

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge
August 2, 2007

2007 AUG -2 PM 1:04
CHIEF CLERK'S OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Derek Seal
General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-06-2964; TCEQ Docket No. 2005-1287-PST-E; In Re: Executive Director of the Texas Commission on Environmental Quality v. Hamsho, Inc.

Dear Mr. Seal:

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 August 22, 2007. Any replies to exceptions or briefs must be filed in the same manner no later than September 4, 2007.

This matter has been designated **TCEQ Docket No. 2005-1287-PST-E ; SOAH Docket No. 582-06-2964**. 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,

A handwritten signature in black ink, appearing to read "Shannon Kilgore".

Shannon Kilgore
Administrative Law Judge

SK/ap
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 417-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: HAMSHO INC

SOAH DOCKET NUMBER: 582-06-2964

REFERRING AGENCY CASE: 2005-1287-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ SHANNON KILGORE**

REPRESENTATIVE / ADDRESS

PARTIES

BLAS J. COY, JR.
OFFICE OF THE PUBLIC INTEREST COUNSEL
MC-103 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

JENNIFER FLECK
TED A. COX, P.C.
4910 DACOMA, STE. 100
HOUSTON, TX 77092
(713) 956-9400 (PH)
(713) 956-8485 (FAX)

HAMSHO, INC.

MARK CURNETT
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-0626 (PH)
(512) 239-3434 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

xc: Docket Clerk, State Office of Administrative Hearings

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

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EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner

§
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BEFORE THE STATE CHIEF CLERKS OFFICE

OF

V.

HAMSHO, INC.,
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 Hamsho, Inc. (Hamsho or Respondent). Respondent owns and operates a convenience store, with the retail sale of petroleum products, in Port Arthur. The ED alleges that Respondent has violated the Commission's rules and applicable provisions of the Texas Health and Safety Code and the Texas Water Code relating to underground storage tanks (USTs) and control of vehicle refueling emissions. The ED requests imposition of an administrative penalty of \$35,125 and a requirement that Respondent implement corrective measures.

The parties have stipulated to the violations and the need for the requested corrective action. The only issue in dispute is the appropriateness of the penalty amount sought by the ED.

The Administrative Law Judge (ALJ) recommends that the Commission order Respondent to perform the corrective action and pay the administrative penalty amount recommended by the ED.

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 parties waived a preliminary hearing in this matter. ALJ Shannon Kilgore convened the hearing on the merits on June 13, 2007, at the hearings facility of the State Office of Administrative Hearings, located on the 4th floor of the William P. Clements State Office Building, 300 W. 15th St., Austin, Texas. The ED was represented by TCEQ Litigation Division Attorney Mark Curnutt. Respondent was represented by attorney Jennifer Fleck. The hearing adjourned and the record closed that same day.

III. DISCUSSION

A. The Parties' Stipulations and the Remaining Disputed Issue

The parties stipulated to a number of facts, including the following:

- ◆ Respondent is subject to the enforcement authority of the TCEQ.
- ◆ At the time of the alleged violations, Respondent owned and operated a convenience store in Port Arthur, Texas, with retail sales of petroleum products.
- ◆ On May 2, 2005, Hamsho failed to maintain a record of the testing conducted at the motor vehicle fuel dispensing facility and proof of attendance and completion of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility, as required by 30 TEX. ADMIN. CODE § 115.246(4) and (5) and TEX. HEALTH & SAFETY CODE § 382.085(b). To date, Hamsho has not verified compliance with respect to this violation.
- ◆ On May 2, 2005, Hamsho failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment as required by 30 TEX. ADMIN. CODE § 334.50(a)(1)(A), (b)(2)(A)(i)(III), and (d)(9)(A)(iii) and TEX. WATER CODE § 26.3475(a). Hamsho provided documentation verifying compliance with respect to this violation on July 1, 2005.
- ◆ On May 2, 2005, Hamsho failed to provide and maintain the Stage II Vapor Recovery System in proper operating condition and free of defects as required by

30 TEX. ADMIN. CODE § 115.242(3) and (3)(A). Hamsho did not have the required swivel adaptors installed on the Stage 1 dry break and product fill adapters by the specified July 1, 2004 implementation date, and the flow rate determination test failed during a test on June 23, 2005, due to a sump pump that did not pump at full capacity. Hamsho provided documentation verifying compliance with respect to this violation on August 25, 2005.

- ◆ On May 2, 2005, Hamsho failed to verify proper operation of Stage II equipment at least once every 12 months or upon major system replacement or modification as required by 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b). No annual testing to verify proper operation of the Stage II equipment was conducted by Hamsho in 2003 or 2004. To date, Hamsho has not verified compliance as to this violation.
- ◆ On May 2, 2005, Hamsho failed to equip the UST with corrosion protection and have the system designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system as required by 30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d). Due to Hurricane Rita's effects on the gulf coast area, Hamsho was given a compliance extension for this violation until November 23, 2005. To date, Hamsho has not verified compliance with respect to this violation.
- ◆ On May 2, 2005, Hamsho failed to provide proper overfill prevention equipment for the UST system as required by 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2). Hamsho provided documentation verifying compliance with respect to this violation on June 23, 2005.
- ◆ On May 2, 2005, Hamsho failed to reconcile inventory control records on a monthly basis as required by 30 TEX. ADMIN. CODE § 334.48(c). Hamsho provided documentation verifying compliance with respect to this violation on July 1, 2005.
- ◆ On May 2, 2005, Hamsho failed to report to the agency any UST system analysis report result other than a "pass" as a suspected release from an UST as required by 30 TEX. ADMIN. CODE §§ 334.50(d)(9)(A)(iv) and 334.72. Reports submitted by Hamsho indicate there was a suspected release in February 2005 that was not investigated or reported.
- ◆ On May 2, 2005, Hamsho failed to immediately investigate and confirm all suspected releases of regulated substances at a UST site within 30 days as required by 30 TEX. ADMIN. CODE §§ 334.74(1). Hamsho provided documentation verifying compliance with respect to this violation on July 20, 2005.

- ◆ The assessed recommended administrative penalty has been correctly calculated in the amount of \$35,125.00. The ED correctly applied the September 2002 Penalty Policy established by the Commission in calculating the penalty in this enforcement action.

The parties also stipulated to the corrective action to be taken by Hamsho, including: the establishment of a system to maintain employee training records, repairing the corrosion protection system, and implementing a reporting system for suspected releases.¹ Because of the parties' stipulations, there is only one contested issue in this case: whether Respondent has the ability to pay a penalty of \$35,125 and, if so, over what amount of time it will be required to pay.

B. Discussion

Applicable law. The Commission's rules provide that a respondent in an enforcement case who asserts an inability to pay a recommended penalty has the burden of establishing that a lesser penalty is justified under the person's financial circumstances.²

ED's evidence and argument. The ED offered the testimony of Donna Chaffin, a certified public accountant and budget analyst with the TCEQ. Ms. Chaffin reviews financial information submitted by parties claiming an inability to pay proposed penalties in enforcement matters. Ms. Chaffin testified that whenever a party to an enforcement matter asserts an inability to pay the recommended penalty, she sends the party a list of required financial information to be submitted. The required items include disclosure forms from banks, leases and notes held by the party, tax returns, and financial statements. After analyzing the information presented, she makes a recommendation as to whether the party can pay the penalty.

¹ The stipulated corrective action is incorporated in the accompanying proposed order for this case.

² 30 TEX. ADMIN. CODE § 70.8(a).

In this case, stated Ms. Chaffin, Hamsho failed to supply all of the requested information. Hamsho failed to submit a copy of a lease, a copy of a note payable to Wachovia Bank, and a disclosure form listing the loan account at Wachovia Bank. Nevertheless, Ms. Chaffin analyzed what materials she did receive and concluded that Hamsho had failed to demonstrate an inability to pay. In fact, according to Ms. Chaffin, Hamsho has access to cash that could be used to pay the penalty in full. She found indications of such excess cash in Hamsho's financial statements, bank statements, and tax records, including a receivable from an affiliated company, a deposit with the Internal Revenue Service (IRS) resulting from a tax overpayment in 2005, and excessive rent paid to a related company. Ms. Chaffin stated that her TCEQ team leader, a senior financial analyst with the Commission, participated in reviewing the case and concurred with her assessment.

Respondent's evidence and argument. Mr. Firdous Hamani³ testified on behalf of Hamsho. He indicated that in 1999 he or one of his companies purchased the store in question, which was one of 11 stores called the "Prince Texas Group." He said that the investigations that gave rise to the allegations in this case occurred prior to the signing of an agreed order in a 2001 lawsuit brought by the TCEQ and involving eight or nine of the 11 stores. Penalties of about \$68,000 were assessed in connection with that case, but the total penalty was reduced to \$6,800 because he showed he was unable to pay. He further stated that in October 2005 he signed an agreed order concerning eight of the stores.

Mr. Hamani stated that in the spring of 2005, the same stores were investigated by the TCEQ and similar violations were found – the violations alleged in this case. At that time, Mr. Hamani was still trying to meet the technical requirements from the first enforcement case. Two of the stores were owned by a corporation called SMW, and the TCEQ had fined them about \$50,000; Mr. Hamani stated he owns the real estate and is responsible for paying those fines. He stated he is responsible for paying still other fines as well.

³ Ms. Chaffin testified that Mr. Firdous Hamani owes 100 per cent of Hamsho's shares.

Mr. Hamani is also paying an \$11,000 note for the Prince Texas Group stores. He collects \$6,000 per month from the leased stores, but is \$5,000 short every month. Of the 11 stores, three are closed but he is still paying penalties in connection with those stores.

According to Mr. Hamani, the store at issue in this case is not doing too well, nor too badly – just okay. Of the store's three gas pumps, one was broken in Hurricane Rita and he has no money to repair it.

Mr. Hamani testified that Hamsho's bank account has about \$75,000, but the funds are necessary to cover money order withdrawals, gasoline withdrawals, and check cashing withdrawals. He said that the account balance fluctuates a great deal.

Mr. Hamani stated that for all these reasons, Hamsho is unable to pay \$35,000 in penalties.

On cross-examination, Mr. Hamani acknowledged that the violations at issue in this case are not the same as the violations addressed in the 2005 agreed order, but he said that all the violations are similar and related. He also acknowledged that the 2005 agreed order was against Prince Texas Group and the instant case is against Hamsho, although Mr. Hamani said he owns both. Mr. Hamani testified that Hamsho has one loan and that it is current on its payments. However, Mr. Hamani stated he owns other entities that have a lot of debt.

Hamsho also offered in evidence a number of documents,⁴ including some responses to specific inquiries about finances from the TCEQ, some tax documents and financial statements, and a number of commercial checking account statements and loan invoices for Hamsho.

⁴ These documents were offered and admitted collectively as Respondent's Exhibit 1, consisting of approximately 50 pages of unnumbered documents about which Hamsho offered no explanatory testimony.

ALJ's finding and recommendation. Through Mr. Hamani's testimony and the documentation offered in evidence, Hamsho has proven that it has a commercial loan with a balance of about \$47,000. The evidence also shows that Mr. Hamani owns several companies and stores that collectively owe more than \$100,000 dollars in penalties and commercial debt. However, the ALJ cannot conclude on the basis of this evidentiary record that Hamsho is unable to pay the recommended penalty of \$35,125. It appears that Hamsho is solvent and has been earning profits in recent years. Ms. Chaffin testified that, based on the financial information she had reviewed, including the materials offered by Hamsho at hearing, the company had not demonstrated an inability to pay. Ms. Chaffin identified sources of cash, such as a deposit with the IRS and excessive rent paid to a related company, that Hamsho's evidence does not specifically address.

After reviewing the evidence, the ALJ concludes that Hamsho has failed to meet its burden to prove that it cannot pay the recommended penalty. Therefore, the ALJ recommends that Hamsho be ordered to pay an administrative penalty of \$35,125 and perform the stipulated corrective action.⁵

SIGNED August 2, 2007.



**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

⁵ The parties' stipulations included the following language: "If it is determined that the respondent has the ability to pay the assessed administrative penalty, the amount and duration of payments will also be at issue subject to adjudication." ED Exhibit E (paragraph 26). Neither party offered evidence or argument related to the issue of a payment schedule or TCEQ policy concerning penalty installment payment plans.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Assessing Administrative Penalties and Requiring Certain Actions of
Hamsho, Inc.

SOAH DOCKET NO. 582-06-2964
TCEQ DOCKET NO. 2005-1287-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 and requiring certain corrective actions of Hamsho, Inc.(Respondent). Shannon Kilgore, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on June 13, 2007, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, represented by Jennifer Fleck, and the Commission's Executive Director (ED), represented by Mark Curnutt, 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. At the time of the alleged violations, Respondent owned and operated a convenience store (store) located at 1125 Jefferson Drive, Port Arthur, Jefferson County, Texas, with retail sales of petroleum products.
2. On May 2, 2005, Respondent failed to maintain a record of the testing conducted at the motor vehicle fuel dispensing facility and proof of attendance and completion of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility. To date, Respondent has not remedied this deficiency.
3. On May 2, 2005, Respondent failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment. Respondent provided documentation verifying compliance with respect to this deficiency on July 1, 2005.
4. On May 2, 2005, Respondent failed to provide and maintain the Stage II Vapor Recovery System in proper operating condition and free of defects. Respondent did not have the required swivel adaptors installed on the Stage 1 dry break and product fill adapters by the specified July 1, 2004 implementation date, and the flow rate determination test failed during a test on June 23, 2005, due to a sump pump that did not pump at full capacity. Respondent provided documentation verifying compliance with respect to this deficiency on August 25, 2005.
5. On May 2, 2005, Respondent failed to verify proper operation of Stage II equipment at least once every 12 months or upon major system replacement or modification. No annual testing to verify proper operation of the Stage II equipment was conducted by Respondent in 2003 or 2004. To date, Respondent has not verified compliance as to this deficiency.

6. On May 2, 2005, Respondent failed to equip the UST with corrosion protection and have the system designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system. Due to Hurricane Rita's effects on the gulf coast area, Respondent was given a compliance extension for this violation until November 23, 2005. To date, Respondent has not verified compliance with respect to this deficiency.
7. On May 2, 2005, Respondent failed to provide proper overfill prevention equipment for the UST system. Respondent provided documentation verifying compliance with respect to this deficiency on June 23, 2005.
8. On May 2, 2005, Respondent failed to reconcile inventory control records on a monthly basis. Respondent provided documentation verifying compliance with respect to this deficiency on July 1, 2005.
9. On May 2, 2005, Respondent failed to report to the agency any UST system analysis report result other than a "pass" as a suspected release from a UST. Reports submitted by Respondent indicate there was a suspected release in February 2005 that was not investigated or reported.
10. On May 2, 2005, Respondent failed to immediately investigate and confirm all suspected releases of regulated substances at a UST site within 30 days. Respondent provided documentation verifying compliance with respect to this deficiency on July 20, 2005.
11. 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.

12. On June 1, 2006, Respondent requested a contested case hearing regarding this enforcement action.
13. Respondent also sought staff review of his ability to pay the recommended penalty.
14. Respondent provided financial records and other information for review by the ED's staff, although the information was incomplete.
15. Donna Chaffin, a financial analyst with the TCEQ, evaluated Respondent's ability to pay the \$35,125 penalty calculated by the ED. Ms. Chaffin determined, based on the information submitted, that Respondent could pay the penalty.
16. On July 25, 2006, 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.
17. The preliminary hearing in this case was waived by the parties. The ALJ issued a written order admitting the jurisdictional documents, determining that the Commission and SOAH had jurisdiction over the matter, and establishing a schedule.
18. The hearing on the merits was convened on June 13, 2007, by ALJ Shannon Kilgore. The record closed the same day.
19. Respondent is solvent and has been earning profits in recent years.

20. Respondent has sources of cash, such as a deposit with the IRS and excessive rent paid to a related company.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority. TEX. WATER CODE ANN. §§ 5.013 and 7.002.
2. 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. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties. 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. Respondent violated 30 TEX. ADMIN. CODE § 115.246(4) and (5) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain a record of the testing conducted at the motor vehicle fuel dispensing facility and proof of attendance and completion of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility.
5. Respondent violated 30 TEX. ADMIN. CODE § 334.50(a)(1)(A), (b)(2)(A)(i)(III), and (d)(9)(A)(iii) and TEX. WATER CODE § 26.3475(a) by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment.

6. Respondent violated 30 TEX. ADMIN. CODE § 115.242(3) and (3)(A) by failing to provide and maintain the Stage II Vapor Recovery System in proper operating condition and free of defects.
7. Respondent violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of Stage II equipment at least once every 12 months or upon major system replacement or modification.
8. Respondent violated 30 TEX. ADMIN. CODE § 334.49(a)(2) and TEX. WATER CODE § 26.3475(d) by failing to equip the UST with corrosion protection and have the system designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system.
9. Respondent violated 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2) by failing to provide proper overfill prevention equipment for the UST system.
10. Respondent violated 30 TEX. ADMIN. CODE § 334.48(c) by failing to reconcile inventory control records on a monthly basis.
11. Respondent violated 30 TEX. ADMIN. CODE §§ 334.50(d)(9)(A)(iv) and 334.72 by failing to report to the agency any UST system analysis report result other than a “pass” as a suspected release from an UST.
12. Respondent violated 30 TEX. ADMIN. CODE §§ 334.74(1) by failing to immediately investigate and confirm all suspected releases of regulated substances at a UST site within 30 days.

13. The ED correctly applied the September 2002 Penalty Policy established by the Commission in calculating the penalty in this enforcement action.
14. Respondent had the burden of proof to establish its inability to pay the calculated penalty. TEX. ADMIN. CODE § 70.8(a).
15. Respondent has failed to prove that it is unable to pay the calculated penalty.
16. Based on the above Findings of Fact and Conclusions of Law, an administrative penalty of \$35,125 should be assessed against Respondent. TEX. WATER CODE § 7.053; 30 TEX. ADMIN. CODE § 70.8(a).
17. Based on the above Findings of Facts and Conclusions of Law, ordering Respondent to carry out the corrective actions specified below is a reasonable exercise of the Commission's authority. TEX. WATER CODE § 7.073.

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. 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.
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 certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. Respondent shall submit copies of all correspondence, reports, and documentation required by these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Keith Anderson
Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892.

4. Respondent is assessed an administrative penalty in the amount of thirty-five thousand one hundred twenty-five dollars (\$35,125.00) for violations of the Commission's rules and applicable statutes.
5. All checks submitted to pay the penalty imposed by this Order shall be made out to "The Texas Commission on Environmental Quality."
6. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Hamsho, Inc.; Docket No. 2005-1287-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.

7. Respondent's payment of the penalty and compliance with all the terms and conditions set forth in this Order resolve 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.

8. 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.
9. The Chief Clerk shall provide a copy of this Order to all of the parties.
10. 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.
11. 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.
12. 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

**Kathleen Hartnett White, Chairman
For the Commission**