

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
H. S. Buddy Garcia, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 17, 2007

**Via Interagency mail, and  
Via Facsimile Transmission to: (512) 475-4994**

The Honorable Shannon Kilgore  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

Re: The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and The Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision;  
Hamsho Inc.; RN102409430  
SOAH Docket No. 582-06-2964; TCEQ Docket No. 2005-1287-PST-E

To The Honorable Judge Kilgore:

Please find enclosed a copy of 1) the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and 2) the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision. These pleadings are being filed in response to your Proposal for Decision signed on August 2, 2007. If you have any questions or comments, please call me at (512) 239-0624.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Curnutt".

Mark A. Curnutt  
Attorney  
Litigation Division

Enclosures

cc: Office of the Chief Clerk, MC 105  
TCEQ Central Records, MC 212  
Ms. Jennifer Fleck, *Ted A. Cox, P.C.*, 4910 Dacoma, Suite 100, Houston, Texas 77092

2007 AUG 17 PM 1:58

CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-06-2964  
TCEQ DOCKET NO. 2005-1287-PST-E

EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
PETITIONER

VS.

HAMSHO, INC.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW  
JUDGE'S PROPOSAL FOR DECISION**

COMES NOW the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), represented by the Litigation Division, and files his Exceptions to the Administrative Law Judge's Proposal for Decision. In support thereof, the Executive Director would show the following:

**I. PROPOSED ORDER**

The Executive Director ("ED") respectfully requests that the ALJ make the following revisions to the Proposed Order:

**INTRODUCTION**

The Executive Director respectfully requests that the introductory paragraph be revised to change the title of the petition considered by the Commission in assessing administrative penalties and ordering corrective actions of Hamsho, Inc. Currently, the sentence reads, "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 and requiring certain corrective actions of Hamsho, Inc. (Respondent)." The sentence should be changed and revised to reflect the underlined title, "On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's First Amended Report and Petition (EDFARP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring certain corrective actions of Hamsho, Inc. (Respondent)."

**FINDINGS OF FACT NO. 11**

The Executive Director respectfully requests that Findings of Fact No. 10 be revised to change the title of the petition considered by the Commission in assessing administrative penalties and ordering corrective actions of Hamsho, Inc. Currently the sentence reads. "On April 24, 2006, the ED issued the Executive Director's Preliminary Report and Petition, setting out Respondent's alleged violations and seeking an order assessing an administrative penalty of \$35,125 and requiring corrective action." The sentence should be changed to include the following underlined corrections, "On April 24, 2006, the ED issued the Executive Director's First Amended Report and Petition, setting out Respondent's alleged violations and seeking an order assessing an administrative penalty of \$35,125 and requiring corrective action."

**ORDERING PROVISION NO. 1**

The Executive Director respectfully requests that Ordering Provision No. 1 be revised to maintain consistency with Commission Orders. Ordering Provision No. 1, first sentence reads:

- "1. Within 30 days after the effective date of the Commission's order, Respondent shall:
- a. Establish a system whereby the training records for each employee shall be maintained as long as that employee continues to work at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246;
  - b. Repair the corrosion protection system, conduct a three year corrosion protection test, and begin conducting 60 day rectifier checks, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
  - c. Implement a reporting system whereby the region is notified within 24 hours of a suspected release when the Statistical inventory reconciliation ("SIR") analysis results are noted as "Fail" or "Inconclusive," in accordance with 30 TEX. ADMIN. CODE § 334.50."

The sentence should be changed to include the following underlined corrections:

- "1. Within 30 days after the effective date of this Order, Respondent shall:
- a. Establish a system whereby the training records for each employee shall be maintained as long as that employee continues to work at the Station, in accordance

with 30 TEX. ADMIN. CODE § 115.246;

- b. Repair the corrosion protection system, conduct a three year corrosion protection test, and begin conducting 60 day rectifier checks, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
- c. Implement a reporting system whereby the region is notified within 24 hours of a suspected release when the Statistical inventory reconciliation ("SIR") analysis results are noted as "Fail" or "Inconclusive," in accordance with 30 TEX. ADMIN. CODE § 334.50."

### **ORDERING PROVISION NO. 2**

The Executive Director respectfully requests that Ordering Provision No. 2 be revised to maintain consistency with Commission Orders. Ordering Provision No. 2, first sentence reads:

- "2. Within 60 days after the effective date of the Commission's Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.a through 1.a.c."

The sentence should be changed to include the following underlined corrections:

- "2. Within 60 days after the effective date of this Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.a through 1.c."

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle  
Executive Director

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Mary R. Risner, Division Director  
Litigation Division

By: 

Mark A. Curnutt

State Bar of Texas No. 24051615

Litigation Division, MC 175

P.O. Box 13087

Austin, Texas 78711-3087

Telephone: (512) 239-3400

Fax: (512) 239-3434

**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2007, the original and eleven (11) copies of the foregoing "Exceptions to Administrative Law Judge's Proposal for Decision" ("Exceptions") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Exceptions was mailed via Certified Mail, return receipt requested (Article No. 7004 2510 0003 9113 8437), to:

Jennifer Fleck  
*Ted A. Cox, P.C.*  
4910 Dacoma, Suite 100  
Houston, Texas 77092

I further certify that on this day a true and correct copy of the foregoing Exceptions was hand-delivered, to Blas Coy, Jr., Office of the Public Interest Counsel, Texas Commission on Environmental Quality - MC 103.

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via fax to 512/475-4994 and mailed via inter agency mail, to:

The Honorable Shannon Kilgore  
Administrative Law Judge  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 AUG 17 PM 1:59  
CHIEF CLERKS OFFICE



Mark A. Curnutt  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality