

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

<b>ORDER TYPE:</b>		
<input type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input checked="" type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	

<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input checked="" type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>

**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

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that odd-colored sediment had run off of 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 May 24, 2010. 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) 239-3400

**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:** S & D Holdings, LLC, Member, Flat Rock Minerals, LLC, 914 Judson Road, Longview, Texas 75601  
 Attn: Mr. Harold D. "Trace" Shappell, Member

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

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>  December 9, 2008</p> <p><b>Date of Investigation Relating to this Case:</b>  December 9, 2008</p> <p><b>Date of NOE Relating to this Case:</b>  March 13, 2009</p> <p><b>Background Facts:</b>  The EDPRP was filed on July 9, 2009, 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 July 14, 2009. The EDFARP was filed on August 31, 2009, 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 EDFARP on September 4, 2009. 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><b>Current Compliance Status:</b>  Respondent no longer operates the facility.</p> <p><b>WQ:</b>  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><b>Total Assessed:</b> \$10,650</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> \$10,650</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><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that as of October 29, 2009, Respondent no longer operates the facility.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	16-Mar-2009			
	<b>PCW</b>	10-Dec-2009	<b>Screening</b>	24-Mar-2009	<b>EPA Due</b>

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

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	37358	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-0421-WQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Thomas Jecha
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,500</b>
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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.

<b>Compliance History</b>	42.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$3,150</b>
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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.

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

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

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

Notes: Withdrawal of good faith effort to comply because result of enforcement action is a default order.

<b>Final Penalty Amount</b>	<b>\$10,650</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$10,650</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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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.

<b>PAYABLE PENALTY</b>	<b>\$10,650</b>
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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 ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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 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 were 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**

OR	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 74 Number of violation days

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 \$1,875

	Before NOV	NOV to EDRP/Settlement Offer
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
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	<b>TOTAL</b>	\$136
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# 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:
ID Number(s):			
	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		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 16, 2004 to March 16, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Thomas Jecha</u>	Phone:	<u>239 - 2576</u>

## 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<br>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 Report? NO   | Classification: Moderate |
| 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. |                          |
- 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, LLC,  
RN105497176**

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**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, LLC ("Flat Rock").

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

**FINDINGS OF FACT**

1. Flat Rock operated 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. Flatrock 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 were 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 March 18, 2009.
5. The Executive Director recognizes that as of October 29, 2009, Flat Rock no longer operates the Facility.

6. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Flat Rock Minerals, LLC” (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, LLC” (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, LLC; 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.
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.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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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, LLC" (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, LLC" (the "EDFARP") was filed with the Office of the Chief Clerk on August 31, 2009.

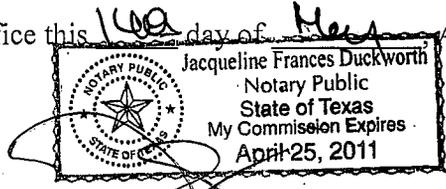
I sent the EDFARP to Flat Rock at its last known address on August 31, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Flat Rock received notice of the EDFARP on September 4, 2009, as evidenced by the signature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

More than 20 days have elapsed since Flat Rock received notice of the EDPRP and 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 10th day of May, A.D., 2010.



Notary Stamp

Notary Signature