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 7, 2010

Via Facsimile to (512) 475-4994 and Via Interagency Mail

The Honorable Sharon Cloninger
State Office of Administrative Hearings
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025

Re: Texas Commission on Environmental Quality ("TCEQ") Enforcement Proceeding
Against Eun Bok Lee dba Lees Cheveron
TCEQ Docket No. 2009-0052-PST-E
SOAH Docket No. 582-09-5022

Dear Judge Cloninger:

Enclosed please find the Executive Director's Exceptions to the Administrative Law Judge's Proposed Order regarding the above-referenced matter. If you have any questions, please do not hesitate to call me at (512) 239-0107. Thank you for your attention to this matter.

Sincerely,

Barham A. Richard
Attorney
Litigation Division

Enclosure

cc: TCEQ Chief Clerk (original)
Mr. Tom Greimel, Enforcement Division, TCEQ, MC 128
Mr. Blas Coy, Public Interest Counsel, TCEQ, MC 103
Mr. Les Trobman, Office of General Counsel, TCEQ, MC 101
Mr. Eun Bok Lee, 10101 Long Point Road, Houston, Texas 77043

SOAH DOCKET NO. 582-09-0052
TCEQ DOCKET NO. 2009-0052-PST-E

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, PETITIONER	§	**BEFORE THE**
	§	
	§	
	§	
	§	**STATE OFFICE OF**
VS.	§	
	§	
EUN BOK LEE DBA LEES CHEVERON, RESPONDENT	§	
	§	**ADMINISTRATIVE HEARINGS**
	§	

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

NOW COMES the Executive Director, by and through his attorney, Barham A. Richard, and submits the following proposal 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 to correct typographical errors. These suggested modifications are proposed pursuant to 30 TEX. ADMIN. CODE § 80.257.

The Executive Director recommends the following modifications:

1. Remove the "s" from the word "violations" in Findings of Fact No. 6 to indicate that there is only one violation in this case.

2. Add an additional notice provision, 30 TEX. ADMIN. CODE § 1.12, in Conclusions of Law No. 3, so that it reads "...and 30 TEX. ADMIN. CODE §§ 1.12, 39.25, and 80.6."

3. Remove the hyphen between the words "four" and "thousand" and "nine" and "hundred" in Ordering Provision No. 1, so that it reads "...four thousand nine hundred forty-six dollars..."

PRAYER

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. Copies of the Proposed Order with the recommended modifications are attached. Attachment "A" is a redline/strikeout version which clearly delineates the recommended modifications. Attachment "B" is a copy of the Proposed Order incorporating the Executive Director's recommended changes.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Kathleen C. Decker, Division Director
Litigation Division

by _____

Barham A. Richard
State Bar of Texas No. 24056201
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE

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

I further certify that on this day true and correct copies of the foregoing Exceptions were mailed to the following persons by the method of service indicated:

Mr. Eun Bok Lee, Owner Lees Cheveron 10101 Long Point Road Houston, Texas 77043	Via First Class and Certified Mail, Return Receipt Requested (Article No. 70022030000570591016)
The Honorable Sharon Cloninger State Office of Administrative Hearings William P. Clements Building 300 West 15th Street, Suite 502 P.O. Box 13025 Austin, Texas 78711-3025	Via interagency mail and via facsimile to (512) 475-4994
Mr. Blas Coy Office of the Public Interest Counsel Texas Commission on Environmental Quality Mail Code 103	Via Electronic Mail
Mr. Les Trobman Office of General Counsel Texas Commission on Environmental Quality Mail Code 101	Via Electronic Mail

Barham A. Richard
Attorney
Litigation Division
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Assessing Administrative Penalties and Requiring Certain Actions of
Eun Bok Lee d/b/a Lee's Chevron
SOAH DOCKET NO. 582-09-5022
TCEQ DOCKET NO. 2009-0052-PST-E

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing an administrative penalty against Eun Bok Lee d/b/a Lee's Chevron (Respondent). Sharon Cloninger, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on March 11, 2010, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, who authorized his son Dae Hak Lee to speak on his behalf, and the Commission's Executive Director (ED), represented by Barham A. Richard, an 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. Respondent owns and operates a convenience store with retail sales of gasoline (the station) located at 10101 Long Point Road, Houston, Harris County, Texas.

2. A January 6, 2009 TCEQ investigation of the station revealed that Respondent had failed to verify proper operation of Stage II equipment at least once every 12 months.

3. No annual testing to verify proper operation of the Stage II equipment had been conducted by Respondent since July 2007.

4. Stage II equipment testing was performed during the January 6, 2009 TCEQ investigation. Filters on the dispensers nearest to the tanks were replaced, no other repairs were necessary, and all tests passed during the investigation.

5. Respondent received notice of the violation from TCEQ on January 8, 2009.

6. On May 6, 2009, the ED issued the EDPRP, setting out Respondent's alleged violation and seeking an order assessing an administrative penalty of $6,196.

7. The ED did not recommend corrective measures in the EDPRP.

8. On May 20, 2009, Respondent filed an answer to the EDPRP with the Commission's Chief Clerk's Office.

9. On March 10, 2010, the ED prepared a revised Penalty Calculation Worksheet that recommended a penalty of $4,946.

10. The revised penalty reflected a reduction of 25 percent or $1,250 from the original $6,196 recommended amount due to Respondent's good faith effort to comply with the Stage II testing requirement.

11. On August 5, 2009, the Commission's Chief Clerk issued notice of the hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

12. On September 10, 2009, the preliminary hearing in this case was held at SOAH in Austin before Judge Cloninger. Jurisdictional documents were admitted, and a procedural schedule was established.

13. The hearing on the merits was convened at SOAH in Austin on March 11, 2010, by Judge Cloninger. The record closed the same day.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority. TEX. WATER CODE ANN. §§ 5.013 and 7.002.

2. 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. TEX. GOV'T CODE ANN. ch. 2003.

3. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties. TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TEX. ADMIN. CODE § 155.401, and 30 TEX. ADMIN. CODE §§ 1.12, 39.25 and 80.6.

4. Respondent violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of Stage II equipment at least once every 12 months.

5. The ED correctly applied the September 2002 Penalty Policy established by the Commission in calculating the $4,946 penalty in this enforcement action.

6. Based on the above Findings of Fact and Conclusions of Law, an administrative penalty of $4,946 should be assessed against Respondent. TEX. WATER CODE ANN. §§ 7.052 and 7.053.

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. Respondent is assessed an administrative penalty in the amount of four thousand nine hundred forty-six dollars ($4,946) for violation of the Commission's rules and applicable statutes.

2. All checks submitted to pay the penalty imposed by this Order shall be made out to "The Texas Commission on Environmental Quality."

3. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Eun Bok Lee d/b/a Lee's Chevron, Docket No. 2009-0052-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.

4. Respondent's payment of the penalty set forth in this Order resolves only the violation that is the subject of the Order. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations that are not raised here.

5. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines Respondent has not complied with one or more of the terms or conditions of this Order.

6. The Chief Clerk shall provide a copy of this Order to all of the parties.

7. The effective date of this Order is the date the order is final, as provided by TEX. GOV'T. CODE ANN § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.

8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

9. 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 denied for want of merit.

Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Bryan W. Shaw, Ph.D., Chairman
For the Commission

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Assessing Administrative Penalties and Requiring Certain Actions of
Eun Bok Lee d/b/a Lee's Chevron
SOAH DOCKET NO. 582-09-5022
TCEQ DOCKET NO. 2009-0052-PST-E

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing an administrative penalty against Eun Bok Lee d/b/a Lee's Chevron (Respondent). Sharon Cloninger, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on March 11, 2010, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, who authorized his son Dae Hak Lee to speak on his behalf, and the Commission's Executive Director (ED), represented by Barham A. Richard, an 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. Respondent owns and operates a convenience store with retail sales of gasoline (the station) located at 10101 Long Point Road, Houston, Harris County, Texas.

2. A January 6, 2009 TCEQ investigation of the station revealed that Respondent had failed to verify proper operation of Stage II equipment at least once every 12 months.

3. No annual testing to verify proper operation of the Stage II equipment had been conducted by Respondent since July 2007.

4. Stage II equipment testing was performed during the January 6, 2009 TCEQ investigation. Filters on the dispensers nearest to the tanks were replaced, no other repairs were necessary, and all tests passed during the investigation.

5. Respondent received notice of the violation from TCEQ on January 8, 2009.

6. On May 6, 2009, the ED issued the EDPRP, setting out Respondent's alleged violation and seeking an order assessing an administrative penalty of $6,196.

7. The ED did not recommend corrective measures in the EDPRP.

8. On May 20, 2009, Respondent filed an answer to the EDPRP with the Commission's Chief Clerk's Office.

9. On March 10, 2010, the ED prepared a revised Penalty Calculation Worksheet that recommended a penalty of $4,946.

10. The revised penalty reflected a reduction of 25 percent or $1,250 from the original $6,196 recommended amount due to Respondent's good faith effort to comply with the Stage II testing requirement.

11. On August 5, 2009, the Commission's Chief Clerk issued notice of the hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

12. On September 10, 2009, the preliminary hearing in this case was held at SOAH in Austin before Judge Cloninger. Jurisdictional documents were admitted, and a procedural schedule was established.

13. The hearing on the merits was convened at SOAH in Austin on March 11, 2010, by Judge Cloninger. The record closed the same day.

II. CONCLUSIONS OF LAW

1. Respondent is subject to the Commission's enforcement authority. TEX. WATER CODE ANN. §§ 5.013 and 7.002.

2. 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. TEX. GOV'T CODE ANN. ch. 2003.

3. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties. TEX. GOV'T CODE ANN. § 2001.052, TEX. WATER CODE ANN. § 7.058, 1 TEX. ADMIN. CODE § 155.401, and 30 TEX. ADMIN. CODE §§ 1.12, 39.25 and 80.6.

4. Respondent violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of Stage II equipment at least once every 12 months.

5. The ED correctly applied the September 2002 Penalty Policy established by the Commission in calculating the $4,946 penalty in this enforcement action.

6. Based on the above Findings of Fact and Conclusions of Law, an administrative penalty of $4,946 should be assessed against Respondent. TEX. WATER CODE ANN. §§ 7.052 and 7.053.

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. Respondent is assessed an administrative penalty in the amount of four thousand nine hundred forty-six dollars ($4,946) for violation of the Commission's rules and applicable statutes.

2. All checks submitted to pay the penalty imposed by this Order shall be made out to "The Texas Commission on Environmental Quality."

3. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Eun Bok Lee d/b/a Lee's Chevron, Docket No. 2009-0052-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.

4. Respondent's payment of the penalty set forth in this Order resolves only the violation that is the subject of the Order. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations that are not raised here.

5. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines Respondent has not complied with one or more of the terms or conditions of this Order.

6. The Chief Clerk shall provide a copy of this Order to all of the parties.

7. The effective date of this Order is the date the order is final, as provided by TEX. GOV'T. CODE ANN § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.

8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

9. 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 denied for want of merit.

Issued:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Bryan W. Shaw, Ph.D., Chairman
For the Commission