

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1119-WQ-E TCEQ ID: RN103972691 CASE NO.: 34204**  
**RESPONDENT NAME: DOUGLAS L. BARR DBA TEXAS ROCK**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 478 Limestone County Road 374, Groesbeck, Limestone County</p> <p><b>TYPE OF OPERATION:</b> Surface mining operation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 7, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Barham A. Richard, Litigation Division, MC 175, (512) 239-0107  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492  <b>TCEQ Regional Contact:</b> Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3007  <b>Respondent:</b> Mr. Douglas, L. Barr, Owner, Texas Rock, 478 LCR 374, Groesbeck, TX 76642  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b>                      February 1, 2007</p> <p><b>Dates of Investigation Relating to this Case:</b>                      June 30, 2004, January 13, 2005 and                      March 21, 2007</p> <p><b>Date of NOE Relating to this Case:</b>                      July 1, 2004 (NOV); May 8, 2007 (NOE)</p> <p><b>Background Facts:</b></p> <p>An EDRP was filed on December 19, 2007. The Respondent received notice of the EDRP on December 20, 2007, as evidenced by the signature on the return receipt "green card."</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>WQ</b></p> <p>1. Failed to provide records indicating that periodic inspections and quarterly visual monitoring of storm water discharges from each outfall were being conducted on a quarterly basis [30 TEX. ADMIN. CODE § 281.25(a)(4); Texas Pollutant Discharge Elimination System (TPDES) Permit No. TXR05Q601, Part III, Section A(5)(i); and 40 CODE OF FED. REG. § 122.26(c)].</p> <p>2. Failed to include a report containing the results of the annual site compliance investigation as part of the SWP3 or referenced in the SWP3 and record results for each annual monitoring period on a DMR to be made readily available for inspection and review, upon request by TCEQ personnel [30 TEX. ADMIN. CODE § 281.25(a)(4); TPDES Permit No. TXR05Q601, Part III, Section A(7)(c)(4) and Section D(1)(d); and 40 CODE OF FED. REG. § 122.26(c)].</p>	<p><b>Total Assessed:</b> \$6,300</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$6,300</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed penalties but will be required to do so under the terms of the Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions</b></p> <p>The Executive Director recognizes that the Respondent no longer owns or operates the facility.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

## TCEQ

<b>DATES</b>	Assigned	25-May-2007	Screening	16-Jul-2007	EPA Due	
	PCW	16-Nov-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Douglas L. Barr dba Texas Rock
Reg. Ent. Ref. No.	RN103972691
Facility/Site Region	9-Waco
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	34204	No. of Violations	2
Docket No.	2007-1119-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Michael Meyer
Multi-Media		EC's Team	EnforcementTeam 7
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$6,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 5% Enhancement **Subtotals 2, 3, & 7** \$300

Notes: The respondent received one NOV with same or similar violations.

**Culpability** No 0% Enhancement **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction **Subtotal 5** \$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.

**Total EB Amounts** \$448 **Subtotal 6** \$0  
 Approx. Cost of Compliance \$400 *\*Capped at the Total EB \$ Amount*

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$6,300

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

**Final Penalty Amount** \$6,300

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$6,300

**DEFERRAL** **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** **\$6,300**

Screening Date 16-Jul-2007

Docket No. 2007-1119-WQ-E

PCW

Respondent Douglas L. Barr dba Texas Rock

Policy Revision 2 (September 2002)

Case ID No. 34204

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN103972691

Media [Statute] Water Quality

Enf. Coordinator Michael Meyer

### 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

The respondent received one NOV with same or similar violations.

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

<b>Screening Date</b> 16-Jul-2007	<b>Docket No.</b> 2007-1119-WQ-E	<b>PCW</b>
<b>Respondent</b> Douglas L. Barr dba Texas Rock	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34204	<i>PCW Revision May 25, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN103972691		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Michael Meyer		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 281.25(a)(4) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. TX05Q601, Part III. Section A(5)(i) and 40 Code of Federal Regulations § 122.26(c)	
<b>Violation Description</b>	Failed to provide records indicating that periodic inspections and quarterly visual monitoring of storm water discharges from each outfall were being conducted on a quarterly basis, as documented during an investigation conducted on March 21, 2007. Specifically, the quarterly visual monitoring forms were blank for calendar year 2006.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

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

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

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Four quarterly events are recommended (one for each quarter of calendar year 2006).

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$217"/>	Violation Final Penalty Total <input type="text" value="\$4,200"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,200"/>	

### Economic Benefit Worksheet

**Respondent** Douglas L. Barr dba Texas Rock  
**Case ID No.** 34204  
**Reg. Ent. Reference No.** RN103972691  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Item Description 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)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.0	\$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]	\$200	31-Mar-2006	31-Dec-2006	1.7	\$17	\$200	\$217
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to maintain records of periodic inspections and quarterly visual monitoring of storm water outfalls for calendar year 2006. The Date Required is end of the first quarter of 2006 and the Final Date is the end of the last quarter of 2006.

Approx. Cost of Compliance

\$200

**TOTAL**

\$217

<b>Screening Date</b> 16-Jul-2007	<b>Docket No.</b> 2007-1119-WQ-E	<b>PCW</b>
<b>Respondent</b> Douglas L. Barr dba Texas Rock	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 34204	<i>PCW Revision May 25, 2007</i>	
<b>Reg. Ent. Reference No.</b> RN103972691		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Michael Meyer		
<b>Violation Number</b> 2		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 281.25(a)(4), TPDES Permit No. TXR05Q601, Part III. Section A(7)(c)(4) and Section D(1)(d) and 40 Code of Federal Regulations § 122.26(c)	
<b>Violation Description</b>	Failed to include a report containing the results of the annual site compliance investigation as part of the storm water pollution prevention plan (SWP3) or referenced in the SWP3 and record results for each annual monitoring period on a discharge monitoring report (DMR) to be made readily available for inspection and review, upon request, by TCEQ personnel. Specifically, the SWP3 did not contain annual comprehensive site investigations for calendar years 2005 and 2006. In addition, the respondent failed to maintain results of monitoring for compliance with numeric effluent limitations on discharge monitoring reports.	
	<b>Base Penalty</b>	\$10,000

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

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

**>> Programmatic Matrix**

	<b>Falsification</b>				
		Major	Moderate		Minor
	Actual	<input type="text" value="x"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="10%"/>	

**Matrix Notes** 100 percent of the rule requirement was not met.

**Adjustment**

**Violation Events**

Number of Violation Events <input type="text" value="2"/>	<input type="text" value="730"/>	Number of violation days												
<table border="1" style="border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">monthly</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">quarterly</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">annual</td><td style="text-align: center;"><input type="text" value="x"/></td></tr> <tr><td style="text-align: center;">single event</td><td style="text-align: center;"><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text" value="x"/>	single event	<input type="text"/>		<b>Violation Base Penalty</b> <input type="text" value="\$2,000"/>
daily	<input type="text"/>													
monthly	<input type="text"/>													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text" value="x"/>													
single event	<input type="text"/>													
Two annual events are recommended.														

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$232"/>	Violation Final Penalty Total <input type="text" value="\$2,100"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,100"/>	

## Economic Benefit Worksheet

**Respondent** Douglas L. Barr dba Texas Rock  
**Case ID No.** 34204  
**Reg. Ent. Reference No.** RN103972691  
**Media** Water Quality  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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				0.0	\$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

**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]	\$200	1-Jan-2005	31-Mar-2007	3.2	\$32	\$200	\$232
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to maintain records of annual site investigation for calendar years 2005 and 2006 and to record the results of effluent monitoring on DMRs and maintain the DMRs on-site and available for inspection. The Date Required is the beginning of calendar year 2006 and the Final Date is date the DMR is to be made available for review.

Approx. Cost of Compliance

\$200

TOTAL

\$232

# Compliance History

Customer/Respondent/Owner-Operator: CN602467789 DOUGLAS L BARR DBA TEXAS ROCK Classification: AVERAGE Rating: 2.00

Regulated Entity: RN103972691 DOUGLAS L BARR DBA TEXAS ROCK Classification: AVERAGE Site Rating: 2.00

ID Number(s): STORMWATER PERMIT TXR05Q601

Location: 478 LCR 374, GROESBECK, TX, 76642 Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: July 19, 2007

Agency Decision Requiring Compliance Enforcement

Compliance Period: July 20, 2002 to July 19, 2007

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

Name: Michael Meyer Phone: (512) 239-4492

## Site Compliance History Components

- |   |     |
|---|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance      | 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 | 06/30/2004 | (277397) |  |
| 2 | 01/13/2005 | (346958) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |                |          |
|--------------|---|----------------|----------|
| Date:        | 07/01/2004  | (277397)       |          |
| Self Report? | NO  | Classification | Moderate |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)  |                |          |
| Rqmt Prov:   | PERMIT TPDES MSGP TXR050000.  |                |          |
| Description: | Failure to conduct the periodic site inspections at the frequency required by the industrial general storm water permit, which is once every calendar quarter. The facility documents only one of these inspections in its SWP3, an inspection for the 2nd quarter of 2004. |                |          |
| Self Report? | NO  | Classification | Moderate |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)  |                |          |
| Rqmt Prov:   | PERMIT TPDES MSGP TXR050000.  |                |          |
| Description: | Failure to conduct and document the annual comprehensive site compliance evaluation. The facility failed to document this evaluation in   |                |          |
- 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



<b>IN THE MATTER OF AN</b>	§	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	§	
<b>CONCERNING</b>	§	
<b>DOUGLAS L. BARR DBA TEXAS</b>	§	<b>TEXAS COMMISSION ON</b>
<b>ROCK;</b>	§	
<b>RN103972691</b>	§	<b>ENVIRONMENTAL QUALITY</b>

**DEFAULT ORDER**  
**DOCKET NO. 2007-1119-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. 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 Douglas L. Barr dba Texas Rock (“Mr. Barr”).

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

**FINDINGS OF FACT**

1. Mr. Barr owned and operated a surface mining operation located at 478 Limestone County Road 374, Groesbeck, Limestone County, Texas (the “Facility”).
2. The Facility has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any state water under the Texas Water Code
3. During an investigation conducted on March 21, 2007, a TCEQ Waco Regional Office investigator documented that Mr. Barr:
  - a. Failed to provide records indicating that periodic inspections and quarterly visual monitoring of storm water discharges from each outfall were being conducted on a quarterly basis. Specifically, the quarterly visual monitoring forms were blank for calendar year 2006; and
  - b. Failed to include a report containing the results of the annual site compliance investigation as part of the storm water pollution prevention plan (SWP3) or referenced in the SWP3 and record results for each annual monitoring period on a

discharge monitoring report (DMR) to be made readily available for inspection and review, upon request by TCEQ personnel. Specifically, the SWP3 did not contain annual comprehensive site investigations for calendar years 2005 and 2006. In addition, Respondent failed to maintain results of monitoring for compliance with numeric effluent limitations on DMRs.

4. Mr. Barr received notice of the violations on or about May 18, 2007.
5. The Executive Director recognizes that Mr. Barr no longer owns or operates the facility.
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 Douglas L. Barr dba Texas Rock" (the "EDPRP") in the TCEQ Chief Clerk's office on December 19, 2007.
7. By letter dated December 19, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Barr with notice of the EDPRP. According to the return receipt "green card," Mr. Barr received notice of the EDPRP on December 20, 2007, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Barr received notice of the EDPRP, provided by the Executive Director. Mr. Barr failed to file an answer to the EDPRP, 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, Mr. Barr is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Barr failed to provide records indicating that periodic inspections and quarterly visual monitoring of storm water discharges from each outfall were being conducted on a quarterly basis. Specifically, the quarterly visual monitoring forms were blank for calendar year 2006, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); Texas Pollutant Discharge Elimination System (TPDES) Permit No. TXR05Q601, Part III, Section A(5)(i); and 40 CODE OF FED. REG. § 122.26(c).
3. As evidenced by Finding of Fact No. 3.b., Mr. Barr failed to include a report containing the results of the annual site compliance investigation as part of the SWP3 or referenced in the SWP3 and record results for each annual monitoring period on a DMR to be made readily available for inspection and review, upon request by TCEQ personnel. Specifically, the

SWP3 did not contain annual comprehensive site investigations for calendar years 2005 and 2006. In addition, Respondent failed to maintain results of monitoring for compliance with numeric effluent limitations on DMRs, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); TPDES Permit No. TXR05Q601, Part III, Section A(7)(c)(4) and Section D(1)(d); and 40 CODE OF FED. REG. § 122.26(c).

4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Barr with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, Mr. Barr failed to file a timely answer to the EDPRP, 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 Mr. Barr and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Barr 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.
7. An administrative penalty in the amount of six thousand three hundred dollars (\$6,300.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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. Mr. Barr is assessed an administrative penalty in the amount of six thousand three hundred dollars (\$6,300.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Mr. Barr's 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: Douglas L. Barr dba Texas Rock; Docket No. 2007-1119-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 Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Barr.
4. If Mr. Barr 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, Mr. Barr's failure to comply is not a violation of this Order. Mr. Barr shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Barr shall notify the Executive Director within seven days after Mr. Barr becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Mr. Barr shall be made in writing to the Executive Director. Extensions are not effective until Mr. Barr receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Mr. Barr if the Executive Director determines that Mr. Barr has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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.

Douglas L. Barr dba Texas Rock  
Docket No. 2007-1119-WQ-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF BARHAM A. RICHARD**

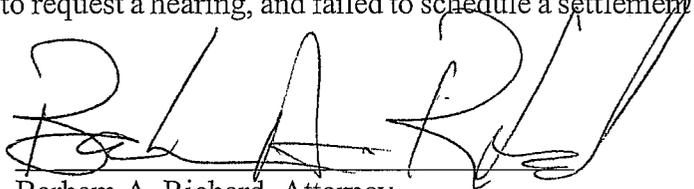
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Barham A. Richard. 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, 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 Douglas L. Barr dba Texas Rock” (the “EDPRP”) was filed with the Office of the Chief Clerk on December 19, 2007.

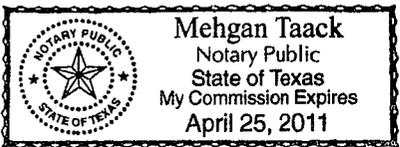
The EDPRP was mailed to Mr. Barr at his last known address on December 19, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Barr received notice of the EDPRP on December 20, 2007, as evidenced by the signature on the card.

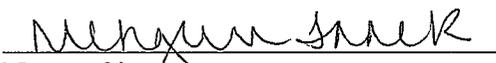
More than 20 days have elapsed since Mr. Barr received notice of the EDPRP. Mr. Barr failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

  
Barham A. Richard, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 12<sup>th</sup> day of February, A.D., 2008.



  
Notary Signature