

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

October 12, 2010

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

Re: SOAH Docket No. 582-10-1882; TCEQ Docket No. 2009-0959-PST-E;  
Executive Director of the Texas Commission on Environmental Quality vs.  
Ameer Ali Jasani

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 November 2, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than November 15, 2010.

This matter has been designated **TCEQ Docket No. 2009-0959-PST-E; SOAH Docket No. 582-10-1882**. 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 black ink, appearing to read "Cassandra J. Church".

Cassandra J. Church  
Administrative Law Judge

CJC/pp  
Enclosures  
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)  
STYLE/CASE: AMEER ALI JASANI  
SOAH DOCKET NUMBER: 582-10-1882  
REFERRING AGENCY CASE: 2009-0959-PST-E

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STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE  
ALJ CASSANDRA CHURCH

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REPRESENTATIVE / ADDRESS

PARTIES

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AMEER ALI JASANI

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**SOAH DOCKET NO. 582-10-1882  
TCEQ DOCKET NO. 2009-0959-PST-E**

**EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,**

**Petitioner**

v.

**AMEER ALI JASANI,**

**Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) sought assessment of an administrative penalty of \$23,130.00 against Ameer Ali Jasani (Respondent) for alleged violations of the Commission's administrative rules governing the operation of petroleum storage tanks (PSTs). The ED also requested that the Commission order certain corrective actions. Respondent did not contest the violations or the calculation of the penalty. He sought reconsideration of the amount of the penalty based on his inability to pay, however, he failed to demonstrate any factual basis for such reconsideration. Accordingly, the Administrative Law Judge (ALJ) recommends that the Commission find that the violations occurred and assess a penalty of \$23,130.00 for them. The ALJ also recommends that the Commission order the corrective actions recommended by the ED for all deficiencies that have not already been corrected.

**II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened on June 24, 2010, before ALJ Cassandra J. Church at the hearings facility of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney

Phillip M. Goodwin, P.G., represented the Executive Director. Respondent appeared on his own behalf. The record was closed until August 13, 2010, to provide Respondent an opportunity to submit, and Staff to review, Respondent's financial records.

## II. DISCUSSION

### A. Background Facts and Alleged Violations

On September 1, 2007, Respondent acquired the property located at 539 North Pine Street, Woodville, in Tyler County, Texas (the Facility). The Facility is convenience store, at which were installed four inactive underground storage tanks (USTs).

Based on a review of Respondent's records conducted on April 3, 2009, the ED's enforcement staff concluded that Respondent had violated several regulations regarding PSTs: (1) failed to timely update his registration when the tanks were removed from service and when he acquired the property;<sup>1</sup>(2) failed to timely remove the tanks from service after a deadline for tank-equipment updating had passed;<sup>2</sup> (3) failed to timely report a suspected release;<sup>3</sup> (4) failed to timely report initial abatement measures after confirmation of a release;<sup>4</sup> and (5) failed to demonstrate acceptable financial assurance for taking corrective action and compensating third parties.<sup>5</sup> For these violations, the ED concluded that a total administrative penalty of \$23,100.00 was warranted under the provisions of the TCEQ's Penalty Policy.<sup>6</sup>

Review and investigation of this site dates back to early 2003 when investigators found that the USTs at the Facility were no longer operable. Investigators found a mixture of petroleum product and water in two of the four tanks, and also found that none of the tanks were properly secured from tampering.<sup>7</sup> None of the several owners between 2003 and September 2007, when Respondent purchased the Facility, took corrective action.<sup>8</sup> The ED pursued

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<sup>1</sup> 30 TEX. ADMIN. CODE § 334.7(d)(3).

<sup>2</sup> 30 TEX. ADMIN. CODE § 334.47(a)(2).

<sup>3</sup> 30 TEX. ADMIN. CODE § 334.72

<sup>4</sup> 30 TEX. ADMIN. CODE § 334.77.

<sup>5</sup> 30 TEX. ADMIN. CODE § 37.815(a) and (b).

<sup>6</sup> ED Exs. 5 and 6.

<sup>7</sup> ED Ex. 2, pp. 2 and 3.

<sup>8</sup> ED Exs. 2 and 4.

enforcement actions against prior owners. In February 27, 2008, the Commission entered a default enforcement order against the prior owner of the Facility, Lorenzo Hernandez, for January 2007 violations of the Commission's regulations regarding management of PSTs.<sup>9</sup> Mr. Hernandez owned the property through April 13, 2007, after which time it went through one interim owner before being purchased by Respondent.

After Respondent purchased the Facility, the ED continued its enforcement action, resulting in the ED issuing on November 13, 2009, his First Amended Report and Petition (Amended EDPRP) seeking the penalty discussed above.<sup>10</sup>

Respondent did not dispute that he had either committed the violations alleged or had allowed them to persist after he acquired the Facility. Rather, he requested a reduction in the administrative penalty to be assessed for those violations based on the fact that he did not intentionally violate the Commission's regulations and that he did not have the financial capability to pay the proposed fine. He stated that he had been trying to get the USTs into compliance once he had learned about the problems with them. He also stated he had the tanks removed in March 2010, and that the contractor had prepared a contractor closure report, as required by the Commission's rules.<sup>11</sup> On January 1, 2010, Respondent updated his UST Registration and Self-Certification Form.<sup>12</sup> Effective January 15, 2010, he had acquired insurance for corrective action and also for personal and property damage that could result from the USTs.

At the hearing, Respondent requested and was granted additional time to establish his inability to pay. A deadline was set for him submit his records to establish his financial condition. However, Respondent failed to submit any financial documentation.<sup>13</sup>

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<sup>9</sup> ED Ex. 8.

<sup>10</sup> ED Ex. 1.

<sup>11</sup> Resp. Ex. 2. (Respondent was permitted to submit this report after the hearing on the merits. The ED did not object to the report.) The report represented that on March 26, 2010, Tyler Pump Services removed four tanks from RPM Kwik Stop 3, at 539 N. Pine Street, Woodville, Texas.

<sup>12</sup> Resp. Ex. 1.

<sup>13</sup> ED's Motion to Close the Administrative Record, August 4, 2010.

On July 7, 2010, Respondent filed a closure report that stated four tanks had been removed from the Facility on March 26, 2010.<sup>14</sup> Based on the report, the ED issued Respondent a new Leaking Petroleum Storage Tank (LPST) identification number, and also concluded that Respondent is responsible for further investigation of a release of petroleum substances from the USTs, as well as any resulting remediation.<sup>15</sup> The ALJ inferred from the ED's actions in doing so that he was satisfied that the tanks at the Facility had been properly closed.

## **B. Penalty Assessment**

Section 7.053 of the Texas Water Code requires the TCEQ to consider certain factors when calculating an administrative penalty. In considering those factors and applying the terms of the Penalty Policy,<sup>16</sup> the ED recommended a penalty of \$23,130.00 for Respondent's violations.

The ED's consideration of a reduction of a proposed penalty based on a respondent's inability to pay must be based on that respondent's financial records.<sup>17</sup> A person raising the claim of inability to pay has the burden of proof to establish his financial condition. As Respondent failed to support his assertion, no reduction is warranted. Respondent did not contest the proposed penalty amount on any other basis. Accordingly, the ALJ recommends that the Commission assess a penalty in the amount of \$23,130.00, as requested by the ED.

## **C. Necessity for Corrective Action**

Based on the ED's evidence and Respondent's failure to contest that evidence, the ED established the need for some of the corrective action requested. Respondent updated his UST registration on January 1, 2010, and, on March 26, 2010, removed the USTs from service. The ED did not object to Respondent's evidence of those corrective actions. Accordingly, the ALJ concludes that no further corrective action is needed on those two issues.

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<sup>14</sup> Resp. Ex. 2.

<sup>15</sup> Motion to Close the Administrative Record.

<sup>16</sup> ED Ex. 5.

<sup>17</sup> 30 TEX. ADMIN. CODE § 70.8.

However, Respondent supplied no evidence that he reported on the nature, cause, and estimated quantity of the release of regulated substances, or filed the appropriate certification regarding his report on the release.<sup>18</sup> Therefore, the Commission is warranted in ordering the corrective actions set forth in the Amended EDPRP regarding the release investigation, and appropriately documenting the release investigation.

As the ED did not indicate otherwise, the ALJ concluded that the closure report was complete and contained all required certifications. Therefore, the ordering paragraph regarding certifications in the Proposed Order references only documentation of the release investigation report. Any necessary amendments to reflect more accurately Respondent's current compliance status should be offered in exceptions.

#### IV. RECOMMENDATION

In sum, the ALJ recommends that the Commission find the Respondent violated state laws and regulations regarding management of USTs, as alleged by the ED, and adopt the attached Proposed Order, which assesses the Respondent \$23,130.00 in administrative penalties and requires him to undertake specified actions necessary to bring his facility into full compliance with state law.

**ISSUED October 12, 2010.**

  
**CASSANDRA J. CHURCH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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<sup>18</sup> ED Ex. 1, pp. 9 and 10.

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** Assessing Administrative Penalties Against  
and Ordering Corrective Action by Ameer Ali  
Jasani; TCEQ Docket No. 2009-0959-PST-E;  
SOAH Docket No. 582-10-1882

On \_\_\_\_\_, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's (ED's) First Amended Preliminary Report and Petition (Amended EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Ameer Ali Jasani (Respondent). A Proposal for Decision (PFD) was presented by Cassandra J. Church, 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 539 North Pine Street, Woodville, in Tyler County, Texas (the Facility).
2. On April 3, 2009, four out-of-service underground storage tanks (USTs) that are not exempt or excluded from regulation existed beneath the Facility.
3. The USTs were located on the Facility at the time Respondent purchased the Facility on September 1, 2007; Respondent acquired ownership of them at the time he purchased the

Facility.

4. In January 2003, a TCEQ environmental investigator found a mixture of petroleum product and water in two of the four USTs, and found that none of the USTs were properly secured from tampering.
5. Between 2003 and April 2003, the ED pursued enforcement action against several interim owners, none of whom took corrective action in regard to the USTs at the Facility.
6. On April 3, 2009, a TCEQ investigator reviewing Respondent's records and documented that Respondent had violated the following Commission rules:
  - 30 TEX. ADMIN. CODE §334.7(d)(3) by failing to notify TCEQ of any change or additional information regarding the UST's 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;
  - 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;
  - 30 TEX. ADMIN. CODE §334.72 by failing to report a suspected release to the TCEQ;
  - 30 TEX. ADMIN. CODE §334.77 by failing to submit a report regarding initial abatement measures within 20 days after confirmation of a release of regulated substances, in regard to the release of regulated substances from USTs confirmed during a 2003 environmental investigation; and

- 30 TEX. ADMIN. CODE §334.815(a) and (b) by failing to demonstrate acceptable financial assurance for taking correcting action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
7. On June 7, 2009, the ED sent Respondent a notice of violation in regard to the above-listed violations.
  8. On November 13, 2009, in accordance with TEX. WATER CODE ANN. § 7.054, the ED filed his Amended EDPRP, in which he alleged that Respondent violated 30 TEX. ADMIN. CODE §§ 334.47(a)(2), 334.47(a)(2), 344.72, 334.77, and 37.815(a) and (b), based on the records review conducted on April 3, 2009.
  9. The Commission has adopted a Penalty Policy, effective September 1, 2002, setting forth its policy regarding the computation and assessment of administrative penalties.
  10. The ED recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$23,130.00 against Respondent, and that the Commission order Respondent to take certain corrective actions.
  11. The \$23,130.00 administrative penalty sought in the Amended EDPRP is an accumulation of the penalties assessed for each violation, calculated in the manner provided by the Penalty Policy.
  12. On November 13, 2009, the ED mailed the Amended EDPRP to Respondent at P.O. Box 877 in Newton, Texas 75966.
  13. On November 22, 2009, Respondent filed an answer to the Amended EDPRP and requested a hearing.
  14. On December 28, 2009, the ED referred this matter to SOAH for a contested case hearing.

15. On January 4, 2010, the Commission's Chief Clerk mailed notice of the preliminary hearing scheduled for January 28, 2010, to Respondent at P.O. Box 877, Newton, Texas 75966.
16. The notice of hearing stated the time, date, place, and nature of the hearing, stated the legal authority and jurisdiction for the action, set forth the alleged violations, and 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 attached Amended EDPRP, being deemed as true, and the relief sought in the notice possibly being granted by default.
17. On January 28, 2010, the ED and Respondent appeared at a preliminary hearing and the ALJ subsequently set a procedural schedule.
18. After two continuances, the hearing on the merits was held on June 24, 2010, in Austin, Texas. Both parties appeared and participated in the hearing.
19. Respondent did not dispute that any of violations alleged in the Amended EDPRP had occurred.
20. Respondent did not dispute that the proposed administrative penalty, as set forth in the Penalty Calculation Worksheet, as included with the Amended EDPRP, was correctly calculated in accordance with the Penalty Policy.
21. Respondent asserted that he was unable to pay the proposed administrative penalty.
22. On January 1, 2010, Respondent submitted a sufficient UST Registration and Self-Certification Form documenting his ownership of the Facility, his acquisition—effective

January 15, 2010—of financial assurance for corrective action and liability, and the status of the USTs at the Facility.

23. The record was held open through August 13, 2010, to provide for the submission and review of Respondent's financial records and also submission of a UST closure report.
24. On March 26, 2010, Tyler Pump Services removed four USTs from the Facility.
25. Respondent's removal on March 26, 2010, of the four USTs at the Facility complied with applicable Commission statutes and rules regarding the removal of USTs from service.
26. Respondent did not investigate the release of petroleum substances from the USTs at the Facility, nor remediate for any release.
27. Respondent did not submit any financial records to the ED for evaluation of his ability to pay the proposed administrative penalty.

## **II. CONCLUSIONS OF LAW**

1. Under TEX. WATER CODE ANN. §§ 7.051 and 7.073, 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 who violates a Commission administrative rule, order, or permit, and also may order the violator to take corrective action.
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, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent is subject to the jurisdiction of the Commission in regard to the operation of petroleum storage tanks, including petroleum USTs, pursuant to TEX. WATER CODE ANN. § 5.013.

4. Respondent timely requested a contested case hearing, pursuant to 30 TEX. ADMIN. CODE § 70.105.
5. Respondent received sufficient notice of the hearing on the alleged violations and the proposed penalties and corrective actions, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051(1) and 2001.052; TEX. WATER CODE ANN. § 7.058; and 30 TEX. ADMIN. CODE §§ 1.12, 39.25, 70.104, and 80.6(c).
6. Based on the Findings of Fact above, Respondent violated 30 TEX. ADMIN. CODE §§ 334.47(a)(2), 334.47(a)(2), 344.72, 334.77, and 37.815(a) and (b), in regard to the operation of USTs.
7. The ED's recommended penalty properly considered the factors required by TEX. WATER CODE ANN. § 7.053, 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.
8. Based on consideration of the Findings of Fact above, the elements set forth in TEX. WATER CODE ANN. §§ 7.052 and 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for each of the alleged violations, resulting in a total administrative penalty of \$23,100.00.

9. The ED met his burden of proof to show an administrative penalty of \$23,100.00 is warranted for the violations found and should be assessed against Respondent.
10. Respondent failed to meet his burden of proof to establish his inability to pay the proposed administrative, pursuant to 30 TEX. ADMIN. CODE 70.8.
11. Based on the Findings of Fact above, Respondent should be required to take the corrective action that the ED recommends in regard to certification and documentation of compliance and to investigation and remediation of a release of regulated substances.

**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 \$23,130.00 for violations of 30 TEX. ADMIN. CODE §§ 334.7(a)(2), 334.47(a)(2), 344.72, 334.77, and 37.815(a) and (b). The payment of this administrative penalty and Respondent'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: Ameer Ali Jasani; Docket No. 2009-0959-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 45 days after the effective date of this Order, Respondent shall submit a report regarding the nature, cause, and estimated quantity of a release of regulated substances, in accordance with 30 TEX. ADMIN. CODE § 334.77.
3. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2. 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:

Derek Eades, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

4. 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 that

Respondent has not complied with one or more of the terms or conditions in this Commission Order.

5. 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.
6. 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.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. 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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**Bryan W. Shaw, Ph. D., Chairman  
For the Commission**