State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 AUG -4 PM 4:16
CHIEF CLERKS OFFICE

August 4, 2009

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

VIA FACSIMILE (512) 239-5533

Re: SOAH Docket No. 582-09-1616; TCEQ Docket No. 2008-0776-PST-E; In The Matter of an Enforcement Action Against Mary Automotive, Inc. d/b/a Mary's Service Center

Dear Mr. Trobman:

I address the comments and exceptions that were submitted by Mary Automotive, Inc. d/b/a Mary's Service Center in response to the June 30, 2009, Proposal for Decision (PFD) and Proposed Order. The exception letter was filed with the Texas Commission on Environmental Quality on July 20, 2009, but was not received at the State Office of Administrative Hearings until August 3, 2009.

Respondent's Comments and ALJ's Response

1. The Respondent objects to the finding that Respondent failed to install fill pipe drop tubes within six inches of the bottom of the underground storage tanks (UST) for the reason that the USTs had been previously inspected and no violation found. I recommend no change to the PFD or Proposed Order.

2. The Respondent objects to the finding that Respondent failed (1) to monitor for releases at least once per month; (2) to provide release detection for product piping; and (3) to conduct daily inventory control and monthly reconciliation for all USTs for the reason that Respondent had been previously told in 2001 that the method being used to conduct daily inventory control and monthly reconciliation was proper. I recommend no change to the PFD or Proposed Order.

3. The Respondent objects to the finding that Respondent failed to provide amended registration information within thirty days following a change for the reason that registration has

been kept up to date in the same manner that has been used since 2001. I recommend no change to the PFD or Proposed Order.

Sincerely,

Richard R. Wilfong
Administrative Law Judge

RRW/sb
cc: Service List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: MARY AUTOMOTIVE INC / MARY'S SERVICE CENTER

SOAH DOCKET NUMBER: 582-09-1616

REFERRING AGENCY CASE: 2007-0776-PST-E

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ RICHARD WILFONG

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MARY AUTOMOTIVE INC., DBA MARYS SERVICE CENTER

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xc: Docket Clerk, State Office of Administrative Hearings

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge
July 17, 2009

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 JUL 17 AM 8:37
CHIEF CLERKS OFFICE

Les Trobman, General Counsel
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VIA FACSIMILE 512/239-5533

Re: SOAH Docket No. 582-09-1616; TCEQ Docket No. 2008-0776-PST-E; In Re: Executive Director of the Texas Commission on Environmental Quality v. Mary Automotive, Inc. d/b/a Mary's Service Center

Dear Mr. Trobman:

The Executive Director (ED) has suggested modifications to the Proposed Order issued on June 30, 2009. I concur with all of the suggestions; however, further comment is warranted concerning the ED's proposed modifications numbered 9, 23 and 29. Each of these proposed modifications request the addition of "(d)(1)(B)(ii)" to the other cited subparts of 30 TEX. ADMIN. CODE § 334.50. The reason that subpart (d)(1)(B)(ii) was omitted from Finding of Fact No. 3, Conclusion of Law No. 7, and the first Ordering paragraph in the Proposed Order, is because it was not plead in the third paragraph of the ED's October 16, 2008, Preliminary Report and Petition (EDPRP) where the ED stated his conclusions regarding the violations committed and his recommended administrative penalty. However, upon further review of the EDPRP, specifically subparagraph 7 d., and the specific violations alleged in the attachments to the April 17, 2008, Notice of Enforcement, it is apparent that effective notice was given of the alleged violation of § 334.50(d)(1)(B)(ii). Moreover, review of the evidence presented at the hearing shows that the alleged violation of § 334.50(d)(1)(B)(ii) was tried by consent notwithstanding any pleading omission. Therefore, I have no objection to the Proposed Order being modified as suggested by the ED.

Sincerely,

Richard R. Wilfong
Administrative Law Judge

RRW:sb
cc: Mailing List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: MARY AUTOMOTIVE INC / MARY'S SERVICE CENTER

SOAH DOCKET NUMBER: 582-09-1616

REFERRING AGENCY CASE: 2007-0776-PST-E

STATE OFFICE OF ADMINISTRATIVE HEARINGS — **ADMINISTRATIVE LAW JUDGE**
ALJ RICHARD WILFONG

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DATE: 07/16/2009

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 4

REGARDING: EXCEPTIONS LETTER (BY ALJ)

DOCKET NUMBER: 582-09-1616

JUDGE RICHARD WILFONG

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