

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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CHIEF CLERKS OFFICE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 19, 2007

**Via Facsimile to (512) 475-4994 and Via Interagency Mail**

The Honorable Roy G. Scudday  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street  
Austin, Texas 78701

Re: Louis Moncus dba Moncus Sand & Gravel  
SOAH Docket No. 582-07-3619; TCEQ Docket No. 2004-1071-WQ-E;  
Executive Director's Exceptions and Proposed Modifications to Proposal for Decision

Dear Judge Scudday:

Enclosed please find the Executive Director's Exceptions and Proposed Modifications to Proposal for Decision regarding the above-referenced matter. If you have any questions, please do not hesitate to call me at (817) 588-5927. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Justin Lannen".

Justin Lannen  
Attorney  
Litigation Division

Enclosure

cc: TCEQ Chief Clerk (original)  
Deana Holland, Enforcement Division, TCEQ, MC 169  
Blas Coy, Office of the Public Interest Counsel, TCEQ, MC 103  
Louis Moncus, 8789 Rock Creek Rd, Waco, Texas 76708

SOAH DOCKET NO. 582-07-3619  
TCEQ DOCKET NO. 2004-1071-WQ-E

2007 NOV 19 PM 4:15

EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,

Petitioner

v.

LOUIS MONCUS  
DBA MONCUS SAND & GRAVEL,  
Respondent

§  
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§

BEFORE THE

CHIEF CLERKS OFFICE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR'S EXCEPTIONS AND PROPOSED MODIFICATIONS TO  
PROPOSAL FOR DECISION**

NOW COMES the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") and hereby files these Exceptions and Proposed Modifications to the Administrative Law Judge's Proposal for Decision, pursuant to 30 TEX. ADMIN. CODE § 80.257.

**I. Introduction**

At the time of the alleged violations, Louis Moncus dba Moncus Sand & Gravel owned and operated a sand and gravel surface mining operation in China Spring, Texas (the "Respondent", the "Facility", or "Respondent"). Based on the evidence gathered by a TCEQ investigator, the Executive Director brought an enforcement action against the Respondent, seeking administrative penalties.

The State Office of Administrative hearings conducted an evidentiary hearing on October 11, 2007. At that hearing, the parties stipulated to a number of facts, including the fact that Respondent operating the Facility in June 2003; as part of the Facility's normal operations, the Respondent utilized a mechanical pump to dewater his mining pits; the Respondent no longer operates the Facility; and the Respondent is not required to perform any corrective actions. The only contested issues remaining in the case were (1) whether the Respondent was required to obtain authorization to discharge storm water and (2) whether the assessed penalty was properly calculated.

**II. Exceptions**

The Executive Director agrees with and supports the adoption of the majority of the Administrative Law Judge's ("ALJ") findings and conclusions. The ALJ determined that the Respondent was required, but failed to, obtain authorization to discharge storm water under the Multi-Sector General Permit for Storm Water (the "Permit" or "Storm Water Permit"); that the

Respondent thus violated 30 Tex. Admin. Code § 281.25(a)(4) and 40 CFR § 122.26(c); and that the \$9,750 administrative penalty recommended by the Executive Director was correctly calculated.

### Options Available to Respondent

The ALJ states that the Respondent had two options under the provisions of the Permit: seek exclusion from the Permit provisions by seeking a Conditional No Exposure Certification for Exclusion ("NEC"), or file a Notice of Intent to Discharge Storm Water ("NOI"). ALJ's Proposal for Decision, page 3. While the Executive Director agrees that the Permit does provide regulated industrial actors with the above two options, the TCEQ's witness, Deana Holland, testified that a third option was available to the Respondent: demonstrate that the Respondent's facility did not have the potential to discharge storm water into waters in the state. Ms. Holland further testified that the Respondent had not demonstrated that he operated a no-discharge facility, and thus Respondent was required to apply for coverage under the Permit. While the Respondent did testify that he constructed a berm to block storm water runoff, he provided no photographs to support that assertion, nor was the existence of a berm noted in Keith Petty's investigation report. Ms. Holland correctly concluded that the Respondent had a potential to discharge storm water into waters in the state and was thus required to obtain authorization to discharge storm water under the Permit.

The Executive Director also disagrees with the ALJ's determination that Mr. Moncus may have been able to qualify for the NEC. The Permit states that "[t]o qualify for a no exposure certification, the operator must provide certification that industrial activities and materials are isolated from storm water and storm water runoff by storm resistant shelters." Permit, Section C.1. Because there was no evidence presented that Respondent had constructed shelters covering the mining area, or that Respondent's mining pits were otherwise unexposed to storm water, the Respondent would likely not qualify for the NEC.

### **III. Other Suggested Modifications**

The Executive Director suggests the following additional changes be made to the ALJ's Proposal for Decision:

1. In Section III.A., paragraph one, second sentence, replace "the investigation" with "Mr. Moncus' submission of a Notice of Intent to Discharge Storm Water."
2. In Section III.A., paragraph two, replace "as of the date of the inspection" with "prior to beginning operations at the facility."
3. In Section III.A., replace paragraph three with the following paragraph: "On March 21, 2005, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) that cited

Respondent for the violations of 30 TAC § 281.25(a)(4) and 40 CFR § 122.26(a)(ii). On August 10, 2007, the ED issued the Executive Director's First Amended Report and Petition (EDFARP) that cited Respondent for the violations of 30 TAC § 281.25(a)(4) and 40 CFR § 122.26(c). The ED recommended the imposition of an administrative penalty in the amount of \$9,750.00 in both the EDP RP and the EDFARP."

4. In Section III.A., paragraph five, page 3, replace "30 TEX. ADMIN. CODE § 25 (A)(4) with "30 TEX. ADMIN. CODE § 281.25 (a)(4).
5. In Section III.A., paragraph 6, third sentence, replace "Section C(1)" with "Part II, Section C.1." Also, in the last sentence of the same paragraph, change "Section C(2)" to "Section C.2."
6. In Section III.A., the last paragraph, remove "of the Permit and".

The Executive Director suggests the following changes be made to the ALJ's Proposed Order:

1. Change "McClellan County" to "McLennan County" in Finding of Fact No. 1.
2. Add the words "required to be" between "was" and "covered" in Finding of Fact No. 1, to wit: "and which was required to be covered by Multi-Sector General Permit No. TXR05000. . ."
3. Change June 21, 2004 with June 14, 2004 in Finding of Fact No. 4.
4. Replace "as of the date of the inspection" with "prior to beginning operations at the facility" in Finding of Fact No. 5.
5. Add the following to the end of the first sentence of Finding of Fact No. 6: "of 30 TAC § 281.25(a)(4) and 40 CFR § 122.26(a)(ii)."
6. Add the following Finding of Fact between existing Findings of Fact Nos. 11 and 12: "On August 10, 2007, the ED issued the Executive Director's First Amended Report and Petition (EDFARP) that cited Respondent for the violations of 30 TAC § 281.25(a)(4) and 40 CFR § 122.26(c).
7. Add a citation to 30 TEX. ADMIN. CODE § 1.12 to Conclusion of Law No. 3.
8. Replace "Its" with "The violation's" in the third line of Conclusion of Law No. 7.

**IV. Conclusion**

The Executive Director respectfully requests that the Commission adopt the ALJ's Proposal for Decision and enter the Proposed Order with the changes requested by the Executive Director.

Respectfully Submitted,

Texas Commission on Environmental Quality

Glenn Shankle  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Mary R. Risner, Director  
Litigation Division

By: *Justin Lannen*  
Justin Lannen  
State Bar of Texas No. 24043770  
Litigation Division, MC R-4  
2309 Gravel Drive  
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(817) 588-5927  
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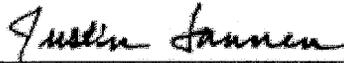
**CERTIFICATE OF DELIVERY**

I hereby certify on this 19th day of November, 2007, the original and 12 copies of the foregoing "Executive Director's Exceptions and Proposed Modification to the Proposal for Decision" ("Exceptions") were filed with the Chief Clerk of the Texas Commission on Environmental Quality, Austin, Texas.

I further certify that a copy of the Exceptions were sent via facsimile to ALJ Roy G. Scudday with the State Office of Administrative Hearings at (512) 475-4994.

I further certify that on this day, a true and correct copy of the foregoing Exceptions were sent via First Class Mail to Mr. Louis Moncus, 8789 Rock Creek Road, Waco, Texas 76708.

I further certify that on this day a true and correct copy of the foregoing Exceptions were hand delivered to Blas Coy, Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



Justin Lannen  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

2007 NOV 19 PM 4:15  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**SOAH DOCKET NO. 582-07-3619  
TCEQ DOCKET NO. 2004-1071-WQ-E**

<b>EXECUTIVE DIRECTOR OF THE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>TEXAS COMMISSION ON</b>	§	
<b>ENVIRONMENTAL QUALITY,</b>	§	
<b>Petitioner</b>	§	
	§	<b>OF</b>
<b>v.</b>	§	
	§	
<b>LOUIS MONCUS DBA</b>	§	
<b>MONCUS SAND &amp; GRAVEL,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) brought this enforcement action, asserting that Louis Moncus dba Moncus Sand & Gravel (Respondent) violated provisions of the rules of the TCEQ related to water quality. The ED sought assessment of a total administrative penalty of \$9,750.00.

The Administrative Law Judge (ALJ) concluded that the ED established that Respondent violated provisions of the rules. The Commission should find the violations occurred and assess Respondent an administrative penalty of \$9,750.00.

**II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE**

The hearing convened on October 11, 2007, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. ED was represented by Justin Lannen, Attorney, Litigation Division. Respondent appeared *pro se*. The record closed on the date of the hearing.

Jurisdiction was admitted as set forth in the order dated August 15, 2007. Undisputed procedural facts are set out in findings in the Proposed Order.

### III. DISCUSSION

#### A. Violations

On May 26, 2004, as part of the Clear Streams Initiative of TCEQ, Keith Petty, Environmental Investigator for TCEQ, conducted an investigation of Respondent's sand and gravel operation located on 1375 Baylor Camp Road, China Spring, McLennan County, Texas. This facility had been operating for thirteen months prior to ~~the investigation~~ Mr. Moncus' submission of a Notice of Intent to Discharge Storm Water. During the investigation Mr. Petty observed that Respondent had placed a pump adjacent to a pit on the site, which pump had pvc/hose lines connected to it. One line was placed in the pit and another was stretched to an adjacent grassy area. Mr. Petty observed that a discharge from the pit had been made to the grassy area on a previous occasion, but no discharge was observed at the time of his investigation.<sup>1</sup> Pursuant to directions from Mr. Petty, on June 14, 2004, Respondent filed a Notice of Intent to Make a Discharge into State Waters (NOI).

On July 16, 2004, TCEQ issued a Notice of Enforcement to Respondent that stated that Respondent's failure to file a NOI prior to beginning operations at the facility ~~as of the date of the inspection~~ was a violation of 30 TEX. ADMIN. CODE (TAC) § 281.25(a)(4).

On March 21, 2005, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) that cited Respondent for the violations of 30 TAC § 281.25(a)(4) and 40 CFR § 122.26(a)(ii).<sup>2</sup> On August 10, 2007, the ED issued the Executive Director's First Amended Report and Petition (EDFARP) that cited Respondent for violations of 30 TAC § 281.25(a)(4) and 40 CFR § 122.26(c). The ED recommended the imposition of an administrative penalty in the amount of \$9,750.00 in both the EDPRP and EDFARP.

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<sup>1</sup> ED Ex. 1.

<sup>2</sup> ED Ex. A.

Respondent does not dispute that he was dewatering the pit of storm water, but asserts that he was not required to secure authorization to do so as he was not making a discharge into state waters.

TEX. WATER CODE § 26.121(a)(1) provides that no person may discharge into or adjacent to any water in the state except as authorized by a permit, rule, or order. 30 TEX. ADMIN. CODE § ~~25(A)(4)~~ 281.25(a)(4) adopts by reference 40 CODE OF FEDERAL REGULATIONS (CFR) § 122.26. 40 CFR § 122.26(c)(1) provides that dischargers “of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.”

On August 20, 2001, the Texas Natural Resource Conservation Commission (now the TCEQ) issued a General Permit to Dispose of Wastes (Permit) covering the discharges of storm water associated with industrial activity.<sup>3</sup> Section A of the Permit groups industrial activities into sectors covered by the permit, and provides that coverage under the Permit “may be obtained to authorize discharges of storm water associated with industrial activity” from the sectors. Sand and gravel mining operations, such as Respondent’s, are included within Sector J-Mineral Mining and Processing Facilities. Part II, Section ~~C(1)~~ C.1. of the Permit provides that facilities covered by the Permit “may be excluded from permit requirements if there is no exposure of industrial materials or activities to precipitation or runoff. To qualify for a no exposure exclusion from permit requirements, the operator must provide certification that industrial activities and materials are isolated from storm water and storm water runoff by storm resistant shelters.” Section ~~C(2)~~ C.2. provides that facilities seeking to discharge under the Permit must submit a completed NOI.

Respondent testified that even though his operation was located with 200 meters of the Bosque River, the storm water pumped from the pits was not discharged from the site but retained on it by surrounding berms. He stated that he filed the NOI after the May 26, 2004 inspection because that was what he was told to do, not because he planned to make a discharge.

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<sup>3</sup> ED Ex. 5

The provisions of the Permit are clear that Respondent had two options. He could seek exclusion from the Permit provisions by seeking a Conditional No Exposure Certification for Exclusion, or he could file a NOI. While Respondent's description of his activities suggests that he may have been able to qualify for the No Exposure Certification, the fact that he pursued neither option prior to making a discharge of storm water from the pit clearly was a violation of the Permit and the Rules:

**B. Penalties**

The total administrative penalty sought for the violation was \$9,750.00. This amount comprises a penalty of \$1,000 for each violation event, one for each of the thirteen months that Respondent was in operation prior to the inspection, for a total penalty of \$13,000. There was a 25% adjustment downward for good faith efforts to comply (the subsequent submission of the NOI). The proposed penalty was assessed under terms of the Commission's 2002 Penalty Policy.<sup>6</sup> No corrective action was sought by the ED in that Respondent no longer operates the facility. Respondent did not dispute the overall accuracy of the ED's calculation of the penalty.

Based on the evidence presented, the ALJ agrees that a fine of \$9,750 should be assessed. Respondent's failure to comply with the provisions of the Permit is clearly established. Based on the above analysis, the ALJ concludes that a penalty of \$9,750.00 is consistent with the factors in TEX. WATER CODE ANN. § 7.053, which must be addressed in assessing an administrative penalty, and with

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<sup>6</sup> ED Ex.7-A, *Penalty Policy of the Texas Commission on Environmental Quality*, September 2002, RG-253.

the Commission's 2002 Penalty Policy.<sup>7</sup> The penalty recommended by the ALJ is commensurate with the severity of the violations found to have occurred and is reasonable.

#### IV. SUMMARY

Based on the preponderance of evidence showing that the violations occurred and the factors supporting the computation of the proposed administrative penalty, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law appearing in the Proposed Order and impose a \$9,750.00 administrative penalty against Respondent.

**SIGNED October 19, 2007.**

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**ROY G. SCUDDAY**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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<sup>7</sup> Under Water Code § 7.053, the ED must consider the following factors:

- the history and extent of previous violations;
- the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
- the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
- economic benefit gained through the violation;
- the amount necessary to deter future violations; and
- any other matters that justice may require.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against  
LOUIS MONCUS DBA MONCUS SAND & GRAVEL  
TCEQ DOCKET NO. 2004-1071-WQ-E  
SOAH DOCKET NO. 582-07-3619**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against Louis D. Moncus dba Moncus Sand & Gravel (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on October 11, 2007, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent and the Commission's Executive Director (ED), represented by Justin Lannen, attorney in TCEQ's Litigation Division.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

**I. FINDINGS OF FACT**

1. In 2004, Louis Moncus dba Moncus Sand & Gravel (Respondent) owned and operated a sand and gravel operation in China Spring, ~~McClellan~~ McLennan County, Texas, which had been

operating since June 2003, and which was required to be covered by Multi-Sector General Permit No. TXR05000 Relating to Storm Water Discharges Associated with Industrial Activity (Permit).

2. On May 24, 2006, Keith Petty, Environmental Investigator for TCEQ, conducted an investigation of Respondent's sand and gravel operation as part of the Clear Streams Initiative. During the investigation Mr. Petty observed that Respondent had placed a pump adjacent to a pit on the site, which pump had pvc/hose lines connected to it. One line was placed in the pit and another was stretched to an adjacent grassy area. Mr. Petty observed that a discharge from the pit had been made to the grassy area on a previous occasion, but no discharge was observed at the time of his investigation.
3. At the time of the investigation, Respondent had not filed either a Notice of Intent to Make a Discharge into State Waters (NOI), an application for an individual permit, or sought a Conditional No Exposure Certification for Exclusion (NEC).
4. On June 21, 2004, Respondent filed a NOI.
5. On July 16, 2004, TCEQ issued a Notice of Enforcement to Respondent that stated that Respondent's failure to file a NOI ~~as of the date of the inspection~~ prior to beginning operations at the facility was a violation of 30 TEX. ADMIN. CODE (TAC) § 281.25(a)(4).
6. On March 21, 2005, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) that cited Respondent for the violation of 30 TAC § 281.25(a)(4) and 40 CFR § 122.26(a)(ii). The ED recommended the imposition of an administrative penalty in the amount of \$9,750.00.

7. The proposed penalty of \$9,750.00 comprised a base penalty of \$1,000.00 for each month of operation without filing a NOI or seeking a NEC, for a total base penalty of \$13,000. There was a 25% adjustment downward for good faith efforts to comply (the subsequent filing of the NOI).
8. An administrative penalty of \$9,750.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in TEX. WATER CODE ANN. § 7.053 and in the Commission's 2002 Penalty Policy.
9. On April 11, 2005, Respondent requested a contested case hearing on the allegations in the EDPRP.
10. On July 11, 2007, the case was referred to SOAH for a hearing.
11. On July 24, 2007, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
12. On August 10, 2007, the ED issued the Executive Director's First Amended Report and Petition (EDFARP) that cited Respondent for the violations of 30 TAC § 281.25(a)(4) and 40 CFR § 122.26(a)(ii).
13. As set forth in an order waiving the preliminary hearing, admitting jurisdictional exhibits, and setting a case schedule that was issued on August 15, 2007, the ED established jurisdiction to proceed.
14. The hearing on the merits was conducted on October 11, 2007, in Austin, Texas, by ALJ Roy G. Scudday and the record closed on that date.
15. Respondent represented himself at the hearing.

## II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. § 7.002.
4. Respondent was notified of the hearing on the alleged violations and the proposed penalties, as required by TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TAC § 155.27, and 30 TAC §§ 1.12, 39.25, and 80.6.
5. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
6. Respondent violated 30 TAC § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS (CFR) § 122.26(c) by failing to file an NOI, an application for an individual permit, or seek a NEC before discharging storm water from the pit.
7. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:

~~It's~~ The violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons;

The nature, circumstances, extent, duration, and gravity of the prohibited act;

The history and extent of previous violations by the violator;

The violator's degree of culpability, good faith, and economic benefit gained through the violation;

The amount necessary to deter future violations; and

Any other matters that justice may require.

8. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
9. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$9,750.00 is justified and should be assessed against Respondent.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT:

1. Louis Moncus dba Moncus Sand & Gravel is assessed an administrative penalty in the amount of \$9,750.00 for violations of 30 TEX. ADMIN. CODE (TAC) § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS (CFR) § 122.26(c). The payment of this administrative

penalty and Louis Moncus' compliance with all the terms and conditions set forth in this Order will 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 that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: Louis Moncus dba Moncus Sand & Gravel, Docket No. 2004-1071-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. 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 Commission Order.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
4. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
5. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Buddy Garcia, Chairman  
For the Commission