

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 21, 2011

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

VIA FACSIMILE NO. 512/239-5533

**Re: SOAH Docket No. 582-10-5942; TCEQ Docket No. 2010-0117-AIR-E; In Re:
Executive Director of the Texas Commission on Environmental Quality v.
John R. Gavlick**

Dear Mr. Trobman:

I have received and reviewed the Executive Director (ED) of the Texas Commission on Environmental Quality's exception to the Proposal for Decision (PFD) filed on May 31, 2011. I did not receive exceptions or a reply to the exceptions from John R. Gavlick (Respondent), although he filed a Request for Reconsideration or Contested Case Hearing with the ED. On June 9, 2011, the ED filed a response to Mr. Gavlick's filing.

1. Substantive Change

The ED filed an exception to the PFD recommending modification of the penalty payment plan that was proposed in the PFD and Order. According to the ED's exception letter, the TCEQ enforcement policy provides that payments must be a minimum of one hundred dollars (\$100.00) and the initial payment must be equal to or more than the following payments. Although the TCEQ enforcement policy was not in evidence at the hearing, the Administrative Law Judge (ALJ) is not adverse to a consistent approach to enforcement.

Therefore, the recommended changes to Finding of Fact (FOF) No. 16, Conclusion of Law (COL) No. 12, and Ordering Provision No. 1 are not opposed by the ALJ. This would substitute the recommended penalty payment plan of the \$1,085.00 penalty as follows:

Payable in ~~44~~ 10 monthly installments, with an initial payment of ~~\$85.00~~ \$140.00
followed by ~~40~~ 9 monthly payments of ~~\$100.00~~ \$105.00.

Although I believe that the reasons for the recommended penalty payment plan have been adequately addressed in the PFD and Proposed Order, the final decision as to the appropriate penalty payment plan, if any, is for the Commission to make.

2. Non-substantive Changes

The ED filed exceptions to clarify and correct the FOFs and an Ordering Provision. The ALJ recommends that the Commission adopt those changes, which would result in changes to FOFs 8, 13, 18, 19, and 20, along with Ordering Provision No. 3.

3. Mr. Gavlick's Request for Reconsideration or Contested Case Hearing

Mr. Gavlick's exceptions are based on testimony and documents that were not in evidence. Specifically, Mr. Gavlick has attached the following which were not offered or admitted into evidence at the hearing:

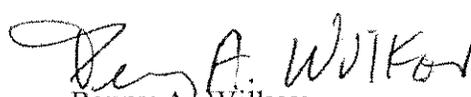
1. An Internet Message Board, May 2009;
2. The "Ag-use Exemption: Fact or Fiction?" article from the Real Estate Center Journal;
3. An Internet Message Board, October 2006; and
4. Exhibit B, Level 2 Exceptions;
5. Additional facts outlined in his letter.

The ED responded on June 9, 2011, contending that Mr. Gavlick's exceptions did not contain information that would warrant a change in the PFD.

Having considered the exceptions and response, the ALJ concludes that there is no factual basis to support a change in the PFD in regard to the findings that a violation occurred. All evidence regarding the conduct of the investigation was presented at the hearing and was considered in arriving at the PFD.

With the changes recommended by the ED, the Proposal for Decision and Proposed Order are ready for your consideration.

Sincerely,


Penny A. Wilkov
Administrative Law Judge

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STYLE/CASE: JOHN R. GAVLICK
SOAH DOCKET NUMBER: 582-10-5942
REFERRING AGENCY CASE: 2010-0117-AIR-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ PENNY WILKOV**

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