

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 26, 2009

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

CHIEF CLERKS OFFICE

2009 JAN 26 PM 4: 11

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: SOAH Docket No. 582-09-1030; TCEQ Docket No.2007-1503-PST-E; In Re: In the Matter of an Enforcement Action Against Gloria Serenil

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 Monday, February 16, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than Thursday, February 26, 2009

This matter has been designated **TCEQ Docket No. 2007-1503-PST-E; SOAH Docket No. 582-09-1030**. 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 seven 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 black ink, appearing to read "Kerrie Jo Qualtrough".

Kerrie Jo Qualtrough
Administrative Law Judge

KJQ/ds
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: GLORIA SERENIL

SOAH DOCKET NUMBER: 582-09-1030

REFERRING AGENCY CASE: 2007-1503-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ KERRIE QUALTROUGH**

REPRESENTATIVE / ADDRESS

PARTIES

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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TCEQ EXECUTIVE DIRECTOR

GLORIA SERENIL
418 NORTH ESPLANADE STREET
KARNES CITY, TX 78118

GLORIA SERENIL

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-1030
TCEQ DOCKET NO. 2007-1503-PST-E

IN THE MATTER OF AN	§	BEFORE THE STATE OFFICE
	§	
ENFORCEMENT ACTION AGAINST	§	OF
	§	
GLORIA SERENIL	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

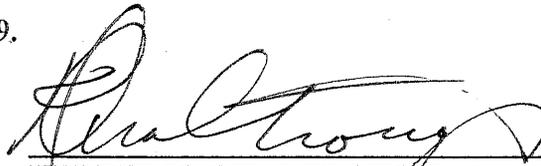
The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) alleges that Gloria Serenil has violated sections in 30 Texas Administrative Code (TAC), chapter 334. The ED asks the Commission to enter an order assessing an administrative penalty against Ms. Serenil in the amount of \$16,800 for these violations. He also recommends that the Commission order Ms. Serenil to take corrective measures.

On February 6, 2008, the ED mailed his Executive Director's Preliminary Report and Petition (EDPRP) to Ms. Serenil by first class and certified mail. (ED Exh. A). Ms. Serenil responded to the EDPRP on February 15, 2008. (ED Exh. B). The response stated that "[a]s for having a hearing or a meeting," she was willing to meet in her home since she is disabled and cannot drive too far. The ED treated the response as an answer and the case was transferred to the State Office of Administrative Hearings (SOAH) for hearing. (ED Exh. C). On November 17, 2008, the notice of hearing for the January 15, 2009 hearing was mailed by first class and certified mail to the same address as the EDPRP. (ED Exh. D). The ED provided a United States Postal Service email confirming that the notice of hearing had been delivered and received. (ED Exh. E).

Although the required notice of hearing was sent to her address, neither Ms. Serenil nor anyone on her behalf appeared at the hearing or sought a continuance. The ED moved for the issuance of a default order deeming the alleged facts true, imposing the proposed penalty, and

ordering Ms. Serenil to take the necessary corrective action. The Administrative Law Judge recommends that the Commission grant the ED's motion and issue the attached default order granting the relief requested by the ED.

SIGNED January 26, 2009.



KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DEFAULT ORDER Assessing Administrative Penalties Against and Ordering Corrective Action by Gloria Serenil; TCEQ Docket No. 2007-1503-PST-E and SOAH Docket No. 582-09-1030

On _____, 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 Gloria Serenil (Respondent). A Proposal for Decision (PFD) was presented by Kerrie Jo Qualtrough, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a preliminary hearing concerning the EDPRP on January 15, 2009, in Austin, Texas.

The Executive Director, represented by Barham A. Richard, appeared at the hearing. The 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 order 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 property with three inactive underground storage tanks located at 1405 Highway 181 North, Normanna, Bee County, Texas. Respondent's three underground storage tanks (USTs) are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Respondent's USTs contain a regulated petroleum substance as defined in the rules of the Commission.
2. On July 19, 2007, a TCEQ Investigator conducted an inspection of Respondent's property and determined that Respondent failed to update the registration to reflect the current ownership information. The inspector also determined that Respondent failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements.
3. On February 6, 2008, the Executive Director filed the EDPRP, in accordance with Texas Water Code § 7.054, alleging that Respondent violated 30 Texas Administrative Code (TAC) § 334.7(d)(1)(A) by failing to notify the agency of any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current ownership information. The ED also alleged that Respondent violated 30 TAC § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system was not brought into timely compliance with the upgrade requirements. The ED

recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$16,800 against Respondent. The Executive Director also recommended that the Commission order Respondent to take certain corrective actions.

4. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
5. The total administrative penalty sought in the EDPRP is an accumulation of the different penalties assessed for each different violation.
6. The Executive Director seeks a penalty of \$1,050 for Respondent's alleged violation of 30 TAC § 334.7(d)(1)(A), for a single event based on the documentation of the violation during the July 19, 2007 investigation.
7. The Executive Director seeks a penalty of \$15,750 for Respondent's alleged violation of 30 TAC § 334.47(a)(2), based on six monthly events (two months per UST) in reliance on documentation of the violation during the July 19, 2007 investigation.
8. On the same date that the EDPRP was filed, the Executive Director mailed a copy of the EDPRP to Respondent's last address known to the TCEQ: Gloria Serenil, 418 North Esplanade Street, Karnes City, Texas 78118.
9. Respondent filed an answer to the EDPRP requesting a hearing, and the matter was referred to SOAH for hearing.
10. On November 17, 2008, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing by certified and first class mail to Respondent at Respondent's last address of record with the Commission.

11. 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 twelve-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by 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 showed how the penalty was calculated for the alleged violations.
12. On January 15, 2009 the ALJ convened the preliminary hearing and jurisdiction was proven. The Respondent failed to appear at the preliminary hearing.
13. Based on Respondent's failure to appear at the hearing, the Executive Director moved for a default judgment against Respondent in which all of the Executive Director's allegations would be deemed admitted as true, the penalties the Executive Director sought would be assessed against Respondent, and Respondent would be ordered to take corrective action recommended by the Executive Director.

II. CONCLUSIONS OF LAW

1. Under Texas Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Water Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.

2. Under Texas Water Code § 7.052, a penalty may not exceed \$10,000 per violation, per day.
3. Under Texas Water Code § 7.073, the Commission may order the violator to take corrective action.
4. As required by Texas Water Code § 7.055 and 30 TAC §§ 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.
5. As required by Texas Government Code §§ 2001.051 and 2001.052; Texas Water Code § 7.058; 1 TAC § 155.401, and 30 TAC §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3), Respondent was notified of the hearing on the alleged violations and the proposed penalties. Additionally, Respondent was notified, in accordance with 1 TAC § 155.501 and 30 TAC §§ 70.106(b) and 80.113(d), that if Respondent failed to appear at the hearing, a default judgment could be rendered against Respondent in which all the allegations contained in the notice of hearing would be deemed admitted as true.
6. An alternative showing of notice was made under 1 TAC § 155.501(c).
7. 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 Texas Government Code, chapter 2003.
8. Based on the above Findings of Fact and Conclusions of Law:
 - a. A default judgment should be entered against Respondent in accordance with 1 TAC § 155.501 and 30 TAC §§ 70.106(b) and 80.113(d); and
 - b. The allegations contained in the notice of the hearing, including those in the EDPRP attached thereto, are admitted as true.

9. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TAC §§ 334.7(d)(1)(A) and 334.47(a)(2).
10. In determining the amount of an administrative penalty, Texas Water Code § 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.
11. Based on consideration of the above Findings of Fact, the factors set out in Texas Water Code § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$16,800 is justified and should be assessed against Respondent.
12. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director recommends.

III. ORDERING PROVISIONS

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, Gloria Serenil shall pay an administrative penalty in the amount of \$16,800 for violations of 30 TAC §§ 334.7(d)(1)(A) and 334.47(a)(2). The payment of this administrative penalty and the performance of all corrective action listed herein will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. 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: Gloria Serenil, TCEQ Docket No. 2007-1503-PST-E; RN101890721" 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. Respondent is order to implement the following corrective measures:

- a. Within 30 days after the effective date of the Commission Order, Respondent shall permanently remove the UST system from service in accordance with 30 TAC § 334.55;
- b. Within 45 days after the effective date of the Commission Order, Respondent shall submit an amended registration to indicate the current ownership and operational status of the UST system, in accordance with 30 TAC § 334.7 to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. Within 60 days after the effective date of the Commission Order, Respondent shall submit written certification and detailed supporting documentation, including

photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provisions Nos. 2a and 2b. 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 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

with a copy to:

Mr. Brad Genzer, Waste Section Manager
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. The Executive Director 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 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 TAC § 80.273 and Texas Government Code § 2001.144.
8. As required by Texas Water Code § 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