

February 25, 2008

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

Re: SOAH Docket No. 582-07-4078; TCEQ Docket No. 2006-2025-MVD-E; In Re:  
Executive Director of the Texas Commission on Environmental Quality v. Palo  
Gaucho, Inc.

Dear Mr. Trobman:

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 March 17, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than March 27, 2008.

This matter has been designated **TCEQ Docket No. 2006-2025-MWD-E; SOAH Docket No. 582-07-4078**. 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,

Paul D. Keeper  
Administrative Law Judge

**PDK/cm**  
Enclosures  
cc: Mailing List

**SOAH DOCKET NO. 582-07-4078  
TCEQ DOCKET NO. 2006-2025-MWD-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>V.</b>	§	<b>OF</b>
	§	
<b>PALO GAUCHO, INC.,</b>	§	
<b>    Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) seeks to assess \$9,200.00 in administrative penalties against Palo Gaucho, Inc. (Respondent). Respondent allegedly violated the provisions of TEX. WATER CODE ANN. § 26.121(a); 30 TEX. ADMIN. CODE (TAC) § 305.125(1) and (17); and Texas Pollutant Discharge Elimination System (TPDES) Permit No. 11432001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6 and Sludge Provisions.

After being properly notified, Respondent failed to appear at the hearing on the merits. The Administrative Law Judge (ALJ) recommends that the Commission enter a default judgment against Respondent, deem as true the facts alleged by the ED, assess a penalty of \$9,200.00, and require Respondent to take certain corrective actions.

**II. VIOLATIONS, JURISDICTION, AND NOTICE**

At the time of the alleged violations, Respondent owned and operated a wastewater treatment facility located on the east side of Farm-to-Market Road 3121, approximately 2.5 miles north of the intersection of Farm-to-Market Road 3121 and Farm-to-Market Road 83 in Sabine County, Texas. During a record review conducted on November 7, 2006, TCEQ staff documented that Respondent failed to comply with the permitted effluent limits at Outfall 001 and failed to submit the annual

sludge report for the monitoring period ending July 31, 2005 by September 1, 2005. These actions violated 30 TAC § 305.125(1) and (17); and TPDES Permit No. 11432001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6 and Sludge Provisions; TEX. WATER CODE ANN. § 26.121(a).

TCEQ has jurisdiction to initiate an action to enforce the provisions of the Texas Water Code under the provisions of TEX. WATER CODE ANN. § 5.013 and 7.002. The TCEQ has jurisdiction over Respondent and authority to assess the penalties requested by the ED. Further, the State Office of Administrative Hearings (SOAH) has jurisdiction over this matter, as reflected in the Conclusions of Law in the attached Default Order.

On June 20, 2007, the ED sent a copy of the ED's Preliminary Report and Petition (EDPRP) to Claudette Galen, President of Respondent, 3855 Lamar Avenue, Suite A, Paris, Texas 75460, and to Darwin MacAlister, Registered Agent of Respondent, at 3001 East Broadway, Pearland, Texas 77581.<sup>1</sup> In a letter dated June 23, 2007, Ms. Galen denied in writing that Respondent held a permit for the wastewater plant.<sup>2</sup>

On August 16, 2007, the ED requested that the matter be referred to SOAH for SOAH's acquisition of jurisdiction and the filing of a Request to Docket Case form.<sup>3</sup>

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

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

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

On September 5, 2007, the ED mailed to Ms. Galen and Mr. MacAlister a Notice of Public Hearing to be held at SOAH on September 27, 2007.<sup>4</sup> Ms. Galen received notice on September 7, 2007, and Mr. MacAlister received notice on September 7, 2007.<sup>5</sup>

On September 27, 2007, the undersigned ALJ convened a preliminary hearing at SOAH. Counsel appearing for the ED was Mary Coleman. Ms. Galen appeared without counsel for Respondent.

On October 1, 2007, the ALJ issued Order No. 1 that adopted a prehearing schedule and set the hearing on the merits at 9:00 a.m., February 14, 2008. A copy of Order No. 1 was faxed by SOAH to each of the party representatives.

On February 14, 2008, the ALJ convened the hearing on the merits. Counsel appearing for the ED was Mary Coleman. No representative made an appearance for Respondent, and neither the ED nor the ALJ received a request for a continuance from Respondent. The ED made a motion for entry of a default Proposal for Decision (PFD) against Respondent.

### III. DEFAULT JUDGMENT

The motion for entry of a default judgment is granted.<sup>6</sup> Notice was provided to Respondent as required by law.<sup>7</sup> The ALJ recommends that the TCEQ adopt the Findings of Fact and Conclusions of Law in the attached Default Order, assess an administrative penalty of \$9,200.00 against Respondent, and direct Respondent to take the specified corrective actions.

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<sup>4</sup> ED Ex. D.

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

<sup>6</sup> 1 TAC § 155.55; 30 TAC §§ 70.106(b) and 80.113(d).

<sup>7</sup> TEX. GOV'T CODE ANN. § 2001.052; 1 TAC §§ 155.27 and 155.55; and 30 TAC §§ 1.11 and ch. 39.

**SIGNED February 25, 2008.**

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**PAUL D. KEEPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



### **DEFAULT ORDER Assessing Administrative Penalties Against Palo Gaucho, Inc.; TCEQ Docket No. 2006-2025-MWD-E; SOAH Docket No. 582-07-4078**

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 Palo Gaucho, Inc. (Respondent). A Proposal for Decision (PFD) was presented by Paul D. Keeper, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a preliminary hearing concerning the EDPRP on September 27, 2007, in Austin, Texas.

The Executive Director, represented by Mary Coleman, appeared at the preliminary hearing. Claudette Galen, president of Respondent, made an appearance. A hearing on the merits was held at SOAH on February 14, 2008. Respondent was not present at the hearing on the merits nor represented by counsel and did not request a continuance. The Executive Director requested that a default judgment be entered against Respondent. The ALJ agreed with the Executive Director's request.

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

## I. FINDINGS OF FACT

1. At the time of the alleged violations, Respondent owned and operated a wastewater treatment facility located at on the east side of Farm-to-Market Road 3121, approximately 2.5 miles north of the intersection of Farm-to-Market Road 3121 and Farm-to-Market Road 83 in Sabine County, Texas (Facility).
2. The Facility has discharged waste into or adjacent to water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During a record review conducted on November 7, 2006, TCEQ staff documented that Respondent violated the following requirements:
  - a. 30 TEX. ADMIN. CODE § 305.125(1); TPDES Permit No. 11432001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6; and TEX. WATER CODE § 26.121(a) exceeding the permitted effluent limits at Outfall 001, as shown below:

<i>Month/Year</i>	DO Monthly	BOD Daily	BOD Single	TSS Daily	TSS Single
	Minimum	Average	Grab	Average	Grab
	Concentration	Concentration	Concentration	Concentration	Concentration
	4.0 mg/L	10.0 mg/L	35.0 mg/L	15.0 mg/L	60.0 mg/L
<b>October 2005</b>	c	c	c	15.3	c
<b>November 2005</b>	c	c	c	21.0	c
<b>December 2005</b>	c	14.2	c	41.5	72.0
<b>January 2006</b>	c	19.9	37.2	61.5	124.0
<b>February 2006</b>	c	29.6	90.0	108.8	364.0
<b>March 2006</b>	c	17.3	c	61.5	78.0
<b>April 2006</b>	3.7	16.8	c	39.7	62.0
<b>May 2006</b>	0.6	162.8	432.0	1500.3	4440.0
<b>June 2006</b>	c	13.3	c	36.3	80.0

Term	Abbreviation
dissolved oxygen	DO
milligrams per liter	mg/L
total suspended solids	TSS
biochemical oxygen demand, five-day	BOD
Compliant	c

- b. 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 11432001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2005 by September 1, 2005.
4. Respondent received notice of the violations on or about November 25, 2006.
  5. On June 20, 2007, the Executive Director sent a copy of the EDPRP to Claudette Galen, President of Respondent, 3855 Lamar Avenue, Suite A, Paris, Texas 75460, and to Darwin MacAlister, Registered Agent of Respondent, at 3001 East Broadway, Pearland, Texas 77581.
  6. In the EDPRP, the Executive Director alleged that the Respondent committed the violations discovered during the November 7, 2006, record review and proposed an administrative penalty of \$9,200.00 for those violations and that the Respondent be required to take corrective actions described below in this Order.
  7. In a letter dated June 23, 2007, Ms. Galen responded to the EDPRP and denied that Respondent held a permit for the wastewater plant.
  8. On August 16, 2007, the Executive Director requested that the matter be referred to SOAH for SOAH's acquisition of jurisdiction and the filing of a Request to Docket Case form.
  9. On September 5, 2007, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Ms. Galen and Mr. MacAlister on behalf of Respondent.

10. 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 showed how the penalty was calculated for the alleged violations.
11. Ms. Galen received notice on September 7, 2007, and Mr. MacAlister received notice on September 7, 2007.
12. On September 27, 2007, the ALJ convened a preliminary hearing at SOAH. Counsel appearing for the Executive Director was Mary Coleman. Ms. Galen appeared without counsel for Respondent.
13. On October 1, 2007, the ALJ issued Order No. 1 that adopted a prehearing schedule and set the hearing on the merits at 9:00 a.m., February 14, 2008. A copy of Order No. 1 was faxed by SOAH to each of the party representatives.
14. On February 14, 2008, the ALJ convened the hearing on the merits. Counsel appearing for the Executive Director was Mary Coleman. No representative made an appearance for

Respondent, and neither the Executive Director nor the ALJ received a request for a continuance from Respondent.

15. Based on Respondent's failure to appear at the hearing, the Executive Director moved for a default judgment against Respondent. The Executive Director moved that all of the allegations be deemed admitted as true, the penalties sought be assessed against Respondent, and Respondent be ordered to take corrective action recommended by the Executive Director.

## **II. CONCLUSIONS OF LAW**

1. The Commission has authority to impose an administrative penalty. TEX. WATER CODE ANN. § 7.051.
2. The Commission has the authority to assess an administrative penalty of up to \$10,000 for each day of each violation. TEX. WATER CODE § 7.052.
3. If a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action. TEX. WATER CODE § 7.073.
4. 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. TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104,
5. Respondent was notified of the hearing on the alleged violations and the proposed penalties. TEX. GOV'T CODE ANN. § 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27, and 30 TEX. ADMIN. CODE §§ 1.11, 70.104, and 80.6.

6. Respondent was notified that if Respondent failed to appear at the hearing, a default judgment could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true. 1 TEX. ADMIN. CODE §155.55 and 30 TEX. ADMIN. CODE §§ 70.106(b) and 80.113(d).
7. 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. TEX. GOV'T CODE ANN. ch. 2003.
8. Based on the above Findings of Fact and Conclusions of Law:
  - a. A default judgment should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE § 70.106(b); and
  - b. The allegations contained in the notice of the hearing, including those in the EDPRP attached thereto, are admitted as true.
9. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE § 305.125(1) and (17); TPDES Permit No. 11432001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6 and Sludge Provisions; and TEX. WATER CODE ANN. § 26.121(a).
10. In determining the amount of an administrative penalty, the Commission is to consider:
  - 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. TEX. WATER CODE ANN. § 7.053
11. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
  12. The Executive Director correctly calculated the penalties for each of the alleged violations. TEX. WATER CODE ANN. § 7.053; the Commission's Penalty Policy.
  13. A total administrative penalty of \$9,200.00 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. Within 30 days after the effective date of this Commission Order, Palo Gaucho, Inc., shall pay an administrative penalty in the amount of \$9,200.00 for violations of 30 TEX. ADMIN. CODE § 305.125(1) and (17); TPDES Permit No. 11432001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6 and Sludge Provisions; and TEX. WATER CODE ANN. § 26.121(a). The payment of this administrative penalty and compliance with this Order will completely resolve 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: Palo Gaucho, Inc., TCEQ Docket No. 2006-2025-MWD-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. Within 60 days after the effective date of the Commission Order, Respondent shall submit written certification of compliance with the effluent limits of TPDES Permit No. 11432001. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following 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."

The certification shall be submitted to: Order Compliance Team, Enforcement Division, MC 149A, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, with a copy to: Ronald Hebert, Water Section Manager, Texas Commission on Environmental Quality, Beaumont Regional Office, 3870 Eastex Freeway 77703-1830.

3. 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 Commission Order.

4. 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.
5. The effective date of this Order is the date the Order is final. 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
6. The Commission's Chief Clerk shall forward a copy of this Order to Respondent, as required by TEX. WATER CODE ANN. § 7.059
7. 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