

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 5, 2008

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

CHIEF CLERK'S OFFICE

2008 NOV -5 PM 1:36

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: SOAH Docket No. 582-07-4067; TCEQ Docket No. 2005-1144-PST-E; In Re:
Issa Ahmad D/B/A Houston Mart

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 November 25, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than December 5, 2008.

This matter has been designated **TCEQ Docket No. 2005-1144-PST-E; SOAH Docket No. 582-07-4067**. 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,


Sharon Cloninger
Administrative Law Judge

SC/lh
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: ISSA AHMAD / HOUSTON MART
SOAH DOCKET NUMBER: 582-07-4067
REFERRING AGENCY CASE: 2005-1144-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ PAUL D. KEEPER**

REPRESENTATIVE / ADDRESS

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-07-4067
TCEQ DOCKET NO. 2005-1144-PST-E

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

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BEFORE THE STATE OFFICE

CHIEF CLERKS OFFICE

V.

OF

**ISSA AHMAD D/B/A HOUSTON MART,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) brought this enforcement action against Issa Ahmad d/b/a Houston Mart (Respondent), seeking administrative penalties based on six alleged violations related to the underground storage tanks (USTs) at the convenience store.

The ED requests imposition of an administrative penalty of \$34,680, but is not requesting corrective measures, because the USTs have been removed since issuance of the Executive Director's Preliminary Report and Petition (EDPRP) on September 14, 2006. Respondent asserts he is neither the owner nor operator of Houston Mart (the Facility), and therefore not liable for the UST violations. The Administrative Law Judge (ALJ) finds Respondent was not the owner but was the operator of the Facility, and agrees with the ED's recommendation to assess an administrative penalty of \$34,680 against him.

II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There were no contested issues of notice or jurisdiction in this case. Therefore those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

The hearing was held October 6, 2008, before ALJ Sharon Cloninger at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The ED was represented by Anna M. Cox, TCEQ Litigation Division Attorney. Respondent appeared through Bart A. Huffman, engineer. The hearing concluded and the record closed that same date.

III. DISCUSSION

A. Background

Respondent is the individual operator¹ of the Facility, a lot and building in San Antonio, Texas, used primarily for operation of a convenience store. On April 21, 2005, TCEQ Environmental Investigator James Bard inspected the Facility and found it to be in violation of laws and rules related to USTs. Respondent's USTs are not exempt or excluded from regulation under the Texas Water Code or Commission rules. At the time of the inspection, Respondent's USTs contained a regulated petroleum substance as defined by Commission rules. Respondent received notice of the violations on or about December 12, 2005, and responded on December 26, 2005, that he was not the owner. The USTs were subsequently removed from the Facility while Mr. Bard was present²

On September 14, 2006, the ED proposed to assess administrative penalties, citing six charges in support of the action. The alleged violations are:

1. Respondent violated 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE ANN. § 26.3475(d) by failing to equip the UST system with corrosion protection.

¹ Respondent's designation by TCEQ as an individual operator is addressed more fully later in this Proposal for Decision.

² Mr. Bard's testimony. The date of the USTs' removal is not in evidence.

2. Respondent violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2) and TEX. WATER CODE ANN. § 26.3475(a) and (c)(1) by failing to monitor the UST tanks and piping system in a manner which would detect a release at a frequency of at least once a month.
3. Respondent violated 30 TEX. ADMIN. CODE § 334.48(c) by failing to properly conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel.
4. Respondent violated 30 TEX. ADMIN. CODE §§ 334.8(c)(4)(A)(vii) and 334.8(c)(4)(A)(iii) by failing to renew a previously issued TCEQ Delivery Certificate and failing to post a valid, current TCEQ Delivery Certificate.
5. Respondent violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE ANN. § 26.3467(a) by failing to make available to a common carrier a valid, current TCEQ Delivery Certificate before delivery of a regulated substance. Specifically, 49 documented deliveries between May 31, 2002, and the date of the inspection, were received without having a current delivery certificate.³
6. Respondent violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing to ensure that a legible tag, label, or marking with the tank number was permanently applied upon, or affixed to, either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Upon receipt of the September 14, 2006 EDPRP, Respondent provided a written response on October 16, 2006, to preserve his right to a hearing before SOAH.

³ A Notice of Storage Tank Registration was issued May 24, 2002, to Jessie M. Hicks, Supermart—Sam Khoja, for the Facility address. ED Exhibit B.

B. Stipulations

At the October 6, 2008 hearing, the parties entered into the following stipulations:

1. Respondent admitted the violations occurred as listed in the first five charges above,⁴ but denied the sixth charge—that the USTs were not labeled.
2. The calculations are correct for the amount of penalty set out in the Penalty Calculation Worksheet attached to the EDPRP.

C. Did Respondent violate 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing to ensure that a legible tag, label, or marking with the tank number was permanently applied upon, or affixed to, either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form?

1. ED's Argument and Evidence

Mr. Bard's Investigation Report⁵ notes that Respondent's tanks were not labeled. He specifies that during the inspection, the two tank fills were not labeled (numbered) as shown on the delivery certificate.⁶

2. Respondent's Argument

Respondent argued that the tanks were labeled, but presented no testimony, photographs, or documentary evidence to support the contention.

⁴ See also ED Exhibit 3 at 11-12.

⁵ ED Exhibit 3 at 4.

⁶ *Id.*, at 11 and 14.

3. ALJ's Analysis

No evidence was presented to rebut Mr. Bard's observation that the USTs were not labeled. Therefore, the ED proved the allegation by a preponderance of the evidence.

4. Penalty

In determining the amount of the penalty, the ED considered the factors set out in TEX. WATER CODE ANN. § 7.053, and recommended a penalty of \$1,020 for this violation.⁷

D. Is Respondent the operator of the Facility?

1. Applicable law

"Operator" is defined as "any person in day-to-day control of and having responsibility for the daily operation of the underground storage tank system." TEX. WATER CODE ANN. § 26.342(8).

Under TEX. WATER CODE ANN. § 26.3513, the Commission "shall consider the person who is in day-to-day control of a petroleum storage tank system at a site that is in violation of this subchapter to be the: (1) person primarily responsible for taking corrective action, for corrective action costs, for receiving a notice of violation, or for paying a penalty assessed; and (2) primary subject of an enforcement action or order under this subchapter.

Further, TEX. WATER CODE ANN. § 26.3513(b) provides that at a site where the owner and the operator are different persons, then "each owner and operator of a [UST] . . . is responsible for taking all corrective action at the site which may be required under this subchapter."

⁷ ED Exhibit 8 at 13.

2. Background

Respondent executed a 10-year lease agreement effective September 1, 2000, with the Facility property owner, Edwina H. Forte, legal guardian for Jessie H. Hicks.⁸ The lease contains no specific provision related to gasoline sales, but does contain the following terms:

- “Tenant may use the Premises only for use as a convenience store and any other lawful purposes related to the operation of a convenience store.”
- “Tenant’s obligations for maintenance shall include the parking lot, driveways, and sidewalks; the sewer, water pipes, and other matters related to plumbing; and the air conditioning system.”
- The landlord’s obligations for maintenance include “all other items of maintenance not delegated to Tenant under this lease.”
- The lease further requires Tenant to comply with all laws, ordinances, requirements, and regulations of federal, state, county, municipal, and other authorities, but does not require Tenant to make alterations of a structural nature.

On May 23, 2001, after the lease was executed between Respondent and Ms. Hicks, the Commission received an Underground Storage Tank Registration & Self-certification Form listing Ms. Hicks as both the owner and operator of the two USTs at the Facility, and the date she became the operator as September 11, 2000. The form is signed by Edwina H. Forte for Ms. Hicks on May 7, 2001, in the “Signature of Owner/Operator or Authorized Representative” blank, certifying the submitted information to be “true, accurate, and complete.”⁹

A December 20, 2005 query of the TCEQ registration database showed Ms. Hicks as the Facility owner, effective April 25, 1986; the operator, effective September 1, 1990; and the holder of

⁸ ED Exhibit B.

⁹ ED Exhibit 3, at 19-22; and ED Exhibit 5, 1-4.

a UST Delivery Certificate for the Facility from May 7, 2001 to May 2002.¹⁰ A Notice of Storage Tank Registration was issued to Ms. Hicks for two USTs at the Facility on May 24, 2002.¹¹

In his response to the September 14, 2006 EDPRP, Respondent contends he is neither the owner nor operator of the USTs targeted for enforcement action.¹² He explains that Ms. Hicks died in about 2003, after which the “real property”—including the USTs and ancillary piping—was bought by Kevin Kearsley on September 28, 2004. A 2005 Bexar County Appraisal District print-out-shows Mr. Kearsley as the 100 percent owner of the Facility: the USTs are listed as part of Mr. Kearsley’s property, while furniture, fixtures, and equipment are shown to be owned by Houston Food Mart.¹³

Following Mr. Bard’s inspection, Respondent did not accept any more fuel deliveries; the last fuel delivery to the Facility was on April 6, 2005. Respondent wrote the TCEQ PST Registration and Self-Certification Team on May 9, 2005 advising them he was no longer selling gas at the Facility and asking that the UST Registration and Self-Certification be canceled.¹⁴

3. ED’s Evidence and Argument

The ED argues that Respondent had day-to-day control of and responsibility for the USTs. While he was not listed as the Facility operator on any document, Respondent signed the lease with Ms. Hicks; paid rent for the Facility; signed field delivery invoices on 49 occasions between

¹⁰ ED Exhibit B.

¹¹ It is not clear why the words “Supermart—Sam Khoja” appear under Ms. Hicks’ name at the Facility address. ED Exhibit B.

¹² ED Exhibit B.

¹³ *Id.*

¹⁴ ED Exhibit B, letters of May 9, 2005, and December 26, 2005.

May 31, 2002, and the April 21, 2005 inspection date,¹⁵ signed the exit interview form provided to him by Mr. Bard following the inspection, and paid to remove the USTs from the Facility.

According to Mr. Bard, the operator of a facility typically signs the fuel delivery invoices, just as Respondent did on 49 occasions. He said Respondent handed him the fuel dispatch tickets during the April 21, 2005 investigation, further proof that he was the operator of the Facility. Mr. Bard said he was present for removal of the USTs, and opined it is not reasonable to pay for UST removal unless you are the owner or operator of a facility. He agreed on cross examination that it is reasonable for a person under regulatory enforcement, such as Respondent, to do everything possible to satisfy the regulatory agency.

Mr. Bard further testified that he never received documentation showing that someone other than Respondent operated the facility, except for the May 23, 2001 Underground Storage Tank Registration & Self-certification Form that listed Ms. Hicks as the owner and operator. Mr. Bard said if an owner or operator dies, as in Ms. Hicks' case, the form must be updated by the heirs, at least, or by the living owner or operator, such as Respondent.¹⁶

4. Respondent's Argument

Respondent argues that he was neither the owner nor operator of the tanks, the tanks have been removed at his own expense; and the proposed administrative penalty is excessive. According to Respondent, he is not responsible for any regulatory maintenance of the USTs.

Respondent said he notified TCEQ in a December 26, 2005 letter that he was not the owner of the real property at the Facility. In an October 16, 2006 letter in response to the EDPRP, he

¹⁵ ED Exhibit 3 at 31, 34, 41, 44-47, 52, 55, 57, 60-62, 64-70, and 78.

¹⁶ According to the TCEQ database, the form was not updated. ED Exhibit B.

advised the Litigation Division that he was not the registered owner or operator.¹⁷ Respondent contends TCEQ has not made an adequate effort to contact Ms. Hicks' estate regarding this enforcement action.

5. ALJ's Analysis

Based on the totality of circumstances, including the testimony of Mr. Bard and the various reports, the ALJ concludes that Respondent was the operator of the USTs on the April 21, 2005 inspection date, and bears statutory responsibility for their oversight, despite his claim that he was not in control of the property and that the owner was responsible for maintaining the USTs. Respondent signed the TCEQ Exit Interview Form that day in the "Regulated Entity Representative Name" blank. He signed at least 49 fuel delivery invoices, provided fuel dispatch records to Mr. Bard, and by all appearances sold gasoline as part of his convenience store operation.

The PST Registration Database Query Results for data last updated April 18, 2005, shows Ms. Hicks to be the owner and operator with a UST Delivery Certificate set to expire in May 2002. But nobody is listed as the owner or operator subsequent to May 2002. Consequently, there is no evidence that someone other than Respondent was the operator of the Facility.

Because the evidence shows Respondent was responsible for the day-to-day control and daily operation of the USTs, the ALJ finds he was the operator on April 21, 2005, and primarily responsible, under TEX. WATER CODE ANN. § 26.3513, for paying the assessed penalty.

IV. CONCLUSION

The ED's recommended administrative penalty of \$34,680 may be assessed against Respondent. Jorge Ibarra, TCEQ Enforcement Coordinator, testified the penalty was consistent with TCEQ policy in effect at the time the Penalty Calculation Worksheet was created. He also said the

¹⁷ ED Exhibit B.

ED is not seeking the corrective actions listed in the EDPRP, because the USTs have been removed from the Facility. A summary of the base penalties as calculated under terms of the Commission's 2002 Revised Penalty Policy for the violations at issue are as follow:

Violation	Event	Base Penalty	Adjustment	Final	Final (Adjusted for Limits)
Failure to equip the UST system with corrosion protection	1	\$10,000	25% (-\$7,500)	\$2,500	\$2,550
Failure to monitor USTs tanks and piping system in a manner which will detect a release at a frequency of at least once every month	1	\$10,000	25% (-\$7,500)	\$2,500	\$2,550
Failure to properly conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel	1	\$10,000	25% (-\$7,500)	\$2,500	\$2,550
Failure to renew a previously issued TCEQ Delivery Certificate and failure to post a valid Delivery Certificate	1	\$10,000	10% (-\$9,000)	\$1,000	\$1,020
Failure to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance. Specifically, 49 documented deliveries between May 31, 2002, and the date of inspection, were received without having a valid delivery certificate.	49	\$10,000	5% (-\$9,500)	\$24,500	\$24,990
Failure to ensure that a legible tag, label, or marking with the tank number is permanently applied upon, or affixed to, either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to UST registration and self-certification form	1	\$10,000	10% (-\$9,000)	\$1,000	\$1,020

In conclusion, the ALJ agrees that the ED's recommended penalty is reasonable and consistent with the applicable law, Commission policy, and prior precedent. Accordingly, the ALJ recommends that the Commission adopt the attached proposed order, including the Findings of Fact and Conclusions of Law and impose a \$34,680 administrative penalty on Respondent.

SIGNED November 5, 2008.



**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST
ISSA AHMAD
SOAH DOCKET NO. 582-07-4067
TCEQ DOCKET NO. 2005-1144-PST-E**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against Issa Ahmad d/b/a Houston Mart (Respondent). Sharon Cloninger, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on October 6, 2008, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, represented by Bart Huffman, engineer, and the Commission's Executive Director (ED), represented by Anna M. Cox, an 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. Respondent operated a convenience store with retail sales of gasoline located at 1533 East Houston Street, San Antonio, Bexar County, Texas (the Facility). Respondent's underground storage tanks (USTs) were not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Respondent's USTs contained a registered petroleum substance as defined by the rules of the Commission.
2. During an inspection conducted on April 21, 2005, a TCEQ San Antonio Regional Office investigator documented that Respondent failed to equip the UST system with corrosion protection; failed to monitor the USTs tanks and piping system in a manner which would detect a release at a frequency of at least once a month; failed to properly conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel; failed to renew a previously issued TCEQ Delivery Certificate and failed to post a valid, current TCEQ Delivery Certificate; failed to make available to a common carrier a valid, current TCEQ Delivery Certificate before delivery of a regulated substance on 49 occasions between May 31, 2002, and the date of the inspection; and failed to ensure that a legible tag, label, or marking with the tank number was permanently applied upon, or affixed to, either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form.
3. Respondent received notice of the violations via hand-delivery on December 12, 2005.

4. The USTs at the Facility contained regulated petroleum substances.

5. Respondent is not the owner of the Facility:
 - a. Respondent executed a 10-year lease agreement effective September 1, 2000, with the Facility property owner, Edwina H. Forte, legal guardian for Jessie H. Hicks.
 - b. A December 20, 2005 query of the TCEQ registration database shows Ms. Hicks as the Facility owner effective April 25, 1986; the operator effective September 1, 1990; and the holder of a UST Delivery Certificate for the Facility from May 7, 2001 to May 2002 (after the lease with Respondent was executed).
 - c. A Notice of Storage Tank Registration was issued to Ms. Hicks for the two USTs at the Facility on May 24, 2002.

6. Respondent is the operator of the Facility.
 - a. Respondent had day-to-day control of and responsibility for the USTs.
 - b. Respondent leased the Facility from Ms. Hicks.
 - c. Respondent signed field delivery invoices for fuel on 49 occasions between May 31, 2002 and April 21, 2005.
 - d. Respondent provided the fuel dispatch invoices to the TCEQ Environmental Investigator on April 21, 2005.
 - e. Respondent signed the exit interview form provided to him by the TCEQ Environmental Investigator on April 21, 2005.
 - f. Respondent decided to stop accepting fuel at the Facility as of May 2005.

- g. Respondent paid for removal of the USTs some time after April 21, 2005.
7. On September 14, 2006, the ED served the EDPRP on Respondent, proposing a total penalty of \$ 34,680 for violations of TEXAS WATER CODE ANN. §§ 26.3467(a), 26.3475(c)(1), and 26.3475(a) and (d), and 30 TEXAS ADMIN. CODE § 334.48(c), 334.49(a), 334.50(b)(1)(A), 334.50(b)(2), 334.8(c), 334.8(c)(4)(A)(iii), 334.8(c)(4)(A)(vii), 334.8(c)(5)(A)(i), and 334.8(c)(5)(C).
 8. As established by the stipulation of the ED and Respondent at the October 6, 2008 hearing, Respondent failed to equip the UST system with corrosion protection as required by TEXAS WATER CODE ANN. § 26.3475(d) and 30 TEXAS ADMIN. CODE § 334.49(a).
 9. The appropriate and reasonable penalty, considering all statutorily required factors, for Respondent's failure to equip the UST system with corrosion protection in violation of TEXAS WATER CODE ANN. § 26.3475(d) and 30 TEXAS ADMIN. CODE § 334.49(a) is \$2,550.
 10. As established by the stipulation of the ED and Respondent at the October 6, 2008 hearing, Respondent failed to monitor USTs tanks and piping system in a manner which would detect a release at a frequency of at least once every month as required by TEXAS WATER CODE ANN. § 26.3475(a) and (c)(1) and 30 TEXAS ADMIN. CODE § 334.50(b)(1)(A) and (b)(2).
 11. The appropriate and reasonable penalty, considering all statutorily required factors, for Respondent's failure to monitor USTs tanks and piping system in a manner which would

detect a release at a frequency of at least once every month in violation of TEXAS WATER CODE ANN. § 26.3475(a) and (c)(1) and 30 TEXAS ADMIN. CODE § 334.50(b)(1)(A) and (b)(2) is \$2,550.

12. As established by the stipulation of the ED and Respondent at the October 6, 2008 hearing, Respondent failed to properly conduct inventory control of all USTs involved in the retail sale of petroleum substances such as motor fuel as required by 30 TEXAS ADMIN. CODE § 334.48(c).
13. The appropriate and reasonable penalty, considering all statutorily required factors, for Respondent's failure to properly conduct inventory control of all USTs involved in the retail sale of petroleum substances such as motor fuel in violation of 30 TEXAS ADMIN. CODE § 334.48(c) is \$2,500.
14. As established by the stipulation of the ED and Respondent at the October 6, 2008 hearing, Respondent failed to renew a previously issued TCEQ Delivery Certificate and failed to post a valid Delivery Certificate as required by 30 TEXAS ADMIN. CODE § 334.8(c)(4)(A)(vii) and 334.8(c)(5)(A)(iii).
15. The appropriate and reasonable penalty, considering all statutorily required factors, for Respondent's failure to renew a previously issued TCEQ Delivery Certificate and failure to post a valid Delivery Certificate as required by 30 TEXAS ADMIN. CODE § 334.8(c)(4)(A)(vii) and 334.8(c)(5)(A)(iii) is \$1,020.

16. As established by the stipulation of the ED and Respondent at the October 6, 2008 hearing, Respondent failed to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance on 49 occasions from May 31, 2002 through April 21, 2005, in violation of TEXAS WATER CODE ANN. §§ 26.3467(a) and 30 TEXAS ADMIN. CODE § 334.8(c)(5)(A)(i).
17. The appropriate and reasonable penalty, considering all statutorily required factors, for Respondent's failure to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance on 49 occasions from May 31, 2002 through April 21, 2005, in violation of TEXAS WATER CODE ANN. §§ 26.3467(a) and 30 TEXAS ADMIN. CODE § 334.8(c)(5)(A)(i) is \$24,990.
18. Respondent failed to ensure that a legible tag, label, or marking with the tank number was permanently applied upon, or affixed to, either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form, as required by 30 TEXAS ADMIN. CODE § 334.8(c)(5)(C).
19. The appropriate and reasonable penalty, considering all statutorily required factors, for Respondent's failure to ensure that a legible tag, label, or marking with the tank number was permanently applied upon, or affixed to, either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form, as required by 30 TEXAS ADMIN. CODE § 334.8(c)(5)(C), is \$1,020.

20. The proposed total administrative penalty of \$34,680 took 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 2002 Penalty Policy.
21. Respondent requested a contested case hearing on the allegations in the EDPRP.
22. On August 17, 2007, the case was referred to SOAH for a hearing.
23. On September 5, 2007, the Commission's Chief Clerk issued notice of the hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.
24. On September 27, 2007, a preliminary hearing was held at the offices of SOAH, William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas, before ALJ Paul Keeper. Respondent was represented by Bart A. Huffman, engineer. Staff attorney Kari Gilbreth appeared for the ED.
25. The hearing was convened on October 6, 2008, by ALJ Sharon Cloninger at SOAH, William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The ED was represented by TCEQ Litigation Division Attorney Anna M. Cox. Respondent was represented by Mr. Huffman. The record closed on October 6, 2008.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. §§ 5.013 and 7.002.
2. Respondent was notified of its alleged violations, the proposed penalties, and of the opportunity to request a hearing on the alleged violations or the penalties, as required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104.
3. Respondent was notified of the hearing on the alleged violations and the proposed penalties, as required by TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TEX. ADMIN. CODE § 155.27, and 30 TEX. ADMIN. CODE §§ 39.25 and 80.6.
4. 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.
5. Respondent violated TEXAS WATER CODE ANN. § 26.3475(d) and 30 TEXAS ADMIN. CODE § 334.49(a) by failing to equip the UST system with corrosion protection.
6. Respondent violated TEXAS WATER CODE ANN. § 26.3475(a) and (c)(1) and 30 TEXAS ADMIN. CODE § 334.50(b)(1)(A) and (b)(2) by failing to monitor USTs tanks and piping system in a manner which would detect a release at a frequency of at least once every month.

7. Respondent violated 30 TEXAS ADMIN. CODE § 334.48(c) by failing to properly conduct inventory control of all USTs involved in the retail sale of petroleum substances such as motor fuel.
8. Respondent violated 30 TEXAS ADMIN. CODE § 334.8(c)(4)(A)(vii) and 334.8(c)(5)(A)(iii) by failing to renew a previously issued TCEQ Delivery Certificate and failing to post a valid Delivery Certificate.
9. Respondent violated TEXAS WATER CODE ANN. §§ 26.3467(a) and 30 TEXAS ADMIN. CODE § 334.8(c)(5)(A)(i) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance on 49 occasions from May 31, 2002 through April 21, 2005.
10. Respondent violated 30 TEXAS ADMIN. CODE § 334.8(c)(5)(C) by failing to ensure that a legible tag, label, or marking with the tank number was permanently applied upon, or affixed to, either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form.
11. Based on the above Findings of Fact and Conclusions of Law, an administrative penalty of \$34,680 is a reasonable exercise of the Commission's authority under TEX. WATER CODE ANN. § 7.051 and takes account of all factors set out in TEX. WATER CODE ANN. § 7.053.

12. Based on the above Findings of Facts and Conclusions of Law, the Commission should assess Respondent an administrative penalty of \$34,680.

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, Respondent shall pay an administrative penalty in the amount of \$34,680 for violations of TEX. WATER CODE ANN. ch. 26 and rules of the TCEQ.
2. The imposition of this administrative penalty set forth in this Order resolves only the violations that are the subject of the Order. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Issa Ahmad, Docket No. 2005-1144-PST-E" to:

Financial Administration Division, Revenues
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

3. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines Respondent has not complied with one or more of the terms or conditions of this Order.
4. The Chief Clerk shall provide a copy of this Order to all of the parties.
5. The effective date of this Order is the date the order is final, as provided by TEX. GOV'T. CODE ANN § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.
7. 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 denied for want of merit.

Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Buddy Garcia, Chairman
For the Commission**