

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 20, 2008

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 OCT 20 PM 4: 28
CHIEF CLERKS OFFICE

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

Re: **SOAH Docket No. 582-08-1485; TCEQ Docket No. 2007-0609-PST-E; In Re: In The Matter of an Enforcement Action Against Mustafa Nadaf D/B/A Discount Mini Mart; RN102650330**

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 **November 10, 2008**. Any replies to exceptions or briefs must be filed in the same manner no later than **November 20, 2008**.

This matter has been designated **TCEQ Docket No. 2007-0609-PST-E; SOAH Docket No. 582-08-1485**. 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 cursive script, appearing to read "Lilo D. Pomerleau".

Lilo D. Pomerleau
Administrative Law Judge

LDP/nl
Enclosures
cc: Mailing List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: MUSTAFA NADAF / DISCOUNT MINI MART

SOAH DOCKET NUMBER: 582-08-1485

REFERRING AGENCY CASE: 2007-0609-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ LILO D. POMERLEAU**

REPRESENTATIVE / ADDRESS

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MUSTAFA NADAF DBA DISCOUNT MINI MART

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-08-1485
TCEQ DOCKET NO. 2007-0609-PST-E

2008 OCT 20 PM 4: 28

IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST MUSTAFA NADAF
D/B/A DISCOUNT MINI MART;
RN102650330

§
§
§
§
§
§

BEFORE THE STATE OFFICE

CHIEF CLERKS OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

In this enforcement action, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) asserts that Mustafa Nadaf d/b/a Discount Mini Mart (Respondent) is not in compliance with the inventory control procedures for three underground storage tanks (USTs), as required by 30 TEX. ADMIN. CODE § 334.48(c). The ED further asserts Respondent is in violation of a 2002 Agreed Order, which involved the same violation. The ED seeks assessment of a total administrative penalty of \$15,875. Based on the record and the statutes and rules governing this matter, the Administrative Law Judge (Judge) finds that Respondent committed the alleged violation and recommends that the Commission require Respondent to pay the total penalty of \$15,875.

II. BACKGROUND AND PROCEDURAL HISTORY

Mr. Nadaf owns and operates a convenience store with retail sales of gasoline at 2424 Azle Avenue in Fort Worth, Tarrant County, Texas. The facility has three USTs that are not exempt or excluded from regulation under the Texas Water Code (Water Code) or the Commission rules. The USTs contain a regulated petroleum substance as defined in the Commission's rules.

On October 21, 2002, the Commission issued an Agreed Order, finding that Respondent had violated several rules and regulations, including "30 TEX. ADMIN. CODE § 334.48(c) . . . by

failing to conduct effective inventory control procedures.”¹ The Agreed Order required Respondent to pay an administrative penalty and “[i]mmediately upon the effective date of this Agreed Order, Mr. Nadf (sic) shall begin conducting effective manual or automatic inventory control procedures for all UST’s in accordance with 30 TEX. ADMIN. CODE § 334.489(c)(relating to Inventory Control).”²

On December 4, 2006, TCEQ Investigator Jurandir Felipe-Ortega, with the Dallas/Fort Worth Regional Office, conducted both a follow-up investigation of an agreed order and a compliance investigation of the facility. He determined that Respondent failed to conduct effective manual or automatic inventory control procedures for the three USTs at the facility. Specifically, each operating day, Respondent failed to record inventory volume measurements for substance inputs, withdrawals, and the amount still remaining in the tank. Respondent also failed to perform necessary monthly calculations and water level measurements. These procedures are required by 30 TEX. ADMIN. CODE § 334.48(c).

On July 30, 2007, the ED filed and served Respondent with a Preliminary Report and Petition that asserted Respondent had violated the above-noted Commission rule. The ED recommended that the Commission enter an enforcement order imposing a penalty of \$15,875 and required Respondent to take immediate corrective action.

The parties moved to waive the preliminary hearing. On February 15, 2008, ALJ Roy G. Scudday of the State Office of Administrative Hearings (SOAH) granted the request to waive the preliminary hearing and admitted jurisdictional documents into the record. ALJ Lilo D. Pomerleau convened the evidentiary hearing in Austin on August 21, 2008. The ED was represented by Kari L. Gilbreth and Anna Cox, staff attorneys. Respondent was represented by John L. Gamboa, attorney. The record closed that same day.

1 ED Ex. 1, Agreed Order at 4.

2 *Id.* at 5.

III. DISCUSSION

Mr. Felipe-Ortega testified that on December 4, 2006, he conducted a petroleum storage tank compliance investigation of the facility, which was in operation that day. Respondent uses an electronic device to measure the fuel levels for each tank. On the day of the investigation, the facility was using automatic tank gauge and inventory control for its monthly method of release detection. However, at the time of the investigation, the facility did not have any tank gauge test records for Mr. Felipe-Ortega to review because the print outs from the automatic tank gauge had been thrown away. Respondent subsequently provided the TCEQ with those records.³

A facility containing USTs may use different methods of release detection. As noted above, this facility uses inventory control and automatic tank gauging. By rule, the Commission requires that a facility with UST systems perform “reconciliation of detailed inventory control records . . . at least once each month . . . sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.”⁴ Every month, the facility must reconcile its records. Moreover, each operating day, the facility must measure substance inputs, withdrawals, and the amount still remaining in the tank.⁵ Mr. Felipe-Ortega testified that the facility has to record, on a daily basis, how much fuel it starts with, how much it sells, how much it receives, and the book balance (the daily over/short). At the end of the month, the facility must reconcile the percent volume sold plus 130 gallons, which allows the facility to properly check for leaks.⁶

At the hearing, Mr. Felipe-Ortega examined the facility’s inventory control records. For example, the record for September 2005 lacked the facility’s name or identification, tank capacity, tank dimensions, and some daily records such as daily gallons dispensed, book inventory, daily over/short, and the initials of the record keeper. It had the date, fuel type (unleaded), and some daily records, which included date, initial stick reading, gallons delivered, and closing stick reading. The lack of entries in the daily over/short column means that the

3 Tr. at 71; ED Ex. 4 at 2.

4 30 TEX. ADMIN. CODE § 334.50(d)(1)(B).

5 Tr. at 77 and 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I).

6 Tr. at 78.

operator at the facility could not determine if there was a gasoline leak or infiltration into the tank (likely from water). The Commission rules require daily documentation on the inventory sheet and, at the end of the month, a total of the daily over/short gallons, plus a mathematical calculation taking the fraction of the sales compared to the daily over/short to see if there is any leakage. If there is leakage over the allowable amount for two months in a row, the facility needs to notify the Commission of a possible release. The rules also require the facility, at least once per month, to note any water in the tank (*i.e.*, perform a water-stick level reading).⁷

Munish (Mike) Badruddil Vasaya, Manager at the Discount Mini Mart, testified that the inventory control records provided to the ED during discovery contained sales and the daily over/short entries but the remaining columns that contained numbers were likely filled out by Mr. Nadaf or Sam Irani, a shift manager.⁸ Mr. Vasaya did not provide any additional information as to why the records were not fully filled-out.

The record also includes a large number of inventory control records that have daily over/short entries of zero. Yet Mr. Felipe-Ortega testified that the likelihood of so many zeroes for daily over/short is suspect. He stated that gasoline expands and shrinks, generally resulting in an over/short amount that is different than zero.⁹ The record also includes a large number of inventory control records that are partially completed. Because all the records lacked necessary monthly calculations and readings, they fail to notify Respondent if there is a potential leak. Thus, the records fail to comply with the Commission's rule at 30 TEX. ADMIN CODE § 334.48(c). Moreover, in addition to the daily over/short calculations of zero, Respondent submitted a significant number of inventory control records for different years that have the same numbers, even the same handwritten corrections. For example, the records submitted for January 2004 have columns of numbers that match the same columns in the records submitted for January 2007, with added columns (*e.g.*, the January form is more fully filled out).¹⁰ The ALJ

7 Tr. at 83-94, 159; ED Ex. 4 at 30.

8 Tr. at 170-171. Mr. Vasaya was not entirely sure that the shift manager's last name was "Irani."

9 Tr. at 158.

10 ED Ex. 14 at 41, 113. *Compare also* the records in Ex. 14 at 42 and 114; 44 and 116 (which includes an entry for a date in February that did not exist); 45 and 117; 46 and 118; 47 and 119; 48 and 120; and 64 and 100; 65 and 101; 66 and 102; 67 and 103; 68 and 104; 69 and 105; 70 and 106; 71 and 107; 72 and 108; 73 and 109; 74 and 110; and 75 and 111. These records contain substantially the same or similar entries for different years.

finds it likely that Respondent did not fill out the records on a daily basis, and the records provided to the Commission were fabricated.

IV. ADMINISTRATIVE PENALTY AND CORRECTIVE ACTION

A. Staff's Penalty Calculation and Corrective Action Recommendation

TCEQ Enforcement Coordinator Elvia Maske testified that the penalties proposed by the ED were calculated under terms of the Commission's 2002 Penalty Policy, which was in effect during the December 4, 2006 investigation.¹¹ The total base administrative penalty sought by the ED in this case is \$12,500, which is \$2,500 per year of violations for the five years from 2002 through 2007. This base penalty was enhanced by 27 percent for one prior notice of violation (NOV) for the same or similar violation, one other NOV, and one violated agreed order concerning the same violation, for a resulting total of \$15,875. No other factors for enhancement or reduction were applicable. The ED thus seeks a total administrative penalty of \$15,875

Ms. Manske calculated the penalty using the penalty calculation worksheet, which was developed to ensure that violations under Texas Water Code § 7.053 are properly and consistently applied. Ms. Manske's worksheet was reviewed by her team leader, supervisor, and section manager; then, the worksheet was reviewed by the enforcement division.¹² The facility is categorized as a minor source because the gasoline output is under 50,000 gallons. For a PST violation, the base penalty is based on the maximum limit, which is \$10,000 per day. However, because a failure to conduct effective manual or automatic inventory control procedures (which is designed to detect leaks) has a potential to impact human health and environment, the impact of the penalty is enhanced by 25 percent.¹³

Ms. Manske also considered Respondent's compliance history at the site for the past five years and whether there was a showing of culpability, good faith, and other factors as justice may

¹¹ ED Ex. 21, TCEQ enforcement policy.

¹² Tr. at 183-184.

¹³ Tr. at 186-187.

require.¹⁴ According to Ms. Manske, Respondent has received two previous notices of violation for the same or similar action. The first notice, from the Fort Worth local program, is dated April 20, 2005, which included notice for failing to conduct triennial and annual testing, maintaining the Stage II system in proper operating condition, and failing to maintain the Stage II vapor recovery system in proper operating condition. The second notice of violation is dated July 28, 2006, and is for failing to comply with the ordering provisions of the Commission's Order in Docket No. 2000-1355-PST-E.¹⁵

In addition to the penalty, Ms. Manske recommended that Respondent be ordered to immediately begin conducting effective inventory control procedures and, within 15 days of the effective date of the order, submit certification that the facility is complying.¹⁶

B. Judge's Penalty Recommendation

The ED's Penalty Calculation Worksheet generally documents that the required statutory factors set forth in Water Code § 7.053 were considered by the ED in calculating the proposed penalty. Pursuant to Water Code § 7.051, the Commission has authority to impose penalties of up to \$10,000 per day for the violation discussed above. The ED has offered reasoned explanations for seeking assessment of a total administrative penalty of \$15,875 against Respondent for a repeated violation of the state's petroleum storage tank requirements.

Respondent requests that the ALJ use discretion in reducing the penalty amount. In support of this request, Respondent argues that:

- No leakage was shown to have occurred from the facility's failure to properly monitor and record each tank's inventory.
- The automatic tank gauge of the facility was working at the time of the inspection.¹⁷

14 Tr. at 187; ED Ex. 8.

15 ED Ex. 22.

16 Tr. at 219.

17 Tr. at 126 (although Mr. Nadaf did not have the printouts on the day of the inspection because the facility had been throwing them away). Tr. at 127.

- The violations are all “paperwork violations.”¹⁸
- Although the failure to properly conduct inventory control is a Category A violation, Commission Staff did not investigate whether Respondent was in compliance in the years 2006-2008, after the entry of the last agreed order.¹⁹
- Respondent corrected all other violations that were noted from the December 4, 2006 inspection and was cited for only one violation.

As Mr. Felipe-Ortega testified, this facility uses both automatic tank gauge (a machine performs leak tests and prints out a confirmation) and inventory control (manually filling out daily records to determine fuel levels) in order to comply with the Commission’s rules. It is not fully automated.²⁰ Thus, Respondent only partially complied with the rule: he performed the first step by using automatic inventory control (using functioning automatic tank gauges). But he did not fully complete required daily and monthly, handwritten entries needed to complete the second step. Although Respondent argues that the facility tested its tanks annually (and no leakage has been found), the Commission’s rules require *monthly* monitoring in order to prevent danger to human health and the environment from gasoline leaks.

The ALJ is not persuaded that that a lesser penalty should be assessed because the violations are only “paperwork” violations or that the Staff’s periodic monitoring of facilities with prior violations somehow infers leniency in this matter. The facility chose to comply with the rules by using manually-filled out forms, rather than software and printouts, but either way, the forms must be completed, included the calculations, as a means of conducting a monthly leakage check. The records required by the Commission (the paperwork) are designed to prevent leaks. Accordingly, the violation was appropriately evaluated and categorized (for penalty purposes) on the basis that there was a *potential* for, not an actual, release of petroleum. Thus, the ED has already accounted for the fact that this was only a “paperwork” violation.

Moreover, there was evidence that the partially-completed forms are suspect. Many, many entries contain daily over/short entries with zero. Further, there were a significant number

18 Tr. at 143.

19 Tr. at 117- 118.

20 Tr. at 136.

of matching entries submitted for different dates. Such evidence strongly suggests that Respondent or employees of the facility have been fabricating forms. Such actions should not be rewarded by any reduction in the ED's proposed penalty.

Accordingly, the Judge recommends that the Commission assess an administrative penalty of \$15,875.

V. ADDITIONAL FACTS

In addition to the facts addressed in the preceding discussion, the proposed Findings of Fact contained in the attached Order include other facts, established during the proceeding, that are necessary to show compliance with regulatory requirements applicable to these proceedings. These additional facts are incorporated by reference in this Proposal for Decision (PFD).

VI. CONCLUSION

After a review of the record and for the reasons given, the Judge recommends that the Commission find Respondent liable for the violations of regulatory standards asserted by the ED, assess Respondent a penalty of \$15,875 for these violations, and order Respondent to take the corrective action suggested by the ED. A draft order incorporating these recommendations is attached to this PFD.

SIGNED October 20, 2008.



LILLO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DEFAULT ORDER Assessing Administrative Penalties Against
and Ordering Corrective Action by Mustafa
Nadaf d/b/a Discount Mini Mart; TCEQ
Docket No. 2007-0609-PST-E; SOAH Docket
No. 582-08-1485

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 Mustafa Nadaf d/b/a Discount Mini Mart (collectively Respondent). A Proposal for Decision (PFD) was presented by Lilo D. Pomerleau, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public hearing concerning the EDPRP on August 21, 2008, in Austin, Texas.

The Executive Director, represented by Kari L. Gilbreth, appeared at the hearing. Respondent was represented by John L. Gamboa. The Executive Director requested that an administrative penalty be assessed on the Respondent and that he be ordered to take certain corrective actions. 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 and operates a convenience store with retail sales of gasoline, located at 2424 Azle Avenue, Fort Worth, Tarrant County, Texas.
2. On December 4, 2006, Jurandir Felipe-Ortega, a TCEQ Dallas/Fort Worth Regional Office investigator, conducted an inspection of Respondent's facility and found that Respondent failed to conduct effective inventory control procedures for three underground storage tanks (USTs) involved in the retail sale of petroleum substances and was not complying with the TCEQ's Agreed Order in Docket No. 2002-1355-PST-E.
3. On January 23, 2007, the TCEQ issued Respondent a Notice of Violation.
4. On July 30, 2007, the Executive Director filed and served Respondent with the EDPRP, in accordance with TEX. WATER CODE ANN. § 7.054, alleging Respondent failed to comply with the Commission rule's at 30 TEX. ADMIN. CODE § 334.48(c) and the Agreed Order in Docket No. 2000-1355-PST-E by failing to conduct effective manual or automatic inventory control procedures for all three USTs.
5. During the inspection, the facility did not have any tank gauge test records for Mr. Felipe-Ortega to review because the print outs from the automatic tank gauge had been thrown away. Respondent subsequently provided the TCEQ with automatic tank gauge records.
6. Respondent's inventory control records for the years 2003 though 2008 lack entries allowing the facility to determine whether a leak has occurred. For example, the record for September 2005 lacks the facility's name or identification, tank capacity, tank dimensions, and some daily records such as daily gallons dispensed, book inventory,

daily over/short, and the initials of the record keeper. It has the date, fuel type (unleaded), and some daily records, which included date, initial stick reading, gallons delivered, and closing stick reading.

7. Many of the inventory control records contain a daily over/short calculation of zero, which is unlikely given the contraction and expansion of gasoline.
8. Some of the inventory control records contain the exact same figures for the same tanks in different years, with similar corrections to certain entries.
9. All of the inventory control records omit required information.
10. The Executive Director proposed a total base penalty of \$12,500.00, which is comprised of a base penalty of \$2,500.00 per year for the five years from 2002 through 2007 for a petroleum storage tank violation that had the potential to result in the exposure of a significant amount of contaminants to human health and environment.
11. The Executive Director also proposed a 27 percent penalty enhancement of \$3,375.00 because Respondent had received one previous notice of violation (NOV) for the same or a similar violation, for a second NOV, and for violating an agreed order concerning the same violation.
12. The Executive Director recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$15,875.00 against Respondent and that the Commission order Respondent to take certain corrective actions.
13. An administrative penalty of \$15,875.00 takes into account the factors set forth in TEX. WATER CODE ANN. § 7.053 and the Commission's 2002 Penalty Policy.
14. On August 20, 2007, Respondent requested a contested case hearing on the allegations in the EDPRP.

15. On January 10, 2008, the Executive Director requested the matter be referred to SOAH for hearing.
16. On January 10, 2008, the Commission's Chief Clerk mailed a notice of hearing to Respondent and the Executive Director. The notice of hearing 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. On February 13 2008, the Executive Director and Respondent filed a request to waive the preliminary hearing.
18. On February 15, 2008, the request to waive the preliminary hearing was granted and jurisdictional documents were admitted into the record.
19. On August 21, 2008, ALJ Lilo D. Pomerleau convened the hearing, and the record closed that day. Respondent was represented by John L. Gamboa and the Executive Director was represented by Kari L. Gilbreth.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority pursuant to TEX. WATER CODE ANN. § 7.051 *et seq.*
2. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE ANN. § 7.073.

3. Respondent was notified of the alleged violations, the proposed penalties, and the opportunity to request a hearing, as required by TEX. WATER CODE ANN. § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104.
4. Respondent was notified of the hearing on the alleged violations and the proposed penalties, as required by TEX. GOV'T CODE ANN. §§ 2001.051(1) and 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.
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. 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. 334.
7. Based on the Findings of Fact and Conclusions of Law, Respondent violated TCEQ Agreed Order Docket No. 2002-1355-PST-E, Ordering Provision No. 2.a, and 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for three USTs.
8. Based on the Findings of Fact and Conclusions of Law, the Commission should assess Respondent an administrative penalty of \$15,875.00.
9. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the ED recommends.

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

1. Mustafa Nadaf d/b/a Discount Mini Mart is assessed an administrative penalty in the amount of \$15,875.00 for violations of TCEQ Agreed Order Docket No. 2000-1355-PST-E, Order Provision No. 2.a and 30 TEX. ADMIN. CODE § 334.48(c). The payment of this administrative penalty and taking the corrective action 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 action or assessing penalties for other violations that are not raised here. 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 “Re: Mustafa Nadaf d/b/a Discount Mini Mart; Docket No. 2007-0609-PST-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 the Commission Order, Mustafa Nadaf d/b/a Discount Mini Mart shall begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48(c).
3. Within 15 days after the effective date of the Commission Order, Mustafa Nadaf shall submit written certification as described below, and include detailed supporting documentation and/or records to demonstrate compliance with Ordering Provision 2a. 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 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 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

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

4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (OAH) 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.
5. 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, are denied.

6. 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.
7. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. 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**