

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 17, 2009

The Honorable Tommy L. Broyles  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

2009 JUL 17 PM 4:16  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision; TCEQ Docket No. 2008-0709-MLM-E; SOAH Docket No. 582-09-1252

Dear Judge Broyles:

Enclosed is a true and correct copy of the "The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision."

The original of this The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision was filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality on this day.

Sincerely,

A handwritten signature in black ink that reads "Xavier Guerra".

Xavier Guerra  
Attorney  
Litigation Division

Enclosure

cc: Mr. James Jones, 1414 West Morton Street, Denison, Texas 75020  
Ms. LaDonna Castañuela, Chief Clerk, TCEQ, MC 105  
Mr. Blas Coy, Public Interest Counsel, TCEQ, MC 103  
Mr. Michael Meyer, Enforcement Division, TCEQ, MC 128

SOAH DOCKET NO. 582-09-1252  
TCEQ DOCKET NO. 2008-0709-MLM-E

2009 JUL 17 PM 4:16

EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
PETITIONER

VS.

JAMES JONES,  
RESPONDENT

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BEFORE THE STATE OFFICE

CHIEF CLERKS OFFICE

OF

ADMINISTRATIVE HEARINGS

**THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW  
JUDGE'S PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW the Executive Director of the Texas Commission on Environmental Quality ("TCEQ"), represented by the Litigation Division, after having reviewed the Administrative Law Judge's Proposal for Decision, and files the following exceptions before the State Office of Administrative Hearings ("SOAH"):

**FINDING OF FACT NO. 1**

The Executive Director respectfully requests Finding of Fact No. 1 of the Order be revised to include the city in the location of the Facility. Currently, the location of the Facility in Finding of Fact No. 1 reads, "920 East Main Street, Grayson County, Texas." The location of the Facility should be changed to, "920 East Main Street, Denison, Grayson County, Texas."

**FINDING OF FACT NO. 13**

The Executive Director respectfully requests Finding of Fact No. 13 of the Order be revised to correct the date the case was referred to SOAH. Currently, the date of the referral to SOAH in Finding of Fact No. 13 reads, "November 18, 2008." The date of the referral to SOAH should be changed to, "November 6, 2008."

**CONCLUSION OF LAW NO. 11**

The Executive Director respectfully requests Conclusion of Law No. 11 of the Order be revised to correct the total administrative penalty amount assessed against the Respondent. Currently, the total administrative penalty amount assessed against the Respondent in Conclusion

of Law No. 11 reads, "\$1,000.00." The total administrative penalty amount assessed against the Respondent should be changed to, "\$2,257.00."

**ORDERING PROVISION NO. 2**

The Executive Director respectfully requests Ordering Provision No. 2 of the Order be revised to include an additional requirement. Currently, Ordering Provision No. 2 reads, "Immediately upon the effective date of this Order, Mr. Jones shall cease to cause, suffer, allow or permit any additional municipal solid waste to be stored, processed, or disposed of at the Facility." With the additional requirement, Ordering Provision No. 2 should be changed to read, "Immediately upon the effective date of this Order, Mr. Jones shall cease to cause, suffer, allow or permit any additional municipal solid waste to be stored, processed, or disposed of at the Facility, and cease and desist from conducting any outdoor burning at the Facility."

**ORDERING PROVISION NO. 5**

The Executive Director respectfully requests Ordering Provision No. 5 of the Order be revised to correct the ZIP Code for the TCEQ Dallas/Fort Worth Regional Office. Currently, the ZIP Code for the TCEQ Dallas/Fort Worth Regional Office in Ordering Provision No. 5 reads, "6118-6951." The ZIP Code for the TCEQ Dallas/Fort Worth Regional Office in Ordering Provision No. 5 should be changed to read, "76118-6951."

Respectfully Submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Kathleen C. Decker, Director  
Litigation Division



By:

\_\_\_\_\_  
Xavier Guerra  
State Bar of Texas No. 24027359  
Litigation Division, MC R-13  
14250 Judson Road  
San Antonio, Texas 78233-4480  
Telephone: (210) 403-4016  
Fax: (210) 545-4329

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of July, 2009, the foregoing The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision was filed with the Chief Clerk of the Texas Commission on Environmental Quality.

I further certify that on this day a true and correct copy of the foregoing The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision was mailed to the following persons by the method(s) indicated:

The Honorable Tommy L. Broyles  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

**Via Facsimile and U.S. First Class Mail  
Facsimile: 512/475-4994**

Mr. James Jones  
1414 West Morton Street  
Denison, Texas 75020

**Via Certified Mail, Return Receipt  
Requested, Article Number 7002 2030  
0005 7057 9335  
and U.S. First Class Mail**

Mr. Blas Coy  
Office of the Public Interest Counsel, MC 103  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**Via Electronic Mail**



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Xavier Guerra  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 JUL 17 PM 4: 17  
CHIEF CLERKS OFFICE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against  
and Requiring Corrective Action By**

**JAMES JONES**

**TCEQ DOCKET NO. 2008-0709-MLM-E**

**SOAH DOCKET NO. 582-09-1252**

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 and requiring corrective action by James Jones (Respondent). Tommy L. Broyles, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on May 1, 2009, in Austin, Texas, and presented the Proposal for Decision.

The parties to the proceeding are Respondent; the Commission's Executive Director (ED), represented by Xavier Guerra, attorney in TCEQ's Litigation Division; and the Office of Public Interest Counsel. 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. Respondent owns real property used for an unauthorized landfill located at 920 East Main Street, Denison, Grayson County, Texas. The site rests on three parcels of land owned by Respondent and consists of approximately ten acres (the Facility) that border Pawpaw Creek.
2. On December 13, 2007, Respondent was responsible for an unauthorized outdoor burn at the Facility. As a result of the burn, the Denison Fire Department was called to the Facility to extinguish the fire.

3. On February 25, 2008, approximately 1,000 cubic yards of municipal solid waste (MSW) had been disposed of at the Facility, including asbestos siding and floor tiles, shingles, asphalt, treated wood, and telephone poles.
4. The burn did not meet an exception to the prohibition on outdoor burning.
5. On March 31, 2008, the TCEQ issued a Notice of Enforcement for Compliance Evaluation Investigation to Respondent.
6. On August 21, 2008, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) in accordance with TEX. WATER CODE ANN. § 7.054, alleging that Respondent violated 30 TEX. ADMIN. CODE §§ 330.15(a)(1) and (c) by failing to prevent the disposal of MSW at an unauthorized site. The ED also alleged that Respondent violated 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to prevent outdoor burning from being conducted on his property.
7. The ED recommended the imposition of an administrative penalty in the amount of \$2,257.00, and corrective action to bring the site into compliance.
8. Respondent has removed concrete that was impeding PawPaw Creek, one of the corrective actions recommended by the ED.
10. The proposed penalty is the base penalty of \$1,000.00 for each violation, plus \$257.00 in avoided costs for the unauthorized outdoor burning.
11. An administrative penalty of \$2,257.00 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.
12. On September 15, 2008, Respondent requested a contested case hearing on the allegations in the EDPRP.
13. On November 6, 2008, the case was referred to SOAH for a hearing.

14. On November 25, 2008, the Commission's Chief Clerk issued a 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.
15. At the preliminary hearing that was held on January 8, 2009, the ED established jurisdiction to proceed.
16. The hearing on the merits was conducted on May 1, 2009, in Austin, Texas, by ALJ Tommy L. Broyles.
17. The ALJ issued the Proposal for Decision on June 30, 2009.

## **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 , the Texas Health & Safety Code, or 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. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.
5. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 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.

6. As required by TEX. GOV'T CODE ANN. §§ 2001.051(1) and 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.401, and 30 TEX. ADMIN. CODE §§ 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.
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, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
8. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(a)(1) and (c), and TEX. HEALTH & SAFETY CODE § 382.085(b).
9. In determining the amount of an administrative penalty, the ED considered several factors, as required by TEX. WATER CODE ANN. § 7.053, including:
  - The 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 TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for the alleged violation and a total administrative penalty of \$2,257.00 is justified and should be assessed against Respondent.

12. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

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

1. James Jones is assessed an administrative penalty in the amount of \$2,257.00 for violations of 30 TEX. ADMIN. CODE §§ 111.201 and 330.15(a)(1) and (c), and TEX. HEALTH & SAFETY CODE § 382.085(b). The payment of this administrative penalty and Mr. Jones' 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 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: James Jones; Docket No. 2008-0709-MLM-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. Immediately upon the effective date of this Order, Mr. Jones shall cease to cause, suffer, allow, or permit any additional municipal solid waste to be stored, processed, or disposed of at the Facility, and cease and desist from conducting any outdoor burning at the Facility.
3. Within 30 days after the effective date of the Commission Order, Mr. Jones shall develop and implement procedures to prevent the recurrence of outdoor burning at the Facility.

4. Within 60 days after the effective date of the Commission Order, Mr. Jones shall remove and properly dispose of all MSW at the Facility.
5. Within 75 days after the effective date of the Commission Order, Mr. Jones shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the above ordering provisions. The certification shall be notarized by a State of Texas Notary Public and 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.”

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:

Mr. Sam Barrett, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

6. 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.

7. 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.
8. 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.
9. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
10. 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