

March 12, 2008

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

Re: SOAH Docket No. 582-08-1241; TCEQ Docket No. 2004-0507-PST-E; In the Matter of an Enforcement Action against Armaan Enterprises Inc., d/b/a Stop N to Go; TCEQ Petroleum Storage Tank Facility ID No. 58141; RN 102385887

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 original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than April 1, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than April 11, 2008.

This matter has been designated **TCEQ Docket No. 2004-0507-PST-E; SOAH Docket No. 582-08-1241**. All documents to be filed must clearly reference these assigned docket numbers. Copies of all exceptions, briefs and replies must be served promptly on the State Office of Administrative Hearings and all parties. Certification of service to the above parties and an **original and eleven copies** shall be furnished to the Chief Clerk of the Commission. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Howard S. Seitzman  
Administrative Law Judge

HSS/pp  
Enclosures  
cc: Mailing List

**SOAH DOCKET NO. 582-08-1241  
TCEQ DOCKET NO. 2004-0507-PST-E**

<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>ENFORCEMENT ACTION AGAINST</b>	<b>§</b>	
<b>ARMAAN ENTERPRISES INC., D/B/A</b>	<b>§</b>	
<b>STOP N TO GO;</b>	<b>§</b>	<b>OF</b>
<b>TCEQ PETROLEUM STORAGE TANK</b>	<b>§</b>	
<b>FACILITY ID. NO. 58141;</b>	<b>§</b>	
<b>RN 102385887</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess seventeen thousand six-hundred eighty dollars (\$17,680.00) in administrative penalties against, and require certain corrective actions by, Armaan Enterprises Inc., d/b/a Stop N To Go (Respondent) for violations of 30 TEX. ADMIN. CODE §§ 334.8(c)(5)(B)(ii) and (A)(i); 334.48(c); 334.50(b)(1)(A), (b)(2)(A)(i)(III), (b)(2)(A)(ii)(I), and (d)(1)(A) and (B); and TEX. WATER CODE ANN. §§ 26.346(a); 26.3467(a); and 26.3475(a) and (c)(1). The ED alleges that Respondent failed to conduct inventory control; failed to provide adequate release detection by not conducting inventory controls in conjunction with automatic tank gauging and by failing to conduct tests for line detectors and piping tightness at least annually; failed to renew its delivery certificate with a timely submission to the Commission of a new Underground Storage Tank (UST) registration and self-certification form; and failed to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into a UST.

After being properly notified, Respondent failed to appear at the preliminary hearing on February 7, 2008, concerning the ED's allegations and recommendation. Therefore, as set out below, the Administrative Law Judge (ALJ) recommends that the Commission enter a default order against Respondent, deem as true the facts alleged by the ED, and assess a penalty of \$17,680.00 against and require certain corrective actions by Respondent.

## II. JURISDICTION AND VIOLATIONS

Respondent owns and operates a convenience store with retail sales of gasoline located at 2221 West Seminary Drive, Fort Worth, Tarrant County, Texas (Facility). On November 14, 2003, a TCEQ Dallas /Fort Worth Regional Office documented the following violations:

- a. Respondent failed to conduct inventory control at the Facility as required by 30 TEX. ADMIN. CODE §§ 334.8(c) and 334.50 (d)(1)(B) and TEX. WATER CODE ANN. § 26.3475(c)(1);
- b. Respondent failed to provide adequate release detection by not conducting inventory controls in conjunction with automatic tank gauging and by failing to conduct tests for line detectors and piping tightness at least annually as required by 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2)(A)(i)(III), (B)(2)(A)(ii)(I); and TEX. WATER CODE ANN. § 26.3475(a) and (c)(1);
- c. Respondent failed to renew its delivery certificate with a timely submission to the Commission of a new Underground Storage Tank (UST) registration and self-certification form as required by 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii) and TEX. WATER CODE ANN. § 26.346(a); and
- d. Respondent failed to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into a UST on October 20, 2003, and October 25, 2003, as required by 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE ANN. § 26.3467(a).

Respondent received notices of the violations on or about November 24, 2003.

Under TEX. WATER CODE ANN. § 7.051, the Commission is authorized to assess an administrative penalty against a person who violates a provision of the Texas Water Code or the Texas Health and Safety Code within the Commission's jurisdiction or a rule adopted or an order or permit issued thereunder. Pursuant to TEX. WATER CODE ANN. § 7.052(c) the penalty may not exceed \$10,000 per day of violation. Additionally, the Commission may order the violator to take corrective action pursuant to TEX. WATER CODE ANN. § 7.073.

In this case, Respondent is alleged to have violated 30 TEX. ADMIN. CODE §§ 334.8(c)(5)(B)(ii) and (A)(i); 334.48(c); 334.50(b)(1)(A), (b)(2)(A)(i)(III), (b)(2)(A)(ii)(I), and (d)(1)(A) and (B); and TEX. WATER CODE ANN. §§ 26.346(a); 26.3467(a); and 26.3475(a) and (c)(1), which are statutes and rules within the Commission's authority. Thus, the Commission has jurisdiction over Respondent and authority to assess penalties and order the corrective action requested by the ED. Further, the State Office of Administrative Hearings (SOAH) has jurisdiction over this matter as reflected in the Conclusions of Law that are in the attached Default Order.

### III. DEFAULT ORDER

A default order in this case should be entered pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55 and 30 TAC §§ 70.106 and 80.113(d). A default may only be entered upon adequate proof that proper notice has been provided to the defaulting party. As set forth in the Findings of Fact and Conclusions of Law, the ALJ finds that the requisite notice has been provided to Respondent in this proceeding, in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; 1 TAC §§ 155.27 and 155.55; and 30 TAC §§ 1.11 and 39.25.

Therefore, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law set forth in the attached Default Order, assessing an administrative penalty of \$17,680.00 against Respondent for the violations in issue and directing Respondent to take the specified corrective actions.

**SIGNED March 12, 2008.**

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**HOWARD S. SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

### **DEFAULT ORDER** Assessing Administrative Penalties Against and Ordering Corrective Action by Armaan Enterprises Inc., d/b/a Stop N To Go; TCEQ Docket No. 2004-0507-PST-E; SOAH Docket No. 582-08-1241

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 and requiring corrective action by Armaan Enterprises Inc., d/b/a Stop N To Go (Respondent). A Proposal for Decision (PFD) was presented by Howard S. Seitzman, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public hearing concerning the EDPRP on February 7, 2008, in Austin, Texas.

The Executive Director, represented by Xavier Guerra, appeared at the hearing. Respondent was not present at the hearing nor represented by counsel and did not file for a continuance. The Executive Director requested that a default be entered against Respondent. The ALJ agreed with the Executive Director's request.

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

## I. FINDINGS OF FACT

1. Respondent owns and operates a convenience store with retail sales of gasoline located at 2221 West Seminary Drive, Fort Worth, Tarrant County, Texas (Facility).
2. On November 14, 2003, a TCEQ Dallas /Fort Worth Regional Office conducted an inspection of Respondent's business/property to determine if Respondent was complying with statutes within the Commission's jurisdiction and the Commission's rules adopted thereunder.
3. On December 3, 2004, the Executive Director filed the Executive Director's Preliminary Report and Petition (EDPRP), in accordance with TEX. WATER CODE ANN. § 7.054, alleging:
  - (1) Respondent failed to conduct inventory control at the Facility as required by 30 TEX. ADMIN. CODE §§ 334.8(c) and 334.50 (d)(1)(B) and TEX. WATER CODE ANN. § 26.3475(c)(1);
  - (2) Respondent failed to provide adequate release detection by not conducting inventory controls in conjunction with automatic tank gauging and failing to conduct tests for line detectors and piping tightness at least annually as required by 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2)(A)(i)(III), (b)(2)(A)(ii)(I); and TEX. WATER CODE ANN. § 26.3475(a) and (c)(1);
  - (3) Respondent failed to renew its delivery certificate with a timely submission to the Commission of a new Underground Storage Tank (UST) registration and self-certification form as required by 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii) and TEX. WATER CODE ANN. § 26.346(a); and
  - (4) Respondent failed to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into a UST on October 20, 2003, and October 25, 2003, as required by 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE ANN. § 26.3467(a). The Executive Director

recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$17,680.00 against Respondent and that the Commission order Respondent to take certain corrective actions.

4. The total administrative penalty sought in the EDPRP is an accumulation of the different penalties assessed for each different violation.
5. The Executive Director seeks a penalty of \$7,800.00, for Respondent's alleged violation of 30 TEX. ADMIN. CODE §§ 334.8(c) and 334.50 (d)(1)(B) and TEX. WATER CODE ANN. § 26.3475(c)(1)), based on three quarterly violation events; the violations have the potential of causing major harm; and Respondent received an estimated economic benefit of \$1,056.00 from the violation.
6. The Executive Director seeks a penalty of \$7,800.00, for Respondent's alleged violation of 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2)(A)(i)(III), (b)(2)(A)(ii)(I); and TEX. WATER CODE ANN. § 26.3475(a) and (c)(1), based on three quarterly violation events; the violations have the potential of causing major harm; and Respondent received an estimated economic benefit of \$473.00 from the violation.
7. The Executive Director seeks a penalty of \$1,040.00, for Respondent's alleged violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii) and TEX. WATER CODE ANN. § 26.346(a), based on a single violation event; the violation was a major programmatic violation; and Respondent received an estimated economic benefit of \$4.00 from the violation.
8. The Executive Director seeks a penalty of \$1,040.00, for Respondent's alleged violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE ANN. § 26.3467(a), based on two separate violation events and the violations have the potential of causing minor harm.

9. The Executive Director mailed a copy of the EDPRP to Respondent's Registered Agent, Aslam Virani, at 2221 West Seminary Drive, Fort Worth Texas, 76115, on the same date that the EDPRP was filed.
10. Respondent, through its Registered Agent Aslam Virani, filed an answer to the EDPRP by letter dated January 11, 2005, and requested a hearing.
11. On December 17, 2007, the Executive Director requested the matter be referred to SOAH for hearing.
12. On January 9, 2008, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Respondent.
13. 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;
  - Referred to the EDPRP, a copy of which was attached, which indicated the matters asserted by the Executive Director;
  - 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 EDPRP 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.
14. On February 7, 2008, the ALJ convened the preliminary hearing. Respondent did not appear, nor did a representative of Respondent appear.

15. Based on Respondent's failure to appear at the hearing, the Executive Director moved for a default against Respondent in which all of the Executive Director's allegations would be deemed admitted as true, the penalties the Executive Director seeks would be assessed against Respondent, and Respondent would be ordered to take the corrective action recommended by the Executive Director. The ALJ granted the motion.

## **II. CONCLUSIONS OF LAW**

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000 per violation, per day for the violations alleged in this proceeding.
3. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.
4. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.
5. 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. Additionally, Respondent was notified, in accordance with 1 TEX. ADMIN. CODE § 155.55, that if Respondent failed to appear at the hearing, a default could be rendered against Respondent in which all the allegations contained in the notice of hearing

would be deemed admitted as true.

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 ANN. ch. 2003.
7. Based on the above Findings of Fact and Conclusions of Law:
  - a. A default judgment should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE §§ 70.106(b) and 80.113(d); and
  - b. The allegations contained in the notice of the hearing, including those in the EDPRP attached thereto, are admitted as true.
8. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE §§ 334.8(c)(5)(B)(ii) and (A)(i); 334.48(c); 334.50(b)(1)(A), (b)(2)(A)(i)(III), (b)(2)(A)(ii)(I), and (d)(1)(A) and (B); and TEX. WATER CODE ANN. §§ 26.346(a), 26.3467(a); and 26.3475(a) and (c)(1).
9. 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.
16. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

17. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$17,680 is justified and should be assessed against Respondent.
18. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

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

1. Armaan Enterprises Inc., d/b/a Stop N To Go is assessed an administrative penalty in the amount of \$17,680.00 for violations of 30 TEX. ADMIN. CODE §§ 334.8(c)(5)(B)(ii) and (A)(i); 334.48(c); 334.50(b)(1)(A), (b)(2)(A)(i)(III), (b)(2)(A)(ii)(I), and (d)(1)(A) and (B); and TEX. WATER CODE ANN. §§ 26.346(a), 26.3467(a); and 26.3475(a) and (c)(1). The assessment of this administrative penalty and Armaan Enterprises Inc.'s, 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: Armaan Enterprises Inc., dba Stop N To Go; Docket No. 2004-0507-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088

Austin, Texas 78711-3088

2. Within 30 days after the effective date of the Commission Order, Armaan Enterprises Inc., shall:

(i) begin conducting effective manual or automatic inventory control procedures for all of its USTs in accordance with 30 TEX. ADMIN. CODE § 334.48(c);

(ii) begin to monitor the UST systems at the Facility for releases in a manner which will detect a release at a frequency of a least once per month, as required by 30 TEX. ADMIN. CODE § 334.50(b)(1)(A);

(iii) Test the line leak detectors for performance and operational reliability, in accordance with 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III); and

(iv) Conduct a successful piping tightness test, in accordance with 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(ii)(I).

3. Withing 45 days after the effective date of the Commission Order, Armaan Enterprises Inc., shall certify compliance with Ordering Provisions 2(i) through 2(iv).

4. Armaan Enterprises Inc., shall submit copies of documentation necessary to demonstrate compliance with those Ordering Provisions to:

Work Leader  
Team 1, Section V  
Enforcement Division, MC 224

Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Sam Barrett, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2301 Gravel Drive  
Fort Worth, Texas 76118

5. 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.
6. 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.
7. 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.
8. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
9. 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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Buddy Garcia, Chairman  
For the Commission