

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 20, 2011

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

VIA FACSIMILE NO. 239-5533

Re: SOAH Docket No. 582-10-5165; TCEQ Docket No. 2009-1720-PST-E; In the Matter of an Enforcement Action Against Gary Lee Corpian and Marilu Lee Corpian

Dear Mr. Trobman:

I have reviewed the April 6, 2011 Executive Director's Exceptions to the Proposal for Decision (ED's Exceptions).

The ED complains that the Penalty Policy does not take into account "the remoteness of the potential for release," it considers "only the degree of harm of the release." The ED's penalty calculation is premised upon the assumption that some subsequent owner will place a petroleum substance into the underground storage tanks.

The undisputed evidence is that the tanks are empty, locked, and secured. All dispensers were removed and the piping is securely capped off. Respondents purchased the property in 1996 at a tax foreclosure resale, never operated a service station at the location, and never used the tanks. The ED's assumption is that someone would unlock the tanks and, with no ready means of extracting the liquid, place a petroleum substance in the tanks. Without some evidence of a reasonable basis or likelihood of assuming that would occur, the ED's supposition is highly speculative. The evidence does not support the ED's assumption or position.

The ED's Exceptions suggested several other modifications. As to Finding of Fact No. 10, the ED objects to the last sentence: "This decision was communicated to Respondents." The ED objects because the March 26, 2010 memorandum was an internal memo and "was not communicated to the Respondents." Mr. Corpian's testimony indicates the information in the March 26, 2001 memorandum was conveyed to him. The decision that the "facility appears to be in compliance and no further action will be required at this time" lies at the heart of Mr. Corpian's understandable confusion about this enforcement action. Mr. Corpian, not the ED, tendered the document into evidence. Finding of Fact No. 10 is correct as written.

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The ED recommends that Finding of Fact No. 12 be modified by replacing the date January 13, 2009 with January 27, 2009. The ALJ cannot verify the correct date as the exhibits were returned to the Commission.

The ALJ disagrees with the changes recommended by the ED to Findings of Fact Nos. 25-27, Conclusion of Law No. 1, and Ordering Provision No. 1.

With the possible exception of Finding of Fact No. 12, I do not recommend any changes to the Proposal for Decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard S. Seitzman". The signature is fluid and cursive, with a large initial "H" and "S".

Howard S. Seitzman
Administrative Law Judge

HSS/pp
cc: Mailing List