

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 23, 2009

CHIEF CLERKS OFFICE

2009 MAY 12 PM 4: 03

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. 582-09-1236; TCEQ Docket No. 2008-1760-AIR; In Re:  
Denying Renewal and Ordering the Immediate Expiration of Air Quality Permit  
No. 31432, Issued to K & K Tank Cleaning, Inc.

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 June 1, 2009. Any replies to exceptions or briefs must be filed in the same manner no later than June 11, 2009.

This matter has been designated **TCEQ Docket No. 2008-1760-AIR; SOAH Docket No. 582-09-1236**. 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,

A handwritten signature in black ink, appearing to read "Ami L. Larson".

Ami L. Larson  
Administrative Law Judge

ALL/ds  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** K & K TANK CLEANING SYSTEMS, INC  
**SOAH DOCKET NUMBER:** 582-09-1236  
**REFERRING AGENCY CASE:** 2008-1760-AIR

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**  
**ALJ AMI LARSON**

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**REPRESENTATIVE / ADDRESS**

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K & K TANK CLEANING SYSTEMS, INC.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-1236  
TCEQ DOCKET NO. 2008-1760-AIR

2009 MAY 12 PM 4:03

EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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BEFORE THE STATE OFFICE OF CHIEF CLERKS OFFICE

V.

OF

APPLICATION OF K & K TANK  
CLEANING SYSTEMS, INC. FOR  
RENEWAL OF AIR QUALITY PERMIT  
NO. 31434 IN TARRANT COUNTY

ADMINISTRATIVE HEARINGS

## PROPOSAL FOR DECISION

### I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks the immediate expiration of the air quality permit for K & K Tank Cleaning Systems, Inc. (Applicant) due to its failure to meet the Commission's requirements for renewal of that permit.

This matter was referred by the ED to the State Office of Administrative Hearings (SOAH) for a contested case hearing to require Applicant to show cause why the permit should not expire immediately as a result of deficiencies in its permit renewal application. However, after being properly notified of the hearing, Applicant failed to appear. Therefore, as set out below, the Administrative Law Judge (ALJ) recommends that the Commission issue an Order denying Applicant's application for permit renewal and specifying an immediate expiration date for Applicant's permit based on the uncontested evidence in the record.

### II. NOTICE

On March 25, 2009, the Commission issued the notice of hearing to Applicant by certified mail, return receipt requested, and by first class mail to the address provided on its renewal

application. The notice of hearing included the time, date, place, and nature of the hearing and cited the applicable rules and statutes. The notice also contained bold-faced language notifying Applicant that a default order could be entered resulting in immediate expiration of the permit at issue if Applicant failed to appear or be represented at the hearing.

### III. PROCEDURAL HISTORY

On March 31, 2009, the contested case hearing to allow Applicant to show cause why its permit should not immediately expire was convened before ALJ Ami L. Larson. The ED appeared and was represented by Staff Attorney Tim Eubank. The Office of Public Interest Counsel appeared and was represented by attorney Eli Martinez. Applicant did not appear and was not represented at the hearing. Nor did Applicant file a request for continuance or provide any reason for its failure to appear.

At the hearing, proper jurisdiction was confirmed and the ED re-offered Exhibits A through J, all of which were admitted without objection.<sup>1</sup> Based on the uncontested evidence, the ALJ finds that Applicant failed to meet the Commission's requirements for renewal. Accordingly, the ALJ recommends that the Commission order the immediate expiration of Applicant's permit no. 31434 and issue the Findings of Fact and Conclusions of Law set forth in the attached proposed order.

### IV. SUMMARY OF UNDISPUTED EVIDENCE

On September 22, 2006, Applicant submitted an application for renewal of its Air Permit No. 31434.<sup>2</sup> On April 2, 2007, the Commission sent Applicant a letter detailing various

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<sup>1</sup> The hearing was previously convened before ALJ Ami L. Larson on January 5, 2009. Applicant failed to appear. At that time, the ALJ found that jurisdiction had been proven based on the admission of Exhibit ED-A. The ALJ further ordered the parties to submit briefs regarding how best to proceed in light of Applicant's failure to appear. Exhibits ED- B through ED-I were also offered at the January 5, 2009, hearing, but were taken under advisement by the ALJ subject to later ruling after review of the parties' briefs. In Order No. 2, the ALJ reset the hearing to March 31, 2009, and ordered the ED to provide new and more specific notice of the nature of that hearing.

<sup>2</sup> ED Exh..A.

insufficiencies in Applicant's permit renewal application and requiring Applicant to provide the necessary information to the Commission within 30 days.<sup>3</sup> On May 16, 2007, the Commission sent Applicant an additional letter indicating that the information necessary to review its renewal application had not yet been received and offering Applicant an additional 15 days to submit the required information.<sup>4</sup> On January 11, 2008, the Commission sent another letter to Applicant explaining that the additional information necessary to review the application was still missing and offering Applicant an additional 30 days to submit the required information.<sup>5</sup> Applicant submitted a letter to the Commission dated February 11, 2007,<sup>6</sup> acknowledging and explaining the renewal application deficiencies as noted by the Commission's prior letters. Applicant's letter also acknowledged that it was non-compliant with the permit requirements but expressed an intent to become compliant in the future.

## V. APPLICABLE LAW AND ANALYSIS

Under the Texas Health and Safety Code, the Commission shall renew a permit on or before the 180<sup>th</sup> day after the date a renewal application is filed unless the Commission determines that the facility will not meet the requirements for renewal, in which case the Commission shall notify applicant of the basis for denial, and establish a schedule and deadline by which the applicant must meet the Commission's requirements for renewal.<sup>7</sup> If the applicant does not meet the Commission's requirements in accordance with the schedule, the applicant must show, in a contested case proceeding, why the permit should not expire immediately.<sup>8</sup>

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<sup>3</sup> ED Exh. E.

<sup>4</sup> ED Exh. F.

<sup>5</sup> ED Exh. G.

<sup>6</sup> ED Exh. H. It appears that the date of the letter should be 2008 rather than 2007, since it refers to receipt of the Commission's letter of January 2008.

<sup>7</sup> TEX. HEALTH AND SAFETY CODE ANN. § 382.055(f).

<sup>8</sup> TEX. HEALTH AND SAFETY CODE ANN. § 382.055(g); 30 TEX. ADMIN. CODE § 116.314.

The preponderance of the evidence presented in this case establishes that Applicant has failed to meet the Commission's requirements for permit renewal. In its only response to the Commission's request for additional required information, Applicant indicated that it was unable to determine the air contaminant emissions as required by the Commission and also acknowledged that other information required by the Commission was unavailable at that time. Additionally, despite being provided proper notice of the hearing, Applicant failed to appear at the contested case hearing to show cause why his permit should not expire immediately. Accordingly, pursuant to applicable law, the ALJ finds that Applicant failed to meet his burden of proof and that his permit should not be renewed and should expire immediately.

**SIGNED May 12, 2009.**



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**AMI L. LARSON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**ORDER Denying Renewal and Ordering  
the Immediate Expiration of Air Quality Permit  
No. 31434 issued to K & K Tank Cleaning, Inc.;  
TCEQ Docket No. 2008-1760-AIR and SOAH  
Docket No. 582-09-1236**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Proposal for Decision (PFD) presented by Ami L. Larson, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a contested case hearing in this matter on March 31, 2009, in Austin, Texas.

The Executive Director, represented by Tim Eubank, and the Office of Public Interest Counsel, represented by Eli Martinez, appeared at the hearing. K & K Tank Cleaning, Inc. (Applicant) was not present at the hearing nor represented by counsel and did not file for a continuance. At the hearing, the Executive Director offered evidence to establish that Applicant's renewal application was insufficient and that Applicant was notified of the insufficiencies but failed to correct them within the time allowed by the Commission. Based on the evidence presented and Applicant's failure to appear at the hearing, the ALJ issued a Proposal for Decision (PFD) agreeing with the Executive Director's request to recommend that Applicant's permit renewal application be denied and that the permit be ordered to expire immediately.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

### I. FINDINGS OF FACT

1. Applicant holds Air Quality Permit No. 31434 for the operation of the Tank Semitrailer Cleaning Facility located at 2450 Cold Springs Road, Fort Worth, Tarrant County, Texas.
2. On September 22, 2006, the Commission received Applicant's application for renewal of permit No. 31434.
3. Applicant's renewal application did not include the following required information:
  - 1) detailed calculations of emission estimates and a description of the methodology used to estimate emissions;
  - 2) Table 2, Material Balance (TCEQ Form 10155);
  - 3) Table 8, Flare Systems (TCEQ Form 10171);
  - 4) Table 15, Adsorbers (TCEQ Form 10183);
  - 5) a Best Available Control Technology analysis for the facility;
  - 6) a discussion of compliance with permit conditions and applicable regulations pursuant to 30 Tex. Admin. Code § 116.311.
4. On April 2, 2007, the Commission sent Applicant a letter detailing the insufficiencies in Applicant's permit renewal application and requiring Applicant to provide the necessary information to the Commission within 30 days.
5. On May 16, 2007, the Commission sent Applicant a letter indicating that the information necessary to review the renewal application had not yet been received and offering Applicant an additional 15 days to submit the required information.

6. On January 11, 2008, the Commission sent a letter to Applicant explaining that the additional information necessary to review the renewal application was still missing and notifying Applicant that a show cause hearing regarding the potential immediate expiration of Applicant's permit would be scheduled if Applicant failed to submit the required information within 30 days.
7. In February 2008, Applicant sent its only response to the Commission.
8. Applicant was unable to determine the air contaminant emissions as required by the Commission.
9. Applicant did not have available and did not provide the information required by the Commission to process its renewal application.
10. On November 17, 2008, the Commission requested that a contested case hearing be set before the State Office of Administrative Hearings (SOAH) to require Applicant to show cause why its permit should not immediately expire as a result of the deficiencies in the permit renewal application.
11. On March 10, 2009, the ED sent a notice of the March 31, 2009, hearing before SOAH to Applicant by certified mail, return receipt requested, and by first class mail to the address provided on its renewal application.
12. The notice of hearing:
  - a. Indicated the time, date, place, and nature of the hearing;
  - b. Stated the legal authority and jurisdiction for the hearing;
  - c. Indicated the deficiencies in the renewal application as alleged by the ED;

- d. Advised Applicant, in at least twelve-point bold-faced type, that failure to appear at the contested case show cause hearing in person or by representative could result in the factual allegations contained in the notice being deemed as true and the permit being subject to immediate expiration by default.
13. The hearing, for which proper jurisdiction was proven, was convened on March 31, 2009, before Administrative Law Judge Ami L. Larson at the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Austin, Texas. The Executive Director (ED) of the Texas Commission for Environmental Quality (TCEQ) appeared at the hearing and was represented by Staff Attorney Tim Eubank. The Office of Public Interest Counsel appeared and was represented by attorney Eli Martinez.
14. Applicant did not appear and was not represented at the March 31, 2009, hearing, and did not file a continuance or provide any reason for its failure to appear.
15. Based on Applicant's failure to appear at the hearing despite being provided proper notice, the ED recommended that the Applicant's permit immediately expire.

## II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Texas Health and Safety Code § 382.011.
2. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Texas Government Code, chapter 2003.
3. An air quality permit holder is required to submit certain information in support of its permit renewal application in order for a permit renewal to be granted. 30 Tex. Admin. Code § 116.311.

4. Under Texas Health and Safety Code § 382.055(g), if an applicant for renewal of an air quality permit fails to meet the Commission's requirements in accordance with the schedule established, then the applicant must show in a contested case proceeding why the permit should not expire immediately.
5. Prior to denial of an application for air quality permit renewal, the Executive Director shall provide notice to the permit holder with a report which describes the basis for denial and a schedule for compliance with the renewal requirements if the denial is based on failure to meet the Commission's requirements. 30 TEX. ADMIN. CODE § 116.314(b).
6. An applicant for air quality permit renewal who fails to satisfy the Commission's requirements for corrective action by the deadline specified in the Executive Director's report, shall be required to show cause in a contested case proceeding why the permit should not expire. 30 TEX. ADMIN. CODE § 116.314(c).
7. An existing permit shall remain effective until a date specified in any Commission order entered following a contested case hearing. 30 TEX. ADMIN. CODE § 116.314(d)(4).
8. As required by Texas Government Code §§ 2001.051 and 2001.052, Applicant was notified of the contested case hearing to allow Applicant to show cause why its permit should not immediately expire.
9. Based on the above Findings of Fact and Conclusions of Law, Applicant failed to satisfy the Commission's requirements for corrective action regarding deficiencies in its renewal application by the deadline specified in the Executive Director's report and failed to show cause in a contested case proceeding why its permit should not expire. 30 TEX. ADMIN. CODE § 116.314(c).

10. Based on the above Findings of Fact and Conclusions of Law, Applicant's air quality permit number 31434 should expire immediately.

### III. 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. The renewal application filed by K & K Tank Cleaning Systems, Inc. is denied and Permit No. 31434 expires immediately.
2. 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.
3. The effective date of this Order is the date the Order is final, as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
4. 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

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Buddy Garcia, Chairman  
For the Commission