

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

July 2, 2007

CHIEF CLERK'S OFFICE

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Derek Seal  
General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

Re: SOAH Docket No. 582-07-1252; TCEQ Docket No. 2006-0772-DCL-E; Assessing  
an Administrative Penalty against Brandy Carter d/b/a Carter's Cleaners

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 July 23, 2007. Any replies to exceptions or briefs must be filed in the same manner no later than August 2, 2007.

This matter has been designated **TCEQ Docket No. 2006-0772-DCL-E; SOAH Docket No. 582-07-1252**. 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 "C. Church".

Cassandra J. Church  
Administrative Law Judge

CJC/pp  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

300 West 15th Street Suite 502  
Austin, Texas 78701  
Phone: (512) 475-4993  
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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** BRANDY CARTER / CARTER'S CLEANERS  
**SOAH DOCKET NUMBER:** 582-07-1252  
**REFERRING AGENCY CASE:** 2006-0772-DCL-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ CASSANDRA CHURCH**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

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EXECUTIVE DIRECTOR

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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BRANDY CARTER  
CARTERS CLEANERS  
P. O. BOX 816  
LULING, TX 78648

CARTERS CLEANERS

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xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-07-1252  
TCEQ DOCKET NO. 2006-0772-DCL-E

EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner

VS.

BRANDY CARTER D/B/A  
CARTER'S CLEANERS  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) brought this enforcement action, asserting that Brandy Carter d/b/a Carter's Cleaners (Respondent) violated TEX. HEALTH & SAFETY CODE ANN. § 374.102 (the Act) and 30 TEX. ADMIN. CODE § 337.10(a) by failing to register the dry cleaning drop off station she owned and operated in Luling, Texas (the Facility). The ED sought assessment of a total administrative penalty of \$1,067.00 for the violations.

The ALJ concluded that the ED established that Respondent violated the Act and TCEQ rules on registration of dry cleaning drop off stations. The recommended penalty of \$1,067.00 is consistent with the TEX. WATER CODE ANN. provisions and Commission rules and policy that govern enforcement actions by the Commission. The Commission should find that the violation occurred and assess Respondent an administrative penalty of \$1,067.00.

**II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE**

The hearing on the merits convened on April 17, 2007, at the State Office of Administrative Hearings (SOAH) facility in Austin, Texas. Respondent appeared on her own behalf and Robert R. Mosley, Staff Attorney, represented the ED. The record closed on May 1, 2007, upon receipt of Respondent's federal income tax returns with personal identification information redacted.

Respondent waived the preliminary hearing and did not dispute jurisdiction or notice. Undisputed procedural facts are set out in findings in the Proposed Order.

### III. DISCUSSION

#### A. Applicable Law

Under the Dry Cleaner Environmental Response section of the Act, the operators of establishments both where dry cleaning is performed and drop off stations were required to comply with all provision of the Act and Commission rules.<sup>1</sup> Any dry cleaning facility that went into service on or after September 1, 2003, was required to register.<sup>2</sup> The Commission set an initial deadline of September 1, 2005, for registration. That deadline was extended to April 26, 2006.<sup>3</sup> On March 24, 2006, the ED sent a mass mailing to dry cleaners and operators of drop off stations advising them of the extension of the deadline to April 26, 2006. Shortly thereafter, Staff investigators began inspections of dry cleaners to enforce the registration requirement. This inspection program was titled the Dry Cleaner Initiative.

Non-compliant dry cleaners are subject to administrative penalties for failure to register. The Act provides for penalties of up to \$50.00 per day for each day a facility is not registered.<sup>4</sup> In mid-2006, the ED limited the per-day penalty amount to \$5.00.

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<sup>1</sup> TEX. HEALTH & SAFETY CODE ANN. § 374.102(a) and 30 TEX. ADMIN. CODE § 334.10(a).

<sup>2</sup> 30 TEX. ADMIN. CODE § 337.10(a).

<sup>3</sup> The extension may have been a grace period for an operator and to register without penalty. The terms of the extension are not in the record.

<sup>4</sup> TEX. HEALTH & SAFETY CODE ANN. § 374.252(b) and (c).

## B. Facts and Violations

Between January 2005 and December 2006, Respondent operated the Facility, located at 500 E. Pierce in Luling, Texas. No dry cleaning was performed on the premises; Respondent arranged by contract for dry cleaning services to be performed at a dry cleaning plant.

On June 7, 2006, as part of the Dry Cleaner Initiative, Christopher Wiatrek, a field investigator with the Region 11 Office, visited Carter's Cleaners. He determined that the establishment was subject to Commission regulation but did not display a valid, current registration. Respondent had not obtained such a registration.

Once informed of the violation, Respondent brought her business promptly into compliance. She did not dispute that she had committed the violation. She stated that until Mr. Wiatrek's inspection she had never heard of the TCEQ and did not know that she had an obligation to register her drop off station with the TCEQ. She stated that the letter sent to her business as part of the mass mailing was not mailed to her correct business address, so did not reach her.

It is unfortunate that the notice on the registration extension was apparently misdirected. However, it is a well-established principle of government regulation of business that individuals conducting a regulated business are charged with knowledge of the law governing its operation. Thus, whether Respondent had personal knowledge of the registration law does not determine whether she will be held responsible for compliance. Once she opened a dry cleaning business, Respondent is held responsible for compliance with all applicable statutes and administrative rules.

The ALJ concluded that the ED established the violation alleged by evidence and by Respondent's admission that she did not timely register her drop off station.

### C. Proposed Penalty

The base penalty of \$1,185.00 was calculated as a violation continuing for 237 days, from September 1, 2005, through April 26, 2006. The ED assessed a \$5.00 penalty for each day of non-compliance. The ED considered this a major programmatic violation. The base penalty was reduced 10 per cent, from \$1,185.00 to \$1,067.00, on the basis of Respondent's good faith effort to comply.

The good faith compliance adjustment was the only applicable adjustment. Respondent had no enforcement actions against her and there were no facts that established a greater or lesser degree of culpability or economic benefit, as those terms are defined in TEX. WATER CODE ANN. § 7.053 and in the Commission's 2002 Penalty Policy.<sup>5</sup>

Based on the facts above, the ALJ concludes that a penalty of \$1,067.00 is consistent with the factors in TEX. WATER CODE ANN. § 7.053.<sup>6</sup> The penalty recommended is commensurate with the severity of the violation found to have occurred and is reasonable.

### D. Financial Hardship Application

After the ED proposed imposing a fine of \$1,067.00 against her, Respondent sought adjustment of the penalty on the basis of financial hardship. She stated that the drop off station was marginally profitable and ceased to be profitable at all by the end of 2006. She stated that the only reason she was

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<sup>5</sup> ED Exh. 9.

<sup>6</sup> Under Water Code § 7.053, the ED must consider the following factors:

- the history and extent of previous violations;
- 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;
- the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
- economic benefit gained through the violation;
- the amount necessary to deter future violations; and
- any other matters that justice may require.

able to realize any profit on the business was because she was provided a rent-free business location by a family member. Respondent closed the drop off station in December 2006.

Respondent's federal income tax returns showed she had taxable income of less than \$10,000 in 2004 and no taxable income in 2005.<sup>7</sup> In July 28, 2006, she told TCEQ staff members that she did not have the money to pay the proposed penalty and also continue to operate the business. Respondent stated that she is a single mother and that Luling, with about 5,000 residents, did not have many employment opportunities which offered the flexibility to allow her to care for her daughter.

Respondent also stated that she supplied TCEQ staff members with extensive financial information because she understood that she might have qualified for a hardship adjustment if the proposed penalty was more than one per cent of her income. However, she later learned she was not qualified for such relief because that the ED considered financial hardship only in cases where the fine exceeded \$3,600.00.

The ED did not dispute Respondent's summary of the ED's policy on financial hardship adjustments. The ED did not provide any independent evidence of that policy. The ED's witness on the penalty calculation, Libby Hogue, did not review Respondent's request for financial hardship adjustment and was not personally familiar with those policies. However, the ALJ had no reason to dispute the accuracy of Respondent's recollection and found her credible since her knowledge was gained in the pursuit of her own claim for relief.

Respondent did not clarify whether she also had requested that she be allowed to pay the penalty in installments or had just sought reduction of the proposed penalty amount.

Although Respondent's description of the ED's hardship policy was not disputed, the ALJ was somewhat troubled by not having a more fully-fleshed-out picture of the ED's hardship policy and all the circumstances involving the ED's review of Respondent's case. Nevertheless, based on the only

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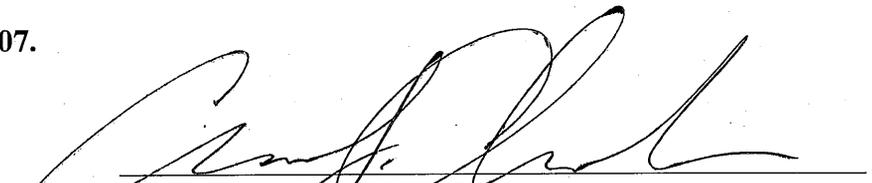
<sup>7</sup> Resp. Exhs. 2 and 3.

evidence in the record, the ALJ concluded that Respondent did not qualify for a reduction of the penalty amount due to the fact that the proposed penalty amount was less than the threshold for consideration. No further adjustment of the penalty amount is warranted.

#### IV. SUMMARY

Based on the preponderance of evidence showing that the violation occurred and the facts supporting the computation of the proposed administrative penalty, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law appearing in the Proposed Order and impose a \$1,067.00 administrative penalty against Respondent.

**SIGNED July 2, 2007.**



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**CASSANDRA J. CHURCH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**ORDER**  
**Assessing an Administrative Penalty**  
**Against**  
**BRANDY CARTER D/B/A**  
**CARTER'S CLEANERS**  
**SOAH DOCKET NO. 582-07-1252**  
**TCEQ DOCKET NO. 2006-0772-DCL-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 an administrative penalty against Brandy Carter d/b/a Carter's Cleaners (Respondent). Cassandra J. Church, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on April 17, 2007, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, who appeared on her own behalf, and the Commission's Executive Director (ED), represented by Robert R. Mosley, 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. Between January 2005 and December 2006, Brandy Carter d/b/a Carter's Cleaners (Respondent) owned and operated a dry cleaning drop station at 500 E. Pierce, Luling, Caldwell County, Texas (the Facility).

2. The Facility was a retail commercial establishment, the primary business of which was to act as a collection point for the drop-off and pick-up of garments or other fabrics sent to a dry cleaning establishment for processing.
3. The Facility was not exempt or excluded from regulation under the Texas Water Code, the Texas Health and Safety Code, or the rules of the Commission.
4. On June 7, 2006, a Commission Field Office investigator determined that Respondent had failed to complete and submit to the Commission the required registration form for a dry cleaning drop station.
5. The deadline for dry cleaning and drop station facilities to complete and submit a registration was September 1, 2005. The Commission extended that deadline to April 26, 2006.
6. On March 24, 2006, the Commission issued a mass mailing to owners of dry cleaning establishments, including drop off stations, advising them of the extension to April 26, 2006.
7. The Commission sent a mailing to Carter's Cleaners on March 24, 2006, but it was not sent to Respondent's then-current business address.
8. The failure to timely register a dry cleaning facility is considered a major programmatic violation on the Commission's penalty matrix, included in the Commission's 2002 Penalty Policy.
9. The period between the September 1, 2005, deadline for registration of a dry cleaning facility and the last day of the extension period, April 26, 2006, comprised 237 days. In mid-2006, the ED assessed a penalty of \$5.00 per day for each day after September 1, 2005, a dry cleaning facility was not registered.
10. Respondent registered the Facility immediately after receiving the Commission's Notice of

Enforcement on June 7, 2006, so made a good faith effort to comply with requirements of the law.

11. Respondent did not have any other enforcement actions against her in the five years preceding the inspection on in June 2006.
12. On September 26, 2006, the ED served the original EDPRP on Respondent, alleging that she had violated TEX. HEALTH & SAFETY CODE ANN. § 347.102 and 30 TEX. ADMIN. CODE § 337.10(a) by failing to register the Facility.
13. The base penalty of \$1,185.00 was calculated as a violation continuing for 237 days, from September 1, 2005, through April 26, 2006, with a \$5.00 penalty assessed for each day of non-compliance.
14. The base penalty was reduced 10 per cent, from \$1,185.00 to \$1,067.00, on the basis of Respondent's good faith effort to comply; no other adjustments to the base penalty were warranted.
15. An administrative penalty of \$1,067.00 takes 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.
16. After receiving the EDPRP containing the proposed penalty, Respondent sought adjustment of the proposed penalty on the basis of financial hardship and submitted financial information, including income tax returns, to the ED for review.
17. In 2006, the ED considered adjustment of a proposed penalty for financial hardship only if the amount of the proposed penalty was \$3,600.00 or above and also exceeded one per cent of a respondent's income. Respondent did not qualify for adjustment of the proposed penalty on the basis of financial hardship.

18. On October 13, 2006, Respondent requested a contested case hearing both on allegations in the EDPRP and on the ED's determination that she did not qualify for consideration of an adjustment of the proposed penalty on the basis of financial hardship.
19. On December 4, 2006, the case was referred to SOAH for a hearing.
20. On December 21, 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.
21. The preliminary hearing set for January 25, 2007, was reset for March 1, 2007. Respondent waived the March 1, 2007, preliminary hearing and the ED established jurisdiction to proceed on agreed evidence.
22. The hearing on the merits was conducted on April 17, 2007, in Austin, Texas, by ALJ Cassandra J. Church. The record closed on May 1, 2007, upon receipt of redacted tax returns from Respondent.
23. Respondent appeared at the hearing on the merits on her own behalf; the ED appeared at the hearing on the merits through his attorney, Robert R. Mosley.

## **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, and TEX. HEALTH & SAFETY CODE ANN. §§ 374.051 and 374.252.
2. Respondent was notified of her alleged violation, the proposed penalty, 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 penalty, 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, as owner of the Facility at the time the violations occurred, was liable for compliance with all regulations governing the operation of a dry cleaning drop station pursuant to TEX. HEALTH & SAFETY CODE ANN. § 374.102(a) and 30 TEX. ADMIN. CODE § 337.10(a).
6. Respondent violated TEX. HEALTH & SAFETY CODE ANN. § 374.102 and 30 TEX. ADMIN. CODE § 337.10(a) by failing to timely register the dry cleaning drop off station owned and operated by her in Luling, Texas.
7. Based on the above Findings of Fact and Conclusions of Law, an administrative penalty of \$1,067.00 is a reasonable exercise of the Commission's authority under TEX. WATER CODE ANN. §§ 7.051 and 7.052 and takes account of all factors set out in TEX. WATER CODE ANN. § 7.053.
8. Based on the above Findings of Facts and Conclusions of Law, the Commission should assess Respondent an administrative penalty of \$1,067.00.

**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 \$1,067.00 for the violations of TEX. HEALTH & SAFETY CODE ANN. § 374.102 and 30 TEX. ADMIN. CODE § 337.10(a).
2. The payment of the administrative penalty herein completely resolves the violation set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Checks rendered to pay the penalty imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Brandy Carter d/b/a Carter's Cleaners, RN 104964564."

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

5. 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.
6. The Chief Clerk shall provide a copy of this Order to all of the parties.

7. 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.
8. 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.
9. 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**

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