

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

2008 AUG 19 PM 3:54  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

August 19, 2008

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

**VIA HAND DELIVERY**

**Re: SOAH Docket No. 582-08-3218; TCEQ Docket No. 2005-2000-PST-E; In the Matter of an Enforcement Action against Asad Ali Corporation d/b/a Sunrise Food mart; RN103023701**

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 September 8, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than September 18, 2008.

This matter has been designated **TCEQ Docket No. 2005-2000-PST-E, SOAH Docket No. 582-08-3218**. 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 "Howard S. Seitzman".

Howard S. Seitzman  
Administrative Law Judge

HSS/pp  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

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Austin, Texas 78701

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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)

**STYLE/CASE:** ASAD ALI CORP / SUNRISE FOOD MART

**SOAH DOCKET NUMBER:** 582-08-3218

**REFERRING AGENCY CASE:** 2005-2000-PST-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ HOWARD S. SEITZMAN**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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AKBER GILANI  
PRESIDENT AND REGISTERED AGENT  
D/B/A SUNRISE FOOD MART  
333 OAK WELL COURT, 1020  
SAN ANTONIO, TX 78218

D/B/A SUNRISE FOOD MART

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AKBER GILANI  
PRESIDENT AND REGISTERED AGENT  
4103 COMMERCE AVENUE  
SAN ANTONIO, TX 78221

AKBER GILANI

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AKBER GILANI  
PRESIDENT AND REGISTERED AGENT  
1539 PALO ALTO ROAD  
SAN ANTONIO, TX 78211

AKBER GILANI

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xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-08-3218  
TCEQ DOCKET NO. 2005-2000-PST-E

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 AUG 19 PM 3:54

IN THE MATTER OF AN  
ENFORCEMENT ACTION AGAINST  
ASAD ALI CORPORATION DBA  
SUNRISE FOOD MART;  
RN103023701

§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

CHIEF CLERKS OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) alleges that Asad Ali Corporation d/b/a Sunrise Food Mart (Respondent) has violated portions of the TEX. WATER CODE and 30 TEX. ADMIN. CODE. The ED asks the Commission to enter an order assessing an administrative penalty against Respondent in the amount of \$2,340.00 for these violations. He also recommends that the Commission order Respondent to undertake corrective actions necessary to bring his operations into compliance.

Respondent, through Jack Gilani, filed a response to the Executive Director's First Amended Report and Petition (EDFARP) requesting a hearing. The case was transferred to the State Office of Administrative Hearings (SOAH) for hearing.

Although the required notice of hearing was sent to him, neither Mr. Gilani nor anyone on Respondent's behalf appeared at the hearing or sought a continuance. The ED moved for the issuance of a default order deeming the alleged facts true, imposing the proposed penalty, and ordering Respondent to take the necessary corrective action. The Administrative Law Judge recommends that the Commission grant the ED's motion and issue the attached default order granting the relief requested by the ED.

**SIGNED August 19, 2008.**

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

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**AN ORDER**

**Assessing Administrative Penalties Against and Ordering Corrective Action by  
Asad Ali Corporation d/b/a Sunrise Food Mart  
SOAH DOCKET NO. 582-08-3218  
TCEQ DOCKET NO. 2005-2000-PST-E**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Report and Petition (EDFARP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Asad Ali Corporation d/b/a Sunrise Food Mart (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).

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 1539 Palo Alto Road, San Antonio, Bexar County, Texas (Facility). Respondent's two underground storage tanks (USTs) are not exempt or excluded from regulation under the TEX. WATER CODE ANN. (Water Code) or the rules of the Commission. Respondent's USTs contain a regulated petroleum substance as defined in the rules of the Commission.

2. During an inspection conducted on November 18, 2005, a TCEQ San Antonio Regional Office investigator documented that Respondent violated the following requirements:
  - a. 30 TEX. ADMIN. CODE (TAC) § 334.49(c)(2)(C) and Water Code § 26.3475(d) by failing to inspect the impressed current cathodic protection system at least once every sixty days to ensure that the rectifier and other system components were operating properly. Specifically, Respondent did not inspect the cathodic protection system bimonthly.
  - b. 30 TAC § 334.10(b) by failing to make available legible copies of all required records for inspection upon request by agency personnel. Specifically, Respondent did not maintain corrosion protection records.
3. During a record review conducted on December 14, 2005, a TCEQ Central Office investigator documented that Respondent violated Water Code § 5.702 and 30 TAC § 334.22(a) by failing to pay outstanding UST fees and associated late fees for TCEQ Account No. 0052558U for fiscal year 2006.
4. Respondent received notice of the violations on or about November 28, 2005, and February 14, 2006.
5. On April 4, 2008, the ED issued the EDFARP and mailed it to Respondent via its President and Registered Agent, Akber Gilani. The EDFARP was mailed to Respondent at three separate addresses on file with the Commission via certified mail, return receipt requested, and via first class mail.

6. In the EDFARP, the ED alleged, based on the above-described inspections that Respondent had violated Water Code §§ 5.702 and 26.3475(d) and 30 TAC §§ 334.10(b), 334.22(a), and 334.49(c)(2)(C).
7. In the EDFARP, the Executive Director recommended that the Commission enter an order assessing an administrative penalty against Respondent in the amount of \$2,340.00 for the alleged violations.
8. The Commission adopted a penalty policy on September 1, 2002 (Penalty Policy).
9. The penalty proposed by the ED was calculated in accordance with the Penalty Policy and the EDFARP included the specific calculations.
10. In the EDFARP, the Executive Director recommended that the Commission direct Respondent to take the corrective actions listed in the Ordering Provisions below to bring the Facility into compliance with the Water Code and the Commission's rules.
11. On April 24, 2007, Respondent, through Jack Gilani, filed an answer and a request for hearing. The handwritten answer and request for hearing was filed on Respondent's letterhead reflecting a street address of 1539 Palo Alto Road, San Antonio, Texas, 78211-4025.
12. On May 21, 2008, the ED asked the Commission's Chief Clerk to refer this case to SOAH for hearing, which she did.
13. On June 4, 2008, the Chief Clerk mailed a notice of hearing to Respondent via its President and Registered Agent, Akber Gilani, at three addresses of record with the Commission, including 1539 Palo Alto Road, San Antonio, Texas, 78211-4025.

14. On June 5, 2008, at 1:58 p.m., delivery of the notice of hearing was accepted at 1539 Palo Alto Road, San Antonio, Texas, 78211-4025 by a Mr. Mohammad.
15. The Chief Clerk also sent the notice of hearing to the ED and the Office of Public Interest Counsel (OPIC).
16. The notice of hearing included a copy of the EDFARP and contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
17. The notice of hearing indicated in 12 pt. boldface type that if Respondent failed to appear at the hearing, a default judgment could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true.
18. On July 24, 2008, ALJ Seitzman convened the hearing as indicated in the notice. The ED, represented by Patrick Jackson, appeared, but Respondent did not.
19. Prior to the hearing, neither Respondent nor anyone representing Respondent filed a motion to continue the hearing or other communication to explain why Respondent would not attend the hearing.

#### **CONCLUSIONS OF LAW**

1. Respondent is subject to the enforcement authority of the Commission pursuant to Water Code § 7.002, because the violations alleged herein are within the Commission's general jurisdiction, pursuant to Water Code § 5.013, as they involve violations of the state's petroleum storage tank program.

2. Under Water Code § 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.
3. Under Water Code § 7.052, a penalty may not exceed \$10,000 per violation, per day for the violations alleged in this proceeding.
4. Additionally, under Water Code § 7.073, the Commission may order the violator to take corrective action.
5. As required by Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDFARP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.
6. As required by TEX. GOV'T CODE ANN. (Gov't. Code) §§ 2001.051 and 2001.052; Water Code § 7.058; 1 TAC § 155.27, and 30 TAC §§ 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.
7. Additionally, Respondent was notified, in accordance with 1 TAC §155.55, that if Respondent failed to appear at the hearing, a default judgment could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true.
8. 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 Gov't. Code ch. 2003.

9. Based on the above Findings of Fact and Conclusions of Law:
  - a. A default judgment should be entered against Respondent in accordance with 1 TAC § 155.55 and 30 TAC § 70.106(b) and §80.113(d); and
  - b. The allegations contained in the notice of the hearing, including those in the EDFARP attached thereto, are deemed admitted as true.
10. Based on the above Findings of Fact, Respondent has violated Water Code §§ 5.702 and 26.3475(d) and 30 TAC §§ 334.10(b), 334.22(a), and 334.49(c)(2)(C).
11. In determining the amount of an administrative penalty, Water Code § 7.053 requires the Commission to consider:
  - a. the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;
  - b. the impact of the violation on:
    1. air quality in the region;
    2. a receiving stream or underground water reservoir;
    3. instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or
    4. affected persons;
  - c. with respect to the alleged violator:
    1. the history and extent of previous violations;

2. the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
  3. the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
  4. economic benefit gained through the violation; and
  5. the amount necessary to deter future violations; and
- d. any other matters that justice may require.
12. Based on the above Findings of Fact and Conclusions of Law, Respondent should pay an administrative penalty in the amount of \$2,340.00 for the violations found above.
  13. Pursuant to Water Code § 7.073, the Commission may order any person who violates any statute or rule within the Commission's jurisdiction to take corrective action.
  14. Based on the above Findings of Fact and Conclusions of Law, Respondent should take the corrective actions listed in the Ordering Provisions below to bring his Facility into compliance with the Water Code and the Commission's rules.

### **III. ORDERING PROVISIONS**

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

1. Within 30 days after the effective date of this Order, Asad Ali Corporation d/b/a Sunrise Food Mart shall pay an administrative penalty in the amount of \$2,340.00 for the

Asad Ali Corporation d/b/a Sunrise Food Mart  
SOAH Docket No. 582-08-3218  
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violations of Water Code §§ 5.702 and 26.3475(d) and 30 TAC §§ 334.10(b), 334.22(a), and 334.49(c)(2)(C).

2. 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: “Asad Ali Corporation d/b/a Sunrise Food Mart, TCEQ Account No. 0052258U” and sent to:

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

3. The payment of this administrative penalty and taking the corrective actions described below in this Order will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or assessing penalties for other violations that are not raised here.
4. Respondent shall implement the following corrective action measures at the Facility:
  - a. Within 30 days after the effective date of this Order, Asad Ali Corporation d/b/a Sunrise Food Mart shall:
    1. Inspect the rectifier and other components of the corrosion protection system, in accordance with 30 TAC § 334.49; and
    2. Begin maintaining all records pertaining to the UST system, in accordance with 30 TAC §334.10; and
  - b. Within 45 days after the effective date of this Order, Respondent shall submit written

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certification, as described below, and include detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 1, 2, 4.a.1., and 4.a.2. The certifications required by this Order shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is 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.”

The certification shall be submitted to:

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

and

Henry Karnei, Jr., Waste Section Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the

Asad Ali Corporation d/b/a Sunrise Food Mart  
SOAH Docket No. 582-08-3218  
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Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this 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 TAC § 80.273 and Gov't. Code § 2001.144.
8. As required by Water Code § 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**