

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

March 12, 2008

CHIEF CLERKS OFFICE

2008 MAR 12 PM 4:14

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

Re: SOAH Docket No. 582-08-1217; TCEQ Docket No. 2006-1163-DCL-E; In the Matter of an Enforcement Action against Twin Lakes Enterprises, Inc., d/b/a Houston Discount Cleaners and d/b/a 1.25 Dry Clean Center; RN 104186945 and RN 104188693

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 April 1, 2008. Any replies to exceptions or briefs must be filed in the same manner no later than April 11, 2008.

This matter has been designated **TCEQ Docket No. 2006-1163-DCL-E; SOAH Docket No. 582-08-1217**. 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,


Howard S. Seitzman
Administrative Law Judge

HSS/pp

Enclosures

cc: Mailing List
Post Office Box 13025 ♦
(512) 475-4993

William P. Clements Building
300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
Docket (512) 475-3445 Fax (512) 475-4994
<http://www.soah.state.tx.us>

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: TWIN LAKES ENTERPRISES, INC / HOUSTON DISCOUNT
CLEANERS AND 1.25 DRY CLEAN SUPER CENTER
SOAH DOCKET NUMBER: 582-08-1217
REFERRING AGENCY CASE: 2006-1163-DCL-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

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

REPRESENTATIVE / ADDRESS

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

QUANG M. NGUYEN
REGISTERED AGENT
TWIN LAKES ENTERPRISES, INC.
7126 BRISTOL RIDGE DRIVE
HOUSTON, TX 77095

TWIN LAKES ENTERPRISES, INC.

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-08-1217
TCEQ DOCKET NO. 2006-1163-DCL-E

2008 MAR 12 PM 4: 14

IN THE MATTER OF AN
ENFORCEMENT ACTION AGAINST
TWIN LAKES ENTERPRISES, INC.,
D/B/A HOUSTON DISCOUNT
CLEANERS AND D/B/A 1.25 DRY
CLEAN SUPER CENTER;

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BEFORE THE STATE OFFICE
CHIEF CLERKS OFFICE

OF

RN 104186945 AND RN 104188693

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess two thousand three-hundred seventy dollars (\$2,370.00) in administrative penalties against, and require corrective actions by, Twin Lakes Enterprises, Inc., d/b/a Houston Discount Cleaners and d/b/a 1.25 Dry Clean Super Center (collectively Twin Lakes or Respondent) for violations of 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102. The ED alleges that Respondent (1) owns and operates Houston Discount Cleaners, a dry cleaning drop station, and 1.25 Dry Clean Super Center, a dry cleaning facility; and (2) failed to complete and submit the required registration forms to TCEQ.

After being properly notified, Respondent failed to appear at the preliminary hearing on February 7, 2008, concerning the ED's allegations and recommendation. Therefore, as set out below, the Administrative Law Judge (ALJ) recommends that the Commission enter a default order against Respondent, deem as true the facts alleged by the ED, assess a penalty of \$2,370.00 against, and require certain corrective actions by, Respondent.

II. JURISDICTION AND VIOLATIONS

Respondent owns, in accordance with TEX. HEALTH & SAFETY CODE § 374.001(12), and operates Houston Discount Cleaners located at 1517 Gears Road, Suite M, Houston, Harris County, Texas (Facility 1) and 1.25 dry Clean Super Center located at 6327 North Eldridge Parkway, Houston, Harris County, Texas (Facility 2). Facility 1 is a retail commercial establishment whose primary business is to act as a collection point for the drop-off and pick-up of garments or other fabrics that are sent to a dry cleaning facility for processing. As such, Facility 1 is a dry cleaning drop station as defined in TEX. HEALTH & SAFETY CODE § 374.001(6). Facility 2 is a retail commercial establishment that operates or has operated, either in whole or in part, for the purpose of cleaning garments, or other fabrics, using a process that involves any use of dry cleaning solvents. As such, Facility 2 is a dry cleaning facility as defined in TEX. HEALTH & SAFETY CODE § 374.001(7).

A May 24, 2006 investigation of Facility 1 by a TCEQ Houston Regional Office investigator documented that Twin Lakes violated 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102 by failing to complete and submit the required dry cleaning and/or drop station facility registration form to TCEQ. A May 23, 2006 investigation of Facility 2 by a TCEQ Houston Regional Office investigator, documented that Twin Lakes violated 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102 by failing to complete and submit the required dry cleaning and/or drop station facility registration form to TCEQ.

Respondent received notices of the violations on or about August 5, 2006, and August 15, 2006.

Under TEX. WATER CODE ANN. § 7.0525 and TEX. HEALTH & SAFETY CODE § 374.252(c), the Commission is authorized to assess an administrative penalty of up to \$50.00 per day for each day of violation, not to exceed \$5,000.00. Additionally, the Commission may order the violator to take corrective action.¹

In this case, Respondent is alleged to have violated a provision of Title 30 of the Texas Administrative Code, which contains rules adopted within the Commission's authority, and a provision of the Texas Health & Safety Code. Each of these is a basis for the imposition of administrative penalties or corrective action. Thus, the Commission has jurisdiction over Respondent and authority to assess penalties and order the corrective action requested by the ED. Further, the State Office of Administrative Hearings (SOAH) has jurisdiction over this matter as reflected in the Conclusions of Law that are in the attached Default Order.

III. DEFAULT

A default in this case is entered pursuant to 1 TEX. ADMIN. CODE § 155.55. That rule specifies that any default entered under the rule shall be issued only upon adequate proof that proper notice has been provided to the defaulting party. As set forth in the Findings of Fact and Conclusions of Law, the ALJ finds that the requisite notice has been provided to Respondent in this proceeding, in accordance with TEX. GOV'T CODE ANN. § 2001.052, 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and 30 TEX. ADMIN. CODE §§ 1.11 and 39.25.

¹ TEX. WATER CODE ANN. § 7.073.

Therefore, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law set forth in the attached Default Order assessing an administrative penalty of \$2,370.00 against Respondent for the violations in issue and directing Respondent to take the specified corrective actions.

SIGNED March 12, 2008.



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DEFAULT ORDER Assessing Administrative Penalties Against
and Ordering Corrective Action by Twin
Lakes Enterprises, Inc., d/b/a Houston
Discount Cleaners and dba 1.25 Dry Clean
super Center; TCEQ Docket No. 2006-1163-
DCL-E; SOAH Docket No. 582-08-1217

On _____, 2008, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Twin Lakes Enterprises, Inc., d/b/a Houston Discount Cleaners and dba 1.25 Dry Clean Super Center (collectively 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), who conducted a public hearing concerning the EDPRP on February 7, 2008, in Austin, Texas.

The Executive Director, represented by Patrick Jackson, appeared at the hearing. Respondent was not present at the hearing nor represented by counsel and did not file for a continuance. The Executive Director requested that a default be entered against the Respondent. The ALJ agreed with the Executive Director's request.

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, in accordance with TEX. HEALTH & SAFETY CODE § 374.001(12), and operates Houston Discount Cleaners located at 1517 Gears Road, Suite M, Houston, Harris County, Texas (Facility 1) and 1.25 dry Clean Super Center located at 6327 North Eldridge Parkway, Houston, Harris County, Texas (Facility 2).
2. Facility 1 is a retail commercial establishment whose primary business is to act as a collection point for the drop-off and pick-up of garments or other fabrics that are sent to a dry cleaning facility for processing. As such, Facility 1 is a dry cleaning drop station as defined in TEX. HEALTH & SAFETY CODE § 374.001(6).
3. Facility 2 is a retail commercial establishment that operates or has operated, either in whole or in part, for the purpose of cleaning garments, or other fabrics, using a process that involves any use of dry cleaning solvents. As such, Facility 2 is a dry cleaning facility as defined in TEX. HEALTH & SAFETY CODE § 374.001(7).
4. A May 24, 2006 investigation of Facility 1 by a TCEQ Houston Regional Office investigator documented that Twin Lakes violated 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102 by failing to complete and submit the required dry cleaning and/or drop station facility registration form to TCEQ.

5. A May 23, 2006 investigation of Facility 2 by a TCEQ Houston Regional Office investigator, documented that Twin Lakes violated 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102 by failing to complete and submit the required dry cleaning and/or drop station facility registration form to TCEQ.
6. On July 5, 2007, the Executive Director filed the EDPRP, in accordance with TEX. WATER CODE ANN. § 7.054, alleging that Respondent had violated 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102.
7. In the EDPRP, the Executive Director alleged that Respondent violated 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102 by failing to complete and submit the required dry cleaning and/or drop station facility registration form to TCEQ for Facility 1.
8. For the violation alleged in the previous finding, the Executive Director seeks a penalty of \$1,185 on the basis that these were two hundred thirty-seven daily events from September 1, 2005, through April 26, 2006; the violation was a major programmatic violation; and Respondent received an estimated economic benefit of \$18.00 from the violation.
9. In the EDPRP, the Executive Director alleged that Respondent violated 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102 by failing to complete and submit the required dry cleaning and/or drop station facility registration form to TCEQ for Facility 2.
10. For the violation alleged in the previous finding, the Executive Director seeks a penalty of \$1,185 on the basis that these were two hundred thirty-seven daily events from September 1, 2005, through April 26, 2006; the violation was a major programmatic violation; and Respondent received an estimated economic benefit of \$18.00 from the violation.

11. The Executive Director mailed a copy of the EDPRP to Quang M. Nguyen, the Registered Agent for Twin Lakes Enterprises, Inc., at 7126 Bristol Ridge Drive, Houston, Texas 77095, on the same date that the EDPRP was filed.
12. By letter dated July 21, 2008 (sic), Quang M. Nguyen filed a response to the EDPRP.
13. On December 19, 2007, the Executive Director requested the matter be referred to SOAH for hearing.
14. On January 7, 2008, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Respondent.
15. The notice of hearing:
 - (a) Indicated the time, date, place, and nature of the hearing;
 - (b) Stated the legal authority and jurisdiction for the hearing;
 - (c) Indicated the statutes and rules the Executive Director alleged Respondent violated;
 - (d) Referred to the EDPRP, a copy of which was attached, which indicated the matters asserted by the Executive Director;
 - (e) Advised Respondent, in at least 12-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and EDPRP being deemed as true and the relief sought in the notice possibly being granted by default; and
 - (f) Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
16. On February 7, 2008, the ALJ convened the preliminary hearing. Respondent did not appear, nor did a representative of Respondent appear.

17. Based on Respondent's failure to appear at the hearing, the Executive Director moved for a default against Respondent in which all of the Executive Director's allegations would be deemed admitted as true, the penalties the Executive Director seeks would be assessed against Respondent, and Respondent would be ordered to take the corrective action recommended by the Executive Director. The ALJ granted the motion.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.0525 and TEX. HEALTH & SAFETY CODE § 374.252(c), the Commission is authorized to assess an administrative penalty of up to \$50.00 per day for each day of violation, not to exceed \$5,000.00.
2. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.
3. As required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties or corrective actions proposed therein.
4. 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 §§ 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. Additionally, Respondent was notified, in accordance with 1 TEX. ADMIN. CODE § 155.55, that if Respondent failed to appear at the hearing, a default could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true.

5. 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.
6. Based on the above Findings of Fact and Conclusions of Law:
 - (a) A default should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE § 70.160(b); and
 - (b) The allegations contained in the notice of the hearing, including those in the EDPRP attached thereto, are admitted as true.
7. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102.
8. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:
 - (a) Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - (b) The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - (c) The history and extent of previous violations by the violator;
 - (d) The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - (e) The amount necessary to deter future violations; and
 - (f) Any other matters that justice may require.
9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director properly

calculated the penalties for the alleged violation, and a total administrative penalty of \$2,370 is justified and should be assessed against Respondent.

11. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

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, Twin Lakes Enterprises, Inc., d/b/a Houston Discount Cleaners and d/b/a 1.25 Dry Clean Super Center (Respondent) shall pay an administrative penalty in the amount of \$2,370 for violation of 30 TEX. ADMIN. CODE § 337.10(a) and TEX. HEALTH & SAFETY CODE § 374.102. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Twin Lakes Enterprises, Inc., d/b/a Houston Discount Cleaners and d/b/a 1.25 Dry Clean Super Center; TCEQ Docket No. 2006-1163-DCL-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. Within 15 days after the effective date of the Commission Order, Twin Lakes shall complete and submit the required dry cleaner and/or drop station registration form for Facility 1 and for Facility 2, in accordance with 30 TEX. ADMIN. CODE ch. 337 to:

Dry Cleaning Registration Team

Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. Within 30 days after the effective date of the Commission Order, Twin Lakes shall submit written certification of compliance with Ordering Provision No. 2 as described below:

The certification shall include detailed supporting documentation, including receipts, and/or other records, to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following 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.”

4. Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

Nicole Bealle, Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Road, Suite H
Houston, Texas 77023-1486

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

Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission 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 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
8. As required by TEX. WATER CODE ANN. § 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

Buddy Garcia, Chairman
For the Commission