

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2010-0026-EAQ-E RN105817241 CASE NO. 38950
RESPONDENT NAME: SALVADOR FARIAS III

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"/> IMMEDIATE 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 OCCURRED: 13105 Babcock Road, San Antonio, Bexar County

TYPE OF OPERATION: Three acre construction site

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: Two complaints were received, alleging commencement of construction activities without proper authorization (approximately 500 loads of fill-dirt had been brought to the site), and that construction debris was being dumped at the site. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The City of San Antonio has expressed an interest in this matter. The complainants have not expressed a desire to protest this action or to speak at agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 12, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-3400

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Air Enforcement Section, MC 219, (512) 239-0321

TCEQ Regional Contact: Ms. Lynn Bumguardner, San Antonio Regional Office, MC R-13, (210) 403-4050

Respondent: Mr. Salvador Farias, III, 13105 Babcock Road, San Antonio, Texas 78249

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS 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:</p> <p>Date of Investigation Relating to this Case: October 8, 2009</p> <p>Date of NOE Relating to this Case: December 4, 2009</p> <p>Background Facts: The EDPRP was filed on May 7, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on May 10, 2010. Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>EAQ: Failed to obtain an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$13,260</p> <p>Total Deferred: \$0 <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: \$13,260</p> <p>This is a Default Order. 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>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, cease all regulated activity at the Site until such time that a WPAP has been reviewed and approved by the TCEQ San Antonio Regional Office. 2. Within 30 days, submit a WPAP application for review and approval. 3. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	28-Dec-2009	Screening	6-Jan-2010	EPA Due	
	PCW	8-Mar-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Salvador Farias III
Reg. Ent. Ref. No.	RN105817241
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38950	No. of Violations	1
Docket No.	2010-0026-EAQ-E	Order Type	Findings
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Harvey Wilson
		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	\$13,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	2.0% Enhancement	Subtotals 2, 3, & 7	\$260
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Notes An enhancement is recommended for one NOV for a non-similar violation.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$109
 Approx. Cost of Compliance \$3,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,260
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$13,260
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,260
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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 No deferral offered for non-expedited cases.

PAYABLE PENALTY	\$13,260
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Screening Date 6-Jan-2010

Docket No. 2010-0026-EAQ-E

PCW

Respondent Salvador Farias III

Policy Revision 2 (September 2002)

Case ID No. 38950

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105817241

Media [Statute] Edwards Aquifer

Enf. Coordinator Harvey Wilson

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)	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) 2%

>> 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

An enhancement is recommended for one NOV for a non-similar violation.

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

Screening Date 6-Jan-2010

Docket No. 2010-0026-EAQ-E

PCW

Respondent Salvador Farias III

Policy Revision 2 (September 2002)

Case ID No. 38950

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105817241

Media [Statute] Edwards Aquifer

Enf. Coordinator Harvey Wilson

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 213.4(a)(1)

Violation Description

Failed to obtain an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the Respondent began depositing fill-dirt on the site without the approval of a WPAP.

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 requirements were not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 13

91 Number of violation days

daily	
weekly	x
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$13,000

Thirteen weekly events are recommended from the date of the investigation (October 8, 2009) until the date of screening (January 6, 2010).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$13,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$109

Violation Final Penalty Total \$13,260

This violation Final Assessed Penalty (adjusted for limits) \$13,260

Economic Benefit Worksheet

Respondent Salvador Farias III
Case ID No. 38950
Reg. Ent. Reference No. RN105817241
Media Edwards Aquifer
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				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	\$3,000	8-Oct-2009	30-Jun-2010	0.73	\$109	n/a	\$109
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of the engineering study and obtaining the WPAP. The Date Required is the date the violation was first documented. 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

\$3,000

TOTAL

\$109

Compliance History Report

Customer/Respondent/Owner-Operator: CN603545393 FARIAS, SALVADOR III Classification: Average Rating: 3.01
Regulated Entity: RN105817241 13105 BABCOCK RD Classification: Average by Default Site Rating: 3.01
ID Number(s):
Location: 13105 BABCOCK RD, SAN ANTONIO, TX, 78249
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: January 08, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 08, 2005 to January 08, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Harvey Wilson Phone: 239 - 0321

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. 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.
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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 11/30/2009 (779133)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)(2)
Description: The complaint alleges that illegal dumping of municipal solid waste is occurring at 13105 Babcock Road, San Antonio, Bexar County, Texas.
 - 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
SALVADOR FARIAS III;
RN105817241**

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§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2010-0026-EAQ-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 Salvador Farias III ("Mr. Farias").

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

FINDINGS OF FACT

1. Mr. Farias owns and operates a three acre construction site located at 13105 Babcock Road, San Antonio, Bexar County, Texas (the "Site").
2. Mr. Farias has discharged waste from the Site into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During an investigation conducted on October 8, 2009, a TCEQ San Antonio Regional investigator documented that Mr. Farias failed to obtain an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, Mr. Farias began depositing fill-dirt on the Site without an approved WPAP.
4. Mr. Farias received notice of the violation on or about December 9, 2009.
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 Salvador Farias III" (the "EDPRP") in the TCEQ Chief Clerk's office on May 7, 2010.

6. By letter dated May 7, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Farias with notice of the EDPRP. According to the return receipt "green card," Mr. Farias received notice of the EDPRP on May 10, 2010, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Farias received notice of the EDPRP, provided by the Executive Director. Mr. Farias 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 Findings of Fact Nos. 1 and 2, Mr. Farias is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Farias failed to obtain an Edwards Aquifer WPAP prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Mr. Farias 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 No. 7, Mr. Farias failed to file a timely answer 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. Farias 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 Mr. Farias 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 thirteen thousand two hundred sixty dollars (\$13,260.00) 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. Mr. Farias is assessed an administrative penalty in the amount of thirteen thousand two hundred sixty dollars (\$13,260.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Mr. Farias'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: Salvador Farias III; Docket No. 2010-0026-EAQ-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. Farias shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Farias shall cease all regulated activity at the Site until such time that a WPAP has been reviewed and approved by the TCEQ San Antonio Regional Office in accordance with 30 TEX. ADMIN. CODE § 213.4;
 - b. Within 30 days after the effective date of this Order, Mr. Farias shall submit a WPAP application for review and approval, pursuant to 30 TEX. ADMIN. CODE § 213.5(b) to:

Lynn Bumguardner, Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

- c. Within 45 days after the effective date of this Order, Mr. Farias shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that 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. Farias shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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:

Lynn Bumguardner, Water Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

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. Farias. Mr. Farias is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Mr. Farias 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. Farias's failure to comply is not a violation of this Order. Mr. Farias shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Farias shall notify the Executive Director within seven days after Mr. Farias 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. Farias shall be made in writing to the Executive Director. Extensions are not effective until Mr. Farias 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. Farias if the Executive Director determines that Mr. Farias has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

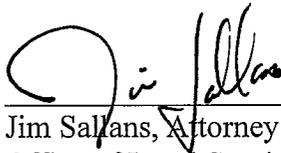
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“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 Salvador Farias III” (the “EDPRP”) was filed with the Office of the Chief Clerk on May 7, 2010.

The EDPRP was mailed to Mr. Farias at his last known address on May 7, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Farias received notice of the EDPRP on May 10, 2010, as evidenced by the signature on the card.

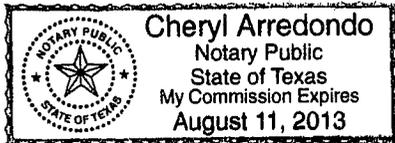
More than 20 days have elapsed since Mr. Farias received notice of the EDPRP. Mr. Farias failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Jim Sallans, Attorney
Office of Legal Services, Litigation Division
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 19th day of August, A.D., 2010.



Cheryl Arredondo
Notary Signature