

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

March 1, 2011

The Honorable Kerrie Jo Qualtrough
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Room 504
Austin, Texas 78701

Re: Executive Director's Exceptions to the Administrative Law Judge's Proposed Order;
TCEQ Docket No. 2009-1334-PST-E; SOAH Docket No. 582-10-4853

Dear Judge Qualtrough:

Enclosed is a true and correct copy of the Executive Director's Exceptions to the Administrative Law Judge's Proposed Order (the "Exceptions").

The original of the Exceptions was filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality on this day.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip M. Goodwin".

Phillip M. Goodwin, P.G.
Attorney
Litigation Division

Enclosure

cc: Nancy Farmer, D.C.T.D., Inc. d/b/a Boomers, 12409 Twin Lakes Lane, San Angelo, TX 76904
Wallace Myers, Waste Enforcement Division, TCEQ
Blas Coy, Public Interest Counsel, TCEQ

SOAH DOCKET NO. 582-10-4853
TCEQ DOCKET NO. 2009-1334-PST-E

EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner

v.

D.C.T.D., INC. D/B/A BOOMERS,
Respondent

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BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

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

NOW COMES the Executive Director of the Texas Commission on Environmental Quality ("Executive Director" or "ED") and hereby files these Exceptions to the Administrative Law Judge's ("ALJ's") Proposed Order, pursuant to 30 TEX. ADMIN. CODE § 80.257.

I. Introduction

D.C.T.D., Inc. d/b/a Boomers ("Respondent") owns and operates a convenience store with retail sales of gasoline containing an underground storage tank ("UST") system located at 2330 Sherwood Way, San Angelo, Tom Green County, Texas. Several violations related to the operation of the UST system formed the basis of this case. The hearing on the merits was held on October 28, 2010 and January 5, 2011. The violations were not in dispute; the issues at the hearing on the merits were the amount of penalty sought and whether Respondent had the financial ability to pay the administrative penalty sought.

II. Exceptions

The Executive Director agrees with and supports the adoption of all of the ALJ's proposed Order, with suggested Modifications to the proposed Order as outlined below.

1. The Executive Director recommends that Paragraph 1 of the section Findings of Fact be modified from "A TCEQ San Angelo Regional investigator conducted an investigation of Respondent on July 16, 2009 and documented violations of UST regulations." to "A TCEQ San Angelo Regional investigator conducted an investigation of **the Facility** on July 16, 2009 and documented violations of UST regulations." (emphasis added)
2. The Executive Director recommends that paragraph 8 of the section Findings of Fact be modified from "Respondent failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0 per cent of the total substance flow-through for the month plus 130 gallons." to "Respondent failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0 **percent** of the total substance flow-through for the month plus 130 gallons." (emphasis added)

3. The Executive Director recommends that Ordering Provision No. 2 be modified from "Respondent shall pay \$2,895.33 each year for three years." to "Within 30 days after the effective date of this Order, Respondent shall pay two hundred fifty-eight dollars (\$258.00) of the administrative penalty. The remaining amount of eight thousand six hundred ten dollars (\$8,610.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred forty-six dollars (\$246.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order."

WHEREFORE, the Executive Director respectfully requests the incorporation of these modifications to the Proposed Order. 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 included as Attachment "A".

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 Phillip M. Goodwin
Phillip M. Goodwin, P.G.
State Bar of Texas No. 24065309
Litigation Division, MC 175
P.O. Box 13087
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(512) 239-0675
(512) 239-3434 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2011, an original and seven (7) copies of the foregoing "Exceptions to Administrative Judge's Proposal for Decision" ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

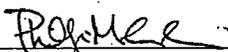
I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via electronic mail to Blas Coy, Jr., Attorney, Office of the Public Interest Counsel, Texas Commission on Environmental Quality.

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via Certified Mail, Return Receipt Requested, Article No. **7010 3090 0000 7807 1643**, and via electronic mail to:

Nancy Farmer, President
D.C.T.D., Inc. d/b/a Boomers
12409 Twin Lakes Lane
San Angelo, TX 76904
nfarmer77511@yahoo.com

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via Facsimile (512) 322-2061, to:

The Honorable Kerrie Jo Qualtrough
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Room 504
Austin, Texas 78701



Phillip M. Goodwin, P.G.
Attorney
Litigation Division
Texas Commission on Environmental Quality

SERVICE LIST

D.C.T.D., Inc. d/b/a Boomers
SOAH Docket No. 582-10-4853
TCEQ Docket No. 2009-1334-PST-E

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