

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 13, 2012

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

Re: **SOAH Docket No. 582-11-1709; TCEQ Docket No. 2010-0503-PST-E;
Executive Director of the Texas Commission on Environmental
Quality v. Mohamed Basheer d/b/a EXXON 45**

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 **Thursday, February 2, 2012**. Any replies to exceptions or briefs must be filed in the same manner no later than **Monday, February 13, 2012**.

This matter has been designated **TCEQ Docket No. 2010-0503-PST-E; SOAH Docket No. 582-11-1709**. 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,

Kerrie Jo Qualtrough
Administrative Law Judge

Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: MOHAMED BASHEER / EXXON 45
SOAH DOCKET NUMBER: 582-11-1709
REFERRING AGENCY CASE: 2010-0503-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ KERRIE QUALTROUGH

REPRESENTATIVE / ADDRESS

PARTIES

BLAS J. COY, JR.
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
bcoy@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

JENNIFER FLECK
TED A. COX, P.C.
4910 DACOMA, STE. 100
HOUSTON, TX 77092
(713) 956-9400 (PH)
(713) 956-8485 (FAX)

MOHAMED BASHEER D/B/A EXXON 45

TAMMY L. MITCHELL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
LITIGATION DIVISION
P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-0736 (PH)
(512) 239-3434 (FAX)
tamm.mitchell@tceq.texas.gov

EXECUTIVE DIRECTOR

**SOAH DOCKET NO. 582-11-1709
TCEQ DOCKET NO. 2010-0503-PST-E**

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

v.

**MOHAMED BASHEER d/b/a
EXXON 45**

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Executive Director (ED) asks the Texas Commission on Environmental Quality (Commission or TCEQ) to assess an administrative penalty against the Respondent, Mohamed Basheer d/b/a Exxon 45, for violations of the rules regulating underground storage tanks (USTs). Mr. Basheer did not contest the alleged violations, and he stipulated that the administrative penalty was properly calculated. However, Mr. Basheer did contest his responsibility for the violations and his ability to pay the administrative penalty. The Administrative Law Judge (ALJ) recommends that the Commission find that Respondent was responsible for the violations of the UST requirements, and assess an administrative penalty of \$39,964 with a three-year payout.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not disputed. These issues are addressed in the findings of fact and conclusions of law in the proposed order without further discussion in this proposal for decision (PFD).

ALJ Kerrie Jo Qualtrough convened the evidentiary hearing on September 8, 2011, in the hearing rooms of the State Office of Administrative Hearings, in Houston, Texas. The ED was represented by Gary Shiu, Staff Attorney, Litigation Division. Mr. Basheer was present and represented by attorney Jennifer Fleck.

Written closing arguments were due on October 27, 2011. Responses were due on November 17, 2011, and the evidentiary record closed on that date.

II. DISCUSSION

A. Violations, Administrative Penalties, and Corrective Action

Mr. Basheer did not contest the violations alleged in the Executive Director's Preliminary Report and Petition (EDPRP). Therefore, it is uncontroverted that, on February 11, 2010, the Galveston County Air Pollution Control Investigator conducted an investigation of the Stage II vapor recovery systems of the USTs at the Exxon 45, located at 6101 Broadway, in Galveston, Texas. The investigator found six violations of the TCEQ's rules regarding Stage II vapor recovery systems.¹ In addition, a record review conducted on March 25, 2010 revealed two violations of a prior agreed order.²

The evidence shows that a total of eight violations were committed at the Exxon 45, as follows:

1. 30 TEX. ADMIN CODE § 115.244(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to conduct daily inspections of the Station's Stage II vapor recovery system;
2. 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operating procedure of the vapor recovery system;
3. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual compliance testing was not conducted;

¹ ED Ex. 1, pgs. 2-3.

² ED Ex. 8 & ED Ex. 9, pg. 2.

4. 30 TEX. ADMIN. CODE § 115.246(5) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain Stage II records at the Station. Specifically, the Respondent did not maintain the Stage II test results;
5. 30 TEX. ADMIN. CODE § 115.245(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to provide notification of a scheduled test cancellation within 24-hours of cancellation. Specifically, the Respondent did not notify the agency of cancellation of a Stage II test scheduled for February 11, 2010;
6. 30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to upgrade the Station's Stage II equipment to onboard refueling vapor recovery (ORVR) compatible systems;
7. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) and TCEQ Agreed Order Docket No. 2007-1087-PST-E, Ordering Provision 2.a.ii., by failing to monitor USTs at the Station for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and
8. 30 TEX. ADMIN. CODE § 334.50(d)(1)(B) and TEX. WATER CODE § 26.3475(c)(1) and TCEQ Agreed Order Docket No. 2007-1087-PST-E, Ordering Provision 2.a.ii., by failing to conduct proper inventory control procedures for all USTs at the Station.³

As a result of these violations, the ED recommended an administrative penalty of \$39,964.⁴ In addition, the ED produced evidence that Mr. Basheer had not brought the Exxon 45 into compliance with the UST requirements, and the ED recommended that Mr. Basheer be required to perform the corrective actions listed in the EDPRP.⁵

At the hearing, Mr. Basheer stipulated that the administrative penalty was properly calculated pursuant to section 7.053 of the Texas Water Code.⁶ In his closing arguments, Mr. Basheer did not dispute the ED's proposed corrective action ordering provisions found in the EDPRP.⁷ Therefore, the ALJ concludes that the evidence supports the alleged violations, the recommended administrative

³ ED Ex. 7, pgs. 3-4.

⁴ ED Ex. 7, pg. 8.

⁵ Tr., pg. 114.

⁶ Tr., pgs. 92-94.

⁷ See ED Ex. 7, pgs. 8-10.

penalty, and the proposed corrective action measures. These issues will be addressed in the findings of fact and conclusions of law in the proposed order without further discussion in this PFD. The remaining issues concern whether Mr. Basheer is responsible for the violations as the owner or operator, and if so, whether he has the ability to pay the recommended penalty.

B. The Owner and Operator of the Exxon 45

The TCEQ's rules impose responsibilities on owners and operators of UST systems. In the EDPRP, the ED asserted that Mr. Basheer was the owner and operator of the Exxon 45, and is responsible for the violations.⁸ Mr. Basheer claims that another entity owned and operated the Exxon 45 at the time of the February 11, 2010 inspection. Mr. Basheer did not take a position regarding his status as owner or operator at the time of the ED's March 2010 record review.

1. Legal Definitions

In chapter 334, the TCEQ's UST rules define "owner" as:

Any person who holds legal possession or ownership of an interest in an underground storage tank (UST) system. . . . For the purposes of this chapter, if the actual ownership of a UST system . . . is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the UST system . . . is located is considered the UST system . . . owner unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the UST system . . . is owned by another person. A person who has registered as an owner of a UST system . . . shall be considered the UST system owner . . . until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the UST system . . . was transferred to a different person subsequent to the date of the tank registration. . . .⁹

⁸ ED Ex. 7, pg. 6; *see* 30 TEX. ADMIN. CODE §§ 115.244(1), 115.245(3), 115.246(5), 115.248(1), 334.50(b)(1)(A) & 334.50(d)(1)(B). Mr. Basheer is also an affected person because he owns a UST system in Galveston County. 30 TEX. ADMIN. CODE §§ 115.242 & 115.245.

⁹ 30 TEX. ADMIN. CODE § 334.2(73).

An “operator” is defined as “[a]ny person in day-to-day control of, and having responsibility for, the daily operation of the underground storage tank system”¹⁰

For purposes of chapter 115, the rules state that “[u]nless specifically defined in Texas Health and Safety Code, Chapter 382 . . . or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control.”¹¹ The ALJ found no definitions for owner or operator in the Texas Health and Safety Code or in chapter 115. Therefore, the ALJ will consider the definitions for owner and operator found in chapter 334 in the analysis of the chapter 115 violations.

2. Evidence

Mr. Basheer and his wife, Maimuna Durdana, have owned the Exxon 45 since 2002.¹² In September 2008, Mr. Basheer’s store was severely damaged by Hurricane Ike. After the storm, Mr. Basheer experienced difficulties collecting from the insurance companies, and it took an inordinate amount of time to make the necessary repairs.

Mr. Basheer wanted to sell the property because he could not re-open the store for almost a year. In his closing arguments, Mr. Basheer claimed that during the summer of 2009, he entered into an agreement with AIMS Stores to purchase the Exxon 45. According to Mr. Basheer, AIMS was later replaced by Lyons Management (Lyons) as the entity to buy the Exxon 45 from Mr. Basheer. Lyons was supposed to purchase the Exxon 45 for \$800,000, paid to Mr. Basheer through a number of payments. Mr. Basheer testified that Lyons did not make any payments pursuant to their agreement.¹³

¹⁰ *Id.* § 334.2(70).

¹¹ *Id.* § 115.10.

¹² Tr., pg. 35.

¹³ Tr., pgs. 188-89.

On November 12, 2009, Mr. Basheer signed a "Residential Contract for Deed."¹⁴ In this document, Lyons agreed to comply with all necessary laws and hold Mr. Basheer harmless for any claims arising out of Lyons' use of the property.¹⁵ Although Mr. Basheer signed the contract, his wife and co-owner, Ms. Durdana, did not.

Mr. Basheer testified that Lyons then forged his and his wife's signatures on a "General Warranty Deed," also dated November 12, 2009, which allegedly transferred title to the Exxon 45 from Mr. Basheer and Ms. Durdana to Lyons.¹⁶ Mr. Basheer stated that Lyons also entered into a November 12, 2009 "Deed of Trust and Security Agreement" with JLE Investors,¹⁷ in exchange for a \$560,000 loan using the store as collateral.¹⁸ As part of this transaction, \$160,000 was paid to the first lien holder, Moody Bank, in payment of Mr. Basheer's loan on the property.¹⁹ Mr. Basheer testified that he did not learn of the forged deed and title transfer until 2011.²⁰

According to Mr. Basheer, he allowed Lyons to take over the Exxon 45 facility in November 2009. He stated that Lyons ran the convenience store, but did not sell any gasoline.²¹ However, from November 23, 2009 through at least December 14, 2009, Mr. Basheer signed at least one check to purchase gasoline.²²

¹⁴ ED Ex. 25. The record does not indicate why Lyons and Mr. Basheer drafted a "Residential Contract for Deed" since the Exxon 45 is not a residence.

¹⁵ ED Ex. 25, pg. 3.

¹⁶ See Resp. Ex. 9.

¹⁷ The evidentiary record contains references to both JLE Investors and JLE Mortgage. The ALJ assumes that for purposes of this PFD, the two names are interchangeable and refer to the same entity.

¹⁸ See Resp. Ex. 10.

¹⁹ Tr., pg. 189. Mr. Basheer gave conflicting testimony regarding the amount Lyons gave to Moody Bank in payment on Mr. Basheer's loan. At one point, Mr. Basheer testified that Lyons paid \$150,000 (Tr., pgs. 54 & 189), but corrected the amount to \$160,000 (Tr., pgs. 189 & 215).

²⁰ Tr., pgs. 46 & 204-05.

²¹ Tr., pg. 38.

²² Tr., pgs. 221-23; ED Ex. 29, pg. 2.

On February 11, 2010, Judy Whelan, an investigator for the Galveston County Health District, arrived at the Exxon 45 for the scheduled testing of the Stage II vapor recovery system. Ms. Whelan determined that Mr. Basheer was the owner of the Exxon 45 by reviewing the TCEQ's UST database, the Galveston County Appraisal District's records, and the pre-test notification.²³ A consultant, Baxter Environmental, had submitted the pre-test notification, and indicated that Mr. Basheer was the owner of the Exxon 45.²⁴ Ms. Whelan concluded that Baxter Environmental contracted with Mr. Basheer to perform the testing.²⁵ However, Mr. Basheer testified that he thinks Lyons arranged for Baxter Environmental to perform the testing, and that Lyons was paying Baxter Environmental for consultant services.²⁶

When Ms. Whelan arrived at the Exxon 45, the cashier informed Ms. Whelan that the store did not have any gasoline. According to Ms. Whelan, the cashier said he was going to call the owner, and he then called Mr. Basheer.²⁷ However, Mr. Basheer testified that the cashier called someone at Lyons, who in turn called him to speak with Ms. Whelan.²⁸ Regardless, Ms. Whelan spoke with Mr. Basheer on the phone, and he confirmed that the store did not have enough gasoline to do the testing.²⁹ Even though the Stage II testing could not be performed, Ms. Whelan completed the record review portion of her investigation.

After her investigation, Ms. Whelan left the exit interview form containing her findings with the cashier for him to give to Mr. Basheer.³⁰ On February 16, 2010, she went back the Exxon 45 and Mr. Basheer was behind the counter. There was conflicting testimony on whether Mr. Basheer had

²³ Tr., pgs. 62-63; *see also* ED Ex. 1, pgs. 8, 9-10, & 24.

²⁴ ED Ex. 1, pg. 8.

²⁵ Tr., pg. 78.

²⁶ Tr., pgs. 225-26.

²⁷ Tr., pg. 69.

²⁸ Tr., pgs. 224-25.

²⁹ Tr., pg. 69.

³⁰ Tr., pg. 79.

prior notice of Ms. Whelan's follow-up visit. During that visit, Ms. Whelan spoke with Mr. Basheer about the alleged violations, and he signed the exit interview form.³¹

Mr. Basheer allowed Lyons Management to run the store and use his checking account and permits until March 2010. He allowed Lyons to use his beer license and his lottery authorization in an effort to effectuate the sale to Lyons.³² However, Lyons could not run the store, and on March 15, 2010, Lyons voluntarily gave the Exxon 45 back to Mr. Basheer.³³ Mr. Basheer then began operating the store and selling gasoline again.

Sometime in 2011, Mr. Basheer attempted to sell the Exxon 45 to another buyer. However, this prospective buyer researched the ownership of the property, and discovered that the title to the Exxon 45 was in the name of Lyons.³⁴ According to Mr. Basheer, this was the first time he knew that title to the property was not in his name.³⁵ Subsequently, JLE Investors foreclosed on the property because of Lyon's nonpayment of the \$560,000 loan.³⁶ After learning of the fraudulent transfer, Mr. Basheer filed suit against several defendants, including Lyons and JLE Investors.³⁷

3. The ED's Position

The ED argued that Mr. Basheer was the owner of the facility, both legally and factually, at the time of the violations. The TCEQ's database indicated that he was the owner, as did the records of the Galveston County Appraisal District. Also, Mr. Basheer signed the UST Registration and Self-Certification forms for 2009 and 2010 as the owner of the facility, and Baxter Environmental indicated on the pre-test notification form that Mr. Basheer was the owner. The ED also maintained

³¹ Tr., pg. 81; ED Ex. 1, pg. 26.

³² Tr., pg. 51.

³³ Tr., pgs. 42-43.

³⁴ Tr., pg. 204.

³⁵ Tr., pg. 46.

³⁶ Tr., pg. 193.

³⁷ ED Ex. 23.

that Mr. Basheer thought he was the owner because he was unaware of the allegedly forged signatures on the November 12, 2009 General Warranty Deed, purporting to convey the Exxon 45 to Lyons.

It is also the ED's position that Mr. Basheer was the operator of the Exxon 45. He was actively involved in the business operations, as evidenced by checks showing that he purchased gasoline and supplies for the convenience store. In addition, he was present behind the cash register when Ms. Whelan returned to the Exxon 45 on February 16, 2010, indicating that he was working at the Exxon 45.

The ED also pointed out that Mr. Basheer regained possession of the Exxon 45 in March 15, 2010. Therefore, he was both the owner and the operator of the store on March 25, 2010, the date of the ED's record review and the resulting violations.

4. Mr. Basheer's Position

Mr. Basheer argued that he was not the owner of the Exxon 45 at the time of the February 11, 2010 inspection. He claimed that Lyons "executed a General Warranty Deed on . . . November 12, 2009, conveying the real property from Basheer and his wife . . . to itself." Mr. Basher contended that Lyons was the fee simple owner of the surface estate and was considered to be the owner of the UST system. Further, it was Mr. Basheer's position that Lyons is the responsible party because Lyons agreed in the Residential Contract for Deed to obey all laws and hold Mr. Basheer harmless for any claims arising out of Lyon's use of the Exxon 45.³⁸

Mr. Basheer also maintained he was not the operator, and he relinquished control of the Exxon 45 to Lyons, although he was available for consultation and assistance. He maintained that Lyons' employees opened and closed the store, ordered inventory, and were responsible for the daily

³⁸ Mr. Basheer also cited to a "Lease to Purchase" Agreement as support for his position on Lyons' and his contractual liabilities. ED Ex. 24. However, the version of this agreement in the record is unsigned, marked-up, and unreadable. The ALJ finds that this document has no evidentiary value.

operations of the store. It was not until March 2010 that he regained control of the day-to-day operations. Regarding his presence behind the cash register on Ms. Whelan's return visit on February 16, 2010, he claimed that Ms. Whelan had previously informed him that she was returning to the store on that date. Therefore, he was there to meet with Ms. Whelan, and was not working at the store.

5. The ALJ's Analysis

As stated in Mr. Basheer's First Amended Original Petition in his lawsuit, title to the Exxon 45 involves the "the [most] convoluted [of] real estate transactions." For purposes of this administrative proceeding, the ALJ determines that Mr. Basheer was the owner on February 11, 2011, and is therefore responsible for the violations found on that date. The ALJ also concludes that Mr. Basheer is responsible for his failure to comply with his prior agreed order, as determined in the March 25, 2010 record review.

The ALJ disagrees with Mr. Basheer's legal analysis that Lyons was the owner of the UST system. According to Mr. Basheer's testimony, Lyons forged the signatures on the November 12, 2009 General Warranty Deed.³⁹ Under state law, a forged deed is void *ab initio* and passes no title.⁴⁰ Therefore, since a forged deed cannot pass title to real property, title to the Exxon 45 remains with Mr. Basheer and his wife, and he appears to have been the owner of the facility at the time of the February 11, 2010 inspection. In addition, without analyzing its provisions, the Residential Contract for Deed could not pass title to the property because Ms. Durdana, a co-owner of the Exxon 45, did not sign it. Neither the forged deed nor the unexecuted contract for deed is sufficient documentation that a change of ownership of the Exxon 45 has occurred, as required by 30 TEX. ADMIN. CODE § 334.2(73).

³⁹ Tr., pgs. 227 & 231.

⁴⁰ *Dwairy v. Lopez*, 243 S.W.3d 710, 712 (Tex. App.—San Antonio 2007, no. pet.).

Also, Lyons' apparent assumption of liability in the Residential Contract for Deed does not relieve Mr. Basheer of his responsibility for the violations. Again, it does not appear that the Residential Contract for Deed is a binding document because Ms. Durdana did not sign it. Also, as pointed out by the ED, the Commission is not a party to the agreement, and Mr. Basheer cannot contract away his liabilities to the state.

Other evidence also supports the conclusion that Mr. Basheer is the owner of the Exxon 45. Mr. Basheer was listed as the owner on three TCEQ's UST Registration and Self-Certification Forms, from April 2009 through May 2011, which includes the date of the February 11, 2010 compliance inspection.⁴¹ Ms. Whelan testified that the records of the Galveston County Appraisal District indicated that Mr. Basheer was the owner of the property. The consulting firm that scheduled the Stage II testing in January 2010 listed Mr. Basheer as the owner on its pre-test notification form. Furthermore, Mr. Basheer thought he was the owner of the facility at the time of the inspection because he was unaware of the November 12, 2009 General Warranty Deed with the forged signatures, purporting to convey the Exxon 45 from Mr. Basheer and his wife to Lyons.

The ALJ also concludes that Mr. Basheer was the operator of the facility at the time of the February 11, 2010 investigation. In 2009 and 2010, Mr. Basheer certified on his TCEQ registration and certification forms that he was the operator of the facility.⁴² On the exit interview form, Mr. Basheer indicated that he would ensure that the violations were remedied.⁴³ The ALJ concludes that Mr. Basheer was also the operator of the Exxon 45.

In his EDPRP, the ED alleged that on February 11, 2010, Ms. Whelan found six violations,⁴⁴ and the owner and operator are responsible for those violations.⁴⁵ He is also responsible, as both the

⁴¹ ED Ex. 2 (Apr. 25, 2009); ED Ex. 3 (Jun. 5, 2010); & ED Ex. 4 (May 20, 2011).

⁴² ED Exs. 2 & 3.

⁴³ ED Ex. 1, pg. 26.

⁴⁴ ED Ex. 7, pgs. 6-7.

⁴⁵ 30 TEX. ADMIN. CODE § 115.244(1), 115.245(3), 115.246(5), & 115.248(1). Mr. Basheer is also an affected person because he owns a UST system in Galveston County. 30 TEX. ADMIN. CODE §§ 115.242 & 115.245.

owner and operator, for the violations found during the March 25, 2010 record review relating to his noncompliance with his May 7, 2008 Agreed Order, docket no. 2007-1087-PST-E.⁴⁶ Therefore, the ALJ recommends that the Commission find that Mr. Basheer is responsible for all the violations set out in the EDPRP.

C. Inability to Pay

As previously stated, the parties stipulated that the ED's recommended penalty of \$39,964 was correctly calculated pursuant to section 7.053 of the Texas Water Code and the TCEQ's 2002 Penalty Policy (RG 253).⁴⁷ The remaining issue is whether Mr. Basheer has the ability to pay that recommended penalty.

The TCEQ's rules set out the process to address an inability to pay claim:

- (a) If any respondent . . . asserts an inability to pay the penalty . . . that party shall have the burden of establishing that a lesser penalty is justified under that party's financial circumstances.
- (b) A party asserting a claim under this section must produce all financial records that would be potentially relevant to that issue The failure of the party raising such a claim to provide all potentially relevant financial records . . . shall constitute a waiver of the claim.⁴⁸

1. ED's Position

Donna Chaffin, a financial analyst at the TCEQ, testified that Mr. Basheer failed to prove that he is unable to pay the recommended penalty. For a sole proprietorship, the ED typically requests that a respondent submit the following information:

⁴⁶ ED Ex. 1, pg. 7; 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) & 334.50(d)(1)(B).

⁴⁷ Tr., pgs. 92-94.

⁴⁸ 30 TEX. ADMIN. CODE § 70.8.

1. Two years of tax returns
2. Two years of financial statements
3. A Financial Data Request Form (FDRF), listing all assets, all income, all liabilities, and all expenses
4. A Schedule of Indebtedness Form, showing the specifics of outstanding debt
5. A TCEQ Disclosure Form, authorizing financial institutions to disclose status of bank accounts and loans
6. Loan notes
7. Leases
8. Written explanation from respondent on why there is an inability to pay the recommended penalty
9. Three months of bank statements
10. Texas Work Force Commission reports⁴⁹

In addition to this information, Ms. Chaffin also requested that Mr. Basheer provide three years of bank statements because of the alleged sale of the Exxon 45 in 2009.

Ms. Chaffin made four additional requests because she believed Mr. Basheer had not provided all the requested documentation.⁵⁰ She also stated that there were irregularities in the items Mr. Basheer had submitted. For example, in his lawsuit against Lyons and JLE Investors, Mr. Basheer stated that he had agreed to sell the property to Lyons for \$800,000. The lawsuit also indicated that the balance due on the agreement was \$640,000, implying that Lyons had made some payments.⁵¹ Ms. Chaffin stated that she had requested documentation of the payments from the sale, and Mr. Basheer responded that he had not received any payments, in apparent conflict with the statements in his lawsuit. The discrepancy between Mr. Basheer's lawsuit and his statements, among other things, caused Ms. Chaffin to question Mr. Basheer's credibility.

Ms. Chaffin also testified about other irregularities in Mr. Basheer's financial documentation. She claimed that in his initial submission, he did not submit bank statements for his accounts at Texas First Bank, and he did not submit the statements for his accounts at Moody Bank and

⁴⁹ Tr., pgs. 118-19.

⁵⁰ ED Ex. 13 (May 25, 2011 request); ED Ex. 18 (Jun. 30, 2011 request), ED Ex. 19 (Jul. 5, 2011 request); & ED Ex. 21 (Jul. 29, 2011 request).

⁵¹ ED Ex. 23, pg. 3.

Wells Fargo until the ED's third request for information.⁵² Ms. Chaffin also discovered from Moody Bank that Mr. Basheer opened and quickly closed an account in mid-2009.⁵³ However, Ms. Chaffin did not see a bank statement for this account, but conceded that the ED had not initially requested bank statements from that time period.⁵⁴ Ms. Chaffin testified that Mr. Basheer's failure to provide all the information requested caused him to lose credibility with her.

In addition, Ms. Chaffin testified that she "discovered during [her] financial review that Mr. Basheer failed to report certain assets that he owned, and this translated to his failure to report his current financial position which in turn translates to his failure to prove the claim that he's unable to pay the assessed penalty."⁵⁵ Specifically, Ms. Chaffin asserted that Mr. Basheer failed to identify the following assets:

1. An undisclosed Wells Fargo account, number 5830
2. An undisclosed Wells Fargo account, number 6469
3. A 2010 Toyota Camry, although Mr. Basheer disclosed the loan on the vehicle as a liability
4. A 2008 Yamaha motorcycle
5. A 1997 Nissan Maxima
6. A 1997 Honda Odyssey⁵⁶

Ms. Chaffin discovered the existence of the two undisclosed bank accounts when she reviewed the bank statements for Wells Fargo account number 3865, an account Mr. Basheer had disclosed to the ED. According to Ms. Chaffin, this statement showed Mr. Basheer transferred a net of \$11,400 from the account soon after Mr. Basheer requested a financial review.⁵⁷

June 30, 2011	\$4,900 transferred from disclosed account number 3865 to undisclosed account number 6489
---------------	---

⁵² Tr., pgs. 131-32.

⁵³ See ED Ex. 16, pg. 1.

⁵⁴ Tr., pg. 141.

⁵⁵ Tr., pg. 123.

⁵⁶ Tr., pg. 127.

⁵⁷ Tr., pgs. 137-38.

July 5, 2011	\$7,000 transferred from disclosed account number 3865 to undisclosed account number 6489
July 8, 2011	\$500 transferred from undisclosed account number 6489 to disclosed account number 3865. ⁵⁸

Regarding the vehicles, Mr. Chaffin determined from a public database that they were registered to either Mr. Basheer or to his wife.⁵⁹

2. Mr. Basheer's Position

In his closing arguments, Mr. Basheer argued that he timely responded to the ED's numerous requests with hundreds of pages of financial data. However, he claimed that it was not until the evidentiary hearing that he learned that the ED was denying his request for a determination that he was financially unable to pay the recommended penalty. Mr. Basheer asserted that Ms. Chaffin questioned Mr. Basheer's credibility, and then discontinued her analysis.

Regarding the undisclosed Wells Fargo account number 5830, Mr. Basheer testified that this was a savings account required by the bank for overdraft protection. In his closing arguments, he claimed that "the account carries a \$50 balance that is moved by the bank in and out of [Mr.] Basheer's checking account to cover overdraft fees. It does not accumulate a balance and [Mr.] Basheer does not have access to the account. It is created by the bank for its protection."⁶⁰ He also stated that the other undisclosed Wells Fargo account number 6469 is a checking account belonging to his daughter. Regarding the transfers of money that concerned Ms. Chaffin, Mr. Basheer stated that these transfers were made into his daughter's account, but he also used that account to purchase gas.⁶¹

⁵⁸ ED Ex. 15, pg. 2.

⁵⁹ Tr., pgs. 127-28.

⁶⁰ This statement is not found in the record. However, Mr. Basheer did testify that he had an additional Wells Fargo savings account that allowed him to have a free checking account. Tr., pg. 185. Further, the Wells Fargo statement for account number 3865 shows that the undisclosed account number 5830 acts as overdraft protection for the disclosed account number 3865. ED. Ex. 15, pg. 2.

⁶¹ Tr., pg. 186.

Regarding the vehicles, Mr. Basheer argued that, although not listed as an asset, he disclosed the loan for the 2010 Camry on the TCEQ's FDRF. He argued that it is disingenuous for the ED to question Mr. Basheer's credibility because he failed to list the car as an asset. He also claimed in his closing arguments that the 2008 Yamaha motorcycle is owned by his son.⁶² At the hearing, he testified that the Honda Odyssey and the Nissan Maxima did not run, and they are parked at the Exxon 45.⁶³ He tried to sell each car for \$500, but no one would buy the vehicles.

Mr. Basheer also addressed the bank statements that were only opened for a couple of months. He testified that because the Exxon 45 was owned by both he and his wife, the insurance companies required him to open accounts in both of their names for the deposit of insurance proceeds. That is why he opened an account at Wells Fargo in 2010 for only two or three months.⁶⁴

At the hearing, Mr. Basheer submitted evidence in support of his claim that he is unable to pay the recommended penalty. The Exxon 45 is the only business Mr. Basheer owns. He does not own rental property and no one owes him money. He does not have life insurance because he cannot afford it.⁶⁵ His wife was laid off from Macy's and he has six children who are in college, high school, and middle school.⁶⁶ He and his wife both work in the store because he cannot afford to hire employees. They run the store seven days a week, from 7:00 a.m. to 11:00 p.m. He also claimed that the population in Galveston decreased by 30 per cent after Hurricane Ike, and this has negatively affected his business.⁶⁷

⁶² There is no evidentiary support for this assertion.

⁶³ Tr., pg. 172.

⁶⁴ Tr., pgs. 184-85.

⁶⁵ Tr., pgs. 170-71.

⁶⁶ Tr., pg. 167.

⁶⁷ Tr., pg. 179.

His 2009 tax return shows a total income of \$44,344.⁶⁸ His 2010 tax return shows a total income of \$19,629, and he supported his family on this income.⁶⁹

According to his "Schedule of Indebtedness," he owes \$22,580.72 to several credit card companies and other entities, including the State Comptroller.⁷⁰ He testified that he is past due on many of his bills, which have been turned over to collection agencies. This is why he could not give current statements to the ED as the ED had requested.⁷¹ He makes payments on his Sam's Club account so that he can buy inventory for the convenience store.⁷² He also borrowed \$50,000 or \$60,000 from a friend to re-open the store.⁷³

In order to purchase fuel for re-sale, some of the Exxon 45's credit card sales are paid directly into the account of one of his fuel suppliers. The supplier wanted this arrangement because of the concern that Mr. Basheer could not pay his fuel bill. Under this arrangement, the supplier bills Mr. Basheer for the difference between his credit card sales and the amount due.⁷⁴

Mr. Basheer stated that he makes about \$.06 on each gallon of gas sold, and he pays credit card and delivery fees out of that \$.06 per gallon. He estimated that he might make a penny per gallon, but he needs the gasoline sales to generate sales inside the store.⁷⁵

Regarding Ms. Chaffin's concerns about his failure to document payments from Lyons, Mr. Basheer testified that Lyons did not give any money to Mr. Basheer as part of their agreement to sell the Exxon 45. Instead, Lyons paid \$160,000 on Mr. Basheer's note to Moody Bank as part of

⁶⁸ Resp. Ex. 2 (2009 Tax Return, ln. 22, total income, \$44,344).

⁶⁹ Resp. Ex. 3 (2010 Tax Return, ln. 22, total income, \$19,629); Tr., pg. 180.

⁷⁰ Resp. Ex. 1.

⁷¹ Tr., pg. 175.

⁷² Tr., pg. 176.

⁷³ Tr., pgs. 173-74.

⁷⁴ Tr., pgs. 186-87.

⁷⁵ Tr., pgs. 187-88.

the transaction involving the forged deed. Mr. Basheer claimed that the payment to Moody Bank was not part of any agreement he had had with Lyons.⁷⁶ Further, JLE Investors has foreclosed on the Exxon 45 because Lyons failed to re-pay its loan.⁷⁷ Apparently, Lyons is attempting to repay JLE Investors, and Lyons is now looking to Mr. Basheer for \$160,000, in repayment of the monies Lyons paid on Mr. Basheer's loan with Moody Bank.⁷⁸

3. ALJ's Analysis

Mr. Basheer's evidence depicts a business devastated by Hurricane Ike. In 2009 and 2010, the Exxon 45 generated little in total income, as shown by his 2009 and 2010 tax returns. Out of this total income, he supported his entire family. In addition, the Exxon 45 appears to be mired in debt and the property itself is the subject of a foreclosure and a lawsuit. The ED presented no rebuttal testimony regarding the evidence presented by Mr. Basheer in his direct case.

In his closing arguments, Mr. Basheer claimed to have submitted hundreds of pages to the ED, a claim the ED did not dispute in his written response. After submitting this documentation, the ED informed Mr. Basheer, for the first time at the evidentiary hearing,⁷⁹ that he had failed to submit information regarding six assets: four vehicles and two bank accounts. There were also other irregularities in Mr. Basheer's submissions that caused Mr. Chaffin to question Mr. Basheer's credibility, including his failure to provide documentation of Lyons' payment of the loan with Moody Bank. Therefore, the ED concluded that Mr. Basheer's information was incomplete. The ED did not express an opinion on Mr. Basheer's ability to pay, other than to contend that Mr. Basheer failed to provide sufficient documentation to demonstrate his financial position.

⁷⁶ Tr., pgs. 188-89.

⁷⁷ Tr., pg. 193.

⁷⁸ Tr., pgs. 216-17.

⁷⁹ In his closing arguments, Mr. Basheer claimed that he learned for the first time at the hearing that the ED had decided to "deny[] his application for financial inability to pay based on his failure to report assets he owned." The record does not contain a letter from the ED to Mr. Basheer explaining his position. Nor is there any testimony that the ED's decision was orally communicated to Mr. Basheer.

In the situation presented here, 30 TEX. ADMIN. CODE § 70.8(b) requires that if Mr. Basheer failed to provide all potentially relevant financial records, then he has waived his claim of inability to pay. Therefore, the ALJ must determine if the missing information is potentially relevant to the financial issue of whether Mr. Basheer has an inability to pay the \$39,964 penalty.

The ALJ concludes that the ownership of the vehicles is not potentially relevant financial information concerning Mr. Basheer's ability to pay the penalty. As Mr. Basheer testified, he owns the Camry subject to a \$17,974.60 loan, and he disclosed this loan on his FDRF.⁸⁰ In addition, two of the vehicles are older cars, which Mr. Basheer attempted to sell for \$500, but could not.

The ALJ further concludes that the records for the two undisclosed bank accounts are potentially relevant information for a financial analysis. The evidence shows that one account was used for overdraft protection, and the bank routinely transferred \$25 into the account.⁸¹ The other account was apparently used by Mr. Basheer's daughter, although he testified that he also used the account for gasoline purchases.⁸² Further, Mr. Basheer transferred \$11,400 into that undisclosed account around the time he requested the financial review on his ability to pay.⁸³ Since Mr. Basheer did not provide sufficient information regarding these two accounts, the ALJ concludes that Mr. Basheer waived his claim, in accordance with 30 TEX. ADMIN. CODE § 70.8(b).

Regardless of whether he waived his claim of an inability to pay, justice may require that the Commission allow Mr. Basheer to pay the penalty over 36 months. Mr. Basheer's evidence of his poor financial condition is uncontroverted. Therefore, the ALJ recommends that the Commission allow Mr. Basheer to make monthly payments on the \$39,964 penalty over 36 months. The ALJ recommends an initial payment of \$1,114, with the remaining \$38,850 of the administrative penalty payable in 35 monthly installments of \$1,110 each.

⁸⁰ ED Ex. 14, pg. 7.

⁸¹ ED Ex. 15, pg. 2; Tr., pg. 185.

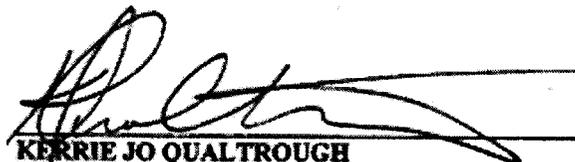
⁸² Tr., pg. 186.

⁸³ ED Ex. 15, pg. 2.

D. Summary

The ALJ recommends that the Commission find that Mr. Basheer is the owner and operator of the facility and, therefore, responsible for the violations found during the February 11, 2010 inspection and the March 25, 2010 record review. Although Mr. Basheer has waived his claim of an inability to pay the recommended penalty, the ALJ also recommends that the Commission allow Mr. Basheer to pay his penalty over a three-year term.

SIGNED January 13, 2012



**KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against
Mohamed Basheer d/b/a Exxon 45
TCEQ Docket No. 2010-0503-PST-E
SOAH Docket No. 582-11-1709**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's (ED's) Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against Mohamed Basheer d/b/a Exxon 45 (Respondent). A Proposal for Decision (PFD) was presented by Kerrie Jo Qualtrough, 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. On August 12, 2010, the ED filed his "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Mohamed Basheer d/b/a Exxon 45" (EDPRP) with the Office of the Chief Clerk.
2. On August 12, 2010, the Executive Director mailed the EDPRP to Respondent at 6101 Broadway Street, Galveston, Texas 77551.

3. On November 1, 2010, Respondent filed an answer to the EDPRP and requested a hearing.
4. On December 2, 2010, the Executive Director referred this matter to SOAH for an evidentiary hearing on the merits.
5. On December 16, 2010, the TCEQ's Chief Clerk mailed notice of the preliminary hearing scheduled for January 20, 2011, to Respondent at 6101 Broadway Street, Galveston, Texas 77551.
6. 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 EDPRP, being deemed as true, and the relief sought in the notice possibly being granted by default.
7. On January 18, 2011, the ED and Respondent filed a "Joint Motion to Waive Appearance at the Preliminary Hearing and Submission of Agreed Hearing Schedule," containing a proposed hearing schedule, that the ALJ adopted.
8. On September 8, 2011, the ALJ convened the hearing on the merits in Houston, Texas. Both parties participated in the hearing.
9. Respondent owns and operates an underground storage tank (UST) system and a convenience store with retail sales of gasoline located at 6101 Broadway Street, Galveston, Galveston County, Texas. The business is called the Exxon 45.
10. The Exxon 45 has a TCEQ petroleum storage tanks facility identification number 26658.

11. The USTs at the Exxon 45 are not exempt or excluded from regulation and contain a regulated petroleum substance.
12. The Exxon 45 consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
13. During an investigation conducted on February 11, 2010, a Galveston County Air Pollution Control investigator documented multiple UST violations at the Exxon 45.
14. At the time of the February 11, 2010 investigation, Respondent was the owner of the Exxon 45.
15. At the time of the February 11, 2010 investigation, Respondent was the operator of the Exxon 45.
16. Respondent failed to conduct daily inspections of the Exxon 45's Stage II vapor recovery system.
17. Respondent failed to have at least one Exxon 45 representative receive training in the operation and maintenance of the Stage II vapor recovery system, and failed to have each current employee receive in-house Stage II vapor recovery training regarding the purpose and correct operating procedure of the vapor recovery system.
18. Respondent failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurred first.
19. Respondent failed to maintain Stage II records at the Exxon 45.
20. Respondent failed to provide notification of a scheduled test cancellation within 24 hours of cancellation.

21. Respondent failed to upgrade the Exxon 45's Stage II equipment to onboard refueling vapor recovery (ORVR) compatible systems. At the time of the Investigation, the Exxon 45 had not installed an ORVR system.
22. Respondent entered into a TCEQ Agreed Order for enforcement matter 2007-1087-PST-E (Agreed Order), dated March 10, 2008.
23. Ordering Provision 2.a.ii. of the Agreed Order required Respondent to monitor the USTs at the Exxon 45 for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).
24. Ordering Provision 2.a.ii. of the Agreed Order required Respondent to conduct proper inventory control procedures for all of the USTs at the Exxon 45.
25. Respondent owned and operated the Exxon 45 when the violations of the Agreed Order were documented on March 10, 2010.
26. Respondent failed to monitor USTs at the Exxon 45 for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).
27. Respondent failed to conduct proper inventory control procedures for all USTs at the Exxon 45.
28. Respondent submitted financial records to the ED for an analysis of his inability to pay the recommended administrative penalty.
29. Respondent did not provide financial information regarding two bank accounts that he owns.

30. The Executive Director and Respondent stipulated at the evidentiary hearing that the administrative penalty of \$39,964 specified in the Penalty Calculation Worksheet was correctly calculated in accordance with the TCEQ Penalty Policy, effective September, 2002, and taking into account the factors set forth in TEXAS WATER CODE § 7.053.
31. Ordering Provisions Nos. 19.a. through 19.c. of the EDPRP are the appropriate corrective actions for the alleged violations in this enforcement matter.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE §§ 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 proposed Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE 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 § 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 recommended penalties and corrective actions, pursuant to TEX. GOV'T

CODE §§ 2001.051(1) and 2001.052; TEX. WATER CODE § 7.058; and 30 TEX. ADMIN. CODE §§ 1.12, 39.25, 70.104, and 80.6(b)(3).

6. Based on the above Findings of Fact, Respondent violated TEX. HEALTH & SAFETY CODE § 382.085(b); TEX. WATER CODE § 26.3475(c)(1); 30 TEX. ADMIN. CODE §§ 115.242(1)(C), 115.244(1), 115.245(2), 115.245(3), 115.246(5), 115.248(1), 334.50(b)(1)(A) and 334.50(d)(1)(B); and TCEQ Agreed Order Docket No. 2007-1087-PST-E, Ordering Provision 2.a.ii.
7. Based on consideration of the above Findings of Fact, the elements set forth in TEX. WATER CODE §§ 7.052 and 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for the alleged violations, resulting in a total administrative penalty of \$39,964.
8. The Executive Director met his burden of proof to show an administrative penalty of \$39,964 is warranted for the violations found and should be assessed against Respondent.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.8, Respondent waived his inability to pay claim because he did not provide records for two bank accounts, which are potentially relevant financial information.
10. Respondent is responsible for paying the administrative penalty.
11. Although Respondent has waived his inability to pay claim, it would be more just, in accordance with TEX. WATER CODE § 7.053(4), for the Respondent to be allowed to pay the penalty over 36 months.
12. To bring the Exxon 45 into compliance, Respondent should take the corrective actions proposed by the ED and set out below in the Order.

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 \$39,964 for violations of the following statutes, rules, and order: TEX. HEALTH & SAFETY CODE § 382.085(b); TEX. WATER CODE § 26.3475(c)(1); 30 TEX. ADMIN CODE §§ 115.242(1)(C), 115.244(1), 115.245(2), 115.245(3), 115.246(5), 115.248(1), 334.50(b)(1)(A) and 334.50(d)(1)(B); and TCEQ Agreed Order Docket No. 2007-1087-PST-E, Ordering Provision 2.a.ii.
2. Within 30 days after the effective date of this Order, Respondent shall pay \$1,114 of the administrative penalty. The remaining amount of \$38,850 of the administrative penalty shall be payable in 35 monthly payments of \$1,110 each. The first monthly payment shall be paid within 30 days after the effective date of this 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 Order, including the payment schedule, the ED 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 Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Order.
3. The full 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.
4. 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: Mohamed Basheer d/b/a Exxon 45, Docket No. 2010-0503-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

5. 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.
6. 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.
7. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T CODE § 2001.144 and 30 TAC § 80.273.
8. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
9. 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

Bryan W. Shaw, Ph. D., Chairman
For the Commission