

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

December 1, 2006

Derek Seal  
General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

CHIEF CLERK'S OFFICE

DEC 1 1 55

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: **SOAH Docket No. 582-06-2407; TCEQ Docket No. 2005-1582-IHW-E; In Re: Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Joe Boy Johnson, Respondent**

Dear Mr. Seal:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than December 21, 2006. Any replies to exceptions or briefs must be filed in the same manner no later than January 2, 2007.

This matter has been designated **TCEQ Docket No. 2005-1582-IHW-E; SOAH Docket No. 582-06-2407**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in cursive script that reads "Thomas H. Walston".

Thomas H. Walston  
Administrative Law Judge

THW:nl  
Enclosures  
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: JOE BOY JOHNSON

SOAH DOCKET NUMBER: 582-06-2407

REFERRING AGENCY CASE: 2005-1582-IHW-E

STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE  
ALJ THOMAS H. WALSTON

PRESENTATIVE / ADDRESS

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JOE BOY JOHNSON

SOAH DOCKET NO. 582-06-2407  
TCEQ DOCKET NO. 2005-1582-IHW-E

EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
PETITIONER

VS.

JOE BOY JOHNSON,  
RESPONDENT

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE

2006 DEC -1 PM 1:55

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**PROPOSAL FOR DECISION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) brought this enforcement action against Joe Johnson, requesting that the Commission assess an administrative penalty of \$2,500.00 and order Mr. Johnson to take certain corrective actions. The Executive Director alleges that Mr. Johnson failed to properly dispose of industrial solid waste that resulted from scrap wire-burning operations conducted on his property. Mr. Johnson acknowledges that the operations were conducted on his property by another person but contends that he is financially unable to pay the proposed penalty or to perform the recommended corrective actions. Based on the evidence presented at hearing, the Administrative Law Judge (ALJ) recommends that the Commission assess an administrative penalty of \$2,500.00 and require the corrective action requested by Staff.

**I. Procedural History**

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|----------------|--|
| March 13, 2006 | The ED issued a Preliminary Report and Petition Recommending Administrative Penalties and Corrective Action against Joe Boy Johnson. |
| March 17, 2006 | Joe Johnson requested a hearing on the ED's recommendation.  |
| May 31, 2006   | The Commission referred the ED's Petition to the State Office of Administrative Hearings (SOAH) for a contested case hearing.        |
| June 1, 2006   | Notice of Public Hearing issued by TCEQ Chief Clerk.   |

June 21, 2006 The ED and Mr. Johnson waived the preliminary hearing and submitted an agreed procedural schedule.

October 12, 2006 Contested case hearing held at SOAH in Austin, Texas. Staff Attorney Mark Curnett represented TCEQ; Mr. Johnson appeared *pro se*. The hearing concluded and the record closed the same day.

## II. Discussion

### A. Introduction

The Executive Director (ED) brought this enforcement action against a rancher, Joe Johnson. In the late 1980s, Mr. Johnson leased a small portion of his land near Melvin, Texas, to Mr. Ronnie Bailey, who operated Bailey Metal Processors, Inc.<sup>1</sup> No evidence was provided concerning the size of the site, but photographs indicate it is approximately one acre or less. Mr. Bailey put an incinerator on the property to burn the insulation off scrap wire in order to recover the copper inside. After about seven to nine months, Mr. Bailey ceased operations on Mr. Johnson's property and moved the business to Brady, Texas. Mr. Johnson received \$150.00 per month rent while the wire-burning business operated on his property.

On June 3, 2005, a TCEQ investigator from San Angelo conducted an investigation of Mr. Johnson's property in response to an anonymous complaint. Mr. Johnson was present and took the investigator to the site. The investigator observed that ash and burn areas remained, along with small metal and plastic pieces, and that the burn location was devoid of vegetation. The investigator took five soil samples for testing: four from the area without vegetation and one about fifty feet south, in a vegetated area that was once a road to the site.

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<sup>1</sup> Melvin is located west of Brady in McCulloch County.

Testing of the soil samples revealed total lead levels and lead levels using the EPA Toxicity Characteristic Leachate Procedure (TCLP) as follows:

Sample	Total Lead Level	TCLP
No. 1	71,800 mg/kg	8.8 mg/l
No. 2	38,400 mg/kg	716.0 mg/l
No. 3	67,800 mg/kg	302.0 mg/l
No. 4	6,110 mg/kg	92.0 mg/l
No. 5	5,720 mg/kg	27.2 mg/l
EPA Hazardous Level	NA	$\geq 5.0$ mg/l

Based on this investigation, the ED initiated an enforcement action against Mr. Johnson that seeks an administrative penalty of \$2,500.00 and remedial action that would require an Affected Property Assessment Report and corrective action as necessary.

Mr. Johnson acknowledges that Mr. Bailey operated a wire-burning operation on his property for several months in the late 1980's. However, he contends that Mr. Bailey only burned wire in the incinerator and that he never saw any outside burning. He also states that Mr. Bailey assured him that the operation was legal and had been "inspected by the State." Further, Mr. Johnson contends that he is not financially able to pay the administrative penalty or for the proposed remedial action.

#### **B. Evidence**

The ED called three witnesses: Christopher Mayben, Mike Meyer, and Donna Chaffin. Mr. Johnson testified on his own behalf.

Christopher Mayben: Mr. Mayben is employed by the TCEQ at the San Angelo office as an Environmental Investigator. He has worked for the TCEQ since 1994 and has held his current

position since 1998. Mr. Mayben testified that the current investigation of Mr. Johnson occurred after the San Angelo office received an anonymous complaint of wire burning on Mr. Johnson's property. On June 3, 2005, Mr. Mayben met Mr. Johnson near the property. Mr. Johnson took him to the wire-burning site and explained that it had been leased to a scrap metal operation in the mid to late 1980s. At the site, Mr. Mayben observed a concrete pad, an area void of vegetation, scattered pieces of metal, and areas of discolored and stained soil. He took photographs and five soil samples, which produced the elevated lead levels discussed previously.

On cross-examination, Mr. Mayben testified that he is not a toxicologist and cannot say if the site is hazardous. He also agreed that trees are growing in the area and that Mr. Johnson was cooperative and voluntarily took him to the site.

Mike Meyer: Mr. Meyer has worked for the TCEQ since 1987 and has been a Senior Enforcement Coordinator for five years. He testified that he calculated a \$2,500.00 administrative penalty for Mr. Johnson's alleged violation in accordance with the TCEQ Penalty Policy. In his opinion, the penalty is appropriate. Mr. Meyer also stated that the ED seeks to require Mr. Johnson to obtain an Affected Property Assessment Report to determine the extent of the contamination. Finally, Mr. Meyer testified that the proposed \$2,500.00 administrative penalty does not meet the \$3,600.00 minimum threshold established by the TCEQ for claiming financial inability to pay.

Donna Chaffin: Ms. Chaffin is a financial analyst for the TCEQ. In this case, she reviewed information supplied by Mr. Johnson concerning his claim of financial inability to pay a \$2,500.00 administrative penalty. Mr. Johnson provided income tax returns for 2003 and 2004 to document his income. However, Ms. Chaffin explained that the TCEQ has a threshold penalty amount of \$3,600.00 for a respondent to claim financial inability to pay. Because the proposed penalty for Mr. Johnson was only \$2,500.00, it did not qualify for inability-to-pay consideration.

On cross-examination, Ms. Chaffin explained that the \$3,600.00 inability-to-pay threshold is based solely on the proposed administrative penalty and does not take into account the cost of the

proposed remedial action.

Joe Johnson: Mr. Johnson testified that his family has owned the ranch where the site is located for many years, and he is the third generation of his family to live on the property. He recalled that he leased the site to Mr. Ronnie Bailey for about seven months in 1986 for \$150.00 per month. Mr. Bailey told him that the incinerator was legal and had been approved by the Texas Air Control Board. Mr. Johnson believes that all wire burning was done in the incinerator and he never saw any wire burned outside. He testified that Mr. Bailey is now quite elderly and very sick and has filed bankruptcy due to environmental problems at the Bailey Metal site in Brady.

Mr. Johnson stated that he has worked hard to be a good steward of the land, and he participates in various conservation programs. He also pointed out that the burn site is on private property, inaccessible to the public, and not within five miles of any underground water source. Although he does not believe the site is a danger to the public, Mr. Johnson wants the contamination cleaned up. However, he stated that he does not have sufficient financial resources and cannot pay for an environmental study or to remediate the site.

Mr. Johnson offered into evidence Volume I of the Hazard Ranking System Documentation Record for the Bailey Metal Processors site in Brady, prepared in August 2004 by the TCEQ Superfund Site Discovery and Assessment Program. Mr. Johnson pointed out that this report stated that an enforcement action would be pursued against Brady National Bank, which had financed and held a lien against the property contaminated by the Bailey Metal operations in Brady, but then the enforcement action against Brady National Bank was dropped. In Mr. Johnson's view, it is not fair to pursue an enforcement action against him for Bailey Metal's minor operations on his property but not pursue an enforcement action against Brady National Bank, which was in the same position with respect to Bailey Metal, particularly when the Brady site had much more serious contamination and the bank has much greater financial resources to pay for a penalty and corrective action.

Mr. Johnson also introduced into evidence an EPA document concerning Phosphate-Induced Metal Stabilization. It states that heavy metals such as lead can be immobilized in soil by chemically binding them into stable phosphate phases (apatite minerals) in soil or sediment. This stabilization is irreversible under most environmental conditions for hundreds of millions of years, according to the report. A press-release from Ohio State University offered into evidence by Mr. Johnson also discusses this procedure and its benefits. Mr. Johnson testified that he would be willing to apply an appropriate phosphate material (rock or fertilizer) to the affected area and then dispose of the treated soil in a pit he would dig. He stated that he could afford this type of remediation by doing the work himself.

### C. ALJ's Analysis

The ED's Preliminary Report and Petition alleged that Mr. Johnson violated 30 TAC §§ 335.2(a) and 335.4. The ALJ finds that Staff established that Mr. Johnson violated § 335.2(a) and that the proposed administrative penalty and corrective action are appropriate. However, the ALJ finds that the ED did not establish that Mr. Johnson violated § 335.4. In addition, the ALJ finds that Mr. Johnson did not establish that he is entitled to special consideration based on financial inability to pay.

#### *30 TAC § 335.2(a)*

Section 335.2(a) prohibits disposal or storage of industrial solid waste without a permit.<sup>2</sup> Although Mr. Johnson did not carry out the wire-burning operations that produced the industrial solid waste, § 335.2(a) prohibited Mr. Johnson from *permitting* or *allowing* the disposal of industrial

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<sup>2</sup> The ED also alleged that Mr. Johnson violated 40 C.F.R. § 270.1. Like 30 TAC § 335.2(a), that section requires a permit to dispose of hazardous solid waste.

solid waste on his property without a permit.<sup>3</sup> That rule provides:

. . . [N]o person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste . . . unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Texas Department of Health (TDH), or other valid authorization from a Texas state agency.

Because Mr. Johnson allowed Mr. Bailey to conduct wire-burning operations and improperly dispose of the resulting industrial solid waste on his property without a permit from the Commission, the ALJ finds that he violated § 335.2(a) as alleged by the ED. Indeed, Mr. Johnson does not dispute this charge.

#### *30 TAC § 335.4*

Staff also alleged that Mr. Johnson violated 30 TAC § 335.4. That section prohibits the disposal or storage of industrial solid waste in a manner that threatens the waters of the state, creates a nuisance, or endangers the public health:

In addition to the requirements of § 335.2 . . . , no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste . . . in such a manner as to cause:

- (1) the discharge or imminent threat of discharge of industrial solid waste . . . into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the [TCEQ];
- (2) the creation and maintenance of a nuisance; or

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<sup>3</sup> 30 TAC § 335.1 contains the following definitions applicable to this case:

(38) Disposal – The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste . . . into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(72) Industrial solid waste – Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, which may include hazardous waste as defined in this section.

(3) the endangerment of the public health and welfare.

The ED offered no evidence that the waste on Mr. Johnson's property caused a discharge or imminent threat of discharge into the waters in the state. There was no evidence concerning any nearby surface waters or underlying groundwater or the ability of the solid waste on Mr. Johnson's property to enter any state waters. Likewise, the ED offered no evidence that the waste on Mr. Johnson's property created a nuisance. The ED did offer evidence that soil samples on Mr. Johnson's property contained lead levels that exceeded the EPA's 5.0 mg/l hazardous level under the Toxicity Characteristic Leachate Procedure (TCLP). However, ED-witness Mayben specifically testified that he was not a toxicologist and could not say whether the site is hazardous to the public health and welfare. In addition, Mr. Johnson testified that the site is at a remote location, on private property, inaccessible to the public, and not within five miles of any underground water source. Under this state of the record, the ALJ finds that the ED did not establish by a preponderance of the evidence that the disposal of industrial solid waste on Mr. Johnson's property caused a discharge or imminent threat of discharge into the waters of the state, created a nuisance, or created a danger to the public health and welfare. Therefore, the ALJ finds that the ED did not establish that Mr. Johnson violated 30 TAC § 335.4.

#### *Administrative Penalty and Corrective Action*

Pursuant to TEX. WATER CODE ANN. §§ 7.051 and 7.073, the Commission may assess an administrative penalty and order a person to take corrective action if the person violates a Commission rule. Because Mr. Johnson violated 30 TAC § 335.2(a), the Commission has authority to assess an administrative penalty and require corrective action. The ED's penalty calculation included one violation and the ED offered uncontested evidence to support an administrative penalty amount of \$2,500.00. Therefore, the fact that the ED did not establish that Mr. Johnson violated both § 335.2(a) and § 335.4 does not affect the penalty calculation. Likewise, the ED established that an Affected Property Assessment Report and remedial action as necessary are appropriate corrective actions. Mr. Johnson did not dispute the amount of the administrative penalty or the

recommended corrective action and the ALJ finds that they are appropriate.

### *Inability to Pay*

Mr. Johnson does contend that he is financially unable to pay for the ED's proposed penalty and corrective action. However, Staff established that the Commission has a threshold penalty amount of \$3,600.00 for a respondent to claim financial inability to pay. Because the proposed penalty for Mr. Johnson is only \$2,500.00, he does not qualify for an inability-to-pay consideration for the administrative penalty.

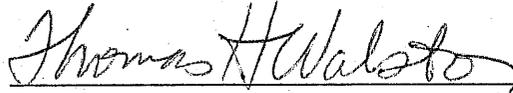
Mr. Johnson also claimed that he cannot afford the remedial action proposed by Staff. However, he offered no evidence on the cost of the proposed corrective action other than to state that it would be expensive, and he offered no evidence on his financial circumstances other than to state he might have to sell some land to pay for the corrective action. Because Mr. Johnson offered insufficient evidence concerning the cost of the proposed corrective action or his financial ability to pay for it, the ALJ recommends that the Commission deny Mr. Johnson's inability-to-pay defense to the proposed corrective action. Likewise, there is insufficient evidence concerning Mr. Johnson's offer to treat the lead-tainted soil with phosphate and bury it in a pit for the ALJ to recommend whether this is appropriate corrective action for Mr. Johnson's site. However, the ALJ assumes the Commission Staff will evaluate this proposal as one possible alternative.

### **III. Conclusion**

In conclusion, the ALJ finds that Mr. Johnson violated 30 TAC § 335.2(a) by allowing Bailey Metal Processors to dispose of industrial solid waste on his property without a permit and that the proposed administrative fine of \$2,500.00 and the proposed corrective action are appropriate. The ALJ also finds that the ED did not establish by a preponderance of the evidence that Mr. Johnson violated 30 TAC § 335.4, and Mr. Johnson did not establish that he is financially unable to pay for the proposed administrative penalty or the proposed corrective action. Therefore, the ALJ

recommends that the Commission assess an administrative penalty of \$2,500.00 against Mr. Johnson and require him to obtain an Affected Property Assessment Report and take corrective action as necessary.

Signed December 1, 2006.



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THOMAS H. WALSTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER:** assessing an administrative penalty against and requiring corrective action by Joe Boy Johnson; TCEQ Docket No. 2005-1582-IHW-E; SOAH Docket No. 582-06-2407

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Joe Boy Johnson (Respondent). A Proposal for Decision (PFD) was presented by Thomas H. Walston, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public hearing concerning the EDPRP on October 12, 2006, in Austin, Texas. The Executive Director, represented by Staff Attorney Mark Curnett, appeared at the hearing. The Respondent appeared *pro se*.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. Respondent owns land approximately 1.5 miles north of the intersection of County Road 128 and County Road 148, near Melvin, McCulloch County, Texas.
2. Around 1986, Respondent leased a small portion of his land to Mr. Ronnie Bailey, who operated Bailey Metal Processors, Inc.

3. For about seven to nine months in 1986, Bailey Metal Processors, Inc. operated an incinerator on Respondent's property to burn insulation off scrap wire in order to recover the copper inside.
4. During 1986, Respondent allowed Bailey Metal Processors, Inc. to dispose of industrial solid waste on Respondent's property without a permit authorizing such activity.
5. In 2005, the TCEQ San Angelo Office received an anonymous complaint about the wire burning operations on Respondent's property.
6. On June 3, 2005, a TCEQ investigator from San Angelo conducted an investigation of Respondent's property in response to the anonymous complaint. The investigator observed that ash and burn areas remained, along with small metal and plastic pieces, and that the burn location was devoid of vegetation.
7. The TCEQ investigator took five soil samples from the burn site on Respondent's property for testing: four from the area without vegetation and one about fifty feet south, in a vegetated area that was once a road to the site. For those samples, total lead levels and lead levels using the EPA Toxicity Characteristic Leachate Procedure (TCLP) were:

Sample	Total Lead Level	TCLP
No. 1	71,800 mg/kg	8.8 mg/l
No. 2	38,400 mg/kg	716.0 mg/l
No. 3	67,800 mg/kg	302.0 mg/l
No. 4	6,110 mg/kg	92.0 mg/l
No. 5	5,720 mg/kg	27.2 mg/l
EPA Hazardous Level	NA	$\geq 5.0$ mg/l

8. The TCLP levels for all five samples exceeded the EPA Hazardous Level for lead.
9. The ED offered no evidence that the industrial solid waste on Respondent's property caused a discharge or imminent threat of discharge into the waters of the state.
10. The ED offered no evidence concerning any nearby surface waters or underlying groundwater or the ability of the solid waste on Respondent's property to enter any state waters.
11. The ED offered no evidence that the waste on Respondent's property created a nuisance.
12. The burn site on Respondent's property is at a remote location, on private property, inaccessible to the public, and not within five miles of any underground water source.
13. The ED did not establish by a preponderance of the evidence that the disposal of industrial solid waste on Respondent's property caused a discharge or imminent threat of discharge into the waters of the state, created a nuisance, or created a danger to the public health and welfare.
14. On March 13, 2006, the Executive Director issued the Executive Director's Preliminary Report and Petition (EDPRP), in accordance with TEX. WATER CODE ANN. (Water Code) § 7.054, 30 TEX. ADMIN. CODE (TAC) chs. 70 and 335, and TEX. HEALTH & SAFETY CODE ch. 361.
15. The EDPRP alleged that Respondent violated 30 TAC §§ 335.2(a) and 335.4 and 40 CODE OF FEDERAL REGULATIONS (CFR) § 270.1 by failing to dispose of hazardous waste in an authorized manner protective of human health and the environment.
16. The EDPRP recommended that the Commission enter an enforcement order assessing an administrative penalty of \$2,500.00 against Respondent.

17. The EDPRP also recommended corrective action to require Respondent to submit for approval an Affected Property Assessment Report pursuant to 30 TAC § 350.91 for soils affected by elevated lead levels and to take response actions as necessary.
18. The Executive Director mailed a copy of the EDPRP to Respondent.
19. Respondent filed an answer to the EDPRP and requested a hearing, so the matter was referred to SOAH for a contested case hearing.
20. On June 1, 2006, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Respondent.
21. The notice of hearing:
  - Indicated the time, date, place, and nature of the hearing;
  - Stated the legal authority and jurisdiction for the hearing;
  - Indicated the statutes and rules the Executive Director alleged Respondent violated;
  - Referred to the EDPRP, a copy of which was attached, which indicated the matters asserted by the Executive Director;
  - Advised Respondent, in at least 12-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and EDPRP being deemed as true and the relief sought in the notice possibly being granted by default; and
  - Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
22. On June 2, 2006, the parties jointly waived appearance at the preliminary hearing, stipulated to the jurisdictional exhibits, and submitted an agreed procedural schedule. Based on the agreement of the parties, the ALJ adopted the agreed procedural schedule and ordered that the evidentiary hearing on the merits convene on October 12, 2006.

23. On October 12, 2006, the ALJ convened the evidentiary hearing. Staff and Respondent appeared and fully participated in the hearing, and the record closed the same day.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. WATER CODE ANN. (Water Code) §§ 5.013 and 7.002.
2. Pursuant to Water Code §§ 7.051 and 7.073, the Commission may assess an administrative penalty and order corrective action against any person who violates a provision of the 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.
3. Under Water Code § 7.052(c), the amount of a penalty in this case may not exceed \$10,000 per day for each violation.
4. As required by Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.
5. As required by TEX. GOV'T CODE ANN. § 2001.052; Water Code § 7.058; 1 TAC § 155.27; and 30 TAC §§ 1.11, 1.12, 39.25, 70.104; and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties and corrective action.
6. 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.

7. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TAC § 335.2(a) by allowing the disposal of industrial solid waste on his property without a permit.
8. The ED failed to prove by a preponderance of the evidence that Respondent violated 30 TAC § 335.4.
9. In determining the amount of an administrative penalty, the Water Code § 7.053 requires the Commission to consider several factors including:
  - Its 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.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
11. Based on consideration of the above Findings of Fact, the factors set out in the Code § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for Respondent's violation. An administrative penalty of \$2,500.00 is justified and should be assessed against Respondent.
12. Respondent should be required to obtain an Affected Property Assessment Report and take corrective action as necessary.

**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. Within 30 days after the effective date of this Commission Order, Joe Boy Johnson shall pay an administrative penalty in the amount of \$2,500.00 for violating 30 TAC § 335.2(a). The imposition of this administrative penalty completely resolves the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Joe Boy Johnson; TCEQ Docket No. 2005-1582-IHW-E; Enforcement ID NO. 26818 " 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. Within 120 days after the effective date of this Order, Respondent shall submit for approval an Affected Property Assessment Report pursuant to 30 TEX. ADMIN. CODE § 350.91, for soils affected by elevated lead levels. If response actions are necessary, Respondent shall comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350, which may include: Submitting plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30

TEX. ADMIN. CODE § 350.33(1)); and Institutional Controls under Subchapter F (30 TEX.

ADMIN. CODE § 350.111) to:

Ata ur Rahman, Manager  
Corrective Actions Section  
Remediation Division, MC 127  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

with a copy to:

Work Leader  
Team 7, Section IV  
Enforcement Division, MC 128  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

and a copy to:

Waste Section Manager  
San Angelo Regional Office  
Texas Commission on Environmental Quality  
622 South Oakes, Suite K  
San Angelo, TX 76903-7013

3. 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.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas 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.

5. 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.
6. 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.
7. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. 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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**Kathleen Hartnett White, Chairman  
For the Commission**