

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 26, 2011

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

Re: SOAH Docket No. 582-10-5396; TCEQ Docket No. 2009-1905-IWD-E;
Executive Director of the Texas Commission on Environmental Quality v. Big D
Hazmat, Inc., Duncan Services, Inc., and Robert L. Duncan

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 August 15, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than August 25, 2011.

This matter has been designated **TCEQ Docket No. 2009-1905-IWD-E; SOAH Docket No. 582-10-5396**. 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 "Shannon Kilgore".

Shannon Kilgore
Administrative Law Judge

SK/ap
Enclosures
cc: Mailing List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: BIG D HAZMAT
SOAH DOCKET NUMBER: 582-10-5396
REFERRING AGENCY CASE: 2009-1905-IWD-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ SHANNON KILGORE**

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

plant still existed in 2009 (and some still exist today). The Property is adjacent to the City of Longview's wastewater treatment facility.

In April, August, and December of 2009 and January 2010, the ED conducted investigations at the Property. This enforcement matter is based on the ED's conclusions resulting from those investigations.

II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

On May 6, 2010, the ED issued the "Executive Director's Preliminary Report and Petition" in this matter, and on the same date a notice of hearing was also issued. On January 14, 2011, the ED issued the "Executive Director's First Amended Report and Petition," and on February 7, 2011, the ED issued the "Executive Director's Second Amended Report and Petition" to the Respondent. Respondents filed an answer on or about February 15, 2011.¹ On March 18, 2011, the ED issued the "Executive Director's Third Amended Report and Petition" (EDTARP).² The documents issued by the ED apprised Respondents of the allegations against them, the laws involved, and the relief sought.

After a series of continuances, the undersigned ALJ convened the hearing on the merits on April 20, 2011. Attorney Kari L. Gilbreth represented the ED. Attorneys William Thompson III and Donald Grissom represented Respondents. No one appeared for the Commission's Office of Public Interest Counsel. The record closed on June 10, 2011, with the submission of final written closing arguments.

¹ ED Exhibit 3.

² ED Exhibit 1.

III. EVIDENCE

A. Relationship of the Three Respondents to the Property and to One Another

It is undisputed that Mr. Duncan owns the Property, and has owned it as far back as 2007.³ It is also undisputed that Mr. Duncan is the owner, president, and registered agent of both Big D and DSI.⁴

Mr. Duncan testified that in 2009 Big D operated at the Property, washing “frac tanks” and other oilfield equipment brought to the site by drilling services providers.⁵ This operation, according to Mr. Duncan, began in January 2009 and lasted only six months.⁶ Mr. Duncan further testified that DSI, which is primarily an equipment hauling company, never operated at the Property. However, he stated in his deposition that DSI paid the workers who cleaned out the frac tanks.⁷

In January 2011, a sign on the gate at the Property stated, “Notice: You are Entering Private Property[.] If you enter this gate, please call Robbie Duncan.” The sign indicated it was a statement by DSI.⁸ Mr. Duncan testified that the sign was placed after Big D’s operations at the site had ceased.⁹

³ Tr. at 138, 241; ED Exhibit 24.

⁴ Tr. at 242; ED Exhibit 18 at 7.

⁵ Tr. at 292-295.

⁶ Tr. at 297.

⁷ ED Exhibit 31 at 56.

⁸ Tr. at 132-133; ED Exhibit 21A.

⁹ Tr. at 324-325.

B. April 7, 2009 Site Investigation

Ross Morgan, an environmental investigator with the TCEQ in Tyler, testified that he conducted an investigation at the Property on April 7, 2009, in response to a complaint made by the City of Longview. According to Mr. Morgan, employees at the City of Longview had expressed concerns about possible wastewater treatment activities at the site, odors, and outdoor burning.¹⁰

Mr. Morgan's inspection report for April 7, 2009,¹¹ indicates that he visited the site and spoke to Mark Jones, operations manager for Big D. Mr. Jones, when asked about wastewater treatment processes at the Property, provided a detailed written description of the site's "closed loop water washout facility."¹² According to the written description, the site was being used to clean oilfield equipment and process the resulting waste material. The description provided by Mr. Jones laid out a four-step process.¹³ First, the oilfield equipment (including frac tanks, vacuum boxes, roll-off boxes, and oilfield water pumps) were cleaned in a "washout containment rack," consisting of reinforced concrete with 6-inch curbs, from which water runs into a collection box.¹⁴

¹⁰ Tr. at 22-24.

¹¹ ED Exhibit 16. Mr. Morgan again visited the Property on June 18, 2009. He did not write an investigation report for that visit, but he testified about his observations that day and took some photos. Those observations and photos are discussed in this subsection.

¹² Tr. at 26-27. The investigation report both quotes the description and includes a copy of the actual description as provided by Mr. Jones. ED Exhibit 16 at 3-4, 11-13. The description is dated January 12, 2009, and is styled as a memo from Mr. Jones to TCEQ.

¹³ The described four-step process involved some of the pre-existing wastewater treatment basins that can be seen on the aerial photo of the site that is ED Exhibit 17, a copy of which is attached to this Proposal for Decision as Attachment 1.

¹⁴ This is labeled as item 3, "wash station," on ED Exhibit 17/Attachment 1; however, the aerial photo, taken prior to the April 7, 2009 inspection, does not show the structure later built at that exact location. Tr. at 28-29, 31. Photos of the wash station or washout containment rack, taken on June 18, 2009, are at ED Exhibit 18 at 19-22. (Item numbers on ED Exhibit 17/Attachment 1, the aerial photo, correspond with photograph numbers in ED Exhibit 18.) See also Tr. at 40-41.

Second, according to the description, material was then pumped into the oil-water separator, a circular reinforced concrete tank with a capacity of 39,896 gallons.¹⁵ Oil was pumped off, collected, and sold.

Third, said the description, water from the bottom of the oil-water separator was pumped off and sent to holding tanks where the water traveled through a series of organic filter rings.¹⁶ Finally, the description said that water was pumped to an aerated concrete holding pond,¹⁷ from which water was re-used for the washout operations. No discharge was contemplated. A schematic representing these steps was also given to Mr. Morgan by Mr. Jones.¹⁸

Mr. Morgan testified that Mr. Jones indicated portable pumps were used to move water from one basin to another at the site.¹⁹ Several such pumps, with hoses, were visible on a visit by Mr. Morgan to the site on June 18, 2009.²⁰ Also on that date, Mr. Morgan noted that the water in the clarifier had a slight oily sheen and a petroleum-like odor, but he did not sample it.²¹

¹⁵ This is labeled as item 11, "oil-water separator," on the aerial photo of the site that is ED Exhibit 17/Attachment 1. Tr. at 56. A photo of the oil-water separator, taken June 18, 2009, is at ED Exhibit 18 at 23. On that date, Mr. Morgan did not notice any lines going into or out of the oil-water separator, but he testified that "at one time" an underground line ran from the washout area to the oil-water separator, and he witnessed disturbed dirt suggesting recent line construction. Tr. at 46, 158-159.

¹⁶ Mr. Morgan used the term "clarifier" when referring to such a tank. Tr. at 57. Two such tanks are mentioned in the written description provided by Mr. Jones, and two such circular tanks are visible in ED Exhibit 17/Attachment 1. However, Mr. Morgan testified that the easternmost clarifier was empty. Photos of the clarifier with water in it (item 13 on ED Exhibit 17/Attachment 1), taken June 18, 2009, are at ED Exhibit 18 at 24-25.

¹⁷ The aeration basin is identified on ED Exhibit 17/Attachment 1 as the bottom portion of the large rectangular tank in the lower left hand part of the aerial photo. Tr. at 58. Photos of the aeration basin are at ED Exhibit 18 at 13 (Aug. 26, 2009), 14 (Aug. 26, 2009), and 26 (June 18 and Aug. 26, 2009).

¹⁸ ED Exhibit 16 at 9; Tr. at 60-61.

¹⁹ Tr. at 47-48, 161.

²⁰ Tr. at 47-50; ED Exhibit 18 at 24.

²¹ Tr. at 51, 193-194, 207.

The written description, as quoted in Mr. Morgan's report, goes on to say:

Our current water level in the holding pond is 6.5 feet deep which equals approximately 1,626,009 gallons of water. The two filter tanks have seven feet of water which equals approximately 173,520 gallons in each filter. The oil water separator tank has approximately eight feet of water making in it 18,774 gallons, with just a small amount of oil on top of water [sic], less than 100 gallons. Our total current water level being held is approximately 1,991,823 gallons. This level varies with rainfall and evaporation but is constant . . . The water levels of all these tanks are monitored weekly and recorded in our operations book. These tanks have been in existence since 1975 and where [sic] left unattended for 15 years before we purchased the property and there is no evidence or sign that they have ever flooded from natural rain fall.²²

Mr. Morgan acknowledged that Mr. Jones indicated not all steps of the above-described process were operational; some were only anticipated. Mr. Morgan observed step one (the washing out of frac tanks) and step two (oily material in the oil-water separator). He did not, however, see anything that looked like a filter in the clarifier, nor did he see lines taking material to the clarifier or the aeration basin.²³ And while there were various pumps present at the site, Mr. Morgan did not ask specifically if they were to be used in the wastewater treatment process, or if they were oilfield pumps at the site to be cleaned.²⁴ Mr. Morgan never actually witnessed material being pumped from any basin to another (aside from the line from the washout pit to the oil-water separator).²⁵

As a result of the April 7, 2009 investigation, Mr. Morgan concluded that unauthorized wastewater treatment was occurring at the Property, and that the facility required an "evaporation permit."²⁶ A notice of violation (NOV) letter was sent to Big D on May 15, 2009, stating that the facility required a permit.²⁷

²² ED Exhibit 16 at 3.

²³ Tr. at 161-167.

²⁴ Tr. at 188-189.

²⁵ Tr. at 190.

²⁶ The term "evaporation permit" was never discussed or explained in the hearing in this case. The ALJ notes that § 26.132 of the Texas Water Code authorizes the Commission to issue permits for evaporation pits, which

Mr. Morgan received a communication dated June 12, 2009, from Chris Shineldecker, senior environmental consultant with Avia Environmental LLC of Longview. Mr. Shineldecker stated he was writing on behalf of Big D,²⁸ and indicated that no wastewater discharge permit was necessary because the facility was not discharging wastewater into or adjacent to waters in the state (although he stated that a solid water registration/notification should likely be made).²⁹ An e-mail from TCEQ personnel to Mr. Shineldecker, also dated June 12, 2009, states, "From the operations you described, if there are no discharges of pollutants which may cause pollution in, or adjacent to any water in the state, no industrial discharge permit, TLAP [Texas land application permit], or 210E authorization is required."³⁰

C. August 26, 2009 Site Investigation

Mr. Morgan returned to the Property on August 26, 2009, in response to a complaint by employees at the neighboring Longview wastewater treatment plant about a possible illegal discharge.³¹

Three City of Longview employees testified at the hearing in this case. Charles Williams, a wastewater treatment plant operator for the City, stated that in the late morning of August 25, 2009, he heard a pump running at the Property. He observed a hose over the wall of one of the basins, and an outlet pointed toward the field. He reported the matter to Marvin Brautigam and Terry Petty, also City employees.³²

are pits used for collecting brine water or residual minerals or salts. Such a permit requirement would not be applicable to the facility involved in this case.

²⁷ ED Exhibit 16 at 15-19.

²⁸ Mr. Duncan acknowledged hiring Mr. Shineldecker. ED Exhibit 31 at 25, 78.

²⁹ ED Exhibit 19 (unnumbered page).

³⁰ ED Exhibit 19 (unnumbered page). There is nothing in the record explaining what a 201E authorization is.

³¹ Tr. at 63-64; ED Exhibit 18 at 2.

³² Tr. at 217-222.

Mr. Brautigam, an industrial pretreatment supervisor with the City, testified that he and Mr. Petty went to the Property that day, in the late afternoon.³³ They drove to the site and saw a “big, red diesel pump pumping large volumes of water down the hill towards the creek.”³⁴ According to Mr. Brautigam, two other persons were present. One introduced himself as Robert Duncan’s son. The other was a young man who stated that he was responsible for the presence of the pump. The City employees told the men to turn off the pump, which they did.³⁵

Also, testified Mr. Brautigam, the young man who said he was Mr. Duncan’s son called his father and passed the telephone to Mr. Brautigam. Mr. Brautigam told Mr. Duncan that he could not be discharging wastewater without a permit. According to Mr. Brautigam, Mr. Duncan replied that he could do whatever he wanted, and he told Mr. Brautigam that he was trespassing.³⁶

Mr. Petty, who also works in industrial pretreatment for the City of Longview, testified that he accompanied Mr. Brautigam to the site. Mr. Petty observed water being discharged from the end of the pipe connected to the pump. Like Mr. Brautigam, Mr. Petty saw two persons at the site, one of whom introduced himself as Mr. Duncan’s son.³⁷

On the August 26, no one was present at the site, other than Mr. Morgan and other TCEQ personnel with him. Mr. Morgan observed a large pump next to the aeration basin. A temporary line was hanging into the basin.³⁸

³³ There is some ambiguity in the record concerning the precise timing of these events. However, the ALJ does not find that the ambiguity raises any concerns about the credibility of the City of Longview employees who testified.

³⁴ Tr. at 226.

³⁵ Tr. at 229-228.

³⁶ Tr. at 228-229.

³⁷ Tr. at 234-235.

³⁸ Tr. at 64-65.

Mr. Morgan took photos during the August 26 investigation. One photo of the aeration basin shows a visible water line higher than the level of the water; this, according to Mr. Morgan, indicates that water had recently been pumped out of the basin.³⁹ Another photo shows a large hose draped over the wall of the aeration basin.⁴⁰ Photos also depict a pump adjacent to the aeration basin; the pump is connected to a hose running into the aeration basin, and to a pipe running eastward toward the trees in the distance. Erosion and standing water are visible at the end of the pipe.⁴¹ Mr. Morgan testified that such erosion could only have been caused by the discharge of a very significant amount of wastewater.⁴² Another photo of the aeration basin taken on August 26, 2009, seems to show a lower water level than in a similar photo taken June 18, 2009.⁴³ Mr. Morgan stated that the difference in the water levels on those two dates was too great to be attributed to evaporation alone.⁴⁴

A TCEQ laboratory analyzed a sample Mr. Morgan took from the aeration basin during his visit on August 26. The result for five-day biological oxygen demand (BOD) was 220 milligrams per liter (mg/l).⁴⁵ According to Mr. Morgan, this result is “right on the average of what raw sewage is” and discharge of such materials would cause “huge” environmental damage.⁴⁶ The laboratory analysis result for total suspended solids (TSS) was 5,360 mg/l. Mr. Morgan stated that most wastewater treatment plants in Texas have a discharge permit limit of 20 mg/l for a monthly average for TSS.⁴⁷

³⁹ ED Exhibit 18 at 13; Tr. at 32.

⁴⁰ ED Exhibit 18 at 14; Tr. at 34.

⁴¹ ED Exhibit 18 at 15-18; Tr. at 35-38.

⁴² Tr. at 203.

⁴³ ED Exhibit 81 at 26; Tr. at 51-52.

⁴⁴ Tr. at 175-176.

⁴⁵ ED Exhibit 18 at 9.

⁴⁶ Tr. at 83, 211.

⁴⁷ Tr. at 84.

Mr. Morgan's investigation report for the August 26 visit states that an exit interview was conducted with Mr. Duncan, who said they were just pumping rainwater that had collected in the aeration basin. However, the report also noted that City of Longview personnel reported it appeared wastewater had been pumped into the basin and mixed with the stormwater present. Mr. Morgan had the impression from Mr. Duncan that Big D employees were involved in the discharge.⁴⁸

TCEQ issued a notice of enforcement (NOE) on October 30, 2009, that alleged Big D had failed to prevent an unauthorized discharge of approximately 500,000 gallons of contaminated water.⁴⁹ TCEQ issued another NOE on December 4, 2009, again asserting that wastewater treatment was occurring at the Property, that wastewater with constituents of concern had been discharged on August 25, 2009, and that a permit was therefore required.⁵⁰ The NOE discussed the August 25, 2009 discharge, and stated, "This act of discharging requires a permit in which Big D Hazmat was notified in the NOV issued on May 15, 2009."⁵¹

In response to the December 4, 2009 NOE, Mr. Duncan wrote a letter⁵² to TCEQ dated December 23, 2009, that stated:

Big D Hazmat has not washed any tanks out since July 8, 2009. When we were washing out tanks, we contacted Ana-Lab Corporation in Kilgore, Texas to come and inspect the tanks both before and after the wash outs. Out of all the tanks that were inspected, only one was shown by Ana-Lab to contain hazardous materials. If you drive by where the tanks were pumped out, you will see plants and green moss growing, and ducks landing in the water. I am unaware of how many gallons were pumped out during the time we were in business. However, I do know that we did not do anything incorrect. We made sure to contact Ana-Lab

⁴⁸ ED Exhibit 18 at 2-3; Tr. at 185.

⁴⁹ ED Exhibit 18 at 10-12.

⁵⁰ ED Exhibit 19 at 11-15.

⁵¹ ED Exhibit 19 at 15.

⁵² ED Exhibit 21 at 4-5. The letter bears a DSI letterhead, but Mr. Duncan testified in deposition that his secretary chose the letterhead, and DSI was not involved in what happened at the site. ED Exhibit 31 at 112. However, Mr. Duncan signed the letter in his capacity as president of DSI and Big D. ED Exhibit 21 at 5.

every time to have them inspect the tanks. . . In fact, out of the seven (7) tanks we had, four (4) have only ever held water. The other tanks had resid[u]e from drilling muds.

I am aware that City of Longview officials contacted you and a sample was taken from a pump that came from an oilfiel[d] company. We did not ask them to pump that tank; however, we had done some previous business with us [sic], and we were working on a trade-out for some work that had been done between the two of us. It is my assertion that the residue came from that pump that was from the oilfield company.⁵³

Attached to Mr. Duncan's letter are laboratory analysis results for samples taken at various locations at the Property on July 20, 2009, by Ana-Lab Corporation.⁵⁴ Mr. Morgan, looking at these laboratory analysis results, noted that petroleum hydrocarbons and benzene were present in sampling from the washout pit.⁵⁵

D. Further Site Investigations

Mr. Morgan visited the Property on December 15, 2009, and no violations were noted. His report stated:

During the investigation the only activity noted was the continual metal scrapping of pumps and other components of the wastewater plant. Mr. Duncan was notified of the investigation, however he did not show. . . He described that he had sold the equipment for Big D Hazmat and was no longer washing frac tanks. The equipment noted in previous investigations was not on site and there were no frac tanks present.⁵⁶

⁵³ ED Exhibit 21 at 4. In his deposition, Mr. Duncan explained that he had meant that anything of concern in samples taken at the end of the pipe at the time of the discharge might have been contaminated, because the pump was an oilfield pump. ED Exhibit 31 at 105.

⁵⁴ ED Exhibit 21 at 6-24.

⁵⁵ Tr. at 108; ED Exhibit 21 at 2.

⁵⁶ ED Exhibit 20. The record shows that in early July 2009 Respondents sold various items of equipment – such as a Bobcat, forklifts, vehicles, and trailers – to a waste management company. ED Exhibit 25.

On January 21, 2010, Mr. Morgan went to the Property again, this time to try to verify calculations he had made in arriving at the conclusion that the August 25 discharge had involved approximately 500,000 gallons of contaminated water. Mr. Morgan used the width of a pipe in the aeration basin as a unit of measure in trying to estimate the height of a water line visible in a photo of the aeration basin taken on August 26, 2009. Employing the estimated height of the water line and the dimensions of the basin (supplied by Mr. Jones in his written description of the facility and treatment process), Mr. Morgan arrived at an estimate of the volume of water discharged on August 15, 2009: 495,692 gallons.⁵⁷

In January 2011, Mr. Morgan went to the Property and noted that the oil water -had been removed. The clarifier and aeration basin were still present and had water in them.⁵⁸

E. Mr. Duncan's Testimony

Mr. Duncan testified at the hearing, and his deposition was admitted in evidence.

The frac tank washing operation, stated Mr. Duncan, only involved the washout area and the oil-water separator. Tanks were brought to the Property by an oilfield service company and washed out at a pit. Big D installed an underground PVC line from the pit to the oil-water separator. Solids remaining in the washout pit would be cleaned out and put in drums; which would be hauled away by the oilfield service company. The water remained in the oil-water separator. The oil at the top of the oil-water separator would be sucked off the top, trucked away, and recycled by a company called Environmental Oil. Mr. Duncan also indicated that, after Big D ceased frac tank washing operations, the remaining residue in the oil-water separator was removed and hauled away for disposal.⁵⁹

⁵⁷ ED Exhibit 18 at 2; ED Exhibit 21 at 2, 25, and 28; Tr. at 122-123, 173-174.

⁵⁸ Tr. at 135-136; ED Exhibit 21A.

⁵⁹ Tr. at 296-301, 305-306.

According to Mr. Duncan, during the six-month period when frac tanks were washed out, no water was removed from the oil-water separator, and no water was pumped from the oil-water separator to a clarifier. In fact, said Mr. Duncan, there were no lines connecting the oil-water separator and the clarifiers. Nor was there any means of communication between the clarifiers and the aeration basins.⁶⁰ Most pumps depicted in TCEQ's photographs of the site, said Mr. Duncan, were not Big D pumps used to move wastewater around the Property, but rather were oilfield pumps brought to the Property to be cleaned or delivered to other sites by DSI.⁶¹

Mr. Duncan testified that, of the four steps described in Mr. Jones' description of the four-step treatment process, only steps one (wastewater enters the washout pit) and two (wastewater is pumped to the oil-water separator) were performed. Steps three and four – movement of wastewater to the clarifiers and aeration basin – were purely anticipated, and never carried out.⁶²

With respect to the discharge on August 25, 2009, Mr. Duncan stated that he did not know it was going to occur. He was not at the Property on that date, nor was anyone from DSI or Big D at the site.⁶³ The frac tank washing operation had been shut down, and the site locked.⁶⁴

He testified that his first indication that something was happening came in the form of a phone call from his son, who said that two men from the City of Longview were at the site and were angry about a pump. Mr. Duncan testified that told his son to cooperate. Mr. Duncan also had a conversation with an employee of the City of Longview, named Marvin, in which Mr. Duncan told him to get off his land.⁶⁵

⁶⁰ Tr. at 301-302.

⁶¹ Tr. at 307.

⁶² Tr. at 308-310.

⁶³ Tr. at 259, 310-311.

⁶⁴ Tr. at 321.

⁶⁵ Tr. at 311-313.

According to Mr. Duncan, groundwater collects in an abandoned lift station site on the Property, and Mr. Duncan wanted to pump that water out. He mentioned something to his son about wanting a big pump. Mr. Duncan's son had a friend, Clay Powell, whose family had a large pump. Mr. Duncan testified that Mr. Powell felt he owed Mr. Duncan a favor because Mr. Powell had borrowed Mr. Duncan's tractor to mow a deer lease, and in the process "tore up" the tractor.⁶⁶ Mr. Duncan stated:

So [my son] must have told Clay, "Hey dad wishes he had a pump," so all that added up. They show up and start pumping water out of the tank up in the plant, up in the facility. Didn't call me, didn't say a word, didn't know nothing until the phone rings.⁶⁷

In his deposition taken on March 14, 2011 (approximately five weeks before the hearing), Mr. Duncan did not recall talking to his son or to anyone from the City of Longview on August 25, 2009.⁶⁸ Also in his deposition, Mr. Duncan said he had asked Mr. Powell to pump stormwater out of the tank. Mr. Duncan seemed to be referring to the tank that was actually pumped out (the aeration basin); he said nothing whatsoever about groundwater in a lift station. Mr. Duncan was shown Mr. Morgan's photos of the pump in proximity to the aeration basin, and still Mr. Duncan did not indicate that he had wanted the lift station, and not the aeration basin, pumped out.⁶⁹ Mr. Duncan identified the aeration basin in a photo and said, "That's the tank that I pumped out of."⁷⁰

⁶⁶ Tr. at 314-318.

⁶⁷ Tr. at 318-319.

⁶⁸ ED Exhibit 31 at 35, 38-39. At another point in his deposition, Mr. Duncan said that on the day of the discharge he was contacted by "someone" – he did not recall who – and told about the discharge. *Id.* at 208-209.

⁶⁹ *See generally* ED Exhibit 31 at 41-50, 91. Mr. Duncan was asked, "Did you ask him [Mr. Powell]... to come to your place?" and he replied, "Yes, ma'am." *Id.* at 41. He was again asked, "Did you ask them [Mr. Powell] at some point prior to August 25th to come to your property and discharge that wastewater out of that tank?" He replied, "Yes, ma'am." *Id.* at 42. At yet another point, he agreed that he had asked someone to come to the site and pump water out of the tank. *Id.* at 91. Mr. Duncan asserted, however, that on the actual day of the discharge he was unaware that it was occurring. *Id.* at 34, 41. And, while he said that the tank he wanted pumped out was a "not a water treatment plant," he went on to explain that he had never put wastewater into the tank at issue. *Id.* at 41. Mr. Duncan has consistently contended that he did not put wastewater into the aeration basin. Indeed, in his response to an interrogatory, Mr. Duncan stated, "The pumping out of water from the aeration basin was...motivated by Duncan's belief that the water in the aeration basins [sic] was not contaminated and did not

Mr. Duncan repeatedly asserted that the aeration basin contained stormwater, and not wastewater.⁷¹ Mr. Duncan also stated in deposition that the tanks at the site went down by several feet every summer due to evaporation.⁷²

IV. ALJ'S ANALYSIS AND RECOMMENDATION

A. Factual Determinations

The evidentiary record shows that Mr. Duncan has owned the Property since 2007. Further, Mr. Duncan is the president and owner of Big D and DSI. Big D carried out an oilfield equipment washing operation at the Property in 2009. While Mr. Duncan asserted that DSI was not involved at the site, he also testified that DSI paid the workers who washed out the frac tanks. The two companies, along with Mr. Duncan, seem to have jointly held assets, as shown by their joint sale of equipment. When Mr. Duncan responded in writing, on December 23, 2009, to the TCEQ NOE concerning the alleged unauthorized wastewater treatment and unauthorized discharge, he signed his letter in his capacity as president of Big D and DSI. The evidence supports a finding that all three Respondents were involved in activities at the site in 2009.

In the oilfield equipment washing operation, frac tanks and other pieces of equipment were rinsed out, with the rinsate entering a concrete pit. Material from the pit was pumped via an underground pipe to a concrete oil-water separator. The oil that floated to the top was skimmed and shipped off-site. The water remained in place.

While other concrete basins existed at the site, the evidence does not support an affirmative finding that the other basins received waste from the oilfield equipment washing

require a permit. The aeration basins [sic] were never used for any treatment procedure and merely contained rainwater." ED Exhibit 7 at 7.

⁷⁰ ED Exhibit 31 at 64-65 (talking about the photo 12 of 14, at ED Exhibit 18 at 24).

⁷¹ ED Exhibit 31 at 78, 109-110, 114; Tr. at 326.

⁷² ED Exhibit 31 at 46-47.

operation. Although Big D's written description of the wastewater treatment process depicted wastewater being pumped from the oil-water separator to the clarifiers and then to the aeration basin, Big D's representative explained to the TCEQ investigator that the full process was never implemented. Indeed, the equipment washing enterprise lasted only months. The TCEQ representative never saw any means of communication from the oil-water separator to the clarifiers, or from the clarifiers to the aeration basin. Mr. Morgan's observations that the water in a clarifier had a slight oily sheen and that the material in the tanks had a hydrocarbon or petroleum-like odor are insufficient to establish that the clarifiers and the aeration basin actually received wastewater from the frac tank washing operation. Waste from the former brewery may have been in those basins. The exact sources of the contents of the basins are unknown.

The evidence further shows that, on August 25, 2009, Mr. Duncan's son and another person ran a hose into the aeration basin, attached the hose to a pump, and attached a pipe to the pump. The pipe ran into a field toward a creek. A very large volume of water was pumped into or close to the creek. While Mr. Morgan's calculation of 500,000 gallons may not be exact, his estimate is sufficient to support a finding that thousands of gallons were discharged. Photographic evidence shows considerable erosion of the ground at the end of the pipe. The five-day BOD for the water in the aeration basin was 220 mg/l – comparable to raw sewage. Further, the TSS was 5,360 mg/l, over 250 times the usual discharge permit limit for a monthly average for TSS. While the exact sources (other than some rainwater) and constituents of the wastewater in the aeration basin are unknown, clearly the material in that basin was cause for concern.

Mr. Duncan's protestations that he was not responsible for the discharge are unpersuasive. He offered different, inconsistent versions of how the discharge came about. At the hearing, he testified that his son's friend took it upon himself to pump the water out as a favor, without Mr. Duncan's knowledge. In his deposition, however, Mr. Duncan acknowledged several times that he had asked his son's friend to pump water out of the aeration basin. The ALJ finds Mr. Duncan's first, and repeated, acknowledgement more convincing than his later denial.

B. The Alleged Violations

The EDTARP alleges two violations: (1) failing to obtain a permit for wastewater treatment activities; and (2) failing to prevent the unauthorized discharge of wastewater. The EDTARP cites to only one provision of the law as having been violated: Texas Water Code § 26.121.

Section 26.121 reads in relevant part:

- (a) Except as authorized by the commission, no person may:
 - (1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;
 - (2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the discharge complies with a person's:
 - (A) certified water quality management plan approved by the State Soil and Water Conservation Board as provided by Section 201.026, Agriculture Code; or
 - (B) water pollution and abatement plan approved by the commission; or
 - (3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, the Department of Agriculture, or the Railroad Commission of Texas, in which case this subdivision does not apply. . .
- (c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any permit or order of the commission.
- (d) Except as authorized by the commission, no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.
- (e) No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the commission.

The first allegation by the ED – processing and treating wastewater generated from oilfield equipment washing, without a permit issued by the Commission – was not proved. It is true that Respondents placed frac tank rinsate in an oil-water separator and skimmed the oil off. However, this treatment activity alone does not amount to a violation of the cited portion of the statute. The ED failed to establish that the August 25, 2009 discharge from the aeration basin was related to the wastewater that was generated in the equipment washing operation and transferred to the oil-water separator. Moreover, § 26.121 does not prohibit unauthorized wastewater treatment activities; rather, the plain language of the statute prohibits unauthorized discharges or activities causing pollution. Therefore, even if the discharge was waste from the equipment washing business, the mere treatment of the wastewater would not constitute a violation of this statute, separate and apart from the discharge or release.⁷³

On the other hand, the second allegation – the unauthorized discharge – falls squarely within § 26.121. “Industrial waste” is broadly defined under chapter 26 of the Water Code as “waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.”⁷⁴ While, as noted above, the precise contents of the aeration basin at the Property are unknown, the evidence supports a finding that the material constituted industrial waste. It had extremely high values for BOD and TSS, and was contained in a wastewater treatment basin at a former industrial plant that was being used as the site of an oilfield equipment washing operation. Subsection (a)(1) makes it a violation to discharge such waste into or adjacent to water in the state, and subsection (c) further makes it a violation to “cause, suffer, allow, or permit” an unauthorized discharge. The evidence supports a

⁷³ The ED’s briefing in this case strongly suggests that it is the discharge that triggers the need for the permit, and the unpermitted discharge that is the violation of § 26.121. For example, the ED’s closing brief states, “Mr. Morgan testified that water containing these types and levels of constituents would be considered wastewater according to TCEQ rules and regulations, and that some type of permit would be required prior to any type of discharge containing these levels of TSS or BOD.” The Executive Director of the Texas Commission on Environmental Quality’s Closing Brief at 8. And the ED’s entire discussion of the first alleged violation in his reply brief consists of a discussion of the discharge and TCEQ’s authority to issue permits for discharges. The Executive Director of the Texas Commission on Environmental Quality’s Response to Respondents Bug D Hazmat, Inc., Duncan Services, Inc, and Robert L. Duncan’s Closing Argument at 11.

⁷⁴ TEX. WATER CODE § 26.001(11).

determination that Respondents caused, suffered, allowed, or permitted the discharge, of industrial waste into or adjacent to water in the state in violation of subsections (c) of the statute.

Even if the waste in the aeration basin was not industrial waste, its extremely high levels of BOD and TSS mean that it would constitute other waste discharged into or adjacent to water in the state that would cause pollution of the water, which is prohibited by Texas Water Code § 26.121(a)(2). “Other waste” is defined as “garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, *or any other substance*, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.”⁷⁵ Mr. Morgan testified that the discharge of material with such a high value for BOD would cause “huge” environmental damage.⁷⁶ Causing, suffering, allowing, or permitting such a discharge would violate subsection (c) of the statute.

Respondents argue that, since Mr. Duncan’s son and Mr. Powell (and perhaps other, unknown persons working with them) carried out the actual discharge, Respondents are not “persons” within the meaning of § 26.121. “Person” means “an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.”⁷⁷ The evidence shows that Mr. Duncan owns and controls the Property, and is president and owner of Big D and DSI. The evidence shows that both Big D and DSI had been active at the site. The evidence further shows that Mr. Duncan asked Mr. Powell to discharge waste from the aeration basin. Therefore, as discussed above, Mr. Duncan and his two corporate entities “caused, suffered, allowed, or permitted” the unauthorized discharge in violation of § 26.121(c).

Respondents argue that they cannot be deemed in violation of § 26.121 because their oilfield equipment washing operation fell under the jurisdiction of the Railroad Commission, not

⁷⁵ TEX. WATER CODE § 26.001(12) (emphasis added).

⁷⁶ Tr. at 211.

⁷⁷ TEX. WATER CODE § 26.001(25).

the TCEQ. This argument fails, however, because (as Respondents themselves assert) the aeration basin from which the discharge emanated has not been shown to have treated or held waste from the oilfield equipment washing operation. And, even if the aeration basin did contain waste from Respondents' equipment washing, a memorandum of understanding (MOU) between the TCEQ and the Railroad Commission indicates that material such as tank rinsate generated at a commercial service company facility is within the TCEQ's jurisdiction.⁷⁸

In summary, the ED has proven by a preponderance of the evidence that Respondents caused, suffered, allowed, or permitted the discharge of industrial waste into or adjacent to water in the state in violation of Texas Water Code § 26.121. However, the ED has failed to show that any unpermitted wastewater treatment activities by Respondents constituted a separate violation of the same statutory provision.

C. Sanction

The ED seeks an order assessing an administrative penalty and requiring corrective action of Respondents. Respondents assert that they have committed no violations that would give rise to sanctions. However, beyond arguing that they are not subject to sanction, they have challenged neither the calculation of the penalty nor the reasonableness of the proposed corrective action.

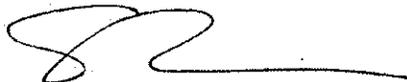
⁷⁸ The MOU provides:

The TCEQ...has jurisdiction over waste generated at commercial service company facilities operated *by persons providing equipment, materials, or services* (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) *to the oil and gas industry*. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; *drum, tank, and truck rinsate*; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and acidizing fluids.

The ED seeks a penalty of \$42,271.00 for the two violations alleged in the EDTARP. Only one violation was shown, however. The ED's requested penalty for the unauthorized discharge violation is \$10,000. Texas Water Code § 7.052(c) provides that the maximum allowable penalty for each violation is \$10,000. According to the testimony of Jorge Ibarra, an enforcement coordinator with the Commission, the unauthorized discharge in this case is considered, under the Commission's penalty policy, to be a major violation due to the fact that there was an actual release.⁷⁹ And, Mr. Ibarra testified, Commission staff determined that an adjustment of \$28,500 would be necessary to capture the Respondents' avoided costs in connection with the unauthorized discharge. Therefore, the evidence supports the imposition of the statutory maximum penalty of \$10,000 for this violation, and the ALJ recommends a penalty of that amount.

Mr. Morgan testified about the ED's recommended corrective action. The ED seeks an order requiring Respondents to: cease unauthorized discharges; develop standard operating procedures to properly dispose of wastewater and conduct employee training to prevent unauthorized wastewater discharges; send pre-treated wastewater to an authorized facility for proper processing and disposal; decontaminate the clarifier and aeration basin, and properly dispose of the wastewater and rinse water. Mr. Morgan testified that, since the operations at the facility seem to have ceased, the technical requirements address the closure of the units.⁸⁰ These requirements are reasonable under the circumstances, and the ALJ recommends their inclusion in the order resulting from this case.

SIGNED July 26, 2011.



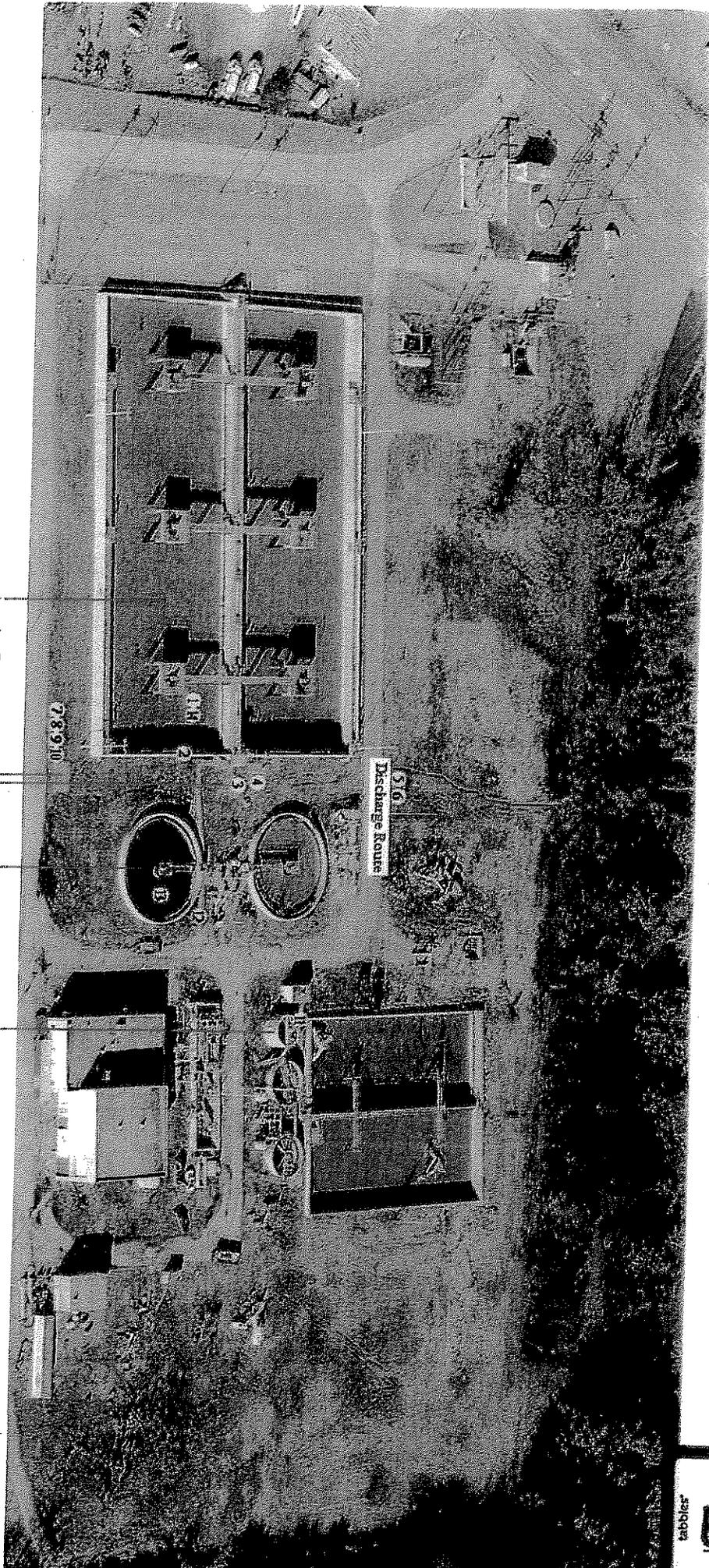
**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

⁷⁹ The penalty calculation worksheet is at ED Exhibit 1, and Mr. Ibarra testified about the penalty calculation. Tr. at 261-290.

⁸⁰ Tr. at 141-146.



Figure 1: Aerial imagery of Big D Hazmat Investigation 778319
Photo # and location
Aerial photo taken prior to investigation wash equipment installation



Aeration Basin

78310

Discharge Route
316

Pump location
Wash Station
Clarifier

Oil-water separator

EXHIBIT
ED-17
tabbler

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against
and Requiring Corrective Action By
BIG D HAZMAT, INC., DUNCAN SERVICES, INC., AND ROBERT L. DUNCAN,
TCEQ DOCKET NO. 2009-1905-IWD-E, SOAH DOCKET NO. 582-10-5396**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Third Amended Report and Petition (EDTARP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring corrective action by Big D Hazmat, Inc., Duncan Services, Inc., and Robert L. Duncan (Respondents). Shannon Kilgore, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on April 20, 2011, in Austin, Texas, and prepared the Proposal for Decision.

The following are parties to the proceeding: Respondents, represented by attorneys William Thompson III and Donald Grissom and the Commission's Executive Director (ED), represented by Kari L. Gilbreth, attorney in TCEQ's Litigation Division.

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. Robert L. Duncan has owned the property located at 5217 West Loop 281 in Longview, Gregg County, Texas (the Property) since 2007.
2. Prior to its purchase by Mr. Duncan, the Property had been the site of an activated sludge wastewater plant for a brewery, and concrete basins at the site had been used in the brewery's wastewater treatment process.
3. Robert Duncan is the president and owner of Big D Hazmat, Inc. (Big D) and Duncan Services, Inc. (DSI).
4. Mr. Duncan and his two corporations are the respondents (collectively, Respondents) in this case.
5. Big D carried out an oilfield equipment washing operation at the Property in 2009.
6. DSI paid the workers who washed out the frac tanks.
7. All three Respondents were involved in activities at the site in 2009.
8. In the oilfield equipment washing operation, frac tanks and other pieces of oilfield equipment were rinsed out, with the rinsate entering a concrete washout pit.
9. Material from the washout pit was pumped via an underground pipe to a concrete oil-water separator. The oil that floated to the top was skimmed off and shipped off-site. The water remained in place.
10. Aside from the washout pit and the oil-water separator, the evidence failed to establish that the wastewater treatment basins (*e.g.*, the clarifiers and the aeration basin) at the Property received waste from the oilfield equipment washing operation.
11. The oilfield equipment washing operation ceased in about July 2009.
12. On August 25, 2009, Mr. Duncan's son and another person, at Mr. Duncan's request, ran a

hose into the aeration basin, attached the hose to a pump, and attached a pipe to the pump. The pipe ran into a field toward a creek. Thousands of gallons of water were pumped into or close to the creek. The discharge ceased the same day.

13. On August 26, 2009, an environmental investigator for the TCEQ conducted an investigation of the discharge at the Property.
14. On August 26, 2009, the five-day biological oxygen demand for the water in the aeration basin was 220 mg/l – comparable to raw sewage. Further, the concentration of total suspended solids (TSS) was 5,360 mg/l, over 250 times the usual discharge permit limit for a monthly average for TSS.
15. The water in the aeration basin was waste and, specifically, industrial waste.
16. Respondents have never held a permit to discharge waste at or from the Property.
17. On August 25, 2009, Mr. Duncan, Big D, and DSI caused, suffered, allowed, or permitted the discharge of industrial waste into or adjacent to water in the state.
18. TCEQ personnel issued a notice of enforcement (NOE) on October 30, 2009, that alleged Big D had failed to prevent an unauthorized discharge of approximately 500,000 gallons of contaminated water. TCEQ personnel issued another NOE on December 4, 2009, asserting that wastewater treatment was occurring at the Property, that wastewater with constituents of concern had been discharged on August 25, 2009, and that a permit was therefore required.
19. On December 15, 2009, and January 21, 2010, an environmental investigator for TCEQ again visited the Property. No further oilfield equipment washing was observed.
20. By January 2011, the oil-water separator had been removed. The clarifier and aeration basin were still present and had water in them.
21. On May 6, 2010, the ED issued the “Executive Director’s Preliminary Report and Petition.”

22. The matter was referred to the State Office of Administrative Hearings (SOAH) on July 20, 2010.
23. On July 22, 2010, the Commission's Chief Clerk issued 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; the violations asserted; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
24. On January 14, 2011, the ED issued the "Executive Director's First Amended Report and Petition."
25. On February 7, 2011, the ED issued the "Executive Director's Second Amended Report and Petition" to the Respondent.
26. Respondents filed an answer on or about February 15, 2011.
27. On March 18, 2011, the ED issued the "Executive Director's Third Amended Report and Petition" (EDTARP). The EDTARP alleged that Respondents violated Texas Water Code § 26.121 by: (1) failing to obtain a permit for wastewater treatment activities; and (2) failing to prevent the unauthorized discharge of wastewater.
28. The ED recommended corrective action and assessment of an administrative penalty of \$42,271. Out of that total, the ED recommended a penalty of \$10,000 for the unauthorized discharge.
29. The hearing on the merits convened on April 20, 2011. Attorney Kari L. Gilbreth represented the ED. Attorneys William Thompson III and Donald Grissom represented Respondents. The record closed on June 10, 2011, with the submission of final written closing arguments.

30. An administrative penalty of \$10,000 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 Penalty Policy.
31. It is reasonable and appropriate to require Respondents to: cease unauthorized discharges; develop standard operating procedures to properly dispose of wastewater and conduct employee training to prevent unauthorized wastewater discharges; send pre-treated wastewater to an authorized facility for proper processing and disposal; decontaminate the clarifier and aeration basin, and properly dispose of the wastewater and rinse water.

II. CONCLUSIONS OF LAW

1. Respondents are subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. § 7.002.
2. 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.
3. 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 of the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
4. 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.
5. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.

6. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondents were notified of the allegations against them and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.
7. As required by TEX. GOV'T CODE ANN. §§ 2001.051(1) and 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27, 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.
8. The foregoing Findings of Fact support a conclusion that Respondents violated TEX. WATER CODE ANN. § 26.121(c), in that they caused, suffered, allowed, or permitted the discharge of industrial waste into or adjacent to water in the state.
9. Respondents' treatment of wastewater without a permit did not, by itself, constitute a separate violation of TEX. WATER CODE ANN. § 26.121.
10. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 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.

11. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties.
12. 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 penalty for the alleged unauthorized discharge, and a total administrative penalty of \$10,000 is justified and should be assessed against Respondents.
13. Based on the above Findings of Fact, Respondents 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. Big D Hazmat, Inc. (Big D), Duncan Services, Inc. (DSI), and Robert L. Duncan (collectively, Respondents) are assessed an administrative penalty in the amount of \$10,000.00 for their violation of TEX. WATER CODE §26.121. The payment of this administrative penalty and Respondents' 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: Big D Hazmat, Inc.; Docket No. 2009-1905-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. Immediately upon the effective date of this Order, Respondents shall cease any unauthorized discharges.
3. Within 30 days after the effective date of this Order, Respondents shall develop and implement standard operating procedures to properly dispose of wastewater and conduct employee training to prevent unauthorized discharge.
4. Within 45 days after the effective date of this Order, Respondents shall pre-treat the wastewater existing at the facility, in accordance with 40 Code of Federal Regulations Part 403, and shall send the pre-treated wastewater to an authorized facility for proper processing and disposal.
5. Within 60 days after the effective date of this Order, Respondents shall decontaminate the clarifier and aeration basin at the facility, and properly dispose of the wastewater and rinse water generated during decontamination at an authorized facility.
6. Within 75 days after the effective date of this Order, Respondents shall submit written certification of compliance with the preceding four ordering provisions. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. 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.”

Respondents shall submit the written certification and copies of documentation necessary to demonstrate compliance 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

Noel Luper, Water Section Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734.

7. 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.
8. 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.
9. 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.
10. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.

11. 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

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