

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*

November 28, 2011

Via Facsimile to (512) 322-2061  
The Honorable Lilo D. Pomerleau  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701-1649

Re: Ali Zulfiqar d/b/a Mini Mart 102 and ZQS Corporation, Inc.  
TCEQ Docket No. 2010-1326-PST-E  
SOAH Docket No. 582-11-3204

Dear Judge Pomerleau:

Please find enclosed a copy of the "Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order" and a copy of the Proposed Order with the suggested modifications.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Frazee".

Stephanie J. Frazee, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality  
[Stephanie.Frazee@tceq.texas.gov](mailto:Stephanie.Frazee@tceq.texas.gov)

Enclosure

cc: Blas Coy, Public Interest Counsel  
Danielle Porras, Enforcement Division  
Todd Thompson, Waste Section Manager

**SOAH DOCKET NO. 582-11-3204  
TCEQ DOCKET NO. 2010-1326-PST-E**

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

**Petitioner**

**V.**

**ALI ZULFIQAR D/B/A MINI MART 102  
AND ZQS CORPORATION, INC.**

**Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**EXECUTIVE DIRECTOR'S EXCEPTIONS AND SUGGESTED MODIFICATIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

NOW COMES the Executive Director, by and through his attorney, Stephanie J. Frazee, and makes the following exceptions and suggestions to modify the Administrative Law Judge's ("ALJ's") Proposed Order, pursuant to 30 TEX. ADMIN. CODE § 80.257.

1. That Finding of Fact No. 7.b. shall be changed to read "There were no overflow prevention equipment records available to ensure that the overfill prevention equipment was installed and properly working;"
2. That Finding of Fact No. 7.f. shall be changed to read "There was no record showing that the gasoline lines were tested annually for releases or that the line leak detector was tested at least once per year; and"
3. That in Finding of Fact No. 12, "20111" shall be replaced with "2011".
4. That Ordering Provision No. 2 shall be changed so that the first monthly payment is "\$583" and the additional 35 monthly payments are "\$551" each.
5. That in Ordering Provision No. 3., "20 TEX. ADMIN. CODE 334.43" shall be replaced with "30 TEX. ADMIN. CODE § 334.42".

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 attached.

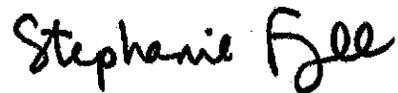
Respectfully Submitted,

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



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Stephanie J. Frazee  
State Bar of Texas No. 24059778  
Litigation Division, MC 175  
P.O. Box 13087  
Austin, TX 78711  
(512) 239-3693  
(512) 239-3434 (FAX)

**CERTIFICATE OF SERVICE**  
**Ali Zulfiqar d/b/a Mini Mart 102 and ZQS Corporation, Inc.**  
**SOAH Docket No. 582-11-3204**  
**TCEQ Docket No. 2010-1326-PST-E**

I hereby certify that on November, 28<sup>th</sup> 2011, the original and 7 copies of the foregoing "Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order" ("Modifications") 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 Modifications were sent to the following:

**Via Facsimile to (512) 322-2061**

The Honorable Lilo D. Pomerleau  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701-1649

**Via Facsimile to (409) 765-6469 and Via Certified Mail, Return Receipt Requested**

Mark W. Stevens  
P.O. Box 8118  
Galveston, Texas 77553

**Article No.7002 2030 0005 7059 3591**

**Via electronic mail**

Blas Coy, Public Interest Counsel

*Stephanie Frazee*

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Stephanie J. Frazee  
Attorney  
Litigation Division  
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against and  
Requiring Corrective Action by  
Ali Zulfiqar d/b/a Mini Mart 102 and ZQS Corporation, Inc.  
TCEQ DOCKET NO. 2010-1326-PST-E  
SOAH DOCKET NO. 582-11-3204**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action from Ali Zulfiqar d/b/a Mini Mart 102 (Respondent) and ZQS Corporation, Inc. Lilo D. Pomerleau, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on September 1, 2011, in Austin, Texas, and presented the Proposal for Decision.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

**I. FINDINGS OF FACT**

1. Ali Zulfiqar d/b/a Mini Mart 102 (Respondent) owns and operates a convenience store, including gasoline pumps and tanks, located at 2311 25<sup>th</sup> Avenue, Texas City, Galveston County, Texas (Facility).
2. Respondent owns three underground storage tanks (USTs) at the Facility that are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. On January 12, 2010, TCEQ Investigator Lisa E. Merritt conducted an inspection of the Facility and determined that Respondent had committed four violations of the TCEQ rules regarding USTs.
4. On February 18, 2010, the TCEQ sent a Notice of Violation to Respondent and to Binh Tran, the owner of the property at 2311 25<sup>th</sup> Avenue, Texas City, Galveston County.
5. On June 16, 2010, Ms. Merritt conducted a follow-up inspection and determined that Respondent remained in violation of several TCEQ rules, the Texas Water Code, and the Texas Health and Safety Code.
6. Ms. Merritt referred the matter to the TCEQ Enforcement Division because some of the violations found on her June 16, 2010 inspection were Category A violations, which are of a serious nature.
7. On or about June 16, 2010, Respondent was responsible for the following violations at the Facility:
  - a. The super unleaded tank was out of service, and there were no locks on the tank to prevent access, tampering, and vandalism;
  - b. There were no overflow prevention equipment records available to ensure that the overfill prevention equipment was installed and properly working;
  - c. The UST registration records had not been amended to reflect the current operator and out-of-service status of the super unleaded storage tank and the delivery certificate had not been properly renewed;
  - d. A valid delivery certificate was not available at the time of gas deliveries for fuel delivered between January 12 and June 16, 2010;
  - e. There was no documentation to show that the Facility was insured to compensate any third party for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum USTs;
  - f. There was no record showing that the gasoline lines were tested yearly for releases or that the line leak detector was tested at least once per year; and

- g. There was water in the fuel spill bucket and no documentation that any overspill containers or catchment basins were being inspected every 60 days.
8. On July 26, 2010, the TCEQ sent a Notice of Enforcement to Mr. Tran and sent a copy to Respondent.
9. On December 14, 2010, the ED filed a Preliminary Report and Petition (EDPRP) with the Commission's Chief Clerk and mailed a copy of it by U.S. first class mail and certified mail, return receipt requested, to Respondent at 2311 25<sup>th</sup> Avenue, Texas City, Texas 77590. The Preliminary Report and Petition alleged that Respondent violated TEX. WATER CODE ANN. §§ 26.3467(a) and 26.3475(a) and (c)(1); TEX. HEALTH & SAFETY CODE ANN. § 382.085(b); and 30 TEX. ADMIN. CODE §§ 37.815(a) and (b), 115.226(1), 334.7(d)(3), 334.8(c)(5)(A)(i), 334.8(c)(5)(B)(ii), 334.10(b), 334.42(i), 334.48(c), 334.49(c)(4), 334.50(b), 334.50(b)(2)(A)(i)(III), 334.50(d)(1)(B)(ii), 334.50(d)(1)(B)(iii)(I), and 334.54(b)(2).
10. On December 30, 2010, Respondent requested a contested case hearing on the allegations in the EDPRP, and on January 31, 2011, the Chief Clerk referred this dispute to SOAH for hearing.
11. A Notice of Preliminary Hearing was issued on February 9, 2011.
12. A preliminary hearing was held on March 10, 2011, before ALJ William G. Newchurch at SOAH, William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas.
13. The evidentiary hearing convened on September 1, 2011, before ALJ Lilo D. Pomerleau at SOAH, William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The ED was represented by Staff Attorney Stephanie Frazee. Respondent was represented by attorney Mark W. Stevens. The record closed that day.

14. The ED recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$19,868 payable over a three-year period.
15. An administrative penalty of \$19,868 takes into account the factors contained in TEX. WATER CODE § 7.053 and the Commission's 2002 Penalty Policy.
16. Respondent failed to provide sufficient documentation detailing an inability to pay the proposed penalty.

## II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. §§ 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 findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. 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 ANN. § 5.013.
4. Respondent received sufficient notice of the hearing on the alleged violations and the recommended penalties and corrective actions, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051(1) and 2001.052; TEX. WATER CODE ANN. § 7.058; and 30 TEX. ADMIN. CODE §§ 1.12, 39.25, 70.104, and 80.6(c).
5. Based on the above Findings of Fact, Respondent violated TEX. WATER CODE ANN. §§ 26.3467(a) and 26.3475(a) and 30 TEX. ADMIN. CODE §§ 37.815(a) and (b),

334.7(d)(3),334.8(c)(5)(A)(i),334.8(c)(5)(B)(ii),334.10(b),334.42(i),334.50(b),  
334.50(b)(2)(A)(i)(III), and 334.54(b)(2).

6. The ED's recommended penalty properly considered the factors required by TEX. WATER CODE ANN. § 7.053, including its impact or potential impact on public health and safety, natural resources and their uses, and other persons; the nature, circumstances, extent, duration, and gravity of the prohibited act; the history and extent of previous violations by the violator; the violator's degree of culpability, good faith, and economic benefit gained through the violation; the amount necessary to deter future violations; and any other matters that justice may require.
7. Based on the above findings of fact, the elements set forth in TEX. WATER CODE ANN. §§ 7.052 and 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for each of the alleged violations, resulting in a total administrative penalty of \$19,868.
8. The ED met his burden of proof to show an administrative penalty of \$19,868 is warranted for the violations found and should be assessed against Respondent.
9. Respondent failed to meet his burden to show that he has an inability to pay the recommended administrative penalty, pursuant to 30 TEX. ADMIN. CODE § 70.8.

**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 \$19,868 for violations of the following statutes and rules: TEX. WATER CODE ANN. §§ 26.3467(a) and 26.3475(a) and 30 TEX. ADMIN. CODE §§ 37.815(a) and (b),334.7(d)(3), 334.8(c)(5)(A)(i),334.8(c)(5)(B)(ii),334.10(b),334.42(i),334.50(b),34.50(b)(2)(A)(i)(III), and 334.54(b)(2).

2. Within 30 days after the effective date of this Order, Respondent shall pay the first monthly payment of \$583. The remaining amount of the administrative penalty shall be payable in 35 monthly payments of \$551 each. 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. Within 30 days from the effective date of the Commission Order, Respondent shall begin conducting bimonthly inspections of all sumps, manways, and overflow containers or catchment basins in accordance with 30 TEX. ADMIN. CODE § 334.42.
4. The payment of this administrative penalty and compliance with all the terms and conditions set forth in this Order will completely resolve the violation set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or assessing penalties for other violations that are not raised here. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: Ali Zulfiqar d/b/a Mini Mart 102 and ZQS Corporation, Inc., TCEQ DOCKET NO. 2010-1326-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. Within 60 days after the effective date of this Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering

Provision paragraph 3. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

6. The Executive Director 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 Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
7. 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, are denied.
8. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

9. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
  
10. 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**

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