II Section D2(c).			
Secondary Rule Cite(s)				
Violation Description	Failure to post a signed copy of the construction site notice at the construction site in a location where it is readily available for viewing, as documented during an investigation conducted on February 7, 2006.			
Base Penalty	\$10,000			

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> **Programmatic Matrix**

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

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended.

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

Estimated EB Amount \$8

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent: Benavides Custom Homes, LLC
 Case ID No: 29197
 Reg. Ent. Reference No: RN104014964
 Media [Statute]: Water Quality
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	03-May-2005	30-Nov-2006	1.6	\$8	n/a	\$8

Notes for DELAYED costs: Estimated cost for posting a signed copy of the construction site notice at the construction site to prevent the noncompliance. Date required is the first documented date of noncompliance. Final date is the anticipated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$100

TOTAL \$8

Screening Date	10-Apr-2006	Docket No.	2006-0427-WQ-E	PCW
Respondent	Benavides Custom Homes, LLC		Policy Revision 2 (September 2002)	
Case ID No.	29197		PCW Revision May 19, 2005	
Reg. Ent. Reference No.	RN104014964			
Media [Statute]	Water Quality			
Enf. Coordinator	Ruben Soto			
Violation Number	3			
Primary Rule Cite(s)	30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(a) and TPDES General Permit No. TXR150000 Part III Section D1.			
Secondary Rule Cite(s)				
Violation Description	Failure to have the Storm Water Pollution Prevention Plan ("SWP3") readily available at the time of an on-site inspection, as documented during an investigation conducted on February 7, 2006.			
			Base Penalty	\$10,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent <input type="text"/>
	Potential				

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
			X			Percent <input type="text" value="10%"/>
Matrix Notes	100% of the rule was not met.					

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$8"/>	Violation Final Penalty Total <input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent Benavides Custom Homes, LLC
Case ID No. 29197
Reg. Ent. Reference No. RN104014964
Media [Statute] Water Quality
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
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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	03-May-2005	30-Nov-2006	1.6	\$8	n/a	\$8

Notes for DELAYED costs Estimated cost for the SWP3 being readily available to prevent the noncompliance. Date required is the first documented date of noncompliance. Final date is the anticipated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100
TOTAL \$8

Screening Date	10-Apr-2006	Docket No.	2006-0427-WQ-E	PCW
Respondent	Benavides Custom Homes, LLC		Policy Revision 2 (September 2002)	
Case ID No.	29197	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN104014964			
Media [Statute]	Water Quality			
Enf. Coordinator	Ruben Soto			
Violation Number	4			
Primary Rule Cite(s)	30 Tex. Admin. Code § 205.6 and Tex. Water Code § 5.702			
Secondary Rule Cite(s)				
Violation Description	Failure to pay General Permits Stormwater fees for fiscal years 2005 and 2006 (TCEQ Financial Administration Account No. 20006737) as documented during a record review conducted on April 19, 2006.			
Base Penalty				\$10,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent <input type="text"/>
	Potential				

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
						Percent <input type="text"/>
Matrix Notes		<input type="text"/>				

Adjustment - \$10,000

Base Penalty Subtotal \$0

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty \$0

No administrative penalty is recommended because penalty and interest will be assessed at the next billing.

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

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent: Benavides Custom Homes, LLC
Case ID No.: 29197
Reg. Ent. Reference No.: RN104014964
Media [Statute]: Water Quality
Violation No.: 4

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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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs N/A

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator: CN602499923 Benavides Custom Homes, LLC Classification: AVERAGE Rating: 1.50

Regulated Entity: RN104014964 DE BONA BLUFFS UNIT 1 Classification: AVERAGE Site Rating: 1.50

ID Number(s): STORMWATER PERMIT TXR152927

Location: DEL RIO HIGHWAY 277 AND VETERANS BLVD. EAGLE PASS, MAVERICK CO., TX. Rating Date: 9/1/2005

Repeat Violator: NO

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: April 19, 2006

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 19, 2001 to April 19, 2006

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Ruben Soto Phone: 512 239-4571

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	03/31/2006	(460327)
2	05/31/2005	(394025)

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

Date: 05/31/2005 (394025)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Rqmt Prov: PERMIT IA
Description: Failure to post NOI within public view.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Rqmt Prov: PERMIT IA
Description: Failure to post a construction site notice in public view.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Rqmt Prov: PERMIT IA
Description: Failure to fully develop/implement the SWP3.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
AGAINST
BENAVIDES CUSTOM
HOMES, LLC;
RN104014964**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2006-0427-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7 and 26; and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Benavides Custom Homes, LLC ("Benavides").

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

FINDINGS OF FACT

1. Benavides owns and operates a construction site for custom homes located near Del Rio Highway 277 and Veterans Boulevard in Eagle Pass, Maverick County, Texas (the "Site").
2. Benavides has discharged waste into or adjacent to any water in the state or has committed an act or engaged in other activity which in itself or in conjunction with any other discharge or activity has caused, continues to cause or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. During an inspection conducted on February 7, 2006, a TCEQ Laredo Regional Office investigator documented that Benavides:
 - a. Failed to post a copy of the Notice of Intent at the Site in a location where it is readily available for viewing.
 - b. Failed to post a signed copy of the Site notice at the construction site in a location where it is readily available for viewing.

- c. Failed to have the Storm Water Pollution Prevention Plan ("SWP3") readily available at the time of an on-site inspection.
4. During an inspection conducted on April 19, 2006, a TCEQ staff member documented that Benavides failed to pay General Permits Stormwater fees for fiscal years 2005 and 2006, for TCEQ Financial Administration Account No. 20006737.
5. Benavides received notice of the violations on or about April 5, 2006.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Benavides Custom Homes, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on September 12, 2006.
7. By letter dated September 12, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Benavides with notice of the EDPRP. According to the return receipt "green card," Benavides received notice of the EDPRP on September 26, 2006, as evidenced by the signature on the card.
8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Benavides Custom Homes, LLC" (the "EDFARP") in the TCEQ Chief Clerk's office on March 14, 2007.
9. By letter dated March 14, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Benavides with notice of the EDFARP. According to the return receipt "green card," Benavides received notice of the EDFARP on March 20, 2007, as evidenced by Mr. Benavides' signature on the card.
10. More than 20 days have elapsed since Benavides received notice of the EDPRP and EDFARP provided by the Executive Director. Benavides failed to file an answer to either the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Benavides is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26; and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Benavides failed to post a copy of the Notice of Intent at the Site in a location where it is readily available for viewing, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 CODE OF FEDERAL REGULATIONS § 122.26(a); and TPDES General Permit No. TXR150000 Part II, Section D3(d).
3. As evidenced by Finding of Fact No. 3.b., Benavides failed to post a signed copy of the construction site notice at the Site in a location where it is readily available for viewing, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 CODE OF FEDERAL REGULATIONS § 122.26(a); and TPDES General Permit No. TXR150000 Part II, Section D2(c).
4. As evidenced by Finding of Fact No. 3.c., Benavides failed to have the Storm Water Pollution Prevention Plan ("SWP3") readily available at the time of an on-site inspection, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 CODE OF FEDERAL REGULATIONS § 122.26(a); and TPDES General Permit No. TXR150000 Part III, Section D1.
5. As evidenced by Finding of Fact No. 4, Benavides failed to pay General Permit Storm Water fees for fiscal years 2005 and 2006, for TCEQ Financial Administration Account No. 20006737, in violation of 30 TEX. ADMIN. CODE § 205.6 and TEX. WATER CODE § 5.702.
6. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Benavides with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director timely served Benavides with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 9, Benavides failed to file a timely answer to either the EDPRP or EDFARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Benavides and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Benavides for violations of the Texas Water Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Benavides is assessed an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) for violations of the TEX. WATER CODE chs. 5 and 26 and rules of the TCEQ. The payment of this administrative penalty and Benavides' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Benavides Custom Homes, LLC; Docket No. 2006-0427-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. Benavides shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Order, Benavides shall:
 - i. Post a copy of the Notice of Intent at the site in a location where it is readily available for viewing;
 - ii. Post a signed copy of the construction site notice at the Site in a location where it is readily available for viewing; and
 - iii. Ensure the SWP3 is readily available at the time of an on-site inspection and/or post a notice describing the location of the SWP3.

- b. Within 30 days after the effective date of this Order, Benavides shall pay all outstanding General Permits Storm Water fees, including any associated penalties and interest, for fiscal years 2005 and 2006 with the notation "TCEQ Financial Administration Account No. 20006737" 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

- c. Within 45 days after the effective date of this Order, Benavides shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Ms. Rose Luna-Pirtle
Water Section Manager
Laredo Regional Office
Texas Commission on Environmental Quality
707 East Calton Road, Suite 304
Laredo, Texas 78041-3887

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Benavides. Benavides is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Benavides fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Benavides' failure to comply is not a violation of this Order. Benavides shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Benavides shall notify the Executive Director within seven days after Benavides becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Benavides shall be made in writing to the Executive Director. Extensions are not effective until Benavides receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Benavides if the Executive Director determines that Benavides has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KATHLEEN C. DECKER

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

“My name is Kathleen C. Decker. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the ‘Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Benavides Custom Homes, LLC’ (the ‘EDPRP’) with the Office of the Chief Clerk on September 12, 2006.

I sent the EDPRP to Benavides at its last known address on September 12, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Benavides received notice of the EDPRP on September 26, 2006, as evidenced by the signature on the card.

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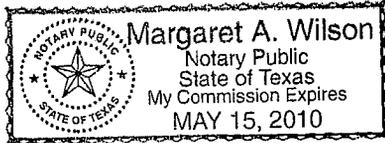
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Kathleen C. Decker
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kathleen C. Decker, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 8th day of May, 2007.



Margaret Wilson

Notary Stamp