

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

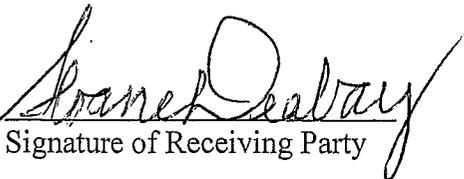
TO: **DOCKET CLERK  
OFFICE OF CHIEF CLERK  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
P.O. BOX 13087  
AUSTIN, TX 78711-3087**

RE: **SOAH Docket No. 582-09-3658; TCEQ Docket No. 2008-1684-WQ-E;  
Executive Director of Texas Commission on Environmental Quality vs. Dale  
Werlinger**

On December 11, 2009, the following items were delivered to the Chief Clerk's Office.

## Proposal for Decision and Proposed Order

Your signature below acknowledges receipt of the above referenced documents from the State Office of Administrative Hearings.

  
Signature of Receiving Party

Date

HB/pp

2009 DEC 11 PM 4:08  
CHIEF CLERKS OFFICE  
TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

December 11, 2009

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

Re: SOAH Docket No. 582-09-3658; TCEQ Docket No. 2008-1684-WQ-E;  
Executive Director of Texas Commission on Environmental Quality vs. Dale  
Werlinger

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 DEC 11 PM 4:10  
CHIEF CLERKS OFFICE

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 documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than December 31, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than January 13, 2010.

This matter has been designated **TCEQ Docket No. 2008-1684-WQ-E; SOAH Docket No. 582-09-3658**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Hunter Burkhalter".

Hunter Burkhalter  
Administrative Law Judge

HB/pp  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

**300 West 15th Street Suite 502**

**Austin, Texas 78701**

**Phone: (512) 475-4993**

**Fax: (512) 475-4994**

**SERVICE LIST**

**AGENCY: Environmental Quality, Texas Commission on (TCEQ)**

**STYLE/CASE: DALE WERLINGER**

**SOAH DOCKET NUMBER: 582-09-3658**

**REFERRING AGENCY CASE: 2008-1684-WQ-E**

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ HUNTER BURKHALTER**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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DALE WERLINGER  
P.O. BOX 727  
HEARNE, TX 77859  
(979) 571-8665 (PH)

DALE WERLINGER

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xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-3658  
TCEQ DOCKET NO. 2008-1684-WQ-E

2009 DEC 11 PM 4:10

EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner

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CHIEF CLERKS OFFICE  
BEFORE THE STATE OFFICE

OF

V.

DALE WERLINGER,  
Respondent

ADMINISTRATIVE HEARINGS

## PROPOSAL FOR DECISION

### I. INTRODUCTION

In this enforcement action, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) asserts that Dale Werlinger (Respondent or Mr. Werlinger) violated TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c). Respondent owns and operates a construction site located between 450 and 650 North Market St. in Hearne, Robertson County, Texas (the Site). The ED alleges that Respondent committed two types of violations: (1) failing to prevent an unauthorized discharge of sediment from the Site into a nearby storm drain that discharges directly into Sandy Creek; and (2) failing to develop and implement a Storm Water Pollution Prevention Plan (SWP3). The ED seeks assessment of an administrative penalty totaling \$4,400 and corrective action by Respondent. As set out below, the undersigned Administrative Law Judge (ALJ) recommends the TCEQ: find that Respondent committed the violations alleged, assess an administrative penalty totaling \$4,400, and require certain corrective actions by Respondent.

## II. BACKGROUND AND PROCEDURAL HISTORY

On February 6, 2009, the ED mailed his Executive Director's Preliminary Report and Petition (EDPRP) to Respondent.<sup>1</sup> The EDPRP recommended an administrative penalty of \$4,400 and corrective action. On March 9, 2009, Respondent requested a hearing on this matter.<sup>2</sup>

ALJ Hunter Burkhalter of the State Office of Administrative Hearings (SOAH) convened a preliminary hearing in this action on July 2, 2009, in Austin, Texas. On October 16, 2009, ALJ Burkhalter convened an evidentiary hearing in Austin. At the evidentiary hearing, the ED was represented by Phillip Goodwin, and Respondent appeared *pro se*. The record closed on the date of the evidentiary hearing.

## III. JURISDICTION

The parties did not dispute TCEQ's jurisdiction, SOAH's jurisdiction, or the adequacy of notice. The TCEQ and SOAH have jurisdiction over this matter and notice was proper as reflected by the Findings of Fact and Conclusions of Law in the attached Order.

## IV. EVIDENCE

The ED alleged that Respondent committed two violations:

- (1) Respondent failed to develop and implement a Storm Water Pollution Prevention Plan (SWP3) in accordance with the Construction General Permit (CGP) for storm water at the Site, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c); and

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

<sup>2</sup> Ex. ED-1, p. 17

- (2) Respondent failed to prevent an unauthorized discharge of waste by allowing sediment from the Site to be discharged into a nearby storm drain that discharges directly into Sandy Creek, in violation of TEX. WATER CODE § 26.121(a)(1).

Jay Travis Halepeska is an Environmental Investigator for the TCEQ's Waco Regional Office. He specializes in, among other things, stormwater investigations. Mr. Halepeska testified that, on March 10, 2008, an anonymous call was made to the TCEQ Waco office complaining that sediments were discharging off the Site. In response, Mr. Halepeska and other TCEQ investigators conducted an investigation of the Site on March 18, 2008. During that inspection, he observed that sediment was discharging off the Site onto the adjacent roadway and from disturbed soils on the Site into a storm sewer due to lack of structural controls to catch runoff. Photographs of the violations were taken during the inspection.<sup>3</sup>

Mr. Halepeska testified that the Site qualifies as a "small construction site" under the applicable rules because it is between one and five acres in size. During a follow-up investigation on March 31, 2008, TCEQ investigators measured the area of disturbed soils at the site and confirmed that the total area of disturbed soils exceeded one acre but was smaller than five acres. Because of its size, Mr. Halepeska testified that an SWP3 was required for the Site.

On April 18, 2008, TCEQ sent to Respondent a written Notice of Violations (NOV) which advised him of the violations that had been found and directed him to cure the violations by no later than May 18, 2008.<sup>4</sup>

Mr. Halepeska testified that, on May 21, 2008, a second anonymous call was made to the TCEQ Waco office complaining that sediments were still discharging off the Site. In response, TCEQ conducted another Site investigation on May 23, 2008. During that inspection, it was observed that the same violations were still occurring. Moreover, the area of disturbed soils on

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<sup>3</sup> See also Ex. ED-2.

<sup>4</sup> See also Ex. ED-2, pp. 5-8.

the Site had expanded in size. Photographs of the violations were taken during the inspection.<sup>5</sup> On July 8, 2008, TCEQ again sent to Respondent a written NOV advising him of the violations and directing him to cure them by no later than August 8, 2008.<sup>6</sup>

On July 18, 2008, Respondent sent correspondence to TCEQ in which he claimed to have implemented storm water prevention measures at the Site.<sup>7</sup> In response, TCEQ conducted a compliance investigation on July 21, 2009. The investigators determined that the information provided by Respondent was insufficient to cure the alleged violations.<sup>8</sup> On August 8, 2008, TCEQ sent to Respondent a written "Additional Compliance Documentation Needed" letter advising him that the violations remained unresolved and directing him to cure them by no later than September 9, 2008.<sup>9</sup>

On September 8, 2008, Respondent contacted a TCEQ investigator seeking information as to how to cure the violations. TCEQ personnel sent him on-line links for the SWP3 worksheet and instructions. Mr. Halepeska testified that, on September 10, 2008, another TCEQ compliance review was conducted for the Site. Because it was determined that the violations remained unresolved, the investigation file was referred to TCEQ's Enforcement Division.<sup>10</sup> Respondent was notified of this fact on October 10, 2008.<sup>11</sup>

According to Mr. Halepeska, a final and complete SWP3 has never been prepared for the Site. Likewise, no documentation has ever been submitted to TCEQ to demonstrate that sufficient measures have been put in place at the Site to prevent discharge of sediment.

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<sup>5</sup> See also Ex. ED-3.

<sup>6</sup> See also Ex. ED-3, pp. 5-8.

<sup>7</sup> See also Ex. ED-4, pp. 9-13.

<sup>8</sup> See also Ex. ED-4.

<sup>9</sup> See also Ex. ED-4, pp. 5-8.

<sup>10</sup> See also Ex. ED-5.

<sup>11</sup> See also Ex. ED-5..

Harvey Wilson, an Enforcement Coordinator at TCEQ, testified as to the process by which penalties were calculated for the violations in this case. After reviewing the investigation file, Mr. Wilson personally prepared the penalty calculation worksheet for this case.<sup>12</sup> For the first violation – Respondent’s failure to develop and implement an SWP3 – Mr. Wilson testified that a penalty of \$2,200 was appropriate and consistent with TCEQ’s Penalty Guidelines. Due to the significant number of days that the Respondent has continued to fail to implement an SWP3, Mr. Wilson found it appropriate to calculate the penalty for two monthly violation events (based upon 44 violation days), which enhanced the penalty amount. Similarly, the penalty amount was slightly enhanced because of Respondent’s compliance history, based upon the two NOV’s previously issued to Respondent in this case.

As to the second violation – Respondent’s failure to prevent an unauthorized discharge – Mr. Wilson testified that a penalty of \$2,200 was appropriate and consistent with TCEQ’s Penalty Guidelines. Because unauthorized discharges were observed by TCEQ inspectors on two different dates, Mr. Wilson found it appropriate to calculate the penalty for two violation events, which enhanced the penalty amount. Similarly, the penalty amount was slightly enhanced because of Respondent’s compliance history, based upon the two NOV’s previously issued to Respondent in this case.<sup>13</sup>

Mr. Wilson testified that, in total, the ED seeks \$4,400 in penalties from Respondent for the two violations and a requirement that Respondent take further corrective measures.

In his testimony, Respondent did not deny the allegations against him. Rather, he focused on what he contended was poor public service by TCEQ personnel. He complained that a TCEQ investigator, Melissa Dudley, failed to return some of his phone calls. He also complained that he had difficulty understanding the documents and instructions provided to him

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<sup>12</sup> Ex. ED-1, pp. 31-37.

<sup>13</sup> See also Ex. ED-6.

by TCEQ. He described himself as a lay person without formal training. He did note that he made some attempts to prevent runoff at the Site by installing hay bales around a drain.

Respondent claims to have submitted to TCEQ a document purporting to be an SWP3 for the Site (the "purported SWP3").<sup>14</sup> There is some question as to whether, in fact, the plan was submitted to TCEQ and, if so, when it was submitted. Respondent did not state when the plan was submitted. Its signature page is dated June 15, 2008. However, Mr. Halepeska testified that the document had never been received by TCEQ prior to the day before the evidentiary hearing in this matter when Respondent provided a copy to Mr. Goodwin and advised that he intended to enter it as an exhibit. Mr. Halepeska further testified that, for a number of reasons, the purported SWP3 is inadequate to suffice as an SWP3 for the Site. For example, it is a plan for a "Multi-Sector, Industrial General Permit," whereas, the type of SWP3 that is required for the Site would be a "Construction General Permit." Moreover, the purported SWP3 is incomplete, contains insufficient information, and contains an inadequate site diagram.

## V. DISCUSSION AND ALJ'S ANALYSIS

The ED met his burden of proving that the alleged violations occurred. It is undisputed that Respondent owns and operates the Site. The unauthorized discharge allegation is clearly proven by the photographic evidence and testimony. The Texas Water Code prohibits any person from discharging industrial waste into or adjacent to any water in the state without prior TCEQ authorization.<sup>15</sup> "Industrial waste" is defined as "waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business."<sup>16</sup> As such, the sediments that TCEQ proved were discharged from the Site constitute unauthorized discharges of industrial waste in violation of state law.

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<sup>14</sup> Ex. ED-12.

<sup>15</sup> TEX. WATER CODE § 26.121(a) and (c).

<sup>16</sup> TEX. WATER CODE § 26.001(11).

Similarly, there is ample evidence to support the claim that Respondent failed to develop and implement an SWP3 in accordance with the CGP for storm water at the Site. Pursuant to 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c), anyone who causes discharges of storm waters associated with small construction activity is required to apply for coverage under a promulgated storm water general permit. In doing so, the discharger must develop and implement an SWP3 in accordance with the Construction General Permit for Storm Water. Mr. Halepeska testified that no SWP3 had ever been filed with TCEQ for the Site. Mr. Werlinger testified, unconvincingly, that the purported SWP3 had been filed, but never stated when it had been filed. Even if it had been filed, Mr. Halepeska testified, convincingly, that the purported SWP3 did not remotely satisfy the applicable requirements.

It is regrettable if, in fact, telephone calls by Respondent to TCEQ were not promptly returned. Moreover, the ALJ is sympathetic to Respondent's complaints that this area of regulation is difficult to understand. Nevertheless, the record reflects that TCEQ was generous in providing Respondent with time and informational resources to figure out his regulatory responsibilities and come into compliance.

TCEQ is authorized to assess an administrative penalty against a person who violates provisions of the Texas Water Code within the TCEQ's jurisdiction or a rule adopted by the TCEQ. In this case, the penalty may not exceed \$10,000 per violation per day.<sup>17</sup> Additionally, the TCEQ may order the violator to take corrective action.<sup>18</sup> The ALJ finds that the administrative penalty recommended by Staff is warranted on the grounds that Respondent violated the environmental laws and regulations noted above. The ED appropriately considered the factors set forth in TEX. WATER CODE ANN. § 7.053 and followed the TCEQ's Penalty Policy in calculating the total proposed penalty in the amount of \$4,400.

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<sup>17</sup> TEX. WATER CODE ANN. § 7.054(c).

<sup>18</sup> TEX. WATER CODE ANN. § 7.073.

This amount is reasonable, as the ED sought penalties for only four violation events when each day of non-compliance could have been included as separate violations.

## VI. CONCLUSION

The ALJ recommends that the TCEQ adopt the Findings of Fact and Conclusions of Law set forth in the attached Proposed Order, concluding that the alleged violations occurred, assessing an administrative penalty of \$4,400 against Respondent for the violations alleged and established in this proceeding, and requiring corrective action by Respondent.

**SIGNED December 11, 2009.**



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**HUNTER BURKHALTER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against  
and Requiring Corrective Action By  
DALE WERLINGER  
TCEQ DOCKET NO. 2008-1684-WQ-E  
SOAH DOCKET NO. 582-09-3658**

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 Dale Werlinger (Respondent). Hunter Burkhalter, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on October 16, 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 Phillip Goodwin, 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 and operates a construction site located between 450 and 650 North Market St. in Hearne, Robertson County, Texas (the Site). The Site includes an area of disturbed soils that is larger than one acre but smaller than five acres.
2. On March 18, 2008, sediments from disturbed soils on the Site were observed to be

discharging off the Site onto an adjacent roadway and into a storm drain due to a lack of structural controls to catch storm water runoff. The storm drain discharges directly into Sandy Creek. Further, Respondent failed to submit a required Storm Water Pollution Prevention Plan (SWP3) for the Site in accordance with the Construction General Permit (CGP) for storm water at the Site.

3. On April 18, 2008, the TCEQ issued a Notice of Violations (NOV) to Respondent and directed him to cure the violations by May 18, 2008.
4. On May 23, 2008, sediments were again observed to be discharging off the Site onto an adjacent roadway and storm drain. Further, Respondent had continued to fail to submit the required SWP3 for the Site.
5. On July 8, 2008, the TCEQ issued a second NOV to Respondent and directed him to cure the violations by August 9, 2008.
6. On July 18, 2008, Respondent advised TCEQ that he had taken minimal measures to control storm water runoff. Those measures were inadequate to cure the violations. Although Respondent was informed that the measures were inadequate, Respondent took no further action.
7. To date, no adequate SWP3 has been filed and no adequate measures to prevent storm water discharge have been put in place at the Site.
8. On February 6, 2009, 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: (1) 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to develop and implement a SWP3 in accordance with the CGP for storm water; and (2) TEX. WATER CODE § 26.121(a)(1) by failing to prevent an unauthorized discharge of industrial waste into or adjacent to any Texas waters.

9. The ED recommended the imposition of an administrative penalty in the amount of \$4,400 and corrective action by Respondent.
10. The proposed penalty includes a penalty of \$2,200 for failing to develop and implement an SWP3; plus a penalty of \$2,200 for failing to prevent an unauthorized discharge.
11. A total administrative penalty of \$4,400 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 the Commission's 2002 Penalty Policy.
12. On March 9, 2009, Respondent requested a contested case hearing on the allegations in the EDPRP.
13. On April 10, 2009, the case was referred to SOAH for a hearing.
14. On May 20, 2009, 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. The hearing on the merits was conducted on October 16, 2009, in Austin, Texas, by ALJ Hunter Burkhalter. The ED, represented by his attorney, Phillip Goodwin, and Respondent, representing himself, appeared.

16. The ALJ issued the Proposal for Decision on December 11, 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 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 each of 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 TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c).
9. In determining the amount of an administrative penalty, the ED considered the factors required by TEX. WATER CODE ANN. § 7.053, including:
  - 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 violations and a total administrative penalty of \$4,400 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. Dale Werlinger is assessed an administrative penalty in the amount of \$4,400 for violations of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 C.F.R. § 122.26(c). The payment of this administrative penalty and Respondent's 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: Dale Werlinger; Docket No. 2008-1684-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. Within 30 days after the effective date of this Order, Respondent shall develop and implement for the Site a Storm Water Pollution Prevention Plan (SWP3) in accordance with the Construction General Permit (CGP).

3. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2. 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:

Sid Slocum, Water Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Wroth, Texas 76118-6951

4. 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.

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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**Bryan W. Shaw, Ph.D., Chairman  
For the Commission**