

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1151-WQ-E TCEQ ID: RN105346241 CASE NO.: 36207**  
**RESPONDENT NAME: TOTAL LAND DEVELOPMENT CORP.**

<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 HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** Old 440 Road and Claridge Avenue, Killeen, Bell County

**TYPE OF OPERATION:** land clearing and road construction

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** A complaint was received alleging that sediment was being discharged from the site into a nearby tributary. There is no record of additional pending enforcement actions regarding this facility location.

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired October 19, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Ms. Heather Brister, Water Enforcement Section, MC R-9, (254) 761-3034

**TCEQ Regional Contact:** Mr. Frank Burlison, Waco Regional Office, MC R-9, (254) 761-3001

**Respondent:** Mr. Terry Grey, Vice President, Total Land Development Corp., P.O. Box 10, Bayside, Texas 78340

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**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 checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      July 17, 2007</p> <p><b>Dates of Investigation Relating to this Case:</b>                      August 22, 2007 (initial complaint investigation);                      May 20, 2008 (record review)</p> <p><b>Date of NOE Relating to this Case:</b>                      June 20, 2008</p> <p><b>Background Facts:</b>                      The EDPRP was filed December 22, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on December 29, 2008, as evidenced by the signature on the card. The EDFARP was filed April 9, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDFARP on April 14, 2009, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP and EDFARP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>                      The Respondent no longer has operational control at the site.</p> <p><b>WQ:</b>                      Failed to obtain authorization to discharge storm water associated with construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p><b>Total Assessed:</b> \$2,100</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$2,100</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this 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>The Executive Director recognizes that the Respondent no longer has operational control at the Site as of June 26, 2008.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

**TCEQ**  
DATES

Assigned 23-Jun-2008  
PCW 11-Jul-2008 Screening 11-Jul-2008 EPA Due

**RESPONDENT/FACILITY INFORMATION**

Respondent Total Land Development Corp.  
Reg. Ent. Ref. No. RN105346241  
Facility/Site Region 9-Waco Major/Minor Source Minor

**CASE INFORMATION**

Enf./Case ID No. 36207 No. of Violations 1  
Docket No. 2008-1151-WQ-E Order Type 1660  
Media Program(s) Water Quality Government/Non-Profit No  
Multi-Media Enf. Coordinator Heather Brister  
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 \$2,000

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

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

Compliance History 5.0% Enhancement Subtotals 2, 3, & 7 \$100

Notes The Respondent received one notice of violation for the same or similar violation.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0

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

Total EB Amounts \$155 \*Capped at the Total EB \$ Amount  
Approx. Cost of Compliance \$2,000

**SUM OF SUBTOTALS 1-7** Final Subtotal \$2,100

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$2,100

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$2,100

**DEFERRAL** 0.0% Reduction Adjustment \$0

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

Notes

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** \$2,100

Screening Date 11-Jul-2008

Docket No. 2008-1151-WQ-E

PCW

Respondent Total Land Development Corp.

Policy Revision 2 (September 2002)

Case ID No. 36207

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105346241

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

### 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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 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 notice of violation for the same or similar violation.

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

<p><b>Screening Date</b> 11-Jul-2008</p> <p><b>Respondent</b> Total Land Development Corp.</p> <p><b>Case ID No.</b> 36207</p> <p><b>Reg. Ent. Reference No.</b> RN105346241</p> <p><b>Media [Statute]</b> Water Quality</p> <p><b>Enf. Coordinator</b> Heather Brister</p> <p><b>Violation Number</b> <input type="text" value="1"/></p> <p><b>Rule Cite(s)</b></p> <p><b>Violation Description</b></p>	<p><b>Docket No.</b> 2008-1151-WQ-E</p> <p style="text-align: right;"><b>PCW</b></p> <p style="text-align: right; font-size: small;">Policy Revision 2 (September 2002) PCW Revision June 12, 2008</p>																																										
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<p><b>&gt;&gt; Environmental, Property and Human Health Matrix</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;"></td> <td style="width:10%;"></td> <td colspan="3" style="text-align: center;"><b>Harm</b></td> <td style="width:10%;"></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td rowspan="2" style="text-align: center; vertical-align: middle;"><b>OR</b></td> <td style="text-align: center;"><b>Release</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right; vertical-align: middle;"><b>Percent</b> <input type="text" value="0%"/></td> </tr> <tr> <td style="text-align: center;"><b>Actual</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td></td> <td style="text-align: center;"><b>Potential</b></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table>				<b>Harm</b>						Major	Moderate	Minor		<b>OR</b>	<b>Release</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>		<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>															
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<p><b>Violation Events</b></p> <p><b>Number of Violation Events</b> <input type="text" value="2"/>      <input type="text" value="51"/> <b>Number of violation days</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> <td style="width:10%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">daily</td> <td><input type="text"/></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">monthly</td> <td><input type="text" value="x"/></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">quarterly</td> <td><input type="text"/></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">semiannual</td> <td><input type="text"/></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">annual</td> <td><input type="text"/></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">single event</td> <td><input type="text"/></td> <td></td> <td></td> <td></td> </tr> </table> <p style="text-align: right;"><b>Violation Base Penalty</b> <input type="text" value="\$2,000"/></p> <p style="text-align: center;">Two monthly events are recommended from the record review date (May 20, 2008) to the date of screening (July 10, 2008).</p>									daily	<input type="text"/>					monthly	<input type="text" value="x"/>					quarterly	<input type="text"/>					semiannual	<input type="text"/>					annual	<input type="text"/>					single event	<input type="text"/>			
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	N/A	x	(mark with x)																																								
<p><b>Economic Benefit (EB) for this violation</b>      <b>Statutory Limit Test</b></p> <p><b>Estimated EB Amount</b> <input type="text" value="\$155"/>      <b>Violation Final Penalty Total</b> <input type="text" value="\$2,100"/></p> <p style="text-align: right;"><b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,100"/></p>																																											

### Economic Benefit Worksheet

Respondent Total Land Development Corp.

Case ID No. 36207

Reg. Ent. Reference No. RN105346241

Media Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Cost    Date Required    Final Date    Yrs    Interest Saved    Onetime Costs    EB Amount

Item Description    No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,000	22-Aug-2007	10-Mar-2009	1.55	\$155	n/a	\$155
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to develop and implement a storm water pollution prevention plan and to obtain a permit to discharge storm water at a construction site. Date Required is the date of the investigation when the violation was initially documented, and Final Date is the estimated date of compliance.

**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

\$2,000

TOTAL

\$155

# Compliance History

Customer/Respondent/Owner-Operator: CN603349689 Total Land Development Corp. Classification: Average Rating: 1.00  
Regulated Entity: RN105346241 OLD 440 VILLAGE Classification: Average Site Rating: 1.00

ID Number(s):

Location:

Located southwest of the intersection of Old 440 Road and Clairidge Avenue in Killeen, Bell County, Texas.

TCEQ Region:

REGION 09 - WACO

Date Compliance History Prepared:

October 31, 2008

Agency Decision Requiring Compliance History:

Enforcement

Compliance Period:

June 25, 2003 to June 25, 2008

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

Name: Heather Brister

Phone: 254/761-3034

## Site Compliance History Components

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

## 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 03/24/2008 (638172)
    - 2 06/20/2008 (654581)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/12/2007 (573337)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)

Rqmt Prov: PERMIT CGP; Part II; Section D(3)(b)

Description: Failure to obtain authorization to discharge storm water in association with a construction activity.
  - F. Environmental audits. N/A
  - G. Type of environmental management systems (EMSs). N/A
  - H. Voluntary on-site compliance assessment dates. N/A
  - I. Participation in a voluntary pollution reduction program. N/A
  - J. Early compliance. N/A
- Sites Outside of Texas  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TOTAL LAND DEVELOPMENT  
CORP.;  
RN105346241

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2008-1151-WQ-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended 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. The respondent made the subject of this Order is Total Land Development Corp., ("Total Land Development").

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

**FINDINGS OF FACT**

1. Total Land Development operated a subdivision located at Old 440 Road and Claridge Avenue in Killeen, Bell County, Texas ("the Site").
2. The Site discharged waste water into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During a record review inspection on May 20, 2008, TCEQ Central Office staff documented that Total Land Development failed to obtain authorization to discharge storm water associated with construction activities at the Site.
4. Total Land Development received notice of the violation on or about June 25, 2008.
5. The Executive Director recognizes that Total Land Development no longer has operational control at the Site as of June 26, 2008.
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 Total Land Development Corp.” (the “EDPRP”) in the TCEQ Chief Clerk’s office on December 22, 2008.

7. By letter dated December 22, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Total Land Development with notice of the EDPRP. According to the return receipt “green card”, Total Land Development Corp received notice of the EDPRP on December 29, 2008, 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 Total Land Development Corp.” (the “EDPRP”) in the TCEQ Chief Clerk’s office on April 9, 2009.
9. By letter dated April 9, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Total Land Development with notice of the EDFARP. According to the return receipt “green card”, Total Land Development Corp received notice of the EDFARP on April 14, 2009, as evidenced by the signature on the card.
10. More than 20 days have elapsed since Total Land Development received notice of the EDPRP and EDFARP, provided by the Executive Director. Total Land Development failed to file an answer, 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, Total Land Development 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., Total Land Development failed to obtain authorization to discharge storm water associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c).
3. As evidenced by Finding of Fact Nos. 6, 7, 8 and 9 the Executive Director timely served Total Land Development with proper notice of the EDPRP and EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No 10, Total Land Development failed to file a timely answer to either the EDPRP or the 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 Total Land Development and assess the penalty recommended by the Executive Director.

5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Total Land Development 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.
6. An administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Total Land Development is assessed an administrative penalty in the amount of two thousand one hundred dollars (\$2,100.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Total Land Development'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: Total Land Development Corp.; Docket No. 2008-1151-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 Total Land Development. Total Land Development is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
4. If Total Land Development 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, Total Land Development's failure to comply is not a violation of this Order. Total Land Development shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Total Land Development shall notify the Executive Director within seven days after Total Land Development 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 Total Land Development shall be made in writing to the Executive Director. Extensions are not effective until Total Land Development 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 Total Land Development if the Executive Director determines that Total Land Development 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.

Total Land Development Corp.  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF JIM SALLAMS**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Jim Sallans. 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.

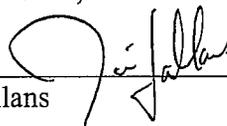
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Total Land Development Corp.” (the “EDPRP”) was filed with the Office of the Chief Clerk on December 22, 2008.

I sent the EDPRP to Total Land Development at its last known address on December 22, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Total Land Development received notice of the EDPRP on December 29, 2008, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 Total Land Development Corp.” (the “EDFARP”) was filed with the Office of the Chief Clerk on April 9, 2009.

I sent the EDFARP to Total Land Development at its last known address on April 9, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Total Land Development received notice of the EDFARP on April 14, 2009, as evidenced by the signature on the card.

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

  
\_\_\_\_\_  
Jim Sallans  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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 10<sup>th</sup> day of September, A.D., 2009.

  
\_\_\_\_\_  
Notary Signature

