

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

April 27, 2007

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2007 APR 27 PM 1:04  
CHIEF CLERKS OFFICE

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

Re: SOAH Docket No. 582-07-1469; TCEQ Docket No. 2006-0901-MLM-E; In Re:  
Chico Auto Parts & Service, Inc.

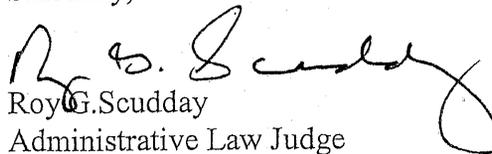
Dear Mr. Seal:

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 May 17, 2007. Any replies to exceptions or briefs must be filed in the same manner no later than May 28, 2007.

This matter has been designated **TCEQ Docket No 2006-0901-MLM-E; SOAH Docket No. 582-07-1469**. 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,

  
Roy G. Scudday  
Administrative Law Judge

RGS/sb  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**WILLIAM P. CLEMENTS BUILDING, Jr.**

**300 West Fifteenth Street**

**Austin, Texas 78701**

**Phone (512) 475-4993**

**Facsimile (512) 475-4994**

**SERVICE LIST**

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

**STYLE/CASE:** CHICO AUTO PARTS & SERVICE INC

**SOAH DOCKET NUMBER:** 582-07-1469

**REFERRING AGENCY CASE:** 2006-0901-MLM-E

---

**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ ROY SCUDDAY**

---

**REPRESENTATIVE / ADDRESS**

**PARTIES**

BLAS J. COY, JR.  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF PUBLIC INTEREST COUNSEL  
MC-173 P.O. BOX 13087  
AUSTIN, TX 78711-3087  
(512) 239-6363 (PH)  
(512) 239-6377 (FAX)

OFFICE OF PUBLIC INTEREST COUNSEL

---

DOCKET CLERK  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF THE CHIEF CLERK  
PO BOX 13087  
AUSTIN, TX 78711  
(512) 239-3300 (PH)  
(512) 239-3311 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

ROBERT R. MOSLEY  
STAFF ATTORNEY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
LEGAL DIVISION  
MC-175 P.O. BOX 13087  
AUSTIN, TX 78711-3087  
(512) 239-0624 (PH)  
(512) 239-3434 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

TERRY HAND  
REGISTERED AGENT  
CHICO AUTO PARTS & SERVICE, INC.  
302 SOUTH WEATHERFORD  
CHICO, TX 76030

CHICO AUTO PARTS & SERVICE, INC.

---

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-07-1469  
TCEQ DOCKET NO. 2006-0901-MLM-E

2007 APR 27 PM 1:04

EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Petitioner

§  
§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

CHIEF CLERKS OFFICE

v.

CHICO AUTO PARTS & SERVICE,  
INC.  
Respondent

OF

ADMINISTRATIVE HEARINGS

## 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 Chico Auto Parts & Service, Inc., (Respondent) violated provisions of the rules of the TCEQ. The ED sought assessment of a total administrative penalty of \$7,350.00 and corrective action.

The ALJ concluded that the ED established that Respondent violated provisions of its rules. The Commission should find the violations occurred, assess Respondent an administrative penalty of \$7,350.00, and require the corrective action requested by the ED.

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

The hearing convened on April 23, 2007, before Administrative Law Judge (ALJ) Roy G. Scudday in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. The ED was represented by Robert R. Mosely, Attorney, Litigation Division. Respondent was represented by its president, Terry Hand, and its secretary-treasurer, Anna Hand. The record was closed at the conclusion of the hearing that day.

Jurisdiction was established at the preliminary hearing held February 22, 2007. Undisputed procedural facts are set out in findings in the Proposed Order.

### III. DISCUSSION

#### A. Violations

On December 2, 2005, Jim Kerlin, an investigator for TCEQ, conducted an investigation at Respondent's auto parts supply and emergency response contractor site located at Business Hwy. 101, Chico, Wise County, Texas. During the investigation, Mr. Kerlin noticed that, among other problems, twenty-five 55-gallon drums and five fiber-pack drums of unknown materials were on the site. On January 12, 2006, TCEQ issued Respondent a Notice of Violation (NOV).<sup>1</sup> Included in the notice, as Recommended Corrective Action for the drums, was a request that an "adequate Waste Determination be conducted on these unknown materials," with "copies of appropriate documentation forwarded" to the Regional office for review. The compliance date for this action was February 10, 2006. Respondent did not provide any of the requested documentation until much later than the compliance date.

On May 9, 2006, Mr. Kerlin conducted a second inspection of Respondent's site. During that inspection, Mr. Kerlin noted that three of the fiber-pack drums had been crushed or had collapsed, releasing contents to adjacent surface soils. Mr. Kerlin also noted a dark powdery material, identified as carbon black residues from a transport truck, that had been discharged to surface soils of the site. The discharge of these wastes was noted as a violation of TCEQ rules as set forth in the June 11, 2006 Investigation Report.<sup>2</sup>

Mr. Kerlin recommended that the stockpiles of contaminated soils be removed for disposal at an authorized facility, and that Respondent notify the Regional office of its compliance by May 15, 2006.

---

<sup>1</sup> ED Exh. 5.

<sup>2</sup> ED Exh. 1.

During the May 9, 2006 inspection, Mr. Kerlin noticed that the 25 drums had been removed from the facility. He was told by Mr. Hand that the drums had been emptied by a tank truck and the contents transported to the Brunson Waste Disposal Well, a site regulated by the Texas Railroad Commission (RRC). The failure to conduct a waste determination on the contents of these drums as well as the contents of the fiber packs was noticed as a second violation of TCEQ rules. The disposal of the contents of the drums in the RRC regulated well was noticed as a third violation because such a well was not authorized to receive non-RRC wastes.

On May 10, 2006, Respondent provided TCEQ with documentation to show that it had contracted for the disposal of the carbon black and the contents of the fiber packs. The documents also identified the contents of the fiber packs as a polymer emulsion adhesive.<sup>3</sup>

In a records review conducted in August 2006, the Staff determined that Respondent failed to prevent the unauthorized discharge of industrial solid waste, in violation of 30 TEX. ADMIN. CODE (TAC) § 335.4, conduct hazardous waste determinations in violation of 30 TAC § 335.62 and 40 CODE OF FEDERAL REGULATIONS (CFR) § 262.11, and dispose of the twenty-five 55-gallon drums at an authorized facility, in violation of 30 TAC § 330.15(c). On November 6, 2006, the ED issued the Executive Director's Preliminary Report and Petition (EDPRP) that cited Respondent for the three violations.<sup>4</sup>

Respondent did not dispute that it had committed the first and third violations, and failed to conduct a waste determination of the contents of the drums. Respondent argued that it did not commit the second part of the second violation in that it did provide documentation showing the waste determination of the contents of the fiber packs. As a result, Respondent contended that the proposed penalty should be decreased.

---

<sup>3</sup> Resp. Exh. 1.

<sup>4</sup> ED Exh. A

## B. Penalties and Corrective Action

The total administrative penalty sought for the three violations was \$7,350.00. This amount includes a fine of \$1,000.00 for the failure to prevent the unauthorized discharge of industrial solid waste, *i.e.*, the contents of the fiber pack drums and the carbon black waste, together with a \$50.00 compliance-history enhancement for one previous NOV for the same or a similar violation.<sup>5</sup> The penalty amount for the second violation includes a fine of \$2,500 for each violation event, one for the failure to conduct a waste determination on the 55-gallon drums and one for the failure to conduct a waste determination on the fiber packs, for a total fine of \$5,000 together with a \$250.00 compliance-history enhancement for one previous NOV for the same or a similar violation. The penalty amount for the third violation of failure to dispose of the contents of the drums at an authorized facility includes a fine of \$1,000, together with a \$50.00 compliance-history enhancement for one previous NOV for the same or a similar violation. There were no adjustments upward for culpability or downward for good faith efforts to comply. The proposed penalty was assessed under terms of the Commission's 2002 Penalty Policy.<sup>6</sup> The only corrective action the ED sought was to require Respondent to submit a plan to avoid the same or similar violations in the future.

Respondent did not dispute the overall accuracy of the ED's calculation of the penalty. However, as noted in the discussion above, it urged reduction of the proposed administrative penalty because it had complied with the requirement to conduct a waste determination on the contents of the fiber packs before their disposal.

Based on the evidence presented, the ALJ agrees that a fine of \$7,350 should be assessed. Respondent was notified of the need to conduct a waste determination on the contents of both sets of containers in January. It was not until after the second inspection in May that Respondent did so regarding the fiber packs. As a result there were two failures to determine the character of the wastes

---

<sup>5</sup> ED Exh. A. The January 12, 2006, notice of violation cited two violations that were subsequently corrected in addition to the violation regarding the waste determination.

<sup>6</sup> ED Exh.2, *Penalty Policy of the Texas Commission on Environmental Quality*, September 2002, RG-253.

at the time of the May inspection, one regarding the contents of the 55-gallon drums and the other regarding the contents of the fiber packs. The fact that Respondent subsequently identified the contents of the fiber packs does not mitigate the fact that the failure to do so at the time of the inspection is considered an event in the computation of the penalty.

Based on the above analysis, the ALJ concludes that a penalty of \$7,350.00 is consistent with the factors in TEX. WATER CODE ANN. § 7.053 which must be addressed in assessing an administrative penalty and with the Commission's 2002 Penalty Policy.<sup>7</sup> The penalty recommended by the ALJ is commensurate with the severity of the violations found to have occurred and is reasonable. The corrective actions proposed by the ED are also appropriate, uncontested, and may be imposed under TEX. WATER CODE ANN. § 7.053(2).

#### IV. SUMMARY

Based on the preponderance of evidence showing that the violations occurred and the factors 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 \$7,350.00 administrative penalty against and require certain corrective action by Respondent.

---

<sup>7</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.

SIGNED April 27, 2007.

  
\_\_\_\_\_  
ROY G. SCUDDAY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** Assessing Administrative Penalties  
Against and Requiring Certain Actions of  
CHICO AUTO PARTS & SERVICE, INC.  
SOAH DOCKET NO. 582-07-1469  
TCEQ DOCKET NO. 2006-0901-MLM-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 by Chico Auto Parts & Service, Inc., (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on April 23, 2007, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, represented by its president, Terry Hand, and its secretary-treasurer, Anna Hand; 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. In 2006, Respondent owned and operated an auto parts supply and emergency response contractor site at Business Hwy 101, Chico, Wise County, Texas, (the Facility).
2. On December 2, 2005, Jim Kerlin, an investigator for TCEQ, conducted an investigation at Respondent's site and noticed that, among other problems, twenty-five 55-gallon drums and five fiber-pack drums of unknown materials were on the site.
3. On January 12, 2006, TCEQ issued Respondent a Notice of Violation (NOV) that included a request that an "adequate Waste Determination be conducted on these unknown materials" with "copies of appropriate documentation forwarded" to the Regional office for review by February 10, 2006. Respondent did not respond to the request.
4. On May 9, 2006, Mr. Kerlin conducted a second inspection of Respondent's site, during which he noted that three of the fiber-pack drums had been crushed or had collapsed, releasing contents to adjacent surface soils, and that a dark powdery material, identified as carbon black residues from a transport truck, had also been discharged to surface soils of the site.
5. During the May 9, 2006 inspection, Mr. Kerlin noticed that the twenty-five 55-gallon drums had been removed from the facility and determined that they had been emptied by a tank truck and the contents transported to the Brunson Waste Disposal Well, a site regulated by the Texas Railroad Commission (RRC).
6. On May 10, 2006, Respondent provided TCEQ with documentation to show that it had contracted for the disposal of the carbon black residues and the contents of the fiber packs, which were identified as a polymer emulsion adhesive.

7. On November 6, 2006, the ED served the EDPRP on Respondent, alleging that it failed to prevent the unauthorized discharge of industrial solid waste, conduct hazardous waste determinations, and dispose of the twenty-five 55-gallon drums at a TCEQ authorized facility.
8. The ED proposed a total base penalty of \$7,000.00, which comprised a base penalty of \$1,000.00 each for the first and third violations and a base penalty of \$2,500.00 for each failure to conduct a waste determination, construing the failure regarding the contents of the 55-gallon drums as one event and the failure regarding the contents of the fiber packs as a second event.
9. The ED also proposed a penalty enhancement of \$350.00, which was five percent of the total proposed base penalty and represented a compliance-history enhancement for issuance of a notice of violation (NOV) to Respondent for the same or similar violations.
10. The total penalty for the three violations and proportionate enhancement for a prior NOV on the same or similar violations would be \$7,350.00.
11. An administrative penalty of \$7,350.00 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.
12. On November 10, 2006, Respondent requested a contested case hearing on allegations in the EDPRP.
13. On January 10, 2007, the case was referred to SOAH for a hearing.

14. On January 29, 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.
15. At the preliminary hearing that was held on February 22, 2007, the ED established jurisdiction to proceed.
16. The hearing on the merits was conducted on April 23, 2007, in Austin, Texas, by ALJ Roy G. Scudday, and the record closed on that date.
17. Respondent was represented at the hearing on the merits by Terry Hand, its president, and Anna Hand, its secretary-treasurer.

## II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. § 7.051 *et. seq.*, TEX. HEALTH & SAFETY CODE ANN. ch. 361, and 40 CODE OF FEDERAL REGULATIONS § 262.11.
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, as owner and operator of the Facility at the time the violations occurred, was liable for compliance with all regulations governing its operation, pursuant to 30 TEX. ADMIN. CODE ch. 335.
6. Respondent violated 30 TEX. ADMIN. CODE (TAC) § 335.4 by failing to prevent the unauthorized discharge of industrial solid waste, specifically a polymer emulsion adhesive, and carbon black residues.
7. Respondent violated 30 TAC § 335.62 and 40 CODE OF FEDERAL REGULATIONS § 262.11 by failing to conduct hazardous waste determinations, specifically of twenty-five 55-gallon drums and five fiber pack drums.
8. Respondent violated 30 TAC § 330.15(c). by failing to dispose of twenty-five 55-gallon drums at an authorized facility.
9. Based on the above Findings of Fact and Conclusions of Law, an administrative penalty of \$7,350.00 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(2).
10. Based on the above Findings of Facts and Conclusions of Law, the Commission should assess Respondent an administrative penalty of \$7,350.00.
11. Based on the above Findings of Facts and Conclusions of Law, the corrective action specified below of implementing procedures to prevent the same or similar events in the

future is a reasonable exercise of the Commission's authority under TEX. WATER CODE ANN. § 7.073.

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 \$7,350.00 for violations of rules of the TCEQ. Payment shall be made payable to "TCEQ" and shall be sent with the notation "Re Chico Auto Parts & Service, Inc., Docket No. 2006-0901-MLM-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

2. Immediately upon the effective date of this Commission Order, Respondent shall implement standard operational procedures to be employed by staff to ensure prevention of unauthorized discharges; implementation of proper hazardous waste determinations for all wastes; and disposal of wastes only at authorized waste management facilities.
3. Within 45 days after the effective date of this Commission 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 2.

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 I 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.

Respondent shall submit the written certification 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:

Mr. Sam Barrett  
Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

4. 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.
5. The Chief Clerk shall provide a copy of this Order to all of the parties.

6. 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.
7. 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.
8. 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**