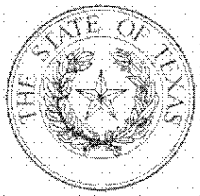
State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 15, 2015

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

VIA FACSIMILE NO. 512/239-5533

Re: **SOAH Docket No. 582-13-6088; TCEQ Docket No. 2013-0499-MSW-E; In Re: Executive Director of the Texas Commission on Environmental Quality v. Alamo Recycle Centers LLC and Eisenberg Properties, Ltd.**

Dear Mr. Royall:

I have reviewed the exceptions filed by the Executive Director (ED) to my Proposal for Decision (PFD) in the above-referenced matter. At this time, I have no changes to make to my recommendation, the findings, or conclusions. I will, however, briefly respond to the exceptions.

In exceptions, the ED argues various reasons why the prior financial assurance violations by an unrelated entity should count against the compliance history of Eisenberg Properties, Ltd. (Respondent) in this current matter. Ultimately, I continue to find the ED's reasons to be unpersuasive. It may make sense for a landlord, who generally has a right of access to its own property, to be liable for past open and obvious violations of its tenant. However, a financial assurance violation is not the type of violation that would be open and obvious to a landlord. Respondent did not get any notice of the prior financial assurance violation orders against its tenant, and was not a party to the prior proceedings. While the ALJ does not disagree with the general concept of connecting past violations to a property site for purposes of compliance history, such would not appear appropriate in calculating a penalty against Respondent under the facts of this case. Ultimately, though, this is a legal question left to the discretion of the Commission. I write simply to reiterate my belief that the enhancement for compliance history in this action is unwarranted.

Sincerely,

Craig R. Bennett
Administrative Law Judge

CRB/ls
cc: Mailing List

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AGENCY:	**Environmental Quality, Texas Commission on (TCEQ)**
STYLE/CASE:	**ALAMO RECYCLE CENTERS LLC AND EISENBERG PROPERTIES LTD**
SOAH DOCKET NUMBER:	**582-13-6088**
REFERRING AGENCY CASE:	**2013-0499-MSW-E**

STATE OFFICE OF ADMINISTRATIVE HEARINGS	**ADMINISTRATIVE LAW JUDGE** **ALJ CRAIG R. BENNETT**
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