

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 19, 2010

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

Re: SOAH Docket No. 582-09-5022; TCEQ Docket No.2009-0052-PST-E; Eun Bok Lee D/B/A Lee's Chevron

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 documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than May 10, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than May 20, 2010.

This matter has been designated **TCEQ Docket No. 2009-0052-PST-E; SOAH Docket No. 582-09-5022**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Cloninger".

Sharon Cloninger  
Administrative Law Judge

SC/lh  
Enclosures  
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)  
STYLE/CASE: EUN BOK LEE / LEES CHEVRON  
SOAH DOCKET NUMBER: 582-09-5022  
REFERRING AGENCY CASE: 2009-0052-PST-E

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STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE  
ALJ SHARON CLONINGER

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REPRESENTATIVE / ADDRESS

PARTIES

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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EUN BOK LEE  
OWNER  
LEES CHEVRON  
10101 LONG POINT ROAD  
HOUSTON, TX 77043

EUN BOK LEE D/B/A LEES CHEVRON

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xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-5022  
TCEQ DOCKET NO. 2009-0052-PST-E

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE STATE OFFICE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
Petitioner	§	
	§	
V.	§	OF
	§	
EUN BOK LEE DBA LEE'S CHEVRON,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) brought this enforcement action against Eun Bok Lee d/b/a Lee's Chevron (Respondent). Respondent owns and operates a convenience store with the retail sales of gasoline (the station) in Houston, Harris County, Texas. The ED alleges that Respondent has violated the Commission's rules and applicable provisions of the Texas Health and Safety Code and the Texas Water Code relating to annual testing of Stage II equipment.<sup>1</sup> The ED requests imposition of an administrative penalty of \$4,946 and recommends no corrective measures.

Respondent admitted to the Stage II compliance testing violation in his hearing request letter to the ED<sup>2</sup> and on the record at hearing. The only issue in dispute is the appropriateness of the penalty amount sought by the ED. The ED argues the penalty was correctly calculated. Respondent believes the penalty is too harsh. The Administrative Law Judge (ALJ) finds that the requested penalty conforms with the Commission's Penalty Policy<sup>3</sup> and recommends that the Commission order Respondent to pay the \$4,946 fine.

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<sup>1</sup> Stage II equipment is used to control vehicle refueling emissions at motor vehicle fuel dispensing facilities. See diagram, ED Ex. 14.

<sup>2</sup> ED Ex. B.

<sup>3</sup> ED Ex. 11.

## II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Jurisdiction and notice were not contested in this case. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

The preliminary hearing was held September 10, 2009, before ALJ Sharon Cloninger at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Jurisdiction was established and a procedural schedule was adopted.

The hearing on the merits was held March 11, 2010, before Judge Cloninger at SOAH in Austin. Barham A. Richard, Staff Attorney, represented the ED. Respondent appeared *pro se* and authorized Dae Hak Lee, his son and the station manager, to speak on his behalf. The hearing adjourned and the record closed that same day.

## III. DISCUSSION

### A. Background

The following facts are undisputed. Respondent owned the station on January 6, 2009, when a TCEQ investigation revealed that Respondent had not verified proper operation of the Stage II equipment at least once in the previous 12 months as required by 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b). The most recent Stage II compliance test had been conducted in July 2007; no test was performed by the July 2008 anniversary date.

Instead, the Stage II compliance test was performed during the January 6, 2009 investigation in the presence of TCEQ's contracted investigator Craig Green. Mr. Green reported that the filters on the dispensers nearest to the tanks were replaced, no other repairs

were necessary, and all tests were passed during the investigation.<sup>4</sup> Respondent received notice of the violation on January 8, 2009.<sup>5</sup>

Respondent explained he did not order the Stage II system compliance testing by the 12-month anniversary date because of financial constraints.<sup>6</sup> He said he knowingly did not schedule the testing because the approximately \$1,000 test fee was needed to keep his business afloat due to the higher cost of gasoline being charged by his supplier in 2008 when gasoline prices jumped from \$2 per gallon to about \$4 per gallon in six months. According to Respondent, the business also suffered financially in 2008 because of dwindling gasoline profit at the station due to higher credit card processing fees, heightened consumer agitation at gasoline prices, and increased gasoline theft.<sup>7</sup> He said the decision to postpone the Stage II testing was a difficult one, but his first priority was the financial solvency of the business.

Respondent testified that when gasoline prices dropped after Hurricane Ike hit Houston in September 2008,<sup>8</sup> his business costs also dropped. As soon as he was financially able, in December 2008, he ordered the required testing, which was performed during the January 6, 2009 TCEQ investigation.

Initially, as set out in the Executive Director's Preliminary Report and Petition (EDPRP) issued May 6, 2009, the ED recommended an administrative penalty of \$6,196 for Respondent's Stage II equipment testing violation. Subsequently, the ED reduced the recommended administrative penalty to \$4,946. The new figure reflects a 25 percent or \$1,250 reduction in the proposed penalty to account for Respondent's good faith effort to comply with the Stage II testing requirement. Tom Greimel, Enforcement Coordinator, testified on behalf of the ED that

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<sup>4</sup> ED Ex. 8 at 2-3. Mr. Green testified that both the investigation and the Stage II compliance test were conducted on January 6, 2009, not January 6, 2008, as stated on the Investigation Report.

<sup>5</sup> ED Ex. 8.

<sup>6</sup> The previous test was conducted on July 11, 2007. Testimony of Dae Hak Lee.

<sup>7</sup> ED Ex. B.

<sup>8</sup> ED Ex. 17.

the revised \$4,946 penalty was correctly calculated<sup>9</sup> in accordance with the Commission's Penalty Policy.<sup>10</sup>

**B. ALJ's Finding and Recommendation**

Respondent admitted that he knowingly postponed the required Stage II equipment testing beyond the anniversary due date because he needed the approximately \$1,000 test fee to keep his business solvent. The ALJ appreciates the difficulty of his decision but finds that the requested penalty is warranted. As stated in a March 23, 2009 letter to Respondent from TCEQ's Office of Compliance and Enforcement, Respondent's station is in an area categorized as "non-attainment" for air quality by the Environmental Protection Agency. The letter states, "Compliance with air quality regulations is particularly important in non-attainment areas and therefore, leniency with regard to the proposed penalty is not appropriate in this instance."<sup>11</sup>

Based on Respondent's admission and the testimony of Mr. Greimel, the ALJ concludes the ED properly calculated the proposed penalty amount. Respondent presented no evidence of inability to pay the penalty as permitted by 30 TEX. ADMIN. CODE § 70.8(a). Therefore, the ALJ recommends that Respondent be ordered to pay a penalty of \$4,946.

SIGNED April 19, 2010.

  
\_\_\_\_\_  
SHARON CLONINGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

<sup>9</sup> See Penalty Calculation Worksheet, ED Ex. 12.

<sup>10</sup> ED Ex. 11. See also ED Ex. 18, Revisions to Penalty Calculation Worksheets, July 24, 2007 interoffice memorandum from Glenn Shankle, Executive Director.

<sup>11</sup> ED Ex. 10.

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 violations 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 §§ 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**

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