

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

TEXAS
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ON ENVIRONMENTAL
QUALITY
2008 FEB 28 PM 4:15
CHIEF CLERKS OFFICE

February 28, 2008

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Executive Director's Response to Exceptions
C.B. Express, Inc. dba Discount Beer & Cigarettes; RN101447563
TCEQ Docket No. 2006-1661-PST-E; SOAH Docket No. 582-07-2361

Dear Ms. Castañuela:

Enclosed for filing are the originals and eleven copies of the Executive Director's Response to C.B. Express Inc. dba Discount Beer and Cigarettes' Exceptions to the Administrative Law Judge's Proposal for Decision ("Response to Exceptions").

Enclosed please also find one copy of this letter to you, one copy of the Executive Director's Response to Exceptions, and one copy of the letter to the Administrative Law Judge. Please file stamp these documents and return them to Benjamin Thompson, Attorney, Litigation Division, MC 175. If you have any questions or comments, please call me at (512) 239-1297.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill", written over a horizontal line.

Benjamin O. Thompson
Attorney
Litigation Division

Enclosures

cc: Mr. Habib Arab, President, C.B. Express, Inc., 4644 Old Pond Dr., Plano, TX 75024
Philip Defrancesco, Enforcement Division, TCEQ, MC R-4
Sam Barrett, Waste Section Manager, TCEQ, MC R-4
Blas Coy, Public Interest Counsel, TCEQ, MC 103

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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February 28, 2008

**Via Interagency mail, and
Via Facsimile Transmission to: (512) 475-4994**

The Honorable Carol Wood
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
Austin, Texas 78701

Re: The Executive Director's Response to C.B. Express, Inc. dba Discount Beer & Cigarettes' Exceptions to the Administrative Law Judge's Proposal for Decision;
C.B. Express, Inc. dba Discount Beer & Cigarettes; RN101447563
TCEQ Docket No. 2006-1661-PST-E; SOAH Docket No. 582-07-2361

To The Honorable Judge Wood:

Please find enclosed a copy of the Executive Director's Response to C.B. Express, Inc. dba Discount Beer & Cigarettes' Exceptions to the Administrative Law Judge's Proposal for Decision. These pleadings are being filed in response to your Proposal for Decision signed on January 28, 2008. If you have any questions or comments, please call me at (512) 239-1297.

Sincerely,

A handwritten signature in black ink, appearing to read "B. O. Thompson".

Benjamin O. Thompson
Attorney
Litigation Division

Enclosures

cc: Office of the Chief Clerk, MC 105
Blas Coy, Public Interest Counsel, TCEQ, MC 103
Mr. Habib Arab, President, C.B. Express, Inc., 4644 Old Pond Dr., Plano, TX 75024

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admitted into evidence, and there is no indication in the record of any such pending request.

5. Respondent's implicit contention that the Commission should consider evidence outside the record should be considered in light of the fact that Mr. Arab, the president of C.B. Express, Inc., has recently appeared before the Commission under similar circumstances. At the Commission's January 24, 2007 Agenda, Mr. Arab appeared before the Commission on behalf of A & S Corporation dba Shiloh Beverages, and offered new evidence that was not presented at the evidentiary hearing to contest a Proposal for Decision. At that time, the Commission informed Mr. Arab of the importance of presenting a defense and evidence at the evidentiary hearing rather than when the proposal for decision is before the commission.

II. Evidence of Stage II testing being performed at the facility on July 27, 2006 is not relevant to the violations alleged.

1. The violation at issue involves the failure to conduct monthly release detection as required by 30 Tex. Admin. Code § 334.50, which is entirely separate from the Stage II testing requirements found in 30 Tex. Admin. Code § 115.245. The "Vapor Recovery Test Procedure Results Cover Sheet" provided by the Respondent does not provide any relevant information on the issue of whether monthly release detection was performed at the facility in the month prior to July 27, 2006.
2. Alternatively, the "Vapor Recovery Test Procedure Results Cover Sheet" is outside of the record, and therefore should not be considered by the Commission at this time.

PRAYER

WHEREFORE, the Executive Director submits his Response to C.B. Express, Inc. dba Discount Beer & Cigarettes' Exceptions, as more fully set forth above, and respectfully requests that each of the Respondent's exceptions be denied.

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Mary R. Risner, Division Director
Litigation Division

By: 
Benjamin O. Thompson
State Bar of Texas No. 24056429
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-3400
Fax: (512) 239-3434

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2008, the original and eleven (11) copies of the foregoing "Executive Director's Response to C.B. Express, Inc. dba Discount Beer & Cigarettes' Exceptions to the Administrative Law Judge's Proposal for Decision" ("Response to Exceptions") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Response to Exceptions was mailed via Certified Mail, return receipt requested (Article No. 7000 0520 0022 7534 3965), to:

Mr. Habib Arab, President
C.B. Express, Inc.
4644 Old Pond Drive
Plano, Texas 75024

I further certify that on this day a true and correct copy of the foregoing Response to Exceptions was hand-delivered, to Blas Coy, Jr., Office of the Public Interest Counsel, Texas Commission on Environmental Quality - MC 103.

I further certify that on this day a true and correct copy of the foregoing Response to Exceptions was sent via fax to 512/475-4994 and mailed via inter agency mail, to:

The Honorable Carol Wood
Administrative Law Judge
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
Austin, Texas 78701



Benjamin O. Thompson
Attorney
Litigation Division
Texas Commission on Environmental Quality