

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

March 16, 2015

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

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:

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 April 6, 2015. Any replies to exceptions or briefs must be filed in the same manner no later than April 16, 2015.

This matter has been designated **TCEQ Docket No. 2013-0499-MSW-E; SOAH Docket No. 582-12-6877**. 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 "Craig R. Bennett".

Craig R. Bennett  
Administrative Law Judge

CRB/lr  
Enclosures  
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

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STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE

ALJ CRAIG R. BENNETT

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REPRESENTATIVE / ADDRESS

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ALAMO RECYCLE CENTERS, LLC

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SIMON TETLOW  
GENERAL MANAGER  
EISENBERG HOLDINGS INC.  
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SAN ANTONIO, TX 78232

EISENBERG HOLDINGS INC.

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**SOAH DOCKET NO. 582-13-6088**  
**TCEQ DOCKET NO. 2013-0499-MSW-E**

<b>EXECUTIVE DIRECTOR OF THE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>TEXAS COMMISSION ON</b>	§	
<b>ENVIRONMENTAL QUALITY,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>ALAMO RECYCLE CENTERS LLC</b>	§	
<b>and EISENBERG PROPERTIES, LTD.,</b>	§	
<b>Respondents</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) initiated this enforcement action against Alamo Recycle Centers LLC (ARC) and Eisenberg Properties, Ltd. (Eisenberg), alleging that these parties failed to prevent the unauthorized storage, disposal, or discharge of municipal solid waste (MSW) in violation of 30 Texas Administrative Code §§ 330.7(a) and 330.15. The ED subsequently resolved its enforcement action against ARC through settlement, but continues to maintain its action against Eisenberg. In this action, the ED seeks an administrative penalty against Eisenberg in the amount of \$14,250 for the alleged violation of the Commission's rules.

After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that Eisenberg did violate 30 Texas Administrative Code §§ 330.7(a) and 330.15 by suffering, allowing, or permitting the unauthorized storage of MSW on property it owned. For such violation, the ALJ recommends that the Commission impose on Eisenberg a reduced penalty in the amount of \$11,250.<sup>1</sup>

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<sup>1</sup> Because Eisenberg no longer owns the property in question, the ED has not requested corrective action.

## II. PROCEDURAL HISTORY AND JURISDICTION

The hearing on the merits convened on November 18, 2014, at the State Office of Administrative Hearings in Austin, Texas. ALJ Craig R. Bennett presided. The ED appeared through attorneys Jeffrey Huhn, Joel Cordero, and Tammy Mitchell. Eisenberg appeared *pro se*, through its general manager, Simon Tetlow. The record closed on January 16, 2015, with the filing of written closing arguments. No parties challenged jurisdiction or notice, and the proposed order attached to this proposal for decision contains the necessary findings of facts and conclusions of law concerning those matters.

## III. BACKGROUND

The pertinent facts of this case are relatively straightforward and undisputed. Eisenberg owned property at 7240 East Interstate Highway 10 in San Antonio, Bexar County, Texas (Site). Eisenberg leased the property to ARC, which was registered by the Commission to operate a recycling center and authorized to accept certain types of solid waste for recycling. Eisenberg and ARC had no relationship except that of landlord/tenant.

ARC operated a recycling center at the Site and received MSW at the Site as part of its operations. In 2011 and 2012, the Commission issued separate agreed enforcement orders against ARC for failing to maintain adequate financial assurance for closure of solid waste materials maintained on the Site.<sup>2</sup> Although Eisenberg owned the Site at the time, it was not the operator of the recycling facility and it was not named in the Commission's enforcement orders against ARC. On July 19, 2012, Eisenberg evicted ARC from the property, halting operations at the Site.

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<sup>2</sup> ED Exs. 8 and 9.

In July and August of 2012, TCEQ staff investigated the Site and found 72,975 cubic yards of unauthorized MSW at the Site.<sup>3</sup> On August 16, 2012, TCEQ staff notified Eisenberg and ARC, by separate letters, of their respective responsibilities for closure of the Site.<sup>4</sup> ARC was responsible as the operator of the Site, and Eisenberg was responsible as the owner of the property. The closure letters advised ARC and Eisenberg that they had until January 14, 2013, to complete closure of the Site.

On January 31, 2013, TCEQ staff again visited the Site and determined that it had not been closed as required by the closure letters of August 16, 2012.<sup>5</sup> Therefore, TCEQ staff sent a notice of enforcement letter to ARC and Eisenberg on February 15, 2013, advising that corrective action was still needed at the Site.<sup>6</sup> When ARC and Eisenberg failed to take corrective action in response to the February 2013 letters, the ED initiated this enforcement action by serving a preliminary report and petition on them on May 22, 2013.

Eisenberg sold the property in early 2013 and, as of the date of the hearing on the merits, the Site has still not been closed as directed by the Commission staff's letters. The ED settled with ARC prior to the hearing, but continues to pursue this action against Eisenberg. The ED does not contend that Eisenberg had any involvement in allowing the MSW to be stored on the Site originally. Rather, it appears that ARC was responsible for allowing most, if not all, of the unauthorized disposal of MSW at the Site.<sup>7</sup> However, the ED contends that Eisenberg is responsible for the waste at the Site because it was the owner of the Site when the waste was placed there, and it was given an opportunity to remove the waste and close the Site but failed to do so.

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<sup>3</sup> ED Ex. 2.

<sup>4</sup> ED Ex. 2 at 41-44. "Closure" of a site refers to the removal of unauthorized waste and returning the site to a compliant state.

<sup>5</sup> ED Ex. 1.

<sup>6</sup> ED Ex. 1 at 27-34.

<sup>7</sup> While the evidence indicates the majority of the waste was placed at the Site while ARC was operating it, there is the possibility that additional waste was placed there after ARC was evicted from the Site.

Accordingly, the ED contends that Eisenberg is responsible for suffering, allowing, or permitting the unauthorized storage or disposal of MSW on its property—thus making it liable under 30 Texas Administrative Code §§ 330.7(a) and 330.15. Because Eisenberg no longer owns the property, the ED is not seeking corrective action in this case. Rather, the ED seeks only an administrative penalty against Eisenberg.

#### IV. APPLICABLE LAW

The Commission has the duty to protect the people and environment of Texas by controlling the management of solid waste.<sup>8</sup> Its jurisdiction includes the management of MSW and coordination of MSW activities.<sup>9</sup> To further the state's interest in protecting public health and the environment, the Commission has adopted rules governing the management of MSW.<sup>10</sup> The Commission's rules prohibit a person from "caus[ing], suffer[ing], allow[ing], or permit[ing] any storage, processing, removal, or disposal" of MSW without written authorization from the Commission.<sup>11</sup> The Commission may assess an administrative penalty against a person who violates a provision of the Texas Water Code, Texas Health and Safety Code, or a Commission rule.<sup>12</sup> Such penalties may not exceed \$25,000 per day of violation.<sup>13</sup>

In an enforcement case, the ED has the burden of proving by a preponderance of the evidence the occurrence of any violation.<sup>14</sup> All parties share the burden of proving by a preponderance of the evidence any facts relevant to the statutory factors governing the determination of the penalty amount.<sup>15</sup>

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<sup>8</sup> Tex. Health & Safety Code § 361.002(a).

<sup>9</sup> Tex. Health & Safety Code § 361.011(a).

<sup>10</sup> Tex. Health & Safety Code § 361.022(d).

<sup>11</sup> 30 Tex. Admin. Code § 330.7(a); 30 Tex. Admin. Code § 330.15(c).

<sup>12</sup> Tex. Water Code § 7.051(a).

<sup>13</sup> Tex. Water Code § 7.052(c).

<sup>14</sup> 30 Tex. Admin. Code § 80.17(d).

<sup>15</sup> 30 Tex. Admin. Code § 80.17(d).

## V. ANALYSIS

Staff argues that Eisenberg violated the Commission's prohibition on causing, suffering, allowing, or permitting the storage or disposal of MSW. Staff relies on 30 Texas Administrative Code §§ 330.7(a), 330.15(a), and 330.15(c), which state that no person may "cause, suffer, allow, or permit" unauthorized MSW activities. The term "person" includes owners of real property where violations occur.<sup>16</sup>

The plain meaning of "cause, suffer, allow, or permit" requires little interpretation. The words reflect the Commission's plain intention to exercise its authority to control almost any action or inaction, whether active or passive in nature, by any person if the action or inaction involves the storage or disposal of MSW on land within the state's borders. Staff's closing argument contains a detailed discussion of these terms' definitions.<sup>17</sup>

At the hearing on the merits, the parties stipulated to facts that establish Eisenberg's liability in this case. Specifically, the parties stipulated that Eisenberg owned the Site, the Site involved the management and disposal of municipal solid waste, Eisenberg failed to prevent the unauthorized disposal of MSW, and 72,975 cubic yards of MSW was stored, processed, and disposed of at the Site.<sup>18</sup> Further, the parties agree that Eisenberg did not remove the MSW from the Site after being made aware of it. These stipulations establish that Eisenberg suffered, allowed, or permitted the activities at the Site.

Beyond the stipulations, the evidence also shows that Eisenberg suffered, allowed, or permitted the unauthorized MSW activities. As owner of the Site, Eisenberg leased the property to ARC for the purpose of operating a MSW facility. ARC received a large amount of unauthorized MSW at the Site. Once the TCEQ initiated enforcement at the Site, MSW activities were no longer authorized. Although Eisenberg evicted ARC, it did not undertake

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<sup>16</sup> 30 Tex. Admin. Code § 330.7(a).

<sup>17</sup> ED's Written Closing Argument at 5-6.

<sup>18</sup> Hearing Record at 3:09-4:42.

efforts to close the site as required by the TCEQ staff's letter. As the property owner, Eisenberg had a responsibility to remove the MSW once it learned the waste was there. While ARC had a similar responsibility, Eisenberg's responsibility was not diminished simply because ARC was the party responsible for the MSW in the first place and also had a duty to remove it.

By failing to remove the MSW after being notified of it, Eisenberg suffered, allowed, or permitted the storage of MSW without written authorization from the Commission. This is a violation of 30 Texas Administrative Code §§ 330.7(a), 330.15(a), and 330.15(c). So, there is no dispute as to Eisenberg's liability in this case. The only question is in regard to the penalty.

At the hearing, Eisenberg stipulated to the amount of the penalty. However, Eisenberg then appeared to argue that there were a number of factors warranting a reduction or elimination of the penalty against it. This appears somewhat incongruous with the stipulation. Because Eisenberg was not represented by counsel, but rather appeared *pro se* through its general manager, the ALJ concludes that Eisenberg was stipulating that the penalty was calculated according to the proper methodology, but was not agreeing that it should be responsible for that exact amount.<sup>19</sup>

Eisenberg argues that it should not be held liable for any penalty because its tenant, ARC, caused the violations. However, the Texas Solid Waste Disposal Act provides that an owner is still liable for violations when its tenant caused those violations in connection with its lease with the owner.<sup>20</sup> Eisenberg's lease to ARC contemplated use of the Site as a construction-waste processing facility. Collecting and storing MSW is directly related to ARC's lease agreement. Therefore, arguing that the tenant is responsible is not a defense for Eisenberg in this case.

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<sup>19</sup> In its closing briefing, the ED notes that Eisenberg "stipulated that the penalty was correctly calculated." ED's *Written Closing Argument*, at 3. This is consistent with the ALJ's interpretation of what Eisenberg intended to agree to by its stipulation.

<sup>20</sup> Tex. Health & Safety Code § 361.275(c)(2) and (d).

Regardless of how the waste may have come to the Site, Eisenberg had a responsibility to remove the waste once it became aware of it. Eisenberg did not remove the waste as directed by TCEQ staff, and therefore is liable for it. Accordingly, Eisenberg's liability under the plain language of 30 Texas Administrative Code §§ 330.7(a), 330.15(a), and 330.15(c) is clear because it suffered, allowed, and permitted the continuous storage and disposal of MSW at the Site that it owned.

## VI. PENALTY AMOUNT

The Commission may assess a penalty of up to \$25,000 a day for each violation proven in this case. The ED calculated the proposed \$14,250 penalty in accordance with the Commission's Penalty Policy, which took effect on September 1, 2011.<sup>21</sup> Although the violation is considered a major actual violation and could have been calculated as occurring over many days (resulting in numerous separate penalties), the ED treated the violation as a single monthly violation and calculated the penalty as one single event. This resulted in a \$7,500 base penalty. The ED increased the base penalty by 40%, or \$3,000, based on compliance history. The ED then increased the penalty further by \$3,750 for the economic benefit for failing to comply with the Commission's rules. Combined, this resulted in a total administrative penalty of \$14,250.<sup>22</sup>

As noted above, Eisenberg stipulated to the proper calculation of the penalty. Accordingly, this may end the analysis and the Commission may choose to impose the penalty amount of \$14,250. However, because Eisenberg also challenged its responsibility for the full penalty, the ALJ will discuss an additional concern he has in this case.

The ALJ agrees that the ED's penalty calculation was made consistent with TCEQ practices. But, the ALJ disagrees that the penalty calculation should include an enhancement of \$3,000 based on compliance history. In making this adjustment, the ED relied solely on two prior enforcement orders against ARC in 2011 and 2012. Thus, the ED determined the

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<sup>21</sup> ED Ex. 5.

<sup>22</sup> See ED Ex. 4 for the penalty calculation worksheet showing all of the steps to get to the total penalty of \$14,250.

compliance history showed “enforcement for two previous orders with a denial of liability.”<sup>23</sup> However, those enforcement actions were not against Eisenberg, any predecessor-in-interest to Eisenberg, or any entity related to Eisenberg. Those actions were solely against ARC and were for failure to maintain financial assurance.

The ED argues the compliance history runs with the Site. While this makes sense for many types of violations, it appears unreasonable to apply such a standard when the past violations were not related to the Site as much as the regulated business itself. ARC’s past violations related to its failure to maintain financial assurance, and not to any unauthorized disposal of MSW or other unauthorized actions at the Site. The ALJ does not find it reasonable to enhance a penalty against Eisenberg for past financial assurance compliance actions against ARC—an entirely unrelated entity. Therefore, the ALJ recommends the \$3,000 enhancement for compliance history be removed from the penalty calculation, resulting in a total administrative penalty of \$11,250. This is the amount the ALJ recommends that Eisenberg be ordered to pay. However, the ALJ also recognizes that, in light of the parties’ stipulation, the Commission may choose to disregard this recommendation and impose the higher penalty sought by the ED.

## VII. RECOMMENDATION

The ALJ recommends that the Commission issue the attached proposed order, find that Eisenberg committed the alleged violation, and order it to pay an administrative penalty of \$11,250 for the violation.

**SIGNED March 16, 2015.**



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

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<sup>23</sup> ED Ex. 4.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER  
ASSESSING ADMINISTRATIVE PENALTIES AGAINST  
EISENBERG PROPERTIES, LTD., RESPONDENT  
TCEQ DOCKET NO 2013-0499-MSW-E  
SOAH DOCKET NO. 582-13-6088**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition recommending that the Commission enter an order assessing administrative penalties against Eisenberg Properties, Ltd. A Proposal for Decision (PFD) was presented by Administrative Law Judge (ALJ) Craig R. Bennett of the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the Preliminary Report and Petition on November 18, 2014, in Austin, Texas.

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

**I. FINDINGS OF FACT**

1. Eisenberg Properties, Ltd. (Eisenberg) once owned property at 7240 Interstate Highway 10 East in San Antonio, Bexar County, Texas (the Site).
2. Eisenberg leased the Site to Alamo Recycle Centers, LLC (ARC) for the purpose of operating a construction waste recycling business.
3. In 2011 and 2012, the TCEQ issued separate agreed enforcement orders against ARC for failing to maintain adequate financial assurance for closure of solid waste materials maintained on the Site.

4. On July 19, 2012, Eisenberg evicted ARC from the Site.
5. In July and August 2012, a TCEQ investigator found 72,975 cubic yards of municipal solid waste at the Site, which was not in operation at the time.
6. On August 16, 2012, the TCEQ investigator sent a letter to Eisenberg's registered agent requesting closure of the Site by January 14, 2013.
7. On January 31, 2013, the TCEQ investigator conducted a follow up investigation and discovered that the waste had not been removed and the Site had not been closed.
8. On February 15, 2013, TCEQ staff sent letters to ARC and Eisenberg advising that the corrective action was still needed at the Site.
9. When corrective action was not taken, the ED initiated this enforcement action by serving a preliminary report and petition on Eisenberg and ARC on May 22, 2013.
10. The ED settled its enforcement action against ARC, leaving Eisenberg as the only remaining party against whom enforcement action was being taken.
11. Because Eisenberg sold the Site in 2013, the ED is not seeking corrective action.
12. The matter was referred to SOAH on August 29, 2013.
13. The parties waived the preliminary hearing and submitted an agreed procedural schedule.
14. On August 19, 2014, notice of the hearing was provided to all parties.
15. On November 18, 2014, ALJ Craig R. Bennett convened the hearing on the merits. The ED appeared through attorneys Jeffrey Huhn, Tammy Mitchell, and Joel Cordero. Eisenberg appeared through its general manager, Simon Tetlow. The hearing adjourned the same day. The record closed on January 16, 2015, following the parties' submission of written closing arguments.
16. Eisenberg stipulated to the following facts, which are hereby found:
  - a. Eisenberg owned the Site;
  - b. the Site involved the management and disposal of municipal solid waste;
  - c. Eisenberg failed to prevent the unauthorized disposal of municipal solid waste at the Site;
  - d. The amount of 72,975 cubic yards of municipal solid waste was stored, processed, and disposed of at the Site; and
  - e. Eisenberg did not remove the municipal solid waste from the Site after being made aware of it.

## II. CONCLUSIONS OF LAW

1. The Commission has the duty to protect the people and environment of Texas by controlling the management of solid waste. Tex. Health & Safety Code § 361.002(a).
2. “Solid waste” includes garbage, rubbish, refuse, and other discarded material, including material resulting from municipal operations. Tex. Health & Safety Code § 361.003(35).
3. “Municipal solid waste” includes solid waste resulting from municipal activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste. Tex. Health & Safety Code § 361.003(20).
4. Owners of land used for solid waste processing, storage, or disposal, are responsible for solid waste brought onto their land. Tex. Health & Safety Code § 361.271(a)(1) and (a)(2).
5. An owner may not avoid responsibility by showing that its tenant who contracted with the owner to process solid waste on the owner’s property was responsible for bringing the waste onto the property. Tex. Health & Safety Code § 361.275(c)(2) and (d).
6. The Commission has adopted rules prohibiting a person from “caus[ing], suffer[ing], allow[ing], or permit[ting]” the dumping or disposal of municipal solid waste without the written authorization of the Commission. 30 Tex. Admin. Code §§ 330.7(a), 330.15(a) and 330.15(c).
7. The Commission’s rules provide that the ED may seek recourse against an owner or operator who causes, suffers, allows, or permits waste to be stored, processed, or disposed without authorization. 30 Tex. Admin. Code § 330.7(a).
8. The Commission may assess an administrative penalty not to exceed \$25,000 per day of violation against a person who violates a provision of the Texas Water Code, Texas Health and Safety Code, or a Commission rule. Tex. Water Code §§ 7.051(a) and 7.052(c).
9. Eisenberg is subject to the jurisdiction of the Commission because it owned land where a municipal solid waste facility was located. Tex. Health & Safety Code § 361.011.
10. In an enforcement case, the ED has the burden of proving by a preponderance of the evidence the occurrence of any violation. 30 Tex. Admin. Code § 80.17(d).
11. Eisenberg timely requested a contested case hearing. 30 Tex. Admin. Code § 70.105.

12. Eisenberg received notice of the hearing on the alleged violation and the recommended penalties. Tex. Gov't Code §§ 2001.051(1) and 2001.052; Tex. Water Code § 7.058; and 30 Tex. Admin. Code §§ 1.12, 39.25, 70.104, and 80.6(c).
13. Based on the above Findings of Fact, Eisenberg violated 30 Tex. Admin. Code §§ 330.7(a), 330.15(a), and 330.15(c).
14. The ED's recommended penalty includes a \$3,000 increase based on the compliance history of an entity other than Eisenberg, and the past violation is not substantively related to the violations in this case.
15. The \$3,000 enhancement for compliance history should not be included in the penalty calculation.
16. Considering all the factors, the Commission should impose an administrative penalty of \$11,250 against Eisenberg.

### **III. ORDERING PROVISIONS**

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Within 30 days after the effective date of this Commission Order, Eisenberg Properties, Ltd., shall pay an administrative penalty in the amount of \$11,250 for its violation of 30 Texas Administrative Code §§ 330.7(a), 330.15(a), and 330.15(c) considered in this case.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Eisenberg Properties, Ltd., TCEQ Docket No. 2013-0499-MSW-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
3. The payment of the administrative penalty will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.

4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Eisenberg if the Executive Director determines that Eisenberg has not complied with one or more of the terms or conditions in this Commission Order.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 Tex. Admin. Code § 80.273 and Tex. Gov't Code Ann. 2001.144.
7. The Commission's Chief Clerk shall forward a copy of this Order to Eisenberg.
8. If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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