

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 1, 2009

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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 SEP -2 AM 9:55
CHIEF CLERKS OFFICE

Re: SOAH Docket No. 582- 09-1615; TCEQ Docket No. 2008-1234-MSW-E;
In Re: The Matter of Enforcement Action Against Alan and Yolanda Black DBA
Black's Construction and Caliche Pit

Dear Mr. Trobman:

On August 31, 2009, the State Office of Administrative Hearings (SOAH) received by fax a copy of a letter from Jenette Black, wife of Alan Black. (*See Att.*). The date stamp on this letter indicates that it was received by the Texas Commission on Environmental Quality (TCEQ) on August 13, 2009. However, it was not sent to SOAH and therefore, the Administrative Law Judge (ALJ) was unaware that Mrs. Black had filed exceptions on Mr. Black's behalf. Also, Yolanda Black, Mr. Black's ex-wife and co-respondent in this enforcement case, did not file with SOAH any exceptions to the proposal for decision (PFD). After reviewing the attached letter, the ALJ recommends that the Commission overrule the exceptions.

Ms. Black argues that the PFD is unfair because Black Construction and Caliche Pit closed in December of 2000. Ms. Black states that any actions from that time should have been penalized in 2000, not 2005. Ms. Black may be referencing a 2005 Agreed Order that Yolanda Black and Alan Black, through his mother, entered into to settle a previous enforcement action.

In the PFD, the ALJ determined that the 2005 Agreed Order was valid against Yolanda Black. Regarding Mr. Black, his mother signed the 2005 Agreed Order on his behalf pursuant to a power of attorney. At the May 28, 2009 hearing on the merits in this case, Mr. Black argued that his mother did not have the authority to sign the 2005 Agreed Order on his behalf. The ALJ concluded that it is questionable whether the power of attorney was sufficient to vest Mr. Black's mother with the authority to act on his behalf by signing the 2005 Agreed Order. Therefore, the ALJ did not recommend that Mr. Black be found to have violated the 2005 Agreed Order. However, Mr. Black testified that he placed municipal solid waste (MSW) from the construction

company in the caliche pit. Even though Mr. Black removed some of the waste from the caliche pit in 2006, other MSW still remained in the pit at the time of the hearing on the merits in this case in May 2009. Therefore, Mr. Black violated and continued to violate section 330.15(c) of title 30, Texas Administrative Code (TAC). For these and the reasons stated in the PFD, the ALJ recommends that Commission overrule Ms. Black's exceptions.

Ms. Black also argues that 30 TAC § 330.4(d) states that a permit is not required in this instance. Ms. Black argues that this section provides that a permit is not required for a "MSW transfer station that is used in the transfer of MSW to a solid waste processing or disposal facility"

Ms. Black may be referring to 30 TAC § 330.9(b) that requires a registration for certain MSW transfer stations. The caliche pit does not meet the definition of an MSW transfer station as defined by 30 TAC § 330.3(157). Also, the caliche pit is not used to transfer waste to a solid waste processing or disposal facility. Therefore, section 330.9(b) is not applicable to the caliche pit and the ALJ recommends that this exception be overruled.

Ms. Black argues that at the time of the illegal dumping that occurred at the caliche pit in 2002, Mr. Black was out of the country. As previously stated, Mr. Black testified that he placed MSW resulting from his construction business in the caliche pit before he terminated the business in 2000. Some of that MSW was still in the caliche pit as of May 2009. The ALJ recommends that the Commission overrule this exception.

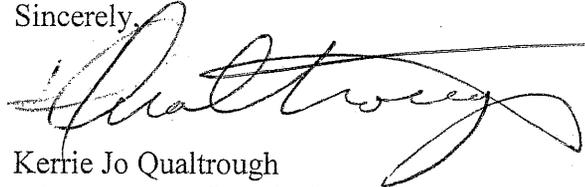
Regarding Mr. Black's inability to pay, Ms. Black stated that she was sending the 2008 income tax return, credit card bills, and medical bills. Before the hearing on the merits, in April 2009, the Executive Director (ED) requested the 2008 income tax return and other financial documentation from Mr. Black and Yolanda Black in order to have current information. Yolanda Black provided the requested documentation. The ED reviewed her documentation, determined that she did not have the ability to pay, and reduced the penalty accordingly.

Mr. Black gave the ED financial information in 2008 but did not provide the 2008 income tax return and other information that the ED requested in April 2009. There is conflicting testimony on whether Mr. Black refused to give the additional information or was unable to provide the information for health reasons. However, Mr. Black took the position at the hearing on the merits that the ED should already be in possession of enough information to determine that he was unable to pay the penalty. Because the ED did not have current information, the ED could not determine whether Mr. Black was able to pay the administrative penalty. The 2008 income tax return, credit card bill, and medical bills are not in the evidentiary record from the May 2009 hearing on the merits:

Ms. Black argues that Mr. Black's mother paid \$3,755 as an administrative penalty in settlement of the 2005 Agreed Order. As previously stated, it is questionable whether the 2005

Agreed Order was valid against Mr. Black. The Commission may want to consider applying the \$3,744 payment of the 2005 administrative penalty to Mr. Black's current recommended penalty under section 7.053(4) of the Texas Water Code.

Sincerely,



Kerrie Jo Qualtrough
Administrative Law Judge

KJQ/ds

cc: Rebecca Combs, Staff Attorney, Texas Commission on Environmental Quality, P.O. Box 13087 MC-175,
Austin, TX 78711-3087 – VIA INTERAGENCY MAIL

Blas Coy, Jr., Office of Public Interest Counsel, Texas Commission on Environmental Quality, P.O. Box 13087
MC-175, Austin, TX 78711-3087 – VIA INTERAGENCY MAIL

Yolanda Black, Blacks Construction Company and Caliche Pit, P.O. Box 162, Mirando City, TX 78369 – VIA
REGULAR MAIL

Alan Black, Blacks Construction Company and Caliche Pit, P.O. Box 4, Oilton, TX 78369 – VIA REGULAR
MAIL

KQ

RECEIVED

AUG 13 2009

Texas Commission on Environmental Quality
Commissioners' Offices

August 10, 2009

Les Trobman, General Counsel

Texas Commission on Environmental Quality

PO Box 13087

Austin Texas 78711-3087

RE: SOAH Docket No. 582-09-1615; TCEQ Docket No. 2008-1234-MSW-E;

In RE: The Matter of Enforcement Action Against Alan Black

Dear Mr. Trobman:

I Jenette Black wife of Alan Black would like to inform you that Mr. Alan Black is out of the country since June 26, 2009 to September 26, 2009.

I am sending you this letter with regards to the decision that was made by Judge Karrie Jo Qualtrough. As per my opinion the decision is not fair and it is bias considering that Black Contruction and Calitche Pit closed on December 2000. Anything happen during that time should be penalized in 2000 not after five years. In addition, my husband is out of the country from August 12, 2002 to December 19, 2005 and he is not doing anything with his property since then. He did not violated MSW rule when this case was filed since he is not here and we give you a copy of his passport.

Based on Chapter 330.4 (d) A permit is not required for a MSW transfer station facility that is used in the transfer of MSW to a solid waste processing or disposal facility from:

- (1) A municipality with a population of less than 50,000;
- (2) A county with a population of less than 85,000;
- (3) A facility used in the transfer of MSW that transfer or will transfer 125 tons per day or less.

With this chapter my husband did not violated any laws whatsoever. Permit is not required, if we based the violation in the above ruling. In addition my husband did not operate in that facility since 2001. After so many years that this property is not doing anything there is a violation?

When they caught somebody going there he is not here he was in the Philippines. He don't know nothing about it. He was not informed that Aguerro Trucking is going to his property. He left United State on August 12, 2002 and arrived in the Philippines on August 14, 2002 due to 26 hours travel time and 13hours difference on time. Please note on the receipt shown on the record on September 11,2002 issued to Aguerro Trucking, Alan Black is not present even on the check issued to him. He can prove that he did not issue the invoice and did not receive the check. Even when they caught the trucking going there he is not here and he was not informed regarding the dumping. He don't have any communication

to Yolanda Black nor Aguerro Trucking during that time.

In good faith we try our best to clean up the property as soon as we came back from the Philippines in December 21, 2005. There is no consideration whatsoever in what he did to clean it up.

an operation for my surgery
operation which was done on May 11, 2009 in San Antonio. I was confined at the hospital for five days. Alan is with me during that time. Alan inform you regarding this matter in his affidavit. I can send you a proof of this hospitalization.

As what Becky Combs said during the trial health is "not an excuse". What a nice comment. I thought TECQ worry about the health of the people.

In addition my husband had very poor health condition with his type 1 diabetes (fully insulin dependent), high blood pressure and poor heart condition. This kind of problem aggravates his condition. That is why he cannot work no more. Having this kind of problem since we come back from the Philippines caused him depression, anxiety, high blood pressure and uncontrolled sugar.

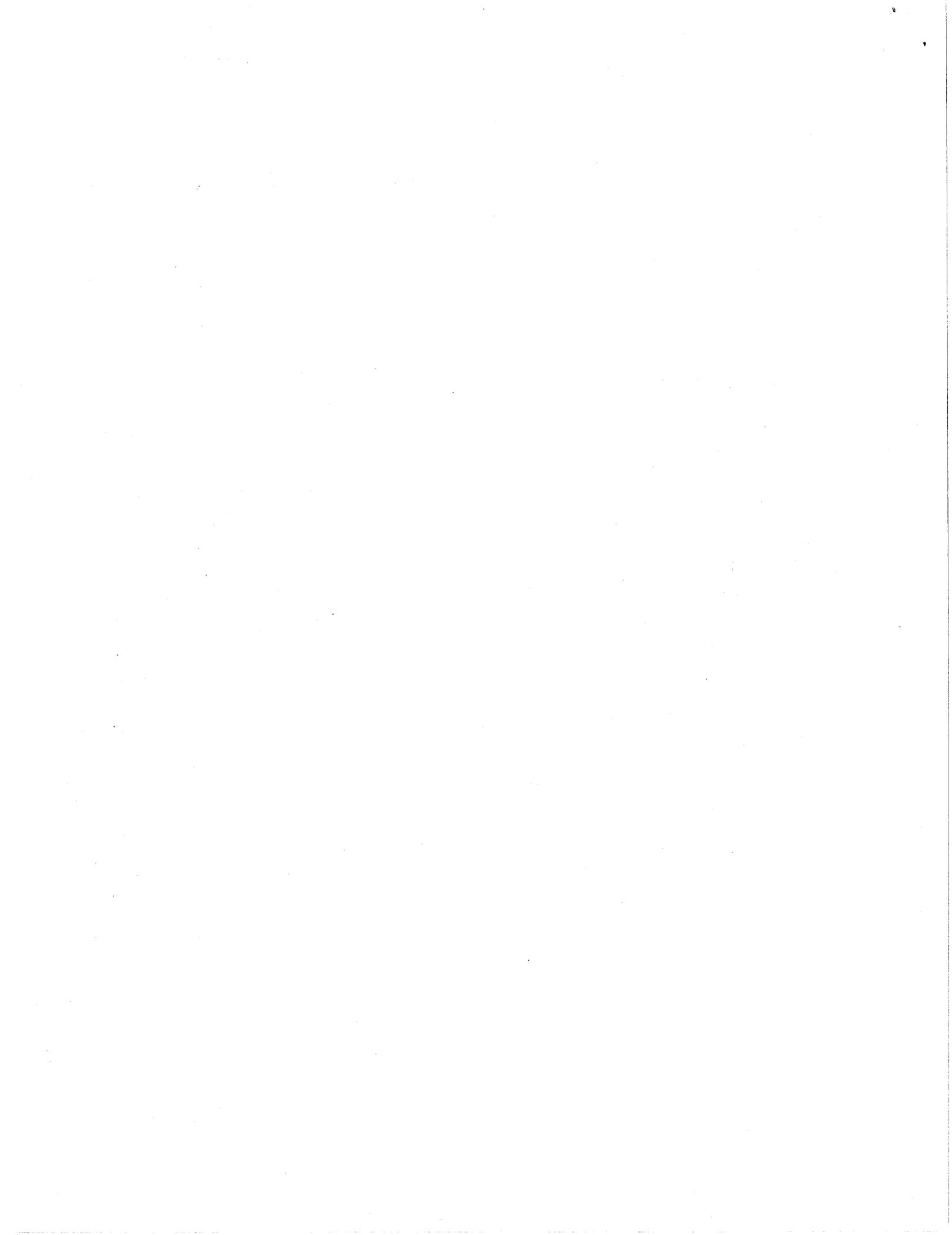
With regards to his income, he is getting disability benefit and all he is getting is not enough to pay for his medication and doctors visits. I will send you copy of our 2008 income tax return together with our credit card bills and medical bills.

In addition my mother in law issued a check payable to TCEQ on March 1, 2005 in the amount of Three Thousand Seven Hundred Fifty. This should be the payment of Alan Black for his share of the penalty.

I am writing you this letter to review and give him consideration.

Thank you for your consideration.


Jenette Black



State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 26, 2009

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

2009 AUG 28 PM 3:00
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: SOAH Docket No. 582- 09-1615; TCEQ Docket No. 2008-1234-MSW-E;
In Re: The Matter of Enforcement Action Against Alan and Yolanda black DBA
Black's Construction and Caliche Pit

Dear Mr. Trobman:

On August 13, 2009, the Executive Director (ED) of the Texas Commission on Environmental Quality filed exceptions to the Administrative Law Judge's (ALJ) Proposal for Decision. No replies to the ED's exceptions were filed. After reviewing the ED's exceptions, the ALJ recommends that the Commission sustain the ED's exceptions and make the revisions as set out by the ED. The ALJ recommends that the Commission adopt the proposed order as modified by the ED.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerrie Jo Qualtrough", written over a horizontal line.

Kerrie Jo Qualtrough
Administrative Law Judge

KJQ/ds

cc: Rebecca Combs, Staff Attorney, Texas Commission on Environmental Quality, P.O. Box 13087 MC-175,
Austin, TX 78711-3087 – VIA INTERAGENCY MAIL
Blas Coy, Jr., Office of Public Interest Counsel, Texas Commission on Environmental Quality, P.O. Box 13087
MC-175, Austin, TX 78711-3087 – VIA INTERAGENCY MAIL
Yolanda Black, Blacks Construction Company and Caliche Pit, P.O. Box 162, Mirando City, TX 78369 – VIA
REGULAR MAIL
Alan Black, Blacks Construction Company and Caliche Pit, P.O. Box 4, Oilton, TX 78369 – VIA REGULAR
MAIL