

AN EXCEPTION TO THE JUDGE'S PROPOSAL

CHWIKI CORP.
454 East Highway 67
Duncanville, Texas 75137

October 26, 2011

The Honorable Judge Michael J. O'Malley
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

TEXAS
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ON ENVIRONMENTAL
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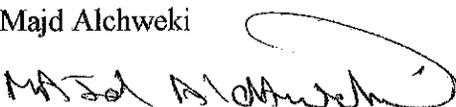
Dear Judge O'Malley,

I am the respondent on SOAH Docket No. 582-11-1905, TCEQ Docket No. 2009-1756-PST-E, in EXECUTIVE DIRECTOR of TCEQ v. CHWIKI CORP. d/b/a PANTHER MARKET. I am writing to dispute and appeal the decision which will take in effect after November 15, 2011. At the hearing I was not contesting the facts that the case and the violations occurred, therefore I agreed to the violations but not to the sum of the penalty amount. When Donna Chaffin testified on behalf of the ED regarding the administrative penalty I submitted financial information to the ED for a financial analysis due to ineligibility to pay the due amount. In this case Ms. Chaffin reviewed my financial information, which showed that it had gross receipts of \$920,998. One percent of gross receipts are \$9,210. Therefore Ms. Chaffin recommended the penalty amount of \$9,210 over 36 months. But Ms. Chaffin did not take into consideration and calculation the incident that happened in late of 2009, she did not calculate the year of 2009 which it was \$752,066 rather than the year of 2010 which was \$920,998. In this situation Ms. Chaffin should consider the year in which the incident happened and penalize me for that amount, which would be \$7,521 instead of the \$9,210.

I recognize that this penalty might impose a greater burden on my business, even though I have agreed to the penalties, the amount that the TCEQ and the ALJ recommended said to be properly calculated is still too high. Which in reality the ALJ has declined to give an opinion on the means of TCEQ's policy of calculation. As a result of loss of business due to repairs and temporarily closure of the store the amount of \$5,000 dollars for 36 months is fair for both sides. Even though set amount still puts me in a predicament with other payments. As agreed upon I am aware of the violations and under no circumstance do I wish to default from payment. Where I am aware of the burden and struggle I don't understand why the calculations were made for 2010 instead of 2009 when the incident occurred. Because I am still recovering from using the previous year is insufficient to come up with payable funds. The amount of repairs and loss of business should also be considered.

Respectfully,

Majd Alchweki



CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2011 a true and complete copy of AN EXCEPTION TO THE JUDGE'S PROPOSAL FOR DECISION was served to all persons listed on the attached mailing list.

I further certify that on this day, a true and complete copy of AN EXCEPTION TO THE JUDGE'S PROPOSAL FOR DECISION was sent via described method to:

Via Certified Mail, Return Receipt Requested:

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Austin, Texas 78701-1649

Blas J. Coy Jr.
Texas Commission on Environmental Quality
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Houston, Texas 77023

Bridget C. Bohac, Chief Clerk (7 copies and 1 original)
Texas Commission on Environmental Quality
Attention: Docket Clerk, MC 105
P.O. Box 13087
Austin, Texas 78711-3087

SERVICE LIST

CHWIKI CORP. d/b/a Panther Market

SOAH DOCKET NO. 582-11-1905

TCEQ DOCKET NO. 2009-1756-PST-E

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Majd Al Chaweki, President
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