

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0421-WQ-E TCEQ ID: RN105497176 CASE NO.: 37358
RESPONDENT NAME: FLAT ROCK MINERALS, L.L.C.

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 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: Lafayette Creek Ranch on Farm-to-Market Road 2796, 3.2 miles west of the intersection of Farm-to-Market Road 2796 and Farm-to-Market Road 557, Upshur County

TYPE OF OPERATION: sand and gravel mining operation

SMALL BUSINESS: Yes No N/A

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that odd-colored sediment had run off the Respondent's property into nearby bodies of water. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated 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 December 21, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Section, MC 169, (512) 239-2576

TCEQ Regional Contact: Mr. Noel Luper, Tyler Regional Office, MC R-5, (903) 535-5174

Respondent: Mr. Trace Shappell, President, Flat Rock Minerals, L.L.C., P.O. Box 2967, Longview, Texas 75606

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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: December 9, 2008</p> <p>Date of Investigation Relating to this Case: December 9, 2008</p> <p>Date of NOE Relating to this Case: April 9, 2009</p> <p>Background Facts:</p> <p>The EDPRP was filed on July 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 EDPRP on July 14, 2009. The EDFARP was filed on August 31, 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 September 4, 2009. The Respondent failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: No outstanding Technical Requirements.</p> <p>WQ: Failed to prevent the unauthorized discharge of any pollutant into or adjacent to any water in the state [TEX. WATER CODE § 26.121].</p>	<p>Initial Calculated Penalty: \$10,650</p> <p>Total Assessed: \$10,650</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$10,650</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 checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent performed the following corrective actions at the Facility:</p> <ol style="list-style-type: none"> a. Repaired 20 yards of a storm water barrier berm and installed a 150 yard drain line to prevent storm water from collecting along the barrier berm as of October 16, 2008; b. Added silt screen and 24 hay bales on the southern property line as of October 17, 2008; and c. Installed three storm water retention basins on the southern portion of the Facility in January 2009 and completed trenching on the northern portion of the Facility to direct storm water away from the property line on February 21, 2009.



Penalty Calculation Worksheet (PCW)

DATES	Assigned	16-Mar-2009	Screening	24-Mar-2009	EPA Due	
	PCW	10-Dec-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Flat Rock Minerals, LLC		
Reg. Ent. Ref. No.	RN105497176		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	37358	No. of Violations	1	
Docket No.	2009-0421-WQ-E	Order Type	1660	
Media Program(s)	Water Quality	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Thomas Jecha	
		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	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	42.0% Enhancement	Subtotals 2, 3, & 7	\$3,150
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Notes: Enhancement recommended for one NOV with dissimilar violations and two agreed orders with denial of liability issued to the facility within the past five years.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,875
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$136
 Approx. Cost of Compliance: \$9,580
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,775
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OTHER FACTORS AS JUSTICE MAY REQUIRE	21.4%	Adjustment	\$1,875
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Upward adjustment to offset the Good Faith Effort to Comply reduction due to default.

Final Penalty Amount	\$10,650
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,650
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$10,650
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Screening Date 24-Mar-2009

Docket No. 2009-0421-WQ-E

PCW

Respondent Flat Rock Minerals, LLC

Policy Revision 2 (September 2002)

Case ID No. 37358

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105497176

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	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) 42%

>> 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

Enhancement recommended for one NOV with dissimilar violations and two agreed orders with denial of liability issued to the facility within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 42%

Screening Date 24-Mar-2009

Docket No. 2009-0421-WQ-E

PCW

Respondent: Flat Rock Minerals, LLC

Policy Revision 2 (September 2002)

Case ID No. 37358

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105497176

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121

Violation Description

Failed to prevent the unauthorized discharge of any pollutant into or adjacent to any water in the state. Specifically, the concentration of total suspended solids ("TSS") in a storm water run-off sample collected from Outfall No. 5, measured 345 milligrams/liter ("mg/l"). This concentration exceeds both the General Permit benchmark TSS value of 100 mg/l and TSS of 7 mg/l measured in a reference sample collected from a nearby unaffected creek. Also, several inches of sediment was observed in receiving streams and ponds located on adjacent property downstream from Outfall Nos. 5 and 6.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		x		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3 Number of violation days 74

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,500

Three monthly events are recommended from the December 9, 2008 investigation until compliance was achieved on February 21, 2009.

Good Faith Efforts to Comply

25.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$1,875

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes

The Respondent completed work to achieve compliance on February 21, 2009.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$136

Violation Final Penalty Total \$10,650

This violation Final Assessed Penalty (adjusted for limits) \$10,650

Economic Benefit Worksheet

Respondent Flat Rock Minerals, LLC
Case ID No. 37358
Reg. Ent. Reference No. RN105497176
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$9,580	9-Dec-2008	21-Feb-2009	0.20	\$6	\$129	\$136
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to enhance control measures to include improvements to retention ponds and rock berms. The date required is the date of the investigation and the final date is the 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

\$9,580

TOTAL

\$136

Compliance History Report

Customer/Respondent/Owner-Operator: CN603344581 FLAT ROCK MINERALS, LLC Classification: AVERAGE Rating: 2.25
Regulated Entity: RN105497176 ROCK CRUSHER PLANT NO 1 & 2 Classification: AVERAGE Site Rating: 1.50
STORMWATER PERMIT TXR05X737
AIR NEW SOURCE PERMITS PERMIT 84664L001
Location: located at Lafayette Creek Ranch on FM 2796, 3.2 mi W of intersect of FM 2796 and FM 557.
TCEQ Region: REGION 05 - TYLER
Date Compliance History: March 16, 2009
Prepared:
Agency Decision Requiring Compliance: Enforcement
Compliance Period: March 16, 2004 to March 16, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Thomas Jecha Phone: 239 - 2576

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
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

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

Effective Date: 12/20/2008 ADMINORDER 2008-1525-WR-E

Classification: Major

Citation: 2B TWC Chapter 11, SubChapter A 11.081
2B TWC Chapter 11, SubChapter A 11.121

Description: Field Citation - Failure to obtain a permit for the diversion of state water.

Effective Date: 01/30/2009 ADMINORDER 2008-1579-WQ-E

Classification: Major

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

Description: Field Citation - Failure to obtain a multi-sector industrial storm water permit.

- 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	06/03/2008	(681530)
2	09/09/2008	(688931)
3	09/12/2008	(702502)
4	01/12/2009	(723105)

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

Date: 06/06/2008 (681530)

Self NO

Classification: Moderate

Report?

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

Description: Failure to obtain a storm water multi-sector general permit (MSGP) prior to beginning mining operations. Mr. Smith contacted Mr. Shappell on April 9, 2008, via the telephone to discuss the mining operation. Mr. Shappell stated they were unaware a storm water permit was required and confirmed the site did not have a permit.

- 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
FLAT ROCK MINERALS, L.L.C.,
RN105497176

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2009-0421-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 Flat Rock Minerals, L.L.C. ("Flat Rock").

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

FINDINGS OF FACT

1. Flat Rock owns and operates a sand and gravel mining operation located at Lafayette Creek Ranch on Farm-to-Market Road 2796, 3.2 miles west of the intersection of Farm-to-Market Road 2796 and Farm-to-Market Road 557 in Upshur County, Texas (the "Facility")
2. Flat Rock has discharged waste from the Facility 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 compliance investigation conducted on December 9, 2008, a TCEQ Tyler Regional Office investigator documented that Flat Rock failed to prevent the unauthorized discharge of any pollutant into or adjacent to any water in the state. Specifically, the concentration of total suspended solids ("TSS") in a storm water run-off sample collected from Outfall No. 5, measured 345 milligrams/liter ("mg/l"). This concentration exceeds both the general permit benchmark TSS value of 100 mg/l and TSS of 7 mg/l measured in a reference sample collected from a nearby unaffected creek. Also, several inches of sediment was observed in receiving streams and ponds located on adjacent property downstream from Outfall Nos. 5 and 6.

4. Flat Rock received notice of the violation on or about April 14, 2009.
5. The Executive Director recognizes that Flat Rock has implemented the following corrective measures at the Facility:
 - a. Repaired 20 yards of a storm water barrier berm and installed a 150 yard drain line to prevent storm water from collecting along the barrier berm as of October 16, 2008;
 - b. Added silt screen and 24 hay bales on the southern property line as of October 17, 2008; and
 - c. Installed three storm water retention basins on the southern portion of the Facility in January 2009 and completed trenching on the northern portion of the Facility to direct storm water away from the property line on February 21, 2009.
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 Flat Rock Minerals, L.L.C." (the "EDPRP") in the TCEQ Chief Clerk's office on July 9, 2009.
7. By letter dated July 9, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Flat Rock with notice of the EDPRP. According to the return receipt "green card", Flat Rock received notice of the EDPRP on July 14, 2009, 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 Flat Rock Minerals, L.L.C." (the "EDFARP") in the TCEQ Chief Clerk's office on August 31, 2009.
9. By letter dated August 31, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Flat Rock with notice of the EDFARP. According to the return receipt "green card", Flat Rock received notice of the EDFARP on September 4, 2009, as evidenced by the signature on the card.
10. More than 20 days have elapsed since Flat Rock received notice of the EDPRP and the EDFARP provided by the Executive Director. Flat Rock failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Flat Rock 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, Flat Rock failed to prevent the unauthorized discharge of any pollutant into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121.
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Flat Rock with proper notice of the EDPRP as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served Flat Rock with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 10, Flat Rock 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 Flat Rock 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 Flat Rock 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 ten thousand six hundred fifty dollars (\$10,650.00) 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. Flat Rock is assessed an administrative penalty in the amount of ten thousand six hundred fifty dollars (\$10,650.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Flat Rock'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: Flat Rock Minerals, L.L.C.; Docket No. 2009-0421-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 Flat Rock. Flat Rock is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. 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 Flat Rock if the Executive Director determines that Flat Rock has not complied with one or more of the terms or conditions in this Order.
5. 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.
6. 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.

Flat Rock Minerals, L.L.C.
Docket No. 2009-0421-WQ-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RUDY CALDERON

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Rudy Calderon. 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.

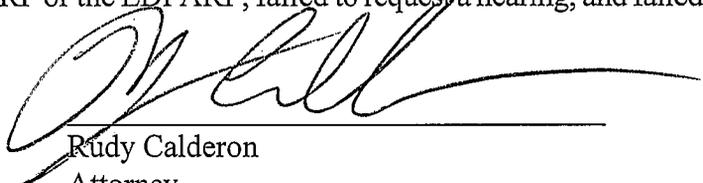
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Flat Rock Minerals, L.L.C.” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 9, 2009.

I sent the EDPRP to Flat Rock at its last known address on July 9, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Flat Rock received notice of the EDPRP on July 14, 2009, 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 Flat Rock Minerals, L.L.C.” (the “EDFARP”) was filed with the Office of the Chief Clerk on August 31, 2009.

I sent the EDFARP to Flat Rock at its last known address on August 31, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Flat Rock received notice of the EDFARP on September 4, 2009, as evidenced by the signature on the card.

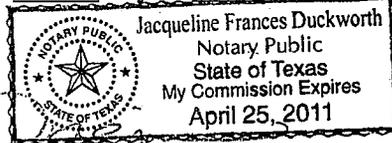
More than 20 days have elapsed since Flat Rock received notice of the EDFARP. Flat Rock failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference”.



Rudy Calderon
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 22nd day of October A.D., 2009.



Notary Stamp

Notary Signature