

Executive Summary – Enforcement Matter – Case No. 39837  
Michael Lamendola dba Windsor Custom Holmes  
RN105656466  
Docket No. 2010-0942-WQ-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
WQ

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
8315 Lime Creek Road, Volente, Travis County

**Type of Operation:**  
property

**Other Significant Matters:**

Additional Pending Enforcement Actions: None  
Past-Due Penalties: None  
Past-Due Fees: None  
Other: None

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** May 13, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$7,700

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$7,700

**Compliance History Classifications:**

Person/CN – Not yet rated  
Site/RN – Not yet rated

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** July 6, 2009  
Complaint Information: Sediment discharging into Gate Hollow Creek from home building activities.

**Date(s) of Investigation:** April 16, 2010

**Date(s) of NOV(s):** December 5, 2008; August 26, 2009

**Date(s) of NOE(s):** May 29, 2010

***Violation Information***

1. Failed to obtain authorization to discharge storm water associated with construction activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C. F. R. § 122.26(c)].
2. Failed to prevent the unauthorized discharge of sediment adjacent to water in the state [TEX. WATER CODE § 26.121].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Immediately, develop and implement a storm water pollution prevention plan, in accordance with General Permit Number TXR150000, or submit written certification that the site has reached final stabilization.
2. Within 30 days, remove all sediment from the construction activity including the sediment that was discharged off-site and into Gate Hollow Creek and properly dispose of it.
3. Within 45 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** December 22, 2010

**Date(s) Green Card(s) Signed:** Unclaimed

**Date(s) Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

***Contact Information***

**TCEQ Attorneys:** Anna M. Treadwell, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ Enforcement Coordinator:** Jorge Ibarra, Water Enforcement Section, (817) 588- 5800

**TCEQ Regional Contact:** Carolyn Runyon, Austin Regional Office, (512) 339- 2929

**Respondent:** Michael Lamendola, Owner, 3500 San Mateo Court, Austin, Texas 78641

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	1-Jun-2010			
	<b>PCW</b>	9-Jun-2010	<b>Screening</b>	8-Jun-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Michael Lamendola dba Windsor Custom Homes				
<b>Reg. Ent. Ref. No.</b>	RN105656466				
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	39837	<b>No. of Violations</b>	2		
<b>Docket No.</b>	2010-0942-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>	Jorge Ibarra, P.E.		
		<b>EC's Team</b>	Enforcement Team 3		
<b>Admin. Penalty \$</b>	<b>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>\$7,000</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>	10.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$700</b>
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Notes: The Respondent was issued two NOVs with the same/similar type of violations.

<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>\$0</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: \$278  
 Approx. Cost of Compliance: \$7,500  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,700</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$7,700</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$7,700</b>
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	
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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 settlement.

<b>PAYABLE PENALTY</b>	<b>\$7,700</b>
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**Screening Date** 8-Jun-2010

**Docket No.** 2010-0942-WQ-E

**PCW**

**Respondent** Michael Lamendola dba Windsor Custom Homes

*Policy Revision 2 (September 2002)*

**Case ID No.** 39837

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105656466

**Media [Statute]** Water Quality

**Enf. Coordinator** Jorge Ibarra, P.E.

**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> )	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <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)** 10%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent was issued two NOVs with the same/similar type of violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 10%

**Screening Date** 8-Jun-2010 **Docket No.** 2010-0942-WQ-E **PCW**  
**Respondent** Michael Lamendola dba Windsor Custom Homes *Policy Revision 2 (September 2002)*  
**Case ID No.** 39837 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105656466  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jorge Ibarra, P.E.

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>			Percent <input type="text" value="0%"/>	
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	

Matrix Notes

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days  
 mark only one with an x  
 daily   
 weekly   
 monthly   
 quarterly   
 semiannual   
 annual   
 single event   
**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**   
**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Michael Lamendola dba Windsor Custom Homes  
**Case ID No.** 39837  
**Reg. Ent. Reference No.** RN105656466  
**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				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,500	16-Apr-2010	1-Feb-2011	0.80	\$100	n/a	\$100
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement a storm water pollution prevention plan and obtain authorization to discharge storm water associated with construction activities. Date Required is the investigation date, Final Date is the expected compliance date.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

**TOTAL**

\$100

**Screening Date** 8-Jun-2010 **Docket No.** 2010-0942-WQ-E **PCW**  
**Respondent** Michael Lamendola dba Windsor Custom Homes *Policy Revision 2 (September 2002)*  
**Case ID No.** 39837 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105656466  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jorge barra, P.E.

**Violation Number**

**Rule Cite(s)**

**Violation Description**

Failed to prevent the unauthorized discharge of sediment adjacent to water in the state. Specifically, a silt fence was installed at the Site, however, it was in need of maintenance in several areas. A double row of silt fence installed in front of the house was undercut by storm water which eroded the down-gradient slope. Sediment discharged over the first silt fence, traveled down-gradient between the two fences and out the end of the controls and into the right of way ditch in front of the Site. The sediment was discharged off-site and into the drainage that flows into Gate Hollow Creek.

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Failure to prevent the unauthorized discharge of sediment adjacent to water in the state resulted in the release of significant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Two monthly events are recommended from the record review date of April 16, 2010 to the screening date of June 8, 2010.

**Good Faith Efforts to Comply**

Reduction

Before NOV NOV to EDPRP/Settlement Offer

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

Notes

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

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Michael Lamendola dba Windsor Custom Homes  
**Case ID No.** 39837  
**Reg. Ent. Reference No.** RN105656466  
**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
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	\$5,000	16-Apr-2010	1-Jan-2011	0.71	\$178	n/a	\$178
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove sediment from affected areas and properly dispose of it and to stabilize the Site. Date required is the investigation date. Final date is the expected compliance date.

### 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

\$5,000

**TOTAL**

\$178

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603677147 LAMENDOLA, MICHAEL Classification: Rating:  
Regulated Entity: RN105656466 8315 LIME CREEK ROAD Classification: Site Rating:  
ID Number(s):  
Location: 8315 LIME CREEK ROAD, VOLENTE, TRAVIS COUNTY,  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: June 07, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: June 07, 2005 to June 07, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

## 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

### Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 12/05/2008 | (709370) |
| 2 | 04/01/2009 | (741016) |
| 3 | 05/15/2009 | (745694) |
| 4 | 05/28/2010 | (799601) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 12/05/2008 (709370)**
- Self Report? NO Classification: Moderate  
Citation: TWC Chapter 26 26.121  
Description: Unauthorized discharge of sediment to Water in the State.
- Self Report? NO Classification: Major  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Description: Failure to obtain coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP).
- Date: 08/26/2009 (765159)**
- Self Report? NO Classification: Major  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Description: Failure to obtain authorization under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP).
- Self Report? NO Classification: Moderate  
Citation: TWC Chapter 26 26.121  
Description: Unauthorized discharge of sediment into Water in the State.
- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
MICHAEL LAMENDOLA D/B/A  
WINDSOR CUSTOM HOMES;  
RN105656466**

§  
§  
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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER**

**DOCKET NO. 2010-0942-WQ-E**

At its \_\_\_\_\_ agenda meeting, 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 Michael Lamendola d/b/a Windsor Custom Homes ("Respondent").

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

**FINDINGS OF FACT**

1. Respondent operates property located at 8315 Lime Creek Road, Volente, Travis County, Texas (the "Site"). Respondent 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.
2. During a record review conducted on April 16, 2010, a TCEQ Austin Regional Office investigator documented that Respondent:
  - a. Failed to obtain authorization to discharge storm water associated with construction activities; and
  - b. Failed to prevent the unauthorized discharge of sediment adjacent to water in the state. Specifically, a silt fence was installed at the Site, however, it was in need of maintenance in several areas. A double row of silt fence installed in front of the house was undercut by storm water which eroded the down-gradient slope. Sediment discharged over the first silt fence, traveled down-gradient between the two fences and out the end of the controls and into the right of way ditch in front of the Site. The sediment was discharged off-site and into the drainage that flows into Gate Hollow Creek.
3. Respondent received notice of the violations on or about June 2, 2010.
4. 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 Michael Lamendola d/b/a Windsor Custom Homes," (the "EDPRP") in the TCEQ Chief Clerk's office on December 22, 2010.

5. By letter dated December 22, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer and failed to request a hearing.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent 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. 2.a., Respondent failed to obtain authorization to discharge storm water associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to prevent the unauthorized discharge of sediment adjacent to water in the state, in violation of TEX. WATER CODE § 26.121.
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 6, Respondent 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 Respondent 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 Respondent for violations of state statutes 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 seven thousand seven hundred dollars (\$7,700.00) 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. Respondent is assessed an administrative penalty in the amount of seven thousand seven hundred dollars (\$7,700.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Michael Lamendola d/b/a Windsor Custom Homes; Docket No. 2010-0942-WQ-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall develop and implement a storm water pollution prevention plan, in accordance with General Permit No. TXR150000, or submit written certification as described in Ordering Provision No. 3.c. below that the Site has reached final stabilization and that coverage, in accordance with General Permit No. TXR150000, would be obtained in the future if required;
  - b. Within 30 days after the effective date of this Order, Respondent shall remove all sediment from the construction activity including the sediment that was discharged off-site and into Gate Hollow Creek and properly dispose of it; and
  - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. The certification shall be notarized by a State of Texas Notary Public and shall 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Carolyn Runyon, Water Section Manager  
Texas Commission on Environmental Quality  
Austin Regional Office  
2800 S IH 35, Suite 100  
Austin, Texas 78704-5712

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF ANNA TREADWELL**

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF TRAVIS**

"My name is Anna Treadwell. 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 Michael Lamendola d/b/a Windsor Custom Homes," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on December 22, 2010.

The EDPRP was mailed to Respondent's last known address on December 22, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

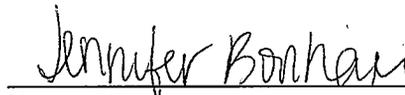
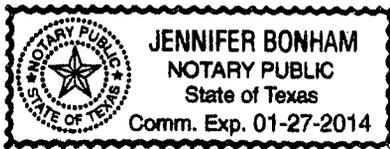
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Anna Treadwell, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna Treadwell, 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 26<sup>th</sup> day of April, A.D. 2011.



Notary Signature