

# State Office of Administrative Hearings

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY



2009 MAR -6 PM 1:36

CHIEF CLERKS OFFICE

Cathleen Parsley  
Chief Administrative Law Judge

March 6, 2009

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

VIA FACSIMILE (512) 239-5533

Re: SOAH Docket No. 582-08-1691; TCEQ Docket No. 2007-0741-PST-E; In The Matter of An Enforcement Action Against Gwen Gordon and Wanda Percy d/b/a Holliday Cafe

Dear Mr. Trobman:

I address the comments and exceptions that were submitted by the Executive Director in response to the February 9, 2009, Proposal for Decision (PFD) and Proposed Order.

Executive Director's exceptions

1. Exception Nos. 1, 2, 3, and 4.

The Executive Director excepts to the reopening of the record to admit Respondents' offer of proof for the reason that the Executive Director was denied the opportunity to conduct cross-examination. To remedy this exception the Executive Director requests that the Commission remand the case with instructions that the ALJ (1) reopen the record, (2) order a financial review of the Respondents and, (3) consider the financial review in making a PFD. While Respondents' testimony was only the lesser of several factors that the ALJ relied on in arriving at the PFD, the ALJ has no objection to a remand of the case provided it is only for the limited purpose of providing the Executive Director the opportunity to cross-examine the Respondents' concerning their offer of proof testimony that was admitted and to offer any evidence to contradict the Respondents' testimony.

2. Exception Nos. 5, 6, 7, 8, 9, and 10.

In the alternative, the Executive Director excepts to the ALJ's determination that no administrative penalty should be assessed against Respondents and proposes revisions to the Findings of Fact and Conclusions of Law in the Proposed Order to assess a penalty of \$5,250. If the Commission does not remand the case then I recommend no changes to the Proposed Order.

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Response from ALJ regarding Exceptions  
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If the Commission does remand the case then I recommend that consideration of these exceptions be deferred pending the remand, reopening of the record, and subsequent return of a PFD and Proposed Order to the Commission.

3. PFD at page 3.

The Executive Director points out a typographical error in the statement that Ms. Percy earns approximately \$800 per month when the record shows that Ms. Percy testified that she earns approximately \$900 per month. I recommend that this correction be made.

Sincerely,



Richard R. Wilfong  
Administrative Law Judge

RRW/sb  
cc: Service List

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**STYLE/CASE:** GWEN GORDAN & WANDA PERCY dba HOLLIDAY CAFE  
**SOAH DOCKET NUMBER:** 582-08-1691  
**REFERRING AGENCY CASE:** 2007-0741-PST-E

**STATE OFFICE OF ADMINISTRATIVE  
 HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
 ALJ RICHARD WILFONG**

**REPRESENTATIVE / ADDRESS**

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GWEN GORDON

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xc: Docket Clerk, State Office of Administrative Hearings

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**DATE:** 03/06/2009  
**NUMBER OF PAGES INCLUDING THIS COVER SHEET:** 5  
**REGARDING:** EXCEPTIONS LETTER (BY ALJ)  
**DOCKET NUMBER:** 582-08-1691

JUDGE RICHARD WILFONG

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