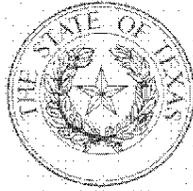


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

June 14, 2011

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

Re: SOAH Docket No. 582-09-4949; TCEQ Docket No. 2008-1170-MLM-E;  
In Re: Executive Director of the Texas Commission on Environmental  
Quality, Petitioner v. Petroleum Wholesale, L.P. DBA Sunmart 363,  
Respondent

Dear Mr. Trobman:

These are my recommended rulings on the exceptions that the Executive Director (ED) filed to my Proposal for Decision (PFD) in this case. The Respondent filed no exceptions.

I recommend that the Commission sustain one of the ED's exceptions and conclude that the Respondent violated 30 TEX. ADMIN. CODE (TAC) §§ 327.5(a) and 334.75(a)(1) and (b) by failing to complete cleanup within 24 hours following the release on July 2, 2007. Because the ED grouped these with other violations and sought a single penalty for the group, the proposed penalty amount would not change.

As discussed in the PFD, the evidence shows that the cleanup began within approximately four hours after the July 2, 2007 release.<sup>1</sup> However, as the ED correctly notes the evidence also shows that TCEQ investigator Charmaine Costner observed product continuing to flow from the Facility into the lake area on July 3, 2007, and seeping from the Facility slab and from the oil/water discharge pipe on July 4, 2007.<sup>2</sup> Additionally, proposed Finding of Fact (FOF) Nos. 63 and 64, note that the release was continuing and had not been cleaned even as late as July 5, 2007. Yet I mistakenly did not recommend a conclusion that the cleanup was not completed within 24 hours as required.

FOFs 63 and 64 seem sufficient as written, but to address the ED's exception and correct my error, I recommend that that the Commission adopt the following revised Conclusion of Law No. 13:

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512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

<sup>1</sup> PFD at 20.

<sup>2</sup> ED Ex. 4 at 00005-6.

13. The Respondent violated Water Code § 26.121(a)(1) and 30 TAC § 334.48(a) on July 2, 2007. Additionally, the Respondent failed to contain and immediately clean the spill of diesel as required by 30 TAC §§ 327.5(a) and 334.75(a)(1) and (b).

The ED also correctly notes that there are typos on page 5 at lines 3 and 7 of the PFD, where 2011 should be 2007. This error is not repeated in the Proposed Order, so no change is needed there.

I recommend that the Commission overrule the ED's other exceptions. They reurge arguments discussed and rejected in the PFD.

Sincerely,



William G. Newchurch  
Administrative Law Judge

WGN:nl  
cc: Mailing List

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**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** PETROLEUM WHOLESALE LP / SUNMART 363  
**SOAH DOCKET NUMBER:** 582-09-4949  
**REFERRING AGENCY CASE:** 2008-1170-MLM-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ WILLIAM G. NEWCHURCH**

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**REPRESENTATIVE / ADDRESS**

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TCEQ

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