

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 5, 2008

CHIEF CLERKS OFFICE

2008 AUG -5 PM 4: 29

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

Re: SOAH Docket No. 582-08-2780; TCEQ Docket No. 2007-1842-PST-E; In Re: In the Matter of an Enforcement Action Against Pulak Barua d/b/a Sunshine Food Mart; RN102280138

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 **August 25, 2008**. Any replies to exceptions or briefs must be filed in the same manner no later than **September 4, 2008**.

This matter has been designated **TCEQ Docket No. 2007-1842-PST-E; SOAH Docket No. 582-08-2780**. 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 "Thomas H. Walston".

Thomas H. Walston
Administrative Law Judge

THW:nl
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

**300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994**

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: PULAK BARUA / SUNSHINE FOOD MART
SOAH DOCKET NUMBER: 582-08-2780
REFERRING AGENCY CASE: 2007-1842-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ THOMAS H. WALSTON**

REPRESENTATIVE / ADDRESS

PARTIES

BLAS J. COY, JR.
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
bcoy@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

DOCKET CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF THE CHIEF CLERK
PO BOX 13087
AUSTIN, TX 78711
(512) 239-3300 (PH)
(512) 239-3311 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

BENJAMIN THOMPSON
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
LITIGATION DIVISION
P.O. BOX 13087
AUSTIN, TX 78711
(512) 239-1297 (PH)
(512) 239-3434 (FAX)

EXECUTIVE DIRECTOR

PULAK BARUA
PULAK BARUA, DBA SUNSHINE FOOD MART
1002 E. MULBERRY ST.
KAUFMAN, TX 75142

PULAK BARUA, DBA SUNSHINE FOOD MART

xc: Docket Clerk, State Office of Administrative Hearings

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

2008 AUG -5 PM 4: 29

IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST PULAK BARUA
D/B/A SUNSHINE FOOD MART;
RN102280138

§
§
§
§
§
§

BEFORE THE STATE OFFICE OF CLERKS OFFICE
OF
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess two hundred seventeen thousand, seven hundred seventy-five dollars (\$217,775.00) in administrative penalties against, and require certain corrective actions by Pulak Barua d/b/a Sunshine Food Mart (Respondent) for violations of various statutes and rules pertaining to underground storage tanks (USTs). The ED alleges that Respondent failed to conduct inventory control; failed to perform an operability test on the cathodic protection system; failed to ensure that all USTs are monitored for release detection at least once a month; failed to conduct an annual piping test; failed to test the line leak detectors annually; failed to accurately complete the UST registration and self-certification form; failed to have required UST records maintained, readily accessible, and available for inspection; failed to ensure that all displaced vapors during fuel deliveries were recovered by having Stage I equipment with a connection to allow the vapor recovery; and failed to ensure that all spill and overfill prevention devices were maintained in good condition.

After being properly notified, Respondent failed to appear at the preliminary hearing on May 29, 2008. A continuance was granted to allow the ED to resend notice to Respondent and the hearing was rescheduled for June 25, 2008. However, Respondent again failed to appear for the hearing concerning the ED's allegations and recommendation. Therefore, as set out below, the Administrative Law Judge (ALJ) recommends that the Commission enter a default order

against Respondent, deem as true the facts alleged by the ED, assess a penalty against Respondent in the amount of \$217,775, and require certain corrective actions by Respondent.

I. JURISDICTION AND VIOLATIONS

Respondent owns and operates a convenience store with retail sales of gasoline located at 1002 East Mulberry Street, Kaufman, Kaufman County, Texas (Facility). On October 11, 2007, a TCEQ Dallas/Fort Worth Regional Office investigator conducted an inspection of the Facility and documented the following violations:

- a. Respondent failed to conduct effective manual or automatic inventory control procedures for all USTs each 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 in a manner which will detect a release at a frequency of at least once every month as required by 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. 2005-0516-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 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)(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 was accurately completed as required by 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 § 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 as required by 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.
- 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 in accordance 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.

Respondent received notice of the violations on or about November 10, 2007.

Under TEX. WATER CODE ANN. § 7.051, the Commission is authorized to assess an administrative penalty against a person who violates a provision of the Texas Water Code or the Texas Health and Safety Code within the Commission's jurisdiction, or a rule adopted or an order or permit issued thereunder. Pursuant to TEX. WATER CODE ANN. § 7.052(c), the penalty may not exceed \$10,000 per day of violation. Additionally, the Commission may order the violator to take corrective action pursuant to TEX. WATER CODE ANN. § 7.073.

In this matter, Respondent is alleged to have violated 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 §§ 7.051, 26.3475(a), (c)(1), (c)(2) and (d); and TEX. HEALTH & SAFETY CODE § 382.085(b), which are statutes and rules within the Commission's authority. Thus, the Commission has jurisdiction over Respondent and authority

to assess penalties and order the corrective action requested by the ED. Further, the State Office of Administrative Hearings (SOAH) has jurisdiction over this matter as outlined in the Conclusions of Law set forth in the attached Default Order.

II. DEFAULT ORDER

A default order in this case should be entered pursuant to 1 TEX. ADMIN. CODE § 55.55 and 30 TEX. ADMIN. CODE §§ 70.106 and 80.113(d). A default may only be entered upon adequate proof that proper notice has been provided to the defaulting party. As set forth in the Findings of Fact and Conclusions of Law, the ALJ finds that the requisite notice has been provided to Respondent in this proceeding, in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; 1 TEX. ADMIN. CODE §§ 155.27 and 155.55; and 30 TEX. ADMIN. CODE §§ 1.11 and 39.25.

Therefore, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law in the attached Default Order, assessing an administrative penalty of \$217,775.00 against Respondent for the violations at issue and directing Respondent to take the specified corrective actions.

SIGNED August 5, 2008.



THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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).
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:
 - (1) Respondent failed to conduct effective inventory control procedures for all underground storage tanks (USTs) 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;
 - (2) 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);
 - (3) 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);

- (4) Respondent failed to provide release detection for the piping associated with the USTs in that Respondent failed to conduct the annual piping tightness test, 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) 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;
- (6) 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;
- (7) 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);

- (8) 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
- (9) 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:
 - Indicated the time, date, place, and nature of the hearing;
 - Stated the legal authority and jurisdiction for the hearing;
 - Indicated the statutes and rules the Executive Director alleged Respondent violated.

- 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
 - 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:
- Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - 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. 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. 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.

3. Within 45 days after the effective date of the Commission Order, Pulak Barua shall certify compliance with Ordering Provisions 2(i) through 2(iii).

4. 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

5. 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.

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 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
8. As required by TEX. WATER CODE ANN. § 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