

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

August 24, 2010

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

Re: SOAH Docket No. 582-10-0469; TCEQ Docket No. 2009-0184-WQ-E;  
In Re: Executive Director of the Texas Commission on Environmental Quality,  
Petitioner vs. Tommy Davis dba Slick Machines Screening Plant

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 September 13, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than September 23, 2010.

This matter has been designated **TCEQ Docket No. 2009-0184-WQ-E; SOAH Docket No. 582-10-0469**. 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 that reads "Thomas H. Walston".

Thomas H. Walston  
Administrative Law Judge

THW/sb  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

300 West 15th Street Suite 502  
Austin, Texas 78701  
Phone: (512) 475-4993  
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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** TOMMY DAVIS dba SLICK MACHINES SCREENING PLANT  
**SOAH DOCKET NUMBER:** 582-10-0469  
**REFERRING AGENCY CASE:** 2009-0184-WQ-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**  
**ALJ THOMAS H. WALSTON**

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**REPRESENTATIVE / ADDRESS**

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THOMAS M. DAVIS

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xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-10-0469**  
**TCEQ DOCKET NO. 2009-0184-WQ-E**

**EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner**

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**BEFORE THE STATE OFFICE**

**OF**

**VS.**

**TOMMY DAVIS DBA SLICK  
MACHINES SCREENING PLANT,  
Respondent**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION ON SUMMARY DISPOSITION**

**I. INTRODUCTION**

On November 16, 2009, the Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) filed its Second Amended Report and Petition (EDSARP) concerning Respondent Tommy Davis dba Slick Machines Screening Plant (Respondent). The EDSARP alleged that Respondent committed violations by failing to obtain authorization to discharge storm water associated with industrial activities (limestone mining and dressing) and by failing to obtain authorization to discharge storm water prior to conducting small construction activities, including but not limited to road construction and culvert installation. Respondent operates a crushed and broken limestone mine at Glen Rose, Somervell County, Texas. The ED seeks an administrative penalty of \$4,200.00 and an order directing Respondent to perform certain corrective actions.

The Administrative Law Judge (ALJ) granted a Motion for Summary Disposition filed by the ED and recommends that the Commission find that the alleged violations occurred, assess an administrative penalty of \$4,200.00, and order the corrective actions recommended by the ED. Because this matter was decided by summary disposition, no evidentiary hearing was held.

## II. PROCEDURAL HISTORY

The procedural history of this case is:

- September 23, 2009 The Commission referred this case to the State Office of Administrative Hearings (SOAH).
- November 12, 2009 Preliminary hearing held at SOAH.
- December 15, 2009 Order No. 2 established a procedural schedule and required the parties to file responses to written discovery requests by March 5, 2010, and to file supplemental responses to discovery requests by April 9, 2010.
- May 20, 2010 Order No. 3 granted the ED's Motion to Compel Discovery and for Sanctions, due to Respondent's failure to respond to the ED's discovery requests. Among other things, the order provided: "The requests for admissions served on Respondent by the ED are deemed admitted as true."
- June 25, 2010 The ED filed a Motion for Summary Disposition.
- June 28, 2010 Order No. 4 established a deadline of July 28, 2010, for Respondent to file a response to the ED's Motion for Summary Disposition.
- August 2, 2010 Order No. 5 extended until August 16, 2010, the deadline for Respondent to file a response to the ED's Motion for Summary Disposition.
- August 18, 2010 Order No. 6 granted the ED's Motion for Summary Disposition, closed the record, and canceled the evidentiary hearing scheduled for August 26, 2010.

## III. BACKGROUND FACTS

Respondent operates a crushed and broken limestone mine located at 11209 U.S. Highway 67, Glen Rose, Somervell County, Texas (the Site). During an on-site investigation conducted on November 24, 2008, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE (TAC) § 281.25(a)(4) and 40 Code of Federal Regulations (C.F.R.) § 122.26(c) by failing to obtain authorization to discharge storm water associated with industrial activities at the Site. Specifically, the investigator observed and

documented evidence that a limestone mining and dressing operation had begun at the Site, with approximately 8,000 cubic yards of screened material located in different areas.

During an on-site investigation on October 16, 2008, and during a record review investigation conducted on February 18, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent violated 30 TAC § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization prior to conducting small construction activities at the Site, including road construction and culvert installation.

Respondent received notice of the violations on or about November 30, 2008, and February 24, 2009. After this matter was referred to SOAH for a hearing, Respondent declined to respond to the ED's discovery requests, including the ED's requests for admissions; did not respond to the ED's motion to compel discovery, including a request that the requests for admissions be deemed admitted as true; and did not respond to the ED's motion for summary disposition. These actions by Respondent ultimately resulted in the ED's requests for admissions to Respondent being deemed admitted as true and the ED's motion for summary disposition being granted.

#### IV. LEGAL AUTHORITIES

The ED alleged that Respondent violated 30 TAC § 281.25(a)(4) and 40 C.F.R. § 122.26(c). The Commission's rule at 30 TAC § 281.25(a)(4) provides:

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 122, which are in effect as of the date of TPDES program authorization, as amended, are adopted by reference:

...  
(4) Part 122, Subpart B – Permit Applications and Special TPDES Program Requirements, § 122.26, requiring permits for storm water discharges. . . .

Then, 40 C.F.R. § 122.26(c) provides:

*(c) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity – (1) Individual application.* Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. . . .

Concerning summary disposition, the Commission's rule at 30 TAC § 80.137(c) provides:

Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of hearing, or filed thereafter and before disposition with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.

## V. DISCUSSION

This case was decided by summary disposition. The ED's Motion for Summary Disposition was based on seventeen exhibits submitted by the ED as summary disposition evidence,<sup>1</sup> including the requests for admissions served on Respondent that were deemed admitted as true by Order No. 3. As discussed in that order, the ED filed and mailed discovery requests to Respondent, including requests for admissions, on January 29, 2010. Order No. 2 established a deadline of March 5, 2010, for parties to file responses to written discovery requests and a deadline of April 9, 2010, for parties to supplement discovery responses. However, Respondent failed to file any objections or responses to the discovery requests, even though the Office of Public Interest Counsel sent Respondent a letter on March 11, 2010, requesting Respondent to answer discovery. Further, the ED contacted Respondent by telephone on April 9, 2010, to again request responses to the discovery requests, but Respondent stated that

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<sup>1</sup> ED Exs. A-Q.

he did not wish to participate in the discovery process. The Respondent never provided any written response to the discovery requests and he never responded to the ED's motion to deem the requests for admissions to be admitted as true. Therefore, on May 20, 2010, the ALJ issued Order No. 3, which, among other things, deemed the ED's requests for admissions to Respondent to be admitted as true. The deemed admissions and the additional summary disposition evidence provided by the ED established that Respondent committed the violations as alleged by the ED.

**A. Failure to obtain authorization to discharge storm water associated with industrial activities.**

As noted previously, 30 TAC § 281.25(a)(4) adopts by reference 40 C.F.R. § 122.26(c), which provides that “[d]ischargers of storm water associated with industrial activity . . . are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.” Industrial activity includes mining and dressing of crushed or broken stone.<sup>2</sup> Mining and crushing of stone require coverage under the Multi Sector General Permit (MSGP), TPDES General Permit No. TXR050000.<sup>3</sup> In order to obtain coverage by the MSGP, an individual conducting industrial activity must submit a Notice of Intent letter and a Storm Water Pollution Prevention Plan (SWP3).<sup>4</sup> At the time of the investigations involved in this case, Respondent had not submitted a Notice of Intent letter or an SWP3.<sup>5</sup>

In addition, Respondent's deemed admissions established that:

- Respondent conducted a mining operation at the Site from at least October 16, 2008, through at least November 24, 2008;
- As of February 18, 2009, Respondent had not obtained permit coverage for the Site;
- Respondent was conducting a commercial mining operation at the Site at the time of the on-site investigations;
- Respondent was mining limestone at the Site at the time of the on-site investigations;

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<sup>2</sup> ED Ex. N, at 69, Part V.J.

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

<sup>4</sup> ED Ex. N, at 21-23, Part II.C.2, 3, and 4.

<sup>5</sup> ED Exs. A, B, C, and D.

- Respondent had failed to obtain authorization to discharge storm water associated with industrial activities at the time of the on-site investigations;
- Respondent had no Storm Water Pollution Prevention Plan in place at the Site at the time of the on-site investigations; and
- The Site required permit coverage as it was operated by Respondent.<sup>6</sup>

Based on the ED's summary disposition evidence and Respondent's deemed admissions, no genuine issue as to as to any material fact exists, and the ED has established as a matter of law that Respondent violated 30 TAC § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization for storm water discharge from industrial activity at the Site, either through an individual permit or through coverage under a promulgated storm water general permit.

**B. Failure to obtain authorization to discharge storm water prior to conducting small construction activities, including road construction and culvert installation.**

The requirement to obtain authorization to discharge storm water contained in 30 TAC § 281.25(a)(4) and 40 C.F.R. § 122.26(c) also applies to "small construction activity," which includes:

[C]learing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres of land. . . . Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g. the routine grading of existing dirt roads, asphalt overlays of existing roads, the routing clearing of rights-of-way, and similar maintenance activities).<sup>7</sup>

Coverage for small construction activity can be obtained under TPDES Construction General Permit No. TXR150000.<sup>8</sup> Concerning this alleged violation, Respondent's deemed admissions established that:

- Respondent had not obtained permit coverage for the Site;

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<sup>6</sup> ED Ex. F, Requests for Admissions Nos. 1, 2, 3, 4, 6, 18, and 19.

<sup>7</sup> 40 C.F.R. § 122.26(b)(15); ED Ex. O, Part I.B., at 8.

<sup>8</sup> ED Ex. O.

- Respondent failed to obtain authorization prior to conducting small construction activities at the Site;
- Respondent constructed an access road at the Site;
- The area Respondent mined at the Site measures between one and five acres;
- No Construction Site Notice was present at the Site at the time of the investigations;
- Respondent had excavated part of the Site with an articulating front-end loader;
- Respondent had excavated part of the Site with a track hoe;
- The Site required permit coverage as it was operated by Respondent;
- At the time of the on-site investigations, freshly excavated spoil was present at the Site;
- At the time of the on-site investigations, recently scarified surface area was present at the Site.<sup>9</sup>

Based on the ED's summary disposition evidence and Respondent's deemed admissions, no genuine issue as to as to any material fact exists, and the ED has established as a matter of law that Respondent violated 30 TAC § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization for storm water discharge for small construction activity at the Site, either through an individual permit or through coverage under a promulgated storm water general permit.

### **C. Administrative penalty.**

TEX. WATER CODE § 7.053 requires the TCEQ to consider certain factors when calculating an administrative penalty. After considering those factors and using the Commission's established Penalty Policy, the ED recommended a penalty of \$4,200.00 for Respondent's violations.<sup>10</sup> The ED's summary disposition evidence included a penalty calculation worksheet for Respondent's violations; the Commission's Penalty Policy (September 2002);<sup>11</sup> and Respondent's deemed admissions, which included admissions that the requested

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<sup>9</sup> ED Ex. F, Requests for Admissions Nos. 2, 7, 8, 9, 10, 11, 12, 13, 19, and 21.

<sup>10</sup> ED Ex. P.

<sup>11</sup> ED Exs. G and H.

penalty is reasonable and justified under the factors contained in TEX. WATER CODE § 7.053 and that Respondent is financially able to pay the requested \$4,200.00 penalty.<sup>12</sup>

Based on the ED's summary disposition evidence and Respondent's deemed admissions, no genuine issue as to as to any material fact exists regarding the calculation and assessment of the proposed administrative penalty, and the ED has established as a matter of law that a \$4,200.00 administrative penalty is fair and reasonable and should be assessed against Respondent.

**D. Corrective action.**

TEX. WATER CODE § 7.073 allows the Commission to order a person who violates any statute or rule within the Commission's jurisdiction to take corrective action. As noted previously, the Commission's rules<sup>13</sup> require persons conducting small construction activities to obtain storm water discharge permit coverage under the Construction General Permit (CGP) (TPDES General Permit No. TXR150000).<sup>14</sup> To obtain coverage under that permit, an applicant must develop an SWP3 and post a Construction Site Notice.<sup>15</sup>

Respondent's deemed admissions included an admission that the corrective action ordering provisions requested by the ED are necessary, justified, and appropriate given the violations alleged by the ED.<sup>16</sup> Based on this admission, no genuine issue of material fact exists regarding the requested corrective action ordering provisions. Therefore, the ED has established as a matter of law that the corrective action of posting a Site Construction Notice at the Site is necessary and appropriate.

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<sup>12</sup> ED Ex. F, Requests for Admissions Nos. 23 and 25.

<sup>13</sup> 30 TAC § 281.25(a)(4) and 40 C.F.R. § 122.26(c).

<sup>14</sup> ED Ex. O.

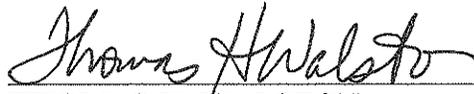
<sup>15</sup> ED Ex. O, Part II.E.2, at 15-16. After the investigations involved in this case, Respondent submitted an SWP3 for authorization for industrial activities under the Multi Sector General Permit (MSGP), TPDES General Permit No. TXR050000, so only the Construction Site Notice is needed for Respondent to obtain authorization under the CGP.

<sup>16</sup> ED Ex. F, Request for Admission No. 24.

## VI. RECOMMENDATION

Based on the ED's summary disposition evidence, including the Respondent's deemed admission, and for the reasons stated above, the ALJ recommends that the Commission approve the summary disposition granted to the ED and against the Respondent; find that the Respondent has violated 30 TAC § 281.25(a)(4) and 40 C.F.R. § 122.26(c) as alleged; and adopt the attached proposed Order, which assesses an administrative penalty of \$4,200.00 against Respondent and requires Respondent to take the appropriate corrective action as requested by the ED.

SIGNED August 24, 2010.



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against  
and Ordering Corrective Action by Tommy  
Davis dba Slick Machines Screening Plant;  
TCEQ Docket No. 2009-1084-WQ-E;  
SOAH Docket No. 582-09-2308**

On \_\_\_\_\_, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Second Amended Report and Petition (EDSARP), which recommended that the Commission enter an order assessing administrative penalties against and requiring corrective action by Tommy Davis dba Slick Machines Screening Plant (Respondent). A Proposal for Decision (PFD) on Motion for Summary Disposition was presented by Thomas H. Walston, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

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

**I. FINDINGS OF FACT**

1. Respondent Tommy Davis dba Slick Machines Screening Plant conducted a mining operation at 11209 U.S. Highway 67, Glen Rose, Somervell County, Texas (the Site) from at least October 16, 2008, through at least November 24, 2008.
2. During an on-site investigation at the Site conducted on November 24, 2008, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE (TAC) § 281.25(a)(4) and 40 Code of Federal Regulations

(C.F.R.) § 122.26(c) by failing to obtain authorization to discharge storm water associated with industrial activities at the Site. Specifically, the investigator observed and documented that a limestone mining and dressing operation had begun at the Site, with approximately 8,000 cubic yards of screened material located in different areas.

3. During an on-site investigation at the Site on October 16, 2008, and during a record review investigation conducted on February 18, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent had violated 30 TAC § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization prior to conducting small construction activities at the Site, including road construction and culvert installation.
4. As of February 18, 2009, Respondent had not obtained permit coverage for the Site.
5. Respondent was conducting a commercial mining operation at the Site at the time of the on-site investigations.
6. Respondent was mining limestone at the Site at the time of the on-site investigations.
7. Respondent had conducted screening operations at the Site at the time of the on-site investigations.
8. Respondent had failed to obtain authorization to discharge storm water associated with industrial activities at the Site at the time of the on-site investigations.
9. Respondent failed to obtain authorization prior to conducting Small Construction Activities at the Site.
10. Respondent constructed an access road at the Site.
11. Respondent installed culverts at the Site.
12. The area mined by Respondent at the Site measured between one and five acres.

13. No Construction Site Notice was present at the Site at the time of the on-site investigations.
14. Respondent had excavated part of the Site with an articulating front-end loader at the time of the on-site investigations.
15. Respondent had excavated part of the Site with a track hoe at the time of the on-site investigations.
16. Part of the Site was a former mining site.
17. A track hoe was present at the Site at some point between October 16, 2008, and February 18, 2009.
18. A front end loader was present at the Site at some point during between October 16, 2008, and February 18, 2009.
19. A screener was present at the site at some point between October 16, 2008, and February 18, 2009.
20. No Storm Water Pollution Prevention Plan was in place at the Site at the time of the on-site investigations.
21. The Site required permit coverage as it was operated by Respondent.
22. A pile of cleared vegetation was present at the Site at the time of the on-site investigations.
23. Freshly excavated soil was present at the Site at the time of the on-site investigations.
24. A recently scarified surface area was present at the Site at the time of the on-site investigations.
25. On February 19, 2009, a Notice of Enforcement letter was issued to Respondent.

26. On November 16, 2009, the Executive Director filed a Second Amended Report and Petition (EDSARP), in accordance with TEX. WATER CODE § 7.054. The EDSARP alleged that:
  - (a) Respondent violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization to discharge storm water associated with industrial activities. Specifically, the investigator observed and documented that a limestone mining and dressing operation had begun, with approximately 8,000 cubic yards of screened material located in different areas of the Site.
  - (b) Respondent violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization prior to conducting small construction activities, including but not limited to, road construction and culvert installation.
27. The Executive Director recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$4,200.00 against Respondent and that the Commission order Respondent to take certain corrective actions.
28. The \$4,200 administrative penalty sought in the EDSARP is an accumulation of the different penalties assessed for each violation.
29. The Executive Director mailed a copy of the EDSARP to Respondent on the same date that it was filed.
30. Respondent filed a timely response to the EDSARP and requested a hearing.
31. On September 23, 2009, the TCEQ referred this matter to SOAH for a contested case hearing.

32. On October 5, 2009, the TCEQ Chief Clerk mailed notice to Respondent of the preliminary hearing scheduled for November 12, 2009.
33. 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.
  - Advised Respondent, in at least twelve-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 the previously filed Executive Director's First Amended Report and Petition 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.
34. On November 12, 2009, the Executive Director and Respondent appeared at a preliminary hearing but could not agree on a procedural schedule.
35. On December 15, 2009, Order No. 2 established a procedural schedule, including a deadline for the parties to file responses to written discovery requests by March 5, 2010, and to file supplemental responses to discovery requests by April 9, 2010.
36. Respondent did not respond to discovery requests submitted to him by the Executive Director, including requests for admissions.
37. On May 20, 2010, Order No. 3 granted the Executive Director's Motion to Compel Discovery and for Sanctions. Among other things, Order No. 3 provided: "The requests for admissions served on Respondent by the ED are deemed admitted as true."
38. On June 25, 2010, the Executive Director filed a Motion for Summary Disposition.

39. On June 28, 2010, Order No. 4 established a deadline of July 28, 2010, for Respondent to file a response to the Executive Director's Motion for Summary Disposition.
40. On August 2, 2010, Order No. 5 extended until August 16, 2010, the deadline for Respondent to file a response to the Executive Director's Motion for Summary Disposition.
41. Respondent did not file a response to the Executive Director's Motion for Summary Disposition.
42. On August 18, 2010, Order No. 6 granted the Executive Director's Motion for Summary Disposition, closed the record, and canceled the evidentiary hearing scheduled for August 26, 2010.
43. Respondent is financially able to pay an administrative penalty of \$4,200.00.
44. The corrective action requested by the ED is necessary, justified, and appropriate given the violations established by the ED.
45. Assessing an administrative penalty of \$4,200.00 against Respondent is reasonable and justified given the violations committed by Respondent and considering the factors set forth in Tex. Water Code § 7.053.

## **II. CONCLUSIONS OF LAW**

1. Under TEX. WATER CODE §7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health and Safety Code within the Commission's jurisdiction, or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE §7.052, a penalty may not exceed \$10,000.00 per violation, per day for the violations alleged in this proceeding.

3. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE §7.073.
4. As required by TEX. WATER CODE §7.055 and 30 TEX. ADMIN. CODE §§1.11 and 70.104, Respondent was notified of the EDSARP and of the opportunity to request a hearing on the alleged violations and the proposed penalties and corrective actions.
5. As required by TEX. GOV'T CODE §§ 2001.051(1) and 2001.052; TEX. WATER CODE § 7.058; 1 TEX. ADMIN. CODE § 155.27; 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 and corrective actions.
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 ch. 2003.
7. Based on the Findings of Fact and Conclusions of Law:
  - (a) Respondent violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization to discharge storm water associated with industrial activities at the Site; and
  - (c) Respondent violated 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c) by failing to obtain authorization prior to conducting small construction activities at the Site, including but not limited to, road construction and culvert installation.
8. In determining the amount of an administrative penalty, TEX. 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.
9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$4,200.00 is justified and should be assessed against Respondent.
11. Based on the above Findings of Fact, Respondent should be required to take the corrective action 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. Respondent Tommy Davis dba Slick Machines Screening Plant is assessed an administrative penalty in the amount of \$4,200.00 for violations of 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 section. 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: Tommy Davis dba Slick Machines Screening Plant; Docket No. 2009-0184-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 10 days after the effective date of this Order, Respondent shall post the Construction Site Notice for the construction activities where it is readily available for viewing by the general public in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4).
3. Within 45 days after the effective date of this Order, Respondent shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 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 fines and imprisonment for knowing violations."

The certification shall be sent to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 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 Worth, 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 §2001.144.
7. 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, Chairman**  
**For the Commission**