

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 26, 2009

CHIEF CLERKS OFFICE

2009 MAR 26 PM 1:52

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. 582-09-0637; TCEQ Docket No. 2008-0235-WQ-E;
Executive Director of the Texas Commission on Environmental Quality v.
Patriot Car Wash, L.L.C.**

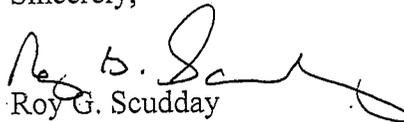
Dear Mr. Trobman:

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 April 15, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than April 25, 2009.

This matter has been designated **TCEQ Docket No. 2008-0235-WQ-E; SOAH Docket No. 582-09-0637**. 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,


Roy G. Scudday
Administrative Law Judge

RGS/ap
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: PATRIOT CAR WASH LLC
SOAH DOCKET NUMBER: 582-09-0637
REFERRING AGENCY CASE: 2008-0235-WQ-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ ROY SCUDDAY**

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)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

ELIZABETH H. MITCHELL
OWNER
PATRIOT CAR WASH, L.L.C.
2300 FLITE ACRES ROAD
WIMBERLEY, TX 78676
(512) 847-6148 (PH)
(512) 923-3691 (WK)
(512) 847-7330 (FAX)

PATRIOT CAR WASH, L.L.C.

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-0637
TCEQ DOCKET NO. 2008-0235-WQ-E

2009 MAR 26 PM 1:52

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner

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§

BEFORE THE STATE OFFICE

CHIEF CLERKS OFFICE

V.

OF

PATRIOT CAR WASH, L.L.C.,
Respondent

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) brought this enforcement action, asserting that Patriot Car Wash, L.L.C. (Respondent) violated provisions of the rules of the TCEQ related to water quality. The ED sought assessment of a total administrative penalty of \$1,070.00 as well as corrective action. Based on Respondent's failure to appear, the ED's allegations were accepted as true, establishing the violations. The Administrative Law Judge (ALJ) agrees with the ED's recommendation.

II. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

The hearing convened on March 17, 2009, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The ED was represented by Benjamin O. Thompson, Attorney, Litigation Division, who moved for a default based on Respondent's failure to appear.

Jurisdiction was proved as found in the order dated November 14, 2008. Undisputed procedural facts are set out as findings in the Proposed Order.

III. RECOMMENDATION

In accordance with 1 TEX. ADMIN. CODE (TAC) § 155.501 and 30 TAC §§ 70.106(b) and 80.113(d), the ALJ granted ED's motion for default and recommends the imposition of an administrative penalty in the amount of \$1,070.00, and corrective action necessary to bring the site into compliance.

SIGNED March 26, 2009.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against
and Requiring Corrective Action By
PATRIOT CAR WASH, L.L.C.
TCEQ DOCKET NO. 2008-0235-WQ-E
SOAH DOCKET NO. 582-09-0637**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring corrective action by Patriot Car Wash, L.L.C. (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on March 17, 2009, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent and the Commission's Executive Director (ED), represented by Benjamin O. Thompson, attorney in TCEQ's Litigation Division.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. On November 27, 2007, an Environmental Investigator for TCEQ conducted an investigation of Respondent's site located at 1815 Ranch Road 620, Lakeway, Travis County, Texas. The investigator observed that the ground behind the car wash site, on which Respondent was authorized to irrigate with reclaimed industrial wastewater, was saturated and water was pooling in low areas and on to adjacent property in a low area.
2. On August 6, 2008, Respondent received the Notice of Violation on or about January 15, 2008.
3. On July 29, 2008, the ED issued the EDPRP in accordance with TEX. WATER CODE ANN. § 7.054, alleging that Respondent violated 30 TEX. ADMIN. CODE § 210.56(f)(3) by failing to cease irrigating with industrial reclaimed wastewater when the ground was saturated. The ED recommended the imposition of an administrative penalty in the amount of \$1,070.00, and corrective action to bring the site into compliance.
4. The proposed penalty of \$1,000.00 is the base penalty for each day of violation. An enhancement of \$70.00 is recommended because Respondent had one Notice of Violation for the same or similar violations and one Notice of Violation for non-similar violations in the last five years.
5. An administrative penalty of \$1,070.00 takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in TEX. WATER CODE ANN. § 7.053 and in the Commission's 2002 Penalty Policy.

6. On August 6, 2008, Respondent requested a contested case hearing on the allegations in the EDPRP.
7. On October 8, 2008, the case was referred to SOAH for a hearing.
8. On October 17, 2008, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held; the violations asserted; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. The notice of hearing indicated in 12 pt. boldface type that if the Respondent failed to appear at the hearing, a default judgment could be rendered against it in which all the allegations contained in the notice of hearing would be deemed admitted as true.
10. At the preliminary hearing that was held on November 13, 2008, the ED established jurisdiction to proceed.
11. The hearing on the merits was conducted on March 17, 2009, in Austin, Texas, by ALJ Roy G. Scudday.
12. Respondent failed to appear at the hearing on the merits or file a motion for continuance.
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 seeks would be assessed against Respondent, and Respondent would be ordered to take 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 & 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 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to TEX. WATER CODE ANN. § 7.002.
4. Additionally, the Commission may order the violator to take corrective action. TEX. WATER CODE ANN. § 7.073.
5. 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.
6. 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 § 155.501, 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.

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 TEX. GOV'T CODE ANN. ch. 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 TEX. ADMIN. CODE § 155.501 and 30 TEX. ADMIN. CODE §§ 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 deemed admitted as true.
9. Based on the above Findings of Fact and Conclusions of Law, Respondent violated 30 TEX. WATER CODE § 210.56(f)(3).
10. 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.
11. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

12. 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 the alleged violation and a total administrative penalty of \$1,070.00 is justified and should be assessed against Respondent.
13. 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. Patriot Car Wash, L.L.C. (Respondent) is assessed an administrative penalty in the amount of \$1,070.00 for its violation of 30 TEX. WATER CODE § 330.15(c). The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. 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: Patriot Car Wash, L.L.C.; Docket No. 2008-0235-WQ-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. Immediately upon the effective date of the Commission Order, Respondent shall cease irrigating reclaimed industrial wastewater when the ground is saturated, in accordance with 30 TEX. ADMIN CODE § 210.56.
3. Within 30 days after the effective date of the Commission Order, Respondent shall develop and implement procedures to ensure that irrigating with reclaimed industrial wastewater does not occur when the ground is saturated.
4. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2 and 3. 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 fine and imprisonment for knowing violations.”

The certification shall be submitted 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

Waste Section, Manager
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

5. 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.
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. 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**