

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 31, 2010

Via Facsimile to (512) 475-4994 and Via Interagency Mail

The Honorable Henry D. Card  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
P.O. Box 13025  
Austin, Texas 78711-3025

Re: The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision; TCEQ Docket No. 2008-0124-PST-E; SOAH Docket No. 582-08-3991

Dear Judge Card:

Enclosed is a true and correct copy of the "The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision."

The original of this The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision was filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality on this day.

Sincerely,

A handwritten signature in black ink that reads "Xavier Guerra".

Xavier Guerra  
Attorney  
Litigation Division

Enclosure

cc: TCEQ Chief Clerk (original)  
Mr. Ray Drennan, 1114 West Bloodworth Street, Olney, Texas 76374  
Blas Coy, Office of the Public Interest Counsel, TCEQ, MC 103  
Tom Greimel, Enforcement Division, TCEQ, MC 128



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, Director  
Litigation Division



by \_\_\_\_\_

Xavier Guerra  
State Bar of Texas No. 24027359  
Litigation Division, MC R-13  
14250 Judson Road  
San Antonio, Texas 78233-4480  
(210) 403-4016  
(210) 545-4329 (FAX)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of March, 2010, the original and seven (7) copies of the foregoing The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision was filed with the Chief Clerk of the Texas Commission on Environmental Quality.

I further certify that on this day a true and correct copy of the foregoing The Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision was mailed to the following persons by the method(s) indicated:

Mr. Ray Drennan  
1114 West Bloodworth Street  
Olney, Texas 76374

Via Certified Mail, Return Receipt Requested (Article No. 7004 1350 0002 7559 0255), and U.S. First Class Mail

The Honorable Henry D. Card  
State Office of Administrative Hearings  
William P. Clements Building  
300 West 15<sup>th</sup> Street, Suite 502  
P.O. Box 13025  
Austin, Texas 78711-3025

Via Interagency Mail and via facsimile to (512) 475-4994

Office of the Public Interest Counsel  
Texas Commission on Environmental Quality  
Mail Code 103

Via Electronic Mail.



---

Xavier Guerra  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



### **An ORDER Assessing Administrative Penalties Against Ray Drennan; TCEQ Docket No. 2008-0124-PST-E and SOAH Docket No. 582-08-3991**

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 Ray Drennan (Respondent). A Proposal for Decision (PFD) was presented by Henry D. Card, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the EDPRP on January 11, 2010, in Austin, Texas.

#### **FINDINGS OF FACT**

1. Mr. Drennan owns a building and real property at 125 South Avenue C, Olney, Young County, Texas. He uses the building as a location for his hair salon.
2. Two out-of-service underground storage tanks (USTs) are located on Mr. Drennan's property.
3. On January 30, 2007, Darla Ward, who was a TCEQ Abilene Regional Office investigator, conducted an investigation of the property. She determined that the USTs had not been removed or upgraded as required by TCEQ's rules. Because the USTs were still registered to the previous owner of the property, George Medlin, she further determined that Mr. Drennan had failed to update the registration information for the USTs. In her Investigation Report, Ms. Ward alleged Mr. Drennan therefore had violated

30 TAC §§334.47(a)(2) and 334.7(d)(3). She recommended corrective action in the form of permanent removal or upgrading of the USTs and updating of the registration. A Notice of Violation (NOV) was issued to Mr. Drennan on February 20, 2007.

4. On November 26, 2007, Ms. Ward conducted a follow-up investigation. That investigation determined that the violations she had identified earlier had not been corrected.
5. TCEQ sent a Notice of Enforcement to Mr. Drennan on January 4, 2008, followed by the Executive Director's Preliminary Report and Petition (EDPRP) on April 10, 2008. The EDPRP reiterated the proposed corrective actions and recommended assessment of an administrative penalty of \$11,550, consisting of \$10,500 for the failure to remove the USTs and \$1,050 for the failure to update the registration.
6. Mr. Drennan filed a timely request for a hearing, after which the matter was referred to the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing was sent to Mr. Drennan and to the Office of Public Interest Counsel July 31, 2008, which was more than ten days before the hearing.
8. The notice 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.
9. After a preliminary hearing and some continuances, the hearing on the merits was convened January 11, 2010, before ALJ Henry D. Card. The Executive Director and Mr. Drennan participated in the hearing and offered testimony, documentary evidence, and arguments. The hearing was adjourned and the record closed the same day, January 11, 2010.

10. Mr. Drennan has failed to remove or upgrade the USTs within 60 days of notification.
11. Mr. Drennan has failed to update the registration information for the USTs.
12. An administrative penalty of \$11,550, consisting of \$10,500 for the failure to remove the USTs and \$1,050 for the failure to update the registration is warranted under the Commission's penalty matrix.
13. Under the Commission's financial review policy, the minimum administrative penalty payable by an ongoing business is \$3,600.
14. The Commission's policy allows the minimum penalty of \$3,600 to be paid in monthly installments of \$100 over 36 months.
15. Mr. Drennan is 54 years old and had a limited income of about \$10,000 a year from his business. He lives with his mother, who owns the house in which they live, and owes her approximately \$50,000.
16. Mr. Drennan cannot afford either the administrative penalty or the proposed corrective action of removing the USTs.

#### **CONCLUSIONS OF LAW**

1. Under TEX. WATER CODE ANN. (Texas Water Code) § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas 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(c), a penalty for the violations alleged in this case 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, the 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. (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.
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 Texas Government Code, chapter 2003.
7. Mr. Drennan violated 30 TAC § 334.47(a) (2) by failing to remove the UST system from service.
8. Mr. Drennan violated 30 TAC § 334.7(d)(3) by failing to update the registration.
9. Mr. Drennan should be ordered to remove the USTs from service in accordance with 30 TAC § 334.55.
10. Mr. Drennan should be ordered to update the registration for the UST system in accordance with 30 TAC § 334.7.
11. Pursuant to TEX. WATER CODE ANN. § 7.053 and the Commission's Penalty Calculation Worksheet, Mr. Drennan should be assessed an administrative penalty of \$11,550 for the two violations, consisting of a penalty of \$10,500 for the failure to remove the USTs and \$1,050 for the failure to update the registration for the USTs.
12. Because of Mr. Drennan's inability to pay, all but \$3,600 of the administrative penalty should be deferred pending the corrective action.

13. Mr. Drennan should be allowed to pay the \$3,600 in \$100 increments over a period of 36 months, as provided in the Commission's financial review policy.

#### **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, Ray Drennan shall permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55.
2. Within 45 days after the effective date of this Commission Order, Ray Drennan shall submit an amended registration to indicate the current ownership information in accordance with 30 TEX. ADMIN. CODE § 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 this Commission Order, Mr. Drennan shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Paragraphs 1 and 2.

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 fines and imprisonment for knowing violations.

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC149A  
Texas Commission on Environmental quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Mike Taylor, Waste Section Manager  
Texas Commission on Environmental Quality  
Abilene Regional office  
1977 Industrial Blvd.  
Abilene, Texas 79602-7833

4. Within 60 days after the effective date of this Order, Ray Drennan shall begin paying an administrative penalty in the amount of \$3,600, in increments of \$100 for 36 months, for the violations set forth above. 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: Ray Drennan TCEQ Docket No.2008-0124-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

5. Ray Drennan may be required to pay an additional administrative penalty of \$7,950 if he does not comply with the corrective actions set out in paragraphs 1 and 2 of this Order.
6. 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.
7. 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.
8. 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.
9. As required by Texas Water Code § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
10. 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**

---

**Bryan W. Shaw, Ph D., Chairman  
For the Commission**