

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*

May 24, 2010

*Via Facsimile to (512) 475-4994 and Via Hand Delivery*

The Honorable Steven D. Arnold  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 504  
P.O. Box 13025  
Austin, Texas 78711-3025

Re: Jamal Alshaafi dba Quik Stop; TCEQ Enforcement Case No. 36774;  
TCEQ Docket No. 2008-1748-PST-E; RN102230109  
SOAH Docket No. 582-10-0729  
Executive Director's Exceptions to the Administrative Law Judge's Proposed Order

Dear Judge Arnold:

Enclosed please find the "Executive Director's Exceptions and Modifications to the Administrative Law Judge's Proposal for Decision" regarding the above-referenced matter. If you have any questions, please do not hesitate to call me at (512) 239-1320. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kari L. Gilbreth".

Kari L. Gilbreth  
Attorney  
Litigation Division

Enclosure

cc: Jamal Alshaafi  
TCEQ Chief Clerk  
James Nolan, Waste Enforcement Section  
Frank Burlison, Waste Section Manger, Waco Regional Office  
Blas Coy, Public Interest Counsel  
TCEQ Office of General Counsel (original and 7 copies of enclosure)

**SOAH DOCKET NO. 582-10-0729  
TCEQ DOCKET NO. 2008-1748-PST-E**

**IN THE MATTER OF  
AN ENFORCEMENT ACTION  
AGAINST  
JAMAL ALSHAAFI DBA QUIK STOP,  
RESPONDENT**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

NOW COMES the Executive Director, by and through his attorney, Kari L. Gilbreth, and makes the following suggestions to modify the Administrative Law Judge's Proposed Order. While the Executive Director agrees with the substance of the Proposed Order, these suggested modifications are intended to clarify the provisions of the Order and correct typographical errors. These suggested modifications are proposed pursuant to 30 TEX. ADMIN. CODE § 80.257.

1. The Executive Director recommends that references to "Amended Preliminary Report and Petition (Amended EDPRP)" be changed to "First Amended Report and Petition (EDFARP)" in the proposed Order. The references are contained in the opening paragraph, Findings of Fact Nos. 8, 10 and 11, and Conclusion of Law No. 5.
2. The Executive Director recommends that in Finding of Fact No. 5 that the word "owndership" be changed to "ownership", and "wich" be changed to "which".
3. The Executive Director recommends that in Finding of Fact No. 6 that the apostrophe in the acronym "UST's" be removed.
4. Finding of Fact No. 7 currently reads: "On October 21, 2008, Respondent was served with a Notice of Violation letter." The Executive Director recommends that Finding of Fact be revised as follows: "On or about October 21, 2008, Respondent received a Notice of Enforcement letter."
5. The Executive Director recommends that in Finding of Fact No. 17 a period be inserted after "The record closed that same day".
6. The Executive Director recommends that on the last line of Ordering Provision No. 1 the docket number be changed from "2008-11748-PST-E" to "2008-1748-PST-E".

7. The Executive Director recommends that the first sentence of Ordering Provision No. 1 be changed as follows: "Within 30 days after the effective date of this Commission Order, Jamal Alshaafi d/b/a Quik Stop shall pay an administrative penalty in the amount of \$3,500 for violations of 30 TAC §§334.7(d)(3) and 334.47(a)(2).
8. The Executive Director recommends removing all references to "Annotated" or "Ann." in the Order. The references are contained in Finding of Fact No. 8, Conclusions of Law Nos. 1, 3, 4, 5, 6, 7, 9 and 11, and Ordering Provisions Nos. 8 and 9.
9. The Executive Director recommends re-lettering Conclusion of Law 8.(c) to Conclusion of Law 8.(b).
10. The Executive Director recommends in Ordering Provision No. 4. that the word "Avenue" be changed to "Avenue" in the last address.

To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these recommended modifications, the Executive Director excepts to the Proposal for Decision. A copy of the Proposed Order with the recommended modifications is attached.

  
Kari L. Gilbreth  
State Bar of Texas No. 24040969  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, TX 78711-3087  
(512) 239-1320  
(512) 239-3434 (FAX)

## CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2010, the original and 7 copies of the foregoing "Executive Director's Exceptions to the Administrative Law Judge's Proposed Order" ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Exceptions was mailed via Certified Mail, Return Receipt Requested and Via Facsimile to:

Jamal Alshaafi dba Quik Stop  
1510 East Avenue H  
Temple, Texas 75601

Facsimile No. (254) 771-0211 and  
CM/RRR No. 70022030000570603566

I further certify that on this day a true and correct copy of the foregoing Exceptions was mailed via Inter-Agency Mail and Via Facsimile to:

The Honorable Steven D. Arnold  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701-1649

Facsimile No. (512) 475-4994

I further certify that on this day a true and correct copy of the foregoing Exceptions was delivered via electronic mail to the Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



Kari L. Gilbreth

Attorney

Litigation Division

Texas Commission on Environmental Quality

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** Assessing Administrative Penalties Against and Ordering Corrective Action by Jamal Alshaafi d/b/a Quik Stop; TCEQ Docket No. 2008-1748-PST-E; SOAH Docket No. 582-10-0729

On \_\_\_\_\_, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Report and Petition (EDFARP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Jamal Alshaafi d/b/a Quik Stop (Respondent). A Proposal for Decision (PFD) was presented by Steven D. Arnold, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

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 at 1510 East Avenue H, Temple, Bell County, Texas (Facility).
2. Three inactive underground storage tanks (UST) that are not exempt or excluded from regulation exist beneath the Facility.

3. The USTs were located on the Facility at the time of Respondent's purchase of the Facility in 1997.
4. The deed pursuant to which Respondent purchased the Facility did not exclude the USTs from the conveyance of the Facility.
5. Section 26.342(9) of the Texas Water Code provides that "[i]f the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person."
6. On October 9, 2008, a TCEQ Waco Regional Office investigator documented that Respondent had violated the following:
  - 30 TEX. ADMIN. CODE §334.7(d)(3) by failing to notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; specifically, the registration was not updated to reflect the correct ownership information and current operational status of the USTs at the Facility; and
  - 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

7. On or about October 21, 2008, Respondent received a Notice of Enforcement letter.
8. On May 8, 2009, the Executive Director filed a Preliminary Report and Petition, and on February 12, 2010, the Executive Director filed an EDFARP, in accordance with TEX. WATER CODE § 7.054. The EDFARP alleged that:
  - (a) Respondent violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; and
  - (b) Respondent violated 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.
9. The Executive Director recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$3,500 against Respondent and that the Commission order Respondent to take certain corrective actions.
10. The \$3,500 administrative penalty sought in the EDFARP is an accumulation of the different penalties assessed for each violation.
11. The Executive Director mailed a copy of the original EDPRP and the EDFARP to Respondent at 1510 East Avenue H, Temple, Texas, on the same dates that they were filed.
12. Respondent filed an answer to the original EDPRP and requested a hearing.

13. On October 6, 2009, the TCEQ referred this matter to SOAH for a contested case hearing.
14. On October 29, 2009, the TCEQ Chief Clerk mailed notice to Respondent of the preliminary hearing scheduled for December 3, 2009.
15. 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.
16. On December 3, 2009, the Executive Director and Respondent appeared at a preliminary hearing and agreed to a procedural schedule leading to an evidentiary hearing on March 2, 2010.
17. The hearing on the merits was held on March 2, 2010. All parties appeared and participated in the hearing. The record closed that same day.

## II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE § 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. Respondent owns the USTs located on the Facility.
3. Under TEX. WATER CODE § 7.052, a penalty may not exceed \$10,000.00 per violation, per day for the violations alleged in this proceeding.
4. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE § 7.073.
5. As required by TEX. WATER CODE §7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondent was notified of the EDFARP and of the opportunity to request a hearing on the alleged violations and the proposed penalties and corrective actions.
6. As required by TEX. GOV'T CODE §§ 2001.051(1) and 2001.052; TEX. WATER CODE § 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 and corrective actions.
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 ch. 2003.

8. Based on the Findings of Fact and Conclusions of Law:
  - (a) Respondent violated 30 TAC § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and
  - (b) Respondent violated 30 TAC § 334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.
  
9. In determining the amount of an administrative penalty, TEX. WATER CODE § 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 § 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 \$3,500 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 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. Within 30 days after the effective date of this Commission Order, Jamal Alshaafi d/b/a Quik Stop shall pay an administrative penalty in the amount of \$3,500 for violations of 30 TAC §§334.7(d)(3) and 334.47(a)(2). The payment of this administrative penalty and Jamal Alshaafi d/b/a Quik Stop's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order. 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: Jamal Alshaafi d/b/a Quik Stop; Docket No. 2008-1748-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 this Order, Jamal Alshaafi d/b/a Quik Stop shall permanently remove the UST system from service, in accordance with 30 TAC § 334.55.
3. Within 30 days after the effective date of this Order, Jamal Alshaafi d/b/a Quik Stop shall submit an amended registration to indicate the current ownership and operational status of the UST system, in accordance with 30 TAC § 334.7, to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin TX 78711-3087

4. Within 45 days after the effective date of this Order, Jamal Alshaafi d/b/a Quik Stop shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 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 fines and imprisonment for knowing violations.”

The certification shall be sent to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

with a copy to:

Frank Burlison, Waste Section Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, TX 76710-7826

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 § 2001.144.
8. As required by TEX. WATER CODE § 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**

---

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