

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2008-0592-WQ-E TCEQ ID: RN104285317 CASE NO.: 16788
RESPONDENT NAME: DUKE PENDERGRAFT DBA PENDERGRAFT STONE**

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

SITE WHERE VIOLATION(S) OCCURRED: 0.8 miles north on Bean Road from the intersection of Rockdale Road and Bean Road, Haskell, Haskell County

TYPE OF OPERATION: Stone quarry

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location. As of March 4, 2009, the Respondent owes past-due administrative penalties of \$44,922.93 (\$39,000 plus \$5,922.93 in late fees).

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on September 22, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Air Enforcement Section, MC R-4, (817) 588-5886

TCEQ Regional Contact: Mr. Cliff Moore, Abilene Regional Office, MC R-3, (325) 698-6115

Respondent: Mr. Duke Pendergraft, Owner, Pendergraft Stone, 5127 County Road 319, Abilene, TX 79601-9113

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

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 Complaint Relating to this Case: N/A</p> <p>Date of Investigation Relating to this Case: March 5, 2008</p> <p>Date of NOE Relating to this Case: March 14, 2008</p> <p>Background Facts: The EDPRP was filed July 8, 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 July 11, 2008, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: As of March 3, 2009, the Respondent has not submitted an application for an industrial stormwater permit.</p> <p>WQ:</p> <p>1. Failed to obtain authorization to discharge storm water associated with industrial activities to waters in the state [30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CFR § 122.26(c), and TCEQ Default Order, Docket No. 2004-0938-WQ-E, Ordering Provision Nos. 2.a.i. and 2.a.ii].</p> <p>2. Failed to pay past-due administrative penalties of \$39,000 [TCEQ Default Order, Docket No. 2004-0938-WQ-E, Ordering Provision No. 1].</p>	<p>Total Assessed: \$14,850</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$14,850</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>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input checked="" 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>Findings Order Justification: Indifference to legal duty. Specifically, failure to comply with previous default order.</p>	<p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Within 30 days:</p> <p>a. Pay the past-due administrative penalty assessed in TCEQ Default Order, Docket No. 2004-0938-WQ-E, and</p> <p>b. Submit an administratively complete permit application for an industrial stormwater permit.</p> <p>2. Respond to all letter requests for information from TCEQ regarding the permit application within 30 days after the date of such letter, or by any other deadline specified therein.</p> <p>3. Within 180 days, submit written certification demonstrating that either authorization has been obtained or that operations have ceased.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	17-Mar-2008	Screening	31-Mar-2008	EPA Due	
	PCW	12-Feb-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Duke Pendergraft dba Pendergraft Stone		
Reg. Ent. Ref. No.	RN104285317		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	16788	No. of Violations	2	
Docket No.	2008-0592-WQ-E	Order Type	Findings	
Media Program(s)	Water Quality	Enf. Coordinator	Cheryl Thompson	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Reduction **Subtotal 5**

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

Enhancement* **Subtotal 6**

Total EB Amounts *Capped at the Total EB \$ Amount
 Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 31-Mar-2008

Docket No. 2008-0592-WQ-E

PCW

Respondent Duke Pendergraft dba Pendergraft Stone

Policy Revision 2 (September 2002)

Case ID No. 16788

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN104285317

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

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)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)		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	1	25%
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) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

The Respondent received a Default Order effective on August 20, 2005 and is classified as a Poor Performer.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 31-Mar-2008

Docket No. 2008-0592-WQ-E

PCW

Respondent Duke Pendergraft dba Pendergraft Stone

Policy Revision 2 (September 2002)

Case ID No. 16788

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN104285317

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c) TCEQ Default Order, Docket No. 2004-0938-WQ-E, Ordering Provision Nos. 2.a.i. and 2.a.ii

Violation Description

Failed to obtain authorization to discharge storm water associated with industrial activities to waters in the state.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 11

954 Number of violation days

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

Violation Base Penalty \$11,000

Eleven quarterly events are recommended from the period of August 20, 2005 (effective date of the Default Order) to March 31, 2008 (date of screening).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$370

Violation Final Penalty Total \$14,850

This violation Final Assessed Penalty (adjusted for limits) \$14,850

Economic Benefit Worksheet

Respondent Duke Pendergraft dba Pendergraft Stone
Case ID No. 16788
Reg. Ent. Reference No. RN104285317
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

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	\$2,000	20-Aug-2005	30-Apr-2009	3.7	\$370	n/a	\$370
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain authorization to discharge stormwater associated with industrial activity. Date required is the effective date of the Default Order. Final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$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

\$2,000

TOTAL

\$370

Screening Date 31-Mar-2008

Docket No. 2008-0592-WQ-E

PCW

Respondent Duke Pendergraft dba Pendergraft Stone

Policy Revision 2 (September 2002)

Case ID No. 16788

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN104285317

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s) TCEQ Default Order, Docket No. 2004-0938-WQ-E Ordering Provision 1

Violation Description Failed to pay the administrative penalty assessed in TCEQ Default Order, Docket No. 2007-0938-WQ-E Ordering Provision No. 1.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Empty box for Matrix Notes

Adjustment \$10,000

\$0

Violation Events

Number of Violation Events 0

0 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$0

No additional administrative penalty was calculated for this violation.

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 Duke Pendergraft dba Pendergraft Stone
Case ID No. 16788
Reg. Ent. Reference No. RN104285317
Media 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
<small>No commas or \$</small>							

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]				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: CN602639049 Duke Pendergraft dba Pendergraft Stone Classification: POOR Rating: 60.00

Regulated Entity: RN104285317 PENDERGRAFT STONE Classification: POOR Site Rating: 60.00

ID Number(s):

Location: .8 miles N on Bean Rd from the intersection of Rockdale Rd and Bean Rd Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: March 31, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 31, 2003 to March 31, 2008

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

Name: Cheryl Thompson Phone: (817)588-5886

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 Effective Date: 08/20/2005 ADMINORDER 2004-0938-WQ-E
Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(a)

Description: Failure to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit (MSGP) TXR050000 issued under the Texas Pollutant Discharge Elimination System (TPDES).

- 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 06/28/2004 (277948)

2 03/13/2008 (638435)

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

- 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
DUKE PENDERGRAFT DBA
PENDERGRAFT STONE;
RN104285317

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2008-0592-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 Duke Pendergraft dba Pendergraft Stone ("Mr. Pendergraft").

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

FINDINGS OF FACT

1. Mr. Pendergraft owns and operates a stone quarry located 0.8 miles north on Bean Road from the intersection of Rockdale Road and Bean Road, Haskell, Haskell 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 5, 2008, a TCEQ Abilene Regional Office investigator documented that Mr. Pendergraft
 - a. Failed to obtain authorization to discharge storm water associated with industrial activities to waters in the state.
 - b. Failed to pay the administrative penalty assessed in TCEQ Default Order, Docket No. 2004-0938-WQ-E, Ordering Provision No. 1.
4. Mr. Pendergraft received notice of the violations on or about March 19, 2008.

5. 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 Duke Pendergraft dba Pendergraft Stone" (the "EDPRP") in the TCEQ Chief Clerk's office on July 8, 2008.
6. By letter dated July 8, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Pendergraft with notice of the EDPRP. According to the return receipt "green card," Mr. Pendergraft received notice of the EDPRP on July 11, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Pendergraft received notice of the EDPRP, provided by the Executive Director. Mr. Pendergraft 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. Pendergraft 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. Pendergraft failed to obtain authorization to discharge storm water associated with industrial activities to waters in the state, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(c), and TCEQ Default Order, Docket No. 2004-0938-WQ-E, Ordering Provision Nos. 2.a.i. and 2.a.ii.
3. As evidenced by Finding of Fact No. 3.b., Mr. Pendergraft failed to pay the administrative penalty assessed in TCEQ Default Order, Docket No. 2004-0938-WQ-E, Ordering Provision No. 1., in violation of TCEQ Default Order, Docket No. 2004-0938-WQ-E, Ordering Provision No. 1.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Pendergraft 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. 7, Mr. Pendergraft 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. Pendergraft 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. Pendergraft 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 fourteen thousand eight hundred fifty dollars (\$14,850.00) 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. Pendergraft is assessed an administrative penalty in the amount of fourteen thousand eight hundred fifty dollars (\$14,850.00) for violations of the Texas Water Code and the rules of the TCEQ. The payment of this administrative penalty and Mr. Pendergraft'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: Duke Pendergraft dba Pendergraft Stone; Docket No. 2008-0592-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. Mr. Pendergraft shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Pendergraft shall:

- i. Pay the administrative penalty assessed in TCEQ Default Order, Docket No. 2004-0938-WQ-E, Ordering Provision No. 1, with the notation "Duke Pendergraft dba Pendergraft Stone, Financial Administration Account No. 23607676" 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

- ii. Submit an administratively complete permit application for an industrial stormwater permit, in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Water Quality Division Applications Review and Processing Team
Customer Information and Application Processing Section, MC 145
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

- b. Mr. Pendergraft shall respond completely and adequately, as determined by the TCEQ, to all letter requests for information concerning the permit application within 30 days after the date of such letter, or by any other deadline specified in writing;
- c. Within 180 days after the effective date of the Commission Order, Mr. Pendergraft shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to certify that either authorization has been obtained or that operation has ceased until such time that authorization is obtained and to demonstrate compliance with Ordering Provision No. 2.a. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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."

Mr. Pendergraft shall submit the written certification and copies of documentation

necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Cliff Moore, Water Section Manager
Texas Commission on Environmental Quality
Abilene Regional Office
1977 Industrial Blvd.
Abilene, Texas 79602-7833

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Pendergraft. Mr. Pendergraft is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Pendergraft 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. Pendergraft's failure to comply is not a violation of this Order. Mr. Pendergraft shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Pendergraft shall notify the Executive Director within seven days after Mr. Pendergraft 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 Mr. Pendergraft shall be made in writing to the Executive Director. Extensions are not effective until Mr. Pendergraft 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 Mr. Pendergraft if the Executive Director determines that Mr. Pendergraft 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.

Duke Pendergraft dba Pendergraft Stone
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF DINNIAH M. CHAHIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Dinniah M. Chahin. 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 Duke Pendergraft dba Pendergraft Stone” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 8, 2008.

The EDPRP was mailed to Mr. Pendergraft at his last known address on July 8, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Pendergraft received notice of the EDPRP on July 11, 2008, as evidenced by the signature on the card.

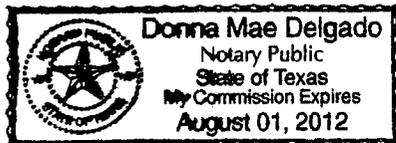
More than 20 days have elapsed since Mr. Pendergraft received notice of the EDPRP. Mr. Pendergraft failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

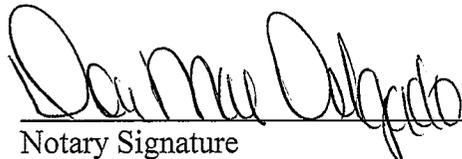


Dinniah M. Chahin, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Mary R. Risner, 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 3rd day of March, A.D., 2009.





Notary Signature