

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

August 25, 2008

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

Re: The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and The Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision;
Pulak Barua dba Sunshine Food Mart; RN102280138
SOAH Docket No. 582-08-2780; TCEQ Docket No. 2007-1842-PST-E

Dear Ms. Castañuela:

Enclosed for filing are the originals and 7 copies of the 1) the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and 2) the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision.

Enclosed please also find one copy of this letter to you, one copy of the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision, one copy of the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision, and one copy of the letter to the Respondent. 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) 239-0624.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Thompson", with a long horizontal flourish extending to the right.

Benjamin O. Thompson
Attorney
Litigation Division

Enclosures

cc: Mr. Pulak Barua, 1002 E. Mulberry St., Kaufman, TX 75142
Judy Kluge, Enforcement Division, TCEQ, MC R-4
Sam Barrett, Waste Section Manager, TCEQ, MC R-4
Blas Coy, Public Interest Counsel, TCEQ, MC 103

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 25, 2008

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

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

Re: The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and The Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision;
Pulak Barua dba Sunshine Food Mart; RN102280138
SOAH Docket No. 582-08-2780; TCEQ Docket No. 2007-1842-PST-E

To The Honorable Judge Walston:

Please find enclosed a copy of 1) the Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision and 2) the Executive Director's Proposed Order to Supplement the Executive Director's 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", with a long horizontal flourish extending to the right.

Benjamin O. Thompson
Attorney
Litigation Division

Enclosures

cc: Office of the Chief Clerk, MC 105
Mr. Pulak Barua, 1002 E. Mulberry St., Kaufman, TX 75142
Judy Kluge, Enforcement Division, TCEQ, MC R-4
Sam Barrett, Waste Section Manager, TCEQ, MC R-4
Blas Coy, Public Interest Counsel, TCEQ, MC 103

2008 AUG 25 PM 4: 17

SOAH DOCKET NO. 582-08-2780
TCEQ DOCKET NO. 2007-1842-PST-E

CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

V.

PULAK BARUA DBA SUNSHINE
FOOD MART

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S EXCEPTIONS AND SUGGESTED MODIFICATIONS TO
THE ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

NOW COMES the Executive Director, by and through his attorney, Benjamin O. Thompson, and makes the following exceptions and suggestions to modify the Administrative Law Judge's ("ALJ's") Proposed Order, pursuant to 30 TEX. ADMIN. CODE § 80.257.

I.

The Executive Director suggests the following modifications to the ALJ's Proposed Order:

1. That Finding of Fact 1 be amended to read "Respondent owns and operates a convenience store with retail sales of gasoline located at 1002 East Mulberry Street, Kaufman, Kaufman County, Texas (Facility). Respondent's four underground storage tanks (USTs) are not exempted or excluded from regulation under the Texas Water Code or the rules of the commission, contain a regulated petroleum substance as defined in the rules of the commission, and consist of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12)."
2. That the numbering (1) through (9) in Finding of Fact 3 be changed to lower case letters a through I.
3. That in Finding of Fact 3.a. (as re-numbered), the abbreviation "(USTs)" be removed, so Finding of Fact 3.a. reads "Respondent failed to conduct effective inventory control procedures for all underground storage tanks involved in the retail sale of petroleum substances used as motor fuel each operating day as required by TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.a., 30 TEX. ADMIN. CODE § 334.48© and TEX. WATER CODE ANN. § 7.051;"
4. That in Finding of Fact 3.d (as re-numbered), the phrase "in that Respondent failed to conduct the annual piping test" be removed so Finding of Fact 3.d. reads "Respondent failed

to provide release detection for the piping associated with the USTs, as required by TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.d., 30 TEX. ADMIN. CODE § 334.50(b)(2), and TEX. WATER CODE ANN. §§ 7.051 and 26.3475(a). Specifically, Respondent did not conduct the annual piping test;”

5. That the bullet points in Finding of Fact 17 be changed to lower case letters a. through e.
6. That the bullet points in Conclusion of Law 9 be changed to lower case letters a. through f.
7. That new Conclusion of Law 12 be added, reading “Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent’s UST delivery certificate if the Commission finds that good cause exists.”
8. That new Conclusion of Law 13 be added, reading “Good cause for revocation of Respondent’s UST delivery certificate exists as justified by Findings of Fact Nos. 3, 13, 14, 15, 16, 17, 18, 19, 20, and 21; and Conclusions of Law Nos. 5 and 7.”
9. That previous Conclusion of Law 12 be appropriately renumbered as Conclusion of Law 14.
10. That new Ordering Provision 2 be added, reading “Respondent’s UST delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new delivery certificate only after Respondent has complied with all of the requirements of this Order.”
11. That new Ordering Provision 3 be added, reading “Within 10 days after the effective date of this Order, Respondent shall send his UST delivery certificate to:

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

To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these recommended modifications, the Executive Director excepts to the Proposal for Decision. A copy of the Proposed Order with the recommended modifications is attached.

Respectfully Submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Kathleen C. Decker, Division Director
Litigation Division



Benjamin O. Thompson
State Bar of Texas No. 24056429
Litigation Division, MC 175
P.O. Box 13088
Austin, TX 78711
(512) 239-1297
(512) 239-3434 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DEFAULT ORDER Assessing Administrative Penalties Against
and Ordering Corrective Action by Pulak
Barua d/b/a Sunshine Food Mart; TCEQ
Docket No. 2007-1842-PST-E; SOAH Docket
No. 582-08-2780

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 Pulak Barua d/b/a Sunshine Food Mart (collectively Respondent). A Proposal for Decision (PFD) was presented by Tom Walston, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public hearing concerning the EDPRP on June 25, 2008, in Austin, Texas.

The Executive Director, represented by Mary Hammer, 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 and operates a convenience store with retail sales of gasoline located at 1002 East Mulberry Street, Kaufman, Kaufman County, Texas (Facility). Respondent's four underground storage tanks (USTs) are not exempted or excluded from regulation under the Texas Water Code or the rules of the commission, contain a regulated petroleum substance as defined in the rules of the commission, and consist of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. On October 11, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator conducted an inspection of Respondent's Facility to determine if Respondent was complying with TCEQ Agreed Order Docket No. 2002-0516-PST-E, statutes within the Commission's jurisdiction, and the Commission's rules adopted thereunder.
3. On March 4, 2008, the Executive Director filed the Executive Director's Preliminary Report and Petition (EDPRP), in accordance with TEX. WATER CODE ANN. § 7.054, alleging:
 - a. Respondent failed to conduct effective inventory control procedures for all underground storage tanks involved in the retail sale of petroleum substances used as motor fuel each operating day as required by TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.a., 30 TEX. ADMIN. CODE § 334.48(c) and TEX. WATER CODE ANN. § 7.051;
 - b. Respondent failed to perform an operability test on the cathodic protection system within three to six months after installation, and at a frequency of at least once every three years as required by TCEQ Agreed Order Docket No. 2002-0516-

PST-E, Ordering Provision No. 2.c., 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE ANN. §§ 7.051 and 26.3475(d);

- c. Respondent failed to ensure that all USTs are monitored to detect a release at a frequency of at least once every month in accordance with TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.d., 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and TEX. WATER CODE ANN. §§ 7.051 and 26.3475(c)(1);
- d. Respondent failed to provide release detection for the piping associated with the USTs, as required by TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.d., 30 TEX. ADMIN. CODE § 334.50(b)(2), and TEX. WATER CODE ANN. §§ 7.051 and 26.3475(a). Specifically, Respondent did not conduct the annual piping test;
- e. Respondent failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.d, 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III), and TEX. WATER CODE ANN. §§ 7.051 and 26.3475(a). Specifically, Respondent did not performance test the line leak detectors annually;
- f. Respondent failed to ensure that the UST registration and self-certification form is accurately completed in accordance with TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.f., 30 TEX. ADMIN. CODE § 334.8(c)(4)(B) and TEX. WATER CODE ANN. § 7.051;

- g. Respondent failed to have the required UST records maintained, readily accessible, and available for inspection upon request by agency personnel as required by 30 TEX. ADMIN. CODE § 334.10(b);
 - h. Respondent transferred, or allowed the transfer of, gasoline from a tank-truck into a stationary storage container, which is located at a motor vehicle fuel dispensing facility, without ensuring the displaced vapors from the gasoline storage container were controlled by a vapor control or vapor balance system, in violation of 30 TEX. ADMIN. CODE § 115.221 and TEX. HEALTH & SAFETY CODE ANN. § 382.085(b). Specifically, Respondent did not ensure that all displaced vapors during fuel deliveries were recovered, and no Stage I equipment was observed, including a connection to allow the recovery of vapors or pressure relief valves on the USTs; and
 - i. Respondent failed to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced with the manufacturers' specifications as required by 30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE ANN. § 26.3475(c)(2). Specifically, the spill bucket on the super unleaded tank was no longer attached to the riser and no longer capable of containing a spill
4. The total administrative penalty sought in the EDPRP is an accumulation of the different penalties assessed for each different violation.
5. The Executive Director recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$217,775.00 against Respondent and that the Commission order Respondent to take certain corrective actions.

6. The Executive Director seeks a penalty of \$62,221.00 for Respondent's alleged violation of TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.a., 30 TEX. ADMIN. CODE § 334.48(c) and TEX. WATER CODE ANN. §7.051 based on eighteen (18) quarterly violation events; the violation has the potential of causing major harm; and Respondent received an economic benefit of \$126.00 from the violation.
7. The Executive Director seeks a penalty off \$62,221.00 for Respondent's alleged violation of TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.c., 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE ANN. §§ 7.051 and 26.3475(d), based on eighteen (18) quarterly violation events; the violation has the potential of causing major harm; and Respondent received an economic benefit of \$1,266.00 from the violation.
8. The Executive Director seeks a penalty of \$62,221.00 for Respondent's alleged violation of TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.d., 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and TEX. WATER CODE §§ 7.051 and 26.3475(a), based on eighteen (18) quarterly violation events; the violation had the potential of causing major harm; and Respondent received an economic benefit of \$1,480.00 from the violation.
9. The Executive Director seeks a penalty of \$24,889.00 for Respondent's alleged violation of TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision No. 2.f., 30 TEX. ADMIN. CODE § 334.8(c)(4)(B), and TEX. WATER CODE ANN. § 7.051, based on eighteen (18) quarterly violation events; the violation was a major programmatic violation; and Respondent received an economic benefit of \$49.00 from the violation.

10. The Executive Director seeks a penalty of \$1,383.00 for Respondent's alleged violation of 30 TEX. ADMIN. CODE § 334.10(b), based on a single violation event; the violation was a major programmatic violation; and Respondent received an economic benefit of \$17.00 from the violation.
11. The Executive Director seeks a penalty of \$3,457.00 for Respondent's alleged violation of 30 TEX. ADMIN. CODE § 115.221 and TEX. HEALTH & SAFETY CODE ANN. § 382.085(b), based on one quarterly violation event; the violation has the potential of causing major harm; and Respondent received an economic benefit of \$52.00 from the violation.
12. The Executive Director seeks a penalty of \$1,383.00 for Respondent's alleged violation of 30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE ANN. § 26.3475(c)(2), based on one quarterly violation event; the violation has the potential for causing major harm; and Respondent received an economic benefit of \$52.00 from the violation.
13. The Executive Director mailed a copy of the EDPRP to Respondent at 1002 East Mulberry Street, Kaufman, Texas 75142, on the same date that the EDPRP was filed.
14. Respondent filed an answer to the EDPRP by letter dated March 19, 2008, and requested a hearing.
15. On April 21, 2008, the Executive Director requested the matter be referred to SOAH for hearing.
16. On May 7, 2008, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Respondent.
17. 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. 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 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
 - e. Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
18. On May 29, 2008, the ALJ convened the preliminary hearing. Respondent did not appear, nor did a representative of Respondent appear. The Executive Director requested a continuance to allow time to confirm that Respondent received notice of the hearing.
 19. By Order No. 1, the ALJ granted the continuance and rescheduled the hearing for June 25, 2008, at 10:00 a.m. Respondent was notified by regular mail at his address as it appears in the Commission's records.
 20. On June 25, 2008, the ALJ convened a hearing. Respondent did not appear and was not represented at the hearing.
 21. 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. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health and Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000.00 per violation, per day for the violations alleged in this proceeding.
3. 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.
4. 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.
5. 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, 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.
6. 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.

7. Based on the above Findings of Fact and Conclusions of Law:
 - a. A default judgment should be entered against Respondent in accordance with 1 TEX. ADMIN. CODE § 155.55 and 30 TEX. ADMIN. CODE §§ 70.106(b) and 80.113(d); and
 - b. The allegations contained in the notice of hearing, including those in the EDPRP attached thereto, are deemed admitted as true.
8. Based on the Findings of Fact and Conclusions of Law, Respondent violated TCEQ Agreed Order Docket No. 2002-0516-PST-E, Ordering Provision Nos. 2.a., 2.c., 2.d., and 2.f.; 30 TEX. ADMIN. CODE §§ 115.221, 334.8(c)(4)(B), 334.10(b), 334.48(c), 334.49(c)(4), 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III); and 334.51(a)(6); TEX. WATER CODE ANN. §§ 7.051, 26.3475(a), (c)(1), (c)(2) and (d); and TEX. HEALTH & SAFETY CODE ANN. § 382.085(b).
9. 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.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
11. 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

correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$217,775.00 is justified and should be assessed against Respondent.

12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST delivery certificate if the Commission finds that good cause exists.
13. Good cause for revocation of Respondent's UST delivery certificate exists as justified by Findings of Fact Nos. 3, 13, 14, 15, 16, 17, 18, 19, 20, and 21; and Conclusions of Law Nos. 5 and 7.
14. Based on the above Findings of Fact, Respondent should be required to take the corrective action measures that the Executive Director 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. Pulak Barua d/b/a Sunshine Food Mart is assessed an administrative penalty in the amount of \$217,775.00 for violations of TCEQ Agreed Order Docket No. 2002-0516-PST-E, Order Provision Nos. 2.a., 2.c., 2.d., and 2.f.; 30 TEX. ADMIN. CODE §§ 115.221, 334.8(c)(4)(B), 334.10(b), 334.48(c), 334.49(c)(4), 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III), and 334.51(a)(6); TEX. WATER CODE ANN. §§ 7.051, 26.3475(a), (c)(2) and (d); and TEX. HEALTH & SAFETY CODE ANN. § 382.085(b). The assessment of this administrative penalty and Pulak Barua's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this section. The

Commission shall not be constrained in any manner from requiring corrective actions or 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: Pulak Barua d/b/a Sunshine Food Mart; docket No. 2007-1842-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. Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new delivery certificate only after Respondent has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Respondent shall send his UST delivery certificate to:

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

4. Within 30 days after the effective date of the Commission Order, Pulak Barua d/b/a Sunshine Food Mart shall:
 - (i) Begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48;
 - (ii) Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10; and
 - (iii) Cease accepting fuel until such time that a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form including the current ownership information, in accordance with 30 TEX. ADMIN. CODE § 334.8.

5. Within 45 days after the effective date of the Commission Order, Pulak Barua shall certify compliance with Ordering Provisions 4(i) through 4(iii).

6. Pulak Barua shall submit copies of documentation necessary to demonstrate compliance with those Ordering Provisions to:

Work Leader
Team 1, Section V
Enforcement Division, MC 224
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2301 Gravel Drive
Fort Worth, Texas 76118

7. 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.

8. 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.

9. 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.

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

11. 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

CERTIFICATE OF SERVICE
Pulak Barua dba Sunshine Food Mart
SOAH Docket No. 582-08-2780
TCEQ Docket No. 2007-1842-PST-E

I hereby certify that on this 25th day of August, 2008, the original and 7 copies of the foregoing "Executive Director's Suggested Modifications to the Administrative Law Judge's Proposed Order" ("Modifications") were 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 Modifications were sent to the following:

Via Inter-Agency Mail and Via Facsimile to (512) 475-4994

The Honorable Thomas H. Walston
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

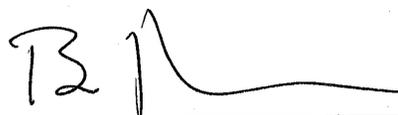
Via Certified Mail, Postage Prepaid

Mr. Pulak Barua
1002 E. Mulberry St.
Kaufman, Texas 75142
Article No. xxxxxxxxxxxxxxxx

Via Hand Delivery

Blas Coy, Public Interest Counsel MC 103

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 AUG 25 PM 4:17
CHIEF CLERKS OFFICE



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